

(H. B. 1745)
(Conference)

(No. 27-2024)

(Approved January 17, 2024)

AN ACT

To create the “Act to Facilitate the Implementation of Remote Work in the Private Sector and to Incentivize the Establishment of Airline Bases in Puerto Rico,” to clarify the applicability of the provisions of employment protection laws to domiciled or non-domiciled employees working remotely from Puerto Rico and to unionized employees of airlines that establish a base in Puerto Rico.

STATEMENT OF MOTIVES

A little over three (3) years ago, the events that took place as a result of the COVID-19 pandemic changed the rules of the game all throughout society. The need to act fast to protect the health of the population forced the academic, business, commercial, and government sectors to transition to and implement alternate work mechanisms for both rendering and receiving services. Within a matter of weeks, local, national, and international communities began to implement telework and remote work or “work from home” as it is commonly known.

Remote work has been the subject of several controversies regarding the law applicable to employment relationships, the protections available to employees, and the obligations set forth in our code of laws with respect to Puerto Rico residents [who work for employers with] no presence or businesses in Puerto Rico. Furthermore, the case of individuals who decided to relocate to Puerto Rico and work remotely has raised legal concerns regarding the applicability of employment protection laws to their employers.

The lack of clear legal rules as well as the scenarios described in the previous paragraph discourage recruitment and the offering of remote work positions from Puerto Rico. In this case, the lack of clarity is directly affecting the efforts to migrate to business models that guarantee a better quality of life and, more specifically, the development of remote work in Puerto Rico's job market.

Several U.S. and international companies have undoubtedly refused their employees' requests to specifically move to Puerto Rico to [render services] perform their duties remotely due to the lack of legal rules concerning these situations. Refusals such as these are mainly based on broad interpretations regarding the applicability of Puerto Rico labor law to the operations of employers whose industries do not generate income from sources in Puerto Rico, either directly or indirectly, or that are not engaged in the sale of taxable items in the Island.

There certainly is a legal framework that regulates some of these aspects such as Act No. 1-2011, as amended, known as the "Internal Revenue Code of 2011" and Act No. 4-2017, as amended, known as the "Labor Transformation and Flexibility Act." Although the aforementioned laws address aspects that are fundamental to commercial operations, employment relationships, and the applicability of the rule of law to foreign companies, none of these laws regulate or group together measures that specifically address matters related to remote work, including work from home, in the private sector.

Furthermore, it is imperative to clearly establish the rule of law applicable to the unionized employees of airlines that establish a base in Puerto Rico after the effective date of this Act. Puerto Rico's tourism industry is currently thriving, which makes it an attractive proposition for airlines to establish a base in our jurisdiction. Our employment laws, however, represent an obstacle for airlines when determining whether to establish a base in Puerto Rico because many airlines have complex collective bargaining agreements in effect that have implications at the national

level. A large percentage of this industry's employees are unionized employees; therefore, it is appropriate to allow their collective bargaining agreements to govern their employment relationships. Also, we acknowledge that this industry provides well-paying jobs, better employment benefits than those required by law, and represents a good opportunity for Puerto Rico's economic growth.

Consistent with the public policy in effect in favor of remote work and seeking to attract new industries, this Legislative Assembly deems it necessary to approve this Act to establish a legal framework that facilitates remote work from Puerto Rico as well as the establishment of airline bases on the Island.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Title.

This Act shall be known as the "Act to Facilitate the Implementation of Remote Work in the Private Sector and to Incentivize the Establishment of Airline Bases in Puerto Rico."

Section 2. Public Policy on Remote Work from Puerto Rico.

The Legislative Assembly of Puerto Rico recognizes that remote work represents a unique opportunity to attract more people to Puerto Rico. It also believes that remote work provides Puerto Ricans with more opportunities to find remote jobs in industries that do not have a presence in Puerto Rico. Therefore, this Act seeks to encourage employers without a presence or businesses in Puerto Rico to hire persons domiciled in Puerto Rico and allow them to work remotely from the Island. For such purposes, this Act clearly establishes the employment provisions that shall apply to such employees and employers. This Act sets forth as public policy to encourage employees and employers without a presence or businesses on the Island to consider Puerto Rico as an ideal place for remote work whether on a temporary or permanent basis.

Section 3.- Definitions.

For the purposes of this Act, the following terms shall have the meanings stated hereinbelow:

(a) “Domiciled” means physical presence with the intent to remain in a place indefinitely as defined in Section 87, Chapter IV, of Act No. 55-2020, as amended, and the related caselaw.

(b) “Employee” means any natural person who voluntarily performs services for the benefit of a covered employer under this Act in exchange for compensation for the services performed.

(c) “Employer” means any employer that is not engaged in taxable trade or businesses, or in the business of selling taxable items in Puerto Rico pursuant to Act No. 1-2011, as amended, its successor law, and any other tax laws or regulations in effect in Puerto Rico, including their official interpretation by the Department of the Treasury.

(d) “Remote Work” is the practice of performing services not in-person, outside of the physical facilities of a worksite, by virtue of which employees may perform their job duties from their residence or from any other location.

The definitions herein established shall not apply to Section 7 of this Act.

Section 4.- Applicability of Labor and Employment Laws to Employees and Employers that Engage in Remote Work from Puerto Rico.

The applicability of statutory provisions, as to employment rights, obligations, and other employment conditions, shall be governed by this Section insofar as the employment relationship complies with the following:

- a. the employee is employed in an executive, administrator, or professional capacity under the Fair Labor Standards Act and the regulations adopted by the Department of Labor and Human Resources;
- b. the employee is domiciled in Puerto Rico;

- c. the employee is covered by this Act, and
- d. the employee works remotely.

These employment relationships shall be governed solely by the terms of the employment agreement and are excluded from all local employment laws, except as expressly provided to the contrary.

The applicability of Act No. 45 of April 18, 1935, as amended; Act No. 139 of June 26, 1968, as amended; and Act No. 428 of May 15, 1950, as amended; shall be contingent upon the employer providing occupational and non-occupational insurance, and, if applicable, chauffeur's insurance that provides coverage equal to or greater than that provided by the aforementioned laws.

The employer shall comply with Act No. 74 of June 21, 1956, as amended, except in those circumstances in which the employee may apply for such benefit in another jurisdiction.

Section 5.- Non-applicability of Labor or Employment Laws to Non-domiciled Employees Who Voluntarily Engage in Remote Work from Puerto Rico.

When a non-domiciled employee voluntarily decides to relocate to Puerto Rico to work remotely for a covered employer under this Act, said employer shall be exempt from compliance with all local employment laws; including all that pertains to benefits, obligations, insurance, and any other provisions applicable to such employment relationship in Puerto Rico. This employment relationship shall be governed solely by the terms of the employment agreement or, absent an employment agreement, by the applicable law in the jurisdiction where the employee is domiciled. The provisions of this Section shall no longer apply to an employee once the employee becomes domiciled in Puerto Rico with the employer's consent, in which case the employment relationship shall be governed by the provisions of Section 4 of this Act.

Section 6.- Applicability of the Puerto Rico Internal Revenue Code and Other Puerto Rico Tax Laws.

The tax treatment of any employee performing services for an employer as provided in Section 3 of this Act shall be determined by Act No. 1-2011, as amended, or its successor law, and by all other tax laws in effect in Puerto Rico.

Section 7.- Precedence of Collective Bargaining Agreements in Airline Industry Employment Relationships in Puerto Rico.

Employees covered by a collective bargaining agreement who work for airlines that establish a base in Puerto Rico after the effective date of this Act are hereby excluded from Puerto Rico's employment protection laws. The terms and conditions of employment of unionized employees shall be governed solely by the collective bargaining agreement.

Section 8.- Responsibility of the Department of Labor and Human Resources.

The Department of Labor and Human Resources shall inform covered employees and employers under this statute of their duties and responsibilities to the Department. Likewise, the Department shall create educational materials to on the provisions of this Act.

Section 9.- Severability.

This Act is hereby approved in the exercise of the Legislative Branch's constitutional prerogatives under Article III of the Constitution of the Commonwealth of Puerto Rico.

However, if any part of this Act were held to be void or unconstitutional, the ruling, holding, or judgment rendered to such effect shall not affect, impair, or invalidate the remainder of this Act. The effect of said judgment shall be limited to the specific part of this Act thus held to be void or unconstitutional.

If the application to a person or a circumstance of any part of this Act were held to be void or unconstitutional, the ruling, holding, or judgment rendered to such effect shall not affect or invalidate the application of the remainder of this Act to such persons or circumstances where it may be validly applied.

It is the express and unequivocal will of this Legislative Assembly that the courts enforce the provisions and application thereof to the greatest extent possible, thus honoring the constitutional mandates, even if it renders ineffective, voids, invalidates, impairs, or holds to be unconstitutional any part thereof, or even if it renders ineffective, invalidates, or holds to be unconstitutional the application thereof to any person or circumstance. This Legislative Assembly would have approved this Act regardless of any determination of severability that the Court may make.

Section 10.- Supremacy.

The provisions of this Act shall prevail over any other provision of law, regulation, or rule inconsistent therewith.

Section 11.- Effectiveness.

This Act shall take effect upon its approval. The lack of regulations required or to be adopted under the provisions of this Act shall not preclude this Act from taking effect and being enforced.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 27-2024 (H. B. 1745) (Conference)** of the **7th Regular Session** of the **19th Legislative Assembly of Puerto Rico:**

AN ACT to create the “Act to Facilitate the Implementation of Remote Work in the Private Sector and to Incentivize the Establishment of Airline Bases in Puerto Rico,” to clarify the applicability of the provisions of employment protection laws to domiciled or non-domiciled employees working remotely from Puerto Rico and to unionized employees of airlines that establish a base in Puerto Rico.

has been translated from Spanish to English and that the English version is correct.
In San Juan, Puerto Rico, on this 9th day of February, 2024.

Mónica Freire-Florit, Esq.
Director