



Are Rehires Immediately Eligible for our 401(k) Plan?

Facts

We just rehired an employee that used to work for us but who terminated almost 4 years ago. She was eligible for our 401(k) plan during her previous tenure but took a distribution of her account shortly after she left.

Question

When does this employee become eligible for the plan again? Immediately on her rehire date or does she have to satisfy our plan's eligibility requirements (age 21 and 1 year of service) again? Is there a statute of limitations on a terminated participant's eligibility for the plan?

Answer

All very good questions, as figuring out how to deal with rehired employees can be quite confusing. Since the answer is the all-too-typical "it depends," it's no wonder.

The short answer is that unless an exception applies, you must always consider a rehired employee's past service with your company (or a [related company](#)) when determining her eligibility date after coming back on board. So, what does it depend on? There are two possible exceptions, and we need to look at your plan document to know whether they apply to your plan.

The Rule of Parity

This rule simply states that a rehired employee's service prior to her prior date of termination can be disregarded if *all three* of the following requirements are met:

- The employee was a participant in the plan during her previous employment.

Note that being an employee is a participant if she has satisfied the eligibility requirements even if she is not actively contributing or receiving benefits.

- She was 0% vested in all contribution sources at the time of termination.

We know what you may be wondering, and the answer is yes. If the employee deferred at all during her first tenure, then this requirement is blown right out of the gate since deferrals are always 100% vested. The same is true if she received any safe harbor contributions.

- The employee has been terminated long enough for there to be 5 consecutive breaks in service.

A break in service is generally a 12-month plan year during which the employee works fewer than 501 hours. For a full-time employee that's about 3 months, so depending on when in the year she initially terminated, her first break in service might not occur until the following plan year.



One Year Holdout Rule

This rule states that you can temporarily ignore a rehired person's prior service until she completes 1 year of service (generally 1,000 hours within 12 months) following rehire date. Once completed, all pre-termination service is reinstated retroactively of her rehire date.

Suffice it to say that the prospect of retroactive service crediting and eligibility creates more than a few compliance challenges. For that reason, it is very rare that we see a plan that includes the one year holdout rule.

Beyond these, there is no statute of limitations on recognizing past service.

Application to the Facts

Since very few plans include the one year holdout rule, we will assume yours is the same. The facts presented make it clear that the rule of parity is not going to come into play either. There are two reasons – one is that your rehired employee was only gone for 4 years, and the second is that you mentioned her taking a distribution before. That means she could not have been 0% vested.

Since we now know that there are no exceptions that apply here, we turn back to the general rule that all previous service must be recognized immediately. Since the employee in question was a plan participant before she terminated, she will rejoin the plan immediately on her rehire date.

For more information on plan eligibility and rehires (including some examples of how to determine when a rehire joins the plan), please visit our Knowledge Center [here](#) and [here](#).



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