

Litigation Filed in Federal Court Seeks to Nullify Recent Amendments to Puerto Rico Employment Laws

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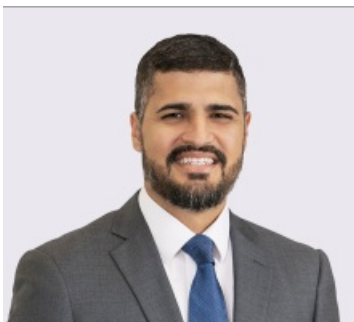
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On September 1, 2022, the Financial Oversight and Management Board for Puerto Rico (“Oversight Board”) – an entity created by Congress to supervise the finances of the government of Puerto Rico and restructure its public debt – filed a federal lawsuit seeking to nullify Act 41, a law that rolled back parts of the 2017 labor law reform. Act 41 went into effect on July 20, 2022, for many employers in Puerto Rico. The changes introduced by Act 41 are effective on September 18, 2022 for certain small and mid-sized businesses, however, as defined in [the new law](#).

In the suit, the Oversight Board argues Act 41 violates several provisions of the PROMESA Act, a federal law passed in 2016 to allow for Puerto Rico to restructure its public debt. Specifically, the Oversight Board alleges Act 41 violates Section 108 of PROMESA, which prohibits the government from enacting, implementing, or enforcing any statute, resolution, policy, or rule that would impair or defeat the purposes of PROMESA, as determined by the Oversight Board. The recently filed complaint argues Act 41 violates this provision because it would negatively affect the revenues of the government of Puerto Rico and would slow economic growth, which would in turn affect Puerto Rico’s capacity to pay newly restructured public debt. The Oversight Board further argues Act 41 violates the certified Puerto Rico Fiscal Plan, a document approved exclusively by the Oversight Board as part of its functions to restructure public debt and grow the Puerto Rico economy. The Oversight Board likewise argues Act 41 violates Section 204 of PROMESA, which requires the government to submit certain information to the Oversight Board for any newly enacted law. The supervising entity argues the government failed to explain how Act 41 does not violate the certified Fiscal Plan and how the negative economic impacts of the law would affect government revenues and expenditures.

The suit was brought in federal court in Puerto Rico and will be litigated in front of District Judge Laura Taylor Swain, who since 2017 has overseen all related cases dealing with the Puerto Rico bankruptcy-like procedure provided by PROMESA. The complaint requests Act 41 be nullified for violating PROMESA, and that the government be permanently enjoined from taking any acts to implement the law.

In the past, the Oversight Board and the government have engaged in litigation concerning the validity of newly enacted laws in the context of PROMESA. In all prior cases, the Oversight Board has been successful in obtaining judgments against the government. The standard of review under PROMESA is extremely deferential toward the Oversight Board. To prevail, the government of Puerto Rico needs to prove the conclusions of the Oversight Board concerning Act 41 are “arbitrary and capricious.”

Employers in Puerto Rico should monitor the case to determine what steps to take once a decision is rendered. It is important to note that, until the Court orders otherwise, Act 41 is



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still in effect. A decision from the Court is expected in the coming months.

Jackson Lewis attorneys are closely monitoring updates and changes to legal requirements and guidance and are available to help employers weed through the complexities of the implementation of Act 41.

If you have questions or need assistance, please reach out to the Jackson Lewis attorney with whom you regularly work.

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