King & Spalding

Client Alert

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The Art of the Deal: Key Human Capital Considerations When Navigating M&A Transactions Under the Trump Administration

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Analysts initially projected a surge in mergers and acquisitions in anticipation of a more business-friendly regulatory environment under President Donald Trump. However, early data indicates that U.S. M&A activity has been sluggish, with the overall number of transactions at its lowest level since 2015, amid uncertainty surrounding the recent flurry of executive orders and potential stagnant inflation, impending corporate tax cuts, and tariff-driven trade wars.

While it remains to be seen whether dealmaking will pick up momentum in 2025, the evolving labor and employment landscape will impact transactional due diligence, workforce integration planning, and workforce management. Below are some labor and employment issues that will be at the forefront as employers navigate transactions under the second Trump Administration: changing areas of focus, a new approach to DEI, immigration compliance, joint employment risks, and due diligence priorities.

SHIFTING SPHERES OF FOCUS

As King & Spalding previously covered, the new administration has made leadership changes to the federal agencies that regulate and enforce federal labor and employment law. Some acting federal agency heads have already announced shifts in enforcement priorities away from broad regulation to a more piecemeal approach. For example, the newly appointed Chairperson of the Federal Trade Commission ("FTC") announced plans to rescind the FTC's 2024 Non-Compete Rule but nonetheless intends to promote competition in "labor markets" through means other than rulemaking.

Other agencies may make similar moves away from broad rulemaking. Indeed, President Trump's February 18, 2025, Executive Order entitled "Ensuring Accountability for All Agencies," seeks to limit the ability of independent federal agencies to set their own regulatory agendas by requiring them to submit rulemaking proposals to the White House for approval.

In light of these shifts at the federal level, the potential for state-level action may take on increased importance and focus in the transactional context:

- There may be greater demands on sellers to demonstrate compliance with state laws, and sellers should expect their employment policies and practices to be subjected to greater scrutiny;
- Buyers are expected to seek more tailored indemnities and special escrows to insure against state-law-related risks; and
- Insurance underwriters are likely to realign their inquiries toward state law compliance.

In particular, certain jurisdictions (such as California and New York), are increasing efforts to enforce state wage-and-hour laws. As such, businesses should expect additional scrutiny regarding contingent labor and contractor arrangements, as well as recordkeeping and payment requirements.

All parties to the deal would do well to remember that the legal and regulatory landscape is changing rapidly and significantly. Therefore, what was once expected or "market" may no longer be so.

INCREASED UNCERTAINTY REGARDING DEI PROGRAMS

In light of President Trump's Executive Orders that aim to eliminate and prohibit diversity, equity, and inclusion ("DEI") programs and policies, as well as statements from newly installed officials at the FTC and EEOC about rooting out private-sector DEI programs, employers on both sides of a deal should be mindful of the short-term and long-term risks associated with these programs in the transactional context.

Still, the status of DEI programs under the Trump Administration is all but certain. Indeed, on February 21, 2025, a Maryland federal court partially enjoined President Trump's Executive Orders related to DEI on multiple grounds, including that the Executive Orders are unconstitutionally vague regarding the scope of "DEI" (or related terms) and that the Executive Orders amount to viewpoint discrimination in violation of the First Amendment. Specifically, the court entered an order (1) prohibiting the termination or pause of existing federal contracts on the grounds that the contractor utilizes "DEI"; (2) prohibiting the implementation of a process whereby federal contractors must certify that they do not utilize "DEI"; and (3) barring federal agencies and departments from taking enforcement actions related to the utilization of "DEI." Further litigation and/or an appeal of this ruling and/or conflicting rulings from other federal district courts may inject further uncertainty and complicate compliance.

While employers wait for more clarity, they can and should still take stock of existing DEI policies (as well as similar equal opportunity and discrimination policies) and consult with counsel on next steps.

EMPLOYMENT-RELATED IMMIGRATION LAW COMPLIANCE

The Trump Administration has also emphasized protections for "American workers" in hiring decisions. The Acting Chair of the Equal Employment Opportunity Commission ("EEOC") recently announced her commitment to preventing anti-American biases, which ties directly into broader immigration law compliance. In a press release issued February 19, 2025, EEOC Acting Chair Andrea Lucas announced that the EEOC will make it a priority to investigate discrimination that allegedly prefers various forms of immigrant labor (described as "illegal aliens, migrant workers, and visa holders or other legal immigrants") over "American workers." The press release further explained

that the EEOC will work "collaboratively with other federal agencies such as the Department of Justice, the Department of Homeland Security, and the Department of Labor on labor and employment issues that overlap with immigration-related law enforcement."

Consequently, employment-related immigration law compliance may assume greater importance for both buyers and sellers, such as an increased focus on historical and present compliance during due diligence—particularly for businesses that employ non-immigrant workers through federally managed programs—and greater use by buyers of forward-looking protections, like indemnities and special escrows.

Due diligence should take a broader view of immigration law compliance, including a more in-depth focus on previous government enforcement, such as audit, investigations, and raids. "Red flags" to note and account for include: paper violations (i.e., failing to collect, maintain, and/or correct Forms I-9); failing to participate in E-Verify if required; and/or a history of USCIS audits or ICE raids.

JOINT EMPLOYMENT ISSUES

During the first Trump Administration, the Department of Labor promulgated a final rule and related regulations that raised the bar for whether two or more companies are considered joint employers under the Fair Labor Standards Act (essentially, a "direct control" test), which previously had not been changed in over 60 years. While the Biden Administration rescinded this rule (returning to the prior "indirect/potential control" test), the second Trump Administration may revisit this standard.

These shifts in joint employment standards have occurred at a time when companies have been making increased use of joint ventures, strategic alliances, and other M&A-adjacent structures to promote growth while managing risk. The trend is already expected to grow in the next few years due to existing economic trends, and the anticipated moves from the second Trump Administration would likely fuel such growth even more.

A change in the applicable joint employment test is likely to increase liability risks in M&A by broadening responsibility for compliance and apportionment and liabilities. Going forward, when deciding on deal structures and assessing joint employment risk, employers should be mindful of current joint employment standards but also recognize that any such standards may not remain in place long-term. A comprehensive consideration of risk would take into account both Trump-era and Biden-era standards.

NEXT STEPS FOR EMPLOYERS

Although uncertainty predominates, employers—particularly those involved in M&A transactions—should closely monitor policy shifts and proactively assess workforce risks and state law compliance, as the evolving legal landscape may significantly impact post-deal integration and liability. Since regulatory and legislative priorities often shift with changes in political leadership, employment issues that may seem lower-risk today could once again become higher-risk issues in as few as two years.

Therefore, employers, particularly those preparing for, or in the process of, a business transaction would be wise to keep one eye on compliance with current developments and the other eye on compliance with previously longstanding requirements and expectations.

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