

Major Rollbacks to Puerto Rico 2017 Employment Law Reform Loom on the Horizon

By Juan Felipe Santos & Carlos J. Saavedra-Gutiérrez

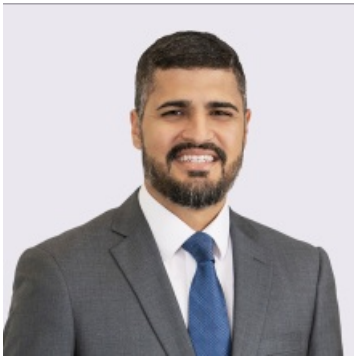
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Months after its [introduction](#), a proposal to reverse portions of the 2017 employment reform law sits on Puerto Rico Governor Pedro Pierluisi's desk. By March 5, 2022, Governor Pierluisi must decide whether to veto House Bill 3 (HB 3) or sign into law a partial repeal of [Law 4-2017](#), commonly known as the Employment Law Reform.

Legislators introduced HB 3 as a full reversal of the 2017 Employment Law Reform and have passed a scaled-back version. If HB 3 becomes law, employers will be faced with changes to the statutory probationary period, daily overtime computation, vacation and sick leave accrual, and independent contractor definition, among many others. HB 3's proposed changes also create inconsistencies with prior versions of the laws it amends. All these changes would be *effective immediately* with no grace period for most employers.

HB 3 calls for the following key changes:

Daily Overtime Computation

Before 2017, Puerto Rico defined one type of overtime as time worked over eight hours in a rolling 24-hour period. The Employment Law Reform amended this definition to time worked over eight hours *in a calendar day*. This eliminated "technical" overtime resulting from changes in daily schedules and meal periods.

HB 3 reverts to the pre-2017 definition of daily overtime and the rolling 24-hour computation. Thus, employers would immediately have to make changes to payroll configurations for overtime.

Vacation and Sick Leave

HB 3 changes both the threshold for accruing paid vacation and sick leave for eligible employees, as well as increases monthly accrual. Employees will accrue 1.25 days of vacation and sick leave for each month in which an eligible employee works 115 hours. This is the pre-2017 accrual for vacation leave. As to sick leave, HB 3 increases accrual from 1.00 day a month to 1.25 days a month, resulting in up to 15 days of sick leave per year.

HB 3 also adds prorated accrual for part-time employees of 0.5 day of paid vacation leave and 0.5 day of paid sick leave for eligible employees who work more than 20 hours per week but less than 115 hours in a month. This was not available under any previous versions of Puerto Rico's Vacation and Sick Leave Law.

Probationary Period

The probationary period under HB 3 is reduced to 90 days, with the option to extend for an additional 90 days upon written notice to the Puerto Rico Secretary of Labor.

HB 3 reinstates the written agreement requirement of the probationary period, instead of the current automatic probationary period of 12 months for "white collar" employees and nine months for all other employees.

Independent Contractor Status

The 2017 Employment Law Reform established a non-rebuttable presumption of independent contractor relationship status, provided specific requirements are met. In the absence of these criteria, the law allowed the common law test factors to be used.

Under HB 3, the independent contractor definition is limited *exclusively* to those who meet criteria previously established for the non-rebuttable presumption, thus eliminating the use of the common-law test. Unless rectified in subsequent technical amendments, this may significantly limit who may qualify as independent contractors.

Annual (“Christmas”) Bonus Threshold

Under HB 3, the hours-worked threshold for the Christmas bonus returns to 700 hours for all employees, regardless of hire date. Currently, employees hired on or after January 26, 2017, must meet a threshold of 1,350 hours between October 1 and September 30.

Unjust Dismissal Law

Most of the 2017 Employment Law Reform changes to the unjust dismissal law, Law 80-1976, are rolled back under HB 3. The calculation of the remedy for an unjust dismissal would no longer be fixed at three months plus two weeks of pay for every year of service for employees hired after January 26, 2017. Instead, the previous formula applies to all employees, regardless of hire date:

- 0-5 years of service = two months plus one week for every completed year of service;
- 5-15 years of service = three months plus two weeks’ of pay for every completed year of service; and
- 15+ years of service = six months plus three weeks’ of pay for every completed year of service.

The 2017 amendments to the examples of just cause for termination and the definition of constructive discharge are also repealed. Finally, the statute of limitations for claims for unjust dismissal is increased from one year to three years.

Other Changes

HB 3 also includes the following:

- Elimination of provisions that require consistent interpretation between federal and local laws that regulate the same issues.
- Reincorporation of the presumption of unjust dismissal on all employment terminations and the presumption that a termination is also discriminatory if there is no just cause for termination.
- Reverting meal period commencement to no earlier than the third hour of work, as opposed to the second hour of work, unless there is a written agreement to do so.

Attorneys [Juan Felipe Santos](#) and [Carlos J. Saavedra-Gutierrez](#) sent a letter on behalf of the Society for Human Resources Management – Puerto Rico Chapter recommending that Governor Pierluisi veto HB 3.

Jackson Lewis attorneys continues to closely monitor progress of HB 3. Please contact a Jackson Lewis attorney if you have questions or need guidance on workplace issues.

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