

BUYER/SELLER BEWARE: EMPLOYMENT ISSUES IMPACTING THE SALE OF A BUSINESS

Ronald A. Sollish, Esq.

I. Acquisition Issues

- A. Due Diligence
- B. Allocation of Risk within Purchase Agreement
- C. Statutory or Common Law Risk and/or
Successor Liability

II. Investigations

- A. Workforce
- B. Agreements
- C. Plans
- D. Disputes and Litigation
- E. Compensation Arrangements

II. Investigations

F. Benefits

G. Health and Welfare

H. Labor Agreements

I. Safety

J. Culture

III. Business Transferor's Notice to Transferee of Unemployment Tax Liability and Rate

- A. UIA Form 1027
- B. Regardless of any agreements between the parties to the transfer, the law provides when a business is sold (or otherwise transferred), the Buyer (or other Transferee) of the business may be liable to pay the unpaid unemployment taxes and interest and may receive the unemployment tax rate, penalty, and the benefit charges of the Seller (or other Transferor)

III. Business Transferor's Notice to Transferee of Unemployment Tax Liability and Rate

- C. The law requires the Transferor of the business, or the Transferor's real estate broker or other agent or attorney, to complete and deliver Form 1027 to the Transferee of the business at least two calendar days (not including Saturday and Sunday or legal holidays) before the Transferor's acceptance of the Transferee's offer to acquire the business

III. Business Transferor's Notice to Transferee of Unemployment Tax Liability and Rate

- D. Failure of the business Transferor or Transferor's agent to provide correct information is a misdemeanor, punishable by up to 90 days imprisonment and/or fine of up to \$2,500 civil liability for consequential damages resulting from the failure to comply with the obligation

III. Business Transferor's Notice to Transferee of Unemployment Tax Liability and Rate

- E. In general, a person or business that acquires the organization, trade, business, or 75% or more of the assets of a business will be liable for unemployment taxes, interest due the unemployment insurance agency from Seller (or other Transferor) of the business, the time of the transfer, up to the reasonable value of the business minus any secured interests in assets
- F. SUTA Dumping

IV. COBRA Obligations

- A. Successor liability may exist for Buyer
- B. In a stock sale where selling group ceases to provide a group health plan, the buying group health plan must provide COBRA coverage to qualified beneficiaries
- C. In an asset sale where the selling group ceases to provide a group health plan. The buying group health plan has the obligation to provide COBRA coverage to qualified beneficiaries
- D. Parties are permitted to allocate responsibility for COBRA pursuant to a contractual agreement

V. The Worker Adjustment Retraining Notification Act ("Warn"), 29 USC § 2101 et. seq.

- A. Warn applies to employers who have at all their sites a total of 100 or more full time employees or 100 or more employees including part time employees who work at least 4,000 hours per week, exclusive of overtime

V. The Worker Adjustment Retraining Notification Act ("Warn"), 29 USC § 2101 et. seq.

- B. Notice is required when there is a **MASS LAYOFF** resulting in a Reduction in hours that effect 500 or more full time employees or 50 or more full time employees if they constitute at least 33% of the active full time employees.

V. The Worker Adjustment Retraining Notification Act ("Warn"), 29 USC § 2101 et. seq.

Additionally, notice is required where there is a **PLANT CLOSING** which occurs when there is a temporary or permanent shut down of a single site of employment or one or more facilities or operating units within a single Site of employment and 50 or more full time employees are laid off, terminated or experience a reduction in hours

V. The Worker Adjustment Retraining Notification Act ("Warn"), 29 USC § 2101 et. seq.

- C. In the event of a mass layoff or plant closing, notice must be given 60 calendar days prior to the final day of work. Penalties include back wages and attorney fees

V. The Worker Adjustment Retraining Notification Act ("Warn"), 29 USC § 2101 et. seq.

- D. In the sale of the business where the Purchaser elects to keep all or most of the employees, the Warn regulations indicate that an employee's termination of employment incident to an asset sale does not constitute a **LOSS OF EMPLOYMENT** for Warn purposes

VI. Discrimination Issues

- A. Age
- B. Disability
- C. Workers' Compensation
- D. Other protected classes

VII. Retirement Plan Termination

VIII. Collective Bargaining Agreements

2015-2016 Breakfast Bites Seminar Schedule

Kathleen H. Klaus

**“Administrative Charge of Discrimination –
Lawyering Up”**

Date: August 12, 2015 - Time: 7:30–9:30 a.m.

Alex G. Domenicucci

**Incentive Compensation Arrangements:
Attract, Motivate & Retain Key Employees**

Date: September 24, 2015 - Time: 7:30–9:30 a.m.

Marc S. Wise

**Affordable Care Act – 5 Things to Know
for 2015**

Date: October 14, 2015 - Time: 7:30–9:30 a.m.

Daniel U. Warsh

**(Not So) Limited Liability: When Corporate
Officers Become Personally Liable**

Date: November 11, 2015 - Time: 7:30–9:30 a.m.

Gary M. Remer

**SHOW ME THE MONEY! Options for
Retirement Benefits**

Date: December 15, 2015 - Time: 7:30–9:30 a.m.

James M. Reid, IV

**Private/Non-Unionized Employers – Be
Prepared for the NLRB’s Broad Expansion of
Employee Rights and Co-Employment Liability**

Date: January 13, 2016 - Time: 7:30–9:30 a.m.

2015-2016 Breakfast Bites Seminar Schedule

Ronald A. Sollish

**Buyer/Seller Beware: Employment Issues
Impacting the Sale of a Business**

Date: February 10, 2016 - Time: 7:30–9:30 a.m.

Rachel A. Hutton

**Social Media and Emerging Technologies:
What Every Employer Needs to Know**

Date: March 9, 2016 - Time: 7:30–9:30 a.m.

Michelle C. Harrell

**THE REVOLVING DOOR OF EMPLOYMENT
LEAVE: The Interplay Among the Employment
Laws with Leave Requirements**

Date: April 6, 2016 - Time: 7:30–9:30 a.m.

Richard M. Mitchell

**Out of the Frying Pan, Into the Fire; Let the
Litigation Commence**

Date: May 11, 2016 - Time: 7:30–9:30 a.m.