

EMPLOYEE BENEFITS AND EXECUTIVE COMPENSATION INFORMATION MEMO

NOVEMBER 18, 2024

IRS Guidance Clarifies 403(b) Plans' Obligations to Part-Time Employees

On Oct. 3, 2024, the Internal Revenue Service released important guidance on the obligations of 403(b) plan sponsors to their part-time employees. Under recently passed legislation that is effective Jan. 1, 2025, a long-term, part-time (LTPT) employee – one who works 500 or more hours in each of two consecutive years – must be permitted to participate in a 403(b) plan, even if they previously had been excluded or excludible. The new IRS guidance (Notice 2024-73) explains which employees must be permitted to participate and the scope of their required participation, and answers several other important questions relating to the rights of LTPT employees under 403(b) plans.

Background

403(b) plans (unlike 401(k) plans and other defined contribution plans) are subject to a “universal availability” rule. Since 1989, this rule has required that new employees of a 403(b) plan sponsor generally must be immediately eligible to make elective deferrals to the plan. (In contrast, 401(k) and other qualified retirement plans usually can exclude new employees until they complete one year of service – defined as a 12-month period during which they work at least 1,000 hours – and reach age 21.) However, the universal availability rule has always been subject to certain exceptions, which permit a 403(b) plan sponsor to exclude certain categories of employees. The excludible employees have included:

- Employees who normally work fewer than 20 hours per week (part-time employees);
- Certain student employees of colleges and universities (student employees);
- Non-resident alien employees with no U.S. source income (non-resident alien employees); and
- Employees who are eligible to make elective deferrals under another 401(k), 403(b) or governmental 457(b) plan sponsored by the same employer (otherwise eligible employees).

Of these exceptions to the universal availability rule, the one for part-time employees has been the one most frequently utilized by 403(b) plan sponsors. It is also the exception directly affected by the new rules governing long-term, part-time employees.

Applicability and Effective Date

New rules governing long-term, part-time employees in *401(k) plans* were enacted in 2019 as part of the original SECURE Act. The IRS issued regulations on the obligations of 401(k) plans to LTPT employees in 2023. We discussed the 401(k) plan rules in an earlier [Information Memo](#). Note that the LTPT rules for 401(k) plans were effective Jan. 1, 2024.

The SECURE Act 2.0, passed in December 2022, enacted similar rules for 403(b) plans that are subject to ERISA (the Employee Retirement Income Security Act, the federal law that governs most private employee benefit plans). The LTPT rules for 403(b) plans are effective Jan. 1, 2025, although (as explained below) the

new rules require that hours of service of LTPT employees on and after Jan. 1, 2023 be taken into account for certain purposes.

Note: The LTPT rules for 403(b) plans only apply to plans that are subject to ERISA. Accordingly, governmental and non-electing church 403(b) plans do not have to comply.

Requirement to Permit Elective Deferrals

The new LTPT rules for 403(b) plans require that an employee who works 500 or more hours in each of two consecutive 12-month periods must be permitted to make elective deferrals to the plan, even if they typically work fewer than 20 hours per week (and so would have been excludible before 2025). In other words, the new LTPT requirements supersede the old exception to the universal availability rule for part-time employees. The 1,000 hour rule will continue to apply, so an eligible employee will be able to make deferrals to a 403(b) plan after working 1,000 hours in one year or, if earlier, after working 500 hours in each of two consecutive years. For this purpose, hours of service on and after Jan. 1, 2023 must be taken into account, so that an otherwise eligible employee who worked 500 or more hours in each of 2023 and 2024 will be eligible to make deferrals to a 403(b) plan effective Jan. 1, 2025.

Importantly, the IRS Notice provides that the new LTPT rules will not supersede the other exceptions to the universal availability (listed above) rule. Accordingly, student employees, non-resident alien employees and “otherwise eligible employees” can continue to be excluded from 403(b) plans, even if they meet the LTPT requirements. Note, however, that the IRS Notice confirms that these other exclusions must be applied consistently, meaning that if the plan excludes (for example) student employees, it must exclude all student employees.

Employer Contributions Are Not Required for LTPT Employees

As with the LTPT rules that apply to 401(k) plans, the new 403(b) plan rules do not require that the employer make any contributions on behalf of an employee who is permitted to make deferrals to a 403(b) plan solely because of the new LTPT requirements. So, although a long-term, part-time employee must be allowed to make elective deferrals to the plan after they complete two years of service with at least 500 hours, the employer is not required to match those deferrals, or to make a non-elective contribution for the LTPT employees, even if it does so for full-time employees. Even if the employer makes “safe harbor” matching or non-elective contributions for other employees, it need not make such contributions on behalf of long-term, part-time employees.

If the employer *does* make matching contribution or non-elective contributions on behalf of LTPT employees:

- hours of service performed by LTPT employees on and after Jan. 1, 2023 must be taken into account in determining their vested interest in such employer contributions; but
- the employer can exclude the LTPT employees from consideration in performing the required discrimination testing of the contributions, for as long as they are “only” LTPT employees.

Note: Once a LTPT employee works 1,000 hours in a 12-month period, they become a “former long-term, part-time employee” and can no longer be excluded from employer contributions or discrimination testing.

What 403(b) Plan Sponsors Should Do

If they have not already done so, 403(b) plan sponsors should:

- determine whether any of their employees will qualify as long-term, part-time employees beginning Jan. 1, 2025, taking into account their hours of service on and after Jan. 1, 2023;
- permit qualifying employees to begin making elective deferrals to the plan beginning Jan. 1, 2025;
- if the plan includes employer contributions, decide whether LTPT employees will be eligible for these contributions and, if they will be eligible, track their hours of service since Jan. 1, 2023 for purposes of determining their vested interest; and
- amend the 403(b) plan document if necessary to reflect the new eligibility rules.

If you have any questions about the new rules on long-term, part-time employees in 403(b) plans, please contact any attorney in our [employee benefits and executive compensation practice](#), or the attorney at the firm with whom you are regularly in contact.

