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## Layoffs May Trigger 100% Vesting in Retirement Plans

Employers working to stay afloat in these challenging economic times have one more thing to think about: layoffs and other employee terminations may result in a “partial termination” of the employer’s 401(k) plan or other retirement plan. An amendment to exclude an employee group from the plan could also trigger a partial termination.

If a partial termination occurs, the plan must 100% vest the accounts of all affected participants. In essence, the plan is treated as terminated with respect to those participants.

A partial termination also requires an allocation of any unallocated accounts (e.g., forfeitures) that the plan may be holding.

There is no bright-line rule for determining whether a partial termination has occurred – it’s a facts and circumstances test. But IRS guidance provides that if there is a 20% or more turnover rate in the plan due to employer action, then there is a presumption that a partial termination has occurred. The presumption can be rebutted by showing that the turnover rate is routine.

If actions terminating participants occur over multiple plan years, then the turnover rate must be determined for the entire related period. For example, if an employer begins laying off employees during the 2008 plan year and continues to do so in 2009, the 2008 and 2009 plan years should be looked at together. This may result in a turnover rate indicating a partial termination for the entire 2008-2009 period, even if the turnover rate in 2008 was less than 20%.

Often, an employer does not realize that a partial termination has occurred until after many participants have already received distribution of their plan benefits. Once participants receive distributions, it can be difficult to locate the participants because they no longer keep plans up to date on their current addresses. Also, questions arise about the administration of the cash-out and other distribution and consent rules, and possible misuse or misallocation of amounts that should not have been forfeited. These reasons underscore the importance of making a timely determination of whether a partial termination has occurred.

Please contact any member of the **Benefits Law Group** with any questions about partial terminations, or any other issues relating to executive compensation and employee benefits.

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**Jane Francis**  
jfrancis@hollandhart.com  
(303) 295-8599  
Denver



**Rebecca Hudson**  
rhudson@hollandhart.com  
(303) 295-8005  
Denver



**Elizabeth Nedrow**  
enedrow@hollandhart.com  
(406) 252-2166  
Billings



**Leslie Thomson**  
lthomson@hollandhart.com  
(406) 252-2166  
Billings



**Brenda Berg**  
brberg@hollandhart.com  
(303) 295-8029  
Denver

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Beth Nedrow, Holland & Hart LLP, 401 North 31st Street, Suite 1500, Billings MT 59101  
Phone: 406-252-2166 | enedrow@hollandhart.com