

February 3, 2017

Labor and Employment Update

Employment Reform Law Enacted

On January 26, 2017, the Governor of Puerto Rico, Hon. Ricardo Rosselló-Nevárez, signed into law the Labor Transformation and Flexibility Act (“LTFA”) providing 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 9 months for non-exempt employees, and 12 months for those classified as executives, administrators and professionals under the Fair Labor Standards Act; allows new temporary employment contracts to be verbal and no longer requires that the purpose for the temporary contract be of a temporary nature; reduces from 3 to 1 year the statute of limitations for contractual or statutory compensation claims arising after the enactment of the LTFA; affords all employees the right to request religious accommodations; outlines certain requirements that if met, create a irrebuttable presumption that the person is an independent contractor, while allowing those who do not meet this presumption to still be deemed a contractor if they meet the traditional case law test. Certain employees can request in writing changes to their schedule, number of hours worked or location, and the employer must provide a reasoned response within 20 days.

Overtime: For employees hired after the enactment of the LTFA, 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. For all employees, eliminates technical overtime by redefining the regular workday on the basis of 8 hours on a natural day rather than rolling 24-hour periods, as long as the employee enjoys at least 8 hours of rest between consecutive workdays; 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 and the work week does not exceed 40 hours; redefines de regular rate of pay to exclude tips (except to the extent necessary to meet minimum wage) and service charges, and allows it to be computed on the basis of regular working hours as under federal law, rather than on the basis of actual hours.

Meal period: For employees hired after its enactment, the LTFA reduces the meal period penalty from double to 1.5 the regular rate. For all employees, it 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.



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Vacation and sick leave: For employees hired after the enactment of the LTFA, increases from 115 to 130 the monthly minimum hours of work required to accrue vacation and sick leave; reduces vacation accrual from 1.25 to 0.5 days per month during the first year of employment, progressively increasing it with tenure up to 1.25 days per month after fifteen (15) years of employment; 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. Sick leave accrual remains at 1 day per month, regardless of number of employees.

Year-end bonus: For employees hired after its enactment, the LTFA 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 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. The LTFA changes the payment date and allow more flexibility to credit prior bonuses against the statutory bonus.

Termination: For employees hired after the enactment of the LFTA, reduces the discharge indemnity and caps it at 9 months of salary. For all employees, eliminates the presumption that all unjustified terminations are discriminatory. 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 based on number of employees. Allows employers to preferentially recall laid off employees on the basis better performance or disciplinary history, in addition to the seniority and productivity criteria allowed until now.

Closing law: The LTFA repealed the Puerto Rico Law to Regulate the Operation of Commercial Establishments (also known as “the Closing Law”), under which certain establishments had to remained closed during certain holidays and from 5:00 to 11:00 a.m. on Sundays and pay a special rate for Sunday work. However, all those commercial establishments that were required by the Closing Law to remain closed during Good Friday and Easter Sunday must remain closed on those days.

Job Reservation: The LFTA reduces from 12 to 6 months the job reservation period for employees who commence workers’ compensation or non-occupational disability leave after its enactment, for employers with less than 15 employees. The incapacity to return to work after expiration of the job reservation period extinguishes the employment relationship.

Milk Extraction: Extends milk extraction rights to part time employees and creates reduced milk extraction requirements for employers that classify as small business under the SBA. Defines elements of a proper milk extraction area to be provided by the employer.

We at Reichard & Escalera are available to assist employers in understanding and working with this new law.

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