



Commonwealth of Puerto Rico  
**DEPARTMENT OF LABOR AND HUMAN RESOURCES**

August 6, 1997

Re: Inquiry Number 14366

This is in reference to your inquiry pertaining to Puerto Rican labor laws. Your letter indicates that your firm is a wholesaler and distributor of safety footwear with headquarters in Endicott, New York. You further state that the firm has two operations in Puerto Rico, located respectively in San Juan and Mayaguez, and that said operations engage in both wholesaling and retailing. The purpose of your inquiry is to seek guidance on laws and regulations that pertain to wages, overtime, holidays and holiday pay, vacations and vacations pay, and other applicable labor standards. You indicate that your operations in Puerto Rico involve both wholesaling and retailing, but do not identify the percentages of each activity. Employment benefits for workers on the island are largely governed by a system of mandatory decrees that are issued by the Puerto Rico Minimum Wage Board, one for each industry. Retail Sales, for example, are covered by Mandatory Decree No. 42, applicable to the Retail Trade Industry. A dual language copy of Mandatory Decree No. 42, Tenth Revision (1991) with the English version on the reverse side, is enclosed for your reference. We direct your attention to pages 17-18 of the section entitled "Coverage of the Definition" of the mandatory decree which states the following:

"As in the definition of Mandatory Decree No. 42 - Ninth Revision (1985), it is the intention of the Board on approving this definition that employees working within an establishment engaged principally in retail selling shall receive the same treatment and shall be covered by the same provisions as other employees working in any secondary activity. The establishments engaged principally in retail sales which are also engaged in wholesaling shall be covered by the decree approved for the retail trade industry, notwithstanding the number of employees which the business uses in wholesaling. However, it should be clearly understood that employees working exclusively or principally in, or who devote more than half of their time to wholesaling in a establishment engaged principally in retail; selling are covered by the mandatory decree applicable to the Wholesaling and Warehousing Industry."

As the above-quoted provision indicates, some of your employees may be covered by Mandatory Decree No. 68, applicable to the Wholesaling and Warehousing Industry. Accordingly, we are also enclosing copy of that decree, Fourth Revision (1989). Your specific questions are quoted below, followed by our answers to each. In the interest of brevity, we will endeavor to the extent possible to refer you to enclosed publications that summarize the applicable legal provisions.

#### "Holidays

1) Is the attached list of holidays a complete listing of all holidays applicable to Lehigh's type of business?

Enclosed is a list of official holidays in Puerto Rico, which must be observed by "business establishments" covered by Act No. 1 of December 1, 1989, as amended, "Act to Regulate the Operation of Business Establishments" popularly known as the Closing Law. The term "business establishments" is defined in the Act as "any site, store or similar place where any type of business operation or commercial activity for the sale or transfer of retail articles or which combine wholesale or retail sales, are carried out."

"1a) Can Lehigh require an employee to work on a holiday? If so, what wages must be paid to employees? (straight time, overtime)"

Pursuant to Act No. 1, supra, business establishments covered by the Act must close down all day during the full day holidays listed in Article 3. Employees may not be required to work on those holidays. However, employees are permitted to work from 5:00 a.m. to 12:00 noon on the half-day holidays listed in Article 4. A copy of Act No. 1 in English is enclosed for your reference.

"1b) Is an employer required to pay overtime to an exempt employee or hours worked on a holiday?"

There is no requirement to pay overtime to a bona fide executive, administrative or professional employee who qualifies for exemption under Regulation No. 13 of the Puerto Rico Minimum Wage Board. An English language copy of that regulation is enclosed for your reference.

"Vacation

2) How much vacation time is an employee entitled to in a calendar year?"

Please refer to Article IV, Section A of Mandatory Decree No. 42 and Article III of Mandatory Decree No. 68. It should be noted that the vacation benefits provided under these mandatory decrees apply only to employees hired prior to August 1, 1995. Vacation benefits applicable to employees hired since that date are those provided under Act No. 84 of July 20, 1995. Please, refer to the enclosed fact sheet which summarizes the provisions of Act No. 84.

"2a) Is vacation prorated if an employee starts mid-year or mid-month? If so, at what rate does vacation accrue?"

Vacation accrues on a monthly basis, provided the employee works at least the minimum hours required under the mandatory decree or under Act. 84, as the case may be. No vacation will accrue in any month in which the employee does not work at least the stipulated minimum hours.

"2b) Can vacation be carried forward to the next year?  
If so, how much?"

Yes. See Article IV, Section A of Mandatory Decree No. 42 and Article III of Mandatory Decree No. 68. In the case of employees subject to Act No. 84, vacation may be accumulated up to a maximum of 30 days, but only pursuant to a written agreement between the employee and the employer. In the event that vacation is not granted after reaching said maximum, the employer is required by law to grant the total accrued as of that date and to pay the employee twice the statutory wages for the period in excess of said maximum.

"2c) Is accrued vacation payable at termination?"

Yes. In the event employment is terminated, for whatever reasons, the employer is required to pay cash value of accrued vacation.

"Sick Time

3) Are employees eligible for paid sick time? If so, how many days per calendar year?"

Yes. Please refer to Article IV, Section B of Mandatory Decree No. 42, and to Article IV of Mandatory Decree No. 68. Employees hired since August 1, 1995 are subject to Act No. 84, accruing sick leave at a rate of one (1) day for each month in which the employee works at least 115 hours, equivalent to 12 days per year.

"3a) Is sick time prorated if an employee starts mid-year or mid-month? If so, at what rate does sick time accrue?"

See answer to question 2a.

"3b) Can sick time be carried forward to the next year?  
If so, how much?"

Yes. See Article IV, Section B of Mandatory Decree No. 42 and Article IV of Mandatory Decree No. 68. Employees subject to Act No. 84 may carry forward a maximum of 15 days.

"3c) Is accrued sick time payable at termination?"

No. Sick leave represents compensation for lost wages when the employee is unable to work due to illness or injury. Accordingly, there is no requirement to pay the cash value or sick leave when the employee has in fact not been absent due to illness or injury. As a deterrent to absentecism, however, many employers voluntarily instituted programs that reward employees for prudent use of sick leave, including a lump sum payment for unused sick leave upon termination.

"3d) Are all classes of employees entitled to sick time (i.e. exempt, no-exempt)?"

Bona fide exempt employees are excluded from the provisions of the mandatory decrees and of Act. No. 84. Accordingly, sick leave benefits are required by law only for nonexempt employees, whether hourly rated or salaried. Exempt employees accrue sick leave benefits only if provided by company policy or by an individual job contract.

"Overtime

"4) When is overtime paid?"

Act No. 379 of May 15, 1948, as amended, requires payment of overtime for all hours worked in excess of a daily 8 hour standard and of a weekly 40 hour standard. A dual language copy of Act No. 379, with the English version on the reverse side is enclosed for your reference. It should be noted that Act No. 379 was amended most recently by Act No. 83 of July 20, 1995. An updated version of Act No. 379, incorporating said amendments, is not yet available. We are therefore enclosing a one-page fact sheet that summarizes the provisions of Act No. 83..

"4a) At what rate is overtime paid?"

Pursuant to Act. No. 379, supra, all hours over 8 per day and over 40 per week must be paid at twice the regular rate that applies to the employee. By way of exception, employers covered by the Fair Labor Standards Act (FLSA), as your firm undoubtedly is, may pay time and one-half (instead of double time) for hours over 8 per day, provided the 40 hour weekly limit is not exceeded. There is

no exception to the requirement that all hours over 40 per week be paid at double time rates.

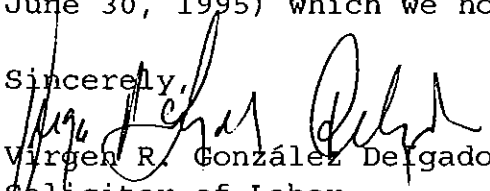
Accordingly, the above exception for firms covered by the FLSA applies only when the employee works in excess of the 8 hour statutory workday on one or more occasions during the week, but because of a short workweek (such as a holiday or an excused absence) the employee does not in fact exceed 40 hours for that week.

"4b) What classes of an employees are eligible to receive overtime?"

Pursuant to Act No. 379, supra, all nonexempt employees, whether hourly rated or salaried, must be paid statutory overtime compensation as previously discussed. As we previously indicated in our reply to question 1b) above, there is no requirement to pay overtime to bona fide executive, administrative and professional employees who qualify for exemption under Regulation No. 13. Such employees are expressly excluded from the provisions of Act No. 379.

We trust the foregoing information, together with the enclosed publications, adequately responds to your inquiry. In response to your request, we have also enclosed one-page fact sheets that summarize the provisions of other labor laws pertaining to maternity leave (Act No. 3 of March 13, 1942), unjustified dismissal (Act No. 80 of May 30, 1976); payment of annual hours (Act No. 148 of June 30, 1969); and payment of wages (Act No. 74 of June 30, 1995) which we hope will be helpful to you.

Sincerely,

  
Virgen R. González Delgado  
Solicitor of Labor

Enclosures