

## Impact of a Merger or Acquisition on Employees Seeking Permanent Residency – Due Diligence Checklist

*By Joel H. Paget*

- Who do you represent? Seller or buyer? Employee? Or both?
- Do you have a joint representation agreement already in place?
- Do you have a conflict of interest?
- Who is going to pay for your time? Do you have a fee agreement in place for your advice on the impact of the merger/acquisition?
- Who is the point person for your client for immigration related issues?
- What is the projected closing date?
- Is there any chance of extending the date, if there is a negative impact on one or more critical employees?
- Have there been any Labor Certification Applications filed for any the employees?
- When was the Labor Certification Application filed and what is the status?
- Have there been any employment based immigrant petitions filed for any of the employees?
- When were the petitions filed and what is the status of each? Have they been approved?
- Has an application for permanent residency been filed by any of the employees?
- When was the application filed and what is the status? Was it more than six months ago?
- Will the employee be working after the closing date in a “same or similar” position to what is described in the Labor Certification Application?
- Will the successor entity file a substitute petition and be able to show ability to pay the salary from the date of the filing of the LCA?
- Does the employee who is seeking permanent residency have any current non immigrant status or is there any status that can be obtained before the closing date?



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- Does the employee who is seeking permanent residency have a spouse who has a non immigrant status that would allow him/her to work in the U.S., for example: L-1 or E status, assuming an EAD can be obtained in time?
- Will the successor entity be willing to sponsor the employee for a new Labor Certification Application?
- Will there be any layoffs that would negatively impact a new recruitment for this position?
- Will the employee be able to maintain working status in the U.S. until he/she can obtain an EAD based on his/her application for permanent residency? What is the visa availability for his/her category?
- Has the employee gained experience at the predecessor entity that can be used along with any other experience for a new Labor Certification Application that will qualify for EB-2?
- Does the spouse of the employee have any better way of maintaining status for both and for obtaining permanent residency?
- Is there any claim to U.S. citizenship by way of parents and grandparents for either the employee or his/her spouse?

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