

## Partial plan liability

By Marcia S. Wagner, Esq.

With the downturn in the economy, it is important to remember that layoffs and downsizing can have a significant impact on tax-qualified plans, whereby certain affected persons must be fully vested and, in certain circumstances, notice must be provided to the Pension Benefit Guaranty Corporation ("PBGC"), as follows:

### Vesting

An employer's reduction in force or a series of reductions in force may trigger a "partial plan termination." Whether a partial plan termination has occurred is based on a facts and circumstances test. However, the general rule of thumb is that if at least 20% of a plan's active participants are terminated as a result of the reductions in force, a partial plan termination has occurred. In the event of a partial plan termination, all affected participants must be made fully vested to the extent that benefits are funded. For a defined contribution plan, the participant's account balance generally must be made fully vested; for a defined benefit pension plan, the participant's accrued benefits must be made fully vested to the extent the plan has sufficient assets, which requires an actuarial calculation as to the present value of vested benefits in the plan.

### Reportable event

In addition, when the number of active plan participants in a defined benefit pension plan insured by the PBGC reduces to less than 80% of the number of active plan participants at the beginning of the plan year or 75% of the number of active plan participants at the beginning of the prior

plan year (for example, as a result of a reduction in force), a reportable event may have occurred. If a reportable event occurs with respect to a plan, a notice must be filed with the PBGC within 30 days of the event unless a reporting waiver applies or the reporting deadline can be extended.

### PBGC proposes new rules on partial terminations

On August 10, the PBGC published proposed regulations under ERISA Section 4062(e), which provides for the reporting of and liability for partial terminations of defined benefit pension plans.

The proposed regulations offer guidance on whether and when a "Section 4062(e) event" occurs; describe the liability that arises and how the liability is satisfied; prescribe record-keeping requirements; and provide for waivers in appropriate circumstances. Under these rules, companies that shut down a facility (or other similar "cessation of operations") that results in a reduction of 20% or more of participants in a pension plan would be required to file a notice regarding the event with the PBGC within 60 days and either pay the partial termination liability amount to the PBGC (which will be held in escrow) or post a bond of up to 150% of the liability. The PBGC can also work out other means of satisfying the liability. ♦

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