

COMMON SITUATION #2:

REHIRE RULES & BREAKS IN SERVICE

(applicable to periods following no *hours of service*)

Rehire Rules & Breaks in Service

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The **Break-in-Service Rules** provide objective criteria for determining whether an employee who leaves and then comes back must be considered a **rehire** (treated as a new hire) versus a **continuing employee** upon their return.



REHIRES

(everything starts over)

- It is as if this employee had NEVER WORKED FOR YOU BEFORE and *can be treated as a new hire*
- Employee can be required to satisfy a new (90-day or less) Waiting Period
- Prior “hours of service” are ignored
- Previous Stability Period(s) NO LONGER APPLY (even if “earned”!)

VS.



CONTINUING EMPLOYEES

(status is preserved)

- Employee CANNOT be required to satisfy a new Waiting Period
- All Measurement Periods Resume
- Any “Earned” Stability Periods MUST BE HONORED *(although any breaks in service with zero “hours of service” will lower their average and may affect their status for the NEXT Stability Period)*

**See special averaging rules to follow.*

Breaks in Service (continued)

Note that a “break in service” is an **unbroken period with no Hours of Service**. That is, not only are there zero hours *worked* but also zero *unworked* Hours of Service as well (e.g., paid sick time/PTO, periods with taxable disability benefits, etc.).

So for example, if an employee stops working but uses PTO, for these purposes her “break in service” would not begin until the day after her PTO had been exhausted and no Hours of Service were being counted.

Breaks in Service (continued)

Please note that a **termination of employment is NOT required**. Regardless of whether they remain an employee during their leave versus quit and then come back, the rules for *how they must be treated upon their return** would work the same.

**How he or she “should” be treated during the break in service itself is affected by their employment status, however, and stability periods may continue to apply. Of course, other laws (such as COBRA, FMLA and the ADA) may also affect the proceedings!*

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OPTION 1: WITHOUT Using the “Rule of Parity”

Break-in-Service Periods *(with No Credited Hours of Service)*

- ≤ 13 weeks (91 or fewer days)* = Always a “Continuing Employee”
- > 13 weeks (92 or more days)* = Can be treated as a New Hire (a.k.a. “rehire”)

Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13	Week 14+
(Always a “Continuing Employee”)													(Always a “Rehire”)

**Educational Organizations must use 26 weeks instead of 13 weeks for these purposes; special rules for counting and averaging scheduled academic breaks may also apply (see Final Rules).*

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In addition, the **Rule of Parity** is an optional rule employers may adopt. It permits an employer to treat an employee as rehired if the period during which no Hours of Service were credited...

- Was at least 4 consecutive weeks in duration; and
- EXCEEDED the *number of weeks* of the employee's immediately preceding period of employment (with them or any member of the employer's controlled group).

EXAMPLES

<u>Preceding Period of Employment</u>	<u>Period with No Hours of Service</u>	<u>Result</u>
8 Weeks	8 Weeks	Returning Employee
6 Weeks	8 Weeks	Rehire (treat as new employee)

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OPTION 2: Using the Rule of Parity

Break-in-Service Periods (with *No Credited Hours of Service*)

- < 4 weeks = Always a “Continuing Employee”
- ≥ 4 weeks and ≤ 13 weeks* = **Rule of Parity** (optional)
- > 13 weeks* = Can be treated as a New Hire (a.k.a. “rehire”)

*But only available if
employee worked
FEWER than 13 weeks
prior to the break!*

Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13	Week 14+
(Always Continuing Employee)				(ALMOST Always Continuing Employee)									(Always New Hire)

**Educational Organizations must use 26 weeks instead of 13 weeks for these purposes; special rules for counting and averaging scheduled academic breaks may also apply (see Final Rules).*

New Hire Decision Tree


 **Has this employee ever worked for us before?**

No, never.

Reasonable Expectations on start (or rehire) date?

Yes, and there's been a gap of **91 or fewer** consecutive days with *zero hours of service*

Yes, and there's been a gap of **92 or more** consecutive days with *zero hours of service*

 **THIS IS A 'REHIRE'**
(everything starts over)

- Employee can be required to satisfy a new (90-day or less) Waiting Period
- Prior "hours of service" are ignored
- Previous Stability Period(s) NO LONGER APPLY (even if "earned"!)

New Part-time, New Variable Hour or New Seasonal Employee

Generally not eligible for first 13 months

(see 'Initial Measurement Period Process')

EVERYBODY ELSE
(including those hired as "clearly" full-time)

Generally eligible after ≤90 day Waiting Period

(see 'Monthly Measurement Method Process')

As an employer, do we utilize the 'Rule of Parity'?


Yes

Was the period during which no hours of service were credited...

- *at least 4 consecutive weeks in duration – AND –*
- *exceeded the number of weeks of this employee's immediately preceding period of employment?*

No

Yes

 **THIS IS A 'CONTINUING EMPLOYEE'**
(status is preserved)

- Employee CANNOT be required to satisfy a new Waiting Period
- All Measurement Periods Resume
- Any "earned" Stability Periods MUST BE HONORED (although any breaks in service with zero "hours of service" will lower their average and may affect their status for the NEXT Stability Period)

No

Wondering how much they pay for benefits?

See Contribution Schedule by Employee Class!

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Break-in-Service Example

Facts. Schroeder works as a piano tuner with very irregular hours. After being deemed part-time for several years, he **averaged 30 hours per week during his most recent Measurement Period** and is thus deemed full-time for the corresponding Stability Period. He immediately accepts his employer's offer of coverage and enrolls.

Three days into his Stability Period, however, Schroeder quits to accept a job at a music academy with more stable hours. After two months of pleading **he agrees to return to work *a few hours per month*** but only to tune concert grands for their biggest customer.

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Break-in-Service Example (continued)

Conclusion. Schroeder is a *continuing employee* because his two-month break in service was SHORTER than 92 days (and was not longer than the period of employment which preceded it).

In order to avoid penalties his employer cannot require a new Waiting Period and ***must allow him to resume his coverage as soon as practicable*** (i.e., the first of the month following his return). *As long as he continues to be an employee* the IRS will continue to deem him *full-time* through the end of any “earned” Stability Period(s) that follow.