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Amendments to Puerto Rico 2017 Employment Law Reform Employers Need to Know

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Puerto Rico Governor Pedro Pierluisi has signed into law changes reversing portions of the 2017 employment reform law. House Bill 1244 (HB 1244) rolls back and changes the statutory probationary period, vacation and sick leave accrual, and eligibility for the annual Christmas Bonus, among other requirements. The changes go into effect for most employers on July 20, 2022. For certain "small" and "mid-size" businesses as defined in the new law, changes will be effective on September 18, 2022.

A prior version of the bill, which included more major rollbacks, was vetoed by the governor in March 2022. Nevertheless, even under HB 1244, employers need to revise their policies and practices to comply with the substantial changes to Law 4-2017, commonly known as the Employment Law Reform.

Further, employers should keep an eye on the Financial Oversight and Management Board for Puerto Rico (the entity created by Congress to supervise the finances of the Government of Puerto Rico). The Oversight Board has communicated to the governor and the legislature its opposition to HB 1244. Under federal law, the Oversight Board has statutory authority to enjoin enactment and implementation of Puerto Rico local laws.

Probationary Period

HB 1244 reduces the probationary period to 90 days, with the option to extend for an additional 90 days upon written notice to the Puerto Rico secretary of labor. If requested, the extension is automatic; the secretary of labor would have no statutory authority to deny, or even revise, the extension notification.

However, the provisions of Law 4-2017 allowing the probationary period to be automatic, with no written requirement, survive.

Vacation and Sick Leave

HB 1244 reduces the minimum threshold for eligible employees to accrue paid vacation and sick leave from 130 hours to 115 hours of work per month. The monthly accrual rate for paid vacation leave is increased to 1.25 days of vacation leave if the employee works at least 115 hours a month. (This is the pre-2017 Employment Law Reform accrual requirement for vacation leave.) The 1-day-per-month accrual rate of sick leave remains the same for this group of employees.

Significantly, HB 1244 introduces accrual of paid vacation and paid sick time for part-time employees. Eligible employees who work at least 20 hours per week, and fewer than 115 hours a month, will accrue 0.5 day of paid vacation leave and 0.5 day of paid sick leave.

Annual ("Christmas") Bonus Threshold

Under HB 1244, the hours-worked threshold to be eligible for the Christmas bonus returns to 700 hours for most employees and will apply regardless of hiring date. (Currently, employees hired on or after January 26, 2017, must meet a threshold of 1,350 hours between October 1 and September 30.)

However, for employees hired on or after January 26, 2017, who work for an employer that meets the definition of "small" and "midsize" business, the hours-worked threshold for bonus eligibility is 900 hours between October 1 and September 30.

Unjust Dismissal Law

Most changes under the 2017 Employment Law Reform to the unjust dismissal law, Law 80-1976 (also called Act 80), are rolled back under HB 1244. The calculation of the remedy for an unjust dismissal would no longer be fixed at 3 months plus 2 weeks of pay for every year of service for employees hired after January 26, 2017. The 9-month cap to the remedy also is eliminated.

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Under HB 1244, the following new formula is introduced for all employees, regardless of hire date:

- 0-15 years of service = 3 months plus 2 weeks' of pay for every completed year of service; and
- 15+ years of service = 6 months plus 3 weeks' of pay for every completed year of service.

Like prior attempts at amending Law 4-2017, HB 1244 amends the examples of just cause for termination and the definition of constructive discharge, limiting employers' discretion to implement a reorganization. Moreover, if the employer makes voluntary payments to employees terminated as part of reorganizations, or reductions in force, such payments are not necessarily offset from the remedy available to employees under Act 80.

HB 1244 also reincorporates the statutory presumption that all employment terminations are unjust dismissal and reverts to the presumption that a termination is also discriminatory if there is no just cause for termination. HB 1244 increases Act 80's statute of limitations from 1 year to 3 years.

Meal Periods

HB 1244 reverts meal period commencement to no earlier than the third hour of work (as opposed to the second hour of work), unless there is a written agreement to do so. The provision that the meal period can be omitted if the total works hours is not more than 6 hours in a working day also is repealed. HB 1244 introduces a requirement for a second meal period if the total number of hours worked exceeds 10 hours. However, if the total hours worked does not exceed 12 hours, the second meal period can be waived only if there is a written agreement with the employee and the first meal period was enjoyed by the worker.

Weekly Day of Rest

HB 1244 introduces a new premium rate for nonexempt employees who work on the weekly day of rest required after 6 consecutive workdays. If the employee is a "student" (broadly defined to include any person enrolled in superior, university, and postgraduate institutions) the premium payment is 2 times the regular rate of pay. However, for employers that fall under the "small" and "midsize" business statutory definition, the premium rate for this group of employees is 1.5 times the regular rate of pay.

HB 1244 does not address whether employers need to have actual knowledge that the employee is a student in order for the premium rate to apply.

Unchanged Provisions of Law 4-2017

HB 1244 is less aggressive in scope than prior attempts at amending the 2017 Employment Law Reform. Following are some important provisions of Law 4-2017 that remain:

- Requirement of consistent interpretation between federal and local laws that regulate the same issues.
- Acknowledgment of an employer's discretion to interpret its own rules or policies, unless such interpretation is arbitrary, capricious, or contrary to law, if the employer reserved said discretion in writing in the rules or policies.
- Daily overtime computation. The 2017 Employment Law Reform definition of time worked over eight hours *in a calendar day* remains in place, eliminating "technical" overtime resulting from changes in daily schedules and meal periods.
- Availability of flexi-time agreements in which, by mutual written agreement, an employee may agree to a workweek of up to 40 hours a week, with no more than 10 hours of work per day, without incurring daily overtime.
- Makeup time. An employer may allow an employee to work up to 12 hours in a day to make up time missed for personal reasons during the week without incurring overtime obligations if the makeup hours are worked within the same week.
- Caps of recoverable damages in discrimination and retaliation claims. The amount of recoverable damages for mental anguish and suffering is subject to caps based on the number of employees working for the company, similar to provisions of Title VII of the Civil Rights Act.
- Statutory irrefutable presumption of independent contractor status if certain requirements are met.
- Recognition of electronic signatures for contracts and other employment-related documents, such as acknowledgment of receipts.
- No limitations on the language of the contract if the employee understands it. The law presumes that a signed document was executed by an employee with knowledge of its language and content.

Jackson Lewis attorneys are closely monitoring updates and changes to legal requirements and guidance and are available to help employers weed through the complexities.

If you have questions or need assistance, please reach out to the Jackson Lewis attorney with whom you regularly work.

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