

Top 20 Things You Should Know About the Proposed Puerto Rico Employment Law Reform

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Under a new government administration, Puerto Rico employment laws will undergo the most significant transformation in decades with the expected enactment of the “Labor Transformation and Flexibility Act.”

In an unprecedented but anticipated move, on January 14, 2017, the Puerto Rico House of Representatives approved the Act, House Bill 453 (HB 453). The Senate approved on January 19, 2017, an amended version of HB 453. The House of Representatives is expected to approve the amended version and Governor Ricardo Rosselló is expected to quickly sign HB 453 into law.

HB 453 dramatically changes the employment landscape in Puerto Rico and provides more flexibility in the workplace. Among the most significant amendments in HB 453 are the following:

1. The Closing Law is mostly repealed, eliminating operating restrictions and special compensation applicable to covered retail industries on Sundays and certain holidays.
2. The concept of an “employment contract” is defined expressly to exclude from the employment relationship the services provided by independent contractors, among others.
3. The establishment of a non-rebuttable presumption of independent contractor relationship status, provided specific requirements are met. It also provides that, unless required by a federal law applicable to Puerto Rico, the “economic reality” test should not be used to evaluate whether an independent contractor relationship exists.
4. The use of electronic signatures and electronic notices to employees is recognized. However, HB 453 requires that electronic disclosure be provided in a way that effectively communicates to employees.
5. Employment-related laws and regulations must be interpreted in a manner consistent with similar federal laws and regulations, except if the local law expressly provides otherwise.
6. The establishment of caps on the amount of damages that can be granted for emotional damages in employment discrimination claims.
7. The implementation of a list of employee’s rights and obligations. Amongst these rights, HB 453 recognizes that employees have the right to individually or collectively exercise any actions ensuing from the employment contract. HB 453 also expressly prohibits employees from competing with their employer (except as otherwise provided by law or by the employment agreement).
8. Addition of new regulations on the assignment of certain expatriates to Puerto Rico.
9. Providing new religious accommodation dispositions, including penalties.
10. Changing the definition of daily overtime as time worked over eight hours in a calendar day, instead of in a rolling 24-hour period.
11. For employees hired after HB 453 is signed into law, the establishment of a uniform

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overtime rate of time-and-a-half the regular rate.

12. More flexibility for employers and employees to mutually agree upon a compressed workweek, excluding the payment of daily overtime under some circumstances, and allows employees to work 12 hours in a day to make up time missed for personal reasons during the week.
13. More flexibility with regards to meal periods. For example, the meal period can be obviated if an employee does not work more than six consecutive hours. In addition, 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. For employees hired after HB 453 is signed into law, the reduction to time-and-a-half compensation that must be paid when employees worked during their meal periods.
14. For employees hired after the enactment of the law, work performed on the day of rest (seventh day) is no longer paid at double the regular rate, but at time-and-a-half.
15. For employees hired after HB 453 is signed into law, vacation leave accrual is reduced and staggered depending on years of service. Current employees are grandfathered in their current benefits. Small employers also have reduced accruals.
16. For employees hired after enactment of the law, the Christmas Bonus is reduced to 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.
17. Paid breastfeeding break to part-time employees who work more than four hours is provided.
18. Providing a new severance formula under Act No. 80 of May 30, 1976 and capping compensation for an unjust dismissal at nine months of salary for employees hired after the enactment of the law. It also provides clearer guidelines for conducting layoffs in companies that have multiple sites on the Island and expands upon the concept of “just cause” in performance-related terminations.
19. Provides an automatic probationary period of nine months for non-exempt employees and 12 months for white-collar employees.
20. The statute of limitations to file unjust dismissal, as well as wage and hour, claims are reduced from three years to one year.

Current employees are grandfathered in their current rights and benefits as to several of the amendments listed above. We will continue to monitor HB 453 and keep you informed of any developments. HB 453 is expected to be approved soon. Please contact a Jackson Lewis attorney if you have any questions about this or other workplace developments.

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