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Puerto Rico Enacts Sweeping Labor Reform

The Island's newly elected administration has enacted a comprehensive labor reform to balance "expenditures and revenues, reducing the level of government intervention in Puerto Rico's economy and providing a competitive business environment." The government is betting that reducing the historically restrictive and protectionist labor laws will promote economic activity, grow tax revenue, and increase both employment and labor participation rate. Many disagree.

The new regulations aim to provide businesses with flexible hiring options and broader work scheduling possibilities, while reducing fringe benefits and severance payments under local wrongful termination law. They will also make it easier for foreign companies to manage their locally-stationed employees with favorable choice of law provisions.

It is important to note that there are numerous grandfather provisions which must be carefully considered before making any decisions or changing existing conditions. Here are some highlights.

Hiring & Termination

While there is no employment-at-will in Puerto Rico, employers can now lawfully hire workers for temporary, fixed or indefinite terms. Fixed terms will cease either by mutual consent, at the expiration of the stipulated period or as per provisions of the contract. Employees hired for an indefinite period of employment can be under probation for nine-month; instead of the current three. Exempt employees can be subjected to even longer periods- up to 12-months. Also, the "for cause" wrongful discharge rules applicable to indefinite terms of employment have been skewed in favor of the employer (including a shorter statute of limitations period) and the compensation scheme is now considerably reduced.

Fringe Benefits

Newly hired full-time employees will no longer be automatically entitled to 15 days' vacation. To accumulate sick and vacation leave, they must work more hours per month- from 115 to 130 hours. For vacation, the amount of leave will increase with tenure, beginning with half a day of leave per month for new recruits. This amount remains fixed for employers with twelve or less workers. For new employees, the right to the yearly (Christmas) bonus requires completion of 1,350 hours of work instead of the current 700 per year and the bonus amount has been lowered.

Discrimination and Retaliation Claims

Establishing a wrongful discharge will no longer create a prima facie case of discrimination. Caps on compensatory damages in claims of discrimination and retaliation are set as follows: employers with less than 101 employees- \$50,000; between 101 and 200- \$100,000; between 201-500- \$200,00; more than 500- \$300,000.

Flexible Hours

By agreement and following certain statutory guidelines, employers can set alternative itineraries of work enabling a person, for example, to complete a 40-hour work schedule in four days by working (up to) 10 hours per day without incurring in overtime. Part-time workers are also favored by the bill. They can now work for longer periods without accruing fringe benefits or demanding a break during a shift so long as it does not exceed six consecutive hours. Regulations affecting the hours of operations of commercial establishments have also been considerably reduced.

Out-of-State Employees

The bill provides that (our translation):

When an employee of another jurisdiction is assigned to work in Puerto Rico for the benefit of another employer, but maintains his employment relationship with the employer located in the other jurisdiction and the performance of his duties in Puerto Rico does not exceed three (3) consecutive years, the contractual and legal rights and obligations shall be interpreted in accordance with the agreement in the employment contract. In such cases, the employee will be subject to the provisions of the Puerto Rico laws of income tax, employment discrimination and accidents or illness occurring in employment. If the parties have not contractually selected the applicable law, it shall be subject to the Puerto Rico rules.

Independent Contractors

There are now guidelines to reduce the risk of erroneously classifying employees as independent contractors. There is an incontrovertible presumption that a person is an independent contractor if:

- A. it owns or has requested an employer identification number or an employer's social security number;
- B. it filed income tax returns claiming to own business;
- C. the relationship has been established by written agreement;
- D. it has been contractually required to have the licenses or permits required by the government to operate its business and any license or authorization required by law to provide the agreed services; and
- E. meets three (3) or more of the following criteria:
 - 1) It maintains control and discretion over the way it will perform the agreed works, except for the exercise of the necessary control by the principal to ensure compliance with any legal or contractual obligations.

- 2) Maintains control over when the agreed work will be carried out, unless there is an agreement with the principal on the itinerary to complete the agreed work, parameters on the schedules to carry out the work, and in the cases of training, the time when the training will take place.
- 3) Is not required to work exclusively for the principal, unless some law prohibits the contractor from serving more than one principal or the exclusivity agreement is for a limited time;
- 4) It is free to hire employees to assist in the provision of the agreed services;
- 5) Has made an investment in its business to provide the agreed services, including but not limited to:
 - i. the purchase or rental of tools, equipment or materials;
 - ii. obtaining a license or permit from the principal to access the principal's place of work to perform the agreed work; and
 - iii. rent a space or work team of the principal to be able to perform the agreed work.

DISCLAIMER: Given the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations.