How to hold on to key employees

During a company merger, the devil is in the details. Identifying key employees and employment issues early on can facilitate a smooth deal. And a communication plan can help prevent, for example, top-producing salespeople from defecting to competitors, decimating the company's customer base, and affecting its value.

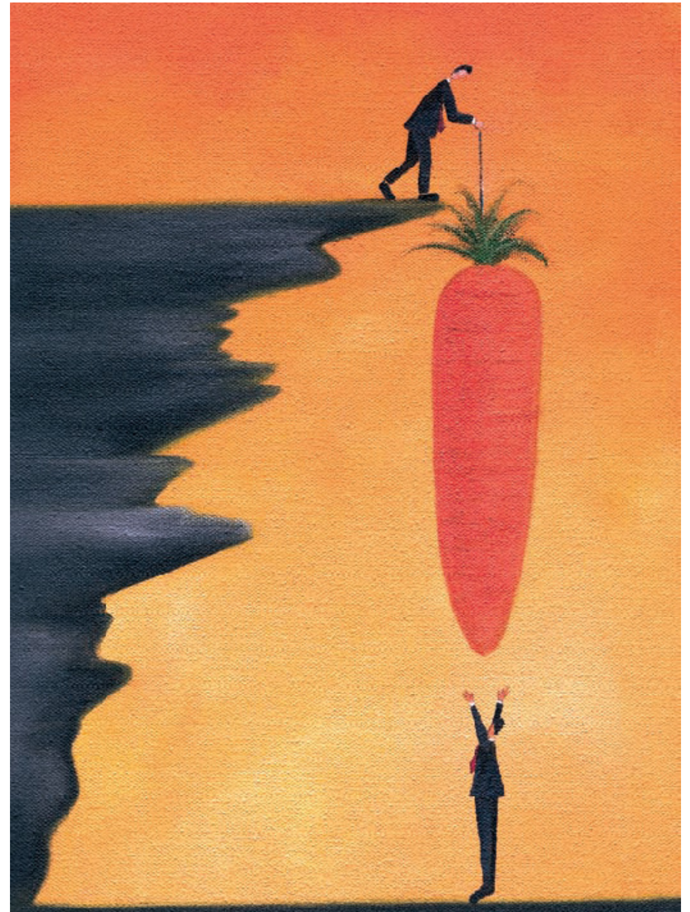
It's important to offer employees incentives to stay, but you also need to anticipate potential legal issues. Plan now to put in place protections to prevent employees from disrupting your deal, both before and after it closes.

Research to retain

As soon as you begin entertaining the idea of a merger or acquisition, assess your current work-force. Enlisting the help of your human resources staff, interview managers and ask them to break down employee responsibilities and identify the top performers in each department. If units are to remain productive after the company changes hands, you must know which employees are responsible for the most — or most important — customer or client relationships.

Employee incentives could include anything from stock options to a guaranteed executive position.

If your company's value relies heavily on research and development or intellectual property, be sure you know who the key brains are behind your brain trust. Without those individuals, your business may have much less future earnings potential and be a lot less attractive to a buyer. And though the topic is broad and beyond this article's scope, begin reviewing patents and other intellectual property to ensure you, not your employees, own them.



The carrot and the stick

Once you or the buyer determines which employees are essential, provide them with incentives to stay put. Depending on the nature of the business, the employee and the terms of the deal, this could be anything from stock options in the newly merged company to a guaranteed executive position to extra vacation time.

Don't stop with the carrot, though — you also need to introduce the stick. Draft agreements that will prevent employees from walking away with the

cream of the company's staff or the most profitable customers. If they haven't already, top performers should sign noncompete agreements that prohibit them from directly competing against the company for a specific period of time.

Watch out for a common loophole, though. In some cases, employees will have noncompete agreements with their original employer (the selling business) that aren't applicable to the newly merged company. If necessary, ask employees to sign new agreements.

Also keep in mind that noncompete agreements aren't enforceable in some states, such as California, and under certain conditions, such as when agreements interfere with the employee's ability to earn a living. Agreements that are unreasonable as to time, distance or purpose can also be deemed unenforceable, so discuss noncompete agreements with your legal advisors before asking employees to sign them.

Out in the cold

Next, assess whether your company has any employee-related legal exposure. Do you have reason to believe (for example, based on past disciplinary actions) that a manager will be sued for discrimination or other illegal on-the-job actions? Are you currently engaged in litigation with one of your employees over workers' compensation benefits?

Potential buyers need to know about such situations because their outcomes can seriously affect future profitability.

People matter

The secret to managing employee issues during a merger is to be proactive. Determine which employees are critical and make sure paperwork is in place to keep them. Also communicate your merger plans to the larger company as soon as feasible and keep tabs on employee morale as the deal closing approaches.

Although all M&As encounter an unexpected obstacle or two along the way, employees don't need to be one of them.