IRS proposes regulations for long-term part-time employees

Make Your Plan
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Key Insights

- The IRS has proposed rules covering the eligibility and vesting requirements for long-term part-time (LTPT) employees included in the SECURE and SECURE 2.0 acts.
- The proposed regulations clarify that LTPT employees are only those who become eligible "solely" by meeting the LTPT employee eligibility requirements.
- The proposed rules also clarify issues on topics such as eligibility, vesting, and nondiscrimination testing, some of which are outside the scope of this article.

The Internal Revenue Service (IRS) has issued proposed regulations containing special rules for long-term part-time (LTPT) employees. Both the SECURE Act of 2019 and the SECURE 2.0 Act of 2022 include provisions governing such workers. The proposed regulations, issued on November 24, 2023, generally require that if a plan offers a qualified cash or deferred arrangement (CODA), LTPT employees must be permitted to make elective deferrals into that CODA if they meet the applicable eligibility requirements.

The proposed regulations also clarify a number of issues related to LTPT employees, including who is an LTPT employee and related eligibility, vesting, and nondiscrimination testing issues.

Who is an LTPT employee?

Under the proposed regulations, an LTPT employee is defined as an employee "who is eligible to participate in a qualified CODA *solely* by reason of having completed" two consecutive 12-month periods during which the employee is credited with 500 hours of service (note that the service requirement changes from three to two consecutive years with respect to plan years beginning in 2025 and afterwards), and attaining age 21 by the end of the last 12-month period.

LTPT employees do not include any employees described in Section 410(b)(3) of the Internal Revenue Code (IRC). This includes certain collectively bargained employees, as well as nonresident aliens who "receive no earned income from [their]

employer that constitutes earned income from sources within the United States."

Note that an employee is only an LTPT employee if they are eligible to make elective deferrals into a qualified CODA solely for the reasons listed above. For example, if an employer maintains a plan containing a CODA, and each employee is eligible to make a cash or deferred election as soon as administratively practicable after they begin working, none of that employer's employees would be LTPT employees because they do not become eligible to make deferrals solely by meeting the requirements described above (i.e., credited with 500 hours of service within two or, in some cases, three consecutive 12-month periods).

Employers may impose additional eligibility conditions so long as those conditions are not proxies for imposing age or service requirements.

Eligibility and participation

An employee who meets the LTPT eligibility requirements described above must be eligible to make deferrals by the earlier of (a) the first day of the plan year following the date the employee meets the eligibility requirements described above, or (b) the date six months after the date the employee meets the eligibility requirements described above.

For purposes of measuring applicable 12-month periods, 12-month periods beginning before January 1, 2021, are not counted. Also, the initial 12-month period must start on the first day in which an employee is entitled to be credited with an hour of service, but subsequent 12-month periods may begin on the first day of the plan year. This could create situations where certain hours are "double counted" or an employee could become eligible as an LTPT employee prior to January 1, 2024. Additional clarification is needed as to whether the IRS intends for an employee to become eligible under the LTPT rules prior to 2024.

> "An important point...is the clarification that LTPT employees become eligible *solely* by meeting the requirements set out in the proposed rules.

Employer contributions generally not required

Generally, employers are not required to make nonelective and matching contributions on behalf of LTPT employees if a plan so elects (but see below regarding the election for nondiscrimination and coverage testing). This generally is true for safe harbor plans as well.

Plans that are intended to satisfy the Actual Deferral Percentage (ADP) or Actual Contribution Percentage (ACP) safe harbors will not fail to do so because the employer does not make nonelective or matching contributions on behalf of LTPT employees, provided that LTPT employees are excluded for purposes of determining whether the plan satisfies the ADP and ACP safe harbor provisions.

Nondiscrimination and coverage testing

Generally, an employer may elect to exclude LTPT employees for purposes of determining whether the plan satisfies the following compliance testing requirements:

- the nondiscrimination requirements of Section 401(a)(4) of the IRC,
- the ADP test of Section 401(k)(3) of the IRC,
- the ADP safe harbor provisions of Section 401(k)(12) and (13) of the IRC,
- the ACP test of Section 401(m)(12) of the IRC,
- the ACP safe harbor provisions of Section 401(m)(11) and (12) of the IRC, and
- the minimum coverage requirements of Section 410(b) of the IRC.

If an employer makes this election, it must apply to all the applicable testing requirements listed above and with respect to all LTPT employees eligible to participate.

Conclusion

This is intended as a brief summary of the IRS's proposed rules relating to LTPT employees. The proposed rules are nuanced and likely to be fact-specific based on characteristics of each plan and its participating employees. As such, plan sponsors should discuss these matters with their own legal counsel.

An important point, however, is the clarification that LTPT employees become eligible *solely* by meeting the requirements set out in the proposed rules. Plans with more immediate eligibility requirements may not need to address many of these issues. There will likely be additional guidance and clarifications provided when the regulations are finalized.

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