

## Act 41-2022 Reverts Provisions of the 2017 Labor Reform and Expands Workers' Rights

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### PRACTICE AREAS

- Labor & Employment

### An McV Labor & Employment Law Alert

June 22, 2022

On June 20, 2022, the Governor of Puerto Rico, Pedro Pierluisi Urrutia, signed into law Puerto Rico Act No 41-2022 (“Act 41-2022”) to reinstate and expand employment protections to all workers in the private sector. Act 41-2022 reverses many provisions of the 2017 Labor Reform.

Among the key amendments implemented through Act 41-2022 are:

#### ■ **Unjust dismissal under PR Act 80-1976**

The following formula to calculate the statutory severance (“mesada”) will apply to all employees, regardless of hire date:

- Employees with 0 to 15 years of service = 3 months plus 2 weeks of pay for each full year of service
- Employees with 15 or more years of service = 6 months plus 3 weeks of pay for each full year of service

Accordingly, the 9-month cap to statutory severance payments was repealed. Moreover, the Act 4-2017 amendments that had expanded on the definitions of “just cause” and constructive discharge were also repealed by Act 41-2022.

#### ■ **Probationary Period**

The probationary period continues to be automatic, but it is reduced to 3 months (90 days) for all employees, regardless of their classification (repealing the automatic 9 and 12-month periods for non-exempt and exempt employees, respectively). The 3-month probationary term may be extended for an additional 3 months upon written notice to the Puerto Rico Secretary of Labor. The new probationary term does not limit the employee’s entitlement to accrue vacation leave.

#### ■ **Vacation and Sick Leave**

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All employees covered by the vacation and sick leave statute, Act 180-1998, regardless of hire date, will accrue 1.25 days of vacation and 1 day of sick leave for each month in which the employee works at least 115 hours. For employers with 12 employees or less, the accrual is ½ day of vacation and 1 day of sick leave if the employee works at least 115 hours per month.

Act 41-2022 expands Act 180-1998 to grant vacation and sick leave to part-time employees, who will be entitled to accrue ½ day of paid vacation leave and ½ day of paid sick leave if they work more than 20 hours per week but less than 115 hours per month. For employers with 12 employees or less, part-time employees (as defined above) accrue ¼ day of vacation and ½ day of sick leave.

### ■ **Annual (“Christmas”) Bonus**

The hours-worked threshold for entitlement to the Christmas bonus returns to 700 hours for all employees, regardless of hire date. For employers that qualify as micro, small and medium business enterprises, the hours-worked threshold is 900 hours.

### ■ **Meal Periods**

The commencement of the meal period is reverted to no earlier than the end of the 3rd hour of work, as opposed to the second hour of work, unless there is a written agreement between employee and employer.

The meal period may be waived only when it is a 2<sup>nd</sup> meal period, the workday does not exceed 12 hours, and there is a written agreement between the employer and employee. Act 41-2022 no longer allows a waiver of the 1<sup>st</sup> meal period.

### ■ **Day of Rest**

Students who work on a 7<sup>th</sup> consecutive day are entitled to payment at 2 times their regular hourly rate. If the students work for a micro, small or medium business enterprise the rate of pay is 1.5 their regular hourly rate.

### ■ **Other changes included**

- In the event of ambiguity, the provisions of an employment agreement will be interpreted liberally in favor of the employee.

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- The statute of limitations for claims of owed wages, unjust dismissal and violation of the employment contract is 3 years (instead on 1 year).
- Act 41-2022 reinstated the rebuttable legal presumptions that any involuntary termination of employment is without just cause and that it is also discriminatory if there is no just cause.

**Act 41-2022 becomes effective 30 days after its approval.** Employers that qualify as micro, small and medium-sized businesses have 90 days to implement the provisions of the law.

**Please Note:** In a letter from the Puerto Rico Fiscal Oversight and Management Board to the Governor of Puerto Rico dated June 13, 2022, the Board stated that the provisions in Act 41-2022 are inconsistent with the Board-certified Fiscal Plan for Puerto Rico, inasmuch as they impair the purposes of the Puerto Rico Oversight Management and Economic Stability Act (“PROMESA”) to promote economic growth and market competition. The Fiscal Board further stated that it reserved its rights under PROMESA to bar and nullify the implementation and enforcement of Act 41-2022. We will be monitoring how this unfolds and keeping you informed of any developments.

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