

Improving coverage for long-term, part-time workers

Section 125

Frequently Asked Questions

This FAQ covers topics intended to help you become familiar with the SECURE 2.0 Act of 2022's Section 125, "Improving coverage for part-time workers":

- An overview of Section 125
- Plan sponsor considerations and proposed actions
- Appendix: clarification and additional information

Improving coverage for part-time workers can be an important savings and lifetime income opportunity for your employees. TIAA is committed to helping you better understand the new requirements. If you have any questions, please contact your TIAA representative.

AN OVERVIEW:

Improving coverage for part-time workers

What is the SECURE 2.0 Act, Section 125?

The SECURE 2.0 Act Section 125 reduces the maximum allowable service requirement for part-time workers. Under the new rule, part-time workers need to complete either 1,000 hours of service in one year or 500 hours of service in two years to be eligible to enroll in a 401(k) plan or an ERISA 403(b) plan. Previously there was a three-year service requirement for part-time workers for 401(k) plans.

Service for 12-month periods beginning before January 1, 2023, is not taken into account for purposes of the new eligibility and two-year vesting rules for long-term, part-time employees.

For 401(k) plans, employers may disregard 12-month periods beginning before January 1, 2021, for purposes of the current vesting rules for long-term, part-time employees.

Which plans are subject to the provision? Is it a mandatory provision?

It is mandatory that plan sponsors of ERISA-covered 401(k) and 403(b) plans comply with the requirements of Section 125. There are some different considerations for 401(k) versus 403(b) plans with respect to tracking service. Please refer to the plan sponsor considerations section below for more details.

Are plan sponsors required to make employer contributions to long-term, part-time employees eligible to participate?

No. The provision applies to eligibility for making elective deferrals and vesting of any employer contributions. In the case of ERISA-covered plans, in which participants become eligible solely by reason of the new eligibility rules, employers are not required to make nonelective or matching contributions and may elect to exclude such employees from testing under the nondiscrimination requirements.

What is the effective date for Section 125?

The requirements are generally applicable for plan years beginning after December 31, 2024.

When do plan sponsors need to begin tracking the hours to comply with this provision?

For ERISA 403(b) plans, employers need to begin tracking hours of service in 2023. For 401(k) plans, employers should have begun tracking hours of service in 2021.

The SECURE Act 1.0 permits employers to disregard 12-month periods beginning before January 1, 2021, for purposes of the three-year rule for long-term, part-time employees in 401(k) plans.

SECURE 2.0 Act of 2022 permits employers to disregard 12-month periods beginning before January 1, 2023, for purposes of the two-year rule for long-term, part-time employees (impacts ERISA 401(k) and ERISA 403(b) plans). 401(k) plan sponsors must comply with both.

Considerations and action items

How does my plan need to prepare for this mandatory change to improving coverage for part-time workers?

This is a new requirement for ERISA 403(b) plans and a modification of the requirements for 401(k) plans. While the requirements of Section 125 are, generally, effective for plan years beginning after January 1, 2024, it is important to begin taking steps to facilitate compliance.

Action now

Ensure you have the capabilities in place to track hours of service for employees. Please note that plan sponsors do not yet need to send tracked hours to TIAA; however, TIAA will provide more details regarding the data file transmission as we approach the effective date.

Action needed, as effective date approaches

Determine/modify eligibility tracking and payroll files and internal processes accordingly.

For ERISA 403(b) plan sponsors

Please note that the requirements of Section 125 for long-term, part-time employees apply in addition to the universal availability rule and notwithstanding exceptions to the rule.

The federal tax code allows a 403(b) plan to exclude certain employees, including: (i) employees who normally work less than 20 hours per week; (ii) students performing services described in IRC Section 3121(b)(10); (iii) nonresident aliens described in IRC Section 410(b)(3)(C); and (iv) employees who are eligible to make elective deferrals under another 401(k), 403(b) or 457(b) plan sponsored by the same employer. The SECURE 2.0 Act Section 125 does not address whether students who work more than 500 hours of service in two consecutive years can continue to be excluded under the federal tax code student exclusion. TIAA recommends plan sponsors work with their legal counsel to review the issue.

What plan document updates are required?

Plan amendments for SECURE 2.0 Act provisions are required by the last day of the first plan year beginning on or after January 1, 2025 (2027 in the case of governmental plans). Plan sponsors should consult with their legal counsel to ensure their plans are being operated in accordance with their terms, including any new requirements and to ensure their plans are timely amended.

- For plan sponsors using TIAA's plan document service, amendments for the SECURE 2.0 Act will be provided for both required provisions and optional features.
- For any plan sponsors using a plan document prepared by a service provider other than TIAA, they should consult with their document preparer to ensure any required amendments are provided in a timely manner. Coordination with service providers other than TIAA will be the plan sponsor's responsibility.
- ERISA plan sponsors will be required to provide a summary of material modifications or summary plan description (as applicable) to plan participants upon any amendment to the provisions of the plan.

Appendix

Does Section 125 apply to ERISA 403(b) plans?

Yes, the SECURE 2.0 Act expanded coverage to ERISA 403(b) plans. The requirement provides that the maximum allowable years for a service requirement is two years (with at least 500 hours of service) beginning in 2025.

How does Section 125 affect vesting?

For those who become plan eligible under this new rule for long-term, part-time employees, each 12-month period the employee has at least 500 hours of service is treated as a year of service for vesting purposes and is not treated as a one-year break in service. For 401(k) plans, service for 12-month periods beginning before January 1, 2021 (January 1, 2023, for 403(b) plans) is generally not required to be considered.

How does the long-term, part-time (LTPT) rule coordinate with the universal availability rule for 403(b) plans?

ERISA 403(b) plans are required to comply with both universal availability and the long-term, part-time rule, notwithstanding exceptions to the rule.

The federal tax code allows a 403(b) plan to exclude certain employees, including: (i) employees who normally work less than 20 hours per week; (ii) students performing services described in IRC Section 3121(b)(10); (iii) nonresident aliens described in IRC Section 410(b)(3)(C); and (iv) employees who are eligible to make elective deferrals under another 401(k), 403(b) or 457(b) plan sponsored by the same employer. The SECURE 2.0 Act Section 125 does not address whether students who work more than 500 hours of service in two consecutive years can continue to be excluded under the federal tax code student exclusion. TIAA recommends plan sponsors work with their legal counsel to review the issue.

If a plan sponsor allows all employees (with no exclusions) to make elective deferrals, the long-term, part-time rule should not practically impact the plan sponsor because the sponsor is not excluding anyone based on hours worked. Section 125 does impact years of service for eligibility and years of vesting service credited for any employer contributions (if applicable).

How does the LTPT rule effect the status of student teachers and/or seasonal workers?

The SECURE 2.0 Act amended ERISA to provide that ERISA-covered 401(k) and 403(b) plans are prohibited from requiring, as a condition of participation, a period of service extending beyond: (a) one year of service (using the 1,000-hour rule); or (b) two consecutive years of service where the employee completes at least 500 hours of service each year.

A 403(b) plan may not exclude employees based on a generic classification such as:

- Part-time
- Temporary
- Seasonal
- Substitute teacher
- Adjunct professor
- Collectively bargained employee

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The SECURE 2.0 Act provision does not address whether students who work more than 500 hours of service in two consecutive years can continue to be excluded under the federal tax code student exclusion.

An ERISA 403(b) plan must comply with both the Internal Revenue Code and ERISA rules simultaneously. Complying with both rules may result in employees who normally work less than 20 hours per week becoming eligible to make elective deferrals because they satisfy the ERISA “two consecutive years of service where the employee completes at least 500 hours of service each year” test.

401(a)/(k) plans may be able to exclude employees based on a job classification subject to annual nondiscrimination testing.

TIAA recommends plan sponsors consult with their legal counsel to determine if an exclusion is permissible.

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