

Washington Pulse



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IRS Releases Guidance for LTPT Employees of ERISA 403(b) Plans

The Internal Revenue Service (IRS) recently issued [Notice 2024-73](#), providing guidance regarding the participation of long-term, part-time (LTPT) employees in 403(b) plans subject to Title I of the Employee Retirement Income Security Act (ERISA). The guidance is effective for 2025 and later plan years and provides answers to some of the questions about the unique eligibility provisions of ERISA 403(b) plans.

Background

In 2019, the Setting Every Community Up for Retirement Enhancement Act ([SECURE Act](#)) changed eligibility requirements so that employees of employers that sponsor 401(k) plans who are credited with at least 500 hours in three consecutive years (beginning on January 1, 2021), must be allowed to participate under a 401(k) plan's salary deferral provision. In 2022, the SECURE 2.0 Act ([SECURE 2.0](#)) reduced the wait from three years to two, effective for plan years that begin after December 31, 2024, and expanded applicability of the LTPT eligibility provisions to ERISA 403(b) plans.

Notice 2024-73 states that the IRS plans to issue a proposed regulation specific to ERISA 403(b) plans and "ERISA LTPT employees," while separately issuing final regulations for 401(k) plans and "section 401(k) LTPT employees." Employers that sponsor 401(k) plans may continue to rely on the [proposed regulation](#) issued in November 2023 until a final regulation is issued. The final regulation for section 401(k) LTPT employees will apply no earlier than to plan years beginning on or after January 1, 2026.

Non-ERISA 403(b) Plans. Notice 2024-73 confirms that the LTPT provisions described in Section 125 of SECURE 2.0 do *not* apply to non-ERISA 403(b) plans (e.g., 403(b) plans sponsored by government employers).

Definition of "ERISA LTPT Employee"

ERISA LTPT Employee. This guidance introduces the term "ERISA LTPT employee," referring to an employee who participates in an ERISA 403(b) plan and meets the definition of an LTPT employee as provided by Section 125 of SECURE 2.0 and ERISA Section 202(a)(1). In contrast, the definition of the term "section 401(k) LTPT employee" refers to an employee who participates in a 401(k) plan and meets the requirements as clarified in the proposed regulation specific to LTPT employees of 401(k) plans.

Former ERISA LTPT Employee. Notice 2024-73 describes a "former ERISA LTPT employee" as an employee who later becomes eligible to participate in the ERISA 403(b) plan for reasons other than meeting the eligibility rules for an ERISA LTPT Employee (e.g., due to an employee being credited with 1,000 hours of service in the preceding year). The notice also states that former ERISA LTPT employees cannot be excluded

- from receiving nonelective or matching contributions, or
- from the application of the nondiscrimination requirements under [IRC Secs. 401\(a\)\(4\)](#), [401\(m\)\(2\)](#), and [410\(b\)](#).

Eligibility and Participation Criteria

Unlike employers that sponsor 401(k) plans, employers that sponsor 403(b) plans are subject to the universal availability rule (other than steeple churches and qualified church controlled organizations (QCCOS)). The universal availability rule requires employers that sponsor 403(b) plans with an elective deferral feature to extend this option to all eligible employees. However, certain classes of employees, including employees who normally work less than 20 hours per week (part-time employees) and student employees (students) as described in [IRC Sec. 3121\(b\)\(10\)](#), may be excluded from participating in a 403(b) plan.

Exclusion for Part-Time Employees. Notice 2024-73 confirms that the statutory exclusion for part-time employees who work less than 20 hours per week is based on *service* (not classification). As a result, an employer that sponsors an ERISA 403(b) plan

- must provide the right to make elective deferrals to a part-time employee who also qualifies as an ERISA LTPT employee, unless another statutory exclusion applies, and
- may continue to exclude part-time employees who do not qualify as ERISA LTPT employees without violating the consistency requirement under Treasury Regulation ([Treas. Reg. 1.403\(b\)-5\(b\)\(4\)\(i\)](#)), which prevents an employer from applying the part-time exclusion to only some, but not all employees.

Exclusion for Student Employees. In contrast, the guidance clarifies that the statutory exclusion for student employees is based on *classification* (not service). So, an employer that sponsors an ERISA 403(b) plan may continue to exclude a student employee from making elective deferrals under the plan regardless of whether the individual qualifies as an ERISA LTPT employee.

Impact on Actual Contribution Percentage (ACP) Testing

- An employer with an ERISA 403(b) plan may exclude ERISA LTPT employees for purposes of applying the actual contribution percentage (ACP) test under [IRC Sec. 401\(m\)\(2\)](#).
- In addition, ERISA 403(b) plans that use the ACP safe harbor available under [IRC Sec. 401\(m\)\(11\) or \(12\)](#) are not required to provide safe harbor contributions to ERISA LTPT employees.

Next Steps

The IRS intends to issue proposed regulations to address Section 125 of SECURE 2.0 and has requested general comments on or before December 20, 2024. The IRS also requested comments specific to whether additional guidance would be helpful in the general application of Section 125 of SECURE 2.0 and IRC Sec. 403(b)(12)(D) to 403(b) plans and determining if the rules that guide the administration of LTPT employees of 401(k) plans should apply differently for ERISA LTPT employees of 403(b) plans.

Visit ascensus.com for the latest developments on this SECURE 2.0 provision.