

117TH CONGRESS
2D SESSION

S. 3751

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to improve retirement plan coverage for part-time workers.

IN THE SENATE OF THE UNITED STATES

MARCH 3, 2022

Mr. CASEY (for himself and Mr. SCOTT of South Carolina) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to improve retirement plan coverage for part-time workers.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. IMPROVING COVERAGE FOR PART-TIME WORK-**
4 **ERS.**

5 (a) AMENDMENTS TO EMPLOYEE RETIREMENT IN-
6 COME SECURITY ACT OF 1974.—

7 (1) IN GENERAL.—Section 202 of the Employee
8 Retirement Income Security Act of 1974 (29 U.S.C.

1 1052) is amended by adding at the end the following
 2 new subsection:

3 “(c) SPECIAL RULE FOR CERTAIN PART-TIME EM-
 4 PLOYEES.—

5 “(1) IN GENERAL.—A pension plan that in-
 6 cludes either a qualified cash or deferred arrange-
 7 ment (as defined in section 401(k) of the Internal
 8 Revenue Code of 1986) or a salary reduction agree-
 9 ment (as described in section 403(b) of such Code)
 10 shall not require, as a condition of participation in
 11 the arrangement or agreement, that an employee
 12 complete a period of service with the employer (or
 13 employers) maintaining the plan extending beyond
 14 the close of the earlier of—

15 “(A) the period permitted under subsection
 16 (a)(1) (determined without regard to subpara-
 17 graph (B)(i) thereof); or

18 “(B) the first 24-month period—

19 “(i) consisting of 2 consecutive 12-
 20 month periods during each of which the
 21 employee has at least 500 hours of service;
 22 and

23 “(ii) by the close of which the em-
 24 ployee has attained the age of 21.

1 “(2) EXCEPTION.—Paragraph (1)(B) shall not
 2 apply to any employee described in section 410(b)(3)
 3 of the Internal Revenue Code of 1986.

4 “(3) COORDINATION WITH OTHER RULES.—

5 “(A) IN GENERAL.—In the case of employ-
 6 ees who are eligible to participate in the ar-
 7 rangement or agreement solely by reason of
 8 paragraph (1)(B):

9 “(i) EXCLUSIONS.—An employer may
 10 elect to exclude such employees from the
 11 application of subsections (a)(4), (k)(3),
 12 (k)(12), (k)(13), (k)(15)(B)(i)(I), and
 13 (m)(2) of section 401 of the Internal Rev-
 14 enue Code of 1986 and section 410(b) of
 15 such Code.

16 “(ii) TIME OF PARTICIPATION.—The
 17 rules of subsection (a)(4) shall apply with
 18 respect to such employees.

19 “(B) TOP-HEAVY RULES.—An employer
 20 may elect to exclude all employees who are eligi-
 21 ble to participate in a plan maintained by the
 22 employer solely by reason of paragraph (1)(B)
 23 from the application of the vesting and benefit
 24 requirements under subsections (b) and (c) of

1 section 416 of the Internal Revenue Code of
2 1986.

3 “(4) 12-MONTH PERIOD.—For purposes of this
4 subsection, 12-month periods shall be determined in
5 the same manner as under the last sentence of sub-
6 section (a)(3)(A), except that 12-month periods be-
7 ginning before January 1, 2022, shall not be taken
8 into account.”.

9 (2) VESTING.—Section 203(b) of the Employee
10 Retirement Income Security Act of 1974 (29 U.S.C.
11 1053(a)) is amended by redesignating paragraph (4)
12 as paragraph (5) and by inserting after paragraph
13 (3) the following new paragraph:

14 “(4) PART-TIME EMPLOYEES.—For purposes of
15 determining whether an employee who is eligible to
16 participate in a qualified cash or deferred arrange-
17 ment or a salary reduction agreement under a plan
18 solely by reason of section 202(c)(1)(B) has a non-
19 forfeitable right to employer contributions—

20 “(A) except as provided in subparagraph
21 (B), each 12-month period for which the em-
22 ployee has at least 500 hours of service shall be
23 treated as a year of service;

24 “(B) paragraph (3) shall be applied by
25 substituting ‘at least 500 hours of service’ for

1 ‘more than 500 hours of service’ in subpara-
 2 graph (A) thereof; and

3 “(C) 12-month periods occurring before
 4 the 24-month period described in section
 5 202(c)(1)(B) shall not be treated as years of
 6 service.

7 For purposes of this paragraph, 12-month periods
 8 shall be determined in the same manner as under
 9 the last sentence of section 202(a)(3)(A), except that
 10 12-month periods beginning before January 1, 2022,
 11 shall not be taken into account.”.

12 (b) CONFORMING AMENDMENT TO INTERNAL REV-
 13 ENUE CODE OF 1986.—Section 410(a) of the Internal
 14 Revenue Code of 1986 is amended by adding at the end
 15 the following new paragraphs:

16 “(6) SPECIAL RULE FOR CERTAIN PART-TIME
 17 EMPLOYEES.—

18 “(A) IN GENERAL.—In the case of a plan
 19 that includes either a qualified cash or deferred
 20 arrangement (as defined in section 401(k)), a
 21 trust of which such plan is a part shall not con-
 22 stitute a qualified trust under section 401(a) if
 23 the plan requires, as a condition of participa-
 24 tion in the plan or arrangement, that an em-
 25 ployee complete a period of service with the em-

1 ployer (or employers) maintaining the plan ex-
 2 tending beyond the close of the earlier of—

3 “(i) the period permitted under para-
 4 graph (1) (determined without regard to
 5 subparagraph (B)(i) thereof), or

6 “(ii) the first 24-month period—

7 “(I) consisting of 2 consecutive
 8 12-month periods during each of
 9 which the employee has at least 500
 10 hours of service, and

11 “(II) by the close of which the
 12 employee has attained the age of 21.

13 “(B) EXCEPTION.—Subparagraph (A)(ii)
 14 shall not apply to any employee described in
 15 subsection (b)(3).

16 “(C) COORDINATION WITH OTHER
 17 RULES.—

18 “(i) IN GENERAL.—In the case of em-
 19 ployees who are eligible to participate in
 20 the arrangement or agreement solely by
 21 reason of subparagraph (A)(ii)—

22 “(I) EXCLUSIONS.—An employer
 23 may elect to exclude such employees
 24 from the application of subsection (b)
 25 and of subsections (a)(4), (k)(3),

1 (k)(12), (k)(13), (k)(15)(B)(i)(I), and
2 (m)(2) of section 401.

3 “(II) TIME OF PARTICIPATION.—

4 The rules of paragraph (4) shall apply
5 with respect to such employees.

6 “(ii) TOP-HEAVY RULES.—An em-
7 ployer may elect to exclude all employees
8 who are eligible to participate in a plan
9 maintained by the employer solely by rea-
10 son of subparagraph (A)(ii) from the appli-
11 cation of the vesting and benefit require-
12 ments under subsections (b) and (c) of sec-
13 tion 416.

14 “(D) 12-MONTH PERIOD.—For purposes of
15 this paragraph, 12-month periods shall be de-
16 termined in the same manner as under the last
17 sentence of paragraph (3)(A), except that 12-
18 month periods beginning before January 1,
19 2022, shall not be taken into account.

20 “(7) PART-TIME EMPLOYEES.—For purposes of
21 determining whether an employee who is eligible to
22 participate in a qualified cash or deferred arrange-
23 ment or a salary reduction agreement under a plan
24 solely by reason of paragraph (6)(A)(ii) has a non-
25 forfeitable right to employer contributions—

1 “(A) except as provided in subparagraph
 2 (B), each 12-month period for which the em-
 3 ployee has at least 500 hours of service shall be
 4 treated as a year of service,

5 “(B) section 411(a)(6) shall be applied by
 6 substituting ‘at least 500 hours of service’ for
 7 ‘more than 500 hours of service’ in subpara-
 8 graph (A) thereof, and

9 “(C) 12-month periods occurring before
 10 the 24-month period described in paragraph
 11 (6)(A)(ii) shall not be treated as years of serv-
 12 ice.

13 For purposes of this paragraph, 12-month periods
 14 shall be determined in the same manner as under
 15 paragraph (6)(D).”.

16 (c) PRE-2021 SERVICE.—Section 112(b) of the Set-
 17 ting Every Community Up for Retirement Enhancement
 18 Act of 2019 (26 U.S.C. 401 note) is amended by striking
 19 “section 401(k)(2)(D)(ii)” and inserting “paragraphs
 20 (2)(D)(ii) and (15)(B)(iii) of section 401(k)”.

21 (d) EFFECTIVE DATE.—The amendments made by
 22 this section shall apply to plan years beginning after the
 23 date which is 1 year after the date of the enactment of
 24 this Act.

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