



2017 LABOR REFORM ACT ALERT

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Puerto Rico is yet again in the process of debating 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. To that effect, Senate Bill 212 (“SB 212”) and House Bill 453 (“HB 453”) have been filed by the current government administration on January 9, 2017, to establish the **Labor Transformation and Flexibility Act** of 2017.

The House of Representatives approved HB 453 on January 14, 2017. The bill heads to the Senate and could be approved at the end of this week. All in all, the bill is intended to amend major employment laws applicable to Puerto Rico’s private sector. Once approved, the amendments will apply only to newly hired employees. Current employees will be grandfathered. These changes 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 twelve (12) months, as opposed to the current three (3) months provided by the Puerto Rico Wrongful Discharge Act or Law No. 80
- 2- No requirement of a written probationary period agreement, as opposed to the current strict requirements of Law No. 80.
- 3- The current severance formula provided by Law No. 80 for regular employees will be amended and 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.
- 4- Changes and clarifications in the basic salary to be used for purposes of computing the indemnity provided by Law No. 80, to exclude certain benefits such as deferred compensation, income from tips that surpasses the federal minimum wage, and disability payments.
- 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 current statute of limitations under Law No. 80 is three (3) years.
- 7- Severance payments under Law No. 80 will not be subject to any withholdings, except such withholdings required by federal law.
- 8- Proposed amendments to the Puerto Rico internal revenue code 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.

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 $\frac{1}{2}$ of vacation day per month during the first year of employment. The employees will then accrue $\frac{3}{4}$ 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 employees will accrue one (1) day. Finally, employees with over fifteen (15) years of employment will accrue $1\frac{1}{4}$ days of vacation.
- 3- Sick leave accrual will be $\frac{3}{4}$ of a day per month.
- 4- The statute of limitations under Law No. 180 will be reduced from three (3) years to one (1) year.
- 5- For employers whose payroll do not exceed twelve (12) employees, the accrual for both vacation and sick leave will be $\frac{1}{2}$ day per month.
- 6- Current employees with higher accrual rates for vacation and sick leave will maintain such accruals rates, provided they continue to work for the same employer.
- 7- It would be illegal to fire 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 will be amended to provide new definitions of over-time.
- 2- Daily over-time will be hours worked in excess of eight (8) per calendar day; not in every twenty-four (24) hour period.
- 3- Over-time will also be the 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 will be paid at a rate of one and a half times (1.5) the base salary rate. Any provision contained in a mandatory decree related to over-time will be repealed.
- 5- The meal period penalty will be paid at a rate of one and a half times (1.5) the base salary rate.
- 6- Employers 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.
- 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 employees’ requests.
- 8- The statute of limitations under Law No. 379 will be 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- Puerto Rico’s Bonus to Workers and Employees Act (Christmas Bonus) or Law No. 148 will be amended to increase the number of hours 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 is paid.
- 2- The Christmas bonus will be reduced to two percent (2%) of the salaries earned with a cap of six hundred dollar (\$600) dollars or three hundred dollars (\$300) depending on the number of employees.
- 3- Newly hired employees will only be eligible to fifty percent (50%) of the bonus during the first year of employment.
- 4- 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 will be 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 shall be 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 (501) employees or more will have a cap of three hundred thousand dollars (\$300,000).
- 6- This cap will also apply 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- This action will result in the loss of the \$11.25 salary per hour for work on Sundays.

As to employees with religious beliefs, such employees must seek reasonable accommodation from their employers in certain circumstances. To attend an extraordinary religious service, the employee must request a leave at least ten (10) days prior to such activity. 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. (work related accidents or conditions) and Law Number 139 of June 26, 1968, 11 L.P.R.A. §201 et seq. (short term disability not related to the employment), 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.

The Labor Transformation and Flexibility Act also defines the term “employment contract” and establishes a non-rebuttable presumption of independent contractor if certain criteria is met. The law also includes sections devoted to the rights and obligations of the employees.

We will continue to monitor these developments during the week until the bill is signed into law.

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, for further information.

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