

PROPOSED REGULATIONS IMPACT RETIREMENT PLANS FOR CERTAIN PART-TIME EMPLOYEES: FAQs FOR EMPLOYERS

Insights
Jan 31, 2024

Employers that sponsor 401(k) or 403(b) plans should be aware of eligibility and participation rules for their long-term, part-time (LTPT) employees. Historically, such plans could exclude employees who worked fewer than 1,000 hours during the plan year. But SECURE Act 1.0 introduced the concept of the LTPT employee — and SECURE Act 2.0 expanded the rules — which created new obligations for these employer-sponsored plans. Notably, the federal government recently issued much-anticipated guidance on LTPT employee rules just ahead of their January 1 effective date — meaning that plan sponsors needed to quickly get familiar with their compliance obligations and create an action plan. Do you still have lingering questions? Here's what you need to know about the LTPT rules and proposed regulations — as well as the answers to your top seven questions.

Understanding the Calculations

SECURE Act 1.0. This law required that 401(k) must permit employees to contribute to the retirement plan if they:

- worked at least 500 hours (but no more than 999 hours) annually for at least three consecutive years; and
- are at least age 21 by the end of the three-year period.

This SECURE Act 1.0 rule became effective on January 1, 2021 (so we ignore all plan years before 2021 for this LTPT employee rule). This means that as of January 1, 2024, any employees who have worked 500 hours annually beginning

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on January 1, 2021, through December 31, 2023 (and have reached age 21 by December 31, 2023) must be permitted to contribute to a 401(k) plan, unless otherwise excluded.

SECURE Act 2.0. This law expanded the LTPT employee rules to cover employer-sponsored 403(b) plans and reduced the three-year period to a two-year period. So, any employees who have worked at least 500 hours (but no more than 999 hours) annually for two consecutive years (and have reached age 21 by the end of that two-year period) must be permitted to contribute to a 401(k) or 403(b) plan, unless otherwise excluded.

The SECURE Act 2.0 rule took effect on January 1, 2023, which means that as of January 1, 2025, any employees who have worked 500 hours annually beginning on January 1, 2023, through December 31, 2024 (and have reached age 21 by December 31, 2024) must be permitted to contribute to a 401(k) or 403(b) plan on January 1, 2025, unless otherwise excepted.

Proposed Regulations. The IRS and Department of the Treasury issued their proposed regulations on LTPT employee rules in late November 2023, which means employers that were seeking clarity had just a little more than a month left to comply with the 2024 deadline for the SECURE Act 1.0 LTPT rules. Notably, the proposed regulations do not seem to permit good-faith reliance on the statute instead of the proposed rules. This creates additional issues for plan sponsors since these proposed regulations were released one month prior to the effective date with no indication of good faith reliance. We recommend you reach out to experienced counsel with compliance questions.

Meanwhile, let's look at some common FAQs about this new guidance that may be on the minds of 401(k) and 403(b) plan sponsors now that 2024 has arrived.

7 FAQs for Employers About the Newly Issued LTPT Guidance

1. Who are LTPT employees?

LTPT employees were previously excludable because they work fewer than 1,000 hours in a consecutive 12-month period. However, if the employee completed two consecutive 12-month periods of employment during which they have worked for 500 hours and has reached age 21 by

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the last day of the second consecutive 12-month period, then they must become eligible for the deferral portion of a retirement plan. Any individual that becomes eligible for the deferral portion of the employer's retirement plan because of this rule is an LTPT employee.

Note: For plan years beginning in 2024, the period is three years under SECURE Act 1.0. This means that as of January 1, 2024, any employees who worked 500 hours annually from January 1, 2021, to December 31, 2023 (and have reached age 21 by December 31, 2023) must be permitted to contribute to a 401(k) or 403(b) plan, unless otherwise excepted.

2. How do you determine the consecutive 12 months for eligibility?

The first 12-month period that must be considered is the employee's first 12 months of employment. After that, you may continue to use anniversary years from the date of hire or may switch to the plan year.

Note: If the employer changes the plan year after the first 12-month period, there may be some overlapping service in counting the 12 months of eligibility service. This overlapping service would be considered two consecutive periods of service for purposes of the LTPT rules.

3. How do you count service for LTPT employees?

Existing plan rules for determining hours of service still apply to LTPT employees. In other words, an employer can still use actual hours or an equivalency method approved by the Department of Labor when determining eligibility.

Note: Under the elapsed time method, an employee is eligible to participate in the plan after 12 months of service — no matter the hours worked. The proposed LTPT rules permit employers to continue using the elapsed time method to determine plan eligibility. However, the plan may not require a waiting period longer than 12 months of service under the elapsed time method.

4. How does this impact employer contributions?

Employers are not required to make contributions (matching, nonelective, or safe harbor) to LTPT employees — but they are free to do so.

Additionally, an employer may choose to make different contributions for LTPT employees than for other participants.

In either case, the employer may elect to exclude LTPT employees from nondiscrimination testing.

The proposed regulations allow employers to exclude LTPT employees from the following, as applicable:

- The general nondiscrimination rules under 401(a)(4);
- Actual deferral percentage (ADP) testing for 401(k) deferrals or for safe harbor provisions;
- Actual contribution percentage (ACP) testing for matching contributions or safe harbor provisions;
- 410(b) minimum coverage testing; and
- Top-heavy vesting and contribution requirements.

The choice to exclude LTPT employees is generally required to apply to all LTPT employees if it will apply to any LTPT employees.

Note: You may need to amend your plan to include these LTPT employee nondiscrimination testing exclusions. You should check with your plan's recordkeeper or ERISA attorney to confirm what steps you should take next.

5. How does vesting work for LTPT employees?

A LTPT generally must receive a year of vesting service for each 12-month computation period in which they earn at least 500 hours of service. However, the plan may apply "break in service" rules to LTPT employees and may exclude the following:

- vesting computation periods that began prior to 2021;
- vesting computation periods before the LTPT employee reached age 18; and
- service before the original effective date of the plan.

6. Can employers still exempt certain employees from eligibility?

Yes. You may still exclude union employees whose retirement benefits were the subject of collective bargaining and nonresident aliens with no U.S.-source income.

In addition, employers can still have eligibility conditions based on employee positions or business classifications that are not service-based classifications. For example, you may still exclude employment at certain specified locations. Some consideration, however, may still be required. For example, an employee classification may still be subject to the LTPT rules if it has the effect of imposing an age or service requirement.

7. When does an LTPT employee become a “former LTPT” employee?

An employee becomes a “former LTPT” on either:

- the first day of the plan year after they complete 1,000 hours of service in an eligibility computation period; or
- the first day they transfer to a job classification that is not eligible for the plan (if they do not return to an eligible classification before the end of the year after the transfer to ineligible status).

A former LTPT is no longer excluded from any plan testing rules and will remain subject to the special LTPT vesting rules.

Next Steps for Employers to Consider

If you provide a 401(k) or 403(b) plan to your employees, you’ll want to coordinate with your plan administrators, recordkeepers, and payroll providers to ensure they can track hours for part-time employees appropriately.

You also may want to consider any plan design changes that will make retirement plan administration easier in the wake of these rules. For example:

- Do you want to impose a 1,000-hour rule to be eligible for matching contributions?
- Do you want to be more generous and allow all employees to participate in the plan (employee deferral and employer contributions) upon becoming an LTPT?

- Do you want to be more generous and allow all part-time employees into the plan without having to track hours?
- Do you want to revise your plan's vesting schedule?
- Do you want to change to the elapsed time method for determining eligibility?

You should consider updating plan documents, summary plan descriptions, and other plan communications (like employee handbooks) — and notifying your employees of these new rules.

Conclusion

If you have questions about these long-term, part-time employee rules for your retirement plan, feel free to reach out to your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Employee Benefits and Tax Practice Group](#). We will continue to provide tips, guidance, and updates on employee benefits and other workplace law topics, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information directly to your inbox.