



Rehires

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What's Ahead

- Service Counting
- Eligibility Computation
- General Rehire Rules
- Break In Service Rules
- Vesting
- Buyback and Forfeiture Restoration Rules
- Other



Year of Service - Counting Hours

- 12-month Computation Period (CP) in which EE has at least 1,000 Hours of Service(HOS)
- No requirement to be employed on a particular day
- No requirement to be employed at beginning or end of CP
 - No requirement to work 12 months
 - 12-month period during which 1,000 HOS are completed



Year of Service - Example

- YOS = Calendar Year
- Katie's DOH = 2/1/15
- Katie works 160 hours per month
- Katie quits 9/1/15
- Credited with 1,120 HOS through term date
- Katie is credited with a YOS at end of 2015 12-month computation period



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Date for Crediting YOS

- Plan Year = Calendar Year
- Entry date is 1/1 or 7/1 "coinciding with" or next following completion of one YOS
- Anna hired 1/2/15
- Does Anna enter on 1/1 or 7/1 of 2016?
 - If YOS credited on 1/1/15, that's coincident with entry date
 - If YOS credited on 1/2/15, then next entry date is 7/1/15



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Hour of Service

- Hour for which EE is paid for performance of duties
- Hour for which EE is paid for non-performance of duties (i.e., vacation or sick pay)
- Hour for which EE receives an award for back pay



Credit for Nonperformance

- Some reasons for pay for nonperformance:
 - Vacation
 - Holiday
 - Illness including disability
 - Layoff
 - Jury duty
 - Military duty
 - Leave of absence
- Does not matter whether the employment relationship has terminated at the time of payment



Limits on Nonperformance Credit

- Don't have to credit more than 501 HOS for any given CP for paid nonperformance
- No need for credits for payments under a plan to comply with:
 - Workers' compensation
 - Unemployment compensation
 - Disability insurance laws
- These are credited hours and differ from unpaid maternity/paternity absences (hours credited to avoid a BIS)



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Credit for Nonperformance

- Pat works 950 HOS
- Pat takes a two-week leave of absence (80 hours)
- Pat has 1,030 HOS



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No Double Counting

- Double credit is not given for the same time
- Pat has 970 HOS
- Pat gets paid for one week of **unused** vacation
- Is Pat credited with 970 or 1,010 HOS?



Counting HOS

- Two options for counting HOS
 - Count actual hours
 - Easy to do for workers paid by the hour
 - Time cards work well
 - Nearly impossible for salaried professionals
 - Use equivalency
- Plan document must specify method being used



Available Equivalencies

- Working hours
 - Disregard nonperformance hours
 - 870 working hours = one YOS
- Regular hours
 - Disregard nonperformance and overtime
 - 750 regular hours = one YOS
- Earnings method
 - Divide compensation by lowest hourly pay rate



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Available Equivalencies (Cont'd)

- Employment period method
 - 1 day = 10 HOS
 - 1 week = 45 HOS
 - ½ month = 95 HOS
 - 1 month = 190 HOS
 - 1 shift = entire length of shift



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Eligibility Computation Period (ECP)

- 12-month period used to determine if EE has YOS for eligibility purposes
- First ECP – always starts with Date of Hire (DOH) and ends 12 months later
- Subsequent ECPs – plan choice:
 - Based on anniversary of DOH
 - Shifting to plan year
 - Most plans shift to plan year



Date of Hire

- Date of first hour of service
 - Generally, as employee (not contractor)
 - Leased or worksite EE – First day perform HOS for ER
 - Controlled or affiliated service group – first day of service for any group member



Odd Result

- CY plan has YOS requirement with quarterly entry
- Shift to PY for eligibility
- John (rehire):
 - May 2013 – August 2013: 430 hours
 - Rehired August 2014
 - January 1 – December 31, 2014 – 950 hours
 - January 1 – December 31, 2015: if 1,000 hours enters on January 1, 2016



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Odd Result (Cont'd)

- Yoko (new hire)
 - Hired August 2014
 - Yoko has one YOS in August 2015 and enters on October 1, 2015
- The result John and Yoko (re)hired on the same date but Yoko enters earlier than John



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Elapsed Time Method

- Based on period of time that elapses while EE is employed
- Period of service
 - Starts on DOH
 - Ends on “severance from service” date = earlier of date of severance or one year after a leave of absence
- Period of severance
 - Starts on the “severance from service” date
 - Ends when employee returns to service



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Elapsed Time Method (Cont'd)

- Service spanning rule
 - If employee returns to work within one year, then must be credited with that year
 - Period of severance can also be period of service
- One-year period of service for eligibility is anniversary of employment date
 - Fractional years count
 - 30 days = month or can use 365 days
- Break in Service (BIS) = a period of severance that isn't counted as a period of service



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Elapsed Time Example

- Al has following employment history:
 - Hired 3/1/2013
 - Quits 10/1/2013
 - Rehired 1/1/2014
 - Quits 2/1/14
 - Rehired 12/1/2014
- Al has two periods of service as of 3/1/2014
 - Did not have one-year break



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Other Rules

- If ER maintains predecessor ER's plan, the plan must count service with the predecessor ER
- If ER does not maintain predecessor ER's plan, the plan may credit predecessor employer service on a nondiscriminatory basis



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Other Rules

- If controlled/affiliated service group exists, plan must treat service with any group member as service with the ER
- If a multiple employer plan (MEP) must count service with all adopting employers



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Break In Service

- 12-month computation period in which EE is credited with no more than 500 HOS
- May occur for eligibility purposes or vesting purposes
- If using elapsed time method of crediting service, a BIS is a 12-month period of severance



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Service Counting - General

- BIS rules only way to disregard service
- Example:
 - Jen works five years for ABC, Inc. as union EE
 - ABC, Inc.'s plan excludes union employees
 - Jen has five YOS
 - Same result if working for foreign company
- Must count service for before plan established or before participant enters plan



Maternity/Paternity Leave

- For purposes of determining BIS only, plan must count unpaid hours for:
 - EE's pregnancy
 - Birth of EE's child
 - Placement of an adopted child with EE
 - Child care by EE starting right after birth
- Limited to enough hours to prevent a BIS in current year (or next year if no actual BIS in current year)



Eligibility BIS Rules

- Allows you to disregard service
 - Temporarily or permanently
- Otherwise must count prior service
- Three rules
 - Two-YOS eligibility rule
 - One-year holdout rule
 - Rule of Parity (five BIS)



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Two-YOS Eligibility Rule

- Only applies to plans using two-YOS eligibility condition
 - Requires full vesting
- Plan can require completion of two YOS without intervening BIS



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One-Year Holdout Rule

- If EE has BIS, then not required to count prior service until EE completes one YOS after rehire
- Situation:
 - EE enters plan
 - Terminates employment
 - Incurs BIS
 - Rehired
- Retroactive entry to reemployment commencement date or, if later, first day of ECP that EE completes 1,000 HOS



One-Year Holdout Rule

Date	Event
January 1, 2011	Hired
December 31, 2011	Credited with one YOS
January 1, 2012	Enters plan
May 15, 2012	Quits (700 HOS)
December 31, 2013	Credited with one year BIS
August 14, 2015	Rehired
March 1, 2016	Completes 1,000 HOS after rehire, enters retroactively to August 14, 2015



One-Year Holdout Rule - Downside

- May have to give retroactive contributions
 - Including top-heavy
- Unusable for elective deferrals
 - How can you defer retroactively?
 - IRS does not believe the rule can be used for elective deferrals
- Only permanently keeps out part-time rehires or those who leave soon after rehire



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Rule of Parity

- Only applies to ***non-vested*** participants
- Can treat rehired EE as new EE if consecutive BIS at least equal the greater of:
 - five, or
 - YOS prior to BIS
- If participant has five or fewer YOS, then must have five BIS
- If participant has > five YOS, then must have BIS = to number of YOS (rarely applies because if five YOS, then at least partially vested)



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Parity BIS Eligibility Example

Date	Event
January 1, 2008	Hired
January 1, 2009	Enters Plan
November 1, 2009	Quits with two YOS; no vesting
December 31, 2010	First one-year BIS
December 31, 2014	Fifth one-year BIS
August 1, 2015	Rehired; must satisfy current eligibility requirements and pass entry date to enter plan again



One-Year Holdout Rule - Downside

- May have to give retroactive contributions
 - Including top-heavy
- Unusable for elective deferrals
 - How can you defer retroactively?
 - IRS does not believe the rule can be used for elective deferrals
- Only permanently keeps out part-time rehires or those who leave soon after rehire



Counting Hours Examples

- For following examples:
 - Plan document counts all service
 - Plan year = Calendar year
 - Eligibility
 - One year of service; 1,000 hours
 - Age 21
 - Quarterly Entry Dates
 - Eligibility computation period
 - First year on anniversary of hire
 - Plan year switch thereafter



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Counting Hours – Example 1

Employee	Action	Date
Phil	Date of Hire (DOH)	February 5, 2014
Phil	Achieved 1,000 hours	August 5, 2014
Phil	12 months of service	February 4, 2015
Phil	Date of Term (DOT)	March 23, 2015
Phil	Date of Rehire (DOR)	November 2, 2015

Phil satisfied the eligibility requirements on February 4, 2015

- Phil severs before the entry date
- No BIS
- When is Phil eligible to enter the plan?



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Counting Hours – Example 2

Employee	Action	Date
Gloria	Date of Hire (DOH)	February 5, 2014
Gloria	Achieved 1,000 hours	August 5, 2014
Gloria	12 months of service	February 4, 2015
Gloria	Date of Term (DOT)	March 23, 2015
Gloria	Date of Rehire (DOR)	November 2, 2017

Gloria satisfied the eligibility requirements on February 4, 2015

- Gloria severs before the entry date
- There is a BIS
- When is Gloria eligible to enter the plan?



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Counting Hours – Example 3

Employee	Action	Date
Jay	Date of Hire (DOH)	February 5, 2014
Jay	Achieved 1,000 hours	August 5, 2014
Jay	12 months of service	February 4, 2015
Jay	Date of Term (DOT)	March 23, 2015
Jay	Date of Rehire (DOR)	November 2, 2017

Jay satisfied the eligibility requirements on February 4, 2015

- Jay severs before the entry date
- There is a five-year BIS
- When is Jay eligible to enter the plan?



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Counting Hours – Example 4

Employee	Action	Date
Mitchell	Date of Hire (DOH)	July 31, 2014
Mitchell	Achieved 1,000 hours	January 25, 2015
Mitchell	Date of Term (DOT)	February 16, 2015
Mitchell	Date of Rehire (DOR)	May 4, 2015
Mitchell	12 Months of Service	July 30, 2015

Mitchell satisfied the eligibility requirements on July 30, 2015

- Mitchell is rehired before anniversary of DOH
- When is Mitchell eligible to enter the plan?



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Counting Hours – Example 5

Employee	Action	Date
Claire	Date of Hire (DOH)	July 31, 2014
Claire	Achieved 1,000 hours	January 25, 2015
Claire	Date of Term (DOT)	February 16, 2015
Claire	Date of Rehire (DOR)	September 17, 2015

Claire completed 1,000 hours in six months

- Claire severed in 7th month
- Claire rehired 1½ months after anniversary of DOH
- When is Claire eligible to enter the plan?



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Counting Hours – Example 6

Employee	Action	Date
Lily	Date of Hire (DOH)	July 31, 2014
Lily	Achieved 1,000 hours	January 25, 2015
Lily	Date of Term (DOT)	February 16, 2015
Lily	Date of Rehire (DOR)	October 26, 2018

Lily completed 1,000 hours in six months

- Lily severed in 7th month
- Lily rehired after more than two 1-year BIS
- When is Lily eligible to enter the plan?



Counting Hours – Example 7

Employee	Action	Date
Cam	Date of Hire (DOH)	July 31, 2014
Cam	Achieved 1,000 hours	January 25, 2015
Cam	Date of Term (DOT)	February 16, 2015
Cam	Date of Rehire (DOR)	December 10, 2022

Cam completed 1,000 hours in six months

- Cam severed in 7th month
- Cam rehired after more than five 1-year BIS
- When is Cam eligible to enter the plan?



Counting Hours – Example 8

Employee	Action	Date
Manny	Date of Hire (DOH)	May 15, 2012
Manny	DOT with 687 HOS	December 8, 2012
Manny	Date of Rehire (DOR)	July 30, 2013
Manny	2013 Plan Year = 283 Hours	At December 31, 2013
Manny	2014 Plan Year = 1,215 Hours	At December 31, 2014

- When is Manny eligible to enter the plan?



Elapsed Time – Example 1

Employee	Action	Date
Haley	Date of Hire (DOH)	April 15, 2014
Haley	Date of Term (DOT)	October 26, 2014
Haley	Date of Rehire (DOR)	January 10, 2015
Haley	Anniversary of DOH	April 15, 2015

Plan has one year eligibility, quarterly entry dates

- When is Haley eligible to enter the plan?



Elapsed Time – Example 2

Employee	Action	Date
Luke	Date of Hire (DOH)	April 30, 2014
Luke	Date of Term (DOT)	November 11, 2014
Luke	Anniversary of DOH	April 29, 2015
Luke	Date of Rehire (DOR)	June 20, 2015

Plan has one year eligibility, quarterly entry dates

- When is Luke eligible to enter the plan?



Elapsed Time – Example 3

Employee	Action	Date
Alex	Date of Hire (DOH)	May 30, 2014
Alex	Date of Term (DOT)	September 6, 2014
Alex	Date of Rehire (DOR)	December 1, 2014
Alex	Date of Term (DOT)	February 15, 2015
Alex	Anniversary of DOH	May 29, 2015
Alex	Date of Rehire (DOR)	June 20, 2015

Plan has one year eligibility, quarterly entry dates

- When is Alex eligible to enter the plan?



Vesting Computation Period

- May be any 12-month period specified in plan
- Most plans use the plan year as the computation period



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Additional Rules for Vesting

- May exclude service (subject to plan provisions):
 - Prior to age 18
 - Prior to initial effective date or predecessor plan
 - During which mandatory employee contributions are not made



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Additional Rules for Vesting (Cont'd)

- After five BIS, future service is excluded in determining vesting of prior contributions
 - Plans provide for forfeiture after five BIS so vested percentage of existing account will not increase
 - This rule does not affect vesting of future contributions



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Forfeiture

- May be earlier of distribution of vested interest in plan or five BIS
 - Requires buy-back provisions
- May be after five BIS regardless of whether distribution is made
 - Requires full vesting if plan is terminated before participant has five BIS



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Buy-Back Provisions

- Applies if employee receives distribution due to termination of participation in plan and plan forfeits non-vested interest
 - Repayment must be made by earlier of
 - Five years after re-employment
 - Five BIS
- Deemed cash-out of \$0 = deemed repayment of \$0 if rehired before repayment period ends



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Buy-Back Provisions (Cont'd)

- No guidance requiring notification of buy-back rights (other than in SPD)
- Buy-back
 - May be made with:
 - After-tax amount
 - Rollover
 - No adjustment for earnings unless DB Plan
 - 401(k) plan may require payment of elective contributions



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Buy-Back - Example

- Tom terminates June 1, 2013
- 60% vested
- Receives cash distribution
 - \$12,000 deferrals
 - \$6,000 from match account (\$10,000 in account)
 - \$12,000 from NEC account (\$20,000 in account)
- Tom was rehired September 1, 2015
 - How much does Tom have to repay to buy back the forfeited amount?



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Forfeiture Restoration

- Can use current year forfeitures
- Employer must contribute



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Rehired Employees and Distributions

- Example:
 - Plan allows distributions upon termination of employment
 - Plan does not permit in-service distributions
 - Robert quits July 15, 2011
 - Robert is rehired June 1, 2015
 - Robert requests distribution on June 2, 2015 claiming he was entitled to a termination distribution
- IRS has informally indicated that the plan could refuse to make distribution



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Rehired Employees and Distributions

- Example:
 - Terminated participant requests 15 annual installments, receives first installment on January 1, 2014
 - Rehired July 10, 2015
 - Do installments stop?
 - Law is silent, check plan document
 - May be OK, but based only on funds in plan as of termination, (not new contributions after rehire)



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Automatic Enrollment – Special Rules

- EACA – refund available 90 days from first automatic deferral
 - If no automatic deferrals for entire PY then treat as new participant
 - New 90 day withdrawal right based on next automatic deferral



Automatic Enrollment – Special Rules (Cont'd)

- QACA – escalation of automatic deferral based on year of initial automatic deferral
 - If no automatic deferrals for entire PY then treat as new participant
 - QACA escalation starts all over
- Rules are not limited to re-hired employees



Other Special Rules

- Is new SPD required to be distributed to a rehire?
 - Yes, if SPD modified prior to rehire date, and the updated SPD has not already been furnished
 - If there was a brief period (i.e. 30 days) between a participant's term date and rehire date, must a new SPD be distributed?
 - Yes, if rehire had taken a distribution of entire vested benefit, then treated as a new participant at rehire for SPD purposes
 - Based on 2004 question from ABA to DOL



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Other Special Rules

- A non-5% owner terminates employment, reaches RBD and starts RMDs. Two years later is rehired.
 - May RMDs be stopped?
 - RMD regulations are silent
 - Safe approach for non-5% owner would be to NOT stop RMDs
 - IRS agreed at 2010 ASPPA Annual Q&A session that circumstances at initial retirement would control for RMD purposes



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