**When to Break the News to Employees About Your M&A Deal**

It was supposed to be the second largest deal in M&A history. In February, Kraft Heinz approached Unilever with a $143 billion offer to acquire the packaged-foods giant. Legendary investor Warren Buffett and 3G Capital’s Jorge Paulo Lemann personally pitched the bid to Unilever CEO Paul Polman, but what was supposed to be an amicable M&A deal collapsed when news of the offer leaked to the public too soon. Markets reacted to the news of the mega-deal, with shares of Unilever rising 15%. Now, unable to negotiate a friendly deal in secrecy, the companies decided to part ways to pursue other growth strategies.

**Timing is Critical to Mergers & Acquisitions (M&A)**

Timing is an important part of mergers and acquisitions – when to sell, when to buy, when to tell various constituents about the deal … when you step into the M&A arena there are many decisions you’ll need to make regarding timing.

When it comes to sharing the news about a deal, leaking information too early can kill your deal entirely. Meanwhile, informing your employees too late or in the wrong manner may harm your business relationships and your image. So, how do you go about completing a successful merger or acquisition while keeping employees engaged, happy (feeling they are being treated fairly and with respect), and informed to the point where they can provide whatever support is needed to get your deal done?

As a general rule, you should guard knowledge of potential buyers and negotiations by sharing this information only with key secret members of your M&A deal team. As M&A attorneys, one of the things we help clients determine is who should and should not be included in a merger & acquisition deal team. This is a seemingly simple decision that carries significant repercussions.

So, **at what point should you tell your employees that you are selling the business?** Here, we aren’t talking about your M&A deal team – the inner circle or key employees. We are talking about the typical employee. There are different schools of thought about announcing to employees that you intend to sell the business:

* Telling your employees the business is for sale before you begin marketing it
* Telling employees about your M&A process sometime prior to closing
* Telling employees you sold your business after the deal closes

Once your M&A negotiations are successful, all contingencies have been satisfied, and your company and the buyer of your business have signed all necessary documents, then you will have to figure out how to break the news to your employees. During this process, avoid relying on top-down, monolithic communications. Instead, try to incorporate the Cascade Principle for corporate communications. Keeping these general considerations in mind, I will go into more detail about what you should do when informing your employees about the sale.

**Telling Your Employees Before You Begin the M&A Sales Process**

##### Keep Things Confidential Until the Deal is Done

You may be inclined to tell your employees about potential deals as soon as possible but consider that most M&A deals never make it to closing2. Sell-side employees may get spooked when they hear news that you are selling the company. It can be quite terrifying to know that new management—more than likely focused on cost saving measures like layoffs and departmental reorganizations—is swooping in.

These feelings are exacerbated when the deal involves your complete exit from the picture. So, a key concern for you as the seller is minimizing harm to employee relationships so as to reduce the likelihood of key employee resignations. These employees have helped you build a company worth acquiring; you want to make sure they stay with the company even after you exit the picture. For these reasons, **keep information about the sale on a need-to-know basis**.

##### Create a Plan

One of the most important factors is having a **clear M&A communications plan** that has messaging events established for both internal and external stakeholders. Now, these plans increase in sophistication as the deal size increases. You should determine what the plan will be for all identified stakeholders. A well-crafted plan can mean all the difference in improving employee morale and retention, supporting management, reassuring clients, preventing vendor flight, and warding off threats from competitors.[[1]](#footnote-1)3

##### Tell Different People at Different Times

You should also **tell specific groups at different intervals**. This starts with your core internal stakeholder deal team. Your company’s CFO, for example, needs to be looped in sooner rather than later. He or she may need to include several subordinates for assisting with the sales process. Next, alert your top management to the potential sale. Make yourself available to answer the questions that will be coming in, and talk to your top managers individually in the days after the meeting. Chances are that most of these individuals will stay with the company even if you exit it; so, getting their buy-in is worthwhile.

##### Be Honest

Another important thing to address from the outset is this: **do not lie to your employees about the M&A deal**. Avoid even giving the impression of being misleading. Employees may approach you directly with concerns that something major is in the works. Avoiding the conversation entirely or lying is not okay, and doing either of the two can destroy trust between your employees and you. It is appropriate to say, “I don’t know,” if the volatility of the deal prevents you from giving specific reassurances at that time. As the CEO, your employees, vendors, and clients will be looking to you for guidance during the sales process. It is important that you set realistic expectations and manage them to avoid letting down any of these stakeholders. It can be tempting to offer reassurances, but always be realistic with them.

#### Do M&A Deals Always Lead to Layoffs?

Buyers are often interested in meeting a specific business need. For example, if your company has developed an app the automatically generates real-time traffic information, a larger conglomerate with a similar app might acquire your company, its IP, its users, and engineers in one M&A deal. Doing so is probably more efficient and less costly than either siphoning off talent over time or licensing the IP. Acquiring your company results in a business advantage for the buyer. Undoubtedly, the larger buyer will want to integrate departments and their files where possible, but they will cut costs and eliminate unessential employees when possible.

Buyer-side, post-closing cost savings often come in the form of reductions in the headcount of the work force. This means layoffs, which can wreak havoc on your employees and their families. **Private equity** has a bad reputation for deploying cost cutting strategies that result in major layoffs post-acquisition.[[2]](#footnote-2)4

So terrible is this reputation that many voters in 2008 refused to back former Massachusetts governor Mitt Romney because of his years of work in private equity at Bain Capital, a private equity firm Romney cofounded that specialized in offshoring jobs.[[3]](#footnote-3)5 The reputation of private equity firms as barbarians at the gates hoping to cut costs without regard for the consequences on employees may have been more deserved in the 1980s with the rise of LBOs. That said, a massive study published in 2014 showed that this reputation may no longer be accurate for private equity firms.[[4]](#footnote-4)6

The researchers analyzed 3,200 target firms over a 25-year period and compared them both before and after acquisition to controls defined by industry, size, age, and prior growth. Relative net job loss at these target firms dipped a modest 1 percent in two years after the acquisition. Not all fears about layoffs are grounded in reality and just because a private equity buyer is involved does not mean substantial layoffs will result.

Data about layoffs may not prove very reassuring for your employees, when their livelihood might be at stake. Looking at it from their point of view, it really isn’t any wonder why mergers don’t always run smoothly. Oftentimes the employees are displaced and the fear of layoffs adds more stress to the entire situation, building up intensity like a pressure cooker. You must strive to take steps that release the pressure. If you want your merger to run smoothly, you will want to make clear, open communications your first priority.

#### When Does the WARN Act affect your M&A deal?

While sales of smaller companies will not trigger the **Worker Adjustment and Retraining Notification Act (WARN)**, larger M&A events may.[[5]](#footnote-5)7 If you fall within the categories detailed below, talk with your lawyers about how the WARN Act affects the transition and integration plan. It could be irrelevant, but you want to be safe, especially if you will continue to have a role in your company post-acquisition.

WARN requires employers to provide at least 60 days’ advance notice before closing a covered plant or conducting a mass layoff. The statute applies to employers with 100 or more employees, although certain employees are not included in the count. Private and public businesses are covered by the WARN Act.

So, how does WARN impact employers? If your company is covered by the WARN Act, it must give notice to all employees (not including business partners) under three scenarios:

* Plant Closing: If an employment facility is being shut down as part of the transaction, and that will result in 50 or more lost jobs during any 30-day period, notice is required.
* Mass Layoff: Notice is also required if there will be a layoff during any 30-day period that affects 500. You also have to provide notice if the layoff impacts between 50–499 employees if they make up 33% or more of your active workforce.
* Smaller Layoff: The WARN Act still applies and notice must be provided even if the layoffs do not rise to the threshold of a plant closing or mass layoff during a 30-day period so long as the number of employment losses for two or more groups of workers combined together reaches the threshold level if combined during any 90-day period. There is an exception to this triggering event: if the employer demonstrates that the employment losses during the 90-day period are the result of separate and distinct actions and causes.

There is no exemption for triggering events in the case of the sale of a business. The WARN Act apportions responsibility for providing the required notices on the buyer or the seller, depending on whether the layoffs happen before the closing or after it. Failure to provide appropriate notice under the WARN Act results in liability to each aggrieved employee for an amount including back pay and benefits for the period of violation, up to 60 days. Talk about the WARN Act with your M&A lawyer and team of professionals to determine how to properly give notice to employees and whether you need to be the party doing so.

A successful M&A deal requires balancing the interests of many stakeholders – from employees and their families, to your company’s management team, and more. Balancing these interest groups is half the battle. If you are going through a merger, make sure that you keep these tips in consideration and consult your M&A attorney for guidance specific to your situation. If you have questions for an M&A lawyer, reach out to me at 512.888.9860. I have offices in Austin and Houston, although I represent buyers and sellers all over Texas.

1. 3 https://www.mergerintegration.com/develop-communication-plans [↑](#footnote-ref-1)
2. 4 http://articles.latimes.com/2012/jan/12/business/la-fi-private-equity-20120112 [↑](#footnote-ref-2)
3. 5 https://www.csmonitor.com/USA/Politics/DC-Decoder/2012/0623/Why-is-Mitt-Romney-s-time-at-Bain-Capital-such-a-target [↑](#footnote-ref-3)
4. 6 http://www.people.hbs.edu/jlerner/private-equity-jobs-and-productivity-8-march-2014-with-ables-and-figures-clean.pdf [↑](#footnote-ref-4)
5. 7 https://www.doleta.gov/programs/factsht/warn.htm [↑](#footnote-ref-5)