

Overtime Liability in an Asset Purchase: More than you bargained for

You expect to take on a company's liabilities when you buy it outright. But when you buy a company's assets, you want a clean deal. You certainly don't want any of the selling company's liabilities. What if, after an asset purchase, you had to swallow an overtime lawsuit against dozens the selling company's ex-employees who were demanding unpaid overtime wages?

That's exactly what happened to a company in front of a Houston federal judge. In *Cooke v. Jasper*, the company who bought the assets had to answer for the seller's overtime problems. A group of the seller's ex-employees initially filed the lawsuit against the seller alone. Learning that the seller had gone out of business once its assets were sold, the ex-employees hauled the buyer into the lawsuit. The ex-employees alleged that the buyer was a "successor employer" to the seller. The federal judge refused to dump the case.

Sifting through nine factors, the federal judge focused on three. First, the buyer knew about the ex-employee's overtime claims. The owner of the seller clearly knew about the claims, and he became the buyer's employee before the asset purchase. Second, the seller had no funds to pay a money judgment because the company had gone out of business. Third, the buyer used the assets to engage in roughly the same business as the seller had. Instead of letting the buyer escape liability, the judge ruled that the buyer had to stand trial for the seller's sins.

Here's when you could be at real risk too if the seller goes out of business after you buy its assets:

- You learn about an overtime dispute during your due diligence before purchasing the assets;
- You hire any of the seller's employees before the asset purchase; or
- You hire the owner of the seller at the same time you buy the assets, leaving the impression that the owner worked for you earlier.



Alan Bush
281.296.3883
abush@bush-law.com

Bush Law Firm
bush-law.com

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No matter whether you're buying a company or just its assets, it's always better to check out overtime pay practices first. Your due diligence could save you a costly overtime lawsuit.

