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WHAT TO **LOVE (AND FEAR)** ABOUT SECURE 2.0 NOW

THE STAFFING CRISIS ISSUE

TRAINING, THE KEY TO RETENTION

401(K) OPERATIONAL ERRORS AND EPCRS


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Jeff Acheson, CPWA®, CFP®, CPFA™, AIF®, CEPA®, NQPA™ , CAPP™, runs his own advisory practice, Advanced Strategies Group, LLC. He is the current President-Elect of the ARA, a Past President of NAPA, and a co-author of NAPA's Nonqualified Plan Advisor (NQPA) designation program curriculum.

Brian Beatty is an ERISA attorney and partner with the law firm of McAfee & Taft in Oklahoma City, OK. He represents public, private, nonprofit and governmental employers in the design, implementation, operation and administration of qualified retirement plans and health and welfare plans.

Gary D. Blachman is a partner in the Chicago office of Ice Miller LLP. He is a member of the *Plan Consultant* Committee.

Lauren Bloom is an attorney who speaks and consults on business ethics. She previously served as General Counsel and Director of Professionalism at the American Academy of Actuaries.

Theresa Conti is the President of Sunwest Pensions in Tempe, AZ, a founding member of The Cerrado Group, and a member of the *Plan Consultant* Committee.

Megan Crawford, ERPA, QPA, is the Director of Sales and Marketing at Williams Benefit Consulting in Quincy, Il. She is a member of the *Plan Consultant* Committee.

Shannon M. Edwards, ERPA, QPA, QKC, QKA, is the President of TriStar Pension Consulting. She is a member of the ASPPA Leadership Council and the *Plan Consultant* Committee.

George Eknaian is a Consultant with BCG Pension Risk Consultants | BCG Penbridge (BCG).

Barbara Giesing, CPSP, SHRM-SCP, SPHR, is the owner of BAG HR Consulting with 30+ years of experience in all aspects of HR, working with small to global organizations. Barbara holds a Bachelor's in Journalism, News/Editorial Writing, a Master's in Public Affairs, is licensed as a SHRM-SCP and a SPHR, is a CPSP and certified in Small Business Management.

Amanda Iverson, CPA, MBA, PHR, SHRM-CP, APM, is the CEO of Pinnacle Plan Design. She is ASPPA's President-Elect.

Chad Johansen is a partner and the Director of Consulting at Plan Design Consultants, Inc. He is a frequent speaker on a range of industry-related topics and a co-host of the RETIREHOLI(K)S.

Steve Keating is the Managing Director at BCG Pension Risk Consultants | BCG Penbridge (BCG).

Brandon Long is an ERISA attorney and partner with McAfee & Taft who represents clients both regionally and nationally in all facets of employee benefits and executive compensation law.

Stan Prybe is of counsel in the Columbus, OH office of Ice Miller LLP. He focuses on executive compensation, qualified retirement plans, health and welfare plans, and benefits issues in mergers and acquisitions.

Sheryl Stucky, CPC, QKA, APA, is the Executive Vice President, Support at Actuarial Systems Corporation (ASC). With over 30 years of pension industry experience, her expertise includes all aspects of recordkeeping and compliance testing, as well as document and tax form preparation.

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READY FOR THE NEW LTPT EMPLOYEE RULES?

Through the lens of a software provider, here are some tips on preparing for the new long-term part-time employee rules. **By Sheryl Stucky**

I was a long-term part-time (LTPT) employee throughout high school, serving up fries at the local fast-food chain. Nothing teaches one patience like working across the counter from "hangry" people!

We have certainly needed patience as we've awaited guidance on the LTPT employee rules set forth in the SECURE Act. And what we asked for finally arrived in the form of SECURE 2.0, enacted on Dec. 29, 2022, though it was not exactly what we had hoped for. While we did receive clarification on the years of service counted for vesting, other questions remain unanswered, and new ones have arisen.

How does the current situaiton affect recordkeepers, TPAs and the software vendors that serve them? Of course, all recordkeeping, valuation and compliance testing system providers must update their software to properly reflect the LTPT employee requirements included in the two SECURE Acts. This will include updates to eligibility, allocation, vesting and compliance testing calculations, plus all system validations, reports and reconciliations.

At ASC, these efforts began with an analysis of the impacts by our ERISA attorneys, consultants, support staff and developers. The LTPT employee rules affect not only our valuation and compliance testing products, but also our plan document, Forms 5500 and CRM products.

Additionally, implementation of these enhancements requires thoughtful planning so as to create the least amount of disruption to users' continued operation of their plans. Timely guidance on unanswered questions is not expected to be forthcoming, making the task of producing timely updates even more difficult for software vendors. All service providers will be forced to make good-faith efforts to apply the rules in their services and software. Still, certain updates may be delayed as we await guidance.

RULES REFRESHER

The most important thing you can do right now to prepare for dealing with LTPT employees is educating yourself on the new rules. Here's a quick summary.

Effective for plan years beginning after 12/31/2020, 401(k) plans must include employees defined as LTPT employees, as outlined below. With the enactment of SECURE 2.0, LTPT employee rules also will apply to 403(b) plans for plan years beginning after 12/31/2024. Section 457 plans are excluded from the LTPT employee rules, as are union employees and nonresident aliens in all plans.

In the SECURE Act, LTPT employees were defined as those working at least 500 hours per year for a period of *three consecutive* 12-month periods. Years of service prior to the SECURE Act effective date are excluded (i.e., pre-2021 years). This means that for calendar year plans, the first date that LTPT employees will begin entering the plan is 1/1/2024. SECURE 2.0 reduces the consecutive years required for eligibility from three to two for plan years beginning after 12/31/2024.

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Service and benefit requirements

- LTPT employees must enter on the earlier of the first day of the first plan year after having met the eligibility requirements, or 6 months after having met the requirements. The age 21 eligibility requirement continues to apply.
- LTPT employees must be allowed to make salary deferrals into the plan. Plans may auto-enroll LTPT employees.
- Employers are not required to make employer, matching, safe harbor or top-heavy contributions on behalf of LTPT employees.
- Employees who subsequently earn 1,000 hours of service are no longer considered LTPT employees as of the first plan year beginning after the year in which they earn 1,000 hours.
- Break-in-service rules will be applied by substituting at least 500 hours of service for more than 500 hours.
- Guidance is needed regarding employees in an excluded class that would otherwise be determined to be LTPT employees. (Most analysts consider them to be excludable, yet this is not clear.)
- Guidance is needed regarding LTPT employee determination when plans amend eligibility provisions (e.g., from immediate entry to 1 year of service).
- Guidance is needed for plans using equivalencies rather than actual hours to clarify how the 500 hours is determined (e.g., can the regular equivalency hours be reduced for LTPT employee purposes?).
- Guidance is needed regarding plans that allow employees to make deferrals before otherwise required under the LTPT employee rules (e.g., immediate entry

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for salary deferrals for all employees) and whether such plans are exempt from the LTPT employee rules.

Compliance

- LTPT employees, even if they receive employer or matching contributions, are not required to be included in coverage and non-discrimination tests (410(b), 401(a)(4), BRF) or ADP/ACP tests *so long as they are participating solely because they are LTPT employees*.
- LTPT employees are subject to individual limits compliance tests, including 402(g), plan limits and 415(c) tests.
- Guidance is needed regarding the inclusion or exclusion of LTPT employees' balances in top-heavy testing. (Note that SECURE 2.0, effective with plan years beginning after 12/31/2023, now allows LTPT employees who would have been otherwise excludable to be excluded from the top-heavy minimum contribution rules, but not excluded from the top-heavy test.)
- Form 5500 participant counts include LTPT employees, unless further guidance clarifies otherwise.

Vesting requirements

- If plan sponsors choose to provide employer or matching contributions to LTPT employees, the law requires that they receive vesting credit for years in which they work at least 500 hours.
- Plans may exclude certain years for vesting purposes, such as years prior to age 18 or years prior to the plan's effective date.
- LTPT employees who move to full-time status apparently will continue to have vesting years determined under the 500 hours standard. (Note that the IRS needs to clarify this requirement.)
- The SECURE Act did not have pre-2021 service years specifically excluded for determining vesting service as was done for eligibility service. SECURE 2.0 now aligns the vesting service rule with the eligibility service rule (i.e., pre-2021 service is excluded). (Note that a technical correction may be needed for SECURE 2.0 regarding the first vesting crediting period as the language references the ERISA §202(a)(3)(A) regarding the eligibility computation period starting from the date of hire, rather than ERISA §203(b)(2)(A), which allows a fixed 12-month period (generally, the plan year) for the vesting computation period. Tracking vesting hours based on date of hire would be a significant burden for most administrators who track hours on a plan year basis.)

Action Plan

Here are suggestions for what to tackle next:

- Review your internal procedures to ensure that you are collecting the required hours data and entering it in your systems for year 2021 and forward, including for takeover plans.
- Communicate with your plan sponsors to reinforce their responsibility to report accurate hours for all employees, not just their full-time employees.
- Watch for updates to your software and participate in training to learn about the options that are available. You may or may not choose to take advantage of some options (e.g., testing options to include or exclude LTPT employees, LTPT employee status overrides if you don't have complete history, etc.).
- You may also want to analyze your client base to identify plans where the LTPT employee rules may have significant impact. Then take the opportunity to reach out to those plan sponsors to prepare them for plan design or enrollment changes in 2024.
- Finally, if you aren't using commercial software currently, now is a good time to explore what vendors can offer you regarding enhanced efficiency and accuracy in complying with the new regulations.

The goal of expanding retirement plan access for LTPT employees is an important one, providing an opportunity for more Americans to be one step closer to a secure retirement. Now, would my 16-year-old self have chosen to defer part of my paycheck into a 401(k) plan? Perhaps yes, if the voice of my dad, who started talking to me about college and retirement savings at age 12, ruled. Or perhaps no, if the latest pair of cool jeans at the mall proved irresistible. One thing that would have moved me, though, is a match. Even a 16-year-old understands free money! PC

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