

SECURE 2.0 ACT

Long-term, part-time employees guide for plan sponsors of ERISA 401(k) Puerto Rico Qualified Plans

What is changing?



The Setting Every Community Up for Retirement Enhancement Act (SECURE 1.0) included a new provision for part-time employees. SECURE 2.0 expanded the rules to include Puerto Rico 401(k) only plans that are subject to ERISA. For plan years beginning after December 31, 2022 employees that complete at least 500, but not more than 1,000, hours of service in two consecutive twelve-month computation periods are eligible to participate in a plan as a long-term, part-time (LTPT) employee.

This provision will impact any employee in a 401(k) Puerto Rico plan that determines eligibility requirements based on hours of service.

Employees covered by a collective bargaining agreement are excluded from the LTPT requirements.



Overview



Background

The SECURE 2.0 Act made changes to the LTPT employee requirements:

- Extended LTPT employee coverage requirements to ERISA-covered 403(b) plans and 401(k) Puerto Rico plans starting with the 2025 plan year. IRS has not issued clarifying guidance related to excludable employees.
- Reduced the employee service requirement from three consecutive years to two consecutive years.



Eligibility

Employees will be eligible to participate upon the earlier of:

- Completion of one year of service (1,000 hours of service during the 12-month eligibility service computation period), or
- Two consecutive years of service where the employee completes at least 500, but not more than 1,000, hours of service each year in twelve-month eligibility service computation periods.



New rule

An employee will become a participant and eligible to make deferral contributions after they satisfy the service, age, and entry date requirements, starting in the 2025 plan year.



Please note that hours-based service exclusions may be subject to the LTPT rule, even if your plan generally uses elapsed time to determine eligibility service.

Overview



Employer contributions

A plan sponsor may include or exclude LTPT employees in any employer contributions. The Fidelity solution will default to exclude LTPT employees from receiving any employer contributions unless directed otherwise.



Vesting*

LTPT employees will receive vesting credit if they complete at least 500 hours of service in a vesting computation period, excluding service prior to 2023.



Testing

A plan sponsor may include or exclude LTPT employees from non-discrimination testing. The Fidelity solution will default to exclude LTPT employees from non-discrimination testing unless directed otherwise.



Excluded employees*

Some plan documents currently exclude employee groups on the basis of the hours they generally work. For example, they may exclude part-time, seasonal, interns, temporary employees or other groups that are hours-based service employees. Many such plans allow these excluded employees to become participants upon the completion of 1,000 hours of service and the age of 21. These same employees may be able to participate under the LTPT requirement as well, even if your plan generally uses elapsed time to determine eligibility service. Plan sponsors should consult with counsel to determine eligibility for excluded employees.

*IRS has not yet issued clarifying guidance related to excludable employee or elapsed time vesting.

How are plan sponsors affected



Plan sponsors must review their plan design and employee population to determine if they are subject to the LTPT employee requirements, if yes:



- Payroll or payroll provider need to track hours of service for their employees
- Work with their payroll or payroll provider to provide required data to Fidelity
- Determine if they want to include LTPT employees in employer contributions and/or non-discrimination testing
- Consider how they want to manage LTPT data internally
- Consider their LTPT employee communication strategy



Employee Eligibility

Plan sponsors **not using** Fidelity's Hours-Based Eligibility Tracking service

Plan sponsors determining eligibility for their LTPT employees should review their procedures and/or consult with their payroll/payroll provider to identify the impact of the new provision.

Plan sponsors must provide Fidelity with the required data to properly identify LTPT employees.

Plan sponsors **using** Fidelity's Hours-Based Eligibility Tracking service

Fidelity's Hours-Based Eligibility Tracking service has been updated to include LTPT employees who complete at least 500 hours of service in each 12-month eligibility service computation period over two consecutive years.

Plan sponsors with plans that use hours of service to determine eligibility for some or all of their employees must provide Fidelity with the information to identify LTPT-eligible employees.



Please reach out to your Fidelity representative to discuss your plan's specific scenario

How Fidelity will assist plan sponsors with LTPT eligible employees



Fidelity has updated our data transmission paths with new LTPT employee datapoints.



Fidelity will extend the current participant enrollment experience to include LTPT eligible employees.



Plan Sponsor WebStation® reporting will be available to assist with the eligibility process, audit support, and account corrections.



Fidelity continues to monitor regulatory guidance for updates to the LTPT employee requirements. We will update plan sponsors after new guidance is issued.

Next steps

Determine

the impact on your employee population.

Plan sponsors with larger employee populations may have different considerations (administrative costs of administering the LTPT employee requirements, cost of making the LTPT employees eligible to receive employer contributions, etc.) than those with smaller populations.

Consult

with your legal counsel for assistance if you are uncertain if your plan document currently excludes employee groups that may be subject to the LTPT employee requirements in the future.

Review

Fidelity's resources to learn more about eligibility tracking, data scenarios, and plan sponsor considerations.

Identify

the information that you must provide to Fidelity based on your plan's specific scenario.

Inform

Fidelity if your plan will include LTPT eligible employees in employer contributions.



Plan sponsor considerations for LTPT employees



Plan sponsors should consider their company's employee benefit objectives, employee retention, and employee enrollment when reviewing LTPT employee requirements and their applicability to their 401(k) Puerto Rico Qualified plan.



We encourage plan sponsors to consult with legal counsel to discuss the benefits and potential impact of the LTPT employee requirements. Considerations may include:

- Number of employees that will likely be subject to the new requirements.
- Administrative complexity of tracking multiple sets of hours of service (one for full-time employees, one for LTPT employees).
- Impact on payroll systems and payroll providers.
- Potential implementation and operational costs, including technology, payroll provider, and per participant cost for adding LTPT-eligible employees.
- Potential impact on employer contributions, if any.



*Fidelity is the Pooled Plan Provider and Plan Sponsor of the Fidelity Advantage 401(k), which is a pooled employer plan (PEP) for adopting employers. The long-term, part-time employee provision does not apply to an employer that adopted this plan. Fidelity provides plan administration services for employers that adopt the Fidelity 3(16) Administration Service or Fidelity Flex®. The long-term, part-time employee provision does not apply to these plans unless an adopting employer excluded service-based employees such as part-time, temporary, seasonal, interns, etc. from the plan's eligibility service requirement. Contact your Managing Director if you have any questions.

Fidelity does not provide legal or tax advice. The information herein is general and educational in nature and should not be considered legal or tax advice. Tax laws and regulations are complex and subject to change, which can materially impact investment results. Fidelity cannot guarantee that the information herein is accurate, complete, or timely. Fidelity makes no warranties with regard to such information or results obtained by its use, and disclaims any liability arising out of your use of, or any tax position taken in reliance on, such information. Consult an attorney or tax professional regarding your specific situation.

Approved for use in advisor and 401(k) markets. Firm review may apply.

For plan sponsor and investment professional use only.

Fidelity Investments Institutional Operations Company LLC, 245 Summer Street, Boston, MA 02210

© 2024 FMR LLC. All rights reserved.

1163071.1.0