



## **LABOR AND EMPLOYMENT CONSIDERATIONS WHEN BUYING OR SELLING A PRINTING COMPANY**

Like other segments of the economy, mergers and acquisitions are fast becoming an increasing part of the landscape of the Graphic Arts industry. While the financial aspects of such mergers and acquisitions generally receive the most attention, labor and employment considerations should not be overlooked. Failure to exercise "due diligence" on the part of both parties could result in substantial liability to both the seller and the buyer. The following checklist should provide some guidelines when examining the labor and employment law obligations that both parties have toward affected employees and the labor organizations that may represent them.

### **EMPLOYMENT/LABOR CHECKLIST IN MERGERS & ACQUISITIONS**

While not exhaustive, this checklist highlights some important questions and issues relating to labor relations and employment law that should be considered by both the buyer and seller in an acquisition or merger.

#### **I. ANALYZING LIABILITIES ASSOCIATED WITH EMPLOYMENT LAWS**

- The buyer and seller should review all charges filed with OFCCP, the EEOC, or other applicable state or municipal agencies within the last three (3) years and discuss indemnification provisions within the sales agreement.
- The buyer and seller should review all complaints of discrimination, denial of compensation or benefits, or wrongful discharge filed with any federal or state court within the last six (6) years and discuss indemnification provisions within the sales agreement.
- The buyer should review all employee policies, handbooks, and manuals currently in effect in all facilities. The buyer should also understand any state law regarding handbooks as "contracts."
- The buyer should ascertain the existence of any government contracts.
- The buyer and seller should review any wage and hour complaints filed against the seller.
- The buyer should ascertain the existence of any employment contracts between seller and employees.

#### **II. ANALYZING OBLIGATIONS ASSOCIATED WITH LABOR LAWS**

- The buyer and seller should review all union collective bargaining agreements. The seller should review for any obligations under the agreement (e.g. severance pay). The buyer should review for successor clause and any assumption of obligations under the contract.
- The buyer and seller should review all pending grievances and requests for arbitration under existing collective bargaining agreements.
- The buyer and seller should review all complaints filed in any court within the last three (3) years alleging breach of collective bargaining agreements.
- The buyer and seller should review all pending charges of unfair labor practices filed with the NLRB, including those that are on appeal with the NLRB or the Courts of Appeals.

- Ensure buy - sell agreement includes necessary provisions to protect company/enable company to achieve its lawful labor objectives.
- Seller should determine plan for effects bargaining with Union.
- Buyer should determine whether it will be a successor to seller under National Labor Relations Act.

### **III. WARN OBLIGATIONS**

- Determine number of employees to assess coverage under Worker Adjustment and Retraining Notification Act.
- Determine order of separations.
- Determine whether to give 60 days notice, or pay in lieu of notice.
- Determine liability if seller chooses not to give a WARN notice.
- Prepare required notices to: employees, the Union, State Dislocated Worker Unit, and applicable cities/municipalities.

### **IV. ANALYZING LIABILITIES ASSOCIATED WITH EMPLOYEE BENEFIT PLANS**

- The buyer and seller should review all documents which evidence plan benefit provisions for every employee benefit plan sponsored by the seller.