

SECURE Act Deep-Dive: Inclusion of Part-Time Employees

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Many of the SECURE Act provisions seek to expand retirement plan coverage for Americans. This includes the new requirement for 401(k) plans to permit long-term part-time employees the right to make elective deferrals. While this is a positive step for employees, for retirement plan sponsors, it is likely to be the SECURE Act provision with the most significant administrative burden.

LIMITATIONS OF THE PROVISION

To be eligible under the new provision, employees must work between 500 and 999 hours per year, for three consecutive years. This new rule only applies to elective deferrals; the present employer contribution eligibility rules, stating that a plan can impose a service requirement that excludes many part-time employees, remain unchanged. However, these 500 to 999-hour years of part-time service will count towards employer contribution vesting purposes. A plan may still impose age requirements for these employees. Thus, if an employee does not satisfy the age requirement by the completion of the three consecutive years of 500 hours or more, the employee may still be excluded. It should also be noted that this new rule will not impact the plan's nondiscrimination testing in any way.

The new provision applies to all 401(k) plans, except those that are collectively

bargained. However, the new rule applies only to 401(k) plans; other types of elective deferral plans, such as 403(b) and 457(b) plans, already have their own elective deferral rules. For 403(b) plans, the "universal availability" provision requires plans to allow all employees the right to make elective deferrals, with limited exceptions. Governmental 457(b) plans are free to distinguish the employees allowed to make elective deferrals, and private, tax-exempt 403(b) plans must discriminate in favor of select management or highly compensated employees

PLAN SPONSOR CONCERNS

While this a positive change for part-time employees, particularly younger ones looking to take advantage of compounding early in their working careers, it is concerning for many plan sponsors. There has been difficulty in tracking hours under the existing service rules; thus, tracking hours for part-timers under this somewhat complicated new rule poses greater challenges. While many plan sponsors may outsource the function to their recordkeeper, this does not resolve the data issue inherent to this type of tracking. Thus, the new rule may create operational compliance errors for many plans.

The provision will not take effect until 2024, which does give employers time

to prepare. However, the provision may catch some 401(k) plan sponsors off-guard, as service will need to be tracked beginning next year (only nine months from now), due to the three consecutive year requirement.

WHERE DO WE GO FROM HERE?

The concern for accurately tracking part-time employee hours is justified. However, retirement plan sponsors do have alternatives that do not involve counting hours. For example, plan sponsors can allow all part-time employees to make elective deferrals to the plan, regardless of hours worked. These employees would not cost the employer any money in terms of employer contributions, since the standard age/service requirements still apply to employer matching and non-elective contributions. The likelihood of droves of part-time employees contributing to the plan is unlikely, so average account balances, which drive recordkeeper pricing, should not be negatively affected.

Another alternative for plan sponsors is to use equivalencies to credit the hours worked for purposes of the part-time service rule, meaning that employees are credited with a certain number of hours for each period they work:

- 10 hours per day
- 45 hours per week
- 95 hours per semi-monthly pay period
- 190 hours per month (note: if an employee works one hour in a month, he/she is credited with the whole 190 hours)

While the SECURE Act part-timer

provision does not directly address equivalencies, it appears that these could be used, since, similarly, to allowing all part-timers to make elective deferrals, this would be as favorable to part-time employees as the SECURE Act provision.

For a comprehensive look at the SECURE Act provisions, please [click here](#). Stay up to date with the SECURE Act by visiting the Knowledge Center on our website or following Cammack Retirement on [LinkedIn](#) or [Twitter](#).

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