

## Employee Benefits Alert

### Year-end Appropriations Act Provides a Safe Harbor for Retirement Plans that Experienced a Large Reduction in Participation

By Heather Stone Fletcher

Qualified plans are required to fully vest affected participants if the plan is terminated or “partially” terminated. Plans are considered to have partially terminated if a large number of employees cease to participate in the plan. Recognizing that it is often unclear if a plan has been partially terminated, Congress has provided a safe harbor for making such determination in the Consolidated Appropriations Act, 2021, signed into law on December 27, 2020.

#### Partial Plan Termination Background

The IRS presumes that any plan with a 20% reduction in active participants has been partially terminated. Generally, the 20% reduction is calculated over the plan year, but could be measured over a longer period of time. Employers may rebut this presumption, and are most successful in doing so where they can show that the turnover percentage is typical, or close to typical, for their business.

For those employers that experienced large layoffs or furloughs in 2020, their qualified plans may have inadvertently been partially terminated, requiring such employers to retroactively vest affected participants.

#### Consolidated Appropriations Act Change

The Appropriations Act provides that a plan will not be treated as having a partial termination for any plan year, which includes the period beginning on March 13, 2020, and ending on March 31, 2021, if the number of active participants covered by the plan on March 31, 2021 is at least 80% of the number of active participants covered by the plan on March 13, 2020.

In other words, if a plan is operated on a calendar year, such plan can be assured that it has not experienced a partial plan termination for its 2020 and 2021 plan years, so long as the number of active participants in the plan on March 31, 2021 is at least 80% of the number of active participants in the plan on March 13, 2020.

While the safe harbor may not prevent a plan from experiencing a partial plan termination, it does give plans the ability to run, and rely on, a clear calculation. If a plan does not meet the safe harbor calculation provided for in the Appropriations Act, it may still rely on the previous partial plan termination guidance.