

Legal Update Article

Puerto Rico Revises Form for Reporting Payments to Terminated Employees, Considers Credit History Ban

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The Puerto Rico Department of the Treasury has announced changes to tax reporting for certain severance payments.

As a result of the Labor Transformation and Flexibility Act (Act 4-2017), adopted in 2017, certain limited payments made by an employer to an employee due to separation of employment are classified as “exempt income” under the Puerto Rico Internal Revenue Code. These are not taxable for purposes of Puerto Rico income tax, but the employer must report the payments to the employee and the Treasury Department on an official informative return.

For the 2017 tax year, the Treasury Department required that employers use Form 480.6D, reserved for Income Not Subject to Withholding, to report these payments. Form 480.6D will not be used for this purpose for the 2018 tax year. In [Internal Revenue Informative Bulletin 18-18](#), issued October 30, 2018, on withholding schedules and informative returns, the Treasury Department announced changes to [Form 499R-2/W-2PR](#) (the Puerto Rico equivalent of the W-2 Form), including a new Box 16 for Exempt Salaries. According to the announcement, payments to employees because of employment termination should be reported in Box 16B with the appropriate code designation. In addition, such reports must be made by January 31, 2019. A failure to report by the deadline may result in penalties.

Employers should consult with their tax professionals to ensure proper tax reporting of payments made to employees as a result of employment termination or settlement of claims related to employment termination.

Bill to Prohibit Using Credit History in Employment Decisions

A bill seeking to prohibit employers from using credit history in employment decisions has been introduced in the Puerto Rico Senate.

If enacted, Senate Bill 1134 (SB 1134) would prohibit employers from refusing to hire, dismissing, or otherwise discriminating against an employee or applicant because of information contained in a credit report. Exceptions under SB 1134 include managerial positions, positions for which a credit report is required by law, and positions that imply a fiduciary responsibility to the employer.

However, before requesting a credit report for current or prospective employees who may be covered by an exception, the employer must notify the employee of its intention in writing.

Introduced on October 30, 2018, SB 1134 has been referred to the Government Commission for evaluation and recommendation.

Please contact Jackson Lewis with any questions about these or other developments.

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