



CROSSPLANS

Guide to Mergers & Acquisitions

Mergers and acquisitions (M&A) can have a significant impact on your workplace retirement plans. Following compliance measures, proper integration, and continuity of benefits is critical. The earlier in the process you address the retirement plans and engage CrossPlans, the more flexibility and options will be available. **This helpful guide outlines your key considerations, distinctions in transaction types, and options for handling retirement plans during the M&A process.**

Understanding the M&A Structure

The structure of the M&A transaction fundamentally affects how the retirement plan is handled.

There are **two** primary types:

Asset Sale

Definition

The buyer purchases specific assets (and sometimes assumes liabilities) of the target company.

Impact on Retirement Plans

- **No automatic transfer** of the seller's retirement plan or liabilities unless explicitly agreed.
- Buyer decides whether to offer employment to seller's employees and whether to credit prior service.
- Seller typically retains plan liabilities.

Key Consideration

The Buyer will take over sponsorship of plan, or the Seller's plan will be merged into Buyer's plan. Employees may experience a distribution event if they have a severance of employment. Generally, a severance of employment will not occur if assets of transferred employees will transfer to the Buyer's plan.

CrossPlan Example

Michael Scott Paper Company sold to Dunder Mifflin as an asset sale. Both Michael Scott Paper Company and Dunder Mifflin sponsored a 401(k) plan. The new owner, Dunder Mifflin, did not wish to merge Michael Scott Paper Company's plan into theirs. Michael Scott Paper Company remained Plan Sponsor of their 401(k) Plan and elected to terminate at the end of the year due to the company shutting down. Dunder Mifflin elected to credit service with Michael Scott Paper Company for eligibility purposes in their Plan. Participants in Michael Scott Paper Company incurred a severance of employment from said company, which resulted in them incurring a distributable event and were required to take a cash distribution or direct rollover from the Plan.

Stock Sale

Definition

Buyer purchases a majority of the equity (shares) of the company.

Impact on Retirement Plans

- Target company's retirement plan **remains in place** as it continues to exist as a legal entity.
- Buyer assumes control and liability for the plan(s).

Key Consideration

It is advisable to terminate the seller's plan before the acquisition occurs. All retirement plan liabilities transfer with the acquired company unless plans are merged or terminated. Buyer assumes responsibility for maintaining protected benefits if termination does not occur before the acquisition occurs.

CrossPlan Example

Michael Scott Paper Company sold to Dunder Mifflin as a stock sale. Both companies sponsored a 401(k) Plan, but had differing plan designs and misaligned protected benefits. To avoid Dunder Mifflin assuming sponsorship of Michael Scott Paper Company's plan, they elected to terminate the Michael Scott Paper Company plan prior to the close of the sale. With the termination occurring **prior** to the sale, Michael Scott Paper Company participants incurred a distributable event and were required to take a cash distribution or direct rollover from the Plan.

Pitfalls to Avoid

1

Failure to Conduct Proper Due Diligence

- Uncover funding issues, compliance failures, or operational errors in the seller's plan.
- Review IRS filings (Form 5500), plan documents, determination letters, and audit reports.

2

Plan Document Incompatibility

- Plans may have conflicting provisions (e.g., eligibility, vesting schedules, service credit rules).
- Contact CrossPlans to read and review **both** Plan Documents
- Need to be careful with Plan Amendment considerations or significant changes to Plan operations or demographics to preserve Transition Relief under 410(b)(6)(c).

3

Nondiscrimination and Coverage Failures

- Post-transaction plans must pass IRC minimum coverage and nondiscrimination testing.
- Especially risky if combining plans with very different employee demographics.

4

Ignoring 401(k) Safe Harbor Requirements

- Safe harbor plans have specific amendment and notice timing rules.
- Improper plan mergers may disqualify safe harbor status.

5

Not Planning for Service Credit

- Determine if the buyer will recognize past service for eligibility, vesting, and benefits.
- In the event of a stock sale, the employee's service credit will be required if employees are working for the same company after acquisition.

6

Postponed Plan Termination

- Terminating a plan after a stock acquisition will prohibit distributions of deferrals, safe harbor contributions, and QNECs/ QMACs from terminating plan if the company sponsors an "alternate" defined contribution plan (exceptions are a SEP, SIMPLE IRA, 403(b), 457 or an ESOP).
This is why it's advisable to terminate the seller's plan before the acquisition occurs.

Options for Handling Your Retirement Plan Post-Transaction

1.

Maintain Separate Plans

1. Maintain Separate Plans

Keep buyer and seller plans operational.

Useful in:

- Complex structures (e.g., subsidiaries).
- Plans with different benefit structures or vendors.

Pros:

- Minimizes disruption.
- Allows time for future consolidation.

Cons:

- Administrative complexity.
- Higher costs.
- Must still pass 410(b) minimum coverage testing separately.
- Multiple Form 5500 filings and independent plan audits. Audit is only required if plan has more than 100 participants with balances.

2.

Merge Plans

3.

Terminate One or More Plans

2. Merge Plans

Combine the acquired company's plan into the buyer's plan.

Requirements:

- Must follow plan terms.
- Must protect accrued benefits.
- Consider timing to avoid mid-year safe harbor issues.

Pros:

- Simplifies administration.
- Creates a unified benefits program.
- One Form 5500 filing and independent plan audit. Audit is only required if plan has more than 100 participants with balances.

Cons:

- Plan compatibility required.
- Due diligence is critical to avoid transferring liabilities.

3. Terminate One or More Plans

Usually, the seller's plan is terminated pre- or post-closing.

Requirements:

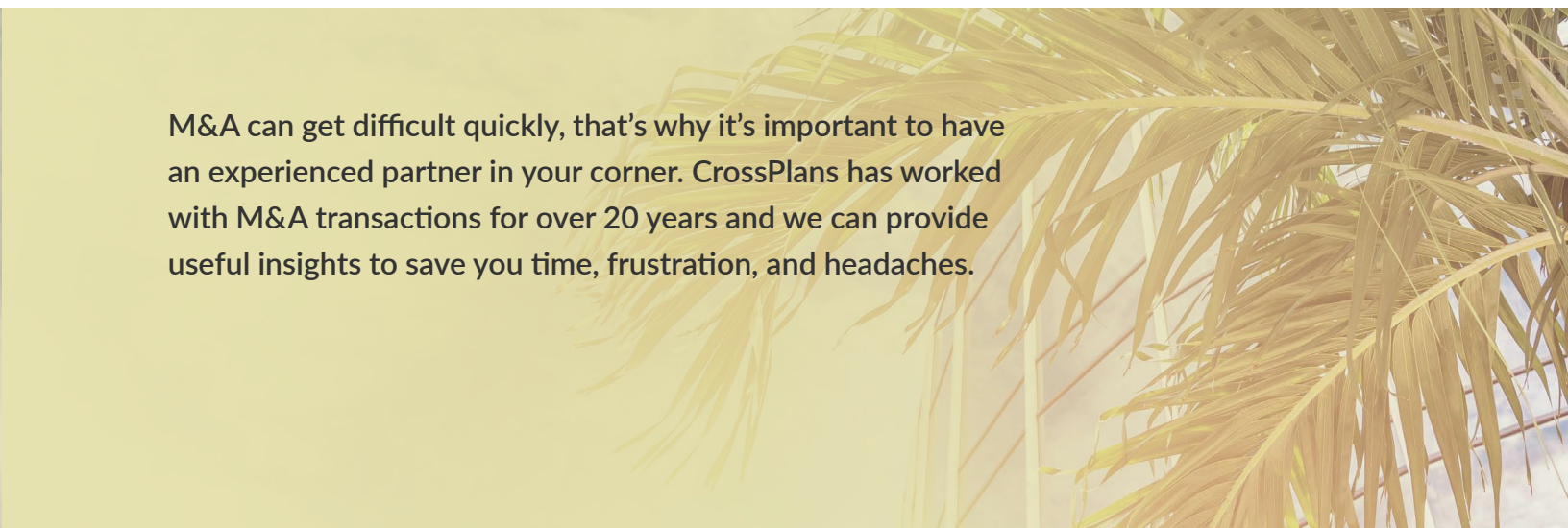
- Formal plan termination process.
- Full vesting of all participants.
- Final Form 5500 filing.
- Distribution or rollover of all assets.

Pros:

- Clears legacy liabilities.
- Simplifies integration.

Cons:

- Accelerates participant taxation unless rolled over.
- Cannot adopt a new plan for 12 months if a similar plan is established post-termination (per IRS successor plan rules).
- Terminating a plan after a stock acquisition will prohibit distributions of deferrals, safe harbor contributions, and QNECs/QMACs from terminating plan if the company sponsors an "alternate" defined contribution plan (exceptions are a SEP, SIMPLE IRA, 403(b), 457 or an ESOP).



M&A can get difficult quickly, that's why it's important to have an experienced partner in your corner. CrossPlans has worked with M&A transactions for over 20 years and we can provide useful insights to save you time, frustration, and headaches.

M&A transactions create both challenges and opportunities in managing your company's retirement plan. Proactive planning, careful due diligence, and strategic decision-making can help avoid compliance failures and ensure a smooth transition for employees and the business.

Contact CrossPlans today for guided and experienced support.



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