

2019 Trends in the Staffing Industry for M&A

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2019 has been another robust year so far for mergers and acquisitions in the staffing industry. Our firm has been involved in a dozen deals to date. We compared our 2019 deals with deals we handled the prior two years and noticed a few important trends.

Deal Terms and Diligence

We have seen a couple of trends in deal terms and diligence this year. One is the more consistent extension of fundamental representations and warranties to include employment compliance representations regarding contingent workers. In conjunction with this trend, we have seen a number of buyers conducting more detailed and sophisticated employment compliance diligence and seeking to carve out compliance failures found in this diligence from indemnification caps.

We continue to see instances where diligence reveals that with respect to foreign subsidiaries, US parent companies are not complying with US tax laws. We recommended sellers undertake a sale readiness audit before they go to market to make sure there are no red flags, especially in the area employment or tax compliance, that may come back to haunt them during diligence.

Compliance with paid time off laws and a recurring debate regarding whether accrued paid time off should be treated as a liability that must be paid at closing or included in the calculation of working capital remain important and often ignored or untimely recognized issues in many deals.



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Rollover Equity

We have seen a dramatic rise in the number of deals including rollover equity as part of the consideration for the deal. Private equity firms, of course, frequently utilize rollover equity as a tool to attract sellers and align their interests with that of seller's principals. In 2019, we have seen strategic buyers join in this practice and offer rollover equity as well in a number of deals.

There are a number of complicated valuation and tax issues associated with offering rollover equity. Structuring rollover equity always involves an analysis of specific facts and corporate structures of the given deal. It is often easier to accomplish in a tax free manner if the buyer is an LLC. However, structuring it in a tax free manner for the selling principals generally comes with a loss of step up in basis to the buyer for the rolled portion of the purchase price.

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Weakening in the LI market

We have seen some weakening in interest and activity in acquisitions in the light industrial space over the past thirty days. US Investors in that space appear to be withdrawing from the market to watch the economy and upcoming presidential election. It is too early to determine if this is just a short term blip in this market segment or will develop into a longer term trend but it is in line with what we predicted for this market segment in our market outlook back in February 2019 (for a copy of that outlook [click here](#)).

Strength in IT and Healthcare

We continue to see strength in acquisitions in the IT and healthcare staffing markets. Both financial and strategic buyers continue to pursue acquisition opportunities. The theme of current buyer strategies appear focused on geographic and service offering expansion.

Lagging Utilization of Analytics in M & A

We continue to see a growing number of staffing firms capturing, triangulating and analyzing financial and non-financial data to aid in attracting candidates and clients. Similar strategies can be utilized to assist in screening acquisition candidates although we do not see many acquirers utilizing sophisticated analytics to aid in this process. Sophisticated sellers can utilize similar analytics to model and support their organic growth projections and increase their value in buyers' eyes.

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About Becker

Our staffing practice is national and one of the largest in the country. Our clients span the spectrum of the industry in terms of size - ranging from large publicly traded companies to smaller highly specialized firms – and in terms of market sector – including staffing firms that focus on professional services (legal, accounting and finance), technology, healthcare, engineering, light industrial and commercial.

We have nine attorneys that dedicate a material portion of their practice to the staffing industry. We counsel staffing firms on all of the major strategic and operational issues impacting their business. In this regard, we offer advice on structuring, mergers and acquisitions, HR, regulatory compliance, on-boarding, off-boarding, compensation strategies and plans, client contracts focusing on indemnification and other key risk provisions and litigation.

Our dedication to understanding the staffing industry delivers tangible benefits to our staffing industry clients.

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