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Reminder: Counting Hours for Part-Time Employee Eligibility to Take Effect Soon

The SECURE Act was adopted in December 2019. As previously discussed, one of its provisions requires every 401(k) plan to permit “long-term” part-time employees to make elective deferrals for plan years beginning on or after January 1, 2024. It also requires these employees to receive credit for purposes of vesting in employer contributions.

A “long-term” part-time employee is an employee who earns at least 500 hours of service in each of three consecutive years beginning after December 31, 2020, and is age 21. However, plan sponsors may continue to exclude collective bargaining employees or other classes of employees not based on hours of service.

If your plan already permits all employees, regardless of part-time or seasonal status, to make elective deferrals, and your plan provides for immediate 100 percent vesting, you don’t need to act. Also, if your plan uses the “elapsed time method,” the plan doesn’t count hours of service and these rules are generally not applicable to your plan. But if your plan requires 1,000 hours of service for eligibility, or excludes seasonal or other part-time employees, then you need to be preparing now for 2024.

What this means to you

For purposes of determining who is a long-term part-time employee beginning in the 2024 plan year, the Internal Revenue Service (IRS) requires you to count hours of service for plan years beginning on or after January 1, 2021. For instance, an employee who works at least 500 hours in the 2021, 2022 and 2023 plan years will be immediately eligible to join the plan for purposes of making elective deferrals effective January 1, 2024 (for calendar year plans).

In addition, the IRS recently announced that for purposes of vesting in any employer contributions, you must credit a year of vesting service for all years, not just years after 2020, in which a long-term part-time employee had at least 500 hours of service. In other words, for eligibility purposes, **only years after 2020** in which a part-time employee has at least 500 hours of service are counted. But for vesting purposes, once an employee qualifies as a long-term part-time employee based on service after 2020, **all years** in which the employee had at least 500 hours, including years before 2021, are counted. This may be a good time to review and evaluate whether your current data retention policy as applicable to rehired employees needs to be updated for purposes of tracking hours of service in accordance with this law.

If your plan counts hours of service, then during 2020 you need to:

Determine whether your payroll system is accurately tracking hours worked according to IRS and Department of Labor guidelines; and

Determine what your plan document says about crediting hours of service.

In most cases, your plan already is counting the hours of service for your part-time employees because most of them are paid on an hourly basis.

However, in some cases, employees are paid on a piecemeal basis, or they are paid a set amount for each day worked, regardless of hours. In these cases, you will need to figure out a means of tracking hours.

Some plans use “equivalencies,” which give each employee a fixed number of hours for each day, week, pay period or month worked. For example, a plan may give 9 hours for each day on which an employee works a single hour. If your plan document uses equivalencies to determine eligibility, we recommend reviewing it now to determine whether to use a different method for part-time employees going forward. You are permitted to use different methods for different classes of employees.

Finally, this recent change in the law requires plans to give these long-term part-time employees the opportunity to make elective deferrals to your 401(k) plan—it does not require you to allow them to participate in employer matching and profit-sharing contributions. However, this may be a good time to consider whether you want to allow them to receive employer contributions.

As the 2021 effective date is fast approaching, we recommend that you review your 401(k) current eligibility requirements now and, as needed, contact your plan counsel to analyze and address the impact of this law.

Contact us

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Husch Blackwell's Employee Benefits & Executive Compensation team will continue to monitor these changes and their implications for our clients. Should you have any questions, please do not hesitate to contact Pat Martin, Myriem Bennani or your Husch Blackwell attorney.