



GOVERNMENT OF PUERTO RICO
DEPARTMENT OF LABOR AND HUMAN RESOURCES

April 11, 2000

Re: Inquiry No. 14742

This is in reply to your inquiry regarding the annual bonus (popularly known as the Christmas Bonus) required by Act No. 148 of June 30, 1969, as amended, 29 L.P.R.A. §§ 501-507. The Act provides, at § 501, as follows:

Any employer who employs one or more workers or employees within the period of twelve (12) months comprised from the first of October of any calendar year until September 30 of the subsequent calendar year shall be bound to grant to each one of said employees who have worked seven hundred (700) hours or more. . . . within the period set forth, a bonus equivalent to 2% of the total wages, computed up to a maximum of ten thousand (10,000) dollars, earned by the employee or worker within the said lapse of time. The total of the amounts paid by reason of said bonus shall not exceed 15% of the net annual profit the employer had within the period comprised from September 30 of the preceding year until September 30 of the year to which the bonus corresponds. It being provided, that on computing the total of the hours worked by an employee to receive the benefits of this chapter, there shall be counted those hours worked for the same employer though the services have been rendered in different businesses, industries and other activities of this employer.

This bonus shall constitute a compensation in addition to any other wages or benefits of any other nature to which the employee is entitled, but any other bonus of the same nature to which the employee is entitled, shall be creditable by virtue of the individual work contract.

The fact that the bonus is set at 2% of the employee's total wages, computed up to a \$10,000 ceiling means that the total bonus would not exceed \$200, provided payment is timely. In the event of delay, however, § 502 provides the following:

The payment of the bonus herein established shall be made not prior to the 1st nor after the 15th of the month of December, except in such cases in which the employer and his workers or employees may have [agreed] by mutual agreement on another date.

If the payment of the bonus herein established is not made in the manner and within the term already set forth, or on the date in which the employer, his workers [or] employees may have [agreed], the employer shall be bound to pay, in addition to said bonus, a sum equal to one-half the sum of the bonus by reason of additional compensation when the payment has been made within the first six (6) months of its noncompliance. If the payment is delayed more than six (6) months, the employer shall be bound to pay another sum equal to said bonus, as additional compensation.

The specific purpose of your inquiry is to determine whether Act No. 148, *supra*, requires a stateside firm with a local operation that provides contract labor to the U.S. Government in Puerto Rico to pay the aforesaid bonus. The only exclusions from that obligation authorized under the Act are those listed at § 505, as follows:

Persons employed in farm activities, in household duties, or in a family residence or in charitable nonprofit institutions, and the officials and employees of the Commonwealth, its public corporations and municipalities who hold office, position or employment of a continuous or irregular character, shall be excluded from the provisions of this chapter.

It is apparent that the activities carried out by this particular firm are covered by the provisions of the McNamara-O'Hara Service Contract Act (SCA) of 1965, which is enforced by the Wage and Hour Division of the U.S. Department of Labor. The issue of whether U.S.-based contract labor firms covered by the SCA and operating on the island are subject to Puerto Rico labor laws has been raised a number of times in the past. It should be noted that in response to that question the Acting Administrator of the Wage and Hour Division issued an opinion letter acknowledging that nothing in the McNamara-O'Hara Service Contract Act will excuse failure to provide a higher benefit required under State or local law.

Finally, employees who believe they are entitled to the annual bonus required under Act No. 148, *supra*, may file a claim with the Bureau of Labor Standards of the Department of Labor and Human Resources.

We trust the foregoing is responsive to your inquiry.

Cordially,



María C. Marina Durán
Solicitor of Labor