

Publications

Long-Term, Part-Time Employee Guidance for Section 403(b) Plans (and Two-Year Extension for 401(k) Regulations)

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On October 3, 2024, the Department of the Treasury (“Treasury”) and the Internal Revenue Service (“IRS”) issued [Notice 2024-73](#) (the “Notice”) to clarify eligibility rules for long-term, part-time (“LTPT”) employees in 403(b) plans. Notably, these rules do not apply to non-ERISA 403(b) plans, such as governmental plans.

The Notice confirms that pursuant to existing Treasury Regulations under Section 403(b), ERISA-covered 403(b) plans may continue to exclude all student employees. However, part-time employees that were excluded under the “less than 20 hours per week” rule must be allowed into the plan for elective deferrals only (not employer contributions) if they meet the LTPT rules. Part-time employees that do not meet the LTPT rules can continue to be excluded from the plan. The Notice also clarifies the application of certain nondiscrimination rules to LTPT employees.

Importantly, the Notice also announces that the final version of the LTPT proposed regulations under Code section 401(k) issued on November 27, 2023, will be effective no earlier than plan years beginning on or after January 1, 2026. This is a welcomed two-year extension period for compliance with the final regulations. (See our prior alert on the 401(k) proposed regulations [here](#).)

A. Background

The SECURE Act of 2019 amended Code section 401(k) to generally require that employees who are age 21 and complete at least 500 hours of service in three consecutive 12-month periods (*i.e.*, LTPT employees) must be eligible to make 401(k) plan deferrals. SECURE 2.0 shortened the required number of consecutive 12-month periods from three to two, and also extended the applicability of the LTPT rules to 403(b) plans subject to ERISA.

Plans that choose to make nonelective or matching contributions on behalf of LTPT employees must count 12-month periods with 500 hours of service for purposes of vesting, although service for 12-month periods beginning before January 1, 2023, is disregarded. In addition, LTPT employees who are eligible to participate in 403(b) plans solely because of the new rules may be excluded from nondiscrimination and coverage testing requirements. The LTPT rules apply to 403(b) plans for plan years beginning after December 31, 2024.

Although plan amendments for LTPT rules are not required until the end of the 2026 plan year, 403(b) plan operations must be compliant by January 1, 2025. For this reason, some employers may wish to amend their plan to provide that all part-time employees are immediately eligible for deferrals, to avoid the LTPT rules altogether.

B. Guidance

The Notice addresses certain eligibility exclusions and discrete nondiscrimination testing issues for LTPT employees in 403(b) plans.

1. Eligibility Exclusions

Can a 403(b) plan continue to exclude part-time employees who normally work less than 20 hours a week from making elective deferrals?

Not necessarily. The IRS continues to permit the statutory exclusions that are not age or service based. The existing statutory part-time employee exclusion that permits a plan to exclude employees who normally work less than 20 hours a week is service based. Therefore, if a part-time employee is over age 21 and completes 500 hours in two consecutive 12-month periods, the employee will be treated as an LTPT employee and the 403(b) plan must allow the LTPT employee to make elective deferrals (unless another statutory exclusion applies).

The Notice explains that because the LTPT rules are new statutory requirements, excluding part-time employees who do not qualify as LTPT employees (while allowing LTPT employees to make deferrals) would not cause a plan to violate the requirement that 403(b) plans treat all employees who belong to an excludable classification (here, part-time employees) consistently. The Notice explains that the Treasury Department and IRS intend to update the Code Section 403(b) consistency requirement to align with this guidance.

Does a 403(b) plan need to provide the right to make elective deferrals to a student employee who qualifies as an LTPT employee?

No. The student employee exclusion is generally based on a statutory classification of employees who are students performing services at the school, college, or university at which they are enrolled and regularly attending classes. Because the student exclusion is based on a classification that is not service-based, 403(b) plans may continue to exclude student employees, regardless of whether they would otherwise satisfy the conditions to be eligible as an LTPT employee.

2. Impact on Employer Contributions and Nondiscrimination Testing

Can an employer with a 403(b) plan exclude LTPT employees for purposes of testing employer nonelective and matching contributions?

Yes. LTPT employees (i.e., those that entered the plan solely due to the LTPT rules) must be eligible to make deferrals, but are not required to be eligible for employer nonelective or matching contributions – including safe harbor contributions. Moreover, SECURE 2.0 permits a 403(b) plan sponsor to exclude LTPT employees from certain nondiscrimination testing requirements, including average contribution percentage (“ACP”) testing for employer match.

Can an employer continue to exclude former LTPT employees who later become eligible to participate in a plan under its standard eligibility conditions from receiving nonelective or matching contributions, or from nondiscrimination testing?

No. The employer contribution and nondiscrimination testing exclusions apply solely to LTPT employees, not former LTPT employees. An LTPT employee who satisfies the plan’s standard (i.e., “non-LTPT”) eligibility conditions, such as the completion of 1,000 hours of service in a 12-month period, becomes a former LTPT employee as of the first day of the plan year following the plan year in which the standard eligibility conditions were satisfied.

C. Effective Dates

The guidance set forth in Notice 2024-73 applies to plan years beginning after December 31, 2024, aligning with the January 1, 2025 effective date of the LTPT rules under SECURE 2.0.

The Notice is just the initial guidance. The Treasury and IRS intend to issue proposed regulations, which will provide additional guidance on the Code section 403(b) LTPT employee rules, including the impact on nondiscrimination testing. The pending regulations will also address LTPT employee eligibility and vesting requirements for ERISA-covered 403(b) plans, which are anticipated to be similar to the final Treasury Regulations for 401(k) plans. This guidance is expected to include a separate vesting rule for former LTPT employees, providing that vesting rules for LTPT employees continue to apply even if an LTPT employee later

satisfies the regular service requirements and becomes a former LTPT employee. Notably, in contrast to the SECURE 1.0 changes applicable to 401(k) plans, the SECURE 2.0 Code provisions did not expressly include a separate vesting rule for 403(b) plans.

Finally, the Notice states that the final regulations for LTPT employees in 401(k) plans (which have not yet been issued) will apply no earlier than plan years beginning on or after January 1, 2026.

D. Next Steps

The Treasury and IRS have requested comments by December 20, 2024 on the Notice, including on (1) the application of nondiscrimination testing rules for LTPT employees in 403(b) plans; and (2) any LTPT rules that should apply differently between 401(k) and 403(b) plans.

In the meantime, although amendments are not required at this time, in order to comply operationally with the guidance, 403(b) plan sponsors and providers should review their eligibility rules and nondiscrimination testing processes, and determine if any changes to plan operations or communications (e.g., safe harbor notices) are necessary in advance of January 1, 2025.

If you have any questions or would like to submit any comments, please contact your regular Groom attorney.