

# EMPLOYMENT ISSUES ARISING FROM THE SALE OF A BUSINESS

Presented by

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# What type of sale is it?

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- Stock transfer
- Sale of assets
- Merger

# Importance of Conducting Due Diligence of Employment Matters

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- Buyers should review all employment related documents (handbooks, contracts, benefits, severance agreements, etc.)
- Buyers should obtain assurances (warranties, covenants, and indemnities) from seller that all pre-closing employment obligations will be satisfied at or prior to closing
- Privacy issues regarding employee information

# If Sale of Assets

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- Seller should terminate all employees at closing
  - Issue all notices (i.e., COBRA and other benefit terminations)
  - Pay out accrued but unused vacation in accordance with policy and applicable law
  - Review severance agreements and policies
  - Review employment agreements
    - Change of control
    - Good reason
    - Severance

# If Sale of Assets

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- Buyer should make offers to the employees it wants to hire
  - Enter into new non-compete and confidentiality agreements

# If Stock Purchase

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- Buyer should be aware that seller's vacation policy may apply to any accrued but unused vacation
- Buyer should be aware of any employment agreements
  - Change of control
    - Good reason
    - Severance provisions

# If Stock Purchase

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- Buyer should make offers to the employees it wants to hire
- Buyer should review non-compete agreements
  - Do the agreements transfer
  - Do the agreements adequately protect the business interests of buyer

# The Worker Adjustment and Retraining Notification Act (“WARN”)

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- Generally requires 60 days’ notice of a plant closing or mass layoff
- Failure to give WARN notice may result in liability for wages and benefits to each affected employee for up to 60 days and civil penalties
- Possible sale of business exception
- Possible issues if employees are terminated prior to or after sale



# State Law Issues

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- The law in each state where there are affected employees needs to be reviewed
- State WARN laws