

Puerto Rico Labor & Employment Alert

Opinion of PR Secretary of Labor 2020-02

On March 23, 2020, the Secretary of the Department of Labor and Human Resources of Puerto Rico issued Opinion No. 2020-02, titled *Applicable Provisions to Exempt Employees and Non-Exempt Employees Working in the Private Sector During the Curfew Ordered by the Governor of Puerto Rico and the New Leaves with Pay* (“Opinion No. 2020-02”). Opinion No. 2020-02 focuses on the applicable provisions relating to employees’ compensation during the curfew, who are currently in isolation, permissible salary deductions, required measures to ensure health and safety and the new leaves under the *Families First Coronavirus Response Act of 2020*, Pub. L. 116-127.

Opinion No. 2020-02 provides in pertinent part:

- Non-Exempt Employees - Employers are not obliged to pay non-exempt employees for the time not worked due to the temporary cease of operations. Employers may at their discretion, place the employees on vacation leave for up to the full accumulated leave. If less than the full accumulated vacation is preferred, then the employees must give their consent because under this scenario their vacation leave would be fractioned. If the employees refuse to have their vacations fractioned, the leave will be without pay.
- Probationary Employees - Probationary employees accrue retroactive vacation leave once they have been working for more than 6 months. Employers may, at their discretion, allow probationary employees to exhaust their accrued vacation leave, after the employees have reached the 6 months, even if the employees may still be on the probationary period. Probationary employees also have a right to their accrued sick leave. If any probationary employee enjoys any of the leaves during the curfew, the probationary period will be automatically interrupted, and it will continue once the employee returns to work.
- Exempt Employees – Exempt employees include executives, administrators and professionals under the *Fair Labor Standards Act* and Regulation No.

7082 of the Puerto Rico Department of Labor. Compensation for exempt employees is predetermined by the employment agreements, Employee Handbooks and the Company's Policies, and must be paid for each week worked, indistinctively of how many hours the employees worked during the week. Assuming the employees worked during the payroll period, employers may discretionally charge any time not worked by exempt employees to leaves available.

- Families First Coronavirus Response Act of 2020 (“FFCRA”)– Leaves provided under the FFCRA will apply after April 2, 2020 until December 31, 2020 to exempt or non-exempt employees. For a more detailed discussion of the applicable leaves, please see our Labor Alert dated March 22, 2020.
- Available Loans by the Employer – Under Act No. 17 of April 17, 1931, due to the state of emergency declared by the Governor of Puerto Rico and the President of the United States, by exception, employers may advance wages or provide respiratory equipment and materials to prevent or treat COVID-19. To recover the wages paid in advance or the equipment provided, the employer may deduct up to 20% from the employee's payroll, after deductions, but the employer can only recover an amount equal to or less than the cost of the equipment, materials or goods given to the employees. The written agreements between the employers and the employees must include how the employees will pay the amount owed to the employer for the advanced wages or equipment and materials provided during the emergency, even if the employees stop working for the Company, until repaid in full. The beforementioned is not applicable to exempt employees who are bound by their agreements with their employers.
- Employers and Employees Excluded from the Curfew, OE-2020-023 – Employers should establish necessary measures to reduce the spread of the COVID-19 and protect the health and integrity of the employees.

Please find link to Opinion No. 2020-02, in the original Spanish version. We will continue to keep you posted on this developing legal scenario and are available to answer your questions or doubts on how to comply with the new statutory requirements.

[Opinion No. 2020-02 \(Spanish\)](#)

If you have any question or concern, please Contact us

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