

UPDATE: How Do Layoffs Affect Your Retirement Plan?

By: Alex Mattingly on January 8, 2021 on graydon.law

Guidance provided by the Consolidated Appropriations Act of 2021 (the “Act”) will temporarily help employers determine if their retirement plans have experienced a “partial termination.” We discussed partial terminations in our [recent blog post](#), and the Act supplements all prior guidance with a bright-line rule for determining when a partial termination occurs. The failure to address a partial termination can result in harsh penalties, including plan disqualification, so it is welcome news that the Act now provides a definitive test regarding partial termination, even if its effects are only temporary.

Before the Act, there was no clear or simple definition of partial termination. IRS guidance and case law established that there was a presumption of a partial termination if a 20% or greater reduction of participating employees in a retirement plan was caused by employer-initiated terminations, but a partial termination was still to be determined on a case by case basis, examining all facts and circumstances. The 20% turnover rate was only one piece of evidence that could be either supported or rebutted by other factors (e.g., closing a branch, cyclical layoffs, etc.). This uncertainty meant that even plans with less than a 20% turnover rate had to consider whether it had experienced a partial termination.

With the new test under the Act, a plan now has no risk of being deemed partially terminated if the number of active plan participants on March 31, 2021 is at least 80% of the number of active plan participants on March 31, 2020. The safe harbor test provides certainty for plans that did not exist before, but unfortunately the relief will only be temporary. The partial termination safe harbor only applies to plan years that include the period beginning March 31, 2020 and ending March 31, 2021 (e.g., plans with a calendar year end will be given relief under the guidance in both the 2020 and 2021 plan years).

If you have any questions regarding partial termination, please contact one of Graydon’s employee benefits team members.