



Winter 2021 Issue

## PRESIDENT'S MESSAGE

### Goodbye 2020!

Last year I welcomed you watching fireworks from the top of the Marina Bay Sands Hotel in Singapore, and last night, I gladly bid you farewell watching the ball drop in an empty Times Square from my living room. But 2020, you were not all bad. You taught us how to use Zoom, make sourdough bread, ration toilet paper, and showed us that anybody could be a Tiger King. You also shined a light on everyday heroes who have worked tirelessly during the pandemic, including doctors and nurses who saved lives, scientists who developed treatments and vaccines for COVID-19, police and firefighters who kept us and our property safe during the wildfires, parents and teachers who shared roles educating children from home and essential workers who ensured we could put food on the table. Our Chapter is a hero to other local organizations we supported this year, including Orange County Food Bank, South County Outreach and Children's Hospital of Orange County. And our members have been heroes to their clients by helping them navigate the CARES Act, helping their employees invest during volatile markets and making sure that compliance testing and audits were completed and 5500's filed on time, all while many have struggled with keeping their businesses open, transitioning to remote working, laying off employees and reducing or eliminating the company match. *2020, we are glad you have come to an end.*

### Hello 2021!

You bring us hope for unity, peace, and a return to normalcy, and we are counting on you to get us back together in person! We cannot predict the future, but we are certain there will be more legislation and regulations to help our clients sort out; and, their employees need our guidance more than ever to help them with their financial health and wellbeing. You also bring change to our Chapter. For the past 6 years, Marti Hack has served as our Chapter Administrator. She has been an incredible asset to us and such a delightful person to work with. While we wish she wanted to work longer, she is ready to retire and hopeful to get back to traveling at the end of the year. We are excited to introduce Christine Stewart as our new Chapter Administrator. Christine has a background as a pension administrator and is a great addition our organization. Marti and Christine will be working together over the next few months during the transition, so we will have an opportunity to thank Marti for her contribution and welcome Christine to our Chapter. *2021, we are glad you are here.*



Shannon Main, President  
Orange County Chapter

## In This Issue

- President's Message 1
- Board Member Profile 2
- Ask the Expert 3
- Member Profile 8
- New Members 9
- Member Benefits 9
- Upcoming Programs 10
- WP&BC Sponsors 11



## PRESIDENT’S MESSAGE—CONTO

I wish you and your families a Happy New Year and health and prosperity in 2021!

Best Regards,

Shannon Main, Principal, Pensionmark  
Orange County Chapter President

## WP&BC BOARD MEMBER PROFILE

**Name:** Kathleen Bass

**Company:** Boutwell Fay LLP

**Title:** Of Counsel

**Years in the Industry:** 22

**First “real” job:** My first real job was as a gift wrap slave in The Broadway department store in December. Scarred me for life. I still won’t go near a mall after Thanksgiving.

**Education:** BA from UC Irvine (Go Anteaters! Zot! Zot! Zot!) and JD from Stanford University (Fear the Tree!)

### **BUSINESS BACKGROUND**

**Nature of your work:** Employee benefits attorney, with my practice areas in qualified retirement plans, and health and welfare plans.

**How did you get into the field:** An alum of Stanford Law School reached out in my third year of law school and sold me on what a great practice it is. I jumped right in after graduation.

**What do you like about your work:** I like the intellectual challenge, the creative possibilities, and the people.

**Why did you join the WP&BC?** Every law firm I have worked with has been a supporter of the organization, so I have been involved in some capacity—attendee, member, committee member, board member, officer— and have been an advocate for WP&BC’s mission of educating and bringing together benefits professionals, from the start of my legal career.

### **PERSONAL**

**Ways you spend free time:** Cooking, reading, wine tasting, & traveling.

**Favorite trip you have taken:** Toss up between Cambria/Paso Robles, road trip to Santa Fe NM, or a long weekend at the Casa del Zorro in Borrego Springs.

**Guiding philosophy:** Always make important decisions based on a move towards something, never based on getting away from something else.

**Favorite charity:** Irvine Public Schools Foundation (full disclosure, my daughter works for them)

**Last book read:** The Night Circus by Erin Morgenstern. Very imaginative and atmospheric.

**Restaurant recommendation:** In what now seems the distant past, I seem to remember loving the food and ambiance at The Beachcomber at Crystal Cove. Let’s just say I’ve raised the flag with them a time or two.

**What will you do when you retire?** More cooking, reading, wine tasting, & traveling I hope!



**Kathleen Bass,**  
Of Counsel  
Boutwell Fay LLP



## Did COVID-19 Furloughs or Layoffs Trigger a Partial Termination for Your Qualified Plan?

Short Answer: It's likely too early to conclude one way or the other.

### Relevant Rule and Standard for Partial Terminations Before COVID-19

Generally, the Internal Revenue Code (Code) requires all unvested benefits to immediately vest when the (tax-qualified) plan is either terminated or the plan experiences a "partial termination." Whether or not a partial termination occurs, and the exact point in time the partial termination occurs, is determined by the IRS based on all the facts and circumstances involved.

The Code provides the following factors for employers to consider:

- Any action taken by the employer, through a plan amendment or severance of employment, to purposefully exclude a group of previously covered participants from participating; and
- Plan amendments that adversely affect the rights of unvested benefits.

Because the partial termination standard is based on facts and circumstances, employers already faced a considerable amount of gray area related to partial terminations even before COVID-19. However, there's one threshold that has clearly been established by the IRS in Rev. Rul. 2007-43, and largely supported by the courts: if the number of participating employees in a plan is reduced by 20% or more in an "applicable period" (typically the plan year), there's a rebuttable presumption that the plan has been partially terminated. Unfortunately, all other aspects of partial termination fall within the gray area of "facts and circumstances."

### Applying the Standard for Partial Terminations

#### Turnover Rates that are Below the 20% Threshold

Although a rebuttable presumption of partial termination is triggered when 20% of participating employees are terminated, the facts and circumstances may allow the IRS (or a court) to

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<sup>1</sup>Although 403(b) plans (tax-sheltered annuity plans) may in certain situations have unvested benefits, these types of plans are not subject to the partial termination requirements under the Code. The partial termination rules only impact tax-qualified plans that maintain a trust under Code section 401(a) – and 403(b) plans do not. In addition, for those 403(b) plans that are subject to ERISA, there is no corresponding partial termination vesting requirement for 403(b) plans. However, that does not necessarily mean that a partial termination will not result in the immediate vesting of affected participants under a 403(b) plan. The plan document or the investment arrangement used to fund the plan may contain provisions that incorporate the partial termination rules.

<sup>2</sup>Treas. Reg. Section 1.411(d)-2(b)(1).



**Ruel Pile,**  
Senior Attorney  
Boutwell Fay LLP



## Did COVID-19 Furloughs or Layoffs Trigger a Partial Termination for Your Qualified Plan?

conclude that a partial termination occurred even if the percentage of terminations (*i.e.*, turnover rate) did not reach the 20% threshold. Although at least one court suggested that turnover rates below 10% are presumed to not result in a partial termination, again, that is only a presumption. If a plan's turnover rate approaches 10%, plan administrators may need to anticipate the possibility of a partial termination.

### No Percentage Establishes a Conclusive Partial Termination

While a rebuttable presumption of a partial termination is triggered after a plan's turnover rate reaches 20%, the Code does not provide a percentage point at which a partial termination becomes conclusive. Nevertheless, the IRS has taken the position that a partial termination occurs when a "significant percentage" of employees covered by the plan are excluded from participating in the plan either by severance of employment or plan amendment. In Rev. Rul. 2007-43, the IRS held that a mere 23% turnover rate (caused by a non-routine shutdown at one business location) was sufficient to meet the significant percentage test and concluded that a partial termination occurred. The IRS further provided that its finding of a partial termination would apply "irrespective of whether the significant decrease in participation in the plan was the result of adverse economic conditions or causes within the control of the employer."

### Calculation of the Turnover Rate

According to the IRS, the turnover rate is determined by dividing the number of participating employees, that suffered an "employer-initiated" severance from employment during the applicable period by the total number of participating employees, including all participating employees at the beginning of the applicable period and any additional employees that became participants in the applicable period. It is tempting to argue that only terminated non-vested employees participating in the plan should be included in the numerator, but the courts have disagreed with this argument. Fortunately, employers may be able to verify (supported through personnel files, employee statements, and other corporate records) that a severance from employment was purely voluntary. In addition, the IRS will take an employer's normal, cyclical turnover rate into consideration when they make a partial termination calculation.

<sup>3</sup>Matz v. Household Int'l Tax Reduction Inv. Plan, No. 14-2507 (7th Cir. 2014).

<sup>4</sup>Rev. Rul. 2007-43, 2007-2 C.B. 45.

**PARTIAL TERMINATION**



## Did COVID-19 Furloughs or Layoffs Trigger a Partial Termination for Your Qualified Plan?

### Applicable Period

The applicable period used to calculate a plan's turnover rate depends on the facts and circumstances; it could span more than one plan year if employer-initiated reductions in employee participation are related. And in this case, a series of terminations related to the pandemic are likely to be grouped together when calculating a plan's turnover rate (even if they occur in multiple plan years). Consequently, if non-COVID-19 severances occur beyond December 31, 2020, it is critically important for employers to record the circumstances surrounding those severances to avoid including them in the numerator in their plan's turnover rate calculation. Unfortunately, where the employment relationship with participating employees is officially severed through layoffs, resulting in a 20% or more turnover rate, the IRS would likely presume that a partial termination has occurred, even if these layoffs occur within a short period of time (*e.g.*, 1-2 months)—subject to rebuttal by the plan sponsor.

### **IRS Guidance on Partial Terminations During COVID-19**

On August 3, 2020, the IRS released its Coronavirus-related relief for retirement plans and IRAs questions and answers ("IRS Release"). It specifically addressed a question on partial termination in Q&A #15. The IRS provides the question:

"Are employees who participated in a business's qualified retirement plan, then laid off because of COVID-19 and rehired by the end of 2020, treated as having an employer-initiated severance from employment for purposes of determining whether a partial termination of the plan occurred?"

And the IRS answers:

"Generally, no. Subject to the facts and circumstances of each case, participating employees generally are not treated as having an employer-initiated severance from employment for purposes of calculating the turnover rate (defined in Rev. Rul. 2007-43, 2007-28 IRB) used to help determine whether a partial termination has occurred during an applicable period, if they're rehired by the end of that period. That means participating employees terminated due to the COVID-19 pandemic and rehired by the end of 2020 generally would not be treated as having an employer-initiated severance from employment for purposes of determining whether a partial termination of the retirement plan occurred during the 2020 plan year."

**PARTIAL TERMINATION**



## Did COVID-19 Furloughs or Layoffs Trigger a Partial Termination for Your Qualified Plan?

Clearly, the IRS will not deem a partial termination to have occurred if a plan sponsor was able to rehire terminated employees before the end of 2020. However, the unprecedented circumstances created by the pandemic are much more complicated for plan sponsors than simply hiring employees back before the end of 2020. We hope the IRS provides additional clarification on COVID-19 with respect to partial terminations because there are many questions left to be answered.

Specifically, the IRS Release does mention rehiring before the end of an “applicable period” but in its example the IRS only refers to rehiring “by the end of” 2020. There is uncertainty as to what happens if the rehiring takes place in 2021 (*e.g.*, for plans that have a plan year end of March 31, 2021). The issue of voluntary terminations and how are they to be determined is left to plan sponsors to interpret for themselves. For example, it is not clear what happens if employees were extended an offer to return to work before December 31, 2020 but “voluntarily” decided not to accept that offer. The IRS Release seemed to generate more questions than answers for plan sponsors and still requires additional IRS guidance to help them navigate Code Section 411(d)(3).

### Legislative Relief for Partial Terminations: Consolidated Appropriations Act, 2021 (the “Act”)

On December 27, 2020, President Trump signed the Act into law which included a temporary rule for preventing partial plan termination—buried in the more than 5,500 pages of the Act (Legislative Relief). It provides:

“A plan shall not be treated as having a partial termination (within the meaning of 411(d)(3) of the Internal Revenue Code of 1986) during 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 percent of the number of active participants covered by the plan on March 31, 2020.”

Based on a plain reading of this language, it appears the Legislative Relief:

- amends Code Section 411(d)(3) to clarify that there would not be a partial termination in this narrow set of circumstances;
- covers more than one plan year because the referenced “period” spans more than 12 months;

<sup>5</sup>Section 209 of the Act – Temporary rule preventing partial plan termination.

PARTIAL TERMINATION



## Did COVID-19 Furloughs or Layoffs Trigger a Partial Termination for Your Qualified Plan?

- overrides the 20% turnover rate presumption in Rev. Rul. 2007-43 because reaching the 80% coverage threshold on March 31, 2021 conclusively determines that no partial termination occurred;
- disregards the facts and circumstances standard in Treas. Reg. Section 1.411(d)-2(b)(1) because it does not reference facts or circumstances in the relevant calculation;
- only focuses on two dates for purposes of plan participation levels relevant to a partial termination (March 31, 2020 and March 31, 2021) which benefits employers that initiated terminations before March 31, 2020 and initiate terminations after March 31, 2021;
- does not require employers to rehire the same employees that were terminated during the referenced period which differs from the requirements of the IRS Release;
- does not address a plan's turnover rate after March 31, 2021.

The Act has been signed into law, so unless plan sponsors have already concluded that a partial termination has occurred, they have a reasonable basis to delay their determination on a partial termination until March 31, 2021. Clarifying regulations are still needed to help guide plan sponsors and will hopefully be issued before the plan's next Form 5500 filing deadline.

### Conclusion

The issue of partial termination will be on the radar of most plan auditors for the upcoming Form 5500 filing season. Consequently, employers should take the necessary steps to account for each participating employee that incurs a severance of employment during the applicable period—carefully documenting every employee that left employment voluntarily. Plan administrators should meet with the plan's auditor to understand their applicable partial termination audit standard. Plan sponsors are encouraged to carefully consider the relevant facts and circumstances, with the advice of their ERISA counsel, before deciding whether a partial termination has occurred. Finally, employers should also be cautious with their plan's use of its forfeiture account because they may be required to restore the forfeited portion of previously terminated participants' accounts.

**PARTIAL TERMINATION**



## NEW MEMBER PROFILE

**Name:** Aksana Munoz

**Company:** Benefit Financial Services Group (BFSG)

**Title:** Lead Client Services Manager/Plan Compliance Specialist

**Years in the Industry:** 8

**First "real" job:** Picking strawberries on a farm in England

**Education:** Bachelor's in Finance from Drexel University

### **BUSINESS BACKGROUND**

**Nature of your work:** I work for BFSG, an institutional consulting and wealth management firm. We help retirement plan sponsors reduce and/or eliminate fiduciary liability and plan costs, and to improve participant outcomes.

**How did you get into the field:** I came across this opportunity almost 8 years ago on Indeed.

**What do you like about your work:** I like that the retirement plan industry constantly evolves and there is so much to learn.

**Why did you join the WP&BC?** I joined WP&BC to build networking relationships with professionals in the retirement plan industry and for professional development.

### **PERSONAL**

**Ways you spend free time:** Hiking, running, gardening, reading, family time

**Guiding philosophy:** Treat others how you would like to be treated

**Favorite charity:** St. Jude Children's Research Hospital

**Last book read:** Dopesick by Beth Macy

**Restaurant recommendation:** Omakase by Gino in Santa Ana, CA

**Favorite trip you have taken (or would like to take):** One of my most memorable trips was to the city of Tulum, Mexico. And, I'd like to explore the world's most remote places (for example, Pitcairn Island)

**What will you do when you retire?** Travel. Travel. Travel.



**Aksana Munoz,  
Lead Client Services Man-  
ager/Plan Compliance Spe-  
cialist  
Benefit Financial Services  
Group**



# GIVING BACK TO OUR ORANGE COUNTY COMMUNITY

## Giving Back to Our Orange County Community

As a non-profit, community-based organization, the Board of Directors feels it is our duty to give back to our community here in Orange County, particularly during this most difficult of times. We are providing a summary of organizations we have supported as a chapter through charitable contributions, in case you would like more information about these organizations and/or would also like to support them through your company or privately.

In the last calendar year, contributions have been made on behalf of Western Pension and Benefits Council, Orange County Chapter to:

### **The Orange County Food Bank**

The OC Food Bank unites communities to end hunger and malnutrition by partnering with more than 300 local charities, soup kitchens, and community organizations. Through donated food, USDA commodities, purchased food, and the generous support of individuals, the OC Food Bank supports non-profit agencies in Orange County serving low-income families and individuals. For more information see their website at <https://www.capoc.org/oc-food-bank/>.

### **South County Outreach**

South County Outreach is a non-profit, non-sectarian organization dedicated to helping low-income individuals, families, and seniors in crisis. South County Outreach is a multi-service provider including food, housing, rental and utility assistance, homeless prevention coaching and counseling, and computer skills training. For more information see their website at <http://www.sco-oc.org/>.

### **Children's Hospital of Orange County (CHOC)**

For many years, our chapter has made contributions on behalf of each of our speakers to CHOC. CHOC's mission is to nurture, advance and protect the health and well-being of children by assisting and enriching existing services as well as developing programs to benefit the families of Orange County. Over two million children count on CHOC to be there when they need it most, regardless of their family's ability to pay. For more information see their website at <https://www.choc.org/>.

## **WP&BC Orange County Statement of Purpose**

The Orange County Chapter of the Western Pension & Benefits Council promotes an exchange of information and ideas among employee benefits professionals. Our members include ERISA attorneys, CPAs, third party administrators, investment industry benefits specialists, actuaries, benefits consultants and plan sponsors' in-house benefits professionals.

Through the monthly breakfast forum presentations and periodic technical lunch forums, the Orange County Chapter provides a forum for dialogue between its members. These meetings encourage full audience participation and exchange of practical solutions to technical issues. Benefit professionals lead the meetings, with an emphasis on topics reflecting current benefit trends and regulatory guidance.

GIVING BACK



*Your Membership Matters!  
Welcome to our newest members ...*

**Gold Member:**

Diane Kimbro: Stone Tapert

**Corporate Members:**

Withum  
Securian

**Individual Members:**

Jordan Schroeder—Janus Heneson  
Kim Ginsberg—Dimensional Fund

Whitney Massey—Level Four Advisors  
Lenora Hernandez—LCH Consulting

**ENJOY THE BENEFITS**



- Business contacts that can result in **new business opportunities**
- **Sharpen your business knowledge**—by learning from industry leaders
- **Reduced fees** to our many program offerings—10 monthly Breakfast Forums ([online until live in-person events are permitted](#))\*, 4 Technical lunches\* and 11 Webinars) as well a substantial discount to the Annual Conference, co-sponsored with NIPA
- Access to WP&BC **Membership directory**
- Attend all of the OC Chapter events and all of the other WPBC Chapter events at membership rate and earn up to **28 CE credits** applied to **AIF, ERPA, ASPPA, NIPA, CEBS, CFP, CPA (CA), CRPS, General, MCLE, NIPA.**

\*While online, **Sponsors** and **Corporate Members** may invite an unlimited number of employees and guests to all Breakfast Webinars at no extra charge! [Click here to join!](#)

**MEMBERS**



**Upcoming Programs**  
 \* All Breakfast Forum Meetings will be held online through June 2021.

|   |   |  |
|---|---|--|
| 1/21/2021<br>*Online Webinar<br>8:00 am - 9:45 am | <a href="#">Lions, and Tigers and Bears, Oh My!: Retirement Plan Issues in a Pandemic</a> | Sherry Boutwell, JD, Partner, Boutwell Fay LLC   |
| 1/26/2021<br>*Online Webinar<br>9:00 am - 3:30 pm | <a href="#">13th Annual ABC's of Pension Plans</a>  | Hitz Burton, JD, Partner, Aon Hewitt<br>Phuong Jennings, QKA Regional Vice President, EGPS, Inc.<br>Stuart Hack, JD, CLU, Retired Partner, Sunlin Consulting<br>Mark Murphy, CPA, Managing Partner, LTSP, Inc. |
| 2/18/2021<br>*Online Webinar<br>8:00 - 9:45 am    | <a href="#">Here We Go Again: With A Twist</a>  | Derrin Watson, JD, Independent ERISA Attorney and Educator   |

Our slate of speakers and topics is subject to change throughout the year. To find the most current information about upcoming meetings, visit [www.WPBCOrangeCounty.org](http://www.WPBCOrangeCounty.org), then select “Events.”

**REDUCED RATES for WP&BC—Orange County ONLINE EVENTS**

**Breakfast Forums** are currently held online at reduced registration rates. Online registration is FREE for all Gold, Sponsor and Corporate Member associates. Reduced rates for Individual Members—is \$35 per person with early registration. Non-Member registration fee reduced to \$55 for early bird registration. Programs begin at 8 am.

**Technical Lunch Forums** are held online with reduced registration is \$35 per member, and \$50 for non-members. Check-ins begin at 11:30 am and typically end at 1:40 pm.

**Recorded Webinars** are sponsored by the WP&BC Governing Board. Registration for a 100 minute session is \$65.00 for members and \$90.00 for non-members. [Click here](#) to see the upcoming Webinars.

**Join the WP&BC—OC for a Networking Zoom  
 Meet & Greet other Benefit Professionals  
 Scheduled 30 minutes before each program!**



The Western Pension and Benefits Council appreciates our Sponsors whose support enhances all that we do!



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WINDES

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