



GOBIERNO DE PUERTO RICO  
DEPARTAMENTO DEL TRABAJO Y RECURSOS HUMANOS

February 24, 1999

Re: Inquiry No. 14614

This is in reference to your inquiry pertaining to scheduling of working hours pursuant to Puerto Rico labor laws. Your specific inquiry is as follows:

[...] I work for a large corporation which sells and services computers world wide and who's [sic] headquartes [sic] is [sic] in the United States. I would like you to please help me understand Puerto Rico labor laws when it comes to RESCHEDULED work weeks. I am a technician and I am non-exempt. I get payed [sic] by-weekly [sic] and by the hour. My normal SCHELDULE [sic] is Monday through Friday 8am through 5pm with one hour off for lunch. I work at customer locations in responce [sic] to service calls.

I have gone to the Dept. of [L]abor in Ponce and they suggested that I write to you. They told me that you could answer my questions in [E]nglish and that the answers would be more credible since they were coming from a legal department instead of an investigator. I will list my questions by numbers.

1. If I am to be RESCHEDULED how am I to be informed, can it be word of mouth, [o]r should there be some sort of posting as to the change and if so, is there a form, and what is form number[?] Where I work in a remote area and do not have access to the posting, are they required to send copy of the change, or an e-mail which is an available media [sic][?] (If I go to the Dept. of Labor and say I worked [o]n Saturday and they did not inform me of the RESCHEDULE change in a reasonable time, are they required to show proof that the [sic] did[?])

2. Is the employer required to keep records of the SCHELDULE [sic] change[?] An example of this question is that if I allege that someone else was supposed to work on a day, and they RESCHEDULED me in his place so as not pay to [sic] overtime,

3. When should you recieve [sic] notice of a RESCHEDULED change[?] Is there a time frame that they have to inform you by[?] Example, if someone who is SCHELDULE [sic] to work is not available, does the employer have the right to call you a day before and say you have to work Saturday, or inform the group you work with, that you are SCHEDULED this weekend[?]

4. If you question your company on thier [sic] RESCHEDULING policies[,] are they required to show that they are in compliance with the law and show you documentation to that fact, or do you have to contact the Dept. of Labor as I am doing, [a]nd if the company had not been complying with the law, or that I am wrong on this issue[,] do I have the right of not suffering any kind of reprisel [sic][?]

5. If you are RESCHEDULED, is the employer required to tell you what day you will be off in advance, not after you worked, or as work becomes available[?]

In reply to your questions, the working day and workweek in Puerto Rico are regulated by Act No. 379 of May 15, 1948, as amended, and those terms are in turn defined under regulations issued by the Secretary of Labor and Human Resources pursuant to Act No 379, *supra*. Although said regulations are currently available only in Spanish, for purposes of this reply we will undertake to provide an unofficial translation of the relevant passages into English. In particular, Article 2 of the regulations defines the working day as follows:

The Working Day, for purposes of computing overtime, will consist of any period of twenty-four (24) consecutive hours.

In order to determine whether any hour worked is overtime, it must be ascertained whether said hour is in excess of eight hours within the period of 24 consecutive hours that ends at that same hour and so on with each hour worked.

In computing hours worked within any period of 24 consecutive hours, hours worked in excess of eight will be counted only once. Once computed as overtime hours, they will be excluded from the computations for subsequent hours.

Next, the regulations define the workweek as follows:

a) The workweek, for purposes of computing hours worked over 40, will consist of a period of one hundred and sixty-eight (168) consecutive hours. Said

workweek will begin on the day and hour determined by the employer, or fixed in

writing through individual working agreement or pursuant to what paragraph (d) of this article provides. Any change in the beginning of the workweek, once it is established, will not become effective until 15 days have elapsed from the date in which such change was notified to the employees. Notification will be effected by posting of a notice in at least three locations that are visible and easily accessible to the workers at the workplace.

b) Those businesses that operate with two or more shifts may establish a different beginning of the workweek for each shift.

c) The beginning of the workweek does not necessarily have to coincide with the beginning of the workweek. These are two different concepts.

d) The workweek will begin at 8:00 a.m. on Monday of each week in every establishment in which the employer had not notified his employees of the beginning of the workweek as of the date this regulation becomes effective. Notification will be effected by posting a notice to that effect in at least three (3) locations that are visible and easily accessible to workers at the workplace; all of which shall be carried out not later than fifteen (15) days prior to the date on which this Regulation becomes effective.

In summary, neither Act No. 379, *supra*, nor the regulations issued by the Secretary pursuant to the Act restrict the employer's right to schedule or reschedule hours to meet the requirements of the particular business. Instead, the Act relies on imposing a penalty, in the form of an overtime premium, on those occasions in which the rescheduling of hours requires the employee to work in excess of 8 hours in any 24-hour period, in excess of 40 hours in any period of 168 consecutive hours, or on the employee's day of rest.

With regard to the issue of reprisals, Section 19 of Act No. 379, *supra*, provides that any employer who "discharges or otherwise discriminates against any employee because the latter has instituted or caused to be instituted any proceeding in accordance with this Act" will be guilty of a misdemeanor and thus subject to the penalties provided by law.

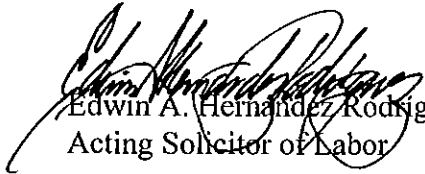
As to the employee's day off, Section 4 of Act No. 379, *supra*, requires overtime payment for "[t]he hours that an employee works for his employer during the day of rest heretofore or hereafter fixed by law in the case of businesses and industries not subject to the closing of their establishments".

The foregoing provision is linked to Act No. 289 of April 9, 1946, as amended, which requires one day of rest for every six days worked. It is well-settled that the "day of rest" means a period of 24 consecutive hours. The employee must work six consecutive days, or part of each of those six days,

in order to be entitled to overtime payment for work performed on the seventh day of that workweek. As the courts have ruled, the employer can only avoid incurring the obligation of overtime payment by granting the employee a regular and fixed day of rest.

We trust the foregoing is responsive to your inquiry.

Cordially,

  
Edwin A. Hernández Rodríguez  
Acting Solicitor of Labor