

Senate Bill No. 212 and House Bill No. 453: Labor Transformation and Flexibility Act

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An McV Labor & Employment Law Alert

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On January 9, 2017, Senate Bill No. 212 and House Bill No. 453 were filed by Governor Ricardo Rosselló's administration to establish the Labor Transformation and Flexibility Act ("Ley de Transformación y Flexibilidad Laboral"). The bills propose major amendments to the Puerto Rico employment laws, and introduce important new definitions and requirements for an employment agreement in the private sector. Among the most important proposed amendments are the following:

Proposed amendments to P.R. Act 180 of May 27, 1998 to increase work hours eligibility requirement and reduce accrual rates for vacation and sick leave, as follows:

- Newly hired employees will accrue a minimum of $\frac{1}{2}$ day up to one and $\frac{1}{4}$ of a day per month of vacation leave, depending on how long they have been employed by the employer. It will be illegal to fire and rehire or replace current employees with new employees to benefit from this amendment.
- The minimum of hours worked in order to accrue vacation and sick leave will be increased from 115 to 130 hours.
- The statute of limitations for filing claims under P.R. Act 180 will be reduced from three (3) years to one (1) year.

Proposed amendments to P.R. Act 379 of May 15, 1948 to provide that payment of overtime, rest day and the meal period penalty at the rate of 1.5 instead of double, and to introduce exceptions to daily overtime pay for employees on an alternate week schedule, as follows:

- Daily overtime will apply to hours worked in excess of eight (8) hours per calendar day instead of hours worked in excess of eight (8) hours in any twenty-four (24) hour period.
- Overtime will be paid at a rate of one and a half times the base salary. All provisions in mandatory decrees regarding overtime will be revoked.
- Employers and employees may agree to establish a flexible working hours agreement providing for workdays of ten (10) regular hours, four (4) days a

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week, without triggering the employer's obligation of daily overtime penalty.

- Employees will be entitled to request flexibility regarding work hours and place of employment, and employers will have the obligation to respond and to provide alternatives if the request is declined.
- The statute of limitations for wages and hours claims will be one year (instead of 3 years).

Proposed amendments to P.R. Act 148 of June 30, 1969 regarding Christmas Bonus to increase work hours eligibility requirement and reduce salary payment percentage, as follows:

- The requirement of hours worked from October 1 to September 30 will be increased from 700 hours to 1,350 hours in order to be entitled to a Christmas Bonus.
- The Christmas Bonus will be reduced from 3% of the employee's salary to 2% of the salary, up to a maximum of \$600 or \$300, depending on the amount of employees employed by the employer. Newly hired employees will receive 50% of the Christmas bonus during their first two (2) years of employment.

Proposed amendments to P.R. Act 80-1976 regarding wrongful termination to extend the probationary term, reduce and cap the severance payment amount, provide for its tax free treatment and allow separation payments to be credited against the severance obligation, as follows:

- All the new hires will be subject to an automatic probationary period of eighteen (18) months (instead of 90 days), except if the employer and the employee agree otherwise. A written probationary contract to be signed prior to commencement of the employment will no longer be required.
- The severance payment will be limited to three (3) months' salary plus two (2) weeks' salary per year of service for all regular employees. Employees who are discharged during their automatic probationary period of eighteen (18) months will not be entitled to claim the severance payment.
- Temporary and fixed term employees are exempt from P.R. Act 80
- The severance payment will be capped at a maximum of nine (9) months' salary.
- The employee's salary used to calculate the severance will not include the value of benefits, disability payments, sick and vacation leave payments, stock options, deferred compensation, or income derived from tips and

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service charges in excess of the federal minimum wage.

- The statute of limitations for wrongful termination claims will be one year (instead of 3 years).
- A legal presumption of unjustified discharge against the employer will no longer apply. The employee will bear the burden of proof to establish that the termination was not supported by a just cause.
- In all Act 80 lawsuits a mandatory settlement hearing will be required to be held within sixty (60) days after the employer files its answer to the complaint. The parties or a representative authorized to approve a settlement must be present at this hearing.
- Although the law provides that entitlement to claim the severance compensation cannot be waived, a terminated employee will be allowed to settle a severance claim as long as all the requirements of a valid settlement agreement are complied with.
- The severance payment will not subject to any withholding except for those required by federal law.
- The bill also proposes amendments to the P.R. Internal Revenue Code to make exempt of income tax the payments issued to employees in the context of an involuntary employment termination or settlement of a wrongful termination claim, up to the amount of the Act 80 severance.

Amendments to P.R. Act 427-2000 regarding rights of breastfeeding mothers to regulate space conditions, extend the benefit to part-time workers and introduce a new penalty, as follows:

- Employers will be required provide to all nursing employees a safe, private and hygienic space to express breast milk or to breastfeed.
- Part time employees who work at least 4 hours will be entitled to 30 minutes to express milk or to breastfeed.
- For employees whose salary includes tips, the penalty payment for interference with the employee's breastfeeding rights will include the tips income, and not only the base salary.
- The employer's penalty for violation of this law will be set at a minimum of \$3,000.

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The bill also establishes a separate chapter regarding employment discrimination to adopt the caps to compensatory and punitive damages awarded to an employee in discrimination and retaliation claims pursuant to Title VII claim (federal antidiscrimination law). The compensatory and punitive damages caps will range from \$50,000 up to \$300,000, depending on the amount of employees employed by the employer.

These bills are under consideration and it is anticipated that they will suffer amendments before a labor reform law is signed by the Hon. Governor Ricardo Rosselló. We will keep you informed of any developments and we will send a comprehensive summary once these bills become law.

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