

BEING BOUGHT: WHAT TO CONSIDER WHEN YOUR EMPLOYER IS ACQUIRED

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BY JARED COSEGLIA

So your company got bought by a competitor in the legal technology space ... now what? As more middle-market legal service providers and software companies get absorbed by global consultancies and publicly traded companies, many seasoned legal technology professionals will find themselves faced with the uncertainties of working for a much larger, different organization. Here are some tips any employee going through an acquisition should consider in order to successfully prepare for the future:

The One Certainty

Josh Hass, former chief technology officer for De Novo Legal, which was acquired by Epiq Systems, summarizes his experience by simply stating, "The only thing guaranteed during this process is

change." When your company is acquired, it is no longer the same company. Things may stay the same for a period of months or even years, but you can count on change. Preparing for a new work environment can often be a mysterious task when no one is sure what those changes will be. Hass, who is now a senior manager at Ernst & Young in its Fraud Investigation & Dispute Services division, continues his advice by adding, "Do not let fear guide your decision-making process. Be smart: before signing anything, take your time."

Noncompetes

The second certainty during an acquisition is your new employer presenting you with new contracts.

The acquiring company is going to ask you to sign a non-



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compete which nullifies any agreement already in place. This is standard practice. The timing is radically different from buyout to buyout in terms of when the new employees are extended official employment contracts and noncompetes, but it is inevitable. Be prepared to receive that noncompete. First, get an employment attorney. Find a referral from someone

you trust and invest the \$400 to \$1,000 needed to have that person read your contract and offer advice. An employment attorney is someone every savvy business professional should have as a support. Second, carefully examine the termination clause terms, especially if you are on the sales force or an executive. Ensure you will receive all commissions/bonuses due if you are terminated for any reason other than “cause.” The definition of termination for “cause” usually includes fraud, disclosure of confidential information, willful misconduct and other similar acts but will vary in detail from contract to contract. Third, investigate the buying company’s reputation for enforcing noncompetes. Most legal technology companies do not rigorously enforce noncompetes on non-revenue generating professionals. This does not mean project managers, programmers or analysts should ignore the potency of signing a noncompete, but rather that sales and executive-level professionals should be the ones to expect conflict if they sign and then breach said agreement.

For Sales Professionals

Sales professionals have the most difficult transition during



an acquisition because accounts shared by both companies will have to be assigned new ownership. Rarely do merging companies simply split revenue streams from shared accounts. Typically, the buying company maintains ownership over all named house accounts. Sales reps being acquired should be prepared to negotiate account ownership. Choose your battles wisely. This can be the most contentious part of an acquisition, but it also creates instant opportunity for both parties to demonstrate their negotiation styles and tactics. Consider including a retention bonus contingent upon employment at one, two and/or three years’ time with incentives to stay annually. Bonuses can also be negotiated for retaining

clients during the acquisition for said periods of time. Know your revenue forecasts for existing clients over the next 12 to 24 months. Being able to predict your revenue streams is critical in fighting for ownership over a client. Then shore up your relationships.

For Owners

If you are an equity stakeholder, there are many nuances that merit consideration when crafting contracts for acquisition. Alexander Wurst, former COO for Digital Mandate, which was bought by RenewData Corporation, contributed these key questions:

“Do you have tag-along rights?” Tag-along is a contractual obligation forcing a

majority shareholder to include the minority shareholder in the right to sell its stake at the time of the majority stakeholder's point of sale. This becomes critical for the minority stakeholder, protecting its interest from being bought and then resold without the ability to cash out with the majority stakeholder.

"Do you have a change in control provision to opt out and execute a liquidity event?" A change of control event occurs when an entity owning more than half the company sells its ownership interest. Often, minority shareholders have a clause allowing them to "cash out" if there is a change in control.

"What are the earn-out terms?" Everyone gets a big check when a company gets bought, right? Wrong. An earn-out clause defines the pricing structure through which the company being acquired must achieve certain revenue goals to receive portions of the payment for selling the company. Sometimes there are additional tenure milestones for individuals to achieve earn-out. Typically, the minimum is two years.

Chris Egan, former CEO of Datum Legal, which was acquired by Integreon, also

highlights the importance of ownership having a well-designed post-acquisition road map. "It's one thing to create a plan that consolidates offices, personnel and technology. It's another to execute on the plan, retain key employees and maintain profitability, all without negatively impacting clients."

Know Why!

Scott Zimmerman, former assistant vice president of legal solutions for RenewData, which was acquired by LDiscovery, feels "the single most important thing to understand during any acquisition is why the acquisition was made." The reasons e-discovery companies are acquired are for specific proprietary technology, specific service offerings, client base, geographic dominance, a practice group (human capital) or rapid success that threatens larger vendors. Knowing why your company has value to a larger company allows you to adjust your role in the company to increase its desired value. Zimmerman, now manager of automated legal services at Haynes and Boone, provides this specific advice to employees being acquired in

the client service ranks: "Aim to take on more responsibility and align yourself with new leadership." The time to "step up" is the moment the company gets bought. Leadership from the purchasing entity will be looking for which client service professionals are indispensable and grasp the vision of the acquisition. Make yourself known and make it known you understand why the acquisition will increase the organization's value and competitive advantage in the market.

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