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IRS clarifies partial plan termination relief, but more guidance needed

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Recently published IRS [Q&As](#) clarify several aspects of the partial termination relief for retirement plans included in the appropriations and pandemic relief package ([Pub. L. No. 116-260](#)) enacted at the end of 2020. Although the Q&As are helpful, additional guidance is needed for employers that concluded they had a partial termination and vested affected participants before Congress enacted the relief.

Partial plan termination relief

A partial termination is presumed to occur when involuntary terminations during a plan year are 20% or more of the plan's number of active participants at the beginning of the year. A partial termination requires full vesting of all affected participants' benefits, to the extent funded. Under the relief, a plan won't have a partial plan termination for any plan year that includes the period beginning March 13, 2020, and ending March 31, 2021, if the number of active participants at the end of that period is at least 80% of the number at the start of the period. The relief allows employers with a large workforce reduction during the pandemic to avoid the cost of a partial termination if they quickly restored their workforce.

IRS Q&As provide guidance

The new IRS guidance says the following:

- **Affected plan years.** The relief is available for an entire plan year if any part of that plan year falls within the period from March 13, 2020, through March 31, 2021. So, for example, a plan with a calendar plan year won't have a partial termination for either the 2020 or 2021 plan year as long as the number of active participants on March 31, 2021, was at least 80% of the number on March 13, 2020. This is a generous application of the relief, since it appears to mean the employer in this example won't have a partial termination in 2021 even if the number of active participants drops back below the 80% level later in the year. However, this may not be what Congress intended, so employers in this position should confirm this interpretation with legal counsel.
- **Rehiring not required.** Employers didn't have to rehire the terminated employees to benefit from the relief. Employers only had to increase their active participant count back up to the 80% threshold by March 31, 2021.

- **Reductions can be for any reason.** The relief is available to all employers that reduced their workforce for any reason, even if completely unrelated to the pandemic.
- **Counting active participants.** Employers should use a reasonable, good-faith interpretation of the term “active participant covered by the plan” when determining the counts as of March 13, 2020, and March 31, 2021. The same interpretation should be used for counting active participants on each date.

Additional guidance needed

Some employers may have determined that a partial plan termination occurred — and vested affected participants accordingly — before the relief was enacted. For example, if an employer whose plan year starts July 1 had a significant workforce reduction during the plan year that ended on June 30, 2020, the employer may have concluded at plan year-end that a partial termination occurred and vested the affected participants. But if this employer later increased its workforce so the number of active plan participants on March 31, 2021, reached at least 80% of the number on March 13, 2020, the employer apparently is still eligible for the relief.

For employers in this situation, applying the relief now would essentially require “unvesting” the affected participants — which would seem to violate the Internal Revenue Code’s vesting rules. These employers need additional IRS guidance on how to proceed. IRS might have decided this technical issue requires more formal guidance than a website Q&A, so additional guidance may be in the works.

Related resources

Non-Mercer resources

- [Coronavirus-related relief for retirement plans and IRAs Q&As](#) (April 27, 2021)
- [Pub. L. No: 116-260](#), the Consolidated Appropriations Act, 2021 (Congress, Dec. 27, 2020)

Mercer Law & Policy resources

- [Partial plan termination relief not a free pass for reportable events](#) (Feb. 25, 2021)
- [Virus aid bill offers help for retirement plans, student loans](#) (Jan. 6, 2021)

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