

IRS Uses Section 409A Analysis to Determine if “Retirement” Occurs for Pension Plan Purposes

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A multiemployer pension plan, in an effort to permit employees to “retire” under an early retirement benefit before that benefit was eliminated, proposed to let eligible participants “retire” and then immediately return to work. In a private letter ruling, the IRS concluded these employees were not legitimately retired. In analyzing “retirement” for qualified pension plan purposes the IRS looked at Section 409A and other sources. Although Section 409A addresses a nonqualified plan, the IRS stated that Section 409A’s definitions regarding termination and separation from service are consistent with the definition of “severance of service date” under the elapsed time method of crediting service. It also cited a prior revenue ruling that concluded an employee is not separated from service if the employee continues on the same job for a different employer post-corporate transaction. Based on this authority, the IRS concluded that “retirement” requires the employee to stop performing services for the employer, and there cannot be an explicit understanding that the employee will immediately return to service with the employer. The IRS recognized that an employee who has attained age 62 may receive a retirement benefit while continuing employment. Although a private letter ruling is only applicable to the taxpayer who received it, employers will want to consider whether they permit retirement benefits to be received by persons prior to age 62 if there will be continued employment in any capacity “post-retirement.” IRS Private Letter Ruling 201147038 can be found [here](#).