

EMPLOYMENT NEWS

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LABOR REFORM: THE BASICS

Governor Ricardo Rosselló enacted the “Labor Flexibility and Transformation Act”. This law, which has immediate effect, modifies some of our most significant labor and employment legislation. The amendments included in the law, which only apply to employees hired or causes of action arising after its enactment, may change the way employers do business in Puerto Rico. In a nutshell, some of the major changes are as follows:



Mandatory Probationary Periods

The new law makes probationary periods automatic, rendering unnecessary the written probationary contract requirement. Non-exempt employees will automatically be subject to a 9-month probationary period, while exempt employees will be subject to a 12 month probationary period.

Wrongful Discharge

Although employers will still be required to have just cause for terminating employees in order to avoid paying the Law 80 penalty, the law includes additional definitions for just cause. For example, just cause now also includes low productivity, incompetence and the receipt by the employer of repeated customers’ complaints.

The formula for the wrongful discharge indemnity also changed. Any regular employee terminated without just cause will be entitled to a payment of three months of salary plus two weeks of salary per each year of completed service. The indemnity, however, will never exceed nine (9) months of salary. All payments made under this law, as well as any payments made pursuant to voluntary severance programs will be tax free.

Finally, the statute of limitations for all claims under Law 80 was reduced from three years to one. This also holds true for all wage and hour claims.

Overtime

The new law defines the following as overtime:

- Any hours worked in excess of eight (8) during any calendar day.
- Any hours worked in excess of forty (40) in any given workweek (a workweek is defined as a 168 hour period)
- Any hours worked during the days or hours in which the operation must remain closed by law. However, hours worked during Sundays will not be considered overtime for the mere fact that they were worked on Sundays.
- Any time worked during the mandatory rest period
- Any time worked in excess of the maximum allowed by a collective bargaining agreement

Overtime will now be paid at 1.5 times the employee's regular rate of pay; meal time period penalties were eliminated.

Flextime Agreements

Employers may implement flexible work schedules through which employees will be required to work ten (10) daily hours in four (4) days during a week. In these cases, overtime premium will be paid for work performed in excess of ten (10) hours in a calendar day.

Closing Law

Operating prohibitions on Sundays have been eliminated. Retailers, however, will not be able to operate on Good Friday or Easter Sunday.

Breastfeeding

The new law provides for a half-an-hour break for expressing milk for every four (4) hours worked by the employee.

Discrimination Claims

The new law eliminates the presumption of discrimination in terminations without just cause. And, although it still allows a plaintiff to recover double the proven damages, the law places a cap on the total damages recoverable by the employee, depending on the size of the employer.

Christmas Bonus

The new law increases the hour requirement (from 700 to 1,350) for an employee to be entitled to receive the Christmas Bonus. It also reduces the maximum amount to be paid by employers and allows for payment of half of such amount during the first year of employment.

Vacation Accrual

The law also increases the monthly hours worked requirement - from 115 to 130- for employees to be entitled to accrue vacation time. And, although sick time accrual remained the same (12 days per year), vacation accrual is now limited to 6 days per year. Of course, employers can provide greater benefits.

Religious Services

The new law makes it unlawful for an employer to limit the employee's right to attend the religious service of choice. The law imposes notification requirements on employees who wish to exercise this right.

Reinstatement

For employers with less than 20 employees, the law reduces the "reservation of employment" requirement (from one year to six months) for employees who are unable to work while receiving treatment at the State Insurance Fund or while on non-occupational insurance leave under SINOT.

For more information do not hesitate to contact any of the following professionals:

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