

Long Term/Part Time Employees - Revised



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SECURE 2.0 made technical corrections to the long-term/part-time rules, including clarifying that (1) long-term/part-time employees may be excluded from a plan's safe harbor provisions and (2) all periods of service prior to 2021 are excluded for both eligibility and vesting. SECURE 2.0 also clarified that the vesting rules that apply to a long-term/part-time employee continue to apply even if the employee later satisfies the regular service requirements.

SECURE 2.0 reduced the consecutive 12-month periods of service required to be a long-term/part-time employee from three to two years, effective for plan years beginning on or after January 1, 2025. It also clarified that ERISA covered 403(b) plans are subject to the long-term/part-time rules.

The following SECURE 1.0 Act provisions remain the same.

The provision concerning long-term/part-time employees applies to all 401(k) plans. The long-term/part-time provision does not apply to 457(b) plans. 457(b) government plans already have the provision that allows them to distinguish the employees that can make employee deferrals.

Effective for plan years beginning after December 31, 2020, the SECURE Act requires that long-term/part-time employees who are non-union employees must be permitted to make elective deferrals under an employer's 401(k) plan after two consecutive 12-month periods during each of which the employee has worked between 500 and 999 hours per year. Service prior to 2021 is not considered in making this determination.

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 2-years/500 hours rule. Megan is employed on June 3, 2022 and works 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 on the next plan entry date following June 2, 2024 (likely July 1, 2024).

In most cases, plans already switch computation periods to plan years after the initial employment year. This makes hours tracking for individual employees simpler but could mean that some employees may come in faster.



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EXAMPLE 2: A calendar year plan uses the employment year eligibility computation period for the initial year and then switches to plan years thereafter to determine the 2-years/500 hours rule. Megan is employed on June 3, 2022 and works 500 hours between June 3, 2022 – June 2, 2023 and she also works 500 hours between January 1, 2023 – December 31, 2024. She will be allowed to start deferrals on the next plan entry date following December 31, 2024 (likely January 1, 2025).

The age 21 requirement still applies. The SECURE Act added a new maximum hours of service requirement but did not change age requirements so a participant does not need to be allowed to participate at age 19.

It appears you can exclude long-term/part-time employees if they fall within an excluded class that is not based on service. For example, if the plan excludes all employees in the Louisville office, then all employees in the Louisville office are excluded, even if some of them are long-term/part-time employees. The exclusions cannot be based on hours or an exclusion that can be seen as hours based. Those categories of employees will need to be tracked for long-term/part-time status.

Once an employee satisfies 1,000 hours in one year, they switch to the eligibility rules that apply to a full-time employee under the plan. 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.

In the case of employees who are eligible for the plan solely by reason of the new rule (500 hours of service in three consecutive years), you may elect to exclude such employees from coverage and nondiscrimination testing, including the ADP and ACP tests.

However, they do not appear able to be excluded from your headcount for Form 5500 purposes.

Auto-enrollment provisions will not apply to these participants unless the employer elects to apply. The SECURE Act does not address this issue directly and more guidance is needed.

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

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. 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. Unlike eligibility rules, hours worked prior to 2021 are not excluded.

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In addition, if you first enter a plan under the long-term/part-time rules, your crediting of vesting service will always be based on 500 hours even if you later qualify for the plan as a regular full-time employee.

A plan can be designed to allow all employees to make elective deferrals, regardless of the number of hours they work.

The drawback to this approach is that more liberal eligibility rules means that you are not able to exclude these employees from employer contributions, nondiscrimination testing or top-heavy minimum contributions.

Compliance with the mandatory long-term/part-time rules has proven to be complex. Although plan amendments, including accelerated eligibility, are not required until the end of the 2025 plan year, plan operations must be compliant by January 1, 2024.



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