

Checklist: Acquisition HR Due Diligence

The following are general considerations for review of human resources before and during an acquisition. This list is not all inclusive and employers should engage with legal counsel during the acquisition process.

Management

- Review of organization chart.
- Arrangement of management functions.
- Employment contracts (written and oral).
- Employment agreements, consulting agreements, non-compete agreements.
- Key employee listing with salary, title and duties.
- Executive management biographies.
- Indemnification agreements.

Employee Census Data

- Date of birth.
- Age.
- Date of hire.
- Salary.
- Sex.
- Job location.
- Position.
- Average scheduled hours.
- FLSA status (exempt/non-exempt).

Employee Benefit Plans

Information for all group life, health, accident and disability plans.

- Carriers for each plan.
- Amount of premium paid by employees for each plan.

- Amount of premium paid by employer for each plan.
- Last two years claims data for medical.
- Number of employees on long-term disability.
- Number of employees on short-term disability.
- Number of employees who are potential long-term disability cases.
- Method of funding existing plans.
- Compliance with ERISA.
- Compliance with Section 125 cafeteria plan requirements.
- Compliance with the Patient Protection and Affordable Care Act (PPACA).

COBRA

- Compliance with COBRA continuation coverage requirements.
- Agreements with third party administrators.

Retirement Plans

- ERISA compliance.
- Qualification status (IRS determination letters).
- Form 5500 annual reports.
- Summary plan descriptions.
- Annual reports and summary annual reports.
- PBGC filings.
- Funding status.
- Frozen or terminated plans.
- Carryover of tax attributes.

Additional Benefits

- Commitments to retirees.
- Other agreements or promises (cars, club dues, etc.).
- Short-term and long-term management incentive plans.
- Employee bonus plans.

- Severance pay plans.
- Employee leave policies.
- Workers' compensation claim history.
- Unemployment insurance claim history.

Compensation

- Total payroll costs.
- Salary structures and ranges.
- Internal compensation equity audits.
- Wage and benefit surveys for the industry and geographical area.
- Unwritten practices affecting compensation and/or benefits.

Compliance

Fair Labor Standards Act (FLSA)

- Wage and hour claims pending, settled or threatened.
- Wage/Hour Division investigations.
- Conciliation agreements with the Department of Labor.

Office of Federal Contractor Compliance Programs (OFCCP)

- Affirmative action programs.
- Conciliation agreements.
- Charges or complaints alleging violation of Executive Order 11246, Section 503 or VEVRAA requirements.
- Files and correspondence regarding prior OFCCP audits or investigations.

Equal Employment Opportunity Commission (EEOC)

- Prior charges.
- Potential charges.
- Pending charges.
- Litigation arising from charges.

Occupational Safety and Health Act

- Complaints.
- Investigation files.
- Citations.

National Labor Relations Board

- Collective Bargaining Agreements.
- Existing petitions.
- Files concerning prior petitions.
- Existing unfair labor practice charges.
- Files concerning prior unfair labor practice charges.
- Litigation with the National Labor Relations Board.

Pension Benefit Guarantee Corporation

- Correspondence.
- Inquiries.
- Charges and litigation.

Other litigation

- Whistleblower matters.
- Wrongful discharge matters.
- Breach of contract claims.
- Any and all federal, state, municipal and administrative decrees, judgments, decisions, opinions or settlement agreements issued or entered into either for or against the company in employment matters.
- Any present or ongoing employment litigation brought by past or present employees or on behalf of past or present employees by any agency of the federal, state or municipal government.
- Schedule of any employment related legal proceedings or charges during the past five years with settlement costs, if any.
- Any litigation not otherwise disclosed concerning employment matters.

Reporting compliance.

- Copies of EEO-1 reports for past five years.
- Copies of VETS-4212 reports for past five years.
- Copy of affirmative action plan.
- OSHA reports 300, 300A, and 301 for the past 5 years.
- PPACA annual reporting.