Proskauer

Question of the Week:

What are your recommendations for handling human capital issues in an M&A transaction?

August 31, 2022

“Recognize that Human Capital is a deal within the deal and plan accordingly. Deal teams sometimes overlook that they need to project out and calendar the key inflection points for successfully closing on the Human Capital part of the deal—just like they would for the M&A work-stream. Understanding that Human Capital requires its own closing just like the other critical work-streams is the key process insight to ensure that the right tone is set from the beginning."

Ben Orlanski, Partner, Mergers & Acquisitions

“Start with a 30,000 foot view and work your way down. First, focus on the structure and business strategy surrounding the transaction. Is it a merger of equals, carve-out deal, asset deal, joint venture, etc.? Which employees and job functions are critical to the business strategy? This will help identify key HR-related goals. Once you understand the structure, you can narrow the focus on details regarding the compensation arrangements, what will be triggered as a result of the transaction, and how to best incentivize and retain the team going forward.”

Andrea Rattner, Partner, Employee Benefits & Executive Compensation

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“One of the most important aspects in M&A is effective communication with employees. It’s critical to maintain brand loyalty and high morale during a transaction and keeping those most affected informed of any impact on them. The go-forward strategy is the best way to do that. Answer the questions you can, follow up when you say you will, and be transparent. This will help you retain the talent that is most valuable to the organization post-transaction.”

David Teigman, Partner, Employee Benefits & Executive Compensation

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Where there are employee owners, decide how to account for their tax goals and expectations for the transaction. Employees are a very important constituency in a deal, no matter how much of a company they own. An M&A transaction may be both an entirely new and unfamiliar experience and yet of significant, even potentially life-changing, personal importance to an employee. Addressing taxes with personnel requires tact and, at times, adaptability. Knowing ahead of time that a certain tax outcome may be counterintuitive is helpful as well.

Malcolm Hochenberg, Partner, Tax

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