

# IRS's Proposed Long-Term, Part-Time Employee Rule

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**PRACTICES** Employee Benefits and Executive Compensation

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On November 24, 2023, the IRS issued a proposed rule (the “**Proposed Rule**”) concerning participation requirements for “long-term, part-time employees” in 401(k) and 403(b) plans under the SECURE Act of 2019 and the SECURE 2.0 Act of 2022 (the “**SECURE Acts**”). Beginning on January 1, 2024, employees aged 21 and over who complete at least 500 hours of service over three consecutive prior 12-month periods (reduced to two consecutive prior 12-month periods in 2025) must be permitted to make elective deferrals in such plans, subject to a few exceptions (each, a “**LTPT Employee**”). As a reminder, although plan amendments under the SECURE Acts are generally not required to be made until on or before the last day of the first plan year beginning on or after January 1, 2025 (2027 in the case of governmental plans), plans must operate in accordance with such amendments as of the effective date of the relevant statutory provisions.

The Proposed Rule provides the following guidance regarding LTPT Employees:

- **12-month period determination.** The initial 12-month period for determining whether a LTPT Employee completes 500 hours of service must begin on such employee’s date of hire; however, subsequent 12-month periods may be based on the first day of the plan year, if provided under the plan’s terms. Once the employee meets the LTPT Employee eligibility requirements, such employee remains an LTPT Employee regardless of the employee’s hours of service in subsequent plan years. Periods before January 1, 2021 are disregarded for this purpose.
- **Employer contributions.** Plan sponsors may, but are not required to, make employer contributions (including safe harbor contributions) on behalf of LTPT Employees. The plan should be amended to reflect whether such LTPT Employees will be eligible to receive employer contributions.
- **Reasonable class exclusions.** Plan sponsors may exclude LTPT Employees if such exclusion is part of a reasonable, permitted classification that is not based on age or service.
- **Nondiscrimination testing and top-heavy requirements.** Plan sponsors may elect, if provided under the plan’s terms, to exclude LTPT Employees from nondiscrimination testing and from the application of the top-heavy vesting and benefit requirements, provided that LTPT Employees may not be excluded from the determination as to whether a plan is top-heavy.

The Proposed Rule is available [here](#).