



News & Types: Employment, Labor & Benefits Update

# Your Part-Time Employees May Be Eligible For Your Company's 401(k) Plan

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## EXECUTIVE

## SUMMARY

Although part-time employees are not likely eligible for a company's group health plan because they work fewer than the 25 or 30 hours per week required by most group health plans, these same part-time employees may be eligible to enroll in a company's 401(k) plan if they work at least 19 hours per week in a 12-month period which equals the 1,000 hours per year maximum service requirement. When part-time employees are improperly excluded from a company's 401(k) plan, they are not given an opportunity to make elective deferrals into the plan or receive any company matching contributions.

When this common issue occurs, companies correct the error by making a contribution to the plan on behalf of each improperly excluded part-time employee (adjusted for earnings) and paying a compliance fee to the Department of Treasury under the Employee Plans Compliance Resolution System ("EPCRS"). A company's corrective contribution will generally be based on the pre-approved methods under EPCRS for correcting for both full-year and partial-year exclusions. By correcting under EPCRS, companies receive a compliance statement from the IRS agreeing to correction methodology thereby relieving the company of any stress and fear of sanctions related to any future IRS plan audit.

Many companies cover full-time employees (those who regularly work 25 or 30 hours per week) in their group health plan while often excluding part-time employees from group health plan participation. In contrast to this common exclusion under group health plans, these very same part-time employees may be eligible to enter a 401(k) plan, make elective deferrals, and receive company matching contributions.

This is because 401(k) plans do not make distinctions based on "full-time" or "part-time" employment. Instead, 401(k) plans use minimum age and service requirements in order to determine which employees are eligible to enter the plan. For 401(k) plans, because the maximum permissible service requirement is 1,000 hours in a 12-month period, a part-time employee need only work on average 19 hours per week (1,000 hours/52 weeks) in order to meet the service requirements needed to participate in a 401(k) plan. By excluding part-time

employees from plan participation, the plan is not being operated in accordance with its written terms, subjecting the plan to monetary sanctions and potential disqualification if audited by the IRS.

**Action Steps:** We recommend that all companies review their 401(k) plan's eligibility requirements in order to confirm the plan's minimum age, service requirements, and plan entry dates. These eligibility requirements are found in the adoption agreement issued by the plan provider. By comparing the plan's eligibility requirements to the company's part-time employee census, companies will quickly be able to determine if one or more of their part-time employees have been improperly excluded from plan participation. If part-time employees have been improperly excluded, we recommend correcting the error under EPCRS. Because EPCRS was established to encourage employers to voluntarily correct plan errors, clients should not fear participating in this IRS-supported program. Finally, because MFEM has filed many corrections on behalf of our clients, we can help answer correction questions and/or prepare the submission.