



# Is Your Change-in-Control Program Deal-Ready?

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## Why Deal Readiness Matters

**With retail and restaurant M&A activity continuing, companies should revisit their change-in-control programs before a transaction is on the horizon. We've seen several examples of restaurant and retail companies in the past year acquired and taken private including, Denny's, Potbelly, Skechers, and Walgreens.** A well-designed Change-in-Control (CIC) program can help retain key executives, reduce uncertainty during negotiations, and avoid last-minute deal complications. An outdated or inconsistent program, by contrast, can create retention risk, unexpected transaction costs, and pressure for one-off negotiations at exactly the wrong time.

Being “deal-ready” means more than having a CIC plan on file. It means knowing who is covered, whether the terms are internally consistent, whether the protections are competitive with market practice, and whether the program will support – rather than complicate – a transaction. The following checklist highlights the provisions companies should review before a transaction arises. The goal is to determine whether those protections are current, consistent, competitive, and aligned with the company's transaction strategy.

## Questions to Ask Before the Next Transaction

Whether your company has a formal change-in-control plan or a collection of individual agreements, the following questions can help identify gaps before they become negotiating issues.

Provision	Considerations
<b>Eligibility</b>	<ul style="list-style-type: none"> <li>• Who is covered? Limited to those necessary in a transaction or most at risk of being severed post-close?</li> <li>• Is eligibility listed by title or person? Is the list still current?</li> <li>• Are protections provided in individual agreements or a formal plan?</li> <li>• If there is no formal plan, are there varying degrees of coverage in different employment or award agreements?</li> </ul>
<b>Change-in-Control Definition</b>	<ul style="list-style-type: none"> <li>• Does the definition reflect the company's current ownership structure, business strategy, and potential transaction scenarios?</li> <li>• Is the definition consistent across employment agreements, severance plans, equity plans, and award agreements?</li> <li>• Does the definition avoid triggering protections in situations that are not intended to be treated as a CIC?</li> </ul>
<b>Good Reason</b>	<ul style="list-style-type: none"> <li>• Is cash severance based on salary only, or salary plus bonus?</li> <li>• Are severance multiples competitive with market practice?</li> <li>• Are severance levels appropriately tiered by role or participant group?</li> </ul>
<b>Cash Severance</b>	<ul style="list-style-type: none"> <li>• How is cash severance defined (base vs. base + bonus)</li> <li>• Are severance multiples competitive with market?</li> <li>• Are levels appropriate by tier of participation?</li> </ul>
<b>Current Year Bonus</b>	<ul style="list-style-type: none"> <li>• Is the annual bonus for the current year addressed?</li> <li>• Is there consistent treatment across agreements?</li> <li>• Is the payout prorated or full? Based on actual or target performance?</li> </ul>
<b>Equity Treatment</b>	<ul style="list-style-type: none"> <li>• Is equity vesting "double-trigger", requiring both a transaction and a qualifying termination of employment?</li> <li>• Is there appropriate language for a failure to assume or replace current outstanding awards?</li> <li>• How is PSU treatment defined (pro rata vs full, actual vs. target?)</li> <li>• Is equity treatment clearly addressed without ambiguity or subject to interpretation?</li> </ul>
<b>Benefits</b>	<ul style="list-style-type: none"> <li>• Are health and welfare benefits clearly defined?</li> <li>• Is the coverage period for 18 months (aligned with COBRA coverage) or consistent with severance multiples?</li> <li>• Are benefits provided as a lump-sum payment or continued over the severance period?</li> </ul>
<b>280G Excise Taxes</b>	<ul style="list-style-type: none"> <li>• Is 280G tax treatment addressed (gross-up, cutback, best-net)?</li> <li>• Is the process clearly defined (e.g., who will run calculations)?</li> </ul>

### **Restrictive Covenants**

- Are appropriate restrictive covenants included, such as non-solicitation, confidentiality, cooperation, non-disparagement, or release requirements?
- Are any non-compete provisions enforceable under applicable state law?
- Is payment conditioned on execution of a release of claims, where appropriate?

### **Governance**

- Has the Board reviewed the CIC plans recently?
- If a consolidated plan has not been put in place, does HR / Legal and the Board understand where individual agreements differ?
- Are provisions credible and consistent with market practice?
- Has the company evaluated the potential transaction cost of the program?

## Preparing Before the Deal Begins

CIC misalignment can create avoidable friction in an M&A process, including executive retention concerns, uncertainty around equity treatment, unexpected costs, and pressure for last-minute negotiations. For example, if one executive's agreement provides for full acceleration of equity while another's provides only pro rata vesting, those differences may be difficult to explain – and harder to resolve – once a transaction is underway. A well-structured CIC program supports retention, promotes deal neutrality, and gives both the company and potential acquirers greater certainty regarding cost and treatment. For boards and management teams, the best time to review change-in-control protections is well before a transaction begins.

To learn more about current S&P 500 change-in-control market practices, explore Meridian's Change-in-Control Severance Arrangements Survey.

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