New Rules Require Plans to 'Chase Time' – Coverage for Long-Term Part-Time Employees

Aug 15, 2023

Categories:

Publications
Tax Law Defined™ Blog

Authors:

Caroline N. Renner
Carl C. Lammers
Sarah N. Lowe

Certain 401(k) and 403(b) plans must be amended to allow part-time employees to participate under new rules in the 2019 Setting Every Community Up for Retirement Enhancement Act ("SECURE 1.0") and the revised rules in SECURE 2.0 passed in the last days of 2022. Beginning in 2024, 401(k) plans that require 1,000 hours of service for participation or that exclude part-time employees until they work 1,000 hours must be amended to allow employees who complete 500 hours of service in three consecutive years to contribute.

For 2025, the rules change and require that part-time employees be offered plan participation after two consecutive years with 500 hours. These rules will apply to 403(b) plans that are subject to the Employee Retirement Income Security Act (ERISA) in 2025. Employer contributions are not required to be made for these "long-term part-time" employees, but any contributions an employer makes must vest based on years of service with 500 hours.

In the current competitive environment for talent, many employers have reduced the requirements to participate in their 401(k) plan. Most of the plans we see allow employees to contribute beginning on their date of hire or 30 days after hire. Some of these plans exclude part-time employees until they work 1,000 hours in a year, but many plans have no part-time employee exclusion. If a plan doesn't have a 1,000-hour eligibility rule and doesn't exclude part-time employees, the plan isn't required to track the 500 hours or comply with the vesting provisions in the new rules. Plans that have a 1,000-hour rule or exclude part-time employees will either need to be amended to remove the 1,000-hour requirement and the part-time employee exclusion, or will need to begin offering the plan to long-term part-time employees. Any plan exclusion for temporary, seasonal or otherwise that might include employees who haven't worked 1,000 hours must also be evaluated to

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

determine what compliance steps are required.

Plan sponsors should consider adopting an amendment to remove a 1,000-hour requirement and/or a part-time employee exclusion so that it is clear how the plan is in compliance. An amendment signed in 2023 to be effective for 2024 would be best and may be required for safe-harbor plans. However, the deadline to sign an amendment will be later than the date the plan must begin complying with the new rules. If a plan isn't amended when the new rules are effective, the employer will need to be sure to track how it applies the new rules in operation so that needed amendments can correctly describe how the plan complied.

The remainder of this article explains these new rules in more detail. Our commentary and examples reflect our reading and understanding of the rules. Treasury regulations or other guidance may be issued that interpret the rules differently, so plan administrators will need to stay tuned for additional clarifications.

SECURE 1.0 Makes Long-Term Part-Time Employees Eligible for 401(k) Plans (not 403(b) Plans) Effective in 2024

Employers have historically been permitted to exclude part-time employees from 401(k) and other qualified retirement plans, provided that any part-time employee became eligible to participate once they completed 1,000 hours of service in their first year of employment, or in any later plan year, and reached age 21. (The rules for 403(b) plans are different and are described below.) SECURE 1.0 requires employers to allow long-term part-time employees to make elective deferrals to a 401(k) plan as early as January 1, 2024, after completion of three consecutive years with 500 hours of service. For plans that choose to continue a 1,000-hour rule and/or a part-time employee exclusion, the following describes the new long-term part-time employee rules for 2024:

- A long-term part-time employee is an employee with 500 hours of service for three consecutive 12-month periods.

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

    - Employers must count hours for 2021, 2022 and 2023 to see if any employees who are not working 1,000 hours have worked 500 hours in each of those three years and are therefore now required to be offered 401(k) plan participation for 2024.

- A plan must count hours in the employee's first 12 months of employment, and then can use annual periods based on the anniversary of employment or can switch to plan years beginning with the plan year that starts in the first 12 months of employment.
    - Most plans count hours based on the first 12 months of employment and then switch to plan years because it is easier to administer, but this can result in employees becoming eligible for the plan more quickly.

- Once the "three consecutive years with 500 hours" service requirement is met, a long-term part-time employee must be permitted to contribute to the 401(k) plan no later than the next January 1 or July 1 (for plans not on a calendar year, the next first day of the plan year or first day of the seventh month of the plan year).
- But, if the long-term part-time employee has not reached age 21 (or a lower age set by the plan), the employee must be eligible on the first date described in the prior bullet on which the employee satisfies the applicable age requirement.
- While no employer contributions are required for long-term part-time employees, if employer contributions are made and are subject to a vesting schedule (or the employee later becomes eligible for employer contributions), the long-term part-time employee must be given a year of service credit for vesting for each year with at least 500 hours starting January 1, 2021.

SECURE 2.0 Changes the Eligibility Rule to Two Years with 500 Hours

On December 29, 2022, SECURE 2.0 updated the rules that apply to long-term part-time employees effective for the 2025 and later

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

plan years, as follows:

- A long-term part-time employee is now an employee that has completed 500 hours of service for **two** consecutive years.
- Only service during and after 2021 is counted for eligibility and vesting in any employer contributions (this is a clarification of the original rule).
- Long-term part-time employees will first be eligible to contribute under the new rules on January 1, 2025 (or, if later, the first day of the plan year beginning in 2025), subject to any minimum age requirement.

The Good News: Long-Term Part-Time Employees Need Not Receive Employer Contributions and Are Not Counted for Testing

Employers are not required to make non-elective or matching contributions for long-term part-time employees that begin participating in the plan under these rules, including under safe harbor plans. Plans can have separate eligibility requirements for match and non-elective contributions, and require 1,000 hours and/or exclude part-time employees until they've worked 1,000 hours, just as they currently can. To the extent that non-elective or matching contributions are provided to long-term part-time employees, those employees may be excluded from nondiscrimination testing.

How Do the Long-Term Part-Time Employee Rules Apply to Your Plan?

The following examples demonstrate how these new rules may apply to your plan. For rules applicable only to 403(b) plans, see the next section.

Example 1: *If your plan does not have an hours-of-service requirement for eligibility, and does not have an exclusion for part-time employees, your plan doesn't need to take any action.*

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

- A plan that allows all employees to participate after 90 days of employment with no exclusion for part-time employees is not affected by the new rules.
- A single vesting schedule for any employer contributions made for long-term part-time employees can be based on years with 1,000 hours of service; no employees need to be credited with vesting service for 500-hour years (which would complicate administration and could create a feeling of unfairness with employees).

Example 2: *If your 401(k) plan excludes part-time employees unless they work 1,000 hours, your plan must now:*

- Track 2021, 2022 and 2023 hours of service for all employees who are not yet 401(k) eligible by 2024, and offer the 401(k) plan to employees who were credited with 500 or more hours of service in each of those three years; participation must be offered to be effective January 1, 2024, or the first day of the 2024 plan year.
- Track 2023 and 2024 hours of service for all employees who are not yet eligible for a 401(k) or 403(b) plan by 2025, and offer the plan to employees who were credited with 500 or more hours of service in each of those two years; participation must be offered to be effective January 1, 2025, or the first day of the 2025 plan year.
    - Continue tracking service for employees who have not otherwise become eligible for the plan, and when an employee has two consecutive years with 500 hours, enroll them in the plan at the end of that period.
        - If the plan tracks the first employment year and then switches to the plan year, long-term part-time employees will only become eligible on the first day of each plan year.
        - If the plan tracks successive employment years based on the employee's date of hire and anniversaries of the date of hire, once an employee has two consecutive employment years with 500 hours, the employee must be eligible to

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

contribute to the 401(k) or 403(b) by the next January 1 or July 1.

- Continue to apply the normal eligibility rule and enroll participants when they meet the requirements. Part-time employees who work 1,000 hours could become eligible sooner than under the three-year or two-year rules described above. IRS guidance is needed regarding whether the 1,000 hours can be removed since the new rules now apply.
- Employees who begin plan participation as long-term part-time employees must be credited with a year of service for vesting in any employer contributions made for them for each year with 500 hours credited beginning with the 2021 plan year (2023 for 403(b) plans); no employer contributions are required, but just in case any are ever made for these long-term part-time employees, years of 500-hour vesting service must be continually tracked.
    - Employers can choose to credit all employees with a year of vesting service for each year with 500 hours of service (and remove the 1,000-hour rule for vesting years), to avoid any feeling of unfairness; a plan amendment is required.

Example 3: *If your plan requires 1,000 hours in the employee's first year of employment or in any plan year in order to become eligible to contribute, your plan must now:*

- Continue to apply the 1,000-hour eligibility rule in addition to the new eligibility rule.
- Track 2021, 2022 and 2023 hours in the same manner as in Example 2 above and provide eligibility and vesting credits as required.
- Track 2023 and 2024 hours in the same manner as in Example 2 above.

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

    - Employees who satisfy the requirements are eligible to participate after the earlier of the first day of the plan year or the first day of the seventh month of the plan year that coincides with or follows the end of the second year with 500 hours.

- To the extent the employer provides non-elective or matching contributions to part-time employees, vesting applies similarly to eligibility—500 hours of service (after January 1, 2021) constitutes a year of service for vesting purposes.
- As an alternative to tracking hours as described in the first two bullet points above, you could amend your plan to allow all employees to participate with no hours of service required effective after up to one year from the employee's hire date. Then, no multi-year hours counting applies for eligibility, and no employees need be credited with 500-hour years of vesting service for employer contributions.

SECURE 2.0 Also Extends the Rule to Cover 403(b) Plans

SECURE 2.0 makes the long-term part-time employee rule apply to ERISA 403(b) plans that are subject to ERISA. There are two major concerns that need to be addressed in future IRS guidance for 403(b) plans. The first involves the general "universal availability" eligibility rule used by most 403(b) plans. Universal availability means that if any of the employer's employees are eligible to make deferrals to a 403(b) plan, then all employees must be eligible to make deferrals, with limited exceptions. In particular, there are two exceptions: (1) employees who work less than 20 hours per week, and (2) student employees. However, less than 20-hour employees and student employees can only be excluded if **all** less than 20-hour and student employees are excluded. Therefore, if any less than 20-hour or student employee becomes eligible as a long-term part-time employee, then no one in that category can be excluded. Hopefully, the IRS will issue guidance quickly indicating whether the exclusions can continue to be applied.

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

The second concern is for 403(b) plans that have been operated as exempt from ERISA (not including plans excluded as government or church plans). While most 403(b) plans are subject to ERISA, a 403(b) plan may be exempt from ERISA if it meets a regulatory exemption which requires extremely limited employer involvement with the plan, including a requirement that participation in the plan be completely voluntary for the employee. Beginning in 2025, SECURE 2.0 will require new 401(k) and 403(b) plans established after December 28, 2022 (when SECURE 2.0 became law) to automatically enroll eligible employees for salary deferral contributions to the plan. Under current guidance, it appears this will cause 403(b) plans formerly exempt from ERISA (other than governmental or church plans) that have not been frozen to new contributions to lose their ERISA exemption. Then, ERISA requirements will apply, including reporting, disclosure and fiduciary requirements.

Other Important Aspects of the Long-Term Part-Time Employee Requirements

Here are a few additional aspects we feel are important to consider:

- Once an employee becomes eligible to contribute under the plan's regular eligibility rule or under the new long-term part-time employee rules, that employee will continue to be eligible to participate throughout employment so long as the employee is employed in the division or other permitted grouping of employees covered by the plan.
- A plan cannot have an eligibility rule for all employees of 500 hours of service in each of two plan years. Long-standing rules prohibit a two-years-of-service requirement for employee deferrals.
- The new rule does not appear to restrict the ability to have a plan cover just one division, or just some subsidiaries and not others, or union versus non-union. Classifications that are not based on hours or years of service should not be prohibited.

Concluding Thoughts

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

FBT Gibbons

The long-term part-time employee rules are intended to improve eligibility for long-term part-time employees to allow and encourage more employees to save for retirement, but the cost to employers may be unduly burdensome given that many part-time employees may not contribute. The capability of the third-party administrator for the plan may impact how a plan will need to comply with the new rules. For example, some third-party administrators have limited ability to track separate vesting schedules for separate groups of employees.

Contact the authors or any member of Frost Brown Todd's Employee Benefits & ERISA team for assistance navigating the new rules for long-term part-time employees.

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

FBT Gibbons