

IRS Memorandum Regarding "Excludable Employees" for Coverage Testing and the ADP Test

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The IRS issued a memorandum providing examples of acceptable interpretations of who may be counted as "excludable employees" for purposes of coverage testing under Code Section 410(b)(4)(B) and performing the ADP test under Code Section 401(k)(3). An "excludable employee" may include an employee (i) until the date on which he or she attains age 21 and completes one year of service, (ii) through the earlier of the date six months after he or she attains age 21 and completes one year of service or the first day of the first plan year after he or she attains age 21 and completes one year of service, or (iii) through the date on which he or she attains age 21 and completes one year of service and any additional waiting period specified in the plan. Note that the IRS memorandum cannot be used or cited as precedent. The IRS memorandum is available [here](#).