



Can an Acqui-Hire Approach to Merger be a Talent Solution?

The legal industry is in the midst of a war for talent. Partner mobility continues at a high rate, at all levels of the market. Associate recruiting has never been so competitive, with generous signing bonuses becoming the norm for experienced corporate associates. On the flip side, between partner retirements, lawyers moving to other firms or in-house, or lawyers leaving the profession altogether, retention of talent is a continuing challenge for many firms. A recent Peer Monitor report showed that turnover over the last 12 months, through the 3rd quarter of 2021, was 13.8%. Despite dramatically increasing associate compensation, healthy growth in partner profits, and a strong focus on recruiting and retention, many firms are at best treading water in terms of size, and at worst shrinking.

The War for Talent

The war for talent is being driven in large part by a period of high demand in the legal industry, particularly in firms with robust corporate groups. Some firms are having to turn away work, even for existing clients, because they simply don't have the bandwidth. While growth in demand improves pricing and productivity in firms, and of course contributes to higher profitability, it comes with longer term risks for the firm. First, it can risk exposing good clients to competitors if the firm isn't able to handle their work. And second, the demand pressure being placed on partners and associates contributes to the industry's retention challenges, which then continues the cycle of too much work for too few bodies.

Of course recruiting and retention challenges are happening across the economy. The technology industry has been feeling this pressure for years, and as a result technology company acquisitions are sometimes driven not by access to new technology or customers but by talent. These so-called acqui-hires are not without risk but may offer some lessons and opportunities for the legal industry.

Are Law Firms Ready to Embrace an Acqui-Hire?

Law firm mergers have always had a strong focus on the talent side of the equation, since people are the primary assets of a law firm. But merger discussions typically focus on clients, client opportunities, market position, economic performance, and structural compatibilities, among other factors. For larger combinations, these are all still critical areas to explore, but for some smaller combinations, perhaps the primary strategic driver is the access to talent. If firms look at mergers through primarily a talent acquisition lens, it may require a different set of criteria to evaluate the attractiveness of mergers.

While some corporate acqui-hires are successful, they can run into issues similar to what we see in law firm acquisitions. Tech company founders are entrepreneurs and are often motivated by the excitement of starting something, not necessarily being part of a larger organization. And they prefer to call the shots rather than abide by what they view as bureaucracy. The same culture may apply to the employees, who may buy in to the company's mission, or the excitement of being in a start-up. They may have a high tolerance for uncertainty and be prepared to move to the next opportunity. Companies being bought for the talent are more likely to be distressed, much like law firms who may find themselves struggling with succession or loss of a client or loss of a key partner, which brings with it a complex set of issues.

What does this mean in the context of law firm mergers? There may be an opportunity to cautiously follow aspects of the acqui-hire model in thinking about mergers. It starts with determining what the talent needs are. If the firm is looking primarily for rainmakers, the acqui-hire model may be riskier as the rainmakers may be more like the founder in a tech company and bristle in a larger firm. But if the firm is looking for experienced partners and associates, and has work to provide to good talent, the model may work well.

Factors to Consider in an Acqui-Hire Merger

A talent driven approach to merger requires a different approach to due diligence. While clients and financial performance are still important, the real focus needs to be on evaluating the talent. Areas to explore include:

- *Is there a core of lawyers who would be additive to the firm?* This does not mean that all the lawyers need to be perfect

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fits, but it may be that you need to shed some lawyers pre- or post-merger.

- *Are the lawyers you most want likely to stay in the combined firm?* Answering this question may require one-on-one meetings with key lawyers to determine their goals and what they see as potential advantages of joining a larger firm. And you need to be realistic about retention. As noted, it may be easier to retain service partners than founders or very entrepreneurial partners.
- *Is the core of lawyers an economic fit?* This may need to be looked at creatively. It is not so much about what their current rates or hours are, but what the potential is within the combined firm. If the firm has an excess of work, are these lawyers who can manage or work on matters at your firm's standard rates? Can the firm fill their plates with this work?
- *Are the lawyers a cultural fit?* Culture is often the primary reason small and midsize firms are reluctant to consider merger opportunities – there is concern about letting go of decision-making, being part of a “large bureaucracy”, or meeting elevated expectations for partners. Further, it is not uncommon for lawyers in smaller firms to be somewhat siloed in their practices. It is important to determine if the lawyers are aligned with or will embrace your firm's culture.
- *What is the worst-case scenario?* The acquiring firm needs to be realistic about the risks of the transaction, particularly if the candidate firm is under-performing. If the risk of losing a high percentage of the firm's lawyers is high, what would the cost of that be? This might include excess space, client disruption, or negative market perception.

A recent combination is a good example of a successful acqui-hire transaction. The firm was a high-quality boutique in a top tier legal market. However, the firm's area of focus, while corporate at its core, had ebbed in demand and the firm was struggling financially. The merger with a larger firm brought the acquiring firm top talent, and they were able to quickly engage the lawyers in their corporate practice to supplement the core practice of the firm.

One of the challenges of an acqui-hire strategy is finding the right candidate and one willing to accept the terms of the merger. As we discussed in a [recent Insight](#), some firms wait until too late to seek a merger. These distressed firms can in fact make good acqui-hire candidates.

Law firm mergers focused primarily on talent acquisition are not for everyone but are an option to consider as the war for talent continues to heat up. And an acqui-hire approach may compare quite favorably to a primarily lateral growth strategy, where the costs can be high and the success rates low.

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