



HR for Business - ConsultStu LLC

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Information Paper "Human Resources in Mergers and Acquisitions"

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If your company becomes involved in buying a company, acquiring a line of business or absorbing employees from another business, there are many human resources related questions. A very common question from the acquiring company is: "do we need to create new hire paperwork for all employees after a merger or acquisition?" The answer depends on how the business transaction happens. If the deal is a stock purchase and employees are brought into the new entity, new documents are unnecessary, unless the new entity plans, procedures etc,.. need to be shared with the new employees. However, most transactions are asset purchases, and in those cases the selling company terminates its employees, and the buying company "hires" them. In this case, new hire paperwork must be completed. Depending on state law (and barring a provision in the agreement to the contrary), the new company is free to hire or not hire the employees of the purchased entity.

Here is a list of some common forms and documents that will need to be updated for "new hires" after an asset purchase transaction.

- ✓ Employment Application
- ✓ Background Checks and Verifications – as with all new hires, the new company will most likely process the new hires through its normal procedures, which will likely involve a criminal background check.
- ✓ Offer Letter (or notice informing employee of any changes in compensation – sometimes required by state law – not in Florida, however)
- ✓ W4 – The IRS states that transferred employees should be given the opportunity to complete a new withholding form. If applicable, state tax withholding forms can also be completed.
- ✓ I9 form – According to the USCIS, the new employer has the option of taking and updating the I9 completed for the purchased company (using the bottom section). However, this is usually a good time to create a whole new I9, and not have to worry about errors and omissions on previous I9s completed by the former employer. There is guidance about mergers on the USCIC webpage and in the Employers Guide to Completing the I9.
- ✓ Employee Handbook acknowledgement – new employees should review and acknowledge the new company workplace rules and procedures. This is especially important if the companies are different sizes, and the newly hired employees may have very different experiences. For instance, employees from a large company have Family and Medical Leave access, while small companies may only have a discretionary personal leave of absence policy.
- ✓ Non-compete, non-solicitation or confidentiality agreements will be needed for key employees.



- ✓ Clarification of transitioning benefits (accrued PTO, vacation and/or sick leave) – normally the new employees are starting over, with no length of service credit (but this is up to the new company to define and communicate).
- ✓ Job descriptions – if jobs are changed, or re-defined, the new company may want to communicate these changes using new job descriptions.
- ✓ Benefit Enrollment forms – the former company will likely be terminating all employee benefit plans, and the hiring company will be offering its plans to the newly hired employees. Follow the enrollment rules and procedures for these newly hired employees, and get sign offs as needed.

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