

| 401Ks for Non-Full Time Workers

What should a company consider when thinking about its not full time employees and their retirement plan?

According to the Bureau of Labor Statistics of the 150 million Americans who are employed, roughly 21 million of them work less than full time and the majority of those do so for non-economic reasons. And, many of those non-full time employees may be eligible for your company's retirement plan. But including and excluding employees from plans takes a careful eye. Here are a few things to consider in working with your clients and their concerns about part-time employees. These considerations should include those who work for a client part-time but regularly, and those who work for a client full-time but only seasonally.

First, according to both IRS and DOL policies, the maximum hourly requirement for an employee to be included in a plan is 1000. Stated a different way, an employee can be excluded from a retirement plan if they work less than 1000 hours a year. To put that in perspective, if an employee works 20 hours a week and takes two weeks of vacation, they will (under normal circumstances) have worked 1000 hours (assuming vacation is not paid or calculated as "working time").

That rule is also calendar year specific. If an employee works less than 1000 hours in one year, but worked more than that in prior years, then, under DOL rules, they may be excluded from the plan in the year where they failed to work 1000 hours.

But those are the rules for excluding, not including, an employee. That is, employers may want to include workers who fail to meet the 1000-hour threshold in their plans for a variety of reasons. Some employers see including part-time workers in 401ks as an incentive to recruit employees. Other employers may want to include workers who don't meet the full 1000 hours because of the seasonality of their work (for

example, employers serving retail-based customers, restaurant owners involved in resort locations, or those in agriculturally-related industries).

Some employers include those working less than 1000 hours to capture interns and students they may want to retain or turn into full time employees. However those interns or working students must be over the age of 21 and must also have at least a year of service to the company to qualify for inclusion in a 401k.

A key point in working with non-full time employees is that to be included in 401k plans, the worker must be classified as an employee. That means consultants and independent contractors are not qualified. 401k plans must be for the benefit of "employees". Some companies have added their contractors to the employee rolls as hourly employees, rather than salaried, so that they can be included in benefits such as health care and 401ks.

Other employers have set up a company sponsored IRA for contractors, most notably among them, Uber.

What should a company consider when thinking about its not full time employees and their retirement plan? The tax consequences, both beneficial and non, of including more employees in the plan should definitely be considered. Other considerations include whether expanding inclusion of employees makes administration of the plan easier. For example, if there are a number of employees who may qualify or are near the 1000 hour per year mark, expanding the requirement to capture more employees may reduce your client's compliance costs. How? If the cost of monitoring how many hours an employee works and whether that will push that employee to the 1000 hour mark is more than the administrative cost of adding employees who work less

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than 1000 hours, then dipping the requirement for enrollment below 1000 hours, say to 900, may save money solely by saving time in monitoring. Additionally, accidentally excluding an eligible employee because of a miscalculation in their hours can result in enforcement action. Corrective contributions, or make-up payments, must be made on the employees' behalf if they are excluded incorrectly. Additionally, some corrective actions for failing to include eligible employees can result in plan disqualification.

Before deciding to include more part-time workers in the plan, a company should carefully consider how it words the change in its plan document so that it does not inadvertently exclude classifications of employees. Doing so could result in investigation or other measures. A client should confer with their legal counsel before they make any such changes and even better, while they are considering expanding their plan. ■