

April 2009

The IRS has released some guidance as to what should be considered an involuntary termination under ARRA.

All of the below ARE Involuntary Terminations:

Failing to renew a contract if employee was willing and able to continue services

Employee quits due to employer action that causes material negative change in employment relationship

Employee resigns knowing that if he doesn't he would have been terminated

Layoff or furlough with right of recall if hours are zero and employee loses coverage

Employer-initiated termination of employment if individual is absent from work due to illness or disability (e.g. non-return from FMLA leave)

Termination for cause, but not gross misconduct

Employee resigns rather than accept required job transfer

The following ARE NOT Involuntary Terminations:

Employer-initiated reduction of hours where employee still retains some work hours, even if he loses coverage (unless employee quits in response)

Work stoppage as a result of strike (except employer-initiated lockout)

Divorce from employee

Dependent losing eligibility under the plan

Death of the employee

Absence due to illness or disability when employee remains employed

For events not listed above, the determination of whether a termination is involuntary is based on all the facts and circumstances. For example, if a termination is designated as voluntary or as a resignation, but the facts and circumstances indicate that, absent such voluntary termination, the employer would have terminated the employee's services, and that the employee had knowledge that the employee would be terminated, the termination is involuntary.