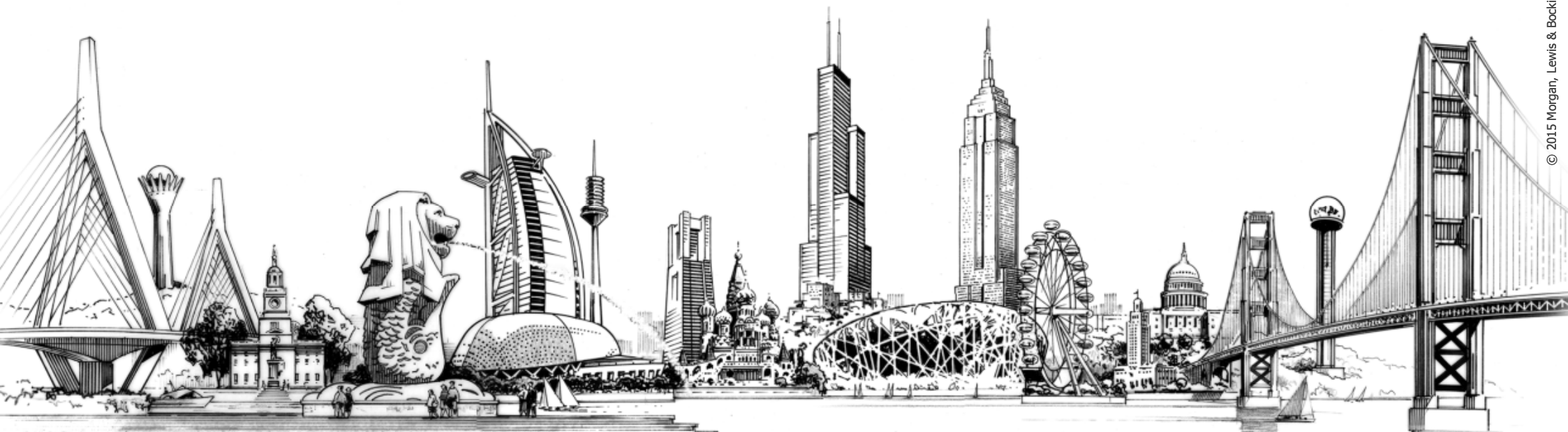


Morgan Lewis

OPEN FOR BUSINESS: AN OVERVIEW OF PUERTO RICO'S LABOR REFORM

Melissa C. Rodriguez
Morgan, Lewis & Bockius LLP

Larissa Garriga
NBCUniversal/Telemundo



Agenda/Topics

- 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/non-exempt?; union/non-union?; 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

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 the probationary period **for new employees**
 - 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

- Prior to the Act, the employer had the burden to show just cause
- The Act eliminates the language concerning the employer's burden to prove that a termination was justified in order to avoid the payment of Law 80 severance.
 - But...

Puerto Rico Labor Transformation and Flexibility Act

Changes to Law 80

Constructive Discharge Standard Codified

- The Act clarifies whether there is a constructive discharge by codifying the standards that were developed in case law.
- Constructive Discharge: resignation of the employee caused by the actions of the employer directed to induce or compel him to resign, such as imposing or trying to impose on him more onerous working conditions, reducing his salary, lowering his category or submitting him to derogatory criticisms or humiliations by deed or word, provided that
 - Acts directed to induce or compel an employee to resign constitute a discharge when the only reasonable alternative is to resign.
 - Mere annoyance is not enough. Rather, the employer's actions must be arbitrary, unreasonable, and capricious actions that generate a hostile environment that impedes the employee's sound stay in the job, and must be originated by a motive foreign to the employer's legitimate interests in safeguarding the good of the business.
 - Where criticisms and humiliations are involved, they must be of a substantial magnitude
- The mere allegation that an employee was forced to resign is insufficient. The employee must demonstrate concrete acts that establish that the employer had the intention of injuring or prejudicing the employee's condition.

Puerto Rico Labor Transformation and Flexibility Act Changes to Law 80

Reasons based on employee's conduct slightly modified to include:

- The employee **incurs** in a pattern of improper or disorderly conduct.
 - **Improper conduct:** voluntary infraction of the employer's norms or instructions that are not contrary to law; illegal or immoral acts; acts or omissions that adversely and significantly impact the employer's legitimate interests or others' well-being, done in a premeditated, intentional or indifferent manner
 - **Disorderly conduct:** voluntary infraction that alters the peace, tranquility, good order and respect that must exist in the workplace
- The employee **incurs** a pattern of performance that **is deficient, inefficient, unsatisfactory, poor, tardy, or negligent. This includes not complying with the employer's norms and standards of quality and security, low productivity, lack of competence or ability to perform the work at reasonable levels required by the employer, and repeated complaints from the employer's clients."**

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 relies on business necessity just cause, it must:
 - Retain employees of greater seniority on the job within their occupational classification which may be held by them (“order of retention analysis”).
 - Reemploy laid-off employees by order of seniority per occupational classification if the employer rehires for those functions.
- Except in those cases in which there is a **reasonably clear and evident difference** in favor of the **capacity, productivity, performance, competence**, efficiency or **conduct record** of the workers compared, in which case the **employer may select the less senior worker on the basis of such criteria**

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 that is 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 employee 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 in the island

Puerto Rico Labor Transformation and Flexibility Act Changes to Law 80

- In the case of transfer of a going business, if the new owner continues to use the services of the employees who were working with the former owner, such employees are credited with the time worked under the former owner for seniority.
- If the new owner chooses not to continue with the services of all or any of the employees, the former owner shall be liable for Law 80 severance, and the purchaser shall retain the corresponding amount from the selling price.
- In case the new owner discharges the employees without good cause after the transfer, the new owner shall be liable for Law 80 severance, there being established also a lien on the business sold, to answer for the amount of the claim.

Puerto Rico Labor Transformation and Flexibility Act Changes to Law 80

- Before the Act, “transfer of a going business” was not defined: could have presumably applied to not just purchase of a business, but also winning a contract, rent of a location, etc., creating doubt as to which employer bore Law 80 liability
- The Act now defines “transfer of going business” as:
 - the sale/purchase through which one employer sells a substantial portion of the passive or active assets of the business to another
 - without interruption of the operations for 6 months or more
 - the new employer continue operating the same type of business in the same location, or different location but with same equipment, machinery and inventory, providing the same services, retaining the same or similar business name or marks
 - so long as the majority of the employees working in the new business at any time during the 6 months following the transfer worked with prior employer at the time of transfer

Puerto Rico Labor Transformation and Flexibility Act

Changes to Law 80

- Under Law 80, full and part-time employees actually or constructively discharged without just cause are entitled to severance payments.
- For employees hired **before the Act**, the severance calculation is (and continues to be) based on years of service (YOS) and highest salary (including commissions, nondiscretionary bonuses, etc.) in the prior three years.

	Part A	Part B
0 - 5 Years	2 months	1 week/YOS
5 - 15 Years	3 months	2 week/YOS
15+ YOS	6 months	3 week/YOS

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:
 - (a) an amount equivalent to 3 months' salary; and
 - (b) an amount equivalent to 2 weeks' salary for each year of service.
- For employees **hired after the Act's effective date**, the severance is capped at 9 months.

Puerto Rico Labor Transformation and Flexibility Act

Changes to Law 80

- The entitlement to Law 80 severance is not prospectively waivable
- However, under the Act, Law 80 claims **can be settled** once the employer either **announces its intent to terminate or executes the termination**, assuming all contractual elements for the settlement contract are satisfied
 - In that context, can negotiate to settle claims for less than the full Law 80 severance
- Under the Act, any voluntary payment that the employer makes for the exclusive reason of termination can be credited towards the Law 80 severance obligation
- The Act clarifies that Law 80 severance claims are only subject to deductions for Medicare and Social Security – not federal or local income

Puerto Rico Labor Transformation and Flexibility Act Changes to Law 80

- Law 80 claims may be brought before the Puerto Rico Department of Labor or the courts
 - Under the new Act, in all Law 80 lawsuits, a mandatory settlement hearing will be held within sixty (60) days after the employer files its answer to the complaint.
- Statute of limitations:
 - Claims before the Act: three (3) years from the effective date of the discharge
 - Claims after the Act: one (1) year from the effective date of the discharge

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 9 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

Puerto Rico Labor Transformation and Flexibility Act

Changes to Law 80

Temporary employment: no “just cause” requirement or severance obligation for terminations upon expiration of temporary period

- The Act expands the definition of temporary employment by identifying some of the situations where it may exist:
 - Specific project (“proyecto específico”)
 - Fixed work (“obra cierta”)
 - Replacing a regular employee during a leave or temporary absence.
 - Extraordinary or short term project (including, without limitation, equipment or facility repairs, cargo loading or unloading, seasonal work, temporary order for production increases, annual inventories, or any other particular project or activity)
- Written temporary agreements are no longer required (but we recommend them)
- Temporary employees who become regular employees may be required to pass a probationary period.
 - However, the employee has to be credited with the time worked as a temporary employee for up to a maximum of six months as part of the probationary period

Puerto Rico Labor Transformation and Flexibility Act Changes to Law 80

Fixed term contracts: no “just cause” requirement or severance obligation for terminations upon expiration of contract term

- The Act recognizes fixed term employment contracts, defined as a contract for a specific period of time **or** for a particular project
 - No need to have a special project for a fixed term contract
- Written fixed term agreements are not required (but we recommend them)
- While fixed term contracts may be renewed, if the practices creates an expectation of continuity, the relationship will be interpreted as not being for a fixed term
- Fixed term contracts not exceeding three years will be presumed to be valid and *bona fide*
- In the case of exempt executive, administrative and professional employees, fixed term contracts will be interpreted by the parties' will as expressed in the contract

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
 - he/she is contractually required to have required licenses or permits, and
 - and he/she 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
- 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

Employees from other jurisdictions

- For employees from other jurisdictions assigned to work in Puerto Rico but who maintain employment relationship with an employer in the other jurisdiction and whose assignment in Puerto Rico does not exceed three years
 - Employment terms are governed such employee's employment contract: can have choice of law provisions selecting law other than Puerto Rico
 - If not choice of law provision, Puerto Rico law applies
 - Will still be subject to Puerto Rico
 - income taxes
 - anti-discrimination laws
 - laws concerning occupational accidents/illness

Puerto Rico Labor Transformation and Flexibility Act

Wage & Hour Changes

General rules: In general:

- 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

- The Act provides that Law 379 (wages & hours) does not apply to:
 - Employees exempt under Regulation 13 (includes white collar)
 - Traveling salespeople and **outside sales persons**
 - Union officers and organizers
 - Chauffeurs and drivers of private/public vehicles compensated by commission, tariff or fare
 - Domestic service employees (seventh day of rest still applies)
 - **All FLSA exemptions** (e.g., computer exemption, RLA, MCA)
 - Federal, commonwealth and municipal government employees
 - **Employees covered by collective bargaining agreement (unless CBA provides otherwise); FLSA still applies**
 - Special law exemptions

Puerto Rico Labor Transformation and Flexibility Act

Wage & Hour Changes

OVERTIME

- Overtime pay is required for:
 - Time worked in excess of 8 hours during any calendar day.
 - This definition represents an amendment to Law 379, under which hours worked in excess of 8 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 5 days in advance of the change

Puerto Rico Labor Transformation and Flexibility Act

Wage & Hour Changes

OVERTIME: Double or time and a half?

- Before the Act: : “Every employer who employs or permits an employee to work during extra hours shall be bound to pay him for each extra hour a wage rate equal to double the rate agreed upon for regular hours; provided, however, that every employer in any industry in Puerto Rico covered by the provisions of the Fair Labor Standards Act approved by the Congress of the United States of America on June 25, 1938, as heretofore or hereafter amended, shall be under obligation to pay only for each extra hour of work in excess of the legal eight (8) hour working day a wage at a rate of not less than time and a half the rate of wage agreed upon for regular hours, save when by a decree of the Minimum Wage Board or by a collective bargaining agreement or both, other working and/or compensation standard has been fixed.” 29 L.P.R.A. § 274 (emphasis added).

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 one and a half 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

OVERTIME:

- What about industries covered by Mandatory Decrees issued by the former Puerto Rico Minimum Wage Board?

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 an 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 such alternate week schedule as a condition of employment
- Alternate week schedule agreements may be terminated at any time after 1 year

Puerto Rico Labor Transformation and Flexibility Act

Wage & Hour Changes

Make Up Time

- An employer may (but does not have to) allow an employee who had to time days or hours off for a personal leave to work additional hours on another day to make up time lost.
- Such make up work hours will not be considered extra hours that require overtime if:
 - The work hours are made up in the same week of the absence
 - The employee does not work more than 12 hours in a day
 - The employee does not work more than 40 hours per week

Puerto Rico Labor Transformation and Flexibility Act

Wage & Hour Changes

Schedule and location

- Employees are entitled to request, in writing, flexibility regarding work hours and work location. The request must specify the requested change, the reason for the request, effective date and duration of the requested change.
- Employers have the obligation to respond within 20 days (or, if the employer meets with the employee within the 20 days, respond within 14 days from the meeting).
 - Employers with more than 15 employees must respond in writing
 - If the request is denied, the employer must provide reasons and alternatives
 - Priority must be given to employees with sole custody of their children
- These provisions do not apply to:
 - Part-time employees (less than 30 hour per week)
 - Employees with less than one year of employment
 - Employees who previously made a similar request within 6 months from receipt of employer's response or commencement of charge, whichever is longer

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 6 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.
- 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 was taken

Puerto Rico Labor Transformation and Flexibility Act

Wage & Hour Changes

Meal Breaks

- A meal period must have a duration of 1 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. Employees hired before the Act still get double his/her regular rate.
 - This penalty is independent of overtime requirements.

Puerto Rico Labor Transformation and Flexibility Act

Wage & Hour Changes

Law 289: 7th Day/Day of Rest

- Nonexempt employees who work 6 consecutive days have the right to take a day of rest.
- For employees hired before the Act, any hours worked during the day of rest must be paid at double the rate agreed upon for the regular hours.
- For employees hired after the Act, any hours worked during the day of rest must be paid at time-and-a-half the rate agreed upon for the regular hours.

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 in order 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 business (employers that employ more than 20 employees), the maximum Christmas Bonus owed per employee is \$600.
 - For small businesses (employers that employ 20 employees or less), 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.
- New provisions for seeking exemption if Christmas Bonus pay is more than certain percentage of profits.

Puerto Rico Labor Transformation and Flexibility Act

Wage & Hour Changes

- There is now a 1-year statute of limitations for wage-and-hour claims after the Act, instead of the three years previously afforded under Law 379.
- Wage and hour claims made before the approval of the Act are subject to the previous statute of limitations.

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 1¼ days**, and **sick leave at the rate of 1 day per month**, for each month in which the employee works at least **115 hours**.
- Under the Act, the minimum 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 **1/2 a day during the first year of service; 3/4 a day after the first year and until the fifth year; 1 a day after 5 years until 15 years; and 1 1/4 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 1/2 a day a month.
- The minimum monthly accrual of sick leave continues to be 1 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.

Puerto Rico Labor Transformation and Flexibility Act

Changes to Law 180

- Under the Act, local employers with no more than 12 employees, can establish vacation leave accrual rates of one half ($\frac{1}{2}$) day per month (6 days per year) for new employees.
 - This accrual rate is available so long as the employer no more than 12 employees and will expire on the next calendar year that you have more than 12 employees for more than 26 weeks in each of the two consecutive years.
- Sick leave accrual remains one day for each month the non-exempt employee works at least 130 hours, irrespective of the number of employees.

Puerto Rico Labor Transformation and Flexibility Act

Lactation Breaks

- Prior to the Act, employers were required provide full-time (at least 7.5 hours per day) nursing mothers the opportunity to breastfeed or express breast milk for 1 hour each day, which can be broken up into two 30-minute periods or three 20-minute periods.
- The Act extends the right to lactation breaks to **part-time employees** whose workday exceeds 4 hours: their lactation break must be 30 minutes for each period of 4 consecutive hours of work.
- In small businesses, lactation breaks must be half an hour each workday, which can be broken up into two 15-minute periods.
- The Act codifies requirements developed through caselaw for spaces for breastfeeding or expressing breast milk: such spaces must guarantee the nursing mother privacy, security, and hygiene, and should have electrical outlets and ventilation.

Puerto Rico Labor Transformation and Flexibility Act Changes to Certain Job Reservation Requirements

- The right to reinstatement for a disability or incapacity that began before the Act went into effect will be governed by job reservation rules applicable from before the effective date of the Act.
- However, for new conditions arising on or after the Act's effective date, the Act decreases the job reservation provisions of the Puerto Rico System for Work-Related Accidents Act and Non-Occupational Disability Insurance Act ("SINOT," in Spanish) **from one year to six months for employers with 15 or fewer employees.**
- Employers with more than 15 employees continue to be subject to prior job reservation requirements.

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 Rico law expressly requires a different interpretation.

Puerto Rico Labor Transformation and Flexibility Act Changes to Discrimination Laws

- Before the Act, under local Law 100 (local general anti-discrimination statute) there was a presumption of discrimination for terminations without cause.
- The Act eliminates the presumption of discrimination in terminations without just cause, and adopts the standards of federal antidiscrimination laws.
- The Act establishes a separate chapter regarding employment discrimination to adopt the Title VII caps to compensatory and punitive damages awarded to employees in discrimination and retaliation claims, depending on the number of persons employed:
 - Less than 101: \$50,000
 - 101-200 employees: \$100,000
 - 201-500 employees: \$200,000
 - 501+ employees: \$300,000
- Employees can still recover double economic damages if they prevail on a discrimination claim

Puerto Rico Labor Transformation and Flexibility Act

Employee Rights

Under Section 2.14, the Act enumerates certain rights conferred upon employees, including:

- The right not to be discriminated or retaliated against based on criteria prohibited by law
- Protection from risks to health or physical integrity
- Protection of privacy, **subject to the employer's legitimate interests to protect its business, property, and workplace, or as provided by law**
- Respect of dignity
- Punctual compensation
- The individual or collective pursuit of actions arising from the employment contract
- All rights that arise from the employment contract

Puerto Rico Labor Transformation and Flexibility Act

Employee Duties

The Act also establishes, under Section 2.15, certain employee “duties” including

- Satisfying the responsibilities and obligations of the job in conformity with the employer’s norms, good faith, and diligence
- Observe established security and hygiene measures
- Abstain from engaging in improper, disorderly, or immoral conduct that reasonably could impact the employer’s best interest
- Complying with the employer’s orders and instructions
- Not competing with the employer’s business
- Contribute to improve the company’s productivity and competitiveness
- Comply with employment contract and/or employer’s rules and norms

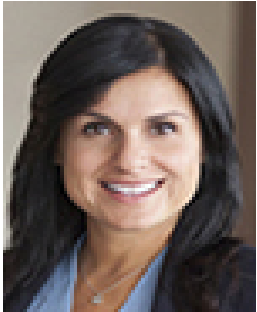
Puerto Rico Labor Transformation and Flexibility Act

Contract Principles

- Under Section 2.6 of the Act, electronic signatures are recognized and given the same legal effect as written signatures
- The Act recognizes both verbal and written contracts
- Contracts can be made in any language
 - It will be presumed that employees who signed a document understood the language in the document
- Employees must be at least 18 years old to enter into an employment contract
- The Act incorporates general principle of contract interpretation (so as to avoid the tendency of interpreting ambiguities in favor of the employee)
- The Act allows employers to reserve the right to interpret its company policies
- One year statute of limitations for contract claims (before: 15 years)

QUESTIONS?

Presenters



Melissa C. Rodriguez

Partner

Morgan Lewis

212.309.6394

Melissa.rodriquez@morganlewis.com



Larissa C. Garriga

Employment Counsel

NBCUniversal/Telemundo

305.889.7921

larissa.garriga@nbcuni.com



Our Global Reach

Africa
Asia Pacific
Europe
Latin America
Middle East
North America

Our Locations

Almaty	Dallas	Los Angeles	Philadelphia	Singapore
Astana	Dubai	Miami	Pittsburgh	Tokyo
Beijing	Frankfurt	Moscow	Princeton	Washington, DC
Boston	Hartford	New York	San Francisco	Wilmington
Brussels	Houston	Orange County	Santa Monica	
Chicago	London	Paris	Silicon Valley	

