

LEGAL ALERT:
PARTIAL TERMINATION GUIDANCE

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Many clients of Palmieri & Eisenberg (“P&E”) have furloughed employees as a result of the COVID-19 pandemic.

In most cases, clients have begun to return employees to work and, in some cases, employee terminations are occurring.

Whenever significant terminations occur, employers must always remember to consider whether a **“partial termination”** has occurred for a qualified retirement plan, such as a typical Section 401(k) plan. The rule of thumb is that if there is more than a **20%** reduction in the number of participants in a retirement plan, as a result of involuntary terminations, the terminated employees should become **100%** vested in their benefits.

Some concern has existed whether furloughed employees could trigger a partial termination. The IRS has issued guidance that if employees are furloughed during 2020, and rehired by the end of 2020, such individuals are **not treated as being terminated**, and therefore do not count for purposes of determining whether a partial termination has occurred. This IRS guidance is consistent with the advice P&E has been giving to our clients. The specific guidance issued from the IRS in a Q&A format is as follows:

Q: Are employees who participated in a business’ qualified retirement plan, then laid off because of COVID-19 and rehired by the end of 2020, treated as having an employer-initiated severance from employment for purposes of determining whether a partial termination of the plan occurred?”

A: Generally, no. Subject to the facts and circumstances of each case, participating employees generally are not treated as having an employer-initiated severance from employment for purposes of calculating the turnover rate (defined in Revenue Ruling 2007-43, 2007-28 IRB) used to help determine whether a partial termination has occurred during an applicable period, if they're rehired by the end of that period. That means participating employees terminated due to the COVID-19 pandemic and rehired by the end of 2020 generally would not be treated as having an employer-initiated severance from employment for purposes of determining whether a partial termination of the retirement plan occurred during the 2020 plan year.

In summation, if employees were terminated due to COVID-19, but rehired by the end of 2020, they are not to be counted in determining if a partial termination occurred. This good news will help some plans in avoiding partial plan terminations.

If anyone has any questions regarding the partial terminations rules, please contact Frank Palmieri at (609) 471-7679 or fpalmieri@p-ebenefitslaw.com.