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Top HR M&A Considerations during the COVID-19 Pandemic

The COVID-19 pandemic has fundamentally altered the way businesses operate, at least for the foreseeable future. The ordinary course of business is anything but ordinary right now, which makes events such as mergers, acquisitions and divestitures potentially more sensitive and disruptive than usual. Despite the pandemic, transactions in progress will continue to move forward if relevant closing conditions are met. Deal teams charged with successfully leading transactions to close must remain focused and adapt quickly to the evolving business environment. To help guide HR deal teams managing merger and acquisition (M&A) transactions through this unprecedented time, Aon's Strategic Advisory practice has identified five key HR considerations.

1 Do Not Go Silent — Communicate, Communicate, Communicate

Regardless of where an employer is in the lifecycle of an M&A transaction, consistent and clear employee communication is always critical to keeping employees engaged and productive, which is increasingly important in this environment. Employees will want to know if the deal is still going forward, why, and if any aspects of the proposed transaction will change. In organizations about to close on a transaction, employees will benefit from communication that reinforces the strategic rationale of the deal, why it still makes sense, and whether deal assumptions such as synergy targets and timing will continue as planned or be adjusted. Companies in the process of integrating a recently acquired business should develop messages to reaffirm the value of the new organization. Regardless of the status of the deal, leaders and managers should plan regular meetings with their teams to take the pulse of the workforce, allow questions to be asked and answered, and to address the unique stresses of working through change in a time of pandemic.

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2 Reassess Transaction Resources, Priorities and Decision-Making

HR Transaction Resources:
Employers should consider whether HR has the necessary resources and tools to manage transactions successfully through the pandemic. In normal times, HR leaders are already stretched thin when working on both M&A activities and their "day" jobs. In this period of pandemic-induced business disruptions, they may need extra support to get the deal work done. For example, employers may need to reconfigure the HR teams with employees outside the HR function or external partners, who both have the capacity and the necessary technical expertise to help. Organizations may also look to reconcile or redeploy technologies to drive efficiencies. Successful HR leaders and teams will be those who are agile in modifying priorities and critical tasks on a weekly—if not daily—basis.

Transaction Priorities:
As HR deal teams look to modify Day 1 and integration priorities, they should consider focusing on completion of the "must haves" and postponing the "nice to haves" until a time after close when HR transition resources are more readily available.

To understand which HR-related transitions and deadlines are flexible and which are non-negotiable, HR should revisit the integration timeline with Legal, Finance and Operations. For example, HR should consider the extent to which a target company's HR operations may be operated as a standalone for a period post-close, and which HR plans, systems, or functions may be provided for some time by the Seller via a Transition Services Agreement.

Transaction Decision-Making:
The pandemic may adversely impact the governance and decision-making processes that typically move deals forward. Since leaders must devote time and attention to manage rapidly evolving crises and maintain business continuity, their availability to review and approve integration recommendations and other transaction activity may be limited. The organization may need to establish new and potentially streamlined protocols to ensure necessary HR governance and oversight are maintained. At the same time, employers need to ensure HR leadership is not over-burdened with decision-making obligations or unnecessarily bottlenecking transition and integration progress.

3 Review Interim Covenants

Purchase Agreements usually include HR-related covenants that govern the actions of both the buyer and the target / seller between signing and close. These covenants typically include changes that can be made with respect to the target's workforce. For example, the seller typically agrees to refrain from making material changes to the target's compensation and benefits programs, from hiring or terminating employees outside of the ordinary course of business, and to otherwise "operate the business as usual" during the interim period. However, due to the COVID-19 pandemic, "business as usual" standards may no longer be realistic. Companies are making significant changes to their compensation and benefits programs to help mitigate the impact of the pandemic on their employees and on their business operations. For example, paid time off policies and other employee support benefits may be enhanced, while promotions and salary increases may be postponed and contributions to retirement accounts may be suspended or delayed.

Therefore, it may no longer be possible to deliver on some or all of the HR-related commitments made in Purchase Agreement covenants. HR leadership must take the necessary actions to identify instances where compliance with interim HR covenants may be impractical, including:

- Review the HR-related interim covenants contained in the Purchase Agreement;
- Identify any concerns with the ability of the business to deliver on the commitments required by those covenants (e.g., changes to compensation and benefit programs, HR policies, and/or employment matters such as hiring / firings / layoffs); and
- Raise these concerns to the deal team to address in the deal documents.

4 Re-Examine HR Input To The Financial Model

HR will typically provide input to the deal team around a target company's material HR-related assets and liabilities that will be built into the overall deal financial model. Due to the COVID-19 pandemic, HR-related costs and liabilities may have changed materially. For example, benefit costs may have increased due to pandemic-related benefit enhancements, retirement plan funding may be altered due to the downturn in the financial markets, and severance liabilities may have materially increased. Accordingly, the HR deal team should re-examine any significant expenditures and other liabilities that are likely to have a material impact on the deal's financial model. Key considerations include:

Revisit pension plan liabilities:
For deals about to close, is the purchase price adjustment mechanism in the Purchase Agreement triggered based on pension plan liabilities that may now be significantly different? For deals in the process of integrating, is the buyer assuming the appropriate level of risk by maintaining the status quo respecting pension assets and liabilities?

New costs associated with revised HR policies:
Are paid time off policies, work-from-home, and other HR policies and their associated costs accurately reflected?

Rethink talent assessment and retention:
Do additional layers of talent need to be assessed to mitigate unnecessary and costly firing/hiring expenses post-close? As flight risk may be diminished in the current environment, is it more critical to retain the right talent post-close and be more targeted with retention programs? Has the equity dynamic changed dramatically for those granted equity as part of retention (or to be cashed out as part of a deal)?

Severance:
Has the company engaged in any pandemic-related terminations or layoffs that have resulted in material severance obligations? Are any additional reductions in force anticipated prior to close?

Revisit Representations and Warranties:
Do Purchase Agreement representations and warranties require revision to reflect any HR-related changes made in response to the COVID-19 pandemic?

Re-evaluate synergies:
Do HR-related synergy targets and timing require reassessment?

5 Managing In A Fully Virtual Environment

Many M&A workstreams involve high-touch, time-sensitive activities. Connectivity and timelines for integration planning and decision-making may be challenged given the 'new normal' remote working environment, often in less-than-ideal circumstances (e.g. strained digital infrastructures, home-schooling needs of children, etc.).

It is therefore critical to implement conventions for working efficiently in a virtual environment, including regular team connection points to keep colleagues engaged and aligned, enhancing the software and hardware resources available to team members working remotely, and making contingency plans for mitigating and working through system interruptions.

Stay Focused

M&A transactions are stressful and uncertain environments for employees, managers and leaders, even during the best of times. In extraordinary times, employers must place an even greater effort on staying connected and remaining focused on achieving deal objectives.

Increasing attention on these HR-related areas will help optimize M&A outcomes and success through—and beyond—these historically challenging times.

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