QRP Update

ascend 2019

Learning Objectives

- Review recent regulatory and other guidance
- Discuss enacted and proposed legislative developments
- Examine litigation that may affect qualified retirement plans

EPCRS Changes

VCP Changes and Clarifications

VCP Submission

Filing
Must file using www.pay.gov as of April 1, 2019

Deficient Submissions
No compliance statement issued, possible refund of user fee

Complete Submissions
IRS may issue compliance statement without contacting plan sponsor

Materially Modified Submissions
New penalty of perjury statement or signed compliance statement

Other Changes/Clarifications

403(b) Plans

Apply corrective amendments to pre-approved 403(b) plans

SCP

Available to 403(b) plans with favorable letters

Penalty

Premature distributions amount plan sponsors pay for IRS to not pursue 10% penalty tax is a sanction, not a fee

DOL Penalty Changes

DOL Penalty Increases

DOL Reporting Penalties		
Failure	**2018**	**2019**
Per day, for failure to properly file a Form 5500	$2,140	$2,194
Per day, for failure to properly provide a black-out notice, or notice of right to divest employer securities (each recipient being a separate failure)	$136	$139
Per day, for failure to provide DOL-requested documents	$152 (not to exceed $1,527 per request)	$156 (not to exceed $1,566 per request)

DOL Penalty Increases

DOL Reporting Penalties		
Failure	**2018**	**2019**
Per required statement, failure to properly provide benefit statements and maintain records vis-à-vis former participants and beneficiaries	$29	$30
Failure of a fiduciary to comply with the prohibition on certain types of distributions from defined benefit pension plans with certain liquidity shortfalls (penalty will be the amount of any distribution, if less)	$16,499	$16,915
Per violation per day, failure of a fiduciary to provide notice to participants and beneficiaries of the above-described distribution restrictions for certain plans with liquidity shortfalls	$1,693	$1,736

Fee Lawsuits

Wong v. Fidelity

- T-Mobile 401(k) plan participant sued recordkeeper, Fidelity
- Allegation: Fidelity requires fund providers to pay a fee to remain in the Fidelity mutual fund “supermarket” and earns fees as a result, which is an undisclosed fee and prohibited transaction
- Massachusetts Secretary of the Commonwealth has begun an investigation and demanded documents pertaining to those mutual funds
- DOL has begun scrutinizing the fees as well

Anthem, Inc. Excessive Fee Lawsuit Settlement

Fiduciary breach – offering Vanguard Prime Money Market Fund instead of a stable value fund caused plan participants to miss out on about $65 million in earnings.

Unreasonably high recordkeeping fees paid to Vanguard - the annual fees ranged from $42 to $94 per participant. Plaintiffs claimed that maximum permissible amount would have been $30 per participant annually.

Anthem settled case for $23.7 million with agreement to take steps to ensure low-cost services and appropriate investment offerings

403(b) “Once In, Always In” Rule

IRS Notice 2018-95, Guidance and Transition Relief

403(b) “Once In, Always In” Rule
Background

Universal Availability

All employees generally must be permitted to make deferrals

“Part-Time Exclusion”

Employees who normally work less than 20 hours per week may be excluded

Final Regulations

Generally effective after 12/31/08

Requirements of Part-Time Exclusion

Meet these 3 conditions

“First Year” Exclusion

Reasonably **expect** employee to work **less than 1,000 hours** during first year of employment

“Preceding Year” Exclusion

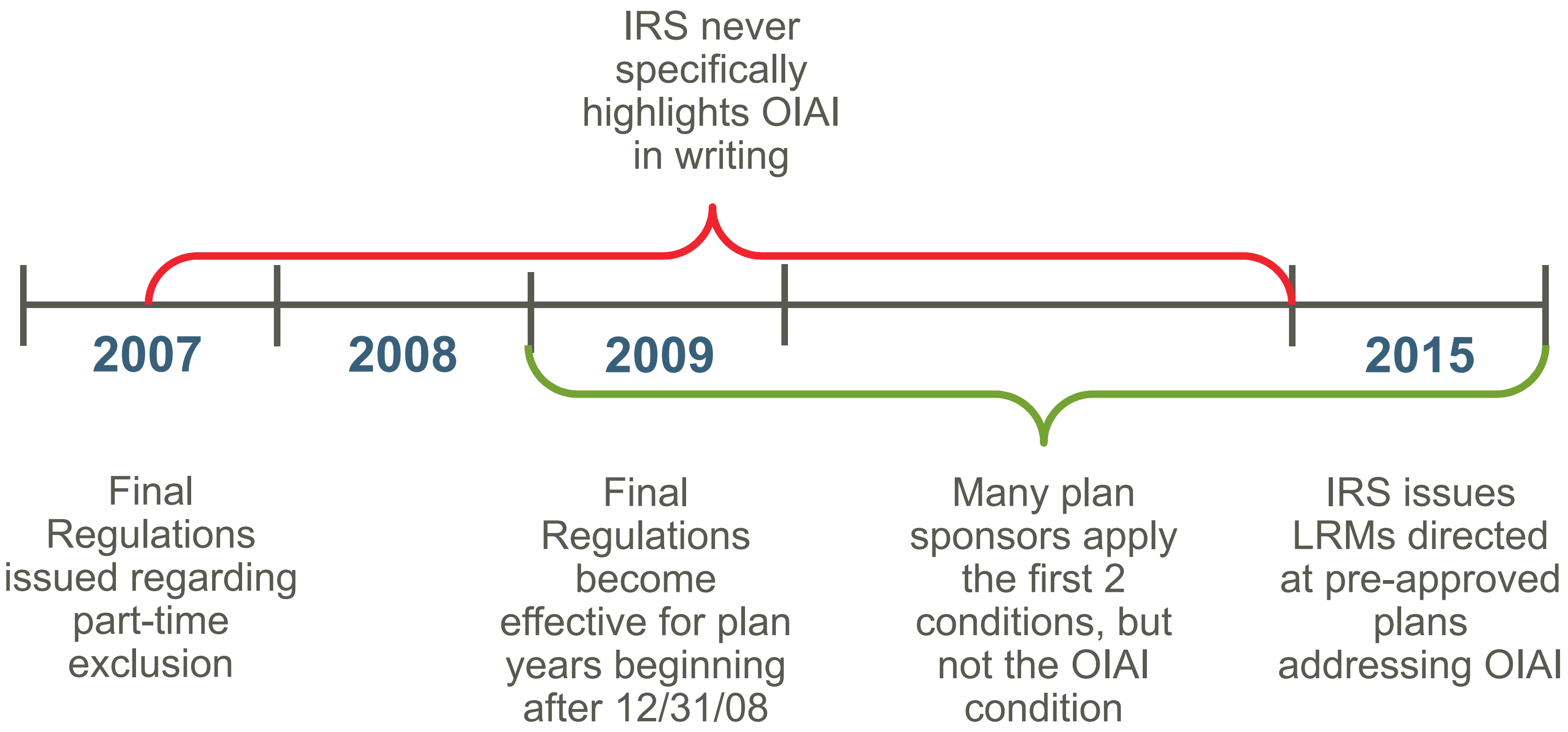
After first year of employment, employee must have **actually worked less than 1,000 hours in preceding year**

“OIAI” Exclusion

Once employee doesn’t meet conditions for exclusion, they may never be excluded again

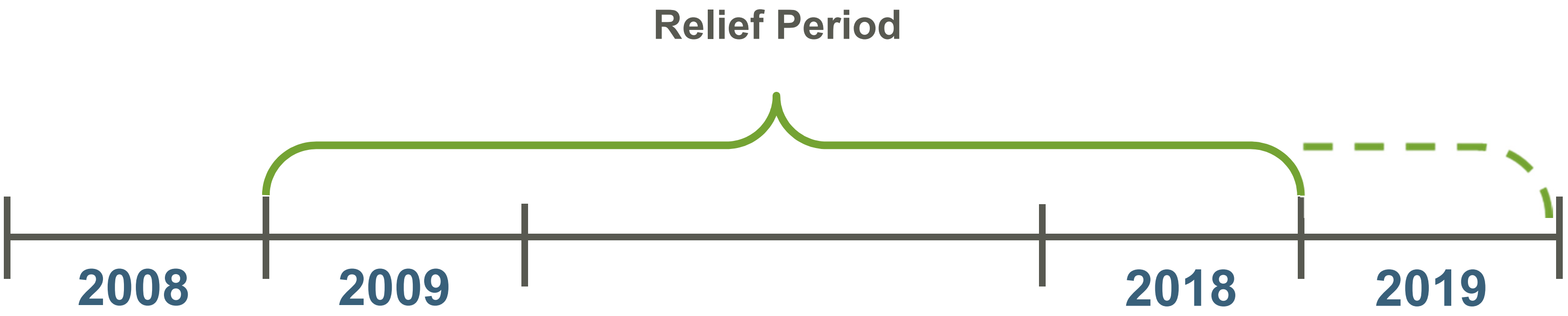
“Once in, always in”

Why the Need for Transition Relief?



Relief Period

Plan won’t fail merely because it failed to apply OIAI condition



End of relief period depends on plan’s exclusion year definition

Relief Period

Plan won’t fail merely because it failed to apply OIAI condition

For plans with exclusion years based on **plan years**, the relief period ends for all employees on the last day of the last exclusion year that ends **before** December 31, 2019. This means that for **calendar year plans**, the relief period **ended December 31, 2018.**

Relief Period

Example – Exclusion Year Based on Noncalendar Plan Year

Newmar Corporation's retirement plan year runs from June 1 to May 31. The exclusion year is based on the plan year. Newmar's relief period ends on **May 31, 2019**, the last day of the last exclusion year that ends **before** December 31, 2019.

6/1/2018
Plan year starts

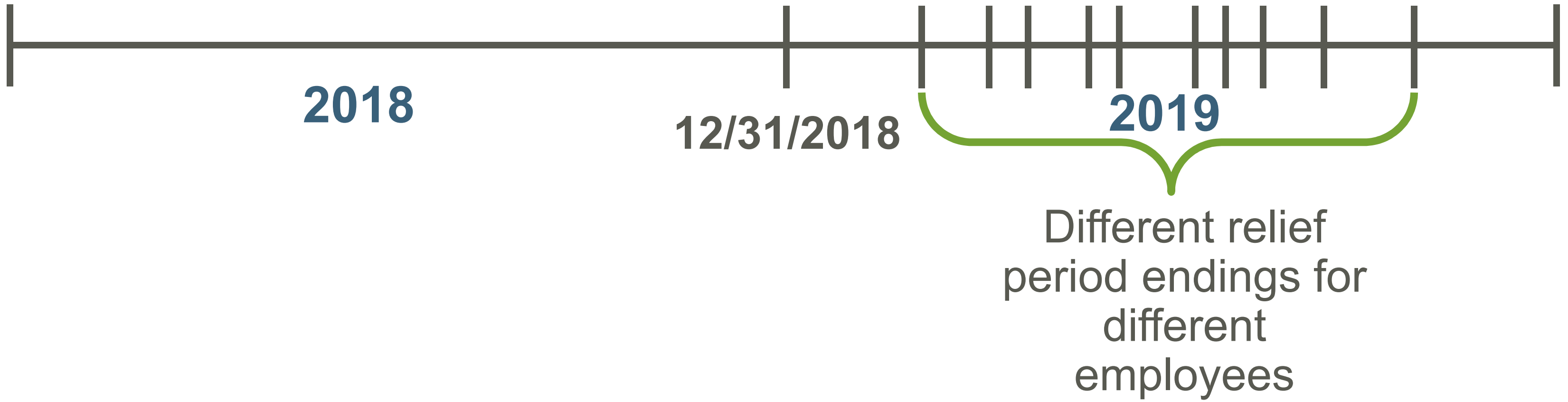
12/31/2018

5/31/2019
Plan year ends

End of relief period

Relief Period

For plans with exclusion years based on **employee anniversary** years, the relief period ends, with respect to **any employee**, on the last day of **that employee's last exclusion year that ends before December 31, 2019**. This means that under this type of plan design, **employees with different anniversary dates will have different relief period endings.**



Relief Period

Example – Exclusion Year Based on Employee Anniversary Year

Employee A began employment on April 1, 2015, and Employee B began employment on July 20, 2015. The relief period for Employee A would end on March 31, 2019, while the relief period for Employee B would end on July 19, 2019.

4/1/2015
Employee A hire date

7/20/2015
Employee B hire date

3/31/2019
Employee A relief period ends

7/19/2019
Employee B relief period ends

Relief Based on Plan Document Type

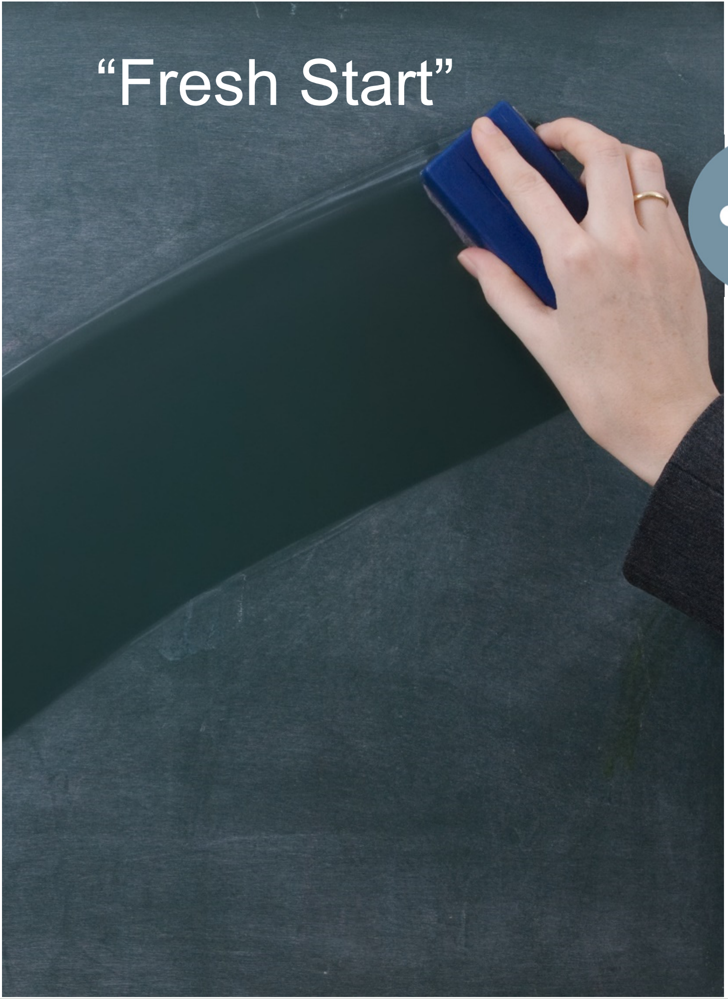
<u>403(b)</u>
Prototype and Volume Submitter

Don't need to amend to reflect operation during relief period

<u>403(b)</u>
Individually Designed Plan

Need to amend to reflect operation during relief period

OIAI language before 4/1/2020



403(b) plans will not fail as long as the OIAI rule is applied properly as if it first became effective January 1, 2018.

On or after January 1, 2019

- 403(b) plans that contain the part-time worker exclusion must apply the OIAI exclusion condition properly in both form and operation.
- May disregard pre-2018 work history

DOL Proposed Rules for Overtime Pay

Effect on Retirement Plans

DOL Proposed Changes to Overtime Pay Effect on Retirement Plans

Increased Costs

Nondiscrimination Testing

Confusion Over Participant Entry Dates

Plan Entry

Eligibility Restrictions

Age

Years of Service

Class exclusions

Plan Entry

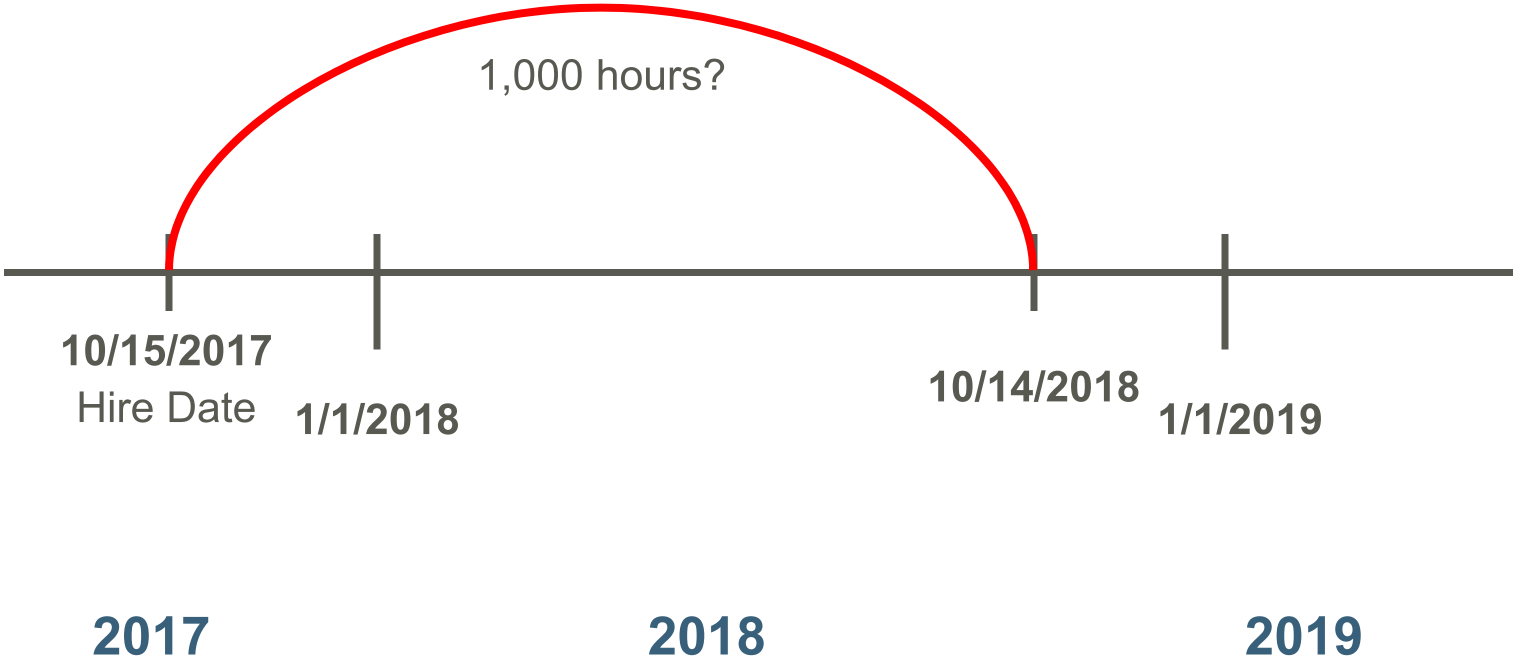
Year of Service

Eligibility computation period: Initial 12-month period from date of hire, then: continues each anniversary year (anniversary method) or switches to plan year (shift to plan year method)

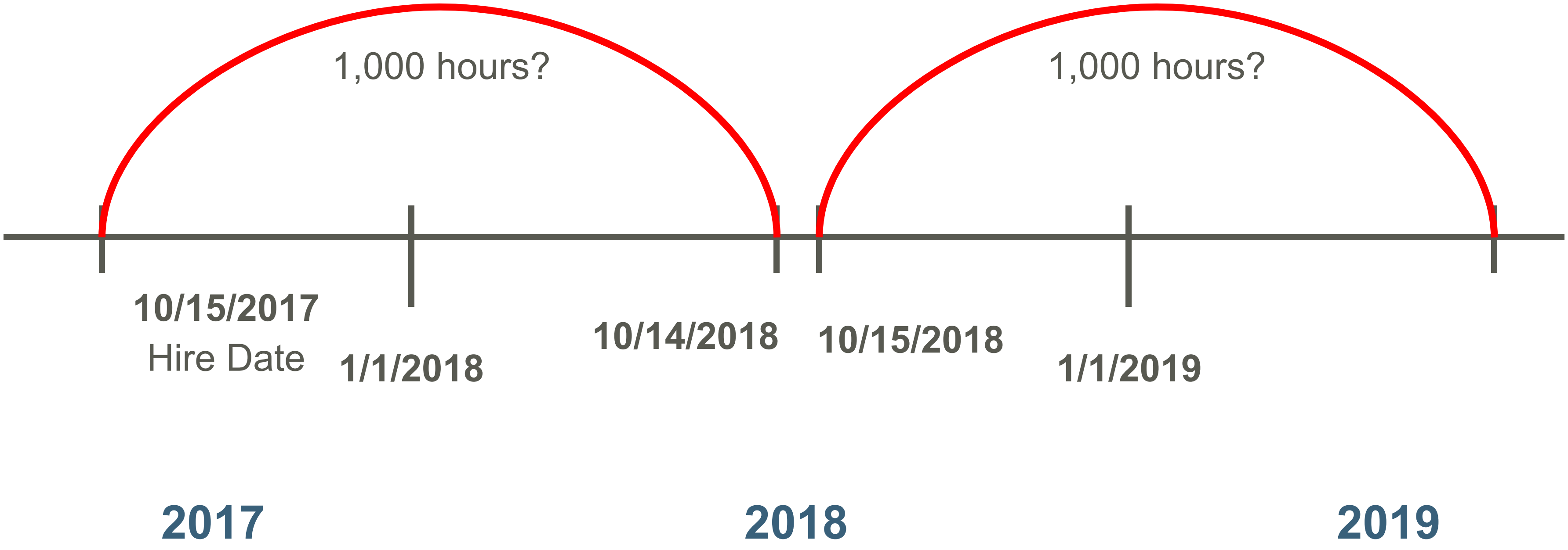
May be required to work up to 1,000 hours during computation period

Typically use anniversary year if elapsed time is used

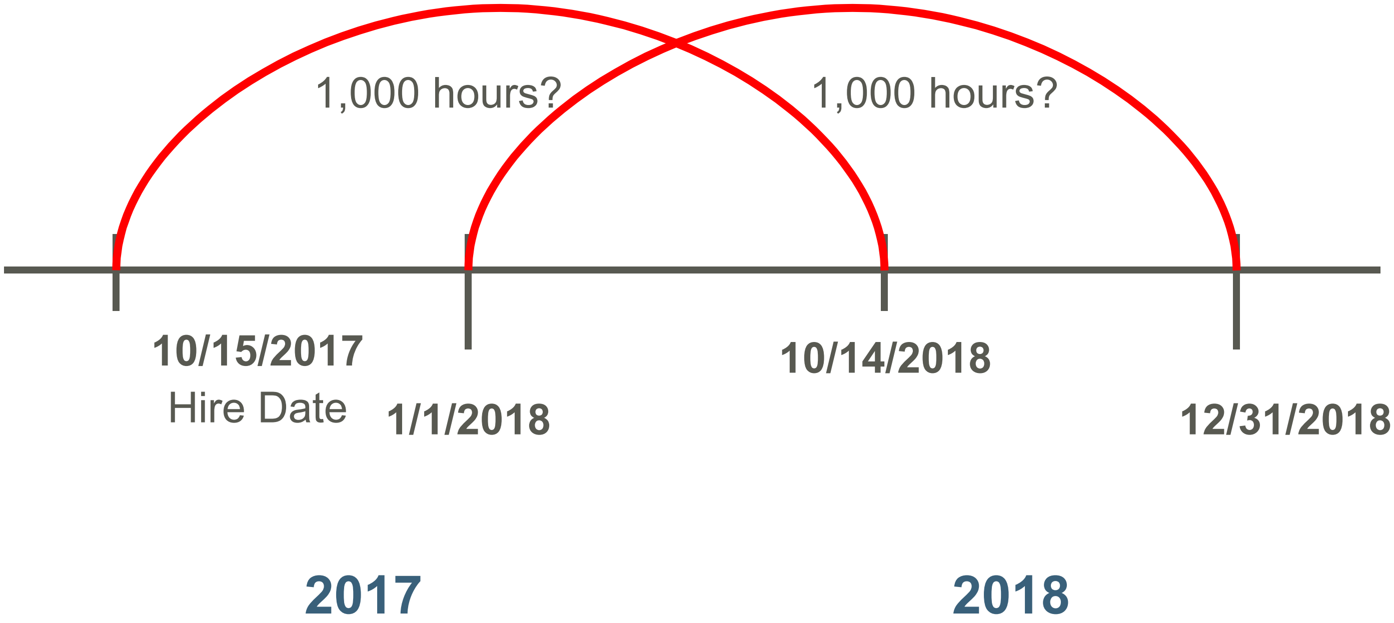
Example: Initial Computation Period



Example: 2nd Computation Period, Anniversary Method

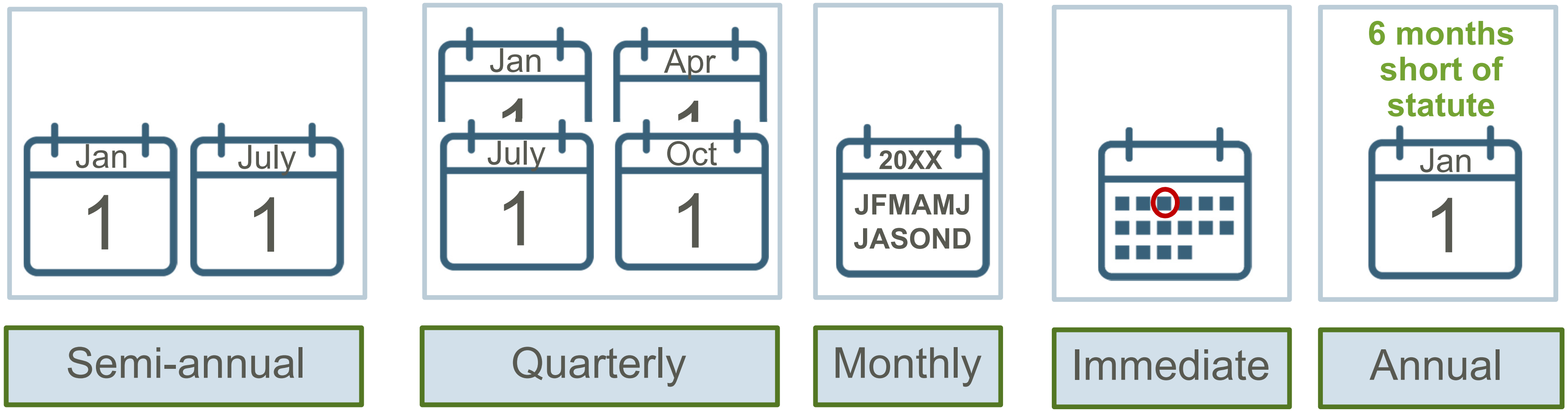


Example: 2nd Computation Period, Switch to Plan Year Method



Plan Entry
Entry Dates

- Enter on first entry date after meeting both age and service requirements
- All employees must enter the plan by the **earlier** of
  - the first day of the plan year after eligibility is satisfied, or
  - within 6 months of meeting eligibility criteria

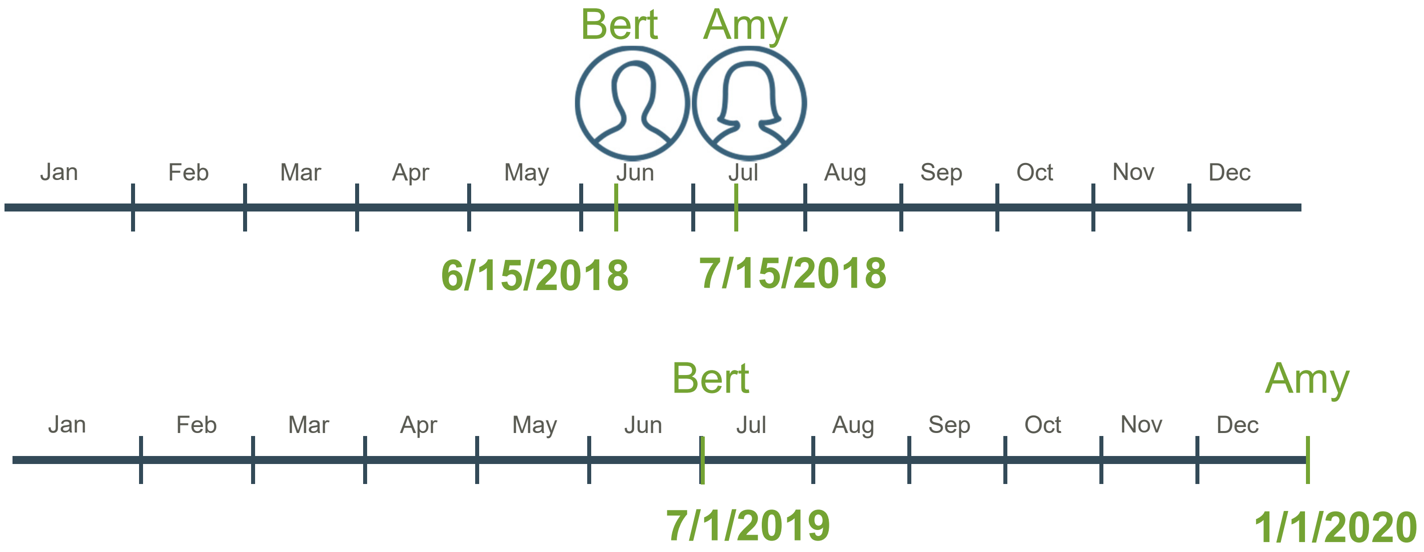


Plan Entry

Example: Entry Dates

Eligibility requirement: one year of service

Plan entry dates: January 1 and July 1



Confusion Over Vesting Eligibility and Breaks in Service

Breaks in Service
Definitions

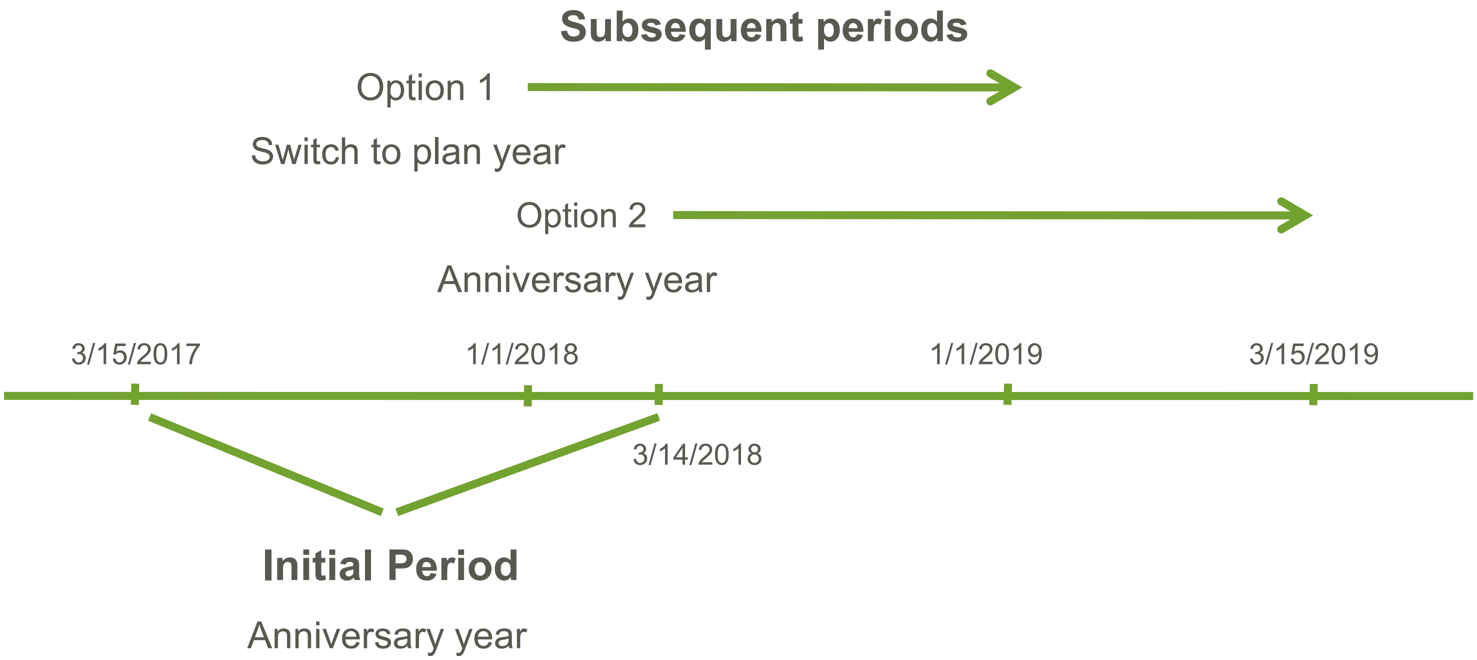
“Year of Service”
- 12-month computation period
- Up to 1,000 hours

“Break in service”
- 12-month computation period
- Minimum number of hours to avoid a break in service: ≤501

“Computation period”
- Defined in plan document
- Initial: anniversary year
- Subsequent: anniversary year or switch to plan year

Breaks In Service

Eligibility computation period



Rehire After Break in Service

Nonparticipant prior to break

Pre-break service is **not** counted

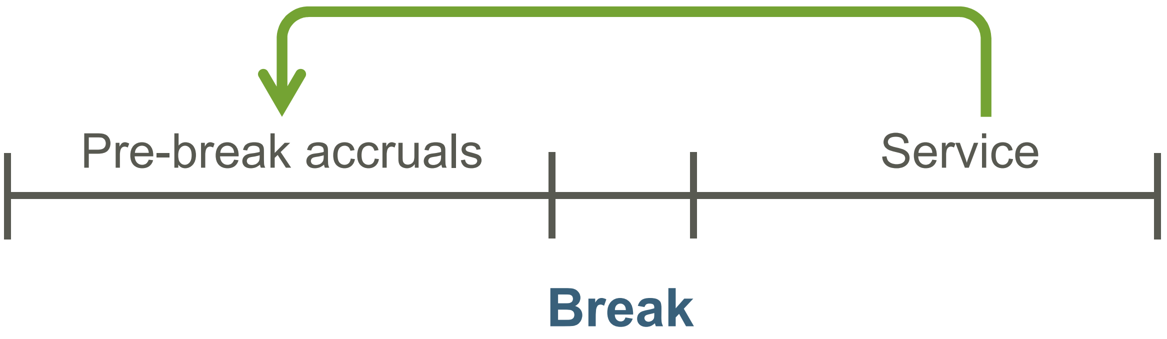
Plan participant prior to break

Pre-break service **must be** counted

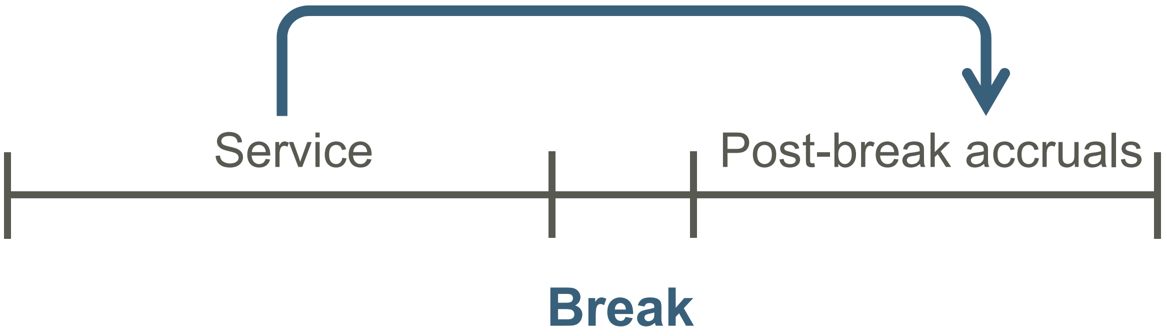
Rehire holdout rule **may** apply

Breaks in Service

Post-break service increases vesting of pre-break dollars unless 5 or more breaks in service



Prior service increases vesting of post-break dollars



Breaks In Service

Example 1

Chloe terminates employment on 10/7/2014.

Chloe has 3 years of service and is 40% vested.

Chloe is rehired on 4/5/2018.

Chloe's pre-break money remains 40% vested, and she'll continue to accrue vesting on this money.

Chloe's post-break money is also 40% vested right away, and she'll continue to accrue vesting on this money.

Breaks In Service

Example 2

Sterling terminates employment on 10/7/2011.

Sterling has 3 years of service and is 40% vested.

Sterling is rehired on 4/5/2018.

Forfeiture occurs on pre-break money after 5 breaks in service.

Sterling's pre-break money remains 40% vested, and will not accrue additional vesting.

Sterling's post-break money is 40% vested right away, and he'll continue to accrue vesting on this money.

Questions?

Thank you for attending

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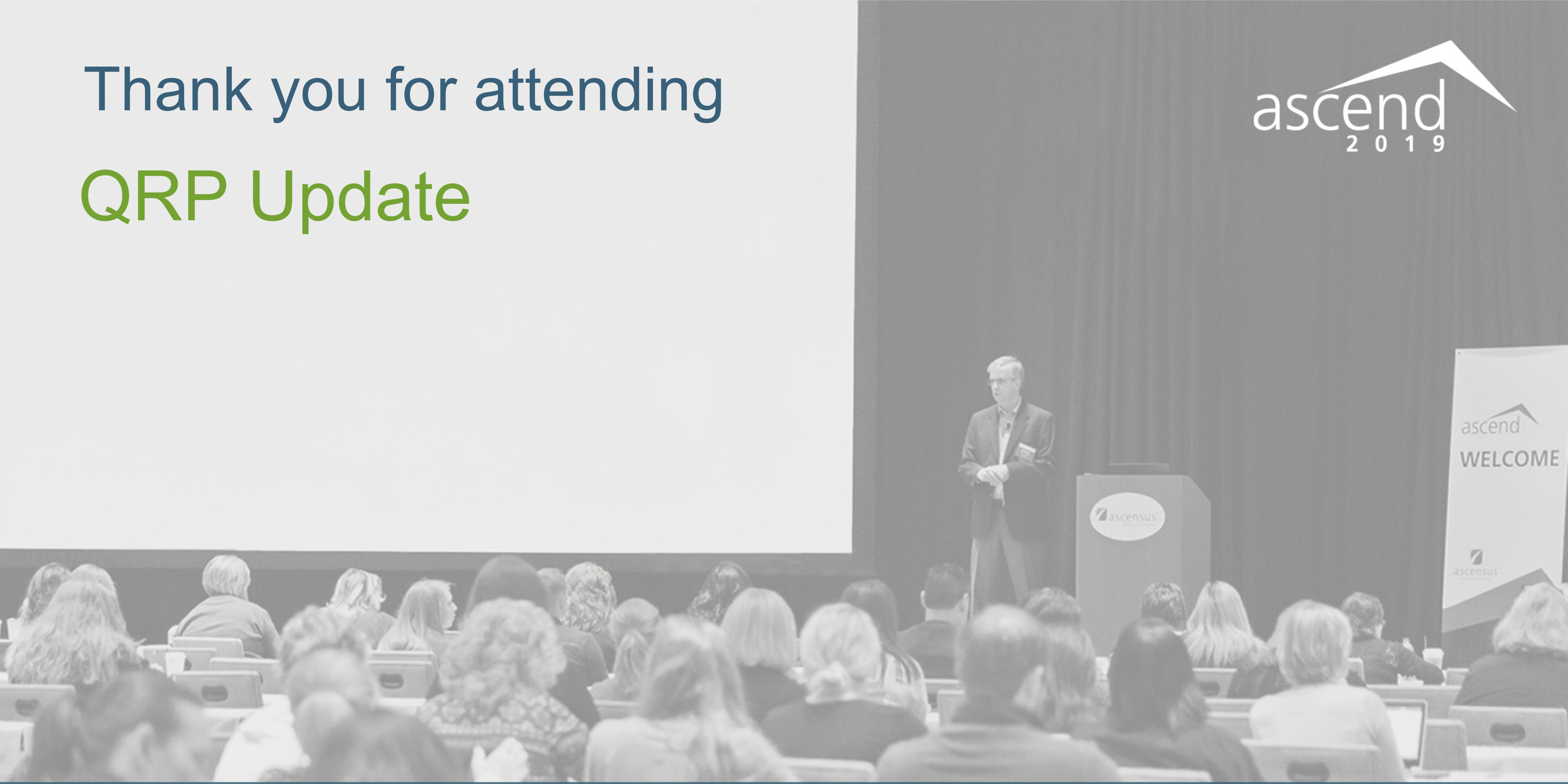

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