Human Resource Considerations When Selling Your Business

By Jeff Kraai, Exit Strategies, Inc.

The sale of a business almost always has implications for the employees of the business. In extreme cases some may loose their jobs. In others, they will have a new boss and possibly new procedures to follow.

You won't always know what the future will hold for your employees after you sell. However, there are ways to protect key employees before and after a transfer of ownership occurs.

First though, it is both critical and in your best interest to limit disclosure of an impending sale to only those employees who are critical to an ownership transfer; in most companies 1-4 people only. On many levels this protects both you, your company, and your employees. If your entire staff were to discover your business is for sale, they first become unsure about their future employment. Shortly thereafter your vendors and suppliers know….worse yet, your competition. If not handled properly, your business value could plummet within weeks. Confidentiality is vital.

Upon a successfully negotiated LOI or Offer to Purchase with Earnest Money, most buyers will view the ability to keep key employees as a major contingency to the transaction. Examples may be production managers, sales managers, general managers, controllers, etc. To help ensure a smooth transition and a stable business in the near future, the buyer may ask these individuals to sign a "Key Employee Contract', widely considered the most common form of 'transition insurance' for both the key employee and the buyer. This contract, typically signed just prior to closing, outlines in simple terms: ongoing job descriptions, pay rates, length of guaranteed employment, and more. To each party this normally guarantees minimal changes pending the transfer of ownership, ensuring a smooth transition for both.

Upon successfully closing, a transfer of ownership occurs and your remaining staff will be informed of the sale. Outside those who signed a Key Employee Contract, there will be others who are important to the ongoing operation of the business. Obviously the buyer would like to retain them as well. (For many employees who 'need' their jobs, no retention plans may be necessary as they have no plans to change employment.) If deemed essential, one common incentive is creative packages that provide incentives for employees to stay on through the negotiated transition period and quite possibly beyond. These incentives can be implemented by either the buyer or seller, and quite commonly both.

Stay-on bonuses are the most popular means of retaining employees. These bonuses can be paid out immediately or over time, and they can be structured in tiers. For example, staying through the closing could be one tier, and remaining on for a specified time after the deal is completed could be another tier. Such compensation packages can feature extended severance pay, performance incentives, or a lump-sum bonus depending on the specific situation. The goal is to make the package as attractive as possible to encourage employees to stay. Since transaction details and employees vary considerably, so will the incentive packages.

The earlier in the process you know the buyer's staffing plans, the sooner you can determine the appropriate course of action. If, for example, the new owner anticipates that he or she will maintain your entire staff, then you may not need to implement an employee-retention plan.

Ultimately the key to successfully managing human resources through the sale of a business is taking the needs of your employees into consideration in advance and integrating them into the future plans of the buyer.

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