

Puerto Rico Secretary of Labor Issues New Opinion on Provisions Applicable to Exempt, Non-Exempt Employees

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The Puerto Rico Secretary of Labor and Human Resources, Hon. Briseida Torres-Reyes, has issued Opinion No. 2020-02 on the applicable legal provisions related to exempt and non-exempt employees of the private sector as a result of the coronavirus (COVID-19) emergency.

This is a follow-up to Opinion 2020-01, on employer obligations, issued on March 13, 2020. (See our article, [Puerto Rico Secretary of Labor Issues Opinion on Employer Obligations during COVID-19 Emergency.](#))

Key aspects of Opinion No. 2020-02 include:

1. Non-exempt employee compensation during [shelter in place/curfew imposed by Executive Order 2020-023](#)

- Employers need not pay non-exempt employees for hours not worked, but they must compensate these employees if they work remotely.
- Employers are encouraged to voluntarily continue to pay employees without exhausting any leave so employees can provide for their families during shelter-in-place period. The Opinion recognizes this may not be economically feasible for some employers and provides that employers may offer partial compensation, bonuses, or other remuneration at their discretion to help employees.
- Employers may voluntarily pay absences due to shelter-in-place order by exhausting vacation leave, but only with the employees' consent. Employers should provide employees the option of using sick leave or unpaid leave if they do not want to use accrued vacation leave during this time.

2. Exempt employee compensation during shutdown/curfew

- Employees are not entitled to paid vacation and sick leave under Puerto Rico Vacation/Sick Leave Law, but employers may be contractually required to provide these benefits through employer policies.
- Reiterates the Fair Labor Standards Act rules and the federal Department of Labor opinion regarding permissibility of depleting paid leave banks during days/hours that exempt employees did not work.
- If exempt employees do not work for a whole workweek they do not have to be paid.

3. New leaves available under Families First Coronavirus Response Act

The Opinion summarizes the provisions of new federal legislation. See our article, [The New Employer Obligations under the Slightly Revised Families First Coronavirus Act \(H.R. 6201\).](#)

4. Loans employers can provide employees in light of the state of emergency

Under recent amendments to Puerto Rico law that governs non-exempt employee paycheck

withholdings, employers may offer employees salary advances, equipment, materials, or goods that are directly related to a state of emergency, and recoup these loans/costs from an employee's salary through payroll withholdings authorized in writing by employee. Repayment cannot be subject to any interest and the employer may only recoup an amount equal to or less than the cost to the employer of obtaining the equipment, material, or goods. Withholdings for these amounts cannot exceed 20 percent of the net payment to employees, after other regular withholdings.

5. Employers exempt from the Executive Order

For employers that are exempt from the Executive Order, the Secretary's Opinion issues a reminder that:

- There may be immunocompromised employees who require a reasonable accommodation under the Americans with Disabilities Act in order to perform their functions;
- Employers have an obligation to adopt measures to reduce the possibility of contagion and take measures to maintain the health and safety of employees, and should post notices to employees about how to avoid contagion; and
- Employers should have protocols and plans to identify personnel with symptoms and implement cleaning and disinfecting measures.

The COVID-19 situation remains fluid. If you need guidance in handling the complicated issues pertaining to COVID-19, please contact a Jackson Lewis attorney.

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