Details of the SECURE Act: Covering Long-Term Part-Time Workers

RETIREMENT MANAGEMENT SERVICES, LLC
905 Lily Creek Road Louisville, KY 40243
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SECURE Act: Long-Term Part-Time Workers

Annemarie Keehn, ERPA, QPA, QKA

***Section 112** of the Act requires that long-term employees who work at least 500 hours in each of 3 consecutive years must be allowed to make elective deferrals to a 401(k) plan sponsored by their employer.*

In late December of 2019 President Trump signed into law a budget bill to fund the government for the remainder of the fiscal year. Included as an addition to the bill was the SECURE Act (Setting Every Community Up for Retirement Enhancement Act of 2019). The intent of the Act is to amend the Internal Revenue Code of 1986 to encourage retirement savings.

The entire text of the Act is nearly 70 pages long. Over the course of several articles, I will be describing the various Sections of the Act, the practical impact of each Section and the due dates for implementing the changes.

Under prior law, an employee who never worked 1,000 hours or more in a 12-month eligibility computation period could be excluded from an employer sponsored plan for all purposes.

Under the new requirement, an employee must be allowed to make elective contributions to the 401(k) portion of a plan after he meets the EARLIER of (a) the plan's normal eligibility requirements OR (b) the close of the first period of 3 consecutive 12-month periods during each of which the employee has completed at least 500 hours of service. The plan can still impose an age requirement for participation, and if it does, the age requirement must be met before the employee can participate, even if the employee has already met the new requirement of 3-years/500 hours per year.

Although on the surface, this may seem fairly straightforward, on reading through the Act and cross-referencing the amended provisions of the Internal Revenue Code, I have found some areas where I am unsure of the practical application of the new rules. Hopefully, we will receive more guidance on these new rules before they become effective.

DETAILS:

- The 12-month eligibility periods may be computed based on employment years and each anniversary thereafter OR the employer may switch to a 12-month plan year after the first 12-month period after employment.

- The entry date for an employee who becomes eligible solely because of the 3-years/500 hours requirement shall be no later than the earlier of the first day of the plan year after satisfying the requirements or the date 6 months after satisfying the requirements.

  EXAMPLE 1: a calendar year plan uses the *employment year eligibility computation period* to determine the 3-years/500 hours rule. Samantha is employed on June 3, 2021 and works 500 hours between June 3, 2021 – June 2, 2022; 500 hours between June 3, 2022 – June 2, 2023 and 500 hours between June 3, 2023 – June 2, 2024. She will be allowed to start deferrals as of **December 1, 2024** (or probably July 1, 2024 if the plan uses semi-annual entry dates, which is common).

  EXAMPLE 2: a calendar year plan switches to the *plan year eligibility computation period* to determine the 3-years/500 hours rule. Samantha is employed on June 2, 2021 and works 500 hours between June 2, 2021 – June 1, 2022. The eligibility period then switches to the calendar year and she works 500 hours between January 1, 2022 – December 31, 2022 and 500 hours between January 1, 2023 and December 31, 2023. She will be allowed to start deferrals as of **January 1, 2024**.

  How will the employer document which computation period is being used? If the plan already has language in the document identifying which computation period method is used for calculating normal eligibility, will that same computation period method be required for the long-term part-time worker group? Also, although employers are only required to use two entry dates per year for this group of workers, is that going to be confusing if other employees have quarterly or monthly entry dates?

- Employees who are eligible for the plan solely as a result of having met the 3-years/500 hours requirement do NOT have to be given an employer matching or nonelective contribution.

- The employer may elect to exclude employees who are eligible for the plan solely as a result of having met the 3-years/500 hours requirement from nondiscrimination testing, ADP/ACP testing, coverage testing and any safe harbor contribution, including a QACA

arrangement. This is an optional exclusion, and there may be some situations in which the employer might find it beneficial to include these individuals in testing.

- What happens in a plan where the employer automatically enrolls participants? Must an employee who becomes eligible to defer solely because of the 3-years/500 hours requirement be auto enrolled? The Act does not address this issue. My thinking is that the employee would not need to be auto enrolled. I am basing that on the fact that the intent of this Section of the Act seems to be to make the plan *available* to long-term part-time workers who don't otherwise have access to an employer plan, but not to subject them to the normal conditions of the plan, including an automatic enrollment provision.

- The employer may elect to exclude employees who are eligible for the plan solely as a result of having met the 3-years/500 hours requirement from the top-heavy vesting rules and from the top-heavy minimum contribution.

- It is unclear at this time whether it will still be permissible to exclude certain classes of employees (for example, PRNs, or employees who work in a specific location, etc.). Currently, employers may elect to exclude from participation employees who are in a specific job class, provided the plan can still pass coverage testing. However, under the Act, if someone who is in one of these excluded classes meets the 3-years/500 hours requirement must they be allowed to defer?

- Employees who are subject to a collective bargaining agreement are excluded from the requirement to be allowed to participate after 3-years/500 hours.

- For vesting purposes, employees who are eligible for the plan solely because of having met the 3-years/500 hours requirement shall be granted a year of service for each 12-month period in which the employee has at least 500 hours of service and a "break in service" for such person will be defined as a year in which the person has not completed at least 500 hours of service. (Under old rules, a break in service was a year in which the person had not completed more than 500 hours of service). This may be a moot point if the employee is not eligible for employer contributions. However, if the employee becomes eligible for employer contributions in a later year, then his vesting service for prior years will be based on his having worked at least 500 hours per year. Will his vesting for future years be based on 500 hours or 1,000 hours? That is not clear at this time. This is another provision that may be difficult to administer through the recordkeeping system since some employees will be given a year of vesting service for working only 500 hours while others will have to work at least 1,000 hours.

- If an employee is eligible for the plan solely because of the 3-years/500 hours rule, and later meets the plan's eligibility requirements, then as of the first plan year beginning after the year in which he meets the requirements, he shall be treated as a "regular" plan participant as far as employer contributions, inclusion in testing, etc.

EFFECTIVE DATE: These rules apply for plan years beginning after December 31, 2020. **12-month periods beginning before January 1, 2021 do not have to be taken into account**.

ANALYSIS: While I appreciate the intention of Congress to allow long-term part-time workers to have the ability to make payroll deferrals to their employer's plan, the administrative reality of managing this provision may prove to be frustrating to employers and third-party administrators alike.

I can't help but wonder if employers will decide that it will be easier to just allow any employee who works 500 hours in a 12-month period to make elective contributions to their plan on the next entry date. Yes, this would allow more workers into the plan than what is required under the new rule (which would require the worker to be there for 3 years before being eligible) but from a tracking standpoint, this would be simpler. These employees could still be excluded from the employer contribution if they never work 1,000 hours in a computation period. Unfortunately, it would appear that if the employer made this kind of amendment to the plan and implemented dual eligibility, it would mean that an employer who uses a safe harbor contribution would lose the top-heavy exemption, which could be a significant deterrent for some employers.