

§ 1.410(a)-9

§ 1.410(a)-9 Maternity and paternity absence.

(a) *Elapsed time*—(1) *Rule*. For purposes of applying the rules of § 1.410(a)-7 (relating to the elapsed time method of crediting service) to absences described in sections 410(a)(5)(E) and 411(a)(6)(E) (relating to maternity or paternity absence), the severance from service date of an employee who is absent from service beyond the first anniversary of the first day of absence by reason of a maternity or paternity absence described in section 410(a)(5)(E)(i) or 411(a)(6)(E)(i) is the second anniversary of the first day of such absence. The period between the first and second anniversaries of the first day of absence from work is neither a period of service nor a period of severance. This rule applies to maternity and paternity absences beginning on or after the first day of the first plan year in which the plan is required to credit service under sections 410(a)(5)(E) and 411(a)(6)(E).

(2) *Example*. The rules of this section are illustrated by the following example:

Assume an individual works until June 30, 1986; is first absent from employment on July 1, 1986, on account of maternity or paternity absence; and on July 1, 1989, performs an hour of service. The period of service must include the period from employment commencement date until June 30, 1987 (one year after the date of separation for any reason other than a quit, discharge, retirement, or death). The period from July 1, 1987, to June 30, 1988, is neither a period of service nor a period of severance. The period of severance would be from July 1, 1988, to June 30, 1989.

(b) *Other methods*. This paragraph provides a safe harbor for plans that compute years of service under the hours of service methods or permitted equivalencies. Such a plan will be treated as satisfying the requirements of sections 410(a)(5)(E) and 411(a)(6)(E) if the plan increases the minimum period of consecutive 1-year breaks required to disregard any service (or deprive any employee of any right) by one. Thus, a plan will satisfy sections 410(a)(5)(E) and 411(a)(6)(E) without having to compute service for maternity or paternity and sections 410(a)(5)(D) and 411(a)(4)(D) and (a)(6)(C), by increasing the period of

26 CFR Ch. I (4-1-11 Edition)

consecutive breaks-in-service from 5 to 6.

[T.D. 8219, 53 FR 31852, Aug. 22, 1988; 53 FR 48534, Dec. 1, 1988]

§ 1.410(a)-9T Elapsed time (temporary).

(a)-(b) [Reserved]

(c) *Eligibility to participate*.

(1) [Reserved]

(2) *Determination of one-year period of service*.

(i) [Reserved]

(ii) For purposes of section 410(a)(1)(B)(i), a “2-year period of service” shall be deemed to be “2 years of service.”

(d) *Vesting*—(1) *General rule*.

(i)-(iii) [Reserved]

(iv) For purposes of determining an employee's nonforfeitable percentage of accrued benefits derived from employer contributions, a plan, after calculating an employee's period of service in the manner prescribed in this paragraph, may disregard any remaining less than whole year, 12-month or 365-day period of service. Thus, for example, if a plan provides for the statutory three to seven year graded vesting, an employee with a period (or periods) of service which yields 3 whole year periods of service and an additional 321-day period of service is twenty percent vested in his or her employer-derived accrued benefits (based solely on the 3 whole year periods of service).

[T.D. 8170, 53 FR 239, Jan. 6, 1988]

§ 1.410(b)-0 Table of contents.

This section contains a listing of the major headings of §§ 1.410(b)-1 through 1.410(b)-10.

§ 1.410(b)-1 Minimum coverage requirements (before 1994).

- (a) In general.
- (b) Coverage tests.
 - (1) Percentage test.
 - (2) Classification test.
- (c) Exclusion of certain employees.
 - (1) Bargaining unit.
 - (2) Air pilots.
 - (3) Nonresident aliens.
- (d) Special rules.
 - (1) Highly compensated.
 - (2) Discrimination.
 - (3) Multiple plans.
 - (4) Profit-sharing plans.

Internal Revenue Service, Treasury

§ 1.410(b)-0

- (5) Certain classifications.
- (6) Integration with Social Security Act.
- (7) Different age and service requirements.
- (i) Application.
- (ii) General rule.
- (8) Certain controlled groups.
- (9) Transitional rule.
- (e) Example.

§ 1.410(b)-2 Minimum coverage requirements (after 1993).

- (a) In general.
- (b) Requirements with respect to employees.
 - (1) In general.
 - (2) Ratio percentage test.
 - (i) In general.
 - (ii) Examples.
 - (3) Average benefit test.
 - (4) Certain tax credit employee stock ownership plans.
 - (5) Employers with no nonhighly compensated employees.
 - (6) Plans benefiting no highly compensated employees.
 - (7) Plans benefiting collectively bargained employees.
- (c) Requirements with respect to former employees.
 - (1) Former employees tested separately.
 - (2) Testing former employees.
- (d) Nonelective contributions under section 403(b) plans.
- (e) Certain governmental and church plans.
- (f) Certain acquisitions or dispositions.
- (g) Additional rules.

§ 1.410(b)-3 Employees and former employees who benefit under a plan.

- (a) Employees benefiting under a plan.
 - (1) In general.
 - (2) Exceptions to allocation or accrual requirement.
 - (i) Section 401(k) and 401(m) plans.
 - (ii) Section 415 limits.
 - (iii) Certain employees treated as benefiting.
 - (iv) Section 412(i) plans.
 - (3) Examples.
- (b) Former employees benefiting under a plan.
 - (1) In general.
 - (2) Examples.

§ 1.410(b)-4 Nondiscriminatory classification test.

- (a) In general.
- (b) Reasonable classification established by the employer.
- (c) Nondiscriminatory classification.
 - (1) General rule.
 - (2) Safe harbor.
 - (3) Facts and circumstances.
 - (i) General rule.
 - (ii) Factual determination.
 - (4) Definitions.
 - (i) Safe harbor percentage.

- (ii) Unsafe harbor percentage.
- (iii) Nonhighly compensated employee concentration percentage.
- (iv) Table.
- (5) Examples.

§ 1.410(b)-5 Average benefit percentage test.

- (a) General rule.
- (b) Determination of average benefit percentage.
- (c) Determination of actual benefit percentage.
- (d) Determination of employee benefit percentages.
 - (1) Overview.
 - (2) Employee contributions and employee-provided benefits disregarded.
 - (3) Plans and plan years taken into account.
 - (i) Testing group.
 - (ii) Testing period.
 - (4) Contributions or benefits basis.
 - (5) Determination of employee benefit percentage.
 - (i) General rule.
 - (ii) Plans with differing plan years.
 - (iii) Options and consistency requirements.
 - (6) Permitted disparity.
 - (i) In general.
 - (ii) Plans which may not use permitted disparity.
 - (7) Requirements for certain plans providing early retirement benefits.
 - (i) General rule.
 - (ii) Exception.
- (e) Additional optional rules.
 - (1) Overview.
 - (2) Determination of employee benefit percentages as the sum of separately determined rates.
 - (i) In general.
 - (ii) Exception from consistency requirement.
 - (iii) Permitted inconsistencies.
 - (3) Determination of employee benefit percentages without regard to plans of another type.
 - (i) General rule.
 - (ii) Restriction on use of separate testing group determination method.
 - (iii) Treatment of permitted disparity.
 - (4) Example.
 - (4) Simplified method for determining employee benefit percentages for certain defined benefit plans.
 - (i) In general.
 - (ii) Simplified method.
 - (5) Three-year averaging period.
 - (6) Alternative methods of determining compensation.
- (f) Special rule for certain collectively bargained plans.

§ 1.410(b)-6 Excludable employees.

- (a) Employees.
 - (1) In general.

§ 1.410(b)-0

- (2) Rules of application.
- (b) Minimum age and service exclusions.
 - (1) In general.
 - (2) Multiple age and service conditions.
 - (3) Plans benefiting certain otherwise excludable employees.
 - (i) In general.
 - (ii) Testing portion of plan benefiting otherwise excludable employees.
 - (4) Examples.
- (c) Certain nonresident aliens.
 - (1) General rule.
 - (2) Special treaty rule.
- (d) Collectively bargained employees.
 - (1) General rule.
 - (2) Definition of collectively bargained employee.
 - (i) In general.
 - (ii) Special rules for certain employees in multiemployer plans.
 - (iii) Covered by a collective bargaining agreement.
 - (iv) Examples.
- (e) Employees of qualified separate lines of business.
- (f) Certain terminating employees.
 - (1) In general.
 - (2) Hours of service.
 - (3) Examples.
- (g) Employees of certain governmental or tax-exempt entities.
 - (1) Plans covered.
 - (2) Employees of governmental entities.
 - (3) Employees of tax-exempt entities.
- (h) Former employees.
 - (1) In general.
 - (2) Employees terminated before a specified date.
 - (3) Previously excludable employees.
 - (i) Former employees treated as employees.

§ 1.410(b)-7 Definition of plan and rules governing plan disaggregation and aggregation.

- (a) In general.
- (b) Separate asset pools are separate plans.
- (c) Mandatory disaggregation of certain plans.
 - (1) Section 401(k) and section 401(m) plans.
 - (2) ESOPs and non-ESOPs.
 - (3) Plans benefiting otherwise excludable employees.
 - (4) Plans benefiting certain disaggregation populations of employees.
 - (i) In general.
 - (ii) Definition of disaggregation population.
 - (5) Additional rules for plans benefiting employees of more than one qualified separate line of business.
- (d) Permissive aggregation for ratio percentage and nondiscriminatory classification tests.
 - (1) In general.
 - (2) Rules of disaggregation.
 - (3) Duplicative aggregation.

26 CFR Ch. I (4-1-11 Edition)

- (4) Special rule for plans benefiting employees of a qualified separate line of business.
- (5) Same plan year requirement.
- (e) Determination of plans in testing group for average benefit percentage test.
 - (1) In general.
 - (2) Example.
- (f) Section 403(b) plans.

§ 1.410(b)-8 Additional rules.

- (a) Testing methods.
 - (1) In general.
 - (2) Daily testing option.
 - (3) Quarterly testing option.
 - (4) Annual testing option.
 - (5) Example.
- (b) Family member aggregation rule.

§ 1.410(b)-9 Definitions.

Collectively bargained employee.
Defined benefit plan.
Defined contribution plan.
Employee.
Employer.
ESOP.
Former employee.
Highly compensated employee.
Highly compensated former employee.
Multiemployer plan.
Noncollectively bargained employee.
Nonhighly compensated employee.
Nonhighly compensated former employee.
Plan year.
Plan year compensation.
Professional employee.
Ratio percentage.
Section 401(k) plan.
Section 401(l) plan.
Section 401(m) plan.

§ 1.410(b)-10 Effective dates and transition rules.

- (a) Statutory effective dates.
 - (1) In general.
 - (2) Special statutory effective date for collective bargaining agreements.
 - (i) In general.
 - (ii) Example.
 - (iii) Plan maintained pursuant to a collective bargaining agreement.
- (b) Regulatory effective dates.
 - (1) In general.
 - (2) Plans of tax-exempt organizations.
- (c) Compliance during transition period.
- (d) Effective date for governmental plans.

[T.D. 8363, 56 FR 47641, Sept. 19, 1991; 57 FR 10954, Mar. 31, 1992, as amended by T.D. 8487, 58 FR 46838, Sept. 3, 1993; T.D. 8548, 59 FR 32914, June 27, 1994; T.D. 9275, 71 FR 41359, July 21, 2006]