



Commonwealth of Puerto Rico  
**DEPARTMENT OF LABOR AND HUMAN RESOURCES**

July 10 , 1997

Re: Inquiry Number 14357

This is in reference to your inquiry regarding the overtime provisions applicable to your firm pursuant to Act No. 379 of May 15, 1948, as amended. Your specific inquiry is the following:

"Beginning on June 30 [1997] the organization has adopted the policy of paying all the employees 1 ½ times for overtime regardless of the location. According to the upper management this is based upon the premise that the company is covered by the federal law. They understand that a US company doing business in Puerto Rico is entitled to do so. However, I personally understand that Puerto Rico labor law #379 prevails over a federal law."

In reply to your inquiry, Article 6 of Act No. 379, as amended, contains a very specific provision with respect to firms covered by Federal law, which is as follows:

"Every employer who employs or permits an employee to work during extra hours shall be bound to pay him for each extra hour a wage rate equal to double the rate agreed upon for regular hours. Provided, however, that every employer in any industry in Puerto Rico covered by the provisions of the Fair Labor Standards Act approved by the Congress of the United States of America on June 25, 1938, as heretofore or hereafter amended, shall be

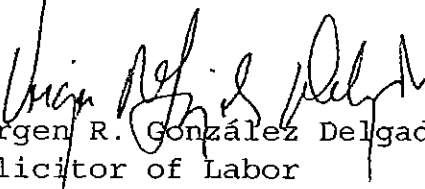
under obligation to pay only for each extra hour of work in excess of the legal eight-hour (8) working day a wage at a rate of not less than time and a half the rate of wage agreed upon for regular hours, save when by a decree of the Minimum Wage Board or by a collective bargaining agreement or both, other working and[/]or compensation standard has been fixed. To determine the wage rate agreed upon for regular working hours the daily, weekly, or monthly wages, or wages otherwise stipulated, shall be divided by the number of regular hours worked during that same period in accordance with the provisions of this Act."

In brief, the above provision allows an employer covered by the Fair Labor Standards Act (FLSA), by way of exception, to pay daily overtime at time and one-half, instead of the double time Act No. 379 requires for employers not covered by the FLSA. It is important to note, however, that this exception applies only to daily overtime. Because the Act requires overtime compensation at double time rates in all other cases, this exception becomes inoperative as soon as the employee exceeds the weekly 40-hour standard. All hours over 40 per week must be paid at double time rates. Thus, the special provision that allows payment at time and one-half will apply only in those cases in which an employee works in excess of eight hours per day on one or more days of a particular workweek, but because of a short workweek (such as when the business shuts down for a holiday or the employee is out on vacation or sick leave) does not exceed 40 hours in the aggregate for that workweek.

You should also be aware that it is a well-settled principle of law that when two different statutes apply, the higher standard will prevail. In fact, this principle is explicitly acknowledged in Section 18(a) of the FLSA. Accordingly, in this situation the higher standard set by Act No. 379 preempts the overtime provisions of the Federal statute.

We trust the foregoing explanation will suffice to clear up the doubts expressed in your letter.

Cordially,

  
Virgen R. González Delgado  
Solicitor of Labor