

WHAT A DIFFERENCE A DAY MAKES

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Qualified plans frequently provide that participation commences on an entry date that coincides with or immediately follows completion of a year of service. While there seems to be no issue with the concept that the calendar year begins on January 1 and ends on December 31, making that same determination with respect to periods that do not begin on the first day, or end on the last day, of a month sometimes seems to present difficulties.

During a question and answer session at the recent 2013 American Society of Pension Professionals & Actuaries' Annual Conference, IRS officials were asked whether an employee who is hired on January 2, 2012 would become a participant on January 1 or April 1, 2013 in a plan providing for entry on the first day of the calendar quarter coinciding with or immediately following completion of one year of service. This does not appear to be an isolated issue, as summary plan descriptions using an example such as this to illustrate the plan's participation requirements have been known to indicate that the year of service would be completed on January 2, 2013, with entry on April 1, 2013. However, in those circumstances, an IRS senior tax law specialist in employee plans technical compliance in effect indicated that the year of service would end on January 1, 2013 by stating that the employee would become eligible to participate on that date. This answer assumes that the service requirement is satisfied on January 1, 2013. Since that date coincides with an entry date, that is the date the employee should be eligible to participate. The IRS official indicated that, in his view, the eligibility date would be different if the plan provided for entry on the first day of the calendar quarter next following completion of one year of service, as opposed to coinciding with or following satisfaction of that requirement.

While this answer was unofficial, and does not constitute a formal position of the IRS, it emphasizes the importance of applying plan provisions—and, in this case, determining when a year ends—literally. Specifically, in a plan that provides for participation to commence on a monthly, quarterly or semi-annual entry date coinciding with or immediately following a year of service, failure to properly do so could result in the improper exclusion of some eligible employees for part of a plan year. While that is not likely to affect a large number of employees, for those employees who are affected it could require corrective action, at the expense of the plan sponsor, and possibly the payment of a fee or penalty to the IRS in order to avoid disqualification of the plan.

MEET THE TEAM



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