



Be Aware of Incurring a Partial Termination of Your Retirement Plan

When would a partial plan termination occur?

There are generally two main events that could cause a partial plan termination:

Employer-initiated terminations affecting a significant percentage of employees - Involuntary terminations of employees for any reason, such as closing a division of the company or laying off a group of employees, other than death, disability, or normal retirement, even if caused by reasons outside of the employer's control, such as the current economic conditions.

Certain plan amendments affecting a significant percentage of employees – Amendments that adversely affect employees' rights to vest in benefits under the Plan, exclude employees previously covered under the plan, or, in regard to defined benefit plans, reduce or cease future benefit accruals for employees that would cause a return of plan assets to the Employer.

Why is it important to determine if a partial plan termination will occur?

If a partial plan termination occurs, the affected group of Participants in the retirement plan must become fully vested in all of their accounts as of the plan's partial termination date. This must occur regardless of the plan's normal vesting schedule or how many Years of Vesting Service those particular Participants have accrued. The partial plan termination alone does not require that the affected participants take distributions from the plan (unlike full plan terminations); however, if the partial plan termination is due to employees being terminated from employment, that would be a distributable event.

What constitutes a "significant percentage"?

In [Revenue Ruling 2007-43](#), the Internal Revenue Service (IRS) analyzed several pertinent court cases, as well as prior rulings, and came to the conclusion that "whether a partial termination of a plan...has occurred depends on the **facts and circumstances**, including the extent to which participating employees have had a severance from employment. 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 of the participating employees as of the start of the applicable period and the employees who became participants during the applicable period." In most cases, the applicable turnover rate period is determined based on the Plan Year but can extend over "a longer period if there are a series of related severances from employment."

How can you be certain that a partial plan termination will occur or has already occurred?

If you will be experiencing, or have already experienced, one of the events mentioned above, or something similar, please contact your client manager for assistance in helping you make the determination as to whether a partial plan termination should occur and affected participants must become fully vested. If you prefer, we can also help you file a Form 5300, Application for Determination for Employee Benefit Plan, to actually have the IRS make the determination and give you added reliance for your plan. Once it is determined that a partial plan termination is in effect, we will also make sure to reflect full vesting for those affected participants, as applicable.

This material was created to provide an overview of the subject(s) covered and is not intended to be comprehensive. It is provided for informational purposes only and is not intended to provide specific legal, tax, or other professional advice. The services of an appropriate professional should be sought regarding your individual situation. Although care has been taken in preparing this material and presenting it accurately, Stephen H. Rosen & Associates, Inc. disclaims any express or implied warranty as to the accuracy of the material contained herein and any liability with respect to it.

89 North Haddon Avenue ■ Haddonfield, NJ 08033
856.795.6834 TEL ■ 856.795.5514 FAX

www.shrosen.com

A wholly owned subsidiary of National Investment Managers Inc.