

My ESOP Has Terminated

When Do I Get My Money?

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Unfortunately, with the country enduring the Great Recession, some ESOP companies have not survived, and their ESOPs have been terminated. Also, some ESOP companies have been sold and the ESOP has been terminated as part of the sale. We've received several calls from ex-employees of those companies wondering when they'll receive their ESOP benefits.

There is no specific deadline as to when a final ESOP distribution must be made. Typically, an ESOP trustee will not allow a distribution until the IRS has ruled that the ESOP has been officially terminated. To do otherwise would put the ESOP trustee at risk. Sometimes, the IRS process takes a couple of years to make a determination with respect to a specific ESOP.

There are several steps that an ESOP must follow before it can make final distributions to ESOP participants. An IRS Form 5310 "Application for Determination for Terminating Plan" must be filed. The ESOP's final tax return must be filed. In the case of a sale, there are often events subsequent to the transaction date that affect the sale price and must be taken into account; for example, a reduction in sale price for the discovery of listed assets that are missing or inventory that is obsolete but still

on the books. Final allocation calculations must be determined. The treatment of unallocated shares must be determined.

Of course, if an ESOP company declares bankruptcy, it's highly likely that the ESOP stock is worthless. If a company is forced to liquidate, it is required to pay off its creditors before it can pay its owners. Typically, there's not enough money to pay off all the creditors, which means there's nothing left for the owners, the ESOP participants.

However, even if the ESOP stock is worthless in the case of bankruptcy, many ESOPs have cash in ESOP participants' individual accounts, and the participants are entitled to receive that cash. If the company is bankrupt, the cash in the ESOP must be used to pay the fees for the ESOP attorney, trustee and administrator in terminating the ESOP, so there sometimes is no cash left over for the ESOP participants in bankrupt ESOP companies.

The message: If an ESOP is terminated because the company was sold or entered bankruptcy, employees should not expect a quick payout of their ESOP benefits; and, in the case of bankruptcy, there may not be any ESOP benefits. **oaw**