Commonwealth of Puerto Rico

DEPARTMENT OF LABOR AND HUMAN RESOURCES

July 11, 1997

Re: Inquiry Number 14344

This is in reply to your undated inquiry regarding the sick leave provisions of Mandatory Decree No. 38 and their application to your employment with a commercial airline. Enclosed with your inquiry is a memorandum issued by your employer that sets forth company policy with respect to vacation and sick leave benefits applicable to employees who transfer to the continental U.S. In regard to sick leave, the memorandum states the following:

> "If an employee, upon transferring has sick [leave] accrual under [Puerto Rico labor law], said bank will be exhausted first, followed by any accrual under [the airline] bank. Upon transferring the employee will accrue 8.0 hours sick [leave] based on equivalent full time service as applicable under [airline regulations]. [Puerto Rico labor law] will no longer apply."

Also enclosed with your inquiry is copy of the relevant airline regulation, about which you observe that it "does not state that the sick [leave] hours accumulated in San Juan must be used first." You add that the regulation "only explains how [s]ick [leave] [h]ours are accumulated from a [p]art time [s]tatus to a [f]ull time [s]tatus."

The issue which prompts your inquiry is the following:

> "What I'm questioning is the validity of the [m]emorandum in question. The [s]ick [leave] [p]olicy according to this memorandum explains the difference according to the [l]abor [l]aw of Puerto Rico and [the airline] [r]egulation.

> [...]. It explains how [s]ick [leave] [h]ours will be accrued once in the United States according to [the airline] [r]egulation. It also states that Puerto Rico [l]abor [l]aw will no longer apply.
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> If Puerto Rico [l]abor [l]aw does not apply[,] then they can not combine the hours accumulated in Puerto Rico with the hours of [the airline] in the U.S.A."

In fact, your employer is correct in stating that Puerto Rico labor law does not apply in the continental U.S., as Puerto Rican law (not just labor law) cannot be applied extraterritorially. Once an employee has been permanently transferred to the continental U.S. (as opposed to a mere temporary reassignment) and is working in the mainland, he or she has no right to file claim for sick leave hours accrued under any Puerto Rico mandatory decree.

Since your employer is under no legal obligation to comply with the sick leave provisions of the mandatory decree once the employee has been transferred to a location outside Puerto Rico, the company could simply ignore the sick leave hours accrued under the mandatory decree. Instead the company chose to provide a higher benefit by allowing the employee to exhaust those hours first, at the same time beginning to accrue sick leave pursuant to company regulations. In effect, the employee's sick leave hours under the mandatory decree are merged into a common bank with the sick leave hours accrued on the mainland under company regulations. It is thus paradoxical that you should object to this policy, which is more liberal than the law requires.

You also indicate that you accrued a total of 157 sick leave hours under Mandatory Decree No. 38 while working in Puerto Rico between March 21, 1988 and May 27, 1989. On that date you transferred to Miami, Florida, where you worked until March 13, 1995, at which time you transferred to New York, working there until July 1, 1996. It should be noted that Mandatory Decree No. 38 requires payment in cash at the prevailing regular rate for accrued and unused sick leave that exceeds 26 days as of November 30 of any calendar year. The 26-day threshhold is equivalent to 208 hours, which means that your total of 157 hours fell short of that mark. With respect to those sick leave hours, you request the following:

> "I would like something in writing stating that the hours earned in Puerto Rico can not be combined with the hours earned in the United States due to the [l]abor [l]aw of Puerto Rico. If so, they must re-activate the hours accrued during the period in which the [e]mployee worked in Puerto Rico.
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> Once the employee returns to Puerto Rico[,] the [l]abor [l]aws of the United States does [sic] not apply. So anything accumulated in the past as an [e]mployee in Puerto Rico will be re-activated."

In fact, all of the foregoing statements are incorrect. For the aforementioned reasons, there is nothing to prohibit the employer from combining sick leave hours accrued under the mandatory decree with those earned pursuant to company regulations. While it is undisputed that Puerto Rico's laws do not apply in the continental U.S. (for the same reasons that Florida's laws do not apply in New York and viceversa), the contrary is not true. Because Puerto Rico is a U.S. territory, Federal laws apply in Puerto Rico in much the same manner as on the mainland. On the other hand, paid sick leave is not required under any Federal law. The company is thus free to set up its own sick leave policy, provided the stipulated benefits do not undercut the terms of State law, a collective bargaining agreement, or an individual employment contract.

With regard to reactivating sick leave hours accrued in the past, it must be noted that claims under virtually all labor laws are subject to a statute of limitations. In this case, you have indicated that your sick leave hours in Puerto Rico were accrued between March 1988 and May 1989, which is clearly beyond the statute of limitations. Accordingly, your employer is under no legal obligation to reinstate those hours upon your transfer back to Puerto Rico.

We trust the foregoing information will prove helpful to you.

Cordially,

Virgen R. González Delgado
Soliditor of Labor