

A world map is shown in the background, rendered in a dark purple and blue color scheme. A grid of thin, light-colored lines is overlaid on the map, creating a digital or data visualization effect. The map is centered on the Americas, with North and South America clearly visible.

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2019 MANAGING THE GLOBAL WORKFORCE WEBINAR SERIES

LABOR REFORM IN LATIN AMERICA

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MEXICO

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Mexico's Labor & Employment Reform

- Published on May 1, 2019 in the Official Gazette (Diario Oficial de la Federacion)
- Effective on May 2, 2019
- Key changes to Mexico's Federal Labor Act Reform
 - Administration of employment justice
 - Collective work relationship
 - Employment relationship

Administration of Employment Justice – New Court System: Judicial Branch

- Progressive closure of local conciliation and arbitration boards, which will be replaced by the Local and Federal Labor Courts (the New Courts)
- The New Courts will be part of the Judicial branch of Government
- The New Courts will coexist with Local and Federal Conciliation Centers and Labor Registry, which will keep records on unions, CBAs, and internal employee handbooks (reglamentos interiores de trabajo)
- Local conciliation and arbitration boards and the Ministry of Labor and Social Welfare will continue to hear individual and collective disputes until the New Courts begin operating

Administration of Employment Justice – New Court System: Judicial Branch

- Local Labor Courts and conciliation centers have up to three years to start operating (May 2, 2022)
- Federal Labor Courts and the Centro Federal de Conciliación y Registro Laboral have up to four years to start operating (May 2, 2023)

Collective Work Relations (Unions)

- CBAs predating the Labor Reform (May 1, 2019) shall be reviewed at least once within the first four years after the Labor Reform comes into effect
- The CBAs will end (after a four-year term) if not supported by the majority of employees or if the employees covered by those CBAs were not voluntarily affiliated (employees will not lose any rights and benefits)
- In anticipation of the beginning of operations of the Centro Federal de Conciliación y Registro Laboral:
 - The Ministry of Labor and Social Welfare has three months (August 2, 2019) to create a protocol that allows verification of CBAs by polling employees
 - To execute a new CBA, unions must obtain an Affiliation Certification evidencing that they have, at least, 30% of the employee population support at the place of employment (May 2, 2020)

Employment Relationship

- Legal simulation to avoid employer or social security obligations by registering employees with a salary that is not correct will be null and void
- The employment agreement shall describe the salary and benefits of each employee
- Any termination of employment that is not ratified by the authorities may be challenged with respect to waiver of rights; and
- The alteration of documents signed by the employees (e.g., blank documents) showing resignation may subject the employer to fines and penalties (asking for the execution of blank documents will do so too)

Employment Relationship

- The employer might be exempt from reinstating an employee by making an indemnification deposit with the court if the employee has been employed for less than a year or is a trust (management) employee
- The employees shall receive a printed payroll statement to be executed in receipt by the employee, or have access to the CFDI (digital tax payment receipt) authorized by the Tax authorities, which shall have itemized details of earnings and deductions.
- Both the employer and its employees shall create a protocol to avoid gender discrimination and prevent sexual violence at the workplace.
- The employer shall not take any action intended to control the employees' union.

Businesses' Obligations Derived from the Labor Reform – Mandatory to Employers

- Employment agreements must name the employees' beneficiaries upon death
- Request for approval with and recording by Centro Federal de Conciliación y Registro Laboral of employment agreements with Mexican employees working abroad (when the relationship is subject to Mexican law)
- Detailed information of paystubs and access to an electronic statement (CFDI – digital tax payment receipt)
- If the employees oppose the deduction of union fees, the employer may not undertake that deduction (relevant for payroll purposes)
- Employers must provide the employees a copy of the applicable CBA (and its revisions) 15 days after deposit with the Centro Federal de Conciliación y Registro Laboral (signature in receipt by employee)

Businesses' Obligations Derived from the Labor Reform – Mandatory to Employers

- Implementation of protocol to prevent gender discrimination and sexual violence
- Prohibition to interfere with unions. The business cannot obligate an employee to join or quit a union, to vote for a political party, or take any action or omit to take any action against the employee's rights
- An employer-employee commission must create a seniority chart by job category, and that chart must be made public
- Entering into collective agreements with unions when an employee is a member of the union and he/she requests it (Unions must have obtained the Affiliation Certification)
- Publication of requests of Affiliation Certification, or approval of CBAs or revisions thereto.

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PUERTO RICO

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Key Changes under the Puerto Rico Labor Transformation and Flexibility Act (the Act)

- Law 80 (Unjust Dismissal Statute)
- Wage & Hour Requirements
- Christmas Bonus
- Closing Law
- Religious Accommodations
- Vacation & Sick Leave
- Breastfeeding Requirements
- Independent Contractors

Puerto Rico Labor Transformation and Flexibility Act

To whom does the Act apply?

- Exempt/nonexempt?; union/nonunion?; current/new?
- The Act provides that employees hired before the Act's effective date (January 26, 2017) will generally retain the same rights and benefits that they had before, to the extent they are more favorable than those provided in the Act, **unless as otherwise provided.**
- Many, but not all, of the Act's changes apply to ALL employees.
- In various sections, the Act makes clear that it will be illegal for employers to fire and replace existing employees in order to take advantage of the more favorable terms introduced through the Act.

Puerto Rico Labor Transformation and Flexibility Act Interplay with Federal Law

- Section 2.13 of the Act provides that all Puerto Rican laws or regulations that regulate the employment relationship in matters similar to that regulated by a law or regulation of the United States must be interpreted consistently with the law or regulation of the United States, unless Puerto Rican law expressly requires a different interpretation.

Puerto Rico Labor Transformation and Flexibility Act Changes to Law 80

- Law 80 (Unjust Dismissal Act)
 - Requires statutory “just cause” for terminations
 - Or the payment of statutory severance
- The requirement to have “just cause” remains under the Act
- But the Act:
 - changes severance payment amounts **for new employees**
 - revises certain definitions of “just cause” **for all employees**
 - sets an automatic probationary period **for new employees**
 - calls for a mandatory settlement hearing
 - reduces the statute of limitations for claims brought under Law 80 **for new claims**

Puerto Rico Labor Transformation and Flexibility Act Changes to Law 80

Reasons based on business necessities under Puerto Rico Law 80:

- Full, temporary, or partial closing of the operations of the establishment.
 - If multiple establishments, the closing of one of them is enough
- Technological or reorganization changes as well as changes of style, design, or the nature of the product made or handled by the establishment, and changes in the services rendered to the public.
- Reductions in employment made necessary by a reduction in the anticipated or prevailing volume of production, sales, or profits at the time of the discharge, **or with the purpose of increasing the establishment's productivity or competitiveness.**

Puerto Rico Labor Transformation and Flexibility Act Changes to Law 80

If the employer has multiple locations in Puerto Rico, what employees must be considered for the order of retention analysis after the Act?

- General Rule: Only the employees within the particular location are impacted
- Exception: Consider occupational classifications in other locations only if, during the year prior to the termination, (1) the employees within the impacted occupational classification transferred usually/regularly from location to location; and (2) the employees are under direct common supervision with respect to day-to-day personnel administration
 - The fact that the employees in the various locations are covered by common policies or participated in common benefits is irrelevant
- Only the locations that fit within the above characteristics have to be considered, as opposed to all locations on the island

Puerto Rico Labor Transformation and Flexibility Act Changes to Law 80

- The Act revises the formula for Law 80 severance for covered employees **hired after the Act's effective date** to:
 - an amount equivalent to three months' salary; and
 - an amount equivalent to two weeks' salary for each year of service.
- For employees **hired after the Act's effective date**, the severance is capped at nine months.

Puerto Rico Labor Transformation and Flexibility Act Changes to Law 80

Probationary employment: no “just cause” requirement or severance obligation for terminations during probationary period

- Automatic probationary periods for employees hired after the Act
 - Executive, administrative, and professional employees hired after the Act have an automatic probationary period of 12 months
 - All other employees have an automatic probationary period of nine months
- If there is a union, the probationary period will be that set by the employer and the union
- Written probationary agreements are no longer required
- Probationary employees accrue vacation once they have been employed for six months, retroactive to commencement of employment
- Any leave authorized by law automatically interrupts the probationary period, which continues upon return to work

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Puerto Rico Labor Transformation and Flexibility Act Independent Contractors

- Independent contractors are exempt from coverage of certain labor and employment laws, including the Law 80 just cause and severance requirements
- Section 2.3 of the Act creates an **irrebuttable presumption** that a person is an independent contractor if he/she:
 - possesses or has requested an employer identification or employer social security number
 - has filed income tax returns claiming to own a business
 - the independent contractor relationship is established by written contract
 - is contractually required to have required licenses or permits and
 - meets certain tests evidencing that he/she has discretion over the engagement, including in the way the work is performed, its timing, the ability to do work for others, and the ability to hire/contract staff or other help

Puerto Rico Labor Transformation and Flexibility Act Independent Contractors

- If the factors to establish the independent-contractor presumption are not met, the “common law test” is used to determine whether there is an employee or independent contractor relationship, including what the parties expressed in their contract and the degree of direct control exercised over the manner in which the work is performed.
- The Act specifically provides that, unless required by a federal law applicable to Puerto Rico, the “economic reality” test should not be used to evaluate whether an independent contractor relationship exists.

Puerto Rico Labor Transformation and Flexibility Act

Wage & Hour Changes

- General rules:
 - New rules about **when** non-exempt employees will be paid overtime or other premium pay: apply to all employees (both those employed before and after the Act)
 - New rules about **how much** to pay non-exempt employees for overtime or other premium pay: apply to employees hired after the Act

Puerto Rico Labor Transformation and Flexibility Act

Wage & Hour Changes

- Overtime pay is required for:
 - Time worked in excess of eight hours during any calendar day.
 - This definition represents an amendment to Law 379, under which hours worked in excess of eight in any consecutive 24-hour period were considered overtime.
 - Time worked in excess of 40 hours per workweek.
 - The employer defines the workweek. The employer must notify employees in writing of the day and time the workweek ends and starts.
 - If not defined and notified, the workweek starts Mondays at 12:01 am.
 - Employees must be notified of any changes five days in advance of the changes.

Puerto Rico Labor Transformation and Flexibility Act

Wage & Hour Changes

OVERTIME: Double or time and a half?

- Section 3.3 amends Law 379, under which certain employees were entitled to overtime pay of two times their regular rate of pay.
- For employees hired after the enactment of the Act, overtime is compensated at a rate of 1 ½ times the regular rate (time and a half).
- Employees with a right to greater benefits before the Act went into effect preserve the greater benefit while they work for the same employer.

Puerto Rico Labor Transformation and Flexibility Act

Wage & Hour Changes

Alternate Weekly Schedule

- An employer and employee may agree in writing to establish an alternate workweek in which the employee works 10 regular hours for four days (which do not have to be consecutive) each week, without incurring the employer's obligation to pay daily overtime.
- However, if, under the alternate workweek, an employee works more than 10 hours in a day, the employee is owed overtime.
- Alternate-week schedule agreements must be in writing and voluntary
 - Employers cannot impose an alternate-week schedule as a condition of employment.
- Alternate-week schedule agreements may be terminated at any time after one year.

Puerto Rico Labor Transformation and Flexibility Act

Wage & Hour Changes

Meal Breaks: the Act amends Law 379 meal break entitlements for non-exempt employees

- If an employee does not work more than six hours in a day, the employer is now not required to provide a meal break.
- However, where a meal break is provided, the meal period is generally required to start between the conclusion of the second (instead of third) consecutive work hour and the beginning of the sixth work hour.
- Although employees working more than 10 hours a day may be entitled to a second meal break, if employees do not work more than 12 hours a day, the second meal break may be obviated if the first meal break was taken.

Puerto Rico Labor Transformation and Flexibility Act

Wage & Hour Changes

Meal Breaks

- A meal period must have a duration of one hour, unless the employer and the employee mutually agree to reduce it **in writing**.
 - A reduced meal period cannot be less than 30 minutes, except in the cases of nurses, security guards, croupiers, **and others authorized by the Secretary of Labor**, where it may be reduced to 20 minutes.
- If an employee hired after the Act is required or permitted to work during his/her meal period, or if the period is enjoyed outside the required time frame, the employee will be entitled to payment at **1.5** his/her regular rate. An employee hired before the Act still gets **double** his/her regular rate.
 - This penalty is independent of overtime requirements.

Puerto Rico Labor Transformation and Flexibility Act

Wage & Hour Changes

Closing Law: REPEALED

- The Closing Law (which applied to retailer with 25 employees or more) required that covered establishments be closed from 5 am to 11 am on Sundays and on New Year's Day, Epiphany, Good Friday, Easter Sunday, Mother's Day, Father's Day, General Elections Day, Thanksgiving Day, and Christmas Day.
 - Certain premium pay was required for work during these days
- The Act repeals the Closing Law
 - Previously covered establishments must remain closed on Good Friday and Easter Sunday

Puerto Rico Labor Transformation and Flexibility Act

Religious Accommodations

- After an employee or prospective employee notifies the employer in writing of the need for a religious accommodation, the employer must reasonably accommodate the individual's religious practices.
- An employer may deny a reasonable accommodation only when it can demonstrate that the employee's chosen method would result in an undue burden.
 - The mere assumption that many other people with the same religious practices might also require reasonable accommodation is not evidence of undue burden.
- An employer may not penalize an employee for attending a religious service, or refuse to permit an employee to participate in a religious service.
- The Act imposes fines of \$1,000 to \$5,000 for violation of the religious accommodation provisions.

Puerto Rico Labor Transformation and Flexibility Act

Wage & Hour Changes

Christmas Bonus

- For employees hired after the Act's effective date, the requirement of hours worked between October 1 and September 30 of the next year is increased from 700 hours to 1,350 hours to be entitled to a Christmas Bonus.
- For employees hired after the Act, the Christmas Bonus is reduced to 2% of salary, from the previous 6% or 3%, and there are different caps depending on the size of the employer:
 - For large businesses (employers that employ more than 20 employees), the maximum Christmas Bonus owed per employee is \$600.
 - For small businesses (employers that employ 20 or fewer employees), the maximum Christmas Bonus owed per employee is \$300.

Puerto Rico Labor Transformation and Flexibility Act

Wage & Hour Changes

Christmas Bonus

- Employees hired starting on the Act's effective date will receive only 50% of the regular Christmas Bonus during their first year of employment.
- The Christmas Bonus will now be paid between November 15 and December 15, instead of between December 1 and December 15.
- Employers may credit any other bonus previously paid to employees during the year against the Christmas Bonus, provided that the employees are given written notice of the employer's intention to do so.
- There are new provisions for seeking exemption if the Christmas Bonus pay is more than a certain percentage of profits.

Puerto Rico Labor Transformation and Flexibility Act Changes to Law 180

- Before the Act, under Law 180, all workers in Puerto Rico employed on or after August 1, 1995, with the exception of administrators, executives, and professionals, **accrue vacation at the rate of 1¼ days per month**, and **sick leave at the rate of one day per month**, for each month in which the employee works at least **115 hours**.
- Under the Act, the minimum number of hours worked in order to accrue vacation and sick leave for all employees (except exempt administrators, executives, and professionals) has been **increased to 130 hours per month**, instead of 115 hours.

Puerto Rico Labor Transformation and Flexibility Act Changes to Law 180

- For employees hired after the Act, the minimum monthly accrual of vacation leave will be **half a day during the first year of service; three-quarters of a day after the first year and until the fifth year; one a day after five years until 15 years; and 1¼ a day after 15 years.**
 - However, if an employer has no more than 12 employees, the minimum monthly accrual of vacation leave is a fixed half a day a month.
- The minimum monthly accrual of sick leave continues to be one day for each month of service, subject to the increase to the minimum hours worked requirement.
- Employees who worked for an employer before the Act went into effect and had rates of accrual of vacation and sick leave superior to that provided for in the Act continue to have the same accrual rates while they work for the same employer.

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BRAZIL

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Brazilian Labor Reform – Overview

- Federal Law 13,467 of July 13, 2017, effective on November 11, 2017
 - Amended a number of sections of the Brazilian Labor Code
- Key changes to Brazilian Labor Reform
 - Role of Unions
 - Flexibility for Direct Negotiations
 - Arbitration/Vacation/Termination by Mutual Consent
 - Work from Home
 - “Bank of Hours”
- Current status of Brazilian labor case law

Role of Unions

- Mandatory Payment of Union Dues
- Mass Layoffs
- Ratification of Employee Termination

Flexibility for Direct Negotiations

- High-Level Employees
 - University Degree
 - Compensation – Monthly Salary higher than twice the maximum Brazilian social security benefit
- Negotiation of Employment Terms and Conditions
 - Parameters
 - Nonsolicitation

Arbitration/Vacation/Termination by Mutual Consent

- Arbitration
 - Perceived advantages
- Vacation
 - Up to three periods, one with at least 14 consecutive days and the others with at least five consecutive days each
- Termination by Mutual Consent
 - 50% of notice and FGTS fine
 - Ability to withdraw 80% of FGTS balance
 - No unemployment insurance

Work From Home

- Main Aspects
 - Work “Predominantly” From Home
- Amendment to Employment Agreement
 - Party responsible for infrastructure costs
 - Right of Employer to review suitability (including ergonomics) of home office infrastructure
- Ability to switch back to performance at employer’s offices
- Terms of Applicable CBA

Bank of Hours

- Main Aspects
 - Offsetting of shortfall or excess hours worked
 - Six-month determination period
 - Compliance with normal work shift
- Amendment to Employment Agreement
- Terms of Applicable CBA
 - Shorter “Determination Period”

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