



LABOR REFORM ACT: LAW NUMBER 4 OF JANUARY 26, 2017

By: Edwin J. Seda-Fernández
Verónica Torres-Torres

On January 26, 2017, the Governor of Puerto Rico signed into law the **Labor Transformation and Flexibility Act** of 2017, Law Number 4 of 2017 (“Law No. 4”). As mentioned last week, Puerto Rico has adopted new labor and employment measures intended to improve competitiveness, create new jobs, reduce the unemployment rate of approximately 12%, improve the labor participation rate, and halt the migration of citizens in search of work opportunities.

Law No. 4 amends major employment laws that apply to employees in the private sector. Current employees will be grandfathered, according to the specific provisions of Law No. 4, which will apply mostly to newly hired employees. The highlights of Law No. 4 include:

Law Number 80 of May 30, 1976, 29 L.P.R.A. §185a et seq. (“Law No. 80”)

- 1- Newly hired employees will have an automatic probationary period of nine (9) months. However, employees classified as executives, administrators, and professionals under the Fair Labor Standards Act (FLSA) white collar exemptions or similar regulations issued by the Puerto Rico Department of Labor, will be subject to an automatic probationary period of twelve (12) months.
- 2- No requirement of a written probationary period agreement.
- 3- The current severance formula provided by Law No. 80 for regular employees has been reduced to a basic indemnity of three (3) months of salary and a progressive indemnity of two (2) weeks for every completed year of salary. However, the severance payment will be capped to nine (9) months of salary. The cap of nine (9) months will not apply to employees hired before the enactment of Law No. 4.
- 4- Changes and clarifications in the definition of the term “basic salary”, to exclude certain benefits such as deferred compensation, income from tips that surpasses the federal minimum wage, and disability payments when obtaining the indemnity provided by Law No. 80.
- 5- Amendments and clarifications to the definition of just cause under Law No. 80.

- 6- The statute of limitations for wrongful discharge cases is reduced to one (1) year. The statute of limitations for termination claims under Law No. 80 made prior to the approval of Law No. 4 will continue to be three (3) years.
- 7- Severance payments under Law No. 80 will not be subject to any withholding, except such withholdings required by federal law.
- 8- The Puerto Rico internal revenue code is amended to make all payments under Law No. 80 tax exempt.
- 9- Mandatory settlement hearings in cases under Law No. 80 within sixty (60) days of the filing of the answer to the complaint.
- 10- Terminated employees are allowed to settle claims under Law No. 80.
- 11- Employees hired prior to the enactment of Law No. 4 are entitled to claim under the existing indemnity formula provided by Law No. 80 prior to the amendments.
- 12- Law No. 4 repealed the provisions of Law No. 80 related to the burden of proof in cases of wrongful discharge. The Puerto Rico Justice Department's opinion, however, is to the effect that the burden of proof in wrongful discharge cases still falls on the employer.

Law Number 180 of July 27, 1998, 29 L.P.R.A §250 et seq. ("Law No. 180")

- 1- Puerto Rico's Minimum Wage Act, Vacation and Sick Leave Act or Law No. 180 is amended to increase the number of hours from one hundred fifteen (115) to one hundred and thirty (130) per month to accrue vacation and sick leave.
- 2- Newly hired employees will accrue a minimum of ½ of vacation day per month during the first year of employment. The employee will then accrue ¾ of vacation day from the second (2nd) up to the fifth (5th) year of employment. From the sixth (6th) to the fifteenth (15th) year of employment the employee will accrue one (1) day. Finally, employees with over fifteen (15) years of employment will accrue 1 ¼ days of vacation.
- 3- Sick leave accrual is one (1) day per month.
- 4- For employers whose payroll does not exceed twelve (12) employees, the accrual for vacation is ½ day per month. The accrual for sick leave, however, is one (1) day per month.
- 5- Employees who accrued vacation and sick leave at higher rates before the enactment of Law No. 4 will continue to do so.
- 6- The statute of limitations established by Law No. 180 has been reduced from three (3) years to one (1) year.
- 7- It will be illegal to terminate and rehire, or substitute current employees to obtain the benefits provided by the amendments to Law No. 180.

Law Number 379 of May 15, 1948, 29 L.P.R.A. §271 et seq. (“Law No. 379”)

- 1- Puerto Rico’s Working Hours and Days Law or Law No. 379 has been amended to provide new definitions of over-time.
- 2- Daily over-time are hours worked in excess of eight (8) per calendar day; not in every twenty-four (24) hour period.
- 3- Over-time are also hours worked in excess of forty (40) during the workweek, the hours worked during the period in which a business shall be closed to the public by law, the hours worked during the rest day, or as defined in a collective bargaining agreement.
- 4- Over-time is to be paid at a rate of one and a half times (1.5) the base salary rate. Employees hired before the enactment of Law No. 4 will preserve any benefits they currently enjoy.
- 5- The meal period penalty is to be paid at a rate of one and a half times (1.5) the base salary rate. The meal period could be waived in cases in which the total of hours worked do not exceed six (6) hours in a day.
- 6- Employer and employees may agree to a voluntary flexible work schedule of no more than ten (10) regular hours per day in a period of four (4) days in a workweek, without incurring in over-time liability. Any arrangement for a flexible work schedule can be revoked by mutual agreement of the parties, or unilaterally after one (1) year.
- 7- Employees may request flexibility as to place of employment and working hours and the employer is obligated to respond and/or provide alternatives to the employee’s request within a period of twenty (20) days.
- 8- Employers can allow employees to replace hours not worked for personal reasons during a workweek. These hours will not be considered as over-time if replaced during the same workweek of the leave, do not exceed of twelve (12) hours in a day, or forty (40) in a workweek.
- 9- The statute of limitations under Law No. 379 has been reduced from three (3) years to one (1) year.

Law Number 148 of June 30, 1969, 29 L.P.R.A. §501 et seq. (“Law No. 148”)

- 1- Law No. 4 amended Puerto Rico’s Bonus to Workers and Employees Act (Christmas Bonus) or Law No. 148 to increase the number of hours for newly hired employees to be eligible for the bonus, from seven hundred (700) hours to one thousand three hundred and fifty (1,350), in the period from October 1 to September 30 of the year in which the bonus will be paid.

- 2- Employers who employ more than twenty (20) employees within a twenty-six (26) week period comprised between October 1 and September 30 of the following year will pay a Christmas bonus of two percent (2%) of the salaries earned with a cap of six hundred dollar (\$600) dollars.
- 3- Employers who employ less than twenty (20) employees within a twenty-six (26) week period comprised between October 1 and September 30 of the following year will pay a Christmas bonus of three hundred (\$300) dollars depending on the number of employees.
- 4- Newly hired employees will be eligible to fifty percent (50%) of the bonus during the first year of employment.
- 5- The bonus will be paid between November 15 and December 15.

Law Number 427 of December 16, 2000, 29 L.P.R.A §478 et seq. (“Law No. 427”)

- 1- Puerto Rico’s Law to Regulate the Period to Breastfeed or to Express Breast Milk or Law No. 427 has been amended to require employers a safe, private, and hygienic place to nurse or extract breast milk.
- 2- Part-time mothers who work more than four (4) hours are entitled to thirty (30) minutes to nurse or extract breastmilk.
- 3- Penalty of at least three thousand dollars (\$3,000) for violations of the law.

Law Number 100 of June 30, 1959, 29 L.P.R.A. §146 et seq. (“Law No. 100”)

- 1- Puerto Rico’s Antidiscrimination Act or Law No. 100 is amended to cap compensatory and punitive damages in employment discrimination cases, pursuant to the limits established by Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991.
- 2- Employers with less than one hundred and one (101) employees will have a cap of fifty thousand dollars (\$50,000).
- 3- Employer with one hundred and one (101) and up to two hundred (200) employees will have a cap of one hundred thousand dollars (\$100,000).
- 4- Employers with two hundred and one (201) and up to five hundred (500) employees will have a cap of two hundred thousand dollars (\$200,000).
- 5- Finally, employers with five hundred and one employees or more will have a cap three hundred thousand dollars (\$300,000).
- 6- This cap also applies to cases of retaliation.

Law Number 1 of December 1, 1989, 29 L.P.R.A. §301 et seq. (“Closing Law”)

- 1- Puerto Rico’s Act to Regulate the Operation of Commercial Establishments or Closing Law is repealed.
- 2- From now on, employers are not bound pay employees the minimum of \$11.50 per hour for work during Sundays.
- 3- However, those commercial establishments that prior to the enacted of the Act, were required to remain closed during Good Friday and Easter Sunday, are still required to remain closed.

As to employees with religious beliefs, such employees must request in writing a reasonable accommodation from their employers. Denial of such request will only be justified if the employer can demonstrate that, from every alternative accommodation available, the one chosen by the employee will result in an undue burden. Mere presumption that many more employees, with the same religious beliefs, may request the same accommodation is not evidence of undue burden. A penalty of up to five thousand dollars (\$5,000) will be imposed on employers who violate the employee’s religious beliefs.

As to the employment reservation provided by Law Number 45 of April 18, 1935, 11 L.P.R.A. §1 et seq. (Workers Accident Compensation Law or “Fondo”) and Law Number 139 of June 26, 1968, 11 L.P.R.A. §201 et seq. (Temporary Disability Law or “SINOT”), the employment reservation of twelve (12) months is decreased to six (6) months for employers with fifteen (15) employees or less at the time of the accident or disability.

Law No. 4 also defines the term “employment contract” and establishes a non-rebuttable presumption of independent contractor if certain criteria are met. Law No. 4 also includes sections devoted to the rights and obligations of the employees.

Given the fast-track process in which Law No. 4 was enacted, we will continue to report as to the changes provided by the Labor Reform Act in future newsletters, if needed.

If you should have any questions or comments relative to the **2017 LABOR REFORM ACT** or any other labor and/or employment matter, please contact any member of the Labor and Employment Division of AMG for further information: Edwin J. Seda Fernández, 787-281-1822, seda@amgprlaw.com; Mariel Y. Haack, 787-281-1951, mhaack@amgprlaw.com; Liana M. Gutiérrez, 787-281-1950, lgutierrez@amgprlaw.com; Verónica M. Torres-Torres, (787) 281-1965, vtorres@amgprlaw.com; or Luis Pérez Giusti, (787) 281-1809, lpg@amgprlaw.com,

The above summary is intended for information purposes only. It cannot be considered a legal opinion, and it does not intend to consider all legal considerations that could be relevant to any particular person or entity.

The contents of PUERTO RICO BUSINESS LAW NOTES may not be reproduced, transmitted, or distributed without the express written consent of Adsuar Muñoz Goyco Seda & Pérez-Ochoa, P.S.C. (“AMG”). The material contained herein is intended for information purposes only and is not to be considered legal advice. Qualified counsel should be consulted based on individual circumstances.