

A Reminder for 401(k) Plan Sponsors and Administrators: The Effective Date for the SECURE Act's Long-Term Part-Time Eligibility Rule is Rapidly Approaching

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While most organizations have been heavily focused on COVID-19, the clock is still ticking on major changes for 401(k) plans set to take effect at the end of 2020. In December 2019 the Setting Every Community Up for Retirement Enhancement Act (the “SECURE Act”) became law. Although portions of the legislation became effective on the first of this year, others were delayed in an effort to give plan sponsors ample time to prepare and amend their plans accordingly. One significant provision of the SECURE Act that will become effective on January 1, 2021, is the broadened eligibility requirements for certain part-time employees.

The new “dual eligibility” rule creates an alternative to the traditional eligibility minimum service requirement that employees complete at least 1,000 hours of service within a twelve-month period (a “Year of Service”). Under the new alternate minimum service rule, 401(k) plans must allow part-time employees who have completed at least 500 hours of service per year for three consecutive years (the “500 Hour Rule”) to participate and make elective deferrals. The eligibility age for both the Year of Service and the 500 Hour Rule is 21.

The primary impact of this change is that long-term part-time employees who never meet the Year of Service requirement can become eligible to participate in a 401(k) plan by meeting the 500 Hour Rule. Although the change becomes effective for plan years beginning after December 31, 2020, 12-month service periods commencing prior to January 1, 2021 do not need to be taken into account for eligibility purposes. For example, if a new employee is hired on August 1, 2020, the employee’s hours of service between August 1, 2020 and July 31, 2021 do not need to be taken into consideration for the 500 Hour Rule. These hours of service, however, do need to be taken into consideration to determine whether the employee has completed a Year of Service. For employers with many part-time workers, this rule may result in an influx of new

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participants entering the plan in 2024, which is the earliest the new eligibility criterion can be satisfied.

Importantly, the new rule only applies to 401(k) plans -- it does not apply to 403(b) plans. The 500 Hour rule also is not required to be made available to employees who are subject to a collective bargaining agreement. Additionally, employers are not required to make employer matching, non-elective, or safe harbor contributions for long-term part-time employees who become eligible as a result of the 500 Hour Rule. Employers should note, however, that if employer contributions subject to a vesting schedule are made available to participants satisfying the 500 Hour Rule, each plan year in which the 500 Hour Rule is met will be treated as a year of vesting service. These participants can be excluded from nondiscrimination and top-heavy testing requirements as well.

Plan sponsors should begin evaluating the logistic and financial implications of the 500 Hour Rule, especially if they have large numbers of part-time employees. Employers should also discuss revisiting their plan's designated measurement period with respect to calculating employee service. It may be administratively less burdensome for plans to utilize the plan year to measure employee service, rather than the 12-month period ending on each employee's employment anniversary date. It is also important to consult with plan service providers and plan counsel in order to ensure timely compliance with this and other provisions of the SECURE Act. As a general rule, plans must be amended to incorporate the SECURE Act provisions by December 31, 2022. Employers should be mindful not to overlook the importance of attending to 401(k) plan compliance. If you have questions about your organization's obligations under the SECURE Act or other employee benefits programs, please contact one of our Employee Benefits attorneys.

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