



MEMORANDUM

TO: Participating employers in the NC 401(k) Plan

FROM: North Carolina Department of State Treasurer

DATE: September 29, 2023

RE: Eligibility of long-term, part-time employees for the NC 401(k) Plan

As you may know, the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019 (SECURE 1.0) and the SECURE 2.0 Act of 2022 (SECURE 2.0) expanded 401(k) plan eligibility for certain long-term, part-time (LTPT) employees. A plan sponsor cannot require “as a condition of participation” in a 401(k) plan that an employee work more than 500 hours for each of three consecutive 12-month periods on or after January 1, 2021 (for SECURE 1.0) or two consecutive 12-month periods on or after January 1, 2023 (for SECURE 2.0). A LTPT employee must be at least 21 years old prior to the end of the applicable two-year or three-year waiting period. Therefore, LTPT employees become eligible to participate in 401(k) plans as early as January 1, 2024 under SECURE 1.0 and January 1, 2025 under SECURE 2.0.

However, uncertainty remains about whether the LTPT employee eligibility requirements are relevant to the NC 401(k) Plan. As you know, eligibility for the NC 401(k) Plan is not conditioned on the number of hours worked by an employee; instead, it is based on membership in certain defined benefit plans (e.g., TSERS, LGERS), participation in UNC’s Optional Retirement Program (ORP), or status as a law enforcement officer (LEO).

It is unclear whether SECURE 1.0 and 2.0 create a new path to eligibility for the NC 401(k) Plan – one based on the number of hours worked by an employee – *in addition to* the three current eligibility groups. In other words, are the SECURE 1.0 and 2.0 requirements inapplicable to the NC 401(k) Plan because the number of hours worked is not a “condition of participation” in the plan? Or do these SECURE 1.0 and 2.0 requirements apply to the NC 401(k) Plan and create a new group of eligible employees (in addition the three current groups of pension members, ORP participants, and LEOs)? The latter approach would lead to additional compliance and operational requirements for the plan and its participating employers.

The uncertainty in this regard requires clarification from the U.S. Treasury Department and the Internal Revenue Service (IRS). Unfortunately, the Treasury Department and IRS have yet to issue any guidance on the LTPT employee eligibility requirements in SECURE 1.0 and 2.0.



North Carolina Total Retirement Plans



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We had hoped for IRS guidance prior to January 1, 2024, but the lack of guidance to date means that the Department and participating employers face continued regulatory uncertainty regarding the application and implementation of the LTPT employee eligibility requirements. Therefore, pending guidance to the contrary, the Department has decided that the LTPT employee eligibility requirements are not relevant to the NC 401(k) Plan because eligibility for the plan does not require a certain number of work hours as a “condition of participation;” instead, eligibility for the plan is based solely on membership in a certain group (i.e., pension member, ORP participant, or LEO).

Therefore, at this time, there is no action required by participating employers regarding LTPT employees.

However, it is possible that future federal regulations or guidance may lead to the application of the LTPT employee eligibility requirement to the NC 401(k) Plan. So, we recommend that you continue tracking the hours of your part-time employees for which payment is made through payroll and reported on Form W-2.

Finally, please know that the Department is exploring ways to expand eligibility for the NC 401(k) Plan to all employees – both part-time and full-time – in a manner that does not require significant implementation costs for the plan or for participating employers. Such a change would increase the retirement opportunities for your employees and make eligibility for the NC 401(k) Plan more consistent with eligibility for the NC 457 Plan.