



GOVERNMENT OF PUERTO RICO
DEPARTMENT OF LABOR AND HUMAN RESOURCES

September 10, 2024

OPINION OF THE SECRETARY NO. 2024-02

TO: PRIVATE SECTOR EMPLOYERS, EMPLOYEES AND THE GENERAL PUBLIC

SUBJECT: EMPLOYMENT LAWS APPLICABLE TO DOMICILED AND NON-DOMICILED EMPLOYEES WORKING REMOTELY FROM PUERTO RICO AND TO CERTAIN UNIONIZED AIRLINE EMPLOYEES PURSUANT TO ACT NO. 27-2024

I. INTRODUCTION

This Opinion intends to clarify and provide additional information concerning the application of Act No. 27-2024, known as the “Act to Facilitate the Implementation of Remote Work in the Private Sector and to Incentivize the Establishment of Airline Bases in Puerto Rico.”¹

Act No. 27-2024 was signed into law by Governor Pedro R. Pierluisi on January 17, 2024, to address an ongoing concern for certain out-of-state employers with no business nexus to Puerto Rico, in terms of applicability of state employment law for remote workers hired by such employers and residing in our jurisdiction. After the enactment of Act No. 27-2024 and together with Act No. 52-2022, which among other things amended the Puerto Rico Internal Revenue Code to address related taxation issues, Puerto Rico now provides a more amicable tax and employment law framework for out-of-state employers with no business nexus to our jurisdiction to consider current or future Puerto Rico residents for remote work opportunities. The Act also promotes the establishment of airline base operations in Puerto Rico by recognizing labor-related industry issues and providing an exemption from state employment law in certain cases.

Since its enactment, the Puerto Rico Department of Labor and Human Resources (“PRDOL”) has received several inquiries regarding the provisions of Act No. 27-2024. Therefore, this Opinion discusses and clarifies certain aspects of Act No. 27-2024 and provides several examples regarding its application to different employer-employee scenarios covered under the Act.

¹ PR Laws Ann. tit. 29 §§ 589-589g.



This Opinion is issued under the authority conferred to the Secretary of Labor in studying and enforcing compliance with current employment law.² It is also issued as part of the duty of the PRDOL to inform employers and employees covered by Act No 27-2024 of their duties and responsibilities, and to provide guidance on the provisions of the Act.³

II. REMOTE EMPLOYEES OF OUT-OF-STATE EMPLOYERS

Act No. 27-2024 establishes which employment laws will govern the employment relationships of remote employees working from Puerto Rico for covered out-of-state employers with no business nexus to Puerto Rico, depending on whether the employees are domiciled in Puerto Rico or elsewhere.

A. DEFINITIONS

There are certain definitions found in Act No. 27-2024 and other statutes that must be considered when determining whether the provisions found in the Act apply to a particular employer or employee.

1. **Employees:** The term “employee” refers to any natural person who voluntarily renders services for the benefit of a covered employer under Act No. 27-2024 in exchange for compensation for the services rendered.⁴
2. **Domiciled:** An employee is considered as domiciled in Puerto Rico when the employee is physically present and has the intention to remain in Puerto Rico indefinitely, as defined by Article 87 of Act No. 55-2020, as amended, known as the “Puerto Rico Civil Code”.⁵
3. **Remote Work:** Remote work is the rendering of services not in-person, outside of the physical facilities of a workplace, by virtue of which employees may perform their job duties from their residence or any other location.⁶
4. **Covered Employers:** The provisions regarding remote work in Act No. 27-2024 apply to any employer that is not “engaged in taxable trade or businesses,” or in the business of selling taxable items in Puerto Rico, pursuant to Act No. 1-2011, as amended, known as the “Puerto Rico Internal Revenue Code of 2011”,⁷ and other tax

² See Section 3(a) of Act No. 15 of April 14, 1931, as amended, known as the “Enabling Act of the Department of Labor and Human Resources”, PR Laws Ann. tit. 3 § 306.

³ See Section 8 of Act No. 27-2024, PR Laws Ann. tit. 29 § 589g.

⁴ Article 3(b) of Act No. 27-2024, PR Laws Ann. tit. 29 § 589b(b).

⁵ Article 3(a) of Act No. 27-2024, PR Laws Ann. tit. 29 § 589b(a). See also Article 87 of Act No. 55-2020, PR Laws Ann. tit. 31 § 5552.

⁶ Article 3(d) of Act No. 27-2024, PR Laws Ann. tit. 29 § 589b(d).

⁷ PR Laws Ann. tit. 13 § 30011 *et seq.*

legislation and regulation in effect in Puerto Rico, including the official interpretation of the Puerto Rico Department of the Treasury.⁸

5. **Engaged in Trade or Business:** Pursuant to Act No. 1-2011, as amended, for taxable years commencing after December 31, 2021, businesses with employees working remotely from Puerto Rico will not be deemed “engaged in trade or business,” if all the following conditions are met:
 - a. At no time during the taxable year, the employer has an office or a fixed place of business in Puerto Rico
 - b. At no time, the employer has an “economic nexus” with Puerto Rico.
 - c. The employer is not considered a “merchant” as defined by Act No. 1-2011.
 - d. The remote employee is not an officer, director, or majority shareholder of the employer.
 - e. The services rendered by the remote employee are for the benefit of clients or businesses of the employer having no nexus with Puerto Rico.
 - f. The employer reports the income paid to the remote employee on a federal W-2 form or a 499R/W-2PR form.⁹

6. **Economic Nexus:** Pursuant to Act No. 1-2011, as amended, allowing employees to perform remote work from Puerto Rico will not be considered an “economic nexus” with Puerto Rico, even when:
 - a. The office located in the home of the remote employee is necessary for the job or is a condition of the job.
 - b. There is a business purpose for allowing the use of the employee’s home as their office.
 - c. The employee is required to perform certain basic job duties from an employer’s location.
 - d. The employer reimburses some of the office expenses incurred by the remote employee.¹⁰

B. REMOTE EMPLOYEES DOMICILED IN PUERTO RICO

The employment relationships between covered employers and domiciled remote employees will be governed exclusively by the employment agreements executed between them when all the following conditions are met:

1. The employee is classified as an “exempt employee” because the employee is an executive, administrator, or professional under the Fair Labor Standards Act of 1938

⁸ Article 3(c) of Act No. 27-2024, PR Laws Ann. tit. 29 § 589b(c).

⁹ See Section 1010.01(40)(D) of Act No. 1-2011, PR Laws Ann. tit. 13 § 30041(40)(D).

¹⁰ *Id.*

(“FLSA”) and the regulations of the Puerto Rico Department of Labor and Human Resources.

2. The employee is domiciled in Puerto Rico.
3. The employer is covered by Act No. 27-2024.
4. The employee performs the work remotely.¹¹

Accordingly, these employment relationships between a covered employer and a domiciled remote employee will be excluded from Puerto Rico employment laws, unless expressly provided otherwise.¹² There are, however, certain laws that apply to domiciled remote employees working for a covered employer under Act No. 27-2024.

Generally, employers in Puerto Rico must provide coverage for workers’ compensation, non-occupational temporary disability, and/or chauffeur’s disability insurance to their eligible employees in accordance with Act No. 45 of April 18, 1935, as amended,¹³ Act No. 139 of June 26, 1968, as amended, known as the “Temporary Disability Benefits Act”,¹⁴ and Act No. 428 of May 15, 1950, as amended,¹⁵ respectively. Pursuant to Act No. 27-2024, a covered employer will not have to provide workers’ compensation benefits, non-occupational temporary disability insurance, and, if applicable, chauffeur’s disability insurance, in compliance with these statutes, if the covered employer of the domiciled remote employee provides coverage that is equal or greater than that which is required by the above-mentioned state laws.¹⁶

¹¹ Article 4 of Act No. 27-2024, PR Laws Ann. tit. 29 § 589c.

¹² *Id.* These include, among others and except as noted below in the case of domiciled remote employees, the following state employment laws, as subsequently amended: Act No. 3 of March 13, 1942, PR Laws Ann. tit. 29 §§ 471-474; Act No. 289 of April 9, 1946, PR Laws Ann. tit. 29 §§ 295-299; Act No. 379 of May 15, 1948, PR Laws Ann. tit. 29 §§ 271-288; Act No. 100 of June 30, 1959, PR Laws Ann. tit. 29 §§ 146-151; Act No. 148 of June 30, 1969, PR Laws Ann. tit. 29 §§ 501-507; Act No. 80 of June 30, 1976, PR Laws Ann. tit. 29 §§ 185a-185n; Act No. 69 of July 6, 1985, PR Laws Ann. tit. 29 §§ 1321-1341; Act No. 44 of July 2, 1985, PR Laws Ann. tit. 1 §§ 501-511b; Act No. 17 of April 22, 1988, PR Laws Ann. tit. 29 §§ 155 *et seq.*; Act No. 115-1991, PR Laws Ann. tit. 29 §§ 194 *et seq.*; Act No. 180-1998, PR Laws Ann. tit. 29 §§ 250b-250j; Act No. 427-2000, PR Laws Ann. tit. 29 §§ 478-478h; Act No. 4-2017, PR Laws Ann. tit. 29 §§ 121 *et seq.*; and Act No. 16-2017, PR Laws Ann. tit. 29 §§ 251-259.

¹³ Act No. 45 of April 18, 1935, as amended, known as the “Puerto Rico Compensation System for Work-Related Accidents Act”, PR Laws Ann. tit. 11 §§ 1-42.

¹⁴ PR Laws Ann. tit. 11 §§ 201-212.

¹⁵ Act No. 428 of May 15, 1950, as amended, PR Laws Ann. tit. 29 §§ 681-695.

¹⁶ Article 4 of Act No. 27-2024, PR Laws Ann. tit. 29 § 589c.

In the event a covered employer decides to provide workers’ compensation coverage through other means, Act No. 45, *supra* at footnote 13, generally will not apply. As such, it is unclear if the employer immunity protection afforded to policy holders under said statute would be granted. Similarly, it is unclear if the reinstatement provisions under Act No. 45, *id.*, and Act No. 139, *supra* at footnote 14, would be applicable to domiciled remote employees under these circumstances. Although the reasonableness of providing employer immunity and the right for employees to be reinstated in their jobs after a covered event could be argued, Act No. 27-2024 is silent regarding the foregoing situations.

It must be noted that the provision regarding domiciled remote employees applies only to white-collar exempt employees under the FLSA.¹⁷ Given that exempt employees are not covered by Act No. 428 of May 15, 1950, as amended, covered employers do not have to provide chauffeur's disability insurance coverage to domiciled remote employees under Act No. 27-2024, regardless of whether or not they are provided coverage pursuant to the laws of another jurisdiction.

As to unemployment insurance, covered employers must comply with the state unemployment benefits statute, Act No. 74 of June 21, 1956, as amended, known as the "Puerto Rico Employment Security Act",¹⁸ unless the domiciled remote employee can apply for unemployment benefits in another jurisdiction.¹⁹ If the domiciled remote employee cannot apply for unemployment benefits in another jurisdiction, a covered employer can delegate to the domiciled remote employee the task of obtaining unemployment insurance with the Puerto Rico Department of Labor and Human Resources, including the filing of unemployment insurance tax quarterly forms. While this delegation is not expressly authorized in Act No. 27-2024, there is nothing in the Act prohibiting this practice. Furthermore, it is consistent with the framework applicable to covered employers for income tax purposes under Act No. 1-2011, as amended by Act No. 52-2022.

Example No. 1: For the past 15 years, Jenny has been living in New York while working as an in-house attorney for a retail company with its headquarters located in the state of New York. The retail company has no business nexus to Puerto Rico. Jenny told her employer that she wants to move to Puerto Rico to live there indefinitely and requested to be allowed to continue working for the company remotely from Puerto Rico. The employer granted Jenny's request, and she moved to and is domiciled in Puerto Rico. The employment relationship between Jenny and the retail company will be governed exclusively by the employment agreement executed between them or, in the absence of an agreement, by the laws applicable in the state where the employer's headquarters are located. The employment relationship will be excluded from Puerto Rico employment laws, unless expressly provided otherwise. The employer will not have to provide workers' compensation benefits and non-occupational disability insurance in compliance with Puerto Rico laws, if the retail company already provides to Jenny coverage that is equal or greater than that which is required by state laws. As to unemployment insurance, Jenny's employer must comply with the state unemployment benefits law and it may delegate registration and quarterly unemployment insurance tax filings, unless she is able to apply for unemployment benefits in another jurisdiction.

¹⁷ *Id.* As for white-collar exemptions applicable to executive, administrative and professional employees under the FLSA, see 29 USC §213(a)(1) and 29 CFR part 541. See also PRDOL Regulation No. 7082, approved January 18, 2006, also known as "Regulation No. 13".

¹⁸ PR Laws Ann. tit. 24 §§ 701 *et seq.*

¹⁹ Article 4 of Act No. 27-2024, PR Laws Ann. tit. 29 § 589c.

C. REMOTE EMPLOYEES NOT DOMICILED IN PUERTO RICO

When an employee voluntarily decides to relocate to Puerto Rico on a non-domiciled basis to work remotely for a covered employer under Act No. 27-2024, the covered employer will be exempt from compliance with all state employment laws, including all pertaining to benefits, obligations, insurance, and any other provisions otherwise applicable to such employment relationship in Puerto Rico.²⁰ This employment relationship will be governed solely by the terms of the employment agreement or, in the absence of an agreement, by the laws applicable in the jurisdiction where the employee is domiciled.²¹ It is clarified that, unlike the previously discussed provision pertaining to domiciled remote employees which only applies to exempt employees under the FLSA, this provision of Act No. 27-2024 applies to exempt and non-exempt employees.²²

Furthermore, if a non-domiciled remote employee decides to become domiciled in Puerto Rico with the consent of the covered employer, and the employee is an exempt employee, the employment relationship will be governed by the provisions of Act No. 27-2024 applicable to remote employees domiciled in Puerto Rico, as herein clarified.²³ The provisions of Act No. 27-2024 will not apply to a non-exempt employee that decides to become domiciled in Puerto Rico, as being an exempt employee is a requirement for the Act to apply in the case of domiciled remote employees. Accordingly, as no exemption shall apply under these circumstances, all Puerto Rico employment laws will apply to the employment relationship between the covered employer and the non-exempt remote employee that decides to become domiciled in Puerto Rico.

Example No. 2: Erick is a non-exempt employee who works as data entry clerk for an insurance company in the state of Florida. Erick has lived in Florida for the past 10 years and has every intention of continuing living in that state. Erick's employer operates exclusively in the state of Florida and has no business nexus to Puerto Rico. Erick requested to his employer to be allowed to work remotely from Puerto Rico for six weeks to help his mother supervise the repairs of her house on the island and with the sale of the property. Erick's employer granted his request. The employer will be exempt from compliance with all Puerto Rico employment laws, including all pertaining to benefits, obligations, insurance, and any other provisions otherwise applicable to such employment relationship in Puerto Rico. This employment relationship will be governed solely by the terms of the employment agreement executed between Erick and his employer or, in the absence of an agreement, by the laws applicable in the state of Florida, where the employee is domiciled. In the event that Erick, a non-exempt employee, decides to become domiciled in Puerto Rico, the provisions of Act No. 27-2024

²⁰ Article 5 of Act No. 27-2024, PR Laws Ann. tit. 29 § 589d.

²¹ *Id.*

²² We note that Section 4 of Act No. 27-2024, PR Laws Ann. tit. 29 § 589c, expressly requires the remote employee to be an exempt employee under the FLSA and applicable regulations. On the other hand, this requirement is absent from Section 5 of the Act. PR Laws Ann. tit. 29 § 589d.

²³ PR Laws Ann. tit. 29 § 589d.

will not be applicable to the employment relationship and all Puerto Rico employment laws will apply.

Example No. 3: In the example above, after moving to Puerto Rico on a temporary basis, Erick decides that he wants to be domiciled in Puerto Rico. As he is a non-exempt employee domiciled in Puerto Rico, the provisions of Act No. 27-2024 will not be applicable to the employment relationship between the covered employer and the non-exempt domiciled employee, and all Puerto Rico employment laws will apply.

III. UNIONIZED EMPLOYEES OF AIRLINES OPENING BASES IN PUERTO RICO

Pursuant to Act No. 27-2024, as of January 17, 2024, employees of airlines that establish air bases or crew bases in Puerto Rico who are covered by collective bargaining agreements are excluded from Puerto Rico employment law protections.²⁴ The terms and conditions of employment of these unionized employees will be governed solely by their collective bargaining agreements.²⁵ It is hereby clarified that the non-unionized employees of airlines with bases in Puerto Rico will be protected by Puerto Rico employment law protections, as there is no applicable exemption for these employees under Act No. 27-2024.

Example No. 4: Sandra, a Puerto Rico resident, applies for and gets hired as a flight attendant with an airline who opened a crew base in Puerto Rico. The flight attendant position is part of a bargaining unit covered under a collective bargaining agreement and Sandra becomes a union employee. Since Sandra's position is covered under a collective bargaining agreement and the airline has crew base operations in Puerto Rico, Puerto Rico employment law protections do not apply to Sandra and the employer-employee relationship shall be covered by the terms and conditions of the collective bargaining agreement.

Example No. 5: Alexandra lives in the state of Texas and works as human resources manager of an airline. Although the airline signed a collective bargaining agreement with a union that covers other airline employees, Alexandra is not a member of the union, and her position is not covered by the collective bargaining agreement. The airline has decided to open an air base in Puerto Rico and has offered Alexandra the position of human resources manager in the new air base. Alexandra decided to accept the position and move to Puerto Rico. Because Alexandra's position is not covered by the collective bargaining agreement, Puerto Rico employment laws will apply to the employment relationship between Alexandra and the airline.

²⁴ Article 7 of Act No. 27-2024, PR Laws Ann. tit. 29 § 589f.

²⁵ *Id.*

IV. CONCLUSION

After the enactment of Act No. 27-2024 and together with Act No. 52-2022, Puerto Rico is better positioned to promote itself as a viable alternative for working remotely both for current residents and out-of-state individuals alike. Potential covered employers hiring remote workers living in or moving to Puerto Rico, whether on a permanent or temporary basis, need to be fully aware and comply with all applicable requirements under Act No. 27-2024 and the Puerto Rico Internal Revenue Code of 2011, as amended by Act No. 52-2022, as to avoid any liability under state tax or employment laws and regulations.²⁶

Furthermore, Act No. 27-2024 provides an exemption on state employment law protections applicable to airline employees, provided that the airline has established an air base or crew base operation in Puerto Rico and that the employee is covered under a collective bargaining agreement. In these cases, state employment law protections shall not apply the terms and conditions of the collective bargaining agreements shall govern the employer-employee relationship.

This Opinion addresses the provisions of Act No. 27-2024 related to labor and employment matters within the expertise of the PRDOL and does not affect the interpretative authority of other government agencies. For clarifications on tax-related issues, refer to the official interpretation of the Puerto Rico Department of the Treasury.



Gabriel Maldonado-González
Secretary

²⁶ Furthermore, keep in mind that Article 6 of Act No. 27-2024 clarifies that the tax treatment of employees rendering services to a covered employer shall be determined by the applicable provisions of Act No. 1-2011, as amended, PR Laws Ann. tit. 13 § 30011 *et seq.*, and any subsequent and other tax legislation in Puerto Rico.