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Why Diversity Audits Are Essential in Mergers & Acquisitions

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Those investing in or acquiring companies should review workplace culture, as part of due diligence, to ensure the acquisition target shares the same diversity, equity, and inclusion values, say Morgan, Lewis & Bockius labor and employment attorneys. They suggest what to examine as part of specialized diligence into DEI.

Most companies have learned that it is important to engage employment law specialists as part of their deal team in any significant transaction. Employment and benefits lawyers help identify issues around employment law compliance. They also address definitive terms around employee transitions, integration, retention, restructuring, and potential layoff events.

For the last several years, prudent companies also have closely scrutinized potential #MeToo issues, recognizing that corporate boards, customers, and broader employee populations—in addition to the public at large—have developed little tolerance for engaging management members who have a known history of harassment complaints. Several companies are now taking this a step further by conducting due diligence on the target company's general workplace culture.

Considering recent developments concerning racial and social justice, many companies recognize that diversity, equity, and inclusion (DEI) initiatives are critical to ensuring a vibrant and sustainable workplace culture. Countless studies have shown the correlation between diversity and business performance, making this an issue for which business imperatives are as strong as the inherent moral ones.

Those looking to invest in or acquire companies often have the resources to also review the workplace culture that they may be adopting, and to ensure, as part of the diligence effort, that it recognizes and shares these values. Specialized diligence into these issues can ensure that there is not only a financial fit, but a cultural fit as well.

This is key to successful post-transaction employee integration, and ultimate employee retention and engagement—as well as broad reputational and brand impact for the surviving company.

Below are a few markers that investors can evaluate beyond figures in a ledger.

1. Look for DEI Programs

Strong DEI programs can be markers of success. Look at everything the company has in place that could impact an inclusive environment, such as whether the company has a formal DEI strategy and whether that strategy is effective.

For example:

Review the company's DEI initiatives, including representation goals, employee trainings, vendor initiatives, and recruitment and retention programs. Assess whether the company has robust anti-discrimination, anti-harassment, and other workplace-conduct policies, including reporting processes, mechanisms for handling employee complaints, workplace investigations, and corrective action.

Ask to see any employee complaints and HR's responses and, when possible, interview heads of HR and compliance on their approaches to addressing issues in the workplace. Review diversity-committee files and consider how much money the company spends on diversity internally and externally.

Check whether there are strategic plans in place to increase recruitment, retention, and promotion of underrepresented groups throughout all levels of the workplace. Look at whether the company has talent-cultivation programs and performance-management systems that create equitable opportunities for workers of all backgrounds and identities to succeed.

Having weak or no DEI programs can create risk because problematic workplace cultures can result in low morale, low productivity, high turnover, and litigation. Investors or acquirers want to be aware of all potential hotspots, not just the financial ones, during the due diligence process.

2. What Does the Company Say About Itself?

Try to get a sense for the culture based on how the company describes its central tenets and foundational principles. Check the company's official social media posts: Do they reflect a diversity of voices and thought? Are they promoting their culture in addition to their business?

Do the company's actions reflect its stated values? What kinds of community engagement, if any, does it participate in? Are there any affinity groups for employees? In other words, what does the company say it is?

3. What Do Employees Say About the Company?

In the absence of a formal workplace-culture study where an outside and impartial counsel can ask focus groups and individual employees for specific examples of the culture, an acquirer can look at what the company's employees have said about the company in public forums, exit interviews, and employee surveys (if any).

They can assess employee satisfaction based on information such as Glassdoor online reviews and social media, paying close attention to any potential themes among employee reviews. They can also look for internal complaints or public records of lawsuits alleging discriminatory practices.

4. Look at the Data

With the increased public attention on diversity, more companies are releasing their own diversity numbers in response to public demand. Companies can look at the data on workforce demographic diversity through external surveys, awards, or on the public website.

An acquirer can request information regarding salary and incentive payments to assess potential issues with pay equity. They can request a breakdown of who serves on leadership teams and management levels.

5. Don’t Forget to Look at Your Own Culture

Any large transaction can put both the acquirer and target in the spotlight, so it’s as important to assess your own workplace culture going into a transaction for potential reputational risk.

One way to do this is through workplace-culture assessments or audits, which generally involve three steps:

(1) looking internally at the company’s own demographic data and review whether its policies and practices are built to enhance and support DEI goals; and,

2) collecting quantitative data through an anonymous survey designed to elicit employee experiences and perceptions regarding safety, respect, diversity, and inclusion in the workplace; and

(3) collecting qualitative data through focus groups and interviews, which provide the “why” behind the quantitative data. The quantitative survey data, focus groups, and interviews can produce a comprehensive view of a company’s culture and identify areas of concern.

All these elements are important ways to determine a target company’s focus on and commitment to DEI, identify any opportunities for both the acquirer and the acquisition target to strengthen their respective DEI practices, and protect against reputational and financial risk before a deal is closed.

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