

# Relief for Partial Plan Terminations May Be “Too Little, Too Early”

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No one denies that employers confronted a plethora of challenges in 2020, and many had to make difficult decisions to reduce their workforces due to the pandemic. Such reductions in force can implicate a number of business considerations and labor laws, but for employers that sponsor qualified retirement plans, these employment decisions can inadvertently implicate the partial plan termination rules under the Internal Revenue Code. In the event of a partial plan termination, affected participants (which under current guidance includes those who have voluntarily terminated employment) must become immediately 100% vested in their benefits under the retirement plan.

The determination of whether a partial plan termination has occurred is based on the surrounding facts and circumstances. However, under guidance previously issued by the Internal Revenue Service, there is a rebuttable presumption that a partial plan termination has occurred if the percentage of participants decreased by at least 20%. When determining whether that threshold percentage has been met, only employer-initiated severances, such as reductions in force and plant closures, are taken into account.

This determination is generally made with respect to each plan year (i.e. as of December 31<sup>st</sup> for a plan on a calendar year). However, the applicable measurement period may be extended beyond the initial plan year where the same event that resulted in the decrease in participation in the initial plan year continues to exist in the subsequent period.

In an effort to provide relief to employers, Congress has modified this determination period under the Consolidated Appropriations Act, 2021 (H.R. 133)(the “Act”) ([here](#)), which was signed into law on December 27, 2020. Under the Act, a qualified retirement plan will not be treated as having suffered a partial plan termination during any plan year that includes the period beginning March 13, 2020 and ending on March 31, 2021 (yes, those are the actual dates referred to in the Act) if the number of active participants covered by the plan on March 31, 2021 is at least 80% of the number of active participants covered by the plan on March 13, 2020. Accordingly, if employers are able to increase the number of their plan participants by March 31, 2021, they can avoid a partial plan termination with respect to the 2020 plan year and the costs associated with accelerated vesting of benefits. Seems like the relief that employers have been looking for, right? Not so fast.

In order to increase plan participation by March 31, 2021, employers would need to make hiring and/or rehiring decisions quickly and ensure that those employees actually enter the plan before March 31, 2021. Since many plans have service requirements that must be satisfied as a condition to participation, this will delay the date on which new employees will enter the plan, absent a plan amendment. It is also unclear what happens if the employer subsequently reduces its workforce later in 2021.

It looks like Congress had good intentions here but, unfortunately, this relief may provide a deadline for resuming normal operations that is not realistic. The world is still struggling to fight against new infections and to manage vaccine distributions, and many businesses are waiting for a new financial relief package to be issued by Congress. A March 31<sup>st</sup> measurement date does not appear to provide enough time for businesses to resume their normal operations under these circumstances.

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