



Commonwealth of Puerto Rico
DEPARTMENT OF LABOR AND HUMAN RESOURCES

January 8, 1999

Re: Inquiry No. 14588

This is in reference to your inquiry pertaining to the application of Act No. 17 of April 17, 1931, as amended, to a payroll system that a client of your law firm proposes to establish. Your specific inquiry is quoted below, followed by our answers to your questions:

Your opinion is requested regarding a bi-weekly payroll system a client of our office is contemplating. The proposed payroll system will permit our client to standardize and centralize payroll operations for many of its subsidiaries, and will facilitate the reduction of payroll processes from 630 to 130 per year. The new payroll system in turn will significantly reduce administrative payroll expenses.

Under the proposed plan, the employees will receive their paychecks in intervals of fourteen (14) days. The amount paid would be for standard hours for the current bi-weekly period, plus the difference between the actual hours and standard hours paid in the previous bi-weekly paycheck. The process is described in more detail using the following two examples:

A. Scenario 1:

- On November 13, 1998, the Company pays an employee wages equivalent to the *standard* eighty (80) hours of *projected* work, from October 31 to November 13, 1998. Thereafter, the Company would adjust the employee's pay for hours *actually* worked in this period, in the next payroll period, that is November 27, 1998. For example, an employee works ninety (90) hours (80 regular hours and 10 overtime hours) from October 31, 1998 to November 13, 1998. On November 13, 1998, the employee would be paid for the *standard* eighty (80) hours of *projected* work. The payment for the ten (10) overtime hours (including the statutory penalty), would be paid the following bi-week, November 27, 1998, along with the payment for *standard* hours of projected work from November 16 to November 27.

Answer

Although not so stated, it must be assumed that the employee in your example is paid for all hours at not less than the statutory minimum wage. The issue raised in this scenario is addressed in Regulations, Part 778 of the Code of Federal Regulations, specifically at § 778.106, which states the following:

There is no requirement in the Act that overtime compensation be paid weekly. The general rule is that overtime compensation earned in a particular workweek must be paid on the regular pay day for the period in which such workweek ends. When the correct amount of overtime compensation cannot be determined until some time after the regular pay period, however, the requirements of the Act will be satisfied if the employer pays the excess overtime compensation as soon after the regular pay period as is practicable. Payment may not be delayed for a period longer than is reasonably necessary for the employer to compute and arrange for payment of the amount due and in no event may be delayed beyond the next payday after such computation can be made. [...]

Payment of overtime in accordance with the above provisions will be recognized by this Department as complying with Act No. 17, *supra*.

B. Scenario 2:

- Using this same example, we assume that the Company paid the employee for the standard eighty (80) hours on November 13. However, the employee actually worked seventy-two (72) hours in this period, therefore the Company overpaid the employee eight (8) hours. To adjust this overpayment, at the end of the next bi-week, on November 27, 1998, the Company would deduct this eight (8) hour overpayment from the payment for *standard* hours of projected work.

Act Number 17 of April 17, 1931 ("Act 17"), as substantially amended by Act Number 74 of July 1, 1995 ("Act 74"), regulates, among other items, the timeline for paying employee wages. Section 3 of Act 74 sets forth that employers shall pay employees the total amount of wages due, in intervals not exceeding fifteen (15) days. Before the 1995 amendment, the Act required payment in intervals of not more than one (1) week. However, the law does not define this clause for practical purposes, nor does it designate specific pay days.

Under the pre-1995 statutory language, the Puerto Rico Department of Labor ("DOL") has held as [a] matter of policy that employers could withhold an employee's first week of pay "in reserve". For example, under a weekly pay system, an employee who commences work on Monday, June 1, 1998, would be paid for the first time on Friday, June 12, 1998. The payment of wages on Friday, June 12, 1998

would cover hours worked during the first week of employment, that is, the week ending June 5, 1998. Successively, on the third Friday of work, June 19, the employee would be paid for wages earned in the second week of work; in other words, the week ending on June 12, 1998.

Considering the DOL established policy, under Act 74, an employer could hold an employee's first week "in reserve". On the second bi-week, the employee would be paid for all work performed during the first bi-week of employment. Thereafter, in the third bi-week, the employee would be paid for all work performed in the second bi-week, etc. In sum, under DOL policy, an employee would receive his/her first paycheck on the second bi-week.

Given these facts, in our opinion, the proposed payroll system complies with Act 17 since, with the exception of the first bi-week, (which would be held "in reserve"), the Company is delivering full payment of wage earned every fifteen (15) days. This type of payroll system has been held valid by federal courts under the Fair Labor Standards Act's "prompt payment rule (.) See, Roger et al v. City of Troy, 4 WH Cases 2d 1089 (2nd Cir. 1998)

Although the adjustment for overpayment (Scenario 2) could be confused with a "deduction for salary advances" under Act 17, this is not the case, for the reasons we proceed to explain. Act 17 sets forth that employers may deduct from employee wages the salary advances that correspond to the period in which the advances were made. As a general proposition, in modern times, "salary advances" are considered *ad hoc* and are granted by employers as a concession upon employee request. In light of this circumstance, the "adjustment" for overpayment in this case, is *sui generis* and should not be considered akin to a "deduction for salary advances". In this context, in our opinion, Scenario 2 would conform to Act 17. Additionally, before the implementation of the new system, employees will be clearly informed of the new policy and that the "adjustment", to the wages paid for projected hours in the previous payroll will be effectuated on the following payroll. Additionally, this "adjustment", whether for overpayment or underpayment, will be clearly stated in the pay stub, in compliance with Act 74 requirements.

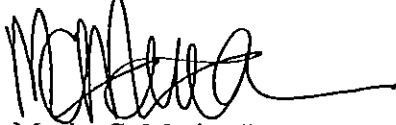
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Answer

We agree that the situation described in your second scenario involves a valid pay adjustment that does not constitute a "salary advance" within the meaning of Section 5(i) of Act No. 17 *supra*, as amended by Act No. 74, *supra*. Thus, it is our opinion that proposed pay system, as described in your inquiry, complied with prevailing law.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein. You have also represented that this opinion is not sought on behalf of a client or firm that is under investigation by the Bureau of Labor Standards of this Department, or that is in litigation with respect to, or subject to the terms of any agreement or order applying, or requiring compliance with the provisions of labor laws enforced by this Department.

Cordially,

A handwritten signature in black ink, appearing to read 'María C. Marina Durán', with a long horizontal flourish extending to the right.

María C. Marina Durán
Solicitor of Labor