

The impact of Leased Employees regarding your Qualified Pension Plan

The definition of a leased employee is any individual “who performs services for another person or entity (the recipient) under an arrangement between the recipient and a third person or entity (the leasing organization) who is otherwise treated as the individual’s employer.” The services that are performed by the individual must be under the direction or control of the recipient.

When it comes to determining, for qualified plans, who is the actual “employer” of the leased employee the IRS has established that “a leased employee is treated as the recipient’s employee **IF** the leased employee has performed services for the recipient pursuant to an agreement with the leasing organization on a substantially full-time basis for a period of at least one year and the services are performed under the primary direction or control of the recipient.”

One factor that can be used to determine whether an individual is under the primary direction or control of the service recipient is whether or not the individual is subject to the direct supervision of the recipient and whether any services performed by the individual are done so in a manner dictated by the recipient.

Of particular importance is the leased employee is treated as the recipient’s employee after performing services for the recipient for a period of one year. Once this stipulation has been met, the leased employee’s total service for the recipient, for purposes of eligibility, entry, allocation and vesting, include the whole period for which the leased employee performed services on behalf of the recipient.

However, simply because the leased employee is treated as the recipient’s employee does not mean that the leased employee (or any other employee) must be eligible to participate in a qualified plan sponsored by the recipient. Leased employees can be excluded so long as the minimum coverage requirement of IRC 410(b) and, if applicable, the minimum participation requirement of IRC 401(a)(26), are satisfied. Leased employees are considered for testing as either “current” or “former” employees who have or are currently participating in a qualified plan sponsored by the recipient. Simply declaring the employees to be “leased” does not preclude them from eligibility for participation.

For a leased employees to NOT be considered employees of the recipient the following requirements must be met: 1) Leased employees DO NOT constitute more than 20% of the recipients non-highly compensated workforce and EACH leased employee is covered by a qualified Money Purchase pension plan maintained by the leasing organization, 2) the Money Purchase plan must provide for immediate participation, 3) the Money Purchase plan must provide full and immediate vesting, and 4) the Money Purchase plan must provide a non-integrated contribution equal to 10% or more of compensation.

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