

## An Update on the 2022 Puerto Rico Labor Reform: Where Exactly are We?

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### PRACTICE AREAS

- Labor & Employment

### An McV Labor & Employment Law Alert

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As you may know, the 2022 Labor Reform has been in full effect since July 21, 2022 for large private employers and since September 18, 2022 for micro, small and medium-sized employers. Consequently, regardless of the size of your business, by now you should be complying with the key changes implemented by this new reform.

However, as anticipated in our July 20, 2022 L&E Alert, on September 1, 2022, the Financial Oversight & Management Board for Puerto Rico (“Fiscal Board”) filed a lawsuit at the U.S. District Court for the District of Puerto Rico (“Title III Court”) that presides over the proceedings regarding Title III of the Puerto Rico Oversight Management and Economic Stability Act, 48 U.S.C. §§ 2101-2241 (“PROMESA”), against the Government of Puerto Rico, seeking to nullify Act 41-2022.

In its lawsuit, the Fiscal Board contends that Act 41-2022 repealed critical business-friendly labor reforms that were implemented by the 2017 Labor Reform (P.R. Act 4-2017), reestablishing many burdensome labor restrictions and employee benefits, and imposing new ones as well, all of which negatively impact labor market flexibility, discourages new job creation and reduces overall economic growth, in violation of the certified 2022 Commonwealth Fiscal Plan and PROMESA.

Not long after, on September 8, 2022, a group of private organizations filed an *amicus brief* in support of the Fiscal Board’s request to nullify Act 41-2022. This group includes the Puerto Rico Retailers Association (“ACDET”), the Restaurants Association of Puerto Rico (“ASORE”), the Puerto Rico Marketing, Industry and Food Distribution Chamber (“MIDA”), the Puerto Rico Hotel & Tourism Association (“PRHTA”), the Puerto Rico Hospital Association (“AHPR”), the Puerto Rico Association of Automobile Distributors and Dealers (“PRADA”), Asociación Hecho en Puerto Rico Inc. (“AHPR”), the Puerto Rico Chamber of Commerce (“CCPR”), the Puerto Rico Manufacturers Association (“PRMA”), and the Puerto Rico Builders Association (“PRBA”).

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An expedited briefing schedule was issued by the Title III Court. On September 29, 2022, Governor Pedro Pierluisi requested the dismissal of the lawsuit on grounds that the Title III Court lacks subject-matter jurisdiction to adjudicate the case and that the Complaint does not have a close connection (“nexus”) to the 2022 Commonwealth’s Fiscal Plan, among other arguments. On that same day, the Fiscal Board moved for summary judgment to reaffirm its request to nullify Act 41-2022. Next, the parties will file opposition motions and counter arguments. It is not expected that the Title III Court will resolve the ‘parties’ dispositive motions sooner than by November or December 2022, or maybe even early next year, creating unnecessary confusion for all businesses alike.

**Please note that Act 41-2022 remains in full effect until otherwise determined by the Title III Court. Accordingly, employers should ensure that their policies, handbooks, contracts, payroll practices and other operational guidelines are in line with the changes implemented by Act 41-2022.**

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