

# Employee Benefits and Rights in Puerto Rico: What to Know Now That Law 41-2022 Has Been Declared Null and Void

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On March 3, 2023, the U.S. District Court for the District of Puerto Rico issued a decision declaring Law 41-2022 null and void, effectively reinstating the prior state of many of Puerto Rico's employment statutory entitlements. The decision will impact employees' statutory benefits and rights, including vacation pay and sick leave, meal periods, holiday bonuses, and statutory severance pay.

On June 20, 2022, the governor of Puerto Rico signed Law 41-2022, which modified some of the statutory benefits and entitlements granted to Puerto Rico employees. The statute became effective on July 20, 2022. On September 1, 2022, the Financial Oversight and Management Board for Puerto Rico, an entity created by the U.S. Congress to oversee Puerto Rico's public administration and legislation, filed an injunction in federal court seeking to stay the effects of Law 41-2022. On March 3, 2022, the district court granted the Board's request for injunctive relief, holding that Law 41-2022 was null and void and enjoining the governor of Puerto Rico and any other persons from "taking any acts to help private parties implement or enforce [Law] 41."

Based on this decision, employers in Puerto Rico may want to review and revise their employment practices and policies to comply with the state of the law prior to July 20, 2022 (the effective date of Law 41-2022).

Below is a summary of the most important statutory benefits and entitlements impacted by the March 3, 2023, decision.

## *Vacation and Sick Leave*

- Nonexempt employees will now accrue vacation leave if they work at least 130 hours per month at a rate of one-half vacation day if they work for employers employing twelve or fewer employees; if they work for employers employing thirteen or more employees they will now accrue vacation based on years of service ranging from one-half day to one-and-one-quarter days, as listed in the table below. (Under Law 41-2022, nonexempt employees who worked for employers with thirteen employees or more accrued vacation leave at a rate of one-and-one-quarter days per month, if they worked at least 115 hours per month. Nonexempt employees who worked for employers with no more than twelve employees accrued one-half day of vacation per month.)

<b>Nonexempt Employees—Vacation Leave Accrual</b>
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<b>Years of service</b>	<b>Accrual per month</b>
Up to 1 year	½ day
More than 1 year and up to 5 Years	¾ day
More than 5 years and up to 15 Years	1 day
15+ years	1¼ day

- ▶ Nonexempt employees now accrue sick leave if they work at least 130 hours per month at a rate of one day per month regardless of the number of employees employed by the employer. (Under Law 41-2022, nonexempt employees accrued one day per month if they worked 115 hours per month.)
- ▶ Part-time nonexempt employees are no longer entitled to accrued vacation or sick leave. (Under Law 41-2022, part-time nonexempt employees who worked at least 20 hours every week accrued one-half vacation day and one-half sick day leave per month if they worked for employers with thirteen or more employee and one-quarter vacation day and one-half sick day if they worked for an employer with twelve employees or fewer.)
- ▶ Nonexempt employees are now only able to request payment in excess of ten days of accrued vacation. (Under Law 41-2022, employees were entitled to request payment for all accrued and unused vacation.)

#### *Meal Periods*

- ▶ The meal period for nonexempt employees now has to be granted not before the end of the second hour of work (under Law 41-2022, not before the end of the third hour of work).
- ▶ The employee or the employer may now revoke the agreement to reduce the meal period from one hour to thirty minutes after the first year of employment. (Under Law 41-2022, the employee or the employer could revoke the agreement at any time.)

#### *Christmas Bonuses*

- ▶ The court decision reverted the working hours eligibility threshold to 1,350 hours per year for employees hired after January 26, 2017, who work for employers with twenty-one or more employees. Under Law 41-2022, the threshold had been reduced to 700 hours.)
- ▶ The 900-hour threshold for employees of micro-enterprises, and small and medium enterprises, was also nullified.

#### *Statutory Severance and Probationary Periods*

- ▶ The severance for employees with fifteen years of service or more is reduced to three months plus two weeks for each year of service from six months plus three weeks for each year of service.
- ▶ The probationary period is now nine months for exempt employees and one year for nonexempt employees. Under Law 41-2022, the probationary period was three months for all employees.

- The severance is subject to a nine-month cap for employees hired after January 26, 2017.

#### *Statute of Limitations*

The statute of limitations for causes of action related to employment contracts, vacation leave, sick leave, and unjust termination is one year, reduced from three years under Law 41-2022.

Ogletree Deakins will continue to monitor developments with respect to changes in employee benefits and rights in Puerto Rico in the aftermath of the federal district court's decision and will post updates on the [Cross-Border](#) and [Employee Benefits and Executive Compensation](#) blogs as additional information becomes available. Important information for employers is also available via the firm's [webinar](#) and [podcast](#) programs.