



Commonwealth of Puerto Rico
DEPARTMENT OF LABOR AND HUMAN RESOURCES

June 23, 1997

Re: Inquiry Number 14337

This is in reply to your letter regarding labor laws in Puerto Rico, which has been forwarded to this office by the Department's Bureau of Labor Standards. Your inquiry encompasses over a dozen specific questions, which we will quote in full, followed by our answer to each point.

Q: "We should appreciate receiving the following information with respect to compensation for two classes of employees

(a) Retail sales employees

(b) Outside or wholesale sales employees"

A: For the purposes of this discussion, it will be assumed that the employer is covered by the provisions of the Fair Labor Standards Act (FLSA). Minimum wages, vacation, sick leave, and other benefits on the island are regulated by a system of mandatory decrees issued by the Puerto Rico Minimum Wage Board pursuant to Act No. 96 of June 26, 1956, as amended, popularly known as the Puerto Rico Minimum Wage Law. Retail sales employees are covered by Mandatory Decree No. 42, applicable to the Retail Trade Industry. A copy of said decree, with the English version on the reverse side, is enclosed for your reference. It should be noted, however, that the minimum hourly wages provided in the decree are preempted by the higher FLSA minimum wage of \$4.75 per hour, which will be increased to \$5.15 per hour effective September 1, 1997.

Employees engaged in wholesaling activities are generally covered by Mandatory Decree No. 68, applicable to the Wholesaling and Warehousing Industry, a copy of which is also enclosed for your reference. As in the case of the mandatory decree applicable to the retail trade, the stipulated minimum wage is also preempted by the Federal minimum wage.

Q: "1) Compensation change (e.g., from straight salary to commission or vice versa). What restrictions, if any, are there in changing compensation?

(a) Is prior notice required?

(b) If so, how long before the effective date of the change must notice be given?

(c) Is there any specific form of notice (e.g., must it be in writing, information required, any other requirements?"

A: There is no requirement in the law that an employee be paid on a salary, hourly, or other basis. The law does provide that whatever method of compensation is used, the employee must be guaranteed at least the applicable minimum wage for all hours worked, plus statutory overtime compensation (in nearly all cases at double time rates) for all hours worked in excess of both an 8-hour workday and a 40-hour workweek. Overtime requirements in Puerto Rico are contained in Act No. 379 of May 15, 1948, a copy of which is enclosed, with the English version on the reverse side. With respect to changing the method of compensation, there is no legal requirement to give prior notice, but it is recommended that the affected employees be given advance written notice.

Q: "2) Is there any prohibition against paying retail store sales persons straight commission? If there is no prohibition, does the state accept the overtime exemption permitted by the federal Fair Labor Standards Act?"

A: There is no prohibition against paying any sales employees, in retail stores or elsewhere, on a straight commission basis. As previously discussed, however, the employee must be guaranteed at least the applicable minimum wage and statutory overtime compensation. With regard to overtime, we assume your question pertains to the exemption provided at FLSA §207(i), which exempts

from the overtime premium employees of retail or service establishments, provided the employee's regular rate of pay is in excess of one and one-half times the minimum hourly wage and that more than half the employee's compensation for a representative period represents commissions on goods or services. Said exemption is not recognized under Act No. 379, which not only requires that such employees be paid overtime, but also provides that such overtime be at double time rates. It should be noted that although a similar exemption was recently enacted by the Commonwealth Legislature as an amendment to Act No. 379, it applies to automotive sales persons only.

Q: "3) How frequently do wages and/or salary have to be paid? Are there any special provisions permitting a deviation? Are there any special provisions for commission paid employees?"

A: The frequency of wage payments is regulated by Act No. 17 of April 17, 1931, as amended by Act No. 74 of June 30, 1995. The amended act provides that wages must be paid "at intervals that shall not exceed fifteen (15) days." Exempt employees are specifically excluded from the coverage of the amended act, but the 15-day standard applies to all nonexempt employees, whether hourly rated, salaried, or paid on any other basis. Thus, there is no special provision for employees compensated on a commission basis.

Q: "4) Are there any special reporting and/or record keeping requirements for commission paid employees?"

A: General recordkeeping requirements applicable in Puerto Rico are contained in Regulation No. 7 of the Minimum Wage Board. There are no separate requirements for employees paid on a commission basis, as the term "wage" is defined under our Minimum Wage Law as "salary, wage, and any sort of compensation, whether in money, kind, services, facilities, or a combination of any of them". That definition has been held to include commissions, which are thus subject to the same requirements as other forms of compensation. A copy of the English language version of Regulation No. 7 is enclosed for your reference.

Q: "5) Can disciplinary or other deductions be made from payments to commission paid employees?"

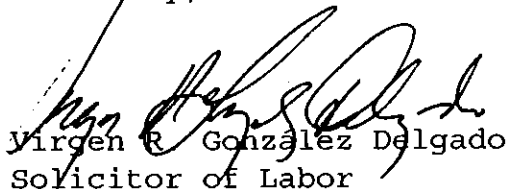
A: The general rule in Puerto Rico is that an employer may not make any payroll deductions other than those specifically authorized under Act No. 17, *supra*, as amended. Since there is no provision in the act that authorizes payroll deductions for disciplinary reasons, regardless of the basis on which the employee is compensated, such deductions would violate the law.

Q: "6) Does there have to be a written agreement with commission paid employees? If so, does it have to be an individual agreement or can a group announcement or policy announcement suffice?"

A: There is no requirement that an employer must enter into a written agreement with employees who are paid on a commission basis. Nevertheless, it is customary to reduce such agreements to writing in the interest of avoiding possible disputes over the precise terms of the commission arrangements.

We trust the foregoing information will prove helpful to you.

Cordially,



Virgen R. González Delgado
Solicitor of Labor

Enclosures