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## SECURE Act

### *Long-Term Part-Time Employees*

The SECURE Act includes a new rule that will dramatically affect eligibility for 401(k) plans. Under this new rule, beginning in 2024, any eligible employee who works at least 500 hours in three consecutive years must be permitted to make 401(k) salary deferral contributions into the plan.

Currently, a 401(k) plan can restrict eligibility to defer to those who worked at least 1,000 hours in a 12-month period. The new rule changes this, however, the plan may still exclude this new group of employees from compliance testing and employer profit sharing, safe harbor and matching contributions.

The earliest someone will enter a plan based on the new SECURE Act provision is January 1, 2024. However, eligibility is determined over a three-year period, so beginning in 2021 employers must start tracking hours worked by part-time employees for this purpose. Of course, if the plan eligibility provisions do not currently require more than 500 hours, this is a moot point.

This provision only affects eligibility to make 401(k) salary deferral contributions into the plan. As a result, these long-term part-time employees will not negatively impact testing or require additional cost in the form of employer contributions to the plan. This changes once a long-term part-time employee meets the plan's regular eligibility requirements and is no longer in the plan solely for this reason. At that point, they would become a regular participant just like any other plan participant.

The employer *may* include these employees in employer contributions, even though they are not required to. If employer contributions given are subject to a vesting schedule, the long-term part-time employees must accrue a year of vesting service for each year during which at least 500 hours are worked. The plan cannot require 1,000 hours of service for this group of employees to accrue a year of vesting service. The reduced requirement for vesting will only apply if employees have entered the plan solely due to this long-term part-time employee provision. If a plan already lets part-time employees into the plan, the normal plan vesting rules still apply.

Although not addressed in the legislation, it is reasonable to assume that long-term part-time employees can still be excluded if they are under a class exclusion for the plan. For example, if the plan excludes employees in a job classification or location and the coverage testing rules are satisfied, that exclusion should override this new rule. Also, the plan may not exclude employees based on working part-time or seasonally — this is not new.

One major question is how this will impact the participant count for Form 5500 purposes. The law did not provide any guidance or relief regarding this, and so far, there is no guidance from the IRS or DOL. Will the long-term part-time employees count as active employees if they choose not to defer into the plan? Will the rules for determining a large plan filer be modified to address this? We will need to wait to see how the Department of Labor responds to this. Fortunately, this will not be an issue until 2024 filings. If these participants do count for Form 5500 purposes, it could push some plans over the 100-participant threshold where an annual independent CPA audit of the plan is required. This would increase the cost of maintaining the plan.