

In this section, we're going to talk about how your employees get treated in an acquisition situation.

Clint: What are the potential ways to think about what an employee can get out an acquisition?

Brad: Well, employees that are part of an acquisition often end up with a couple of different forms of consideration. They can also end up with a new job and in some cases they don't and end up leaving the company. The consideration that they would get includes the stock options that they have and the value of the stock options that they have in your company and whether or not those stock options accelerate or are assumed by a new plan, there is still value there.

Oftentimes, there is a carve-out that is part of the acquisition consideration that's an incentive that employees get for sticking around post-acquisition. Then of course, there is the upside of working for the acquirer which in some cases is quite attractive because the acquirer might be a larger, more interesting company, more vibrant company or just a company where the employee can learn something for a couple of years.

So there are lots of different dynamics around that. Both in upside acquisitions as well as ones that aren't as successful. Unfortunately, a lot of entrepreneurs and boards don't focus on the employee population other than the founders and some of the key employees until late in the process. That is often a mistake. As an entrepreneur and a founder, it's important going into the negotiation process to have a point of view about how you want to treat the employees broadly across your company during the acquisition process and post-acquisition process.

Clint: Describe a little bit of the dynamics of what happens when you basically negotiate this too late in the process.

Brad: If you don't pay attention to it early enough, what you often end up with is a situation where you really are almost close to getting a deal done and then a bunch of things come up at the end. From a buyer's perspective, if the buyer is fair, often those things will be able to be worked through pretty easily.

If for some reason the buyer feels like you've squeezed every last bit of consideration out of them or it's a buyer that is focused on winning a zero-sum negotiation where they want to win every negotiation point, it's often a situation where you are fighting to try and get something appropriate for your employees, many of whom often you want to stay and be motivated to work with you on a go-forward basis.

So waiting too long is a mistake. Starting too early and over-negotiating it too early is also a mistake because you often don't have a good point of view about what the whole deal looks like. However, you can have a frame of reference for how you want your employees to be treated on a go-forward basis and that can play into how you negotiate all the terms.

Clint: Assuming you are skillful about when you have this conversation in the negotiation, how contentious is this issue usually?

Brad: It, again, varies, usually by the importance of the employee to the business on a go-forward basis. So for senior execs in the company, oftentimes the buyer will want those senior execs to sign up to some kind of agreement on a go-forward basis or they want a certain number of them to sign employment agreements as a condition of closing the deal. In that case, you have a situation where you have multiple negotiations going on including with your existing employees.

At lower levels in the organization, it is usually not the case that the buyer is focused on getting employment agreements signed up for everybody but there are often releases or other kinds of things that the buyer will want different employees to sign. If you don't understand that in advance and you leave that to the very end, there is often this mad scramble to get all the pieces put in place

Clint: Questions?

Student: At what point do you tell your employees that you're having a discussion with a potential acquirer?

Brad: It varies a lot and it's also the case that this varies in the context of financing. There are some entrepreneurs who are incredibly open with the whole company about everything that is going on. Rand Fishkin at Moz is a good example of this. Not only is he very open internally, he is very open externally.

So when we did a Foundry Group of Financing at Moz, Rand wrote a five or six page blog post that detailed the financing, the company's performance, ownership. He even had emails of our negotiation back and forth. That level of transparency is something that is part of his value and the value system of the company.

There are other entrepreneurs who tell the employees minutes before the acquisition closed or minutes after the acquisition closed. So as an entrepreneur, it's up to you. Understanding who to talk to and how broadly to expose the information is important, especially around confidentiality dynamics. If you have

a very good culture of openness in your company and there is a lot of trust about confidentiality, talking to more people earlier is a positive thing.

If you know you have lots of leaks and lots of gossip that whenever something gets out, it gets out into the public, you should be a lot more careful and circumspect about it.

My experience is that most entrepreneurs default to a smaller number of people exposed later in the process and that's kind of the norm. The very open, early in the process is an exception but you see it sometimes and when it's done well, it's very powerful.

Student: What should be considered in creating their frame of reference in these negotiations for employees?

Brad: As we talked about earlier, there is a difference between a single player game and a multiplayer game. Your reputation is going to matter in how you interact with your employees and what you do for them. If your employees feel well taken care of in the context of an acquisition, when you as the entrepreneur go start your next company, recruiting those employees will be a lot easier. And by the way, recruiting other employees to come work for you will be a lot easier as well because your reputation in the market will be that you treat people well and thoughtfully in an acquisition.

If you are very stingy or you really pay no attention to how the employees are treated through the process, the next time you try to start a company, your chances of recruiting them, their friends or others are lower because you'll have reputational damage from it.

So you have to really think about this as a multiplayer game where this is just one of the stages in the process.