



ERISA Roundup

A quarterly recap of recent publications from
BDO's ERISA Center of Excellence

Q3 2024

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A Note from BDO's ERISA Practice Leaders

With the rush of plan audits and Form 5500 filings winding down, join us for this edition of our Q3 ERISA Roundup. As September marks the 50th anniversary of ERISA, this edition explores the history of employee benefits plans and how protections have grown in the last 50 years. Also included is a link to our latest podcast discussing implementation of SECURE Act provisions for long-term part-time employees.

Our dedicated ERISA practice leadership team is excited to welcome Michael Belonio to the Assurance Principal Group. His expertise and leadership in employee benefit plan matters will undoubtedly enhance our practice as we continue to provide valuable insights and guidance.

Staying current on ERISA topics is simplified with BDO: Follow along with our regular insights at our [BDO ERISA Center of Excellence](#) and our podcast series [BDOTalksERISA](#). We welcome your feedback on our content at BDOTalksERISA@BDO.com.



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BDO's ERISA Center of Excellence is your source for insights on emerging regulations, industry trends, current topics, and more. Visit us at www.bdo.com/erisa or follow along on Twitter: @BDO_USA and #BDOERISA.

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2024 Deadlines and Important Dates

Sponsors of defined benefit and defined contribution retirement plans should keep the following deadlines and other important dates in mind as they work toward ensuring compliance for their plans in 2024. Dates assume a calendar year plan. Some deadlines may not apply, or dates may shift based on the plan sponsor's fiscal year. For additional support, please contact your BDO representative.

OCTOBER

- ▶ **3 / Action:** Distribute annual notices to participants no earlier than October 3 and no later than Dec 2, including notices for: 401(k) Plan Safe Harbor Match, Automatic Contribution Arrangement Safe Harbor, Automatic Enrollment and Qualified Default Investment Alternatives (QDIA).
- ▶ **15 / Fund:** October 15 possible third quarter 2024 contribution due for defined benefit pension plans.
- ▶ **15 / Action:** October 15 is the extended deadline for filing IRS Form 5500 and IRS Form 8955-SSA.
- ▶ **15 / Action:** October 15 is the extended deadline for filing individual and C-Corp tax returns.
- ▶ **15 / Action:** If an extension was filed, October 15 is the deadline to fund defined contribution employer contributions for C-Corporations and Sole Proprietors.
- ▶ **15 / Action:** October 15 to open a Simplified Employee Pension (SEP) plan for extended tax filers.
- ▶ **15 / Action:** Send annual funding notice to participants of single- and multi-employer defined benefit plans with 100 or fewer participants by October 15.
- ▶ **15 / Action:** October 15, defined benefit plan PBGC Premium filings and payments due.
- ▶ **31 / Action:** Single-employer defined benefit plans that are less than 60% funded or are 80% funded and have benefit restrictions triggered must inform participants by October 31 or 30 days after the benefit restriction applies.

DECEMBER

- ▶ **2 / Action:** Distribute annual participant notices no later than December 2. These include notices for: 401(k) Plan Safe Harbor Match, Automatic Contribution Arrangement Safe Harbor, Automatic Enrollment and Qualified Default Investment Alternatives (QDIA).
- ▶ **15 / Action:** December 15 is the extended deadline to distribute Summary Annual Report (SAR) when the Form 5500 was filed on October 15.
- ▶ **31 / Action:** December 31 is the final deadline to process corrective distributions for failed ADP/ACP testing; a 10% excise tax may apply.
- ▶ **31 / Action:** Ongoing required minimum distributions (RMDs) for 5% business owners and terminated participants must be completed by December 31.
- ▶ **31 / Action:** Amendments to change traditional 401(k) to safe harbor design, remove safe harbor feature or change certain discretionary modifications must be completed by December 31. Amendments to change to safe harbor nonelective design must be completed by Dec 1 of given plan year for 3% or by Dec 31 of the following year for 4% contribution level.
- ▶ **31 / Action:** Plan sponsors must amend plan documents by December 31 for any discretionary changes made during the year.

WEBINAR ON DEMAND

Accounting, Audit, and Regulatory Updates Impacting Retirement Plans

Presented by:

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Join BDO and our thought leaders who will provide an update on key developments in Accounting, Audit, and Regulatory Guidance pertaining to retirement plans.

At the end of this session, participants will be able to:

- ▶ Identify impact of recent accounting developments on retirement plans.
- ▶ Discuss newly effective auditing standards on retirement plans.
- ▶ Demonstrate knowledge of legislative and regulatory changes impacting retirement plans.

[WATCH HERE](#)



Stay Up to Date with Our Podcast, *BDO Talks ERISA*



**BDO TALKS
ERISA**

Our ERISA Center of Excellence hosts a podcast — *BDO Talks ERISA!* This series covers best practices around all things ERISA and any other HR-related topics, including:

- ▶ How to avoid common compliance issues
- ▶ How to navigate the ins-and-outs of ERISA's fiduciary provisions
- ▶ Our own experiences working for BDO's ERISA Services group
- ▶ A deeper dive into the insights we share through our BDO ERISA Center of Excellence

Listen to new episodes of *BDO Talks ERISA* [here](#) or subscribe on [Apple Podcast](#) or [Spotify](#). If you have suggestions for future topics or have a question for us to answer, please [send us an email](#).

New Episode - Navigating New Long Term Part Time Employee Provisions

In this episode, BDO professionals Adaramola Redmond, Daniel Kugel, and Nicole Parnell, Principal, Global Employer Services Retirement Plan Services Leader at BDO, dive into the significant changes brought by the Secure Act and Secure 2.0, focusing on the inclusion of Long-Term Part Time (LTPT) employees in retirement plans. They discuss the new eligibility criteria, compliance requirements, and best practices for plan sponsors to navigate these updates effectively. Tune in to understand how these provisions may impact your employee benefit plans and what steps you need to take to stay compliant.



Understanding the Impact of Workforce Reductions on 401(k) Plans

Employee turnover often triggers a wave of issues for a company and its human resources department. Even 401(k) retirement plans — one of the most sought-after employee benefits — can be impacted when a substantial number of employees are involuntarily terminated. This can constitute a partial 401(k) plan termination where full vesting of the affected employees must occur to satisfy legal and regulatory requirements, yet partial terminations are often easy to overlook.

IDENTIFYING PARTIAL 401(K) TERMINATIONS

An important part of 401(k) management is understanding how workforce reductions can affect the plan itself, as complete disqualification of the plan by the IRS is on the table when a partial termination goes unnoticed or is mishandled.

According to IRS regulations, [a partial 401\(k\) termination](#) may occur upon the involuntary termination of 20% or more of employees who are plan participants at the beginning of the year. It's likely that some of the employees will be fully vested, while others will not meet the plan's requirements for 100% vesting of employer contributions.

Employers, and HR departments specifically, should monitor fluctuations in employee headcounts and watch for events that can trigger a large workforce reduction that, in turn, could result in a partial 401(k) termination. However — and this is where confusion sometimes occurs — the 20% workforce reduction count is cumulative, can span more than one plan year, and can be triggered by events other than layoffs and plant closings, such as:

- ▶ Business restructuring that decreases the size of the workforce.
- ▶ Amendments to the 401(k) plan where the number of eligible employee participants decreases.
- ▶ Employee turnover for positions that are not expected to be replaced.

The [IRS calculates the turnover rate](#) using a specific formula: $TR = A / X + Y$. TR means the turnover rate equals the number of participants who were terminated (A) divided by the number of participants at the end of the prior year plus any added during the plan year (X+Y). For example, if 20 employees were terminated at a company that had 80 participants, the turnover rate would be 25%.

If it appears that a company's workforce has dropped or is expected to drop by 20% or more, employers, HR professionals, and plan administrators should closely scrutinize 401(k) plan documents and the laws and regulations governing such retirement plans.

WORKFORCE REDUCTIONS AND THE 401(K) PLAN

How does the termination of employee participants affect a company's 401(k) plan? Between the complexity of 401(k) plan regulations and vigorous IRS oversight, it's crucial to understand that significant employee turnover and other workforce-related events can have an impact on retirement plan operations and forfeiture accounts.

If it is determined that a partial 401(k) termination occurred, employers must fully vest the affected employees regardless of plan requirements. For example, plan documents might require an employee to work six years to become fully vested in the employer's contributions to the 401(k) plan. A layoff occurs which includes employees with less than six years of service. The employer must vest these employees at 100%, in part because they were not given the opportunity to meet that six-year benchmark. The same is true for other events, such as business restructuring and plan amendments that affect employee eligibility.

Immediate vesting of a large number of departing employees could potentially create financial hardship for the business. The plan's forfeiture accounts may be available to fund the vesting of employees without a significant immediate impact on cash flow. However, any required adjustments to vesting must occur whether the forfeiture accounts will cover the cost or not.

It's important to identify and plan for any event that could jeopardize the 401(k) plan. Failing to recognize a partial 401(k) plan termination is common, but companies can enhance their monitoring procedures and increase awareness.

AVOIDING PARTIAL TERMINATION MISSTEPS

The IRS can completely disqualify a 401(k) plan if vesting is not handled properly after a partial termination. Consider the following best practices to help mitigate the risk:

- ▶ **Learn the rules.** Rules and regulations surrounding partial terminations tend to be complex, consider consulting with an employee benefit plan professional or ERISA attorney to understand the rules.
- ▶ **Know your plan.** Become familiar with plan document provisions related to partial plan terminations, vesting provisions and the use of forfeiture accounts.
- ▶ **Establish oversight policies and procedures.** Monitoring employee voluntary and involuntary terminations by the plan sponsor and management should be ongoing. Consider turnover trends during the plan year as well as across multiple years.
- ▶ **Document all terminations.** It may be necessary to prove to the IRS whether a departure was voluntary or involuntary for the turnover calculation. The IRS may classify voluntary terminations as involuntary terminations if the employer cannot provide support for the nature of the employee's departure.
- ▶ **Manage forfeiture accounts.** The balance of the forfeiture account can include a variety of sources, including funds previously forfeited from participant accounts that are affected by a partial plan termination. The funds in the forfeiture account may be needed to reinstate the accounts of the affected participants.
- ▶ **Correct vesting failures.** The IRS offers the [IRS Employee Plans Compliance Resolution Systems](#) that can be used to correct this compliance failure.

For questions about plan compliance with these and other provisions of ERISA, as well as benefit plan audits, please contact our [Employee Benefit Plan Audit team](#).

The Growth and Impact of Employee Protections in the Last 50 Years

The Employee Retirement Income Security Act of 1974 (ERISA) represents a key moment for retirement security in the United States — and September 4, 2024, marks its 50th anniversary.

While its enactment is certainly an important milestone, ERISA's most enduring impact may be that it began an era of continued enhancements to employee protections and contributed to the reduction of discriminatory treatment of U.S. workers. The 1974 landmark act opened the door for new laws and regulations, paving the way for many of the employee protections now considered standard for the American workforce. In this article, we will look at some of the key protections that were not part of ERISA's original framework but grew from its foundation.

SETTING THE STAGE: THE POLITICAL CLIMATE OF 1974

While ERISA coalesced years of growing concern to improve protections for U.S. workers' retirement, it came about in direct response to a pivotal point in U.S. history. In 1974, the United States was navigating a tumultuous period marked by the ongoing Vietnam War and the Watergate scandal. Following President Richard Nixon's resignation, President Gerald Ford came into office looking for opportunities to unify the country and restore public trust in the government. Ford and Democratic House Speaker Tip O'Neill collaborated on bipartisan legislation that pulled together existing draft legislation to quickly construct the Employee Retirement Income Security Act of 1974.

Enacted on Labor Day 1974, less than a month after Ford took office, ERISA was not as comprehensive as has often been assumed and required subsequent legislation to address its missing or incomplete components. Despite these initial shortcomings, ERISA laid the groundwork for the modern era of employee retirement security and employee protections in the United States. Let's look at some of the significant subsequent reforms and enhancements that have built on ERISA's foundation.

GENDER-BASED AND SPOUSAL DISCRIMINATION

One of the early areas of reform was the elimination of gender-based and spousal discrimination in retirement plans . In 1978, the U.S. Supreme Court's *Manhart* decision removed the requirement for female plan participants to pay more into a plan to account for their longer actuarial lifespans.

The Retirement Equity Act of 1984 (REA) furthered these protections by creating spousal protections and recognizing qualified domestic relations orders (QDROs). The REA required written spousal consent for married plan participants to elect a benefit other than a qualified joint and survivor annuity and provided spousal death benefits for terminated vested participants not in pay status. It also protected the prior vesting service for those taking parental leave or a break-in-service of less than five years' duration.

AGE-BASED DISCRIMINATION

Later reforms addressed age-based discrimination. The Age Discrimination in Employment Act of 1967 (ADEA) had eliminated the mandatory retirement age and allowed participants to continue accruing benefits even if they worked past the normal retirement age. The Older Workers' Benefit Protection Act of 1990 amended the ADEA to further ensure equal benefits for older employees and provide additional safeguards against age discrimination in the workplace.

HEALTH DISCRIMINATION

Health discrimination was another critical area in need of reform.

- ▶ The Americans with Disabilities Act of 1990 (ADA) prohibits discrimination against individuals with disabilities and requires reasonable accommodations for disabled employees.
- ▶ The 2008 Genetic Information Nondiscrimination Act (GINA) prevents the denial of insurance coverage or higher premium costs to a healthy individual based on a genetic predisposition to a disease.
- ▶ The Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) ensures mental health or substance use disorder benefits are on par with medical and surgical health benefits.

EXPANDED HEALTH BENEFIT PROTECTIONS

Protections focused on employee health benefits have been expanded significantly since 1974.

- ▶ The Consolidated Omnibus Reconciliation Act of 1986 (COBRA) established rules governing the continuation of health coverage, including provisions for limited-period health coverage continuation for employees and beneficiaries following certain life events that would otherwise result in a reduction in benefits.
- ▶ The Affordable Care Act of 2010 (ACA) prohibits insurance companies from denying coverage or charging higher premiums based on preexisting conditions.
- ▶ The Family and Medical Leave Act of 1993 (FMLA) provides job-protected leave for serious health conditions and family care for eligible employees, including 12 weeks of unpaid parental leave for the birth and care of a newborn.
- ▶ The Health Insurance Portability and Accountability Act of 1996 (HIPAA) implemented data security measures, expanding employee protections, and ensuring the privacy and security of health information.

Other notable expansions relate specifically to women and children, including the Newborns and Mothers Health Protection Act of 1996, which mandates minimum hospital stays for childbirth, and the Women's Health and Cancer Rights Act of 1998, which ensures insurance coverage for mastectomy reconstruction. Finally, the Children's Health Insurance Program (CHIP) provides health coverage for children from low-income families.

THE EVOLUTION OF EMPLOYEE PROTECTIONS

Since ERISA's enactment, employee protections for U.S. workers have evolved significantly. While some legislation was met with initial resistance, the protections introduced have become indispensable to many in the U.S. workforce. As we celebrate the half-century mark for ERISA, we're reminded that human capital is a company's most valuable asset, and employee protections help maintain a thriving workforce.

Complying with the complexities of ERISA and the employee-related laws that followed can be challenging. Our Employee Benefits Plan Audit team uses their years of experience and knowledge to address client concerns about their benefit plans and offer suggestions based on the client's circumstances. Please contact us to learn more.

Milestones in Employee Protections: Reflecting on ERISA's Legacy

In the 50 years since ERISA was enacted, the landscape of employee protections has undergone significant transformations, driven by legislative advancements, evolving workplace dynamics, and the growing recognition of workers' rights.

EXPLORE THE FULL HISTORY OF THE GROWTH
OF U.S. EMPLOYEE PROTECTIONS ►

Secure Act

2019

**Economic Growth
and Tax Relief
Reconciliation Act**

2001

**Older Workers Benefit
Protection Act**

1990

**ERISA
Signed into Law**

1974

**Social Security
is Enacted**

1935

2024 Audit Innovation Survey

The Evolving Role of Technology + People in the Modern Audit

In today's rapidly changing business environment, finance leaders are facing new expectations, pressures, and opportunities as it relates to technological innovation and its impact on their organizations and the audit experience.

BDO's Audit Innovation Survey underscores the importance of auditors leveraging technology to meet client demand, while critically understanding that technology cannot replace professional skepticism — a hallmark of an auditor's role that remains essential to preserving trust in capital markets.

Our survey of 200 finance leaders provides valuable insights into:

- ▶ Barriers to a smooth financial audit
- ▶ The connection between technology and trust
- ▶ AI usage in finance organizations
- ▶ Ways finance leaders are addressing the accounting talent shortage

[DOWNLOAD THE REPORT HERE ▶](#)





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