Aqui-Hire Transactions: Recruitment Mixed with M&A

Martin H. Levenglick a partner in the Corporate Group at VLP Law Group, and David Goldenberg, a founding partner at VLP Law Group, recently published an article with*Corporate Counsel Magazine* titled, “Aqui-Hire Transactions Recruitment Mixed with M&A.” The article covers the opportunities and risks that exist when engaging in an acqui-hire transaction, a common practice now in the tech community.

In market areas where there is high technological innovation and demand for talented employees, companies are now looking at more non-traditional means to obtain highly skilled employees. The historic process of recruiting then offering employment may not be enough.

One tactic that has become popular with the tech community is the “aqui-hire” method. Essentially an aqui-hire is an M&A transaction, whose goal is to hire a core team of employees from a start up or early stage private company, as opposed to a more traditional M&A transaction, whose goal is to obtain an ongoing business and/or its assets.

An aqui-hire transaction must be analyzed from the buyers, sellers, and investors perspectives and is often structured as an asset purchase transaction, giving the buyer the ability to pick and choose the obligations it would want to take on.

Aqui-hire presents both opportunity and risk. A hiring decision becomes a much larger M&A transaction and the buyer is facing the risks that come along with this, including liabilities, obligations and undesirable features of the seller’s business. The buyer is subject to usual risks of an acquisition but is also subject to additional risks and complications, such as talent that may not perform as hoped, creating potential consequences for the company.

The ultimate goal of an aqui-hire transaction is to gain the talent, however, this is not the only thing that the deal should be structured around. The deal needs to satisfy both employees and ownership. Both sides must agree upon terms that are mutually beneficial. It is important to conduct an aqui-hire with patience, consideration and thoughtfulness to maximize a successful outcome for all parties.

To read the full article in *Corporate Counsel Magazine*, please click here. (subscription required)