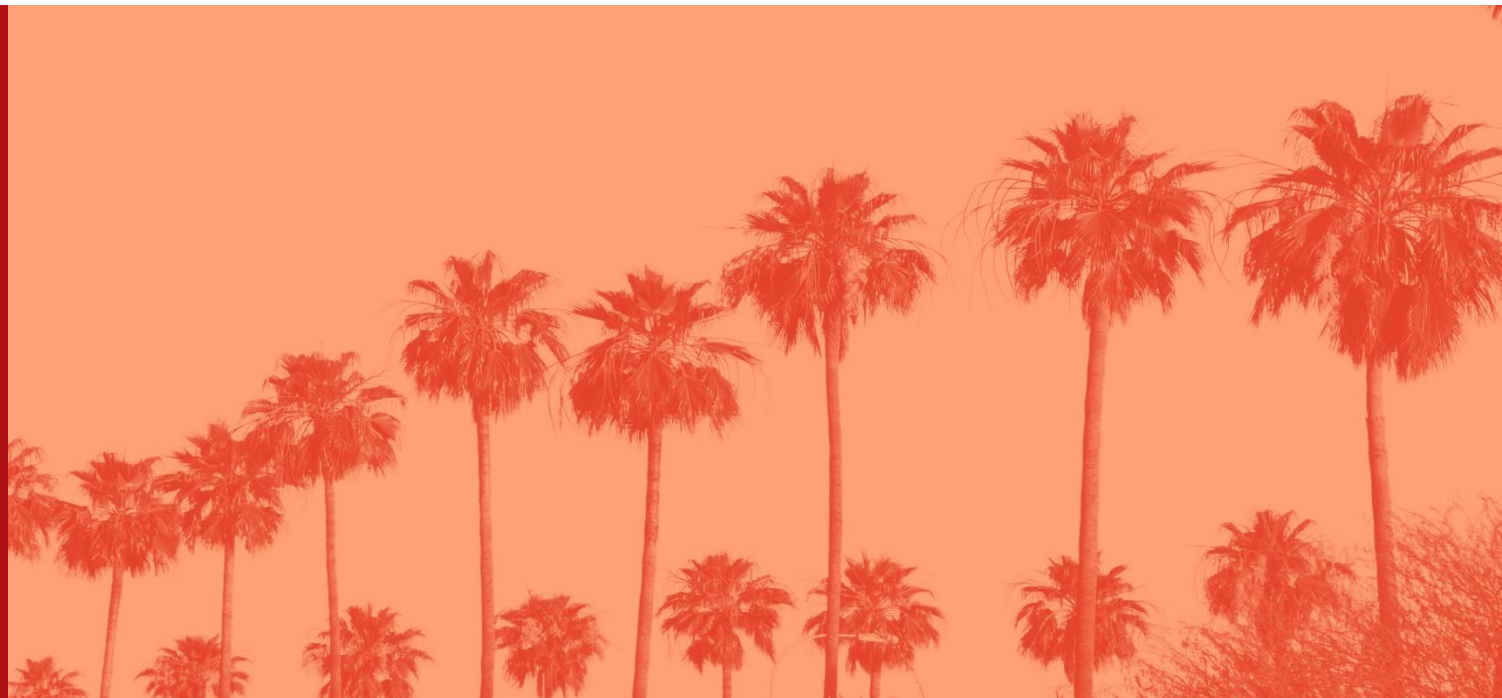


LOOKING AHEAD

- > Michael Marra – Fisher Phillips, New York
- > Frank Martinez – LVMH Moët Hennessy Louis Vuitton Inc.



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Strategic Workplace Law Issues In Mergers & Acquisitions

Agenda

- > Brief Overview of M&A Transactions
- > M&A Transaction Process
- > Key “Hard” Diligence Issues
- > Key “Soft” Diligence Issues
- > Diligence Resources/Toolkit
- > Corporate Integration Issues
- > Q&A

Types of Acquisitions

- > Stock Purchases
- > Asset Purchases
- > Mergers

Transaction Process

- > Preliminary Stages – Acquisition Strategy and Criteria Development; Target Identification; Valuations and Negotiations
- > Due Diligence
- > Purchase Agreement
- > Closing/Financing
- > Implementation and Integration

Key “Hard” Diligence Issues

“Material” Issues

- > Wage and Hour Policy and Compliance
- > Worker Misclassification
- > Class Action Litigations/Arbitration Agreements?
- > Governmental Audits and Investigations
- > Restrictive Covenants, Confidential Information and IP matters

Key “Hard” Diligence Issues *(continued)*

“Material” Issues *(continued)*

- > Key Employee Agreements
- > Immigration Compliance
- > Workplace Safety Exposure
- > Severance and RIF obligations; WARN Act(s)
- > Benefits & Labor matters

Key “Hard” Diligence Issues *(continued)*

Other Key Issues

- > Credible Complaints against Key Employees
- > Litigation History, Informal Complaints
- > Compensation Incentive Arrangements
- > Personnel Management Hygiene
- > Record-Keeping Hygiene
- > Certain Policy Compliance (i.e., Background Checks, Leave Policy)

Key “Soft” Diligence Issues

- > Spot Review of Personnel Materials, Complaints and Investigation Files
- > Litigation/EEOC Detail
- > Employee Surveys
- > Demographic Data
- > Hiring, Turnover and Promotion Data
- > Policy & Perquisite Analysis and Benchmarking
- > Social Media
- > Work/Social Environment
- > Corporate Activities

Diligence Tools

- > Organizational Charts
- > Policies
- > Formal Proceedings (Litigations, Audits, Investigations, Enforcement Actions)
- > Informal Proceedings (Internal; Demand Letters)
- > Contracts & Agreements

Diligence Tools *(continued)*

- > Employee Census Materials
 - > Wage Summaries, Hours & Title History
 - > Extended Demographics
- > Time Records
- > Payroll Documents
- > Filings (OSHA Logs, Forms I-9)
- > Personnel Records
- > Job Descriptions

Diligence Tools *(continued)*

- > Other Descriptive/Narrative Requests (Time Keeping Practices & Processes, Descriptions of Work)
- > Self-Audits
- > Opinion Letters and Other Privileged Documents
- > Benefit Plans and Summaries
- > Incident Logs
- > Insurance Policies
- > **Interviews with Employment Counsel, Human Resources Professionals, Management, Institutional/Historical Knowledge (Prior Practices)**

Emerging Areas of Focus

- > #MeToo Exposure; Key Employees
 - > Brand Exposure (Weinstein Clauses)
- > Training Quality
- > Board Minutes
- > D&I Commitment & Success
- > Minimum Wage and Scheduling Laws
- > Use of Technology/Expectations
- > Pay Equity Laws; PE Diligence Constraints (Asset Deals)

Diligence Reports

- > Material Issues
- > Noteworthy Issues for Transaction Documents
- > Issues Closely Related to Post-Acquisition Operations and Integration

Transaction Document Considerations

- > Reps & Warranties
 - > Legal Impact
 - > Financial Impact
 - > Indemnification
 - > RWI
 - > Escrow
 - > Walk Rights; Litigation
 - > Negotiation and Drafting Considerations; Qualified Reps
 - > Connection to Diligence; Anti-Sandbagging Provisions

Transaction Document Considerations *(continued)*

- > Disclosure Schedules
 - > Affirmative v. Negative Disclosures (Lists & Exceptions)
 - > Sellers typically produce first draft; Tied to R&W
 - > “Materiality” Standards
 - > Pre-Closing Updates

Post-Acquisition Integration

- > Identify Stakeholders and To Do Lists
- > Communications Team(s)
- > Purchase Agreement Bogeys
- > Day One Activities; Personal Connections and Resource Availability

Post-Acquisition Integration *(continued)*

- > Hiring, Restrictive Covenants
- > Retention Agreements
- > Immigration Compliance
- > RIF Analysis and Implementation?
- > RIF & WARN Liability
 - > Severance Obligations, Amendments
 - > Decision-Making Process
 - > OWBPA
 - > Cost Allocation

Post-Acquisition Integration *(continued)*

- > Policy and Plan Continuation or Integration? Consequences?
- > Reorganization (Non-RIF)
- > Harmonizing Job Titles and Duties
- > Communications Plan
- > “Target” Coordination and Buy-In

FINAL QUESTIONS



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THANK YOU

FOR JOINING US

Michael Marra

Partner

mmarra@fisherphillips.com

212-899-9969

New York, NY

Frank Martinez

Vice President, Legal Affairs

LVMH Moët Hennessy Louis Vuitton Inc.

frank.martinez@lvmhny.com

212-931-2560