



Commonwealth of Puerto Rico
DEPARTMENT OF LABOR AND HUMAN RESOURCES

June 3, 1998

Dear Mr. Acevedo:

Re: Inquiry No. 14522

This is in reply to your letter to the Secretary of Labor and Human Resources, César Juan Almodóvar Marchany, regarding the application of Puerto Rico labor laws to contractors performing on U.S. Army Corps of Engineers contracts. Your specific inquiry is as follows:

The US Army Corps of Engineers (USACE) has traditionally been tasked by the Federal Emergency Management Administration (FEMA) emergency operation during natural disasters. As the hurricane season has just started, we are preparing scope of work and bid packages for potential contractors, if and when a hurricane were to hit PR and FEMA were to task us with emergency clean up operations.

The draft contracts and scope of work fall under the Service Contract Act, which adopts by reference the Fair Labor Standards Act. This latter act provides for time and a half for overtime work. We envision, under emergency operations[,] a 10 hour work day and a 7 day work week.

One of our potential bidders has inquired as to the applicability of Commonwealth of P.R. legal dispositions [sic] which require double time for overtime work. Although we have been informed the applicable standard is under the FLSA at time and a half, we have been advised informally [of] the possibility of double time under specific circumstances, such as working on the seventh continuous [sic] day; double time if the time between the last work day was less than 12 hours; and double time if a worker is required to work during his programmed lunch hour.

We will appreciate your written opinion concerning this matter at your soonest convenience, covering the above and any other applicable standard you consider may apply to this situation.

As you are aware, the McNamara-O'Hara Service Contract Act of 1965 does not contain any overtime requirements whatsoever. You point out, however, that the FLSA provisions have been incorporated by reference under SCA. As you are also aware, the FLSA requires overtime compensation at time and one-half for hours worked over 40 per week, but does not require premium pay for hours worked in excess of the 8-hour daily standard. On the other hand, Puerto Rico's Act No. 379 of May 15, 1948, as amended, requires overtime compensation, at double time rates, for hours worked in excess of both the daily 8-hour standard and the weekly 40-hour standard.

It is a well-settled principle in labor law that when two different labor standards apply, the employee is entitled to that standard which provides the higher benefit, a principle that is explicitly acknowledged in FLSA Section 18(a).

Thus, the double time requirement under Act No. 379, *supra*, preempts the time and one-half FLSA provision.

It should also be noted that there is a limited exception to the double time premium required under Act No. 379. Specifically, Article 6 of that Act allows an employer who is covered by the FLSA to pay time and one-half, instead of double time, for hours worked in excess of the daily 8-hour standard, provided the employee does not also exceed the weekly 40-hour standard. This provision thus comes into play when the employee works in excess of 8 hours on one or more days, but because of a short workweek, the 40-hour limit is not reached. There is no exception to the requirement that all hours over 40 per week be paid at double time.

In addition to the above-discussed provisions of Act No. 379, it must be pointed out that employers in Puerto Rico are covered by a complex system of mandatory decrees issued by the Puerto Rico Minimum Wage Board. In addition to setting minimum wages for each particular industry, the decrees provide for vacation, sick leave, and other benefits. For example, Mandatory Decree No. 11, one of the two decrees applicable to the construction industry, requires overtime compensation at double time for hours worked in excess of 8 per day. A number of other decrees, including Mandatory Decree No. 12, which applies to the transportation industry, have a similar requirement. Industries covered by such mandatory decrees are precluded from availing themselves of the above-mentioned time and one-half exception for daily overtime under Act No. 379. Mandatory Decree No. 12, however, requires double time for only the 9th daily hour, and time and one-half for hours in excess of nine. Aside from Mandatory Decree No. 12, employees covered by such decrees must be paid at double time for all hours worked in excess of both the 8-hour day and the 40-hour week.

Your inquiry also refers to the fact that premium pay is required for hours worked on a seventh consecutive day, a provision contained in Act No. 289 of April 9, 1946. Specifically, the Act requires that the employee be granted one day of rest for each six days worked. The employee must work at least six consecutive days, or part of such six

days, in order to qualify for premium payment when required to work on the seventh day of that week. Pursuant to the Act, hours worked on the seventh day must be paid at double time, even if such hours are not in excess of the daily or weekly standard.

You also indicate that you were informed of a requirement to pay double time "if the time between the last work day was less than 12 hours". This is a misinterpretation of a provision of Act No. 83 of July 20, 1995, which represents the most recent amendment to Act No. 379. Article 4 of Act No. 379 has always required overtime compensation for hours worked in excess of 8 in any period of 24 consecutive hours. That provision was amended by Act No. 83 to allow for a limited form of flexitime, subject to a requirement that the employee enjoy a minimum of 12 hours rest between the end of one shift and the beginning of the next shift. Under such an arrangement, the employer may legally pay straight time for hours that would otherwise be overtime, but this is permissible only when there is a voluntary agreement between the employee and the employer to implement a flexible work schedule. In the absence of such an agreement, overtime compensation will be required for such hours even if the employee had 12 or more hours rest between shifts.

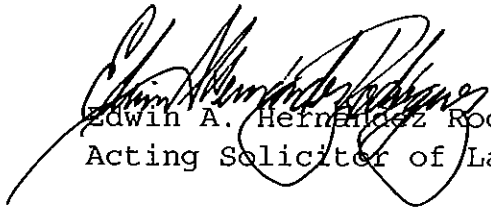
Lastly, you refer to a double time requirement when an employee is required to work during his scheduled lunch hour. Article 15 of Act No. 379 provides that each employee must be granted a meal period not earlier than after the conclusion of the third consecutive hour of work and not later than prior to the beginning of the sixth consecutive hour. If the employer fails to grant the meal period within these time limits, the employee will be entitled to payment at double time for such period. In addition, the Act requires a second meal period in the event the employee works in excess of an 8-hour day. The employee may voluntarily agree to waive the second meal period, however, provided the employee does not work more than two hours beyond the 8-hour day.

In addition to the above time and pay requirements, you should be aware of the provisions of Act No. 230 of May 12, 1942, as amended, known as Puerto Rico's Child Labor Law. The Act prohibits the employment of minors under the age of 18 years "in any occupation dangerous or injurious to his

life, health, education, safety and welfare", as determined by regulations issued by a Board created pursuant to the Act.

We trust the foregoing information adequately responds to your inquiry.

Cordially,



Edwin A. Hernández Rodríguez
Acting Solicitor of Labor