

Federal Court Strikes Down Amendments to Puerto Rico 2017 Employment Law Reform

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March 6, 2023

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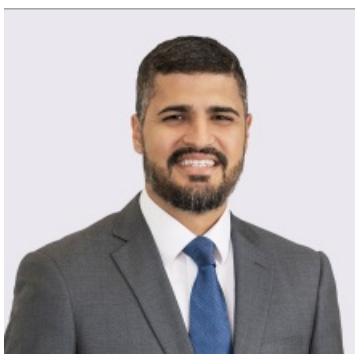
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Less than a year after its enactment, a federal district court has declared null and void Puerto Rico [Act 41-2022](#), a law that rolled back parts of the 2017 employment law reform. *Financial Oversight and Management Board for Puerto Rico v. Pierluisi Urrutia* No. 17 BK 3283-LTS (D. P.R. March 3, 2023). Accordingly, the [2017 Puerto Rico employment law reform](#) is back in full force.

In June 2022, Puerto Rico Governor Pedro Pierluisi signed Act 41-2022, which introduced changes to the statutory probationary period, vacation and sick leave accrual, and the way the annual Christmas Bonus is accumulated, among other requirements. However, the Financial Oversight and Management Board for Puerto Rico (the entity created by Congress to supervise the finances of the Government of Puerto Rico) commenced litigation against the government, seeking to nullify Act 41-2022 as a violation of the PROMESA Act (a federal law passed in 2016 to allow Puerto Rico to restructure its public debt).

The federal court overseeing the Puerto Rico bankruptcy-like procedures ruled Act 41-2022 violated federal law and declared it null and void *ab initio*. The court went as far as to permanently enjoin the governor and any other individuals from taking any steps to help private parties enforce Act 41-2022.

Probationary Period

The 2017 law provides automatic probationary periods of nine months for non-exempt employees and 12 months for white-collar employees.

Vacation and Sick Leaves

For employees hired after January 27, 2017, vacation leave accrual is reduced and staggered depending on years of service. Non-exempt employees must work at least 130 hours per month to accrue statutory vacation leave. As to sick leave, non-exempt employees must work at least 130 hours per month to accrue one sick day per month. Employees who work fewer than 130 hours per month are not entitled to accrue vacation and sick leaves.

Annual (“Christmas”) Bonus Threshold

For employees hired after January 26, 2017, the Christmas Bonus is two percent of the salaries earned, up to \$600, and employees are required to work 1,350 hours to be entitled to the bonus. For smaller employers, the bonus is also two percent, but will be no more than \$300. The bonus will be paid between November 15 and December 15.

Unjust Dismissal Law

The 2017 severance formula under Act No. 80 of May 30, 1976, is restored. Further, the cap on compensation for an unjust dismissal at nine months of salary for employees hired after January 26, 2017, is also restored, as well as the clearer guidelines for conducting layoffs in companies that have multiple sites on the island. The expansion of the concept of “just

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cause” in performance-related terminations is also restored.

Meal Periods

Meal period commencement returns to the previous rules. This period must begin no earlier than the second hour of work, but before the start of the sixth hour of consecutive work. The provision that the meal period can be omitted if the total works hours is not more than six hours is also restored. An employer does not have to provide a second meal period if the employee does not work more than 12 hours and enjoyed a first meal period. There is no requirement to fill out an agreement to that effect. For employees hired after January 26, 2017, time-and-a-half compensation must be paid when employees worked during their meal periods.

Other Provisions Unchanged

Other important provisions of the 2017 law remain in effect, since these were not affected by Act 41:

- Requirement of consistent interpretation between federal and local laws that regulate the same issues.
- The acknowledgment of an employer’s discretion to interpret its own rules or policies, unless such interpretation is arbitrary, capricious, or contrary to law, if the employer reserved said discretion in writing in the rules or policies.
- Daily Overtime Computation: The definition of time worked over eight hours *in a calendar day*, eliminating “technical” overtime resulting from changes in daily schedules and meal periods.
- The availability of flexi-time agreements, in which, by mutual written agreement, an employee may agree to a workweek of up to 40 hours a week, with no more than 10 hours of work per day, without incurring daily overtime.
- Makeup Time: An employer may allow an employee to work up to 12 hours in a day to make up time missed for personal reasons during the week without incurring overtime obligations if the makeup hours are worked within the same week.
- Caps of recoverable damages in discrimination and retaliation claims: The amount of recoverable damages for mental anguish and suffering is subject to caps depending on the number of employees working for the company.
- The statutory irrefutable presumption of independent contractor status if certain requirements are met.
- Recognition of electronic signatures for contracts and other employment-related documents, such as acknowledgment of receipts.
- No limitations on the language of the contract, if the employee understands it. The law presumes that a signed document was executed by an employee with knowledge of its language and content

It remains to be seen whether the Puerto Rico government appeals the court’s decision. However, employers that decided to implement the provisions of the now-defunct Act 41-

2022 must decide whether they want to revert to the provisions of the 2017 law. If employers amended internal policies or manuals, they must be revised and updated. Finally, employers should revise the language of employment contracts to account for the reintroduced probationary period minimums.

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

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

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