

## Solo 401(k) Plans and the Long-Term, Part-Time Employee Rules

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Last month's article looked at the new long-term part-time employee (LTPTE) rules and the IRS's proposed regulations released in late November. This month's article looks at the impact of those LTPTE rules on owner-only ("Solo 401(k)") plans.

### The Rule

Part-time employees who have worked at least 500 hours for three consecutive 12-month periods (now known as "long-term part-time employees") generally must be allowed to participate in at least the deferral feature of most 401(k) plans. *Yes, this includes Solo 401(k) plans.*

### Impact on Plan Design

401(k) plans, including Solo 401(k) plans, can no longer have a service condition — including "disguised" service conditions like an exclusion of part-time employees or seasonal employees — that prevents an employee from making salary deferrals if he or she has worked at least 500 hours for three consecutive years. These long-term part-time employees must be allowed to make *salary deferrals* — the new rule does not require that LTPTEs be eligible for employer contributions. As discussed in last month's article, there are special rules regarding how these LTPTEs are treated for nondiscrimination testing and vesting. For most plans, LTPTEs need to be first enrolled on January 1, 2024.

### So – Will the plan still be a "Solo 401(k)"?

Maybe not. If the business owner does not have any other employees or doesn't have individuals who meet the LTPTE eligibility, then the LTPTE rules won't impact whether it is a Solo 401(k) plan. However, a Solo 401(k) plan that must begin allowing one or more LTPTEs to defer salary will no longer be a "Solo" plan. The eligibility of a LTPTE in even just the



deferral feature of a plan will change the plan from covering only an owner, partner, or spouse into a plan also covering an employee or employees. This means that the plan will now need to comply with ERISA reporting requirements (Form 5500), ERISA disclosure requirements, and ERISA fiduciary requirements. Plans will also need a fidelity bond.

Time is of the essence to ensure that your Solo 401(k) plan clients are aware of the LTPTE rules and have identified and addressed the impact on their plans. Now is a great time to reach out to your Solo 401(k) clients and work with your TPA partner to ensure impacted plans remain in compliance.

### Reminders

- **January 01, 2024:** First day that long-term part-time employees needed to be enrolled in salary deferrals for most plans.
- **February 14 2024:** Celebrate Valentine's Day and ensure plan sponsors are showing love to their plan participants by distributing quarterly benefit statements to participants in participant-directed defined contribution plans.
- **February 28, 2024:** Deadline for filing a non-electronically-filed Form 1099-R with the IRS for 2023 distributions.