



Employee Benefits **ALERT** AUGUST 25, 2010

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Layoffs may cause a partial termination of your retirement plan

If you have reduced the size of your workforce recently, this alert is intended to remind you of the need to consider the possibility that you have caused a “partial termination” of your retirement plan.

Under the Internal Revenue Code, if a retirement plan is “partially terminated,” affected plan participants must be immediately 100% vested in their plan accounts and benefits.

It is not easy to determine if a partial termination has occurred. Generally, although the IRS looks at “all facts and circumstances,” it initially focuses on 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.

The IRS routinely considers this issue — whether a partial termination has occurred — during its audits of retirement plans. Also, we have become aware of participants who have complained to the U.S. Department of Labor that they “lost their money” at the time they lost their job. The DOL is either investigating these complaints itself or turning them over to the IRS.

If you have recently terminated a group of employees or closed down a business location, you should consider (or direct your third party administrator to consider) whether the employment terminations have caused a partial termination of your retirement plans.

For additional information, please contact any member of **McAfee & Taft’s Employee Benefits Practice Group**.