

117TH CONGRESS  
1ST SESSION

# H. R. 5873

To amend the Employee Retirement Income Security Act of 1974 to improve part-time coverage for part-time workers, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 4, 2021

Ms. MANNING introduced the following bill; which was referred to the Committee on Education and Labor, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Employee Retirement Income Security Act of 1974 to improve part-time coverage for part-time workers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Improving Part-Time  
5 Workers Access to Retirement Act of 2021”.

1 **SEC. 2. IMPROVING PART-TIME COVERAGE FOR PART-TIME**  
2 **WORKERS.**

3 (a) AMENDMENT OF EMPLOYEE RETIREMENT IN-  
4 COME SECURITY ACT OF 1974.—

5 (1) IN GENERAL.—Section 202 of the Employee  
6 Retirement Income Security Act of 1974 (29 U.S.C.  
7 1052) is amended by adding at the end the following  
8 new subsection:

9 “(c) SPECIAL RULE FOR CERTAIN PART-TIME EM-  
10 PLOYEES.—

11 “(1) IN GENERAL.—A pension plan that in-  
12 cludes either a qualified cash or deferred arrange-  
13 ment (as defined in section 401(k) of the Internal  
14 Revenue Code of 1986) or a salary reduction agree-  
15 ment (as described in section 403(b) of such Code)  
16 shall not require, as a condition of participation in  
17 the arrangement or agreement, that an employee  
18 complete a period of service with the employer (or  
19 employers) maintaining the plan extending beyond  
20 the close of the earlier of—

21 “(A) the period permitted under subsection  
22 (a)(1) (determined without regard to subpara-  
23 graph (B)(i) thereof); or

24 “(B) the first 24-month period—

25 “(i) consisting of 2 consecutive 12-  
26 month periods during each of which the

1 employee has at least 500 hours of service;  
2 and

3 “(ii) by the close of which the em-  
4 ployee has attained the age of 21.

5 “(2) EXCEPTION.—Paragraph (1)(B) shall not  
6 apply to any employee described in section 410(b)(3)  
7 of the Internal Revenue Code of 1986.

8 “(3) COORDINATION WITH OTHER RULES.—

9 “(A) IN GENERAL.—In the case of employ-  
10 ees who are eligible to participate in the ar-  
11 rangement or agreement solely by reason of  
12 paragraph (1)(B):

13 “(i) EXCLUSIONS.—An employer may  
14 elect to exclude such employees from the  
15 application of subsections (a)(4), (k)(3),  
16 (k)(12), (k)(13), (k)(15)(B)(i)(I), and  
17 (m)(2) of section 401 of such Code and  
18 section 410(b) of such Code.

19 “(ii) TIME OF PARTICIPATION.—The  
20 rules of subsection (a)(4) shall apply to  
21 such employees.

22 “(B) TOP-HEAVY RULES.—An employer  
23 may elect to exclude all employees who are eligi-  
24 ble to participate in a plan maintained by the  
25 employer solely by reason of paragraph (1)(B)

1 from the application of the vesting and benefit  
2 requirements under subsections (b) and (c) of  
3 section 416 of such Code.

4 “(4) 12-MONTH PERIOD.—For purposes of this  
5 subsection, 12-month periods shall be determined in  
6 the same manner as under the last sentence of sub-  
7 section (a)(3)(A), except that 12-month periods be-  
8 ginning before January 1, 2021, shall not be taken  
9 into account.”

10 (2) VESTING.—Section 203(b) of the Employee  
11 Retirement Income Security Act of 1974 (29 U.S.C.  
12 1053(a)) is amended by redesignating paragraph (4)  
13 as paragraph (5) and by inserting after paragraph  
14 (3) the following new paragraph:

15 “(4) PART-TIME EMPLOYEES.—For purposes of  
16 determining whether an employee who is eligible to  
17 participate in a qualified cash or deferred arrange-  
18 ment or a salary reduction agreement under a plan  
19 solely by reason of section 202(c)(1)(B) has a non-  
20 forfeitable right to employer contributions—

21 “(A) except as provided in subparagraph  
22 (B), each 12-month period for which the em-  
23 ployee has at least 500 hours of service shall be  
24 treated as a year of service;

1 “(B) paragraph (3) shall be applied by  
2 substituting ‘at least 500 hours of service’ for  
3 ‘more than 500 hours of service’ in subpara-  
4 graph (A) thereof; and

5 “(C) 12-month periods occurring before  
6 the 24-month period described in section  
7 202(c)(1)(B) shall not be treated as years of  
8 service.

9 For purposes of this paragraph, 12-month periods  
10 shall be determined in the same manner as under  
11 the last sentence of section 202(a)(3)(A), except that  
12 12-month periods beginning before January 1, 2021,  
13 shall not be taken into account.”.

14 (3) PRE-2021 SERVICE.—Section 112(b) of the  
15 Setting Every Community Up for Retirement En-  
16 hancement Act of 2019 (26 U.S.C. 401 note) is  
17 amended by striking “section 401(k)(2)(D)(ii)” and  
18 inserting “paragraphs (2)(D)(ii) and (15)(B)(iii) of  
19 section 401(k)”.

20 (b) CONFORMING AMENDMENTS TO INTERNAL REV-  
21 ENUE CODE OF 1986.—

22 (1) IN GENERAL.—Section 410(a) of the Inter-  
23 nal Revenue Code of 1986 is amended by adding at  
24 the end the following new paragraphs:

1           “(6) SPECIAL RULE FOR CERTAIN PART-TIME  
2       EMPLOYEES.—

3           “(A) IN GENERAL.—In the case of a plan  
4       that includes either a qualified cash or deferred  
5       arrangement (as defined in section 401(k)) a  
6       trust of which such plan is a part shall not con-  
7       stitute a qualified trust under section 401(a) if  
8       the plan requires, as a condition of participa-  
9       tion in the plan or arrangement, that an em-  
10      ployee complete a period of service with the em-  
11      ployer (or employers) maintaining the plan ex-  
12      tending beyond the close of the earlier of—

13           “(i) the period permitted under para-  
14      graph (1) (determined without regard to  
15      subparagraph (B)(i) thereof), or

16           “(ii) the first 24-month period—

17           “(I) consisting of 2 consecutive  
18      12-month periods during each of  
19      which the employee has at least 500  
20      hours of service, and

21           “(II) by the close of which the  
22      employee has attained the age of 21.

23           “(B) EXCEPTION.—Subparagraph (A)(ii)  
24      shall not apply to any employee described in  
25      section 410(b)(3).

1                   “(C)     COORDINATION     WITH     OTHER  
2                   RULES.—

3                   “(i) IN GENERAL.—In the case of em-  
4                   ployees who are eligible to participate in  
5                   the arrangement or agreement solely by  
6                   reason of subparagraph (A)(ii)—

7                   “(I) EXCLUSIONS.—An employer  
8                   may elect to exclude such employees  
9                   from the application of subsection (b)  
10                  and of subsections (a)(4), (k)(3),  
11                  (k)(12), (k)(13), (k)(15)(B)(i)(I), and  
12                  (m)(2) of section 401.

13                  “(II) TIME OF PARTICIPATION.—  
14                  The rules of paragraph (4) shall apply  
15                  to such employees.

16                  “(ii) TOP-HEAVY RULES.—An em-  
17                  ployer may elect to exclude all employees  
18                  who are eligible to participate in a plan  
19                  maintained by the employer solely by rea-  
20                  son of subparagraph (A)(ii) from the appli-  
21                  cation of the vesting and benefit require-  
22                  ments under subsections (b) and (c) of sec-  
23                  tion 416.

24                  “(D) 12-MONTH PERIOD.—For purposes of  
25                  this paragraph, 12-month periods shall be de-

1           terminated in the same manner as under the last  
2           sentence of paragraph (3)(A), except that 12-  
3           month periods beginning before January 1,  
4           2021, shall not be taken into account.”.

5           (2) VESTING.—Section 410(a) of the Internal  
6           Revenue Code of 1986 is amended by adding at the  
7           end the following:

8           “(6) PART-TIME EMPLOYEES.—For purposes of  
9           determining whether an employee who is eligible to  
10          participate in a qualified cash or deferred arrange-  
11          ment or a salary reduction agreement under a plan  
12          solely by reason of paragraph (6)(A)(ii) has a non-  
13          forfeitable right to employer contributions—

14               “(A) except as provided in subparagraph  
15               (B), each 12-month period for which the em-  
16               ployee has at least 500 hours of service shall be  
17               treated as a year of service,

18               “(B) section 411(a)(6) shall be applied by  
19               substituting ‘at least 500 hours of service’ for  
20               ‘more than 500 hours of service’ in subpara-  
21               graph (A) thereof, and

22               “(C) 12-month periods occurring before  
23               the 24-month period described in paragraph  
24               (6)(A)(ii) shall not be treated as years of serv-  
25               ice.



1       For purposes of this paragraph, 12-month periods  
2       shall be determined in the same manner as under  
3       paragraph (6)(D).”.

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