



# Employee Benefits ALERT

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## Has your company's layoff caused a partial termination of your retirement plan?

Maybe you have been forced to lay off employees because of a price collapse in your industry or to brace for economic challenges ahead. Maybe you have been forced to cease operations at one of your business locations. Or maybe you are currently in the process of reducing your workforce.

During these challenging economic times, it is important to keep in mind that if you terminate a significant percentage of your employees, you may unknowingly cause a "partial termination" of your retirement plan. *Under IRS rules, when a partial termination occurs, affected plan participants are required to become immediately 100% vested in the previously-unvested portion of their plan accounts.* Unfortunately, many employers do not recognize this issue until long after the terminated employees have received their incorrectly-calculated distributions. By then, it can be very expensive to go back and correct the errors. Thus, it is best to recognize the issue before, or shortly after, a layoff occurs so that you can accurately calculate each participant's plan account balance.

It is not easy to determine if a partial termination has occurred. The applicable statute does not define a "partial termination," and the applicable regulation merely states that whether a partial termination occurs is determined by looking at the "facts and circumstances."

Generally, the IRS looks at the "turnover rate," i.e., the percentage

reduction in plan participants. If the turnover rate is at least 20 percent, there is a presumption that a partial termination of the plan has occurred. The turnover rate is determined by dividing the number of participating employees who had an employer-initiated severance from employment during the applicable period by the sum of all the participating employees at the start of the applicable period plus the employees who became participants during the applicable period.

At first glance, this analysis may seem straightforward. But what is an "employer-initiated severance"? And what is the "applicable period"? These questions, and others, can be difficult to answer. Furthermore, the turnover rate does not, by itself, determine whether a partial termination has occurred. It is merely the first step in the analysis.

If you are currently in the process of reducing your workforce, or if you have recently been forced to lay off employees or close down a business location and you need assistance in determining whether a partial plan termination has occurred, please contact any of our Employee Benefits attorneys listed below.

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