



Avoid Buying Big Labor & Employment Law Risks

Savvy buyers must be on the lookout for “surprise” labor and employment law risks that can exceed the protection of traditional “reps” and “warranties.” Examples that can ruin a deal include exposure to wage-hour class actions, harassment claims against key employees, and entanglement with unions and multi-employer pension plans.

May 27, 2019

Categories:

[Blogs](#)

[Private Equity Industry](#)

[Blog](#)

Authors:

[Jennifer R. Asbrock](#)

[John T. Lovett](#)

Wage-hour class and collective actions typically carry exposure and litigation expenses measured in millions, not thousands. Total lawsuits and settlements dipped in 2018, but we see middle market companies increasingly becoming targets. Wage-hour problems are inherited in stock sales, and thanks to labor and employment successorship exceptions to general corporate liability principles, they can also plague asset sales. A seller’s existing wage-hour violations may go unnoticed and continue in effect after the sale, until litigation ensues. But if handled properly, sales can be a strategic opportunity to fix wage-hour problems without calling attention to them; add “safe harbor” provisions to personnel policies; and obtain arbitration agreements with class/collective action waivers as a condition of employment with the new owner.

Harassment allegations involving key employees can also inflict a lethal blow to M&A deals. If the worth of a business depends on key executive leadership, personalities identified with the brand, critical salespeople with close client relationships, or irreplaceable creative/technical/market experts, then traditional due diligence is simply not enough. Buyers should review past harassment/discrimination complaints, anonymous reports, or “hotline” calls—no matter how old, if they focus on a key employee. They should also ask to see any settlement agreements disposing of harassment/discrimination claims, especially those purporting to be “confidential.”

The sale of a company with a unionized workforce presents a whole new set of challenges. In a stock sale, buyers are stuck with the existing union and labor agreement, but in exchange, they enjoy a higher degree of labor stability. In an asset sale, buyers end up with the union only if they continue the seller’s line of work and hire a

majority of its union employees, but this is hard to avoid. Despite inheriting a union, it is still possible for buyers in an asset sale to avoid inheriting existing labor agreements under certain circumstances, but this can result in low morale and labor unrest. Perhaps the scariest legal “landmine” in a union setting is the prospect of getting trapped in multi-employer pension plans, many of which are gravely underfunded and carry the ever-looming threat of multi-million-dollar withdrawal liability.

In short, savvy buyers should not only review all threatened and pending litigation during their M&A due diligence. They should also identify less obvious labor and employment issues that can carry big dollar exposure. Some of these risks can be mitigated if they are identified and addressed as part of the sale. Others, however, may make a deal not worth doing. In all events, buyers should go into any purchase with their eyes wide open.

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.