

In a webinar earlier today regarding Mergers & Acquisitions, the following items were discussed and may be of interest.

- There are 3 types: Asset purchase vs. stock purchase vs. merger
- In a stock purchase, a decision will need to be made on what will happen with the retirement plan – it could continue indefinitely, continue for a short period of time, or terminate immediately.
- Plan documents need to be reviewed to ensure that they exclude the employees of the acquired company – an amendment may be required! Important to amend before the transaction to preserve the transition period exclusions.
- If the target company wants to terminate the plan, it's important to take action before the transaction date – allows you to distribute all of the assets.
- Concerns when merging plans:
 - Freeze the sellers plan?
 - How quickly can seller company's employees be enrolled in the buyer's plan.
 - Could amend buyer's plan to provide automatic enrollment of the acquired employees.
 - Ensure no unreasonable delays that could cause fiduciary breach and reduce stress on employees.
 - Need to be very organized.
 - Need to identify who is responsible for all services to be performed – especially the final 5500.
 - Generate a merger agreement to discuss all issues that will arise.
 - ADP/ACP testing may be an issue if the plan uses prior year testing or if one plan uses prior year and the other one uses current year testing.
- Do not credit service for prior company unless the buyer's plan specifically says so.
- No HCEs from the acquired company in the 1st year unless they own stock of the buyer.
- If a subsidiary is sold to another company, then the plan can pay out employees even if they continue to work for the subsidiary. Be sure that all documentation is in order otherwise problems could occur.