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Casting a Wider Net: SECURE 2.0 Gives "Long-Term Part-Time Employees" Faster Access to 401(k) Plans and 403(b) Plans

by Eric D. Altholz on February 22, 2023

The SECURE 2.0 Act of 2022 ("SECURE 2.0") promotes and expands access to retirement plans for American workers in several ways. Among other things, SECURE 2.0 strengthens and expands the special 401(k) plan eligibility requirements for long-term part-time workers established by the Setting Every Community Up for Retirement Enhancement Act of 2019 ("SECURE 1.0") by: (1) shortening the eligibility service period for such workers; and (2) extending the application of the special rules to most 403(b) plans. Although these changes are effective for plan years beginning after December 31, 2024, plan sponsors must start tracking the service of long-term part-time workers much sooner than that to support compliance with the new rules. In addition, sponsors of 401(k) plans should keep in mind that the requirements of SECURE 1.0 are already in effect for service recognition purposes.

Long-term part-time workers under SECURE 1.0

A brief refresher regarding the original provisions of SECURE 1.0 involving long-term part-time workers will make it easier to understand the modifications made by SECURE 2.0.[1] In crafting SECURE 1.0, Congress recognized that a vast number of employees work regular part-time schedules for years yet never achieve the statutory maximum 1,000 hours of service in a 12-month eligibility computation period to become eligible for employer-sponsored retirement benefits. To help close this gap, SECURE 1.0 required – and still requires – sponsors of 401(k) plans to allow employees who are credited with at least 500 hours of service in each of three consecutive 12-month eligibility computation periods ("long-term part-time employees") to make elective deferrals under their 401(k) plans, provided they have attained age 21 by the end of the three consecutive 12-month periods.[2] Only periods of service beginning on and after January 1, 2021 count for purposes of determining the eligibility of long-term, part-time employees for 401(k) plans.

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[1] For a more in-depth overview regarding the original provisions, including special vesting rules, read our October 21, 2020 post.

[2] Long-term part-time employees may be excluded from a plan if they are covered by a collective bargaining agreement as to which retirement benefits were the subject of good faith bargaining. In addition, long-term part-time employees can be excluded from coverage and nondiscrimination testing.

So the first cohort of long-term part-time employees will become eligible to make elective deferrals under their employer's 401(k) plan as soon as January 1, 2024.[3]

SECURE 2.0 casts a wider net

SECURE 2.0 expands the special eligibility rules established by SECURE 1.0 in several important ways, casting a wider net effective as of January 1, 2025 (for calendar year plans). First, SECURE 2.0 shortens the eligibility service period for long-term part-time employees from three consecutive 12-month periods to two consecutive 12-month periods. Second, SECURE 2.0 extends the application of the special eligibility rules to employer-sponsored 403(b) plans, effective for plan years beginning after December 31, 2024. (The special rules do not apply to non-ERISA 403(b) plans.) For purposes of applying these rules to 403(b) plans, service before January 1, 2023, is disregarded. Therefore, the first cohort of long-term part-time employees will become eligible to make elective deferrals to 403(b) plans as soon as January 1, 2025.

SECURE 2.0 also closes a technical gap left open by SECURE 1.0 and provides clarification regarding the crediting of service for vesting purposes. The technical gap was created when SECURE 1.0 amended the Internal Revenue Code provisions governing 401(k) plans but did *not* amend the minimum participation provisions of ERISA to explicitly include eligibility rules for long-term part-time employees. SECURE 2.0 closes this gap by adding new language to Section 202 of ERISA to explicitly incorporate the special eligibility rules. Without this change, a failure to comply with the eligibility requirements for long-term part-time employees would not have amounted to an ERISA violation, even though it would have violated the qualification requirements for 401(k) plans and the comparable requirements for 403(b) plans. In addition, SECURE 2.0 clarifies that pre-2021 service is disregarded for vesting purposes just as it is disregarded for eligibility purposes.

Like SECURE 1.0, SECURE 2.0 does not alter the minimum service requirements that can be used to determine eligibility for employer matching and nonelective contributions to 401(k) plans and 403(b) plans. Therefore, employers can still require an employee to have attained age 21 and be credited with at least 1,000 hours of service during a 12-month eligibility computation period to be eligible for employer contributions under a 401(k) plan or 403(b) plan.

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[3] Note that employees who become eligible solely under the special eligibility rules established by SECURE 1.0 only have to be provided with the opportunity to make elective deferrals to their employer's 401(k) plan; they may continue to be excluded from eligibility for employer contributions (*e.g.*, matching contributions and nonelective contributions) until they meet the 401(k) plan's eligibility service requirement for such contributions.

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What happens to the “universal availability” requirement for 403(b) plans?

Tax-exempt employers may ask how the new eligibility rules for long-term part-time employees will affect the administration of their 403(b) plans in light of the “universal availability” requirement of Code Section 403(b)(12). Although the universal availability rule generally requires that all employees be given an opportunity to make elective deferrals to a 403(b) plan, special exclusions have always been available for student-employees and employees “who normally work less than 20 hours per week.” It appears that those exceptions will no longer apply for plan years beginning on and after January 1, 2025. Tax-exempt employers that have made their 403(b) plans available to all employees regardless of work schedule should not have to change any administrative practices in order to comply with the new eligibility rules for long-term part-time employees. However, tax-exempt employers that have relied on the historical exclusions for student and part-time employees will need to modify their plans and administrative systems to comply with the new requirements.

Amendment deadlines

Retirement plan sponsors have until the last day of the first plan year beginning on or after January 1, 2025 (i.e., December 31, 2025 for calendar year plans) to amend their plan documents to comply with SECURE 2.0. This coincides with the amendment deadlines for SECURE 1.0 and the CARES Act. Between now and then, plan sponsors must operate their plans in accordance with the requirements of those laws.

If you have questions regarding SECURE 2.0 and how it applies to your retirement plan, please contact a member of Verrill’s Employee Benefits and Executive Compensation Group.

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