



# Ius Laboris Webinar

## M&A

**Thursday 6 May 2021**

**10:00 (EDT) | 16:00 (CEST)**



# SPEAKERS

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## DUE DILIGENCE – SOME RED FLAGS

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## GENERAL RED FLAGS

- Relevant issues: (a) Union relationships/engagement; (b) cost estimation towards employee benefits; (c) employment claims (liabilities).
- Legal consequences are different depending on whether an asset or a share purchase takes place.
- Employment benefits and work conditions must remain on the same terms and conditions of employment after closing and these cannot be modified detrimentally to the impacted employees (Brazil, Mexico), otherwise, those changes will be deemed void for all purposes (Brazil) or may create grounds for constructive dismissals (Mexico). Although individual rights are strictly protected in Chile, these may be modified by way of an agreement.
- Transfer of liabilities may vary, in Brazil and Chile, buyer becomes solely responsible for complying with all labour obligations already undertaken by the seller, in Mexico, there is a joint liability for six months.
- Employment contracts would not terminate because of the transfer of the business (Chile, Mexico).
- During the pandemic, general employment compliance on COVID-19 rulings and norms must be in the scope of the review, as severe fines may be applicable in the event of any lack of compliance.
- Transfer of data may trigger delays (for the transaction) if the appropriate privacy notices are not in place.





## THE UNIONS IN M&As

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## NEGOTIATING WITH THE UNIONS

- **Prior Consultation**
  - Brazil & Chile
  - Mexico – asset deals
- **Mass Dismissals in Brazil**
- Before and after Labor Reform
- **Collective Bargaining Agreement – CBA**
  - Chile – same CBA
  - Brazil – not necessarily the same CBA
  - Mexico – more complex process





# EMPLOYEE COMPENSATION



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## SEVERANCE COMPENSATION

- Reorganization and restructuring process
  - Labor continuity (same in Chile, Mexico and Brazil)
  - Termination of employment contracts and hiring
- **Labor continuity:** Employment contracts do not terminate as a result of the transfer of the business (either by sale or merger)
  - To consider:
    - seniority (future cost)
    - top executive employment contract
- **Termination of employment contract and hiring:**
  - severance should be calculated
  - beneficial for employees as they receive severance and pending accrued rights before starting off with their new employer
  - new employment contract signature



# RESTRICTIVE COVENANTS

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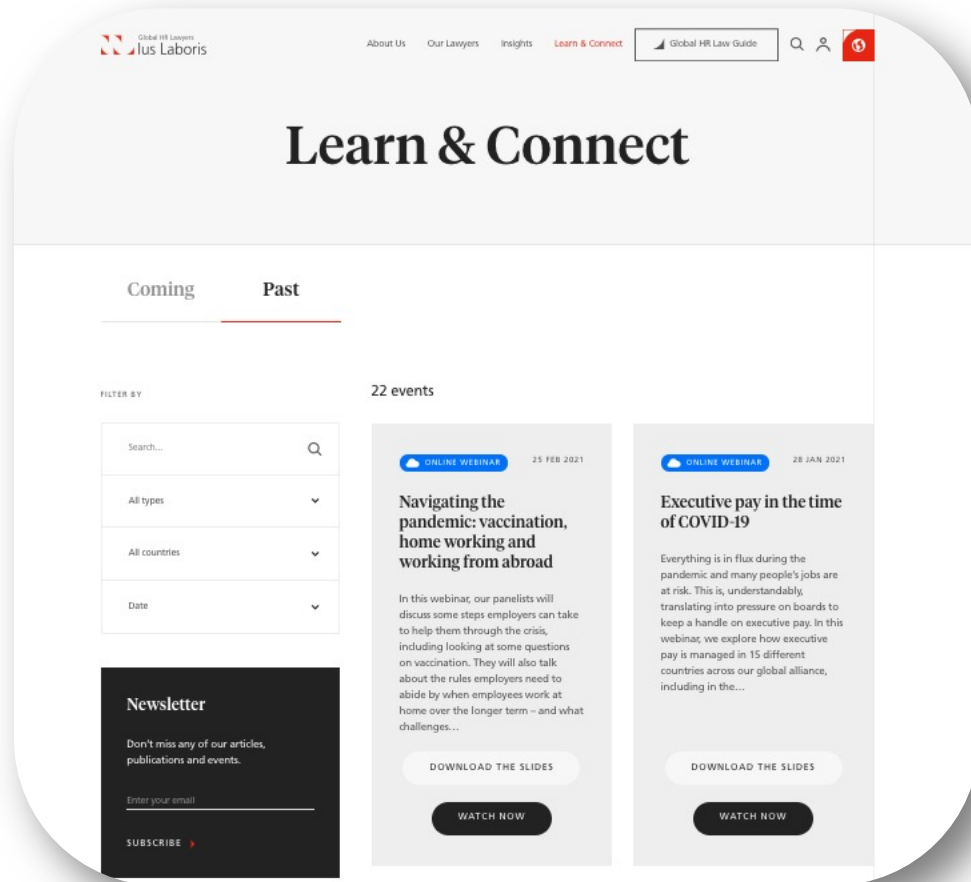
## WHAT'S IN PLACE AND WHAT YOU WOULD WANT GOING FORWARD

- In the US, the laws on restrictive covenants (non-compete and non-solicitation of customers) are very state specific.
- Depending on the state, a buyer may or may not be able to 'step into the shoes' of the seller in terms of enforcing pre-existing restrictive covenants (e.g. Florida requires a provision in the agreement to allow a successor to step into the shoes of the seller). Make sure your due diligence includes a list of all employees currently subject to restrictive covenants and whether the agreements have successor clauses enforceable under each state's law.
- Most states (even California) allow buyers to enter into a broader non-compete with the actual sellers (primary shareholders) of a selling company. In other words, state statutes and case law allow for more liberal enforcement of non-competes between a buying company and the selling shareholders.
- As to employees whom the buying company will continue to employ, you must look at what currently exists and whether you must provide additional consideration (some additional compensation or other consideration) to enter into an agreement with your new employees.
- Consider whether you need a true non-compete or whether you are more focused on protecting relationships with customers by having a non-solicit of customers provision.

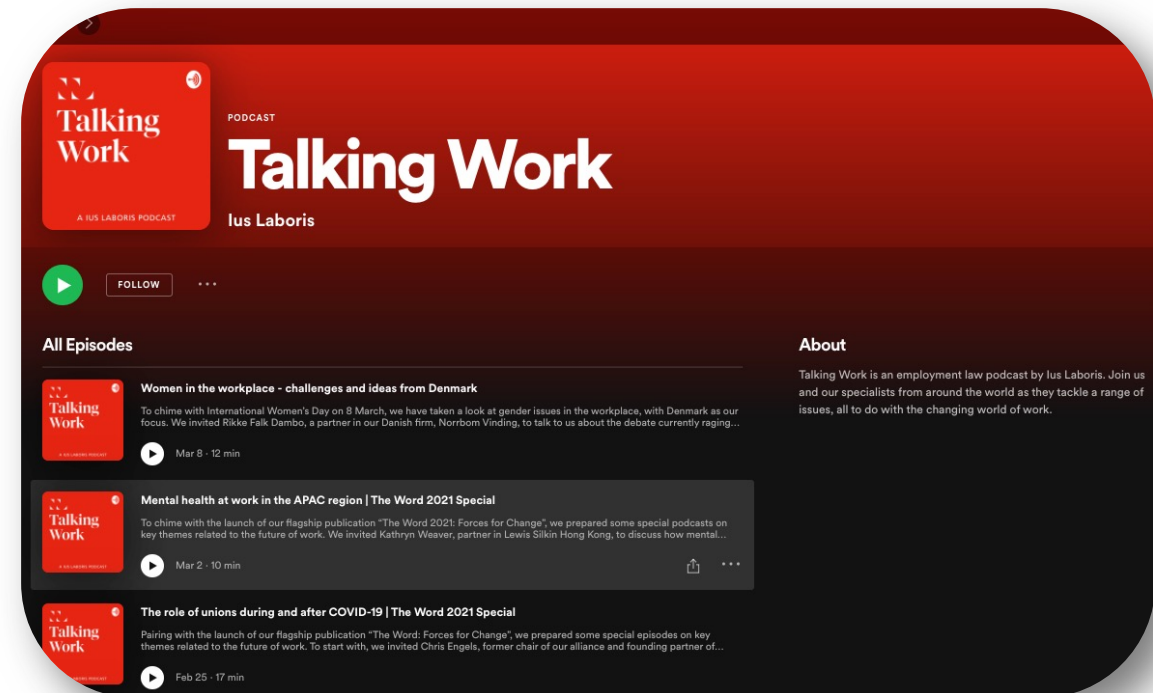


# WEBINARS & PODCASTS

**Webinars:** <https://iuslaboris.com/learn-connect/>



**Podcast series – Talking Work:**  
[https://open.spotify.com/show/0NpiCVfvpZrjPiVJLeEXmv?si=Xe5nbn2hToWe9uR4pK\\_Jjg](https://open.spotify.com/show/0NpiCVfvpZrjPiVJLeEXmv?si=Xe5nbn2hToWe9uR4pK_Jjg)





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