

Critical Due Diligence Checklist

Data Needed	Comments
General Information	
<ul style="list-style-type: none"> • Letter of intent • Draft or final purchase agreement 	<ul style="list-style-type: none"> • These are items that will need to be obtained internally
Organization Structure, Staffing, Performing and Development	
<ul style="list-style-type: none"> • Organization charts • Executive job descriptions • List of key employees (dependent upon synergy type) • Hiring process (all aspects) • Succession plans / management development programs • Retention and turnover statistics (broken out by key employee versus general population) • Promotion process, patterns, and rates • Performance Management Process (all aspects) • Employee training and development programs 	<ul style="list-style-type: none"> • This information can help in assessing the labor costs of the target, and assist in developing an organizational model for the merged company • Target's structure can impact the synergies anticipated in the business model • In an asset purchase, need to assess how reliant the target is on the parent for HR administration • If reductions-in-force are anticipated, the associated costs/savings should be included in the financial model
Workforce Demographics	
<ul style="list-style-type: none"> • Listing of employees in electronic format, including location, title, level or grade, EEO-1 category, DOB, DOH, FLSA status, part-time/full-time, union status, current base salary, bonus or commission eligible indicator, bonus or commission target, bonus or commission YTD, benefit election indicators, sex, marital status, race, accrued vacation, home country, workers' compensation code, most recent performance rating (include scale), most recent raise (date and amount), and accrued but unused vacation/time off benefits • Summary of any recent (2-3 years) reclassification of employees as nonexempt • Contingent workforce data [number, name, agreements (with individuals and third party vendors) and a description of the duties performed] 	<ul style="list-style-type: none"> • All of this data is necessary for a complete and thorough due diligence review, but expect pushback from target <ul style="list-style-type: none"> — Target's HRIS/payroll system should be able to provide most of this data • FLSA classifications of workers should be reviewed to avoid potentially significant problems relating to misclassification • Incorrect classification of an employee as a "non-employee" can be very costly
Labor Relations	
<ul style="list-style-type: none"> • Current collective bargaining agreements side letters, and schedule for upcoming negotiations <ul style="list-style-type: none"> — Successor clauses — Promised increases in benefits • Summary of historical union organizing attempts (last 5 years) 	<ul style="list-style-type: none"> • Unionized workforces can add significant costs and reduce flexibility in restructuring the workforce • Successor obligations should generally be negotiated into the purchase price • Union accretion could be an issue

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Executive Compensation	
<ul style="list-style-type: none"> • Employment contracts • Change-in-control agreements • Retention agreements • Severance arrangements • Any other obligations triggered on a change-in-control • Five-year history of executive base salary and bonus • Executive long- and short-term incentive programs 	<ul style="list-style-type: none"> • Items to watch out for: <ul style="list-style-type: none"> — Change-in-control enhanced severance protections — 280G (golden parachute excise tax) issues — Guarantees relating to compensation, benefits, and perquisites
Employee Benefits	
<ul style="list-style-type: none"> • Employer and employee costs for existing benefit plans, broken down by plan, in whole dollar amounts and as a percentage of payroll (include definition of “payroll” used) • General benefit plan information (welfare plans, qualified and nonqualified retirement plans) <ul style="list-style-type: none"> — Plan documents and summary plan descriptions — 5500s for each plan for the last 3 years — Trust agreements — Funding vehicles — Copies of premium statements or invoices used to pay vendors (benefit suppliers, administrators, actuaries, etc.) • Additional employee welfare plan information needed <ul style="list-style-type: none"> — Copies of claims reports for self-insured plans — Copies of COBRA rates for the medical and dental plans — Copies of the employee and retiree contribution schedules — Copies of the employee enrollment materials — FAS 112 (post-employment benefits) actuarial valuation information • Additional qualified and nonqualified retirement plan information needed <ul style="list-style-type: none"> — FAS 87 (pensions) and FAS 106 (retiree medical and life benefits) actuarial valuation information — Most recent IRS determination letter and IRS filing for qualified plans — DOL top hat filing for nonqualified plans — Most recent nondiscrimination test results for qualified plans — Equity based plans and outstanding awards broken down by participant 	<ul style="list-style-type: none"> • Review methodologies employed by target for determining costs, and compare to buyer’s benefits costs • Review plans for: <ul style="list-style-type: none"> — IRS compliance — Administrative costs — Funding levels — Ability to terminate plans and penalties associated with doing so • Review welfare plans for: <ul style="list-style-type: none"> — Broad-based severance benefit liabilities — COBRA liabilities — Reserve levels — Treatment of claims incurred but not paid prior to the acquisition date • Review retirement plans for <ul style="list-style-type: none"> — Liability calculations (i.e., methodologies and assumptions used) — Vesting provisions (i.e., is vesting triggered upon change in control?) — Potential nondiscrimination issues — Issues relating to equity based plans and plans that offer company stock as an investment option — Cultural implications of plans (i.e., DB versus DC)

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Employee Compensation	
<ul style="list-style-type: none"> • Compensation philosophy or strategy communications for each type of employee population (i.e., sales force) • Total cash competitive assessments • Short term incentive plans (including plan documents) • Long term incentive plans (including plan documents) • Documentation on reward programs (such as commission bonus plans) • Salary administration (such as wage structures and job grades) • Relevant position documentation (overtime practice) 	<ul style="list-style-type: none"> • Differences in compensation philosophies can pose a significant integration challenge • Be aware of potential issues relating to compensating key talent (i.e., retention incentives)
HR Policies and Procedures	
<ul style="list-style-type: none"> • All HR related policies including all employee communications (e.g., handbooks) and manager manuals/guidelines • Informal/oral employment policies • Recordkeeping policies 	
Communication	
<ul style="list-style-type: none"> • Communications philosophy and media employed • Forms/policies distributed to/completed by employees • Employee publications • Any employee communication relating to the contemplated transaction • Supervisor/employee training • Employee surveys 	<ul style="list-style-type: none"> • Corporate communication philosophies and media, as well as survey results, can be excellent indicators of the target's culture, employees' needs, wants and expectations, levels of employee commitment, etc.
Other	
<ul style="list-style-type: none"> • Recent RIFS and WARN compliance • Health and Safety <ul style="list-style-type: none"> — History of workers' compensation experience (2 years) & OSHA inspections or violations (last 5 years) — OSHA logs • Summary of outstanding employee litigation and claims (EEO charges, suits, ULPs, grievances, etc.) and any informal complaints including complaints filed through internal grievance process • Affirmative action plans, EEO 1 & VETs 100 reports 	<ul style="list-style-type: none"> • Can lead to potentially significant claims (e.g., age discrimination, improper WARN notification) • Identifies any potential costs for existing claims and may identify trends in injuries that could lead to class action litigation • Non-compliance with OSHA can generate fines • The broad application of noncompliance of employment policies can lead to large, unanticipated costs and cultural barriers • Compliance with affirmative action requirements is necessary if the target is a federal contractor • All employers with 100 or more employees must file annual EEO-1 reports