



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

August 9, 2000

**Re: Inquiry No. 14794**

This is in reply to your inquiry pertaining to numerous aspects of Puerto Rico's labor laws and regulations. Quoted below are your specific questions, followed by our replies to each:

This office represents a company that operates retail stores, including pharmacies, doing business in Puerto Rico. On behalf of our client, we request that you provide us with the following information pertaining to wage and hour issues in Puerto Rico, as well as copies of pertinent statutes, regulating opinion letters and posting requirements which will assist our client to comply with Puerto Rico's laws.

**A. State Minimum Wage**

1. What is the State's minimum wage?

Answer

Pursuant to Puerto Rico's Minimum Wage Law, Act No. 180 of July 27, 1998, firms covered by the Fair Labor Standards Act (FLSA) are subject to the Federal minimum wage, i.e., \$5.15 p.h. currently.

2. Is the State's minimum wage scheduled to change?

Answer

In accordance with Act No. 180, *supra*, the minimum wage applicable to firms covered by the FLSA will be increased only when the U.S. Congress enacts an increase in the Federal minimum wage.

3. Is the State minimum wage different for part-time or full-time employees?

Answer

No.

4. Is the State minimum wage different for weekend or holiday work.

Answer

No. However, employers covered by Act No. 1 of December 1, 1989, as amended, 29 L.P.R.A. §301 et seq., are required to pay double time for work performed on Sundays.

**B. How frequently must employees be paid in Puerto Rico?**

1. Does the frequency of payment vary by classes of employees (e.g., clerks, professionals, salaries [sic] workers, etc.)?

Answer

The provisions regulating payment of wages in Puerto Rico are contained in Act No. 17 of April 17, 1931, as amended, 29 L.P.R.A. 171 et seq. Pursuant to the Act, employees must be paid at intervals not to exceed fifteen (15) days. This includes both hourly rated and salaried nonexempt employees. On the other hand, exempt executive, administrative, and professional employees are excluded from coverage under the Act.

**C. Overtime Pay**

1. Is the employer required to pay overtime premium pay for employees who are:
  - a. salaried supervisors (e.g., store managers, assistant store managers);
  - b. salaried professionals (e.g., pharmacists);
  - c. salaried administrative employees (e.g., secretaries);
  - d. paid to work in the retail store, on a commission basis; or
  - e. outside sales representatives.

Answer

Under Act No. 379 of May 15, 1948, as amended, 29 L.P.R.A. § 271 et seq., overtime pay is required for all nonexempt employees. Thus, salaried supervisors who meet the executive exemption requirements codified at Reg. No. 13 of the Puerto Rico Minimum Wage Board (copy enclosed) and Regulations, Part 541, 29 CFR, are not entitled to overtime compensation. Similarly, overtime compensation is not required for a salaried pharmacist who meets the professional exemption requirements under the aforementioned regulations or for a salaried administrative employee who meets the requirements for that exemption. The mere fact that an administrative employee is paid on a salary basis does not automatically entitle that employee to the exemption.

With regard to employees paid on a commission basis, Puerto Rico's Supreme Court has ruled that the overtime exemptions enacted under the FLSA apply in Puerto Rico, but only with respect to hours over 40 per week. *Orlando Vega y otros v. Yiyi Motors, Inc.*, 98 JTS 97. Thus, an employee in the retail industry who is paid on a commission basis, or on the basis of salary plus commissions, and qualifies for the FLSA Sec. 7(i) exemption, is not entitled to overtime after 40 hours per week, but must be paid overtime premium for hours over 8 per day. Moreover, pursuant to Mandatory Decree No. 8, one of the two decrees applicable to the Retail Business, such hours must be paid at not less than double the employee's regular rate. Enclosed are copies of Mandatory Decrees No. 42 and No.8. Finally, no overtime compensation is required for outside sales representatives who qualify for exemption under Reg. 541.5.

2. What standards apply in determining which employees are exempt under Puerto Rico's overtime pay requirements?

Answer

See our answer to your previous question.

3. If salaried supervisors, professionals or administrative staff can be classified as exempt from eligibility from [sic] overtime pay, is that exception lost if:
  - a. the employer requires the employee to use vacation, sick or personal time when arriving late to work or leaving work early (even though his or her weekly salary is not adversely affected);

Answer

Such a policy could lead to the conclusion that the employee is not paid on a bona fide salary basis, and result in the loss of the exemption.

- b. the employer requires the employee to use vacation, sick or personal time when absent from work for part of the work day due to personal reasons or illness (even though his or her weekly salary is not adversely affected);

Answer

With respect to this issue, the Department of Labor and Human Resources relies on the interpretation issued by the Administrator of the Wage and Hour Division in an opinion letter dated April 14, 1992. See enclosed copy of that opinion letter.

- c. the employer requires the employee to use vacation, sick or personal time when absent from work for a complete work day due to personal reasons or illness (even though his or her weekly salary is not adversely affected); or

Answer

Deductions for absences of a full day or more, "for personal reasons, other than sickness or accident" have always been allowed under Reg. 541.118(a)(2), which is also recognized by the Department of Labor and Human Resources. If the absence is caused by sickness or accident, requiring the employee to use sick leave for that purpose will not affect the employee's exempt status, pursuant to the aforementioned Wage and Hour opinion letter.

- d. the employer requires the employee to repay advances of vacation or personal time from the last pay check?

Answer

The employer may require an exempt employee to repay such advances for absences of a full day or more, but not for absences of less than a full day.

**D. Compensatory Time Off**

1. Can an employer provide compensatory time off in lieu of payments for hours worked in excess of the employee's regular schedule, but less than 40 hours in a workweek?

Answer

Both the FLSA and Act No. 180, *supra*, require payment of at least the statutory minimum wage for all hours worked in each workweek, including overtime hours. The employee's total wages for each workweek divided by compensable hours must equal or exceed the applicable minimum wage. Since each workweek stands alone, payments in excess of the statutory minimum wage received by an employee cannot be offset against an underpayment that occurs in another workweek. It should also be noted that compensatory time off is a special arrangement authorized under Sec. 7(o) of the FLSA for public employees only. In accordance with Act No. 17, *supra*, employees in private enterprise must be paid "exclusively in lawful money of the United States of America".

2. Can an employer provide compensatory time off in lieu of cash payments for overtime work?

Answer

No. See our reply to your previous question.

**E. Meal Breaks and Rest Breaks**

1. Are employers required to provide meal breaks in Puerto Rico? If so, how long must the breaks be and how often must the breaks be offered?

Answer

The provisions regulating meal breaks are found in Article 15 of Act No. 379, *supra*.

2. Are employers required to offer rest, smoking or other brief breaks? If so, how often must breaks be offered and how long must each break be?

Answer

Although such breaks are customary, they are not required by law. With respect to this matter, the Department of Labor and Human Resources relies on the interpretation set forth in Title 29 Part 785 CFR, Section 785.18.

**F. Payroll Deductions**

1. Can an employee make deductions from a non-exempt employee's wages due to:
  - a. cash register shortages?
  - b. an employee's failure to repay advances of vacation, sick or personal days at the end of a year or upon cessation of employment?
  - c. an employee's obligation to repay a loan made by the employer?
  - d. repay the employer because of the employee's destruction or loss of equipment or property of the employer?
  - e. any other reason?

Answer

The general rule in Puerto Rico is that the only permissible payroll deductions are those that are specifically authorized under Act No. 17, *supra*.

**G. Cost of Drug Testing and Criminal Background Checks**

1. Can an employee be required to pay costs associated with drug testing or criminal background checks?

Answer

No. Act No. 59 of August 8, 1997, 29 L.P.R.A. 161, provides that the costs of administering drug tests to employees must be borne by the employer. Passing on to the employee costs associated with background checks would be regarded as unauthorized deductions under Act No. 17, *supra*.

2. Can an employee be rejected solely because of a "positive" drug or alcohol test?

Answer

No. Act No. 59, *supra*, provides that a first-time positive drug test result is not a justified reason for dismissing an employee. Alcohol abuse is not covered by existing labor laws in Puerto Rico.

H. Unused Sick, Personal and Vacation Days

1. Is an employer required to pay an employee for unused sick, personal or vacation days at the end of the year?

Answer

Personal leave is not required by law in Puerto Rico. Pursuant to Act No. 180, *supra*, unused sick leave, up to a maximum of 15 days, must be carried over to the following year.

Although not required by law, many employers voluntarily provide payment in cash for unused sick leave in excess of the 15-day maximum to discourage absenteeism. Finally, Act No. 180, *supra*, authorizes payment in cash for unused vacation days in excess of 10 days upon written request of the employee.

2. Is a payout required if [sic] unused sick, personal or vacation days upon termination of employment?

Answer

Act No. 180, *supra*, requires payment in cash for unused vacation days upon termination of employment.

I. Paycheck Distribution

1. When must paychecks be distributed if a payday falls on a weekend or holiday?
2. How long after a workweek ends must paychecks be distributed?

Answer

Act No. 17, *supra*, provides that payments must be made at intervals that shall not exceed fifteen (15) days. Although not specifically provided in the Act, payments must ordinarily be made as soon as possible after its completion. When the regular payday falls on a weekend or holiday, many employers choose to effect payment in advance of the weekend or holiday. Should this alternative be impracticable, payment should be made on the next regular working day.

3. If an employer wishes to change its work week or an employee's rate or manner of pay, how much advance notice is required?

Answer

Regulations issued by the Secretary of Labor and Human Resources under Act No. 379, *supra*, provide that any change in the established workweek must be notified to the affected employees by posting a written notice in at least three visible locations in the workplace at least 15 days in advance of said change. Should the employees' overtime compensation be affected by the change in workweek, the provisions of Title 29 Part 778 will be controlling, specifically §§ 778.301 and 778.302. There is no specific advance notice requirement for changes in the employee's rate or manner of pay.

4. How long after termination must a discharged employee be paid?
5. How long after termination must an employee who resigns be paid?

Answer

In accordance with Act No. 17, *supra*, in the event an employee resigns or is terminated during any day of the week, the employer must pay all accrued wages no later than the next payment day.

**J. Deceased Employees**

Does Puerto Rico have any provisions for the payment of monies owed to deceased employees?

Answer

Yes. Wages owed to employees who cannot be located or whose whereabouts are unknown must be submitted by check to the Secretary of Labor and Human Resources for



distribution to the employee or the employee's heirs. Act No. 77 of April 17, 1952, as amended, 29 L.P.R.A. 4.

**K. Direct Deposit**

Can an employee be required to use direct deposit in Puerto Rico?

Answer

No. The employee's consent must be voluntary. Moreover, no adverse action may be taken against an employee for refusing to accept direct deposit or electronic funds transfer. Act No. 17, *supra*.

**L. Vacation Policies**

1. Can an employer adopt a vacation policy which provides that:

- a. unused vacation days at the end of the year are lost (rather than being carried over or paid)?

Answer

No. Vacation days may be accrued up to a maximum of 2 years, by agreement between employee and employer. Accrued vacations in excess of ten days may be paid out in cash, at the employee's written request. Act No. 180, *supra*.

- b. vacation days are earned only upon reaching the employee's anniversary date, and as such, no pro rata use or payment will be made if employment ceases before the employee reaches his anniversary date?

Answer

No. Although the employer is not required to grant vacations until the employee's anniversary date has been reached, every employee who completes the probationary period must be paid in cash for accrued vacation days, including those accrued during the probationary period. Act No. 180, *supra*.

- c. new employees do not earn any vacation time until reaching their first anniversary date or another prescribed date?

Answer

See our answer to your previous question.

**M. Commission Policies**

1. Can an employer adopt commission policies which provide that:
  - a. employees are not eligible to receive commissions upon sales if the employee's employment ends before the commission is paid?

Answer

No. Puerto Rico's Supreme Court has ruled that commissions are "wages" under the Minimum Wage Law. *Junta de Relaciones del Trabajo de Puerto Rico v. Orange Crush of Puerto Rico, Inc.*, 86 D.P.R. 652. Failure to pay all wages to which the employee is entitled is thus a violation of Act No. 180, *supra*.

- b. commissions will be reduced by register shortages, the cost of lost equipment, damaged goods and similar offsets?

Answer

No. Withholding any part of an employee's commissions on that basis would be an unauthorized deduction under Act No. 17, *supra*.

**N. Penalties/Remedies**

What penalties or remedies exist if an employer does not properly pay minimum wage, overtime, or wages in a timely manner?

Answer

Both Act No. 180, *supra*, and Act No. 379, *supra*, provide remedies and penalties for violations. See Articles 9, 10, and 11 of Act No. 180; and Articles 14 and 19 of Act No. 379. In addition, Sec. 7 of Act No. 17, *supra*, provides penalties for failure to pay statutory wages. The remedies and penalties provided under the FLSA will also apply in the case of employers covered by that Act.

O. Minimum Payment Requirement Regarding Employee Garnishment

Does Puerto Rico have any minimum payment requiring garnishment of an employee's wages?

Answer

Yes. In accordance with Article 249 of Puerto Rico's Civil Code, only 25% of an employee's wages can be subject to garnishment. Moreover, the Courts have ruled that unearned wages cannot be garnished in Puerto Rico. *First National Bank of Boston v. Antonio Santisteban & Co.*, 285 F 2d 855; *Torres Santa v. Benítez Roldán*, 115 D.P.R. 855; and *Comoloco v. Benítez Díaz*, 90 JTS 80. Therefore, an employer cannot be required to withhold part of an employee's wages until such time as the wages have been earned. On the other hand, in some cases the Puerto Rico statute may be preempted by certain more stringent provisions of Title III of the Consumer Credit Protection Act.

P. Posting Requirements


What are Puerto Rico's posting requirements?

Answer

Act No. 379, *supra*, requires the employer to post a schedule showing the names of all employees and the hours such employees work each day of the week. Also required are copies of the Mandatory Decree(s) applicable to the business, OSHA and EEO posters, and a poster informing employees of Puerto Rico's antidiscrimination statutes. Copies of that poster and of the Mandatory Decree(s) may be obtained from the Department's Information and Community Relations Center, which is located in this same building.

We trust the foregoing is responsive to your inquiry.

Cordially



María C. Marina-Durán  
Solicitor of Labor

Enclosures: Reg. No. 13  
WH Opinion Letter of April 14, 1992  
Mandatory Decrees No. 42 and No. 8