

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



RETIREMENT MANAGEMENT SERVICES, LLC
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RETIREMENT MANAGEMENT SERVICES, LLC
905 Lily Creek Road Louisville, KY 40243
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The SECURE Act: Changes for Long-Term/Part-Time Employees

Leisha Gosling, MBA, CEBS, QKA

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. We have pulled together a summary of the Provisions below.

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. Service prior to 2021 is not considered in making this determination.

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 long-term/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 calculated 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.



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905 Lily Creek Road Louisville, KY 40243
Phone: 502-429-0767

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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 on the plan entry date next 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.

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 3-years/500 hours rule. Megan is employed on June 3, 2021 and works 500 hours between June 3, 2021 – June 2, 2022; She also works 500 hours between January 1, 2022 – December 31, 2022 and 500 hours between January 1, 2023 – December 31, 2023. She will be allowed to start deferrals on the plan entry date next following December 31, 2023 (likely January 1, 2024).

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 16 working for three years be eligible?

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.

What if the long-term/part-time employees are part of an excluded class?

It appears you can exclude long-term/part-time employees if they fall within an excluded class that isn't 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.

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?

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.



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What if the plan has auto enrollment provisions?

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.

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

If the sole reason employees are participants in the plan is because of the long-term/part-time provision, they do not need to receive any employer contributions, including the Safe Harbor Match or Safe Harbor Nonelective.

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

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.

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

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.

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

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, non-discrimination testing or top-heavy minimum contributions.



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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.



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