

VOL 7: LONG-TERM PART-TIME EMPLOYEES

Including Long-Term Part-Time Employees in 401(k) Plans

Historically, qualified plan rules did not require part-time workers be eligible to participate in an employer's retirement plan. By defining long-term part-time employees, the SECURE Act changed the rules that permitted 401(k) plans to exclude individuals who worked less than 1,000 hours in the plan year.

What is a Long-Term Part-Time Employee?

Generally, qualified plans require a minimum of 1,000 hours of service in a 12-month period for an employee to be eligible to participate in an employer's retirement plan. To expand access to more workers in employer retirement plans, the Setting Every Community Up for Retirement Enhancement Act (the "SECURE Act") introduced the concept of "long-term part-time" ("LTPT") and required these part-time employees be eligible to participate in their employer-provided 401(k) plan.

Effective for plan years beginning after December 31, 2020, Congress amended the 401(k) rules to provide that certain long-term part-time employees must be allowed to make elective deferrals. To help ease the pain of extending eligibility to LTPT employees, Congress exempted those participants from most of the coverage, top-heavy and non-discrimination rules.

Who is considered a "Long-Term Part-Time" Employee?

Starting in 2021, the SECURE Act defines these workers as any employee who in each of the past three consecutive years worked between 500 and 999 hours. For purposes of eligibility, years prior to 2021 "shall not" be taken into account. Thus, the first year that any LTPT employee will be required to be eligible to participate in a 401(k) plan is 2024, although plans can allow entry earlier.

What if the LTPT employee is a part of an excluded class?

The rules regarding LTPT employees do not apply to any of the statutorily excludable employees under the coverage rules of Code Section 410(b)(3) and Code Section 401(k)(15)(C), as amended by Section 112 of the SECURE Act. Statutorily excludable employees include:

- Collectively bargained employees;
- Certain employees not covered by a collective bargaining agreement between air pilots represented in accordance with title II of the Railway Labor Act; and
- Nonresident aliens with no U.S. source income.

Additionally, it is believed that a plan sponsor may exclude LTPT employees if they fall within an excluded class that isn't based on service. For example, if a plan excludes employees in the New York office, then all employees in the New York office are excluded, even if some of them are LTPT employees.

What if a plan has an Age 21 eligibility requirement?

This age requirement would still apply. The law added a new maximum service requirement but did not affect the age requirement.

Are LTPT employees automatically eligible for employer contributions when they become eligible to defer?

No, the SECURE Act provides that LTPT employees must be allowed to make elective deferrals. Such employees are not automatically eligible for matching contributions, employer profit sharing contributions, or safe harbor contributions.

What if a Plan Sponsor wants to give LTPT employees matching and/or employer profit sharing contributions?

Under Notice 2020-68, if a plan sponsor extends matching and/or profit sharing contributions to LTPT employees,

such LTPT employees will be credited with a year of service for purposes of vesting for each 12-month period during which the employee has completed 500 hours of service. All years of service, including years of service prior to January 1, 2021, must be taken into account for purposes of determining a LTPT employee's vesting in nonelective employer and matching contributions.

For LTPT employees, a break in service is defined as a vesting computation period in which the employee did not complete "at least 500 hours of service," rather than "more than 500 hours of service."

How will the inclusion of LTPT employees affect my nondiscrimination testing?

LTPT employees are not included in the actual deferral percentage (ADP) testing.

Are LTPT employees eligible for top-heavy minimum contributions?

If the sole reason LTPT employees are in the plan is because of the long-term part-time provision, then they do not need to receive the top-heavy minimum or be included in top-heavy testing.

What if a LTPT employee subsequently becomes a full-time employee?

The special rules for LTPT employees other than the special vesting rules, (see "What if a Plan Sponsor wants to give LTPT employees matching and/or employer profit sharing contributions?") cease to apply to an employee as of the first plan year beginning after the plan year in which the employee meets the 1,000 hours of service requirement. Specifically, the LTPT employee will be included in ADP testing and top-heavy testing.

When does a plan need to be amended to incorporate the LTPT provisions?

Under the SECURE Act, Section 601, and Notice 2020-68, the deadline for amending the plan is the last day of the plan year for a plan year beginning on or after January 1, 2022, which would be December 31, 2022, for calendar-year plans.

Do the LTPT provisions apply to 403(b) plans?

The long-term part-time provisions do not apply to 403(b) elective deferrals. 403(b) plans are already subject to the universal availability rule, which has not changed.

What issues or questions remain unanswered at this point?

We anticipate further guidance on the LTPT rules as many uncertainties remain regarding the application to plans.

Such questions include:

- Can an equivalency method be used for counting service?
- How should a plan handle any missed deferral opportunities for LTPT employees?
- Will LTPT employees be counted as "participants" for purposes of the Form 5500?
- Will the LTPT rules apply to "grandfathered" governmental plans?
- Will the LTPT rules apply to church 401(k) plans?

Contact your Definiti Retirement Plan Consultant to learn more about long-term part-time employees. You can call Definiti at 1 (888) 912-3653 or email sales@definiti-llc.com if you would like to discuss the possibility of including long-term part-time employees in your Plan.

Brooke Cozort is an ERISA Attorney with significant experience working on ERISA matters and qualified plans. She provides guidance on plan design considerations, operational compliance, fiduciary responsibilities, legislative and regulatory changes and industry trends.



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