



Single Employer Benefits & Pension Alert

THE SECURE ACT - 401(K) PLANS & LONG-TERM, PART-TIME EMPLOYEES | DECEMBER 2020

BACKGROUND

Earlier this year we sent you an Alert summarizing the changes brought about by the Setting Every Community Up for Retirement Enhancement Act, referred to as the SECURE Act. One of these changes requires 401(k) plans to allow long-term, part-time employees to make elective deferrals beginning in 2024 provided certain criteria are satisfied. Under the terms of the SECURE Act, the earliest that a long-term, part-time employee could become eligible to make elective deferrals is January 1, 2024; however, employers that apply an eligibility service requirement in determining whether employees can make elective deferrals to a 401(k) plan must start tracking hours of service for part-time employees beginning on **January 1, 2021**.

PARTICIPATION OF LONG-TERM, PART-TIME WORKERS IN 401(K) PLANS

Generally, employees who have not attained age 21 and completed a 12-month eligibility period during which they are credited with a minimum of 1,000 hours may be excluded from participating in a qualified retirement plan. However, the SECURE Act changes this eligibility requirement to enable certain non-union, long-term, part-time employees to be eligible to make elective deferrals to an employer's 401(k) plan. Long-term, part-time employees who have (i) reached age 21, and (ii) worked at least 500 hours in three consecutive 12-month periods must be eligible to make elective deferrals to an employer's 401(k) plan. Twelve-month eligibility periods that begin prior to January 1, 2021, do not count towards the required three consecutive 12-month periods, so the earliest such employees could become eligible to make elective deferrals would be in 2024. That being said, this change may impact employers beginning on January 1, 2021, when employers with 401(k) plans that have an eligibility

service requirement must start tracking part-time (and any other classification of employee, such as seasonal employees, excluded due to a service-based requirement) employee hours. Employees eligible under this new standard may be excluded from receiving employer contributions and may be excluded when applying nondiscrimination testing. Additionally, this new rule does not apply to collectively bargained employees.

We recommend reviewing your plan document to determine if there is a service-based eligibility requirement (for example a 1,000-hour requirement during a 12-month eligibility computation period) for making elective deferrals to the plan. If there is a service-based eligibility requirement, there may be workers who will become eligible to make elective deferrals beginning in 2024. If hours are not currently being tracked for these employees, a system needs to be implemented to track their hours, or alternatively the plan could be amended, for example, to remove service-based eligibility for elective deferrals and thereby allow all employees to be eligible to make elective deferrals. Plan

amendments to incorporate this change are generally not required until the last day of the plan year beginning on or after January 1, 2022; however, plans must operationally comply with this change and start tracking part-time (and any other classification of employees, such as seasonal employees, excluded due to a service-based requirement) employee hours during 2021. Please note, this change applies only to elective deferrals, and employers may continue to exclude employees who do not satisfy the age 21, 1,000-hour eligibility requirement from receiving employer and/or match contributions. If you are considering applying these more lenient eligibility requirements to employer contributions (including match contributions), you may want to factor in the impact this change may have on vesting calculations. While more guidance is expected, the current IRS position appears to be that all years of service (with 500 or more hours), including those prior to January 1, 2021, count for purposes of determining a long-term, part-time employee's vested interest in employer contributions.

Please do not hesitate to contact us with any questions, or if you would like to discuss amending your plan documents.

This edition of the Single Employer Benefits & Pension Alert was written by Brendan J. Butler, a member of the Single Employer Benefits & Pension practice at Reid and Riege, P.C. The practice works closely with clients to design and draft tax-qualified and nonqualified retirement plans.

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