

# All in the Family: A Strategy for Selling Closely Held Businesses

**Message from Lou Caron:** *Our industry has been consolidating for several years but the pandemic has caused a bubble of sellers and buyers as many companies struggle to survive the current economic conditions. What you may not know is that the Association receives calls from both these parties. We are not licensed business brokers; however, we are happy to help connect companies on either side of the table. We do this with the utmost care to, at a minimum, protect privacy, to not endanger customer lists and to protect employees. Generally, when a seller calls, we offer insights into the various buyers in the marketplace and then discuss how the seller would prefer to make the connection(s). We are also happy to provide referrals to business brokers, accountants and attorneys as needed. If you prefer, we can help you spread the word by placing an anonymous classified ad in Native.news at no extra charge. The bottom line is that we are here to help make that connection and support your efforts. Do not hesitate to call Lou Caron with your questions*

*One of the foremost merger and acquisition experts in the country is Peter Schaefer,*



*Partner at New Direction Partners. The following article by Peter, "All in the Family: A Strategy for Selling Closely Held Businesses," offers great considerations for those considering the sale of their business.*

Family-owned businesses are the backbone of the printing industry. By one estimate, six in 10 U.S. printing companies are held in this way. That's been good for the industry, as the shared vision and sac-

rifice of parents, children and siblings is usually the main driver of the success that family businesses achieve.

But when the time comes for closely-held firms to put themselves up for sale, family ties don't always pull in a helpful direction. Emotions can come to the fore, and individual objectives may clash—issues that have to be resolved in order to be certain of getting the best deal for everyone concerned.

## Some sales are amicable, some are not

This isn't to say that family members can't sell a business just as amicably as they've worked together in it. In one transaction we're helping to close, the father and son owners are parting on the best of terms. The father is moving on to the retirement he's been working toward, while the son is finding the partner and mentor he wants in the new owner. We see strong growth ahead for the business in the compatibility of interests that the principals have preserved.

How different this story is from the case of the husband and wife trying to sell their jointly-owned company in the midst of an acrimonious divorce. The company was exceptional, but morale skidded as the emotional temperature kept rising. The transaction, when it finally closed, wasn't a bad one for the sellers. But, the outcome would have been better if the personal backdrop hadn't been as turbulent as it was.

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## GOVERNMENT & LEGISLATIVE

### On Our Radar

Recently added to the list of proposed regulations and other issues that we're following:

- EEOC proposes new rules for wellness programs. These proposed rules clarify the scope of incentives that employers can offer to entice employees to participate in corporate wellness programs without violating the Americans with Disabilities Act (ADA) or Genetic Information Nondiscrimination Act (GINA). The proposed rules limit incentives to "no more than de minimis" items, such as water bottles, for most programs, especially those that include "disability-related inquiries and/or medical examinations." However, in some situations employers would be allowed to offer incentives of up to 30% (or, in certain circumstances, 50%) of the cost of group health insurance coverage in connection with a health-contingent insurance plan.

### Update on SB 973 Annual Pay Data Reporting Requirements

The newly-enacted SB 973 requires private employers that have 100 or more employees and are required to file an annual EEO-1 report under federal law to also submit a pay data report to the DFEH by March 31 of each year containing specified wage information for the prior calendar year.

The California Department of Fair Employment and Housing (DFEH) has issued additional guidance clarifying which employers are required to submit an Annual Pay Data Report, and for which employees these employers must provide data.

It is now clear that:

- Out-of-state employees count when determining if you have more than 100 employees. Also, part-time

employees are counted the same as full-time employees.

- You must look at an employee's residence and assigned facility when determining which employees to include in your report. You must report on all employees assigned to a California facility regardless of where they live, and all employees who live in California regardless of what facility they are assigned to.
- You can choose to report on out-of-state facilities and out-of-state employees who are not assigned to a California facility, if this would be less burdensome for you (as this option might match up to federal EEO-1 reporting).
- You must use the W-2's Box 5

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## BUSINESS MANAGEMENT

### Check All Guards, Especially on Used Machines

In nearly 28 years of supporting printers in their OSHA compliance, I have found that maintaining the machine guards to effectively prevent employee injuries is not a one-time event. It is an on-going effort that must be supported by all machine operators and supervisors.

#### Put effective rules in place

Often machines that came with factory-installed guards have had those guards removed for maintenance or operator convenience. To ensure that the guards are always maintained there are two rules that must be enforced:

- Lock-out:** Removing guards for maintenance requires locking out the machine's electrical and other power sources.
- Re-installation:** All guards must be properly installed or re-installed and closed, before operating any machine.

#### Make guards for your older machines

Older machines often did not come with factory-produced guards to totally prevent access to all of the machines' hazardous areas. Since there is no "Grandfather Clause" regarding machine guarding, you are responsible for fabricating effective machine guards. This is the case even if those are not available from the original manufacturer.

And remember, just because a machine has been safely operated for years does not necessarily mean that machine is properly guarded!

#### Carefully examine any equipment that you purchase

Don't count on luck to keep your employee's safe. Always double-check any used or refurbished machinery that you purchase and make sure that all protective side panels and guards are installed on this equipment. Don't assume anything when installing machinery your employees will be using at your plant. The need for a required guard may not be easily detected by anyone except for a highly-trained factory technician.

You will feel horrible if one of your employees suffers an injury due to an inadequately-guarded machine! Plus, there is huge potential liability when any employee is injured by a poorly-guarded machine.

We recommend that you have a factory-trained technician install your new purchase, instead of doing it by yourself. We recommend this whether the machine is used or new! And please have that technician put in writing that your machine has been installed with all of the necessary protective guards in place.

Source: John Holland, Assured Compliance Solutions, <http://www.complianceanswers.com/>



## HUMAN RESOURCES

### Reminder: Cal/OSHA Form 300A Data Due by March 2

Don't forget: All employers with 250 or more employees, as well as all employers with 20 to 249 employees in specific industries (including printers), must electronically submit Form 300A injury and illness data each year. Data is submitted to the federal OSHA at [www.osha.gov/injuryreporting/ita/](http://www.osha.gov/injuryreporting/ita/). In addition, you must also post this form in a visible and easily accessible area of your business, such as where your other employee notices are displayed.

### Cal/OSHA's Emergency Temporary Standards Clarified

On January 8 Cal/OSHA published an updated FAQ providing further clarification on its pandemic-related Emergency Temporary Standard, an extensive and potentially confusing regulation. As we previously reported (see <http://bit.ly/emergency-report-article>), this regulation requires you to implement a written COVID-19 Prevention Program; continue to pay employees who have been excluded from work because of exposure; provide notice to employees of potential exposures and free testing to those who were exposed; require and enforce physical distancing; provide PPE; implement cleaning and disinfecting procedures; and keep records of COVID-19 cases.

While you can view the full FAQs at <http://bit.ly/GovtCovidFAQ>, the following provides an overview of some of the most pertinent items.

#### Quarantine period

Although a 14-day quarantine is still recommended, you are allowed to follow the California Department of Public Health's (CDPH's) 10-day quarantine

standard. This brings Cal/OSHA, the CDPH and Governor Newsom's Executive Orders into alignment.

Under this guidance, the quarantine period for asymptomatic "close contacts" of infected individuals can be shortened to 10 days, with or without testing.

#### "Stay at home" pay

The FAQs clarify that the earnings continuation obligation is for "available and able" employees who have been removed from the workplace because of COVID-19 exposure in the workplace and who cannot work remotely. It is not for those who are actually ill and are therefore not "available and able" to work; these employees may be eligible for Workers' Compensation or State Disability Insurance benefits instead. In addition, under this regulation employers are not required to pay workers who are excluded from work if they can show that the employee's COVID-19 exposure was not work related (see FAQs 56 and 57).

#### Testing requirements

The FAQs include three clarifications:

- Tests administered at free testing sites are acceptable.
- The test does not have to take place during the employee's normal working hours. However, the employee must be paid for their time when testing and reimbursed for their travel expenses to and from the testing site.
- An employee can refuse testing. In this case, it is recommended that you get this refusal in writing.

#### Threshold for an outbreak

The original regulation defined an outbreak as being three or more COVID-19 cases in an "exposed workplace" within a 14-day period. The FAQs provide a detailed explanation of what an "exposed workplace" is (FAQs 38-44) and how to measure this 14-day period. In measuring the 14-day period, "The employer should look to the testing date of the cases. Any cases for which tests occurred within a 14-day period would be reviewed to see if the other criteria for an outbreak have been met."

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FEATURE ARTICLE

Continued from front

**Often some of the owners will stay on**

The sale of a family-owned business doesn't have to mean that all the original owners will exit. Some may remain, either because their ongoing employment is a condition of the sale, or because the new owner wants to keep them on for the sake of continuity. Two questions then arise: Who gets to stay? Are those who do stay prepared for what comes next?

Buyers may find themselves having to answer the first question, since the owners who are selling—especially the parents of shareholding children—are often reluctant to make the call.

This also points to something that owners of family businesses must take seriously: Expecting to retain a place for everyone with an ownership stake probably isn't realistic. Instead, sellers should work with buyers to eliminate potential management redundancies and identify the right mix of talent from both sides for the merged business going forward.

There's a financial incentive for giving the correct answer to the "who stays, who doesn't" question, because the compensation of family members who aren't retained can be added back to the calculation of the selling price. As a rough example, if a company is selling at five times EBITDA, returning \$100,000 of compensation effectively creates an additional \$500,000 worth of value for the sellers. This is an increase that benefits every family member with a stake in the transaction!

As for those who'll remain, we always counsel our family clients to give some thought to what it will be like to work for someone else post-sale. Sellers may find that switching gears mentally from owner / entrepreneur to salaried employee isn't easy.

**Selling a business takes time**

When all shareholders are on board with a plan to sell, the main piece of advice to offer is a reminder that the process will need time. It takes a minimum of 12 to 18 months to plan, execute and close a sale. If family members are expected to stay on in management positions, their commitment could be as long as three years. Sellers should factor these schedules into their own plans and adjust their timetables accordingly.

**Less active shareholders should stay out of the spotlight**

In initial meetings with prospective buyers, sellers should try to keep the attention focused on the family members in the pivotal roles—the ones most directly involved in present management and likeliest to continue in those positions after closing. There's no point in letting the show be stolen by less active shareholders whose participation hasn't been as crucial to the successful operation of the business.

**An outside advisor can help you steer through the minefields**

Principals dealing with delicate matters like these may want to consider putting them into the hands of a qualified third-party adviser—a consultant with deep experience in selling and buying family-owned businesses. Such an adviser can provide the emotional detachment, professional objectivity and Mergers & Acquisitions (M&A) market insight needed to make the sale profitable as well as harmonious.

Family ownership of a printing or a packaging business may come to an end, but family ties are forever. With apologies for the play on words, it's no exaggeration to say that the family that M&As together stays together—when the deal is crafted in the unity of purpose and the bond of blood that only family owners know.

Source: Peter Schaefer, New Direction Partners, [www.NewDirectionPartners.com](http://www.NewDirectionPartners.com)

GOVT. & LEGISLATIVE

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**income to determine an employee's pay band.** This is different than the federal EEO-1 Component 2 collection from 2017 and 2018, which was based on the W-2's Box 1.

- **You must include time on paid leave when calculating hours worked.** This also differs from the federal EEO-1 Component 2 required in 2017 and 2018.

The latest FAQs also include details about pay bands, what must be contained in a pay data report and more. You can review it all at <http://bit.ly/paydatareporting>.

**The EEOC's Plan for EEO-1 Data Collection**

Each year private sector employers with 100 or more employees are required to file EEO-1 Component 1 reports. While California is requiring submission of this data by March 31 (see above article on SB 973), the federal government's filing database for these reports for both 2019 (which had been postponed) and 2020 will not open until April 2021. This date provides an extension of the EEOC's usual March 31 deadline. The precise opening date will be announced at the EEOC's new dedicated website for data collections, <https://eeocdata.org/>.

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PIASC Events Calendar

FEB  
8

**WEBINAR: Importance of Respiratory Protection (Presented by OSTs)**  
Monday, February 8 at 11:00 am PT Online  
[www.piasc.org/events](http://www.piasc.org/events)

MAR  
24

**WEBINAR: How to Gain Client's Trust in Managing Their Data (Presented by PIM)**  
Wednesday, March 24 at 9:30 am PT  
Online  
[www.piasc.org/events](http://www.piasc.org/events)

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