GOBIERNO DE PUERTO RICO

DEPARTAMENTO DEL TRABAJO Y RECURSOS HUMANOS

27 de mayo de 1999

Re: Consulta Núm. 14637

Nos referimos a su consulta en relación con un cambio en el sistema de pago de nómina que se propone implantar la empresa que usted representa. Su consulta específica es la siguiente:

> Efectivo 29 de julio de 1999 cambiaremos nuestro sistema de pago de nómina quincenal a bisemanal (80.00) horas. En las próximas seis (6) n[ó]minas[,] comenzando el 31 de mayo de 1999, estaremos pagando 80 horas. De esta manera se acumular[á]n las 40 horas necesarios [sic] conforme al sistema bisemanal.
>
> Este modo de pago se efectuar[á] cada dos (2) jueves, y se pagará lo trabajado en las dos semana[s] anterior[es] a la semana de pago.
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> Deseó [sic] su opinión al respecto para asegurarnos que estamos cumpliendo con la ley sobre pago de nóminas.

En lo que respecta al pago de salarios, la Sección 3 de la Ley Núm. 17 de 17 de abril de 1931, según enmendada por la Ley Núm. 74 de 30 de junio de 1995, dispone lo siguiente:

> El total de los salarios debidos a un obrero o empleado se le pagará en moneda legal de Estados Unidos de América ..... a intervalos que no excederán de hasta quince (15) días.

Conforme a lo anterior, el cambio de pago quincenal a bisemanal no presenta conflicto alguno con las disposiciones de la ley. Sin embargo, es necesario tener presente que las disposiciones de ley que rigen el pago de horas extras, tanto bajo la Ley Núm. 379 de 15 de mayo de 1948, según enmendada, como bajo la Ley Federal de Normas Razonables de Trabajo, se basan en la semana de trabajo, no en períodos quincenales ni bisemanales. Eso significa que el patrono vendría obligado a pagar las horas extras, si algunas, que surjan como consecuencia de la implantación del cambio. Aunque su carta no especifica cuál es la actual semana de trabajo, indica usted que la nómina se pagará cada dos jueves, dejando implícito que habrá un cambio en la semana de trabajo. La reglamentación aplicable a cambios en la semana de trabajo se encuentra en el Reglamento 778, Título 29 del Código Federal de Reglamentos (CFR), específicamente en las §§ 778.301 y 778.302, las cuales citamos a continuación:

> "§ 778.301 Overlapping when change of workweek is made.
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> As stated in § 778.105, the beginning of the workweek may be changed for an employee or for a group of employees if the change is intended to be permanent and is not intended to evade the overtime requirements of the [Fair Labor Standards] Act. A change in the workweek necessarily results in a situation in which one or more hours or days fall in both the 'old' workweek as previously constituted and the 'new' workweek. Thus, if the workweek in the plant commenced at 7 a.m. on Monday and it is now proposed to begin the workweek at 7 a.m. on Sunday, the hours worked from 7 a.m. Sunday to 7 a.m. Monday will constitute both the last hours of the old workweek and the first hours of the newly established workweek.
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> § 778.302 Computation of overtime due for overlapping workweeks.
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> (a) *General rule.* When the beginning of the workweek is changed, if the hours which fall within both 'old' and 'new' workweeks as explained in § 778.301 are hours in which the employee does no work, his statutory compensation for each workweek is, of course, determinable in precisely the same manner as it would be if no overlap existed. If, in the other hand, some of the employee's working time falls within hours which are included in both workweeks, the Department of Labor, as an enforcement policy, will assume that the overtime requirements of section 7 of the Act have been satisfied if computation is made as follows:
>
> (1) Assume first that the overlapping hours are to be counted as hours worked only in the 'old' workweek and not in the new; compute straight time and overtime compensation due for each of the 2 workweeks on this basis and total the two sums.
> (2) Assume now that the overlapping hours are to be counted as hours worked only in the new workweek and not in the old, and complete the total computation accordingly.
> (3) Pay the employee an amount not less than the greater of the amounts computed by methods (1) and (2).

(b) *Application of rule illustrated.*

Suppose that, in the example given in § 778.301, the employee, who receives $5 an hour and is subject to overtime pay after 40 hours a week, worked 5 hours on Sunday, March 7, 1965. Suppose also that his last 'old' workweek commenced at 7 a.m. on Monday, March 1, and he worked 40 hours March 1 through March 5 so that for the workweek ending March 7 he would be owed straight time and overtime compensation for 45 hours. The proposal is to commence the 'new' workweek at 7 a.m. on March 7. If in the 'new' workweek of Sunday, March 7, through Saturday, March 13, the employee worked a total of 40 hours, including the 5 hours worked on Sunday, it is obvious that the allocation of the Sunday hours to the old workweek will result in higher total compensation for the employee for the 13-day period. He should therefore be paid $237.50 (40 X $5 + 5 X $7.50) for the period of March 1 through March 7 and $175 (35 X $5) for the period of March 8 through March 13.

(c) *Nonstatutory obligations unaffected.*

The fact that this method of compensation is permissible under the Fair Labor Standards Act when the beginning of the workweek is changed will not alter any obligation the employer may have under his employment contract to pay a greater amount of overtime compensation for the period in question."

Esperamos que esta información le resulte útil.

Cordialmente,

María C. Marina Durán
Procuradora de Trabajo