

# NEWS YOU CAN USE

## for Advisors and CPAs

December 2023

## Reminder: Long-Term Part-Time Employee Requirement Arrives in January

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One final reminder as we head into year-end: the new long-term part-time employee coverage requirement is upon us. Beginning January 1, 2024, part-time employees who have worked at least 500 hours for three consecutive 12-month periods must be eligible to participate in at least the deferral feature of most 401(k) plans. Although we are still waiting for guidance on how to apply certain rules, this requirement has not been delayed, so plan sponsors need to proceed with enrolling these participants based on a good faith, reasonable interpretation of the rule.

**Applicability:** The rule generally applies to 401(k) plans as of January 1, 2024 (and to ERISA 403(b) plans as of January 1, 2025). The rule does not apply to other defined contribution plans, like 457 plans or SIMPLE IRA plans. It also does not apply to collectively bargained plans or plans not subject to Code Section 410 requirements (such as governmental plans).

**The Gist of It:** 401(k) plans can no longer have a service condition that prevents an employee from making salary deferrals if he or she has worked at least 500 hours for three consecutive years. Employees who do not meet the normal 1,000-hour year of service, but who do meet this new minimum service requirement, are called long-term part-time employees (LTPTEs). Any non-service conditions — such as excluding hourly employees, salaried employees, or highly-compensated employees—appear to still be permitted so long as they are not functioning as disguised service conditions. Exclusions of “part-time employees” and “seasonal employees” generally are service conditions and therefore are subject to the new rules.

**Who is Impacted:** Plans that do not have an hours-based service condition, such as plans that permit employees to defer immediately, or after 90 days, or that use the elapsed time method (rather than hours) to count service are not impacted by the rule. Plans that impose an hours-based service condition for any group of employees (which generally includes plans that exclude “part-time employees” and “seasonal employees”) will be impacted by the rule.

**Two Options:** Plan sponsors who are impacted by the new rule generally have two options.

• **First:** Plan sponsors can keep their plan’s existing service conditions, with the caveat that anyone who meets the LTPTE

definition will be allowed to make deferrals to the plan. On one hand, this limits the number of part-time workers who are eligible for the plan (which might reduce administration cost) and ensures nondiscrimination testing and top heavy minimum contributions are not impacted. On the other hand, though, this imposes an additional duty on the plan sponsor to carefully track hours of any employee that might become a LTPTE. Additionally, the implications of LTPTE status (such as how and when accelerated vesting of employer contributions must apply) are still very unclear, which could lead unintended results. These complexities in accounting and tracking employees may increase the likelihood for operational issues.

• **Second:** Plan sponsors can modify the plan’s existing service condition to ensure all employees are eligible to make salary deferrals before they meet the LTPTE definition. On one hand, this simplifies administration and avoids the LTPTE rules all together, and simplicity generally reduces the likelihood of plan errors. On the other hand, though, such a change may impact nondiscrimination testing for non-safe harbor plans, may increase company contributions for safe harbor plans, and may increase the number of plan accounts in both cases (which, in turn, may increase audit and administration costs).

However, regardless of which approach is taken, an impacted plan sponsor will potentially need to enroll new participants on January 1, 2024. Therefore, now is the time to join with your TPA partner and make sure clients are ready for the new LTPTE rules to take effect in January.

### Reminders

- **December 31, 2023 (a Sunday this year):** General deadline to distribute 2023 RMDs, correct a failed ADP or ACP test, and adopt any discretionary amendments to the plan.
- **Plan Limits for 2024:** The IRS has released limits for 2024. See IRS Notice 2023-75.
- **How did Safe Harbor and QDIA season go?** Now’s a good time to evaluate how distribution of annual notices went this year and how the process can be improved for next year.