

What Puerto Rico Labor Secretary's New Overtime Interpretation Means for Employers

By Sara E. Colón-Acevedo, Juan Felipe Santos & Carlos J. Saavedra-Gutiérrez

September 18, 2024

Meet the Authors



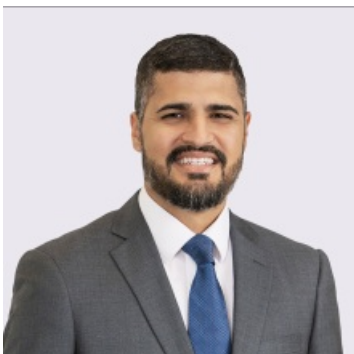
Sara E. Colón-Acevedo

Principal
(787) 522-7310
Sara.Colon-
Acevedo@jacksonlewis.com



Juan Felipe Santos

Office Managing Principal and
Office Litigation Manager
(787) 522-7315
Juan.Santos@jacksonlewis.com



According to Puerto Rico Secretary of Labor Gabriel Maldonado, neither the Constitution of Puerto Rico nor Puerto Rico Act 379 imposes any limitations on employers requiring overtime work of employees beyond paying a specific premium rate.

Secretary Maldonado's Sept. 13, 2024, Opinion revokes the previous multifactor guidance issued by the Puerto Rico Department of Labor (PRDOL).

Previous Guidance

The Puerto Rico Constitution mandates that workers have a right to an ordinary work schedule not exceeding eight hours in a day. Any time worked over eight hours must be paid at no less than one and one-half times the rate established by law.

Puerto Rico Act 379 provides that any time worked over eight hours in a calendar day and over 40 in a week must be compensated generally at one and one-half times the regular rate of pay.

PRDOL guidance had interpreted the law to mean that overtime work should be an exception, and not the norm. Thus, employers could only require workers to work overtime under "extraordinary" circumstances and subject to multiple factors, including:

1. Overtime work must not affect the health and safety of workers;
2. Prior notice must be provided to employees, except in emergency cases;
3. Overtime work must be fairly distributed among employees;
4. Overtime work must first be offered to qualified employees who voluntarily made themselves available for such work;
5. If there were no voluntary workers, then employers should require overtime work in reverse order of seniority; and
6. Employers must evaluate whether employees had reasonable excuses to refuse working overtime by weighing the excuse against the employer's needs.

New Interpretation

According to PRDOL's new position, neither the Constitution of Puerto Rico nor Act 379 imposes any limitations on employers requiring overtime work beyond paying a specific premium rate.

Secretary Maldonado recognized employers should still be cognizant of potential risks to the health and safety of employees when requiring overtime work. Absent these potential risks, it is PRDOL's position that there are no other limitations to imposing overtime work under Puerto Rico law beyond paying a premium rate for work performed over eight hours in a calendar day or 40 hours in a week. The rationale behind the Opinion would also apply to Fair Labor Standards Act-covered employers.

Employers should be mindful, however, that other federal statutes and regulations may limit

**Carlos J. Saavedra-
Gutiérrez**
Of Counsel
787-522-7308
Carlos.Saavedra-
Gutierrez@jacksonlewis.com

the number of hours employees can be required to work.

If you have any questions about the implications of Puerto Rico's Act 379 or other workplace issues, please contact a Jackson Lewis attorney.

Related Services

©2024 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Wage and Hour
Focused on labor and employment law since 1958, Jackson Lewis P.C.'s 1000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged, stable and diverse, and share our clients' goals to emphasize inclusivity and respect for the contribution of every employee. For more information, visit <https://www.jacksonlewis.com>.