

A LOOK AT THE IRS'S PROPOSED LONG-TERM PART-TIME EMPLOYEE REGULATIONS

Hodgson Russ Employee Benefits Alert
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Background. SECURE 1.0 enacted new rules under which a 401(k) plan may be required to allow certain long-term part-time employees (“LTPTEs”) to make elective deferrals even if they do not otherwise satisfy the plan’s general eligibility service requirements. Under the new rules, an LTPTE generally is an employee who is age 21 and who works at least 500 hours per year for *three* consecutive 12-month service periods. For purposes of the LTPTE service requirement, 12-month service periods prior to January 1, 2021, are not taken into account. *Accordingly, January 1, 2024, was the earliest date on which a 401(k) plan could be required to allow an LTPTE to make elective deferrals.*

The new LTPTE rules enacted by SECURE 1.0 do not require 401(k) plan sponsors to make employer contributions on behalf of LTPTE. However, for a 401(k) plan that does make employer contributions on behalf of employees who are eligible *solely on account of* the LTPTE rules, there also are special vesting rules. Under the special vesting rules, a year of vesting service must be granted for each 12-month service period for which the LTPTE has at least 500 hours of service.

Importantly, employees who are eligible solely on account of the LTPTE rules may be excluded from certain compliance testing, including coverage testing, nondiscrimination testing, actual deferral percentage (“ADP”) and actual contribution percentage (“ACP”) testing, and top heavy plan vesting and benefit requirements.

SECURE 2.0 made changes to the SECURE 1.0 LTPTE rules, including provisions that:

- Reduce the number of consecutive 12-month service periods needed to be an LTPTE from three to two, effective for plan years beginning in or after 2025.
- Extend the application of the LTPTE rules to ERISA-covered 403(b) plans.
- Change the special vesting rules for LTPTEs so that 12-month service periods beginning before 2021 (for 401(k) plans) and 2023 (for 403(b) plans) may be disregarded with respect to LTPTEs.
- Clarify that LTPTEs may be excluded from a plan’s safe harbor provisions.

Attorneys

Peter Bradley
Michael Flanagan
Richard Kaiser
Ryan Murphy
Amy Walters

Practices & Industries

Employee Benefits

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Proposed Regulations. Plan sponsors and their plan service providers had many questions as they prepared to implement and administer the complexities of the LTPTE rules. Much needed guidance was provided in the form of new proposed IRS regulations (Prop. Treas. Reg. § 1.401(k)-5). Highlights from the new LTPTE guidance include provisions that:

- Clarify an LTPTE is an employee who becomes eligible to participate in a cash or deferred arrangement *solely* by reason of having (1) completed the requisite number of consecutive 12-month service periods (three currently and two beginning in 2025) with at least 500 hours of service in each period, and (2) attained age 21 by the close of the last of those 12-month service periods. An employee who becomes eligible for a cash or deferred arrangement by completing “any other service requirement” is not an LTPTE. For example, a plan that prescribes more generous age and service eligibility requirements (such as a plan with no age and service eligibility service requirement) to participate in a cash or deferred arrangement would not be subject to the LTPTE rules – part-time employees, in that case, would not become eligible for the arrangement *solely by reason of* the LTPTE rules.
- Employees who are excluded from qualifying as LTPTEs are:
 - Employees covered by a collective bargaining agreement if their retirement benefits were bargained in good faith; and
 - Employees who are nonresident aliens with no U.S.-source income.
- Confirm a plan’s exclusion of an employee group or classification may operate to exclude LTPTEs from participating in the plan, if the exclusion is not a proxy for imposing an age or service requirement. If a plan has a bona fide exclusion of an employee group based on job location, corporate division, job classification, etc. that is not a disguised hours or age exclusion, LTPTEs who are part of the excluded group need not be provided LTPTE participation rights.
- Reiterate plans are not required to make matching contributions or nonelective contributions (including safe harbor matching or nonelective contributions) with respect to LTPTEs. Specific plan language regarding the contribution exclusion may be required.
- Clarify that the LTPTE rules do *not* apply to a plan that uses the elapsed time method of crediting service, and that the normal elapsed time method for determining when an employee satisfies the eligibility service requirement will continue to apply.
- Confirm that the available equivalency methods for crediting hours of service (for example, crediting an employee with 45 hours of service for any week in which the employee is credited with at least one hour of service) may be used to determine whether the employee equals or exceeds the 500-hour threshold.
- Require that the initial 12-month service period begin on the employee’s date of hire and allowing subsequent 12-month service periods to begin either on the anniversaries of the employee’s date of hire or on the first day of the plan year beginning with the plan that begins during the initial 12-month service period.
- Confirm a plan may apply the plan’s regular entry date rules to an LTPTE.
- Clarify that an employee who becomes an LTPTE will not lose LTPTE status even if the employee is credited with fewer than 500 hours in a subsequent year. But, if the LTPTE completes 1,000 hours of service in a computation period (i.e., the employee becomes a former LTPTE), the employee loses LTPTE status and the exclusion from coverage testing, nondiscrimination testing, ADP and ACP testing, and top heavy plan vesting and benefit requirements no

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longer is available. Changes to an ineligible job classification also can result in loss of LTPTE status.

- For purposes of calculating vesting for an LTPTE, require a plan to credit a year of vesting service for each post-2020 12-month vesting computation period during which the LTPTE has at least 500 hours of service. Note that the special vesting rules for an LTPTE who becomes a former LTPTE (for example, by becoming a full-time employee) will continue to apply – in other words, former LTPTEs will continue to receive a year of vesting service for each 12-month vesting computation period in which they are credited with at least 500 hours even if they later become full-time employees.
- Clarify that the exclusion of LTPTEs from coverage testing, nondiscrimination testing, ADP and ACP testing, and top heavy plan vesting and benefit requirements is a matter of employer election – specific plan language relating to the election may be required. Note that plans may not pick and choose whether to factor certain LTPTEs into certain compliance testing and top heavy vesting/benefit requirements. Either all LTPTEs are excluded or none are excluded.

403(b) Plans. The proposed regulations under Code Section 401(k) do not prescribe any specific rules for ERISA-covered 403(b) plans – those plans will become subject to the LTPTE rules beginning in 2025. The LTPTE rules for 403(b) plans generally are expected to be substantively similar to the rules for 401(k) plans. But there are areas in which the rules for 403(b) plans may be different, particularly in terms of how the LTPTE rules specifically affect the universal availability rules and available exclusions from universal availability (e.g., employees who normally work fewer than 20 hours per week). Based on SECURE 2.0's statutory language, however, it seems unlikely groups currently exempt from the universal availability rules will be able to avoid having to comply with the LTPTE rules.

Where do Plans Go from Here? The proposed LTPTE regulations are not yet finalized and will not be finalized until sometime after March 15. 401(k) and 403(b) plan sponsors should be monitoring the LTPTE rules for further developments. In the meantime, 401(k) plan sponsors may rely on these proposed rules to administer their plans.

Plans that are already subject to the LTPTE rules (i.e., 401(k) plans) should already be working with their service providers to be certain administrative processes, if necessary, are in place to ensure compliance with the LTPTE rules. Plans that are not yet subject to the LTPTE rules (i.e., 403(b) plans) should begin to assess whether and how the LTPTE rules affect their plans.

Plan amendments may be needed to reflect plan operations with respect to the LTPTE rules. Technically, plan amendments are not required until December 31, 2026, but the adoption of plan amendments prior to the final amendment deadline might be prudent. In any event, plans should be maintaining records as to how they are complying with the LTPTE rules.

For more information, please contact any member of the Hodgson Russ [Employee Benefits Practice](#).

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