

# The SECURE ACT: Changes for Long Term/Part Time Employees



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# *The SECURE Act: Changes for Long-Term/Part-Time Employees*

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## **What is the SECURE ACT?**

On December 20, 2019, the SECURE Act (Setting Every Community Up for Retirement Enhancement) was included in the bipartisan spending bill signed by President Trump. The Act is the most impactful retirement plan legislation since the Pension Protection Act of 2006.

## **Are all qualified plans subject to the new Long-Term/Part-Time employee law?**

The provision concerning long-term part-time employees applies to all 401(k) plans. The long-term part-time provision does not apply to 403(b) or 457(b) plans. 403(b) plans are already subject to the universal availability rule which was not changed and 457(b) government plans already had the provision that allows them to distinguish the employees that can make employee deferrals.

## **Who is considered a Long Term/Part Time employee?**

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 three consecutive 12-month periods during each of which the employee has worked between 500 and 999 hours per year. This new rule only applies to elective deferrals; the present employer-contribution eligibility rules, stating that a plan can impose a service requirement that excludes many part-time employees, remain unchanged.

## **When do employers need to start including Long Term/Part Time employees?**

Employers need to start counting hours for part-time employees beginning Jan. 1, 2021. The first date at which eligible part-time employees must be allowed to participate is Jan. 1, 2024, three years following the start date for counting hours. Hours worked prior to Jan. 1, 2021 will not count toward eligibility for participation.

## **How are the hours calculate for Long Term/Part Time employees?**

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. Megan 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).



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**Would age 21 for the new Long Term/Part Time count years of service prior to age 21? For example, would an employee starting at age 18 working for three years be eligible?**

The age 21 requirement still applies. The SECURE Act added a new maximum hours of service requirement.

**What if the part-time employees are part of an excluded class?**

It appears you can exclude the long-term part-time employees if they fall within an excluded class that isn't based on service. For example, if the plan excludes 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. This would be the same as the years of service rule.

**What about if the employees are eligible for the plan now but in an excluded class (and nondiscrimination tests pass)?**

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.

**What happens if an employee switches from part-time to full-time?**

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.

**Do I need to include Long Term/Part Time employees in my non-discrimination testing?**

They are not required to be included in the non-discrimination testing.

**Can I as an employer elect to count (for three consecutive year purposes) years prior to 2021?**

The SECURE ACT provides that years prior to 2021 "shall not" be taken into account. A plan can, of course, provide for more liberal service requirements. The issue is what are the consequences. If you are more liberal, then arguably these people are not in the plan solely because of the new statutory requirement. So, the special rules wouldn't apply (i.e., they would be entitled to top-heavy minimum contributions, are counted in nondiscrimination testing (but you can use permissive disaggregation rules). The positive is that they wouldn't be subject to the special vesting YOS for any employer contributions. But we are waiting on more guidance.

**What if the plan has auto enrollment provisions?**

The Secure Act does not address this issue and more guidance is needed.

**Are Long Term/Part Time employees eligible for safe harbor contributions?**

If the sole reason they are in the plan is because of the long-term part-time provision, then they do not need to receive the Safe Harbor Match or Safe Harbor Nonelective.



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**Are top-heavy minimum contributions required for these Long Term/Part Time employees?**

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

**How is vesting credit calculated for Long Term/Part Time employees?**

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. More guidance is needed.

**Are there alternative plan designs that may help in the administration for these changes?**

There are a couple of different ways the plan can be designed to help with the administrative burden. The first is to allow all part-time employees to make elective deferrals, regardless of the number of hours they work. The second is to use the equivalency method to credit the hours part-time employees worked under the part-time service rule, meaning that employees are credited with a certain number of hours for each period they work.

These questions will be updated as more guidance is given. If you have any question do not hesitate to contact your Account Executive.



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