

# The Rehire Headache

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# Agenda

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Basic rehire rules

Forfeiture reinstatement after rehire

More rehire fun!



# General Rules

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- For new hires or rehires, all service is considered, including:
  - Service before the ESOP was in place
  - Service while in an excluded class of employees
- For rehires, a “break in service” rule is the only way to disregard prior service



# Polling Question 1

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Calendar year plan requires 1 Year of Service for entry– 1000 hours in a 12- month eligibility computation period. Semiannual entry. Joe is hired 1/1/23, works 1700 hours, and quits from exhaustion on 8/1/23. Joe is rehired on 2/1/24. When does he join the ESOP?

- a. Never
- b. 2/1/24
- c. 7/1/25



## Polling Question 2

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Same as above, except the ESOP isn't created until 1/1/24. When does Joe join the new ESOP?

- a. Never
- b. 2/1/24
- c. 7/1/25



# Polling Question 3

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After joining the ESOP, Joe quits in 2024 when his account is 40% vested. He receives a lump sum distribution in 2025. Joe is rehired in 2026 and wants the Plan Administrator to restore the prior amount forfeited to his account. Is that possible?

- a. Yes
- b. No
- c. Maybe



# Handling Rehires

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- Plan Administrator reports employees who are rehires
- Plan Administrator/TPA maintain rehire records - prior service periods and hours worked history
- Determine if a rehired employee previously satisfied all age and service requirements
- Determine if the Plan document has eligibility break in service rules that would permit prior service to be disregarded temporarily or permanently



# If No Break in Service Rules

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Fact Pattern	Entry
Previously met age and service requirements; previous plan participant	Immediately at rehire
Previously met age and service requirements, no entry data at prior date of employment termination	Immediately at rehire (or original entry date if later)
Already met service requirement but not the age requirement	At rehire, or following attainment of minimum age, if later
Did not previously satisfy the service requirement	Entry date following completion of the service requirement





# Measuring Service

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Check plan document provisions

- Determine if the ESOP is measuring service using the actual hours method or elapsed time method
- Measure first eligibility period from date of hire to one year anniversary
- Check plan rules for shifting to a different measuring period (plan year) if service requirement not met initially
- Plan document may have them start over at rehire date



# Elapsed Time Method-Beware!

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- Elapsed time method tracks time that elapses while employed, starting with date of hire and ending with severance from service
- Period of severance starts on the severance from service date and ends when employee returns to service
- Tricky service spanning rule
  - If employee returns to work within 1 year, then employee must be credited with service for that year



# Break In Service Rules

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- One Year Holdout Rule for those who enjoy a headache
- Rule of Parity
- Two Year Eligibility Break

To use a break in service rule, it must be in the Plan

- Generally, for a plan tracking actual hours for eligibility, a 1-year break in service (BIS) is a 12-month period during which an employee does not complete more than 500 hours of service – check Plan provisions



# One Year Holdout Rule

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If employee has a BIS, don't count prior service until employee completes another Year of Service after rehire

- First computation period runs from date of reemployment to first anniversary
- If requirement not met, shift to plan year or anniversary year, depending on what the Plan dictates
- Meeting the requirement results in retroactive entry, which may require a corrective contribution for the prior plan year



# Example

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Plan requires 1 Year of Service (1000 hours in 12-month computation period); calendar year plan,

1/1/2023	Date of hire
1/1/2024	Date of entry
5/15/2024	Quits after working 800 hours in 2024
12/31/2025	Has 1 BIS
8/1/2026	Rehired
3/1/2027	Completes 1000 hours of service after rehire; retroactively enters plan on 8/1/2026

This is generally NOT worth the administrative hassle unless many rehires work part time or stay for very short periods of time before leaving again



# Rule of Parity

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- Applies only to nonvested (0% vested) participants
- Treat rehired employee as a new employee if employee has consecutive BIS equal to the greater of
  - 5
  - Years of Service prior to BIS (this would rarely apply)



# Two Year Eligibility Break

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- Applies to plan with a 2 Years of Service requirement – very rare in ESOPs because a participant must become fully vested after completing the service requirement
- If a break in service occurs before the second year is completed, employee loses credit for the first year and starts over



# Restoration of Accounts

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- Plan will include “buy back” provisions for the participant who quits, receives a distribution of his vested benefit and forfeits the nonvested portion of his account
- For restoration of the nonvested portion:
  - Employee repays distribution by the earlier of 5 years after reemployment or 5 BIS (not all plans require repayment)
  - Nonvested participant who previously forfeited 100% of his account has a deemed cash-out of \$0, deemed repayment of \$0





# Mechanics

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- Plan will define amount to restore – generally restoration with no gain/loss
- Plan will define sources for restoration – current year forfeiture carve out and/or contribution



# Don't Forget Prior Service for Other Items

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- Rehires can also keep credit for prior years of vesting service earned and years of participation for diversification, if not excluded under the Rule of Parity
- If the plan uses a points formula, prior service may also be included for points
- If there was a 5 year BIS, new service does not increase the vesting on any existing pre-break in service balance

# More Fun!

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## Fact Pattern 1:

- Joe quits on 7/1/23
- Joe receives distribution – Installments 1 & 2 of 5 annual payments
- Joe is rehired and wants to continue his installment payouts



# Even More Fun!

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## Fact Pattern 2

- Contributions are allocated to participants who complete 1000 hours of service in a plan year & are employed on last day of plan year; requirements waived if terminating employment after Normal Retirement Age (NRA)
- Joe retires 12/31/24 and receives a 2024 contribution due to the waiver
- Joe is rehired 6/1/25 and leaves again on 10/31/25
- Can he retire twice for waiver purposes?



# Takeaways

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- Always check the plan document for the details
- If the plan document is not clear, discuss and put together written clarification for future reference
- Watch out for employees who switch from ineligible to eligible employment classifications
- Each rehire needs to be looked at separately depending on their unique situation

# Questions?

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