

**LONG-TERM, PART-TIME EMPLOYEES IRS PROPOSED REGULATIONS
NOVEMBER 24, 2023**

Topic	What it Says	Specific Plan Document Requirements ¹	Notes and Comments
Definition of Long-Term, Part-Time Employees (LTPTs)	<p>LTPTs are employees who are eligible to participate in a 401(k) plan <u>solely by reason of having:</u></p> <ul style="list-style-type: none"> (1) Completed 2* consecutive 12-month periods during each of which the employee has at least 500 hours of service; AND (2) Reached age 21 by the last day of the 2* consecutive 12-month periods. <p>The following are excluded from LTPT status entirely:</p> <ul style="list-style-type: none"> • Union employees if retirement benefits were bargained; and • Nonresident aliens with no U.S.-source income. <p>Examples and Preamble Takeaways:</p> <ul style="list-style-type: none"> • An employee who becomes eligible for the plan by completing “any other service requirement” is not an LTPT. • To the extent a plan uses elapsed time for eligibility or has immediate eligibility, it will not have any LTPTs, but for elapsed time the plan may not require a waiting period longer than 12 months. <p>* For plan years beginning in 2024, the period is 3 years</p>	<p>No specific documentary requirement is stated, but any special vesting, testing and top heavy rules should be applied to the correct population.</p>	<p>This is important because it determines the population who is subject to all of the other rules (vesting and potential exclusion from testing and top heavy requirements).</p>

¹ Note that all of the relevant eligibility, vesting and other rules related to LTPTs must be in the plan document, but we have specifically called out provisions that are required by the regulations to be specifically stated within the plan.

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Determining Hours of Service	Existing rules apply in crediting hours of service. Plans may use: <ul style="list-style-type: none"> • Actual hours, or • An equivalency approved in DOL regulations: <ul style="list-style-type: none"> ○ 10 hours per day, ○ 45 hours per week, ○ 95 hours per semimonthly pay period, or ○ 190 hours per month. 	If using an equivalency, the specific equivalency to be used must be specified in the plan document.	

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Determining 12-Month Periods for Eligibility	<p>The first 12-month period taken into account must always be the employee’s first 12 months of employment. After that:</p> <ul style="list-style-type: none"> • The plan may use anniversary years from the date of hire, or • The plan may switch to using each plan year beginning after the hire date. <ul style="list-style-type: none"> ○ If the plan changes to the plan year, there will be overlapping service counted for the first 12 months of employment, and ○ The overlapping years would be considered “consecutive” for purposes of the LTPT rules. <p><u>Transition:</u> No 12-month period of service that began before 2021 is required to be counted. So, for all employees hired before 2021, a plan may count service beginning with a date on or after January 1, 2021.</p> <ul style="list-style-type: none"> • If the plan <u>does</u> count years beginning before 2021, and an employee becomes eligible <u>due to</u> using one or more of those years, they will <u>not be considered an LTPT</u> because they became eligible earlier than required under the statute. The employee is instead treated like a regular participant. 	<p>Changing to the plan year after the first 12 months of service is optional and would need to be specified in the document.</p> <p>Also, while not specified in the regulations, generally the eligibility service crediting rules should be set forth in the plan.</p>	<p>Note that if the eligibility computation period changes to the plan year, the plan may be able to use a single entry date, if desired. See section on “Entry Dates” below.</p>
Breaks in Service	<p>No specific break in service rules apply to counting years for LTPTs. However, the years they are credited with 500 hours must be consecutive for them to have LTPT status.</p>	<p>None</p>	

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Entry Dates	<p>Once someone meets the age and service requirements to become an LTPT, the usual 401(k) plan entry date rules apply. Therefore, entry must be on or before the earlier of:</p> <ul style="list-style-type: none"> • The first day of the next plan year following the date when the employee satisfied the eligibility requirements, or • 6 months after the employee met the eligibility requirements. <p>If the employee completes the service requirement but is not employed on the entry date, he must be eligible to defer immediately if later rehired.</p> <p>If the employee is not in an eligible class of employees on the entry date, but later moves to a covered position, he must be eligible to defer immediately upon transfer to the eligible position.</p>	<p>No specific documentary requirement is stated, but entry dates should be stated in the plan generally.</p>	<p>Note that the employee’s status as an LTPT upon either rehire or reclassification after the entry date must be determined based on <u>all</u> prior service, so if the employee had ever completed 1,000 hours in a year he would not be an LTPT but would be a regular participant.</p>
Eligibility Conditions other than Age and Service	<p>As under prior rules, plans may continue to have eligibility conditions based on employee positions or classifications that are not service-based, such as employment at a specified location.</p> <p>But, if an employee classification has the effect of imposing an age and/or service requirement, it will be subject to the LTPT rules.</p>	<p>None</p>	

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When an Employee Stops Being an LTPT	<p>An LTPT stops being an LTPT and becomes a “Former LTPT”:</p> <ul style="list-style-type: none"> • The first day of the plan year after the LTPT completes 1,000 hours of service in an eligibility computation period (without regard to entry dates); or • The first day of the plan year after the LTPT transfers to a classification of job that is not eligible for the plan, but only if the employee does not return to an eligible classification before the end of the year after the transfer to ineligible status. <p>The result of becoming a Former LTPT is that:</p> <ul style="list-style-type: none"> • The employee is no longer excluded from any plan testing rules; and • The employee remains subject to the special vesting rules described below. 	<p>No specific documentary requirement is stated, but any special vesting, testing and top heavy rules should be applied to the correct population.</p>	<p>Note that an employee does not have to continue earning 500 hours each year to remain an LTPT, once they initially become an LTPT.</p> <p>In addition, hours for LTPTs must be tracked each year on an ongoing basis to determine whether they have completed 1,000 hours in a year and ceased to be LTPTs.</p>

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When a Former LTPT Becomes an LTPT Again	<p>Once an LTPT completes 1,000 hours of service in a year, that employee will never again be considered an LTPT.</p> <p>If (i) an LTPT changes to a job classification that is not eligible for the plan, and then (ii) later returns to a position that is covered by the plan:</p> <ul style="list-style-type: none"> • The employee will return to LTPT status retroactively back to the beginning of the year in which the change in status occurs, unless the former LTPT has since completed 1,000 hours of service in a year; OR • If the Former LTPT has since completed 1,000 hours of service in a year, upon change in status the LTPT would be a regular participant and not an LTPT. <p>The result of a Former LTPT returning to LTPT status is that:</p> <ul style="list-style-type: none"> • The employee may again be excluded from plan testing rules. 	<p>No specific documentary requirement is stated, but any special vesting, testing or top heavy rules should be applied to the correct population.</p>	

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Restrictions a Plan may Impose on Deferral Elections for LTPTs who are not highly compensated	<p>To prevent plans from circumventing the LTPT eligibility requirements, the rules for safe harbor 401(k) plans regarding permitted restrictions on employee deferral elections apply to LTPTs who are nonhighly compensated (NHCEs).</p> <p>This means the only restrictions a plan may impose on those employees' deferral elections are as follows:</p> <ul style="list-style-type: none"> • The plan may limit the frequency and duration of periods when employees may make deferral elections, as long as employees have a reasonable opportunity to make or change elections each year; • The plan may require elections to be in percentages or whole dollar amounts; • The plan may cap the amount of deferrals employees may elect, as long as each employee may defer an amount that is enough to receiving the maximum matching contributions available under the plan; • The plan may limit the types of pay eligible for deferral, as long as the compensation definition is nondiscriminatory under Internal Revenue Code Section 414(s); and • The plan may limit deferrals as needed to meet annual contribution limits or military withdrawal suspensions. 	None	

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Vesting Rules for LTPTs	<p><u>LTPTs and Former LTPTs</u> (see “When an Employee Stops Being an LTPT”) must receive a year of vesting service for each 12-month vesting computation period in which they earn at least 500 hours of service, subject to the following:</p> <ul style="list-style-type: none"> • The plan may exclude vesting computation periods that began before 2021; • The plan may exclude vesting computation periods before the employee reached age 18; • The plan may exclude service before the original effective date of the plan; and • The plan may apply break in service rules allowed under existing guidance. <ul style="list-style-type: none"> ○ A break in service means the employee earns less than 500 hours in a vesting computation period. <p>This applies for all employer contribution types under the plan.</p>	<p>No specific plan terms are specified, but in general vesting rules and service crediting methods must be in the plan.</p>	<p>If an employee began participating as an LTPT, the special vesting rules continue to apply after the employee becomes a regular participant.</p> <p>See also “Determining Hours of Service” above.</p>

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12-Month Vesting Computation Periods	<p>For determining the vesting service of LTPTs and Former LTPTs, the plan may use any 12-month period that is permitted under the normal vesting rules. Examples:</p> <ul style="list-style-type: none"> • Calendar year • Plan year • Anniversary years from participant’s hire date 	<p>No specific plan terms are specified, but in general vesting rules and service crediting methods must be in the plan.</p>	<p>The IRS explicitly states that vesting computation periods do not have to be the same as eligibility computation periods for LTPTs.</p>
Employer Contributions for LTPTs	<p>No employer contributions are required for LTPTs, including 401(k) safe harbor contributions.</p> <p>If an employer does not want to make employer contributions for LTPTs, or wants to make different contributions for LTPTs than apply to other groups of participants, it may get relief from nondiscrimination testing issues by making the election to exclude them from testing as described below.</p> <p>If the employer does not elect to exclude the LTPTs from testing, it would need to consider testing ramifications related to any employer contribution design decisions for LTPTs.</p> <p>If elected as described below, LTPTs would also be excluded from top heavy minimum contributions.</p> <p>* SIMPLE plans must make employer contributions for LTPTs.</p>	<p>None specified, but the plan would potentially need to exclude LTPTs from contributions or provide for separate contributions.</p>	<p>This does not apply to Former LTPTs.</p>

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Exclusion from Testing and Top-Heavy	The relief from testing and top heavy rules for LTPTs described below applies to years when the participant is classified as an LTPT. Former LTPTs are subject to the normal testing and top heavy rules.	None	
Election to Exclude LTPTs from Nondiscrimination Rules	<p>An employer may choose to exclude LTPTs from all of the following statutory testing rules:</p> <ul style="list-style-type: none"> • General rules regarding nondiscrimination under 401(a)(4) (related to the amount of benefits and availability of benefits, rights and features); • ADP testing for 401(k) deferrals; • ADP safe harbor provisions; • ACP testing for matching contributions; • ACP safe harbor provisions; and • 410(b) minimum coverage testing. <p><u>All-or-nothing</u>: Either <u>all</u> LTPTs in the plan must be excluded for <u>all</u> of the above tests, or no LTPTs may be excluded from any of the tests.</p>	See election rules below.	LTPT status must be updated each year and Former LTPTs must be reclassified in order to ensure testing is performed correctly.

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Election Requirements	<p>In order to exclude LTPTs from the nondiscrimination testing rules, the employer must make an election.</p> <ul style="list-style-type: none"> • Safe harbor plans must set forth the election in the plan document and it must be adopted before the beginning of the year and remain in effect for the entire year. <ul style="list-style-type: none"> ○ The provision should explicitly exclude LTPTs from the safe harbor provisions as well as 401(a)(4), ADP testing, ACP testing and 410(b) testing. • Non-safe harbor plans do not have to include provisions excluding LTPTs from testing, but would need to contain language authorizing the employer to choose whether to exclude them or not. <p>The default is that LTPTs would be included in testing if a proper election to exclude them is not made.</p>	<p>A safe harbor plan must state the election in the plan document.</p> <p>A non-safe harbor plan must either state the exclusion in the plan, or authorize the election.</p>	

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Top-Heavy Provisions	<p>An employer may elect to exclude LTPTs for purposes of determining whether the plan meets the minimum vesting and contribution requirements for top-heavy plans.</p> <ul style="list-style-type: none"> • <u>All or nothing</u>: The election must apply to all LTPTs and both the vesting and contribution requirements of top heavy plans. • The election does not impact the determination of whether the plan is actually top-heavy, only the requirement to make contributions and provide accelerated vesting to LTPTs • If the employer elects to exclude LTPTs for nondiscrimination testing purposes, a safe harbor plan may still use the top-heavy exemption even though LTPTs are excluded from the safe harbor. 	<p>The plan must state that LTPTs are excluded from the top heavy vesting and contribution requirements.</p>	