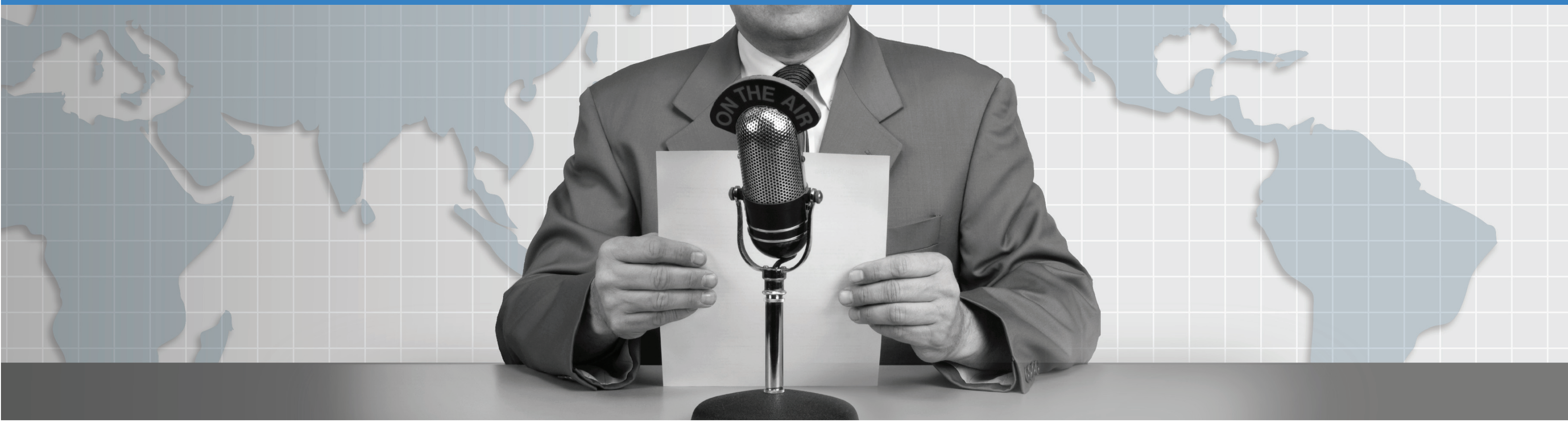
Employee Benefits Broadcast



Foley is pleased to provide you with a brief summary of the July 28, 2009 installment of the Employee Benefits Broadcast Web conference series.

In **Headline News**, Partner Leigh C. Riley discussed situations in which a partial termination of a qualified retirement plan are deemed to occur and the resulting vesting requirements. The key points are:

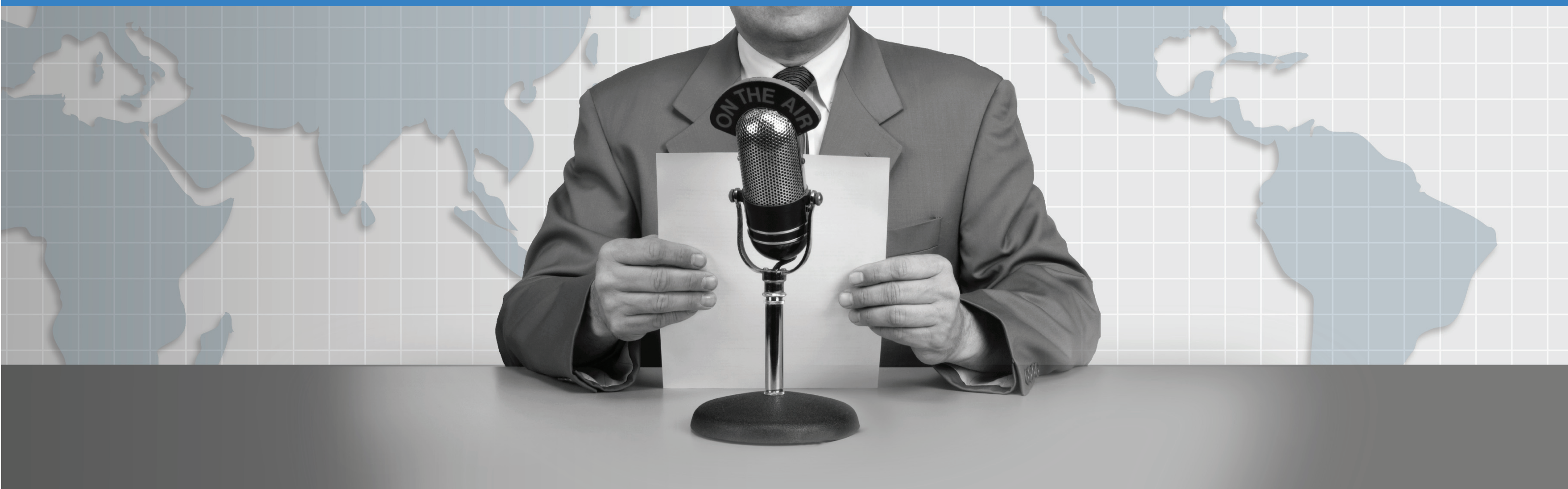
- A partial plan termination occurs when more than 20 percent of a plan's participants experience an employer-initiated severance during an applicable period. Both vested and non-vested participants must be counted.
- The applicable period is each plan year, but may be longer than a plan year if multiple severances from employment are related.
- Upon a partial plan termination, the accounts of affected employees must be vested, and the pension benefits of affected employees must be vested to the extent funded. The position of the IRS is that an affected employee means any employee who terminates employment during the applicable period, not just those who experience the employer-initiated severance.
- It is unclear when the partial termination date is deemed to occur.

Partner Robert E. Goldstein's **In the Spotlight** segment covered the new group health plan requirements of the Mental Health Parity and Addiction Equity Act of 2008. Highlights of the discussion are:

- The law places mental health and substance abuse disorder benefits on full parity with medical/surgical benefits. Mental health and substance abuse disorder benefits must be subject to the same financial requirements and treatment limitations as the predominant requirements that apply to substantially all medical/surgical benefits.
- The law does not require that a group health plan provide mental health and/or substance abuse disorder benefits. But, if they are provided, they must be provided on parity with the other types of benefits under the plan.
- The law is effective for plan years beginning after October 3, 2009. For collectively bargained plans, the effective date may be delayed until the expiration of the collective bargaining agreement that was ratified prior to October 3, 2008.
- The law does not apply to health plans of employers with 50 or fewer employees.
- A group health plan can be exempt if its actuary determines that providing the increased benefits results in a two-percent cost increase in the first year that the plan must comply with the law and a one-percent increase each plan year thereafter.

In **Cram Session**, Partner Lloyd J. Dickinson explained the new requirements for extended group health plan coverage under Michelle's Law.

- A dependent child who is covered under a group health plan due to his or her status as a full-time student is entitled to remain covered under the plan if he or she ceases to be a full-time student due to a medically necessary leave of absence.



- The extended coverage ends on the earlier of one year after the leave begins or the dependent child otherwise ceases to be eligible because, for example, he or she reaches the plan's limiting age.
- Group health plans must provide notice of this right in any request for certification of student status. Plan documents and summary plan descriptions also should be amended to reflect this rule.
- It is unclear how this coverage is to be coordinated with COBRA, but it appears that COBRA would start at the end of the one-year extended period.
- The law is effective for leaves of absence beginning in the first plan year after October 9, 2009.

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About the Employee Benefits Broadcast

The Employee Benefits Broadcast provides participants with needed information in the most efficient manner possible — only a telephone line and Internet access are required to participate — allowing employee benefits professionals to stay up-to-date with timely information from anywhere in the nation.

For more information, please visit Foley.com/EBB or contact Elie Harris at eharris@foley.com.

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