



qualified pension professionals, inc.
specializing in the administration of 401(k) plans

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HERE'S THE SCOOP ON LEASED EMPLOYEES

The term “leased employee” may not sound familiar or sound like it applies to your qualified plan, but leased employees can have a big impact on your plan’s operation and compliance with participation and nondiscrimination rules. If you use an employment agency or temporary employees, you need to be aware of how leased employees may affect your plan.

WHAT IS A LEASED EMPLOYEE?

An individual is treated as a leased employee under IRC §414(n) if he/she meets the following criteria:

1. The individual must be performing services as part of an agreement between a recipient employer and a leasing organization. The recipient employer pays the leasing organization a fee for the individual’s services.
2. The individual must perform services for the recipient employer on a substantially full-time basis for at least one year. Substantially full-time is defined as 1,500 hours during a 12-month period. If the job position the individual is filling would normally require less hours in a 12-month period, substantially full-time would be 75% of the typical hours worked during a 12-month period, but must be at least 500 hours.
3. The individual must be under the primary direction of the recipient employer. This may include supervision of tasks performed, as well as control over what, where, and how those duties are performed.
4. The individual must be a common law employee of the leasing organization.

Once a temporary employee or staffing agency employee satisfies these conditions, he/she must be treated as a leased employee.

HOW CAN LEASED EMPLOYEES AFFECT MY PLAN?

A leased employee must be treated as an employee of the recipient employer for all qualified plan purposes. This includes:

- All of the individual’s service is counted for plan purposes. The time worked as a leased employee is counted for eligibility service and vesting service.
- The leased employee is counted as an employee for purposes of nondiscrimination testing under §§401(k), 401(m), and 401(a)(4) and applying the coverage rules under §410(b).
- The leased employee is included in compliance with the top heavy rules under §416.

If you have leased employees, the only way to prevent them from participating is to specify in the Plan Document that they are excluded. Leased employees must be included in the testing, but they may be excluded from participating and receiving plan contributions IF the required testing passes.

The only way to determine whether leased employees will cause your plan’s testing to fail is to review your complete census, including leased employees, and determine whether or not the plan satisfies the coverage rules. You must report all employees and temporary employees on the annual census in order for QPPI to prepare accurate coverage and nondiscrimination testing for your plan. Failure to include leased employees when you are required to jeopardizes your plan’s qualified status.

This article is only intended to provide general information. It does not offer legal or tax advice, or profess to treat all of the issues surrounding any one topic.



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I USE A STAFFING AGENCY – WHAT DO I NEED TO DO?

1. In general, if you use temporary employees you need to include them on your annual census data. Report these individuals every year, providing the following:
 - a. the initial service date (hire date as a leased employee),
 - b. termination date (if applicable, date he/she stopped performing services),
 - c. hire date as a common law employee (if you hire him/her directly and stop going through the staffing agency),
 - d. all hours the individual works performing services for you (both as a leased employee and/or as a common law employee)
 - e. gross compensation – if the individual must be allowed to participate and accrue benefits, you will need to report the gross pay he/she received each year. This is the amount paid to the individual, not the amount you paid to the leasing organization.
 - f. contributions – if the individual must be allowed to participate and accrue benefits, you will need to report all contributions (401(k) deferrals and employer contributions) made on the individual's behalf. If the individual participates in a plan sponsored by the staffing agency, you need to report the amounts of those contributions – they count in the testing for your plan.

If leased employees are specifically excluded in your plan document, items e and f do not need to be reported unless there is a failure satisfying the coverage rules.

Even if you fully expect that the temporary employees will never perform services long enough to be treated as leased employees, please report them now. If they aren't reported, we can't help you monitor them and that can result in errors and subsequently qualification failures.

2. Contact QPPI if there is a significant change in the number of leased employees you utilize or in the number of your common law employees. Although we monitor the inclusion/exclusion of leased employees annually based on the census data you provide each year, it is important that you notify QPPI when you become aware of impending changes that will affect the census. The coverage rules are based on a ratio of eligible employees. If you hire/terminate a large group of employees or leased employees that could change your plan's testing results. It is always ideal to plan ahead for such changes so that you have the most flexibility, rather than dealing with the changes afterwards when your options may be very limited.

MONITOR AND REPORT NOW TO AVOID CORRECTIONS LATER

This explanation highlights the main components of the leased employee rules. Your individual facts and circumstances, as well as your census, will determine how the leased employee rules apply to your specific plan. Leased employees may not interfere at all with your intentions for who should benefit under your plan, but the only way to help prevent unpleasant surprises and/or required corrections and contributions is to make sure your census is complete and includes everyone who performed services for your company each year. Please contact QPPI if you are concerned that you may have leased employees or have questions about how they may impact your plan.

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