

January 17, 2017

Labor and Employment Update

Employment Reform Bill on the Verge of Becoming Law

On January 9, 2017, the Governor of Puerto Rico, Hon. Ricardo Rosselló-Nevárez, presented the Labor Transformation and Flexibility Act (“LTFA”). It seeks to provide flexibility to Puerto Rico’s employment market as part of a broader plan to reenergize its economy. We summarize the main reforms below:

Employment contracts: Establishes an automatic probationary period (a contract is no longer required) of 12 months; allows temporary employment contracts to be verbal; reduces from 3 to 1 year the statute of limitations to file claims for compensation due under a law or contract; affords employees the right to attend religious services on certain days; outlines the requirements of an independent contractor and creates an irrebuttable presumption of said status when they are met.

Overtime: Sets a uniform overtime rate of 1.5 times the regular rate of pay for daily and weekly overtime and for work performed on the 7th consecutive day of work; eliminates technical overtime by redefining the regular workday on the basis of 8 hours on a natural day rather than in 24-hour periods; allows a compressed workweek of workdays of up to 10 hours without incurring in daily overtime; allows employees to make-up lost hours of work within a week without incurring in daily overtime if the workday does not exceed 12 hours; redefines de regular rate of pay to exclude tips and service charges.

Meal period: Eliminates the meal period in work shifts of up to 6 consecutive hours and the 2nd meal period in work shifts of up to 12 hours; reduces the meal period penalty from double to 1.5 the regular rate.

Vacation and sick leave: For employees hired after passage of the bill, increases from 115 to 130 the monthly minimum hours of work required to accrue leave; reduces vacation accrual from 1.25 to 0.5 days per month during the first year of employment, progressively increasing it with tenure to 1.25 days per month after fifteen (15) years of employment; reduces sick leave from 1 to 0.75 days per month; creates lower accrual rates for employers with 12 employees or less; excludes tips and service charges from the computation of the rate at which leave is paid.

Year-end bonus: For employees hired after passage of the bill, increases from 700 to 1,350 the minimum number of hours required to qualify for the bonus and reduces the bonus to a uniform 2% of salaries, retaining the current maximum of \$600 for



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employers with more than 20 employees and \$300 for the smaller employers; new employees will receive only 50% of the bonus during their first year.

Termination: Eliminates the presumption that all unjustified terminations are discriminatory; reduces the discharge indemnity and caps it at 9 months of salary; lowers from 3 to one 1 year the statute of limitations to file a wrongful termination claim; exempts severance pay from taxation up to the amount of the wrongful termination indemnity; in discrimination and retaliation cases, caps compensatory (non-economic) damages on the basis of number of employees.

Closing law: The bill also repeals the Puerto Rico Law to Regulate the Operation of Commercial Establishments (also known as “the Closing Law”), under which certain establishments must remained closed during certain holidays and from 5:00 to 11:00 a.m. on Sundays.

On January 14, 2017, Puerto Rico’s House of Representatives approved the bill. The bill is currently under the Senate’s consideration. We at Reichard & Escalera will continue to monitor the development of this proposed law and will keep you informed of its final form.

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