

2022 Labor Reform Nullified by Judge Laura Taylor Swain

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As informed in our July 20, 2022 Alert and our October 5, 2022 Alert, the 2022 Labor Reform, Act 41-2022 ("Act 41"), which reinstated and expanded benefits and protections for private-sector employees, was challenged by the Financial Oversight and Management Board (FOMB) for Puerto Rico in a lawsuit filed before the U.S. District Court for Puerto Rico.

On March 3, 2023, Judge Laura Taylor Swain entered an Opinion and Order granting the FOMB's request to nullify Act 41, because it violated the Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA") and was inconsistent with the FOMB's certified fiscal plan for Puerto Rico.

In a sweeping Opinion, the Court ruled that Act 41 and any actions that have been taken to implement it, are null and void ab initio (from its inception). The Court further prohibited and enjoined the Governor of Puerto Rico or other persons who are in active concert or participation with the Governor from taking any acts to help private parties implement or enforce Act 41.

Although the Court's ruling is not final and may be appealed, employers are free to reinstate policies that incorporate the changes of the 2017 Labor Reform and had been repealed by Act 41, as well as eliminate policies that incorporate rights newly created under Act 41, for example:

- Vacation and sick leave - employers may opt to eliminate accruals for non-exempt part timers and may reinstate a requirement that employees work no less than 130 hours monthly (instead of 115 under Act 41) to accrue vacation and sick leave; as well as limit vacation accruals to 1/2 day per month during the 1st year of employment; 34 days after the 1st year and up to 5 years; 1 day per month after the 5th full year and up to 15 years; and 1.25 days per month after 15 years of employment.
- Probationary term – for all new hires, employers may reinstate a probationary term of 9 months for non-exempt employees and a probationary term of 12 months for exempt employees (instead of 90 days under Act 41).

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- Christmas bonus – employers may reinstate a requirement to work at least 1,350 hours (instead of 700 hours under Act 41) for entitlement to the Christmas bonus, unless the employee was grandfathered with the 700 hour requirement under the 2017 Labor Reform.
- Severance – employer's severance penalty reverts to the cap of 9 months; and the severance formula is reinstated to 3 months plus 2 years per year of service for all employees, unless the employee was grandfathered under the 2017 Labor Reform. As to the severance calculation, the limitation that considers only the time worked in Puerto Rico without an interruption of more than 2 years, is also reinstated.
- Meal Breaks - employers may reinstate the option to waive the first meal period if the workday does not exceed 6 hours (instead of allowing only a waiver of the 2nd meal break).

These and other changes to undo the 2022 Labor Reform can be considered by employers. However, the Court's Order nullifying Act 41 is not final. It is expected that the Puerto Rico government will appeal to the U.S. Court of Appeals for the First Circuit to request the reinstatement of Act 41.

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