

# Are You Excluding Part-Time Employees From Your 403(b) Plan?

By: Alex Mattingly on December 19, 2018 on [graydon.law](http://graydon.law)

Employers that sponsor a 403(b) plan generally must allow all employees to participate in the plan due to the universal availability rule. There are limited exceptions for certain categories of employees that may be excluded, one of which is the exclusion of “part-time employees” who normally work less than 20 hours per week. Under the regulations issued by the IRS in 2007, an employee will only be deemed to be a part-time employee if the three following conditions are met:

1. First Year: the employer reasonably expects the new employee to work fewer than 1,000 hours of service in the employee’s first 12 months of employment.
2. Preceding Year: the employee actually worked fewer than 1,000 hours of service in the preceding 12 month period.
3. Once-In-Always-In (“OIAI”): an employee cannot have met the prior two conditions *in any plan year*. In other words, the OIAI condition is not met if an employee had been expected to work 1,000 hours of service in his or her first year of employment, or had ever worked 1,000 hours of service for the employer in a plan year.

The IRS recently acknowledged in a [Notice](#) that many employers have only partially been complying with these requirements, and is providing temporary relief for past and future years so that plans can become compliant. All 403(b) plan sponsors should be aware of this Notice and make sure they are correctly operating their plan, and if not, make sure they make the necessary corrections before the end of the Notice’s designated relief period. The IRS is recognizing that many employers have been correctly applying the first year and preceding year exclusion conditions, but have failed to apply the OIAI exclusion condition. The IRS is now providing transition relief and will provide a fresh-start opportunity for all employers that have met the first two requirements but failed to meet the OIAI requirement.

Under this relief, a plan will not be treated as failing to satisfy the conditions of the part-time exclusion because it has failed to operate in compliance with the OIAI exclusion condition for plan years beginning after December 31, 2008 until plan years ending December 31, 2019. But starting with plan years beginning January 1, 2020, all 403(b) plans must comply with the OIAI exclusion condition. For plans that have improperly excluded participants in the past, the IRS is providing a “fresh-start opportunity” and the OIAI

exclusion condition will be applied as if the condition first became effective January 1, 2018. The result of this fresh-start opportunity is that employers can classify employees as part-time employees for 2018 and any year after if the employee was excluded from participating in the plan in 2018, the employee was not a new employee that was expected to work more than 1,000 hours (in 2018 or any following year), and the employee should not have been included in the plan because the employee worked 1,000 hours in 2017 or any year following.