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SECURE Act: New Part-Time Eligibility Rules for 401(k) Plans

Key points

The new Setting Every Community Up for Retirement Enhancement (SECURE) Act, effective this year, broadens eligibility requirements for 401(k) plans.

Previously, part-time employees who worked fewer than 1,000 hours per year were excluded from such plans.

Under the new rules, long-term, part-time employees who work at least 500 hours in three consecutive years (and have attained age 21) must be allowed to participate in 401(k) plans.

The addition of part-time eligibility does not nullify the 1,000 hours per year rule. It also does not require matching requirements by employers for any level of employee participant.

On December 20, 2019, the SECURE Act was signed into law, generally effective as of January 1, 2020. We have previously described key SECURE Act provisions. This Alert discusses the new 401(k) plan eligibility requirements for long-term, part-time employees effective for plan years beginning after December 31, 2020.

How did the rules work before the SECURE Act became law?

Previously, 401(k) plans could exclude part-time employees working fewer than 1,000 hours per year. Generally, a plan could impose a waiting period of up to one year before an individual became eligible to participate. For plans that defined years of service based using an hours-of-service definition, “one

year” of service meant 1,000 hours in a year. Thus, part-time employees who worked fewer than 1,000 hours per year were excluded from the plan.

How do the rules work under the SECURE Act?

Under the SECURE Act, 401(k) plans must also allow participation by long-term, part-time employees who work at least 500 hours in three consecutive years (and have attained age 21). Thus, part-time employees who traditionally were excluded because they have never completed a year of service (i.e., 1,000 hours) will now be eligible.

Does the SECURE Act nullify the 1,000 hours of service per year rule?

No. 401(k) plans must now have dual eligibility requirements. An employee can become eligible for the plan by fulfilling either: (a) the one year of service requirement (1,000 hours of service in one year), or (b) the three years of service requirement (at least 500 hours of service for three consecutive years).

Are employers required to make matching or other employer contributions on behalf of part-time employees who become eligible under the new three-year rule?

No. Employer matching and other contributions are not required for employees who become eligible for a 401(k) plan under the new three-year rule. However, if an employer chooses to make contributions to these employees, then for vesting purposes, a “year of service” must be a 12-month period during which the part-time employee earned at least 500 hours of service (and not the traditional 1,000 hour rule). The SECURE Act provides relief with respect to nondiscrimination and top-heavy testing for these part-time employees.

When do we need to amend our 401(k) plan?

The new three-year rule is generally effective for plan years beginning after December 31, 2020. While service during plan years beginning prior to 2021 is not required to be taken into account for eligibility purposes, it is not clear when a plan must begin counting service for vesting purposes. Further guidance from the Internal Revenue Service is needed on this point. Therefore, plan administrators should track part-time employee hours in 2020 for purposes of meeting the new rules. As a general rule, plans will need to be amended by December 31, 2022 (for calendar year plans). We are closely following the SECURE Act and will apprise you of key developments.

Contact us

If you have questions about the SECURE Act 401(k) participation rule and the implications for your business or you require an assessment of your employee benefits programs, please contact Patricia

Martin, Molly Callender Hobbs or any member of our Employee Benefits & Executive Compensation team.