

Puerto Rico Labor & Employment Alert

NEW PUERTO RICO MINIMUM WAGE LAW

On September 21, 2021, Governor Pedro Pierluisi signed into law Act No. 47, Puerto Rico's new Minimum Wage Law, that will raise the minimum wage as follows:

- a) to \$8.50 an hour beginning on January 1st, 2022;
- b) to \$9.50 an hour beginning on July 1st, 2023; and
- c) to \$10.50 an hour beginning on July 1st, 2024. However, this last increase will be subject to the approval of the newly created Minimum Wage Evaluating Committee (MVEC).

Minimum wages established in Act 47 will apply to all employees covered by the Federal Fair Labor Standards Act, including employees of government instrumentalities that operate as a business. The previous exclusion of domestic employees was deleted.

Act 47 excludes from its application:

1. agricultural employees,
2. employees of government agencies and instrumentalities, municipalities and the Commonwealth of Puerto Rico Legislative and Judicial Branches;
3. employees covered by a collective bargaining agreement whose salary is equal to or greater than that established by the Act; and
4. exempt administrative, executive and professional employees, as defined in Regulation Number 13 of the Minimum Wage Board.

Tipped Employees are entitled to the prevailing federal minimum wage for tipped employees if, together with tips received, is at least equal to the minimum wage established by Act 47 or by a mandatory decree issued by the MVEC.

The Minimum Wage Evaluating Committee:

The MVEC will be in charge of periodically reviewing and adjusting the minimum wage to changes in the cost of living so that Puerto Rico employees do not fall below the poverty line and are able to meet basic expenses.

The MVEC will consist of a total of seven members as follows: (i) two members representing workers' concerns (one of which must be an economist) and will be appointed by the Governor from a list of candidates submitted by private or public labor organizations; (ii) two members representing employers' concerns (one of which must be an economist) will be appointed by the Governor from a list of candidates submitted by employer associations ; (iii) one member who must be an economist will be appointed by the Governor from lists of candidates submitted by the Department of Economics of the University of Puerto Rico and by the Economists' Association of Puerto Rico; (iv) one member who must be an economist with an expertise in labor matters will be appointed by the Governor from lists of candidates submitted by the Labor Relations Institute and the Department of Economics of the University of Puerto Rico; and (v) the Puerto Rico Secretary of Labor, who shall be the President of the MVEC.

The MVEC can establish a Puerto Rico minimum wage that is higher than the minimum wage established in the Fair Labor Standards Act. Except for the first mandatory decree, any new minimum wage cannot exceed by more than 25% the minimum wage previously established by the MVEC or by the Federal Government.

In applying the Puerto Rico minimum wage, the provisions of federal legislation and regulations regarding how to pay the minimum wage, what are hours of work and which employees and positions are exempt from the minimum wage will apply.

The MWEC must prepare an Annual Report on salaries, benefits, work schedules, and working conditions that prevail, by industry, in Puerto Rico, including a comprehensive analysis of the cost of living and inflation in Puerto Rico. The Annual Report must include specific recommendations about what should be the minimum wage for the calendar year. The Report must take into consideration the value of social benefits, work credits, labor market and economic indicators, among other factors. Based on the Annual Report, the MWEC will approve mandatory decrees establishing minimum wages at least every two years, but not more frequently than twice in a year.

The MWEC is authorized to enact special mandatory decrees for executive, professional and administrative employees as defined in Regulation No. 13 of the Minimum Wage Board. Regulation No. 13 will remain in effect until the MWEC repeals or amends it.

The Act requires that the MWEC issue a special mandatory decree on or before July 1st, 2022, covering agricultural employees, including those not covered by the Fair Labor Standards Act, and subsequent special mandatory decrees.

The Act also requires the MWEC to issue a special mandatory decree for tipped employees.

Mandatory decrees that raise the minimum wage over that established by a prior decree will have retroactive and prospective effect. However, it is not clear from the Act's provisions how the retroactivity of a decree would work. The Act also provides that the new higher wage will benefit employees hired prior to and after the new decree becomes effective.

The MWEC cannot lower a minimum wage established in a previous mandatory decree. However, the MWEC is authorized to rescind, alter or amend any previous mandatory decree, either at its own initiative or at the request of workers and employers.

Employers will be subject to civil fines when incurring in violations to the Act:

The Act allows for the imposition of civil fines for violations of the provisions of the Act as well as civil penalties equal to twice the amount of damages. The Puerto Rico Secretary of Labor is responsible for overseeing compliance with the provisions of the Act and is authorized to obtain injunctions and file any necessary legal action to enforce the provisions of the Act. Employers must allow access to the Secretary or a representative to inspect the workplace as well as all records, accounting books, payrolls and contracts regarding employees' work conditions.

Employees right to file a civil action to recover unpaid wages:

Employees who are paid less than the minimum wage established by Act 47 can file a civil action against the employer for the amount owed, plus an equal amount as additional compensation. The employee can also recover court costs and attorney's fees. The Secretary of Labor can file claims on behalf of aggrieved employees.

Statute of Limitations:

Employees who are working for the employer can file a salary claim under Act 47 to request wages owed for the five-year period immediately preceding the date the employee files the claim.

Act 47 establishes a statute of limitations of five years from the date the employee terminates employment to file a claim that can include wages owed during the last five years of employment..

The statute of limitations is tolled and will begin to run again when the employee, a representative or an authorized Labor Department officer makes a judicial or extrajudicial claim to the employer for salaries owed to the employee. It will also be tolled by any act of the employer acknowledging the debt. Salary claims made prior to the approval of Act 47 will be subject to the previous statute of limitations.

Criminal Liability:

Finally, Act 47 provides that employers, regardless of whether they are covered by the federal minimum wage law,, that were paying wages higher than the federal minimum as of September 21, 2021 , must keep paying such higher wages. Employers that fail to continue to pay the higher wages in violation of the Act will incur in a misdemeanor and will be sentenced to pay a fine of no less than \$500 nor more than \$5,000, to jail time of no less than 120 days and no more than one year, or both.

Amendments to Act 180-1998, Minimum Wage, Vacations and Sick Leave Act:

Act 180 was amended to, among other things, eliminate any reference to minimum wages and, therefore, kept only the provisions related to mandatory vacation and sick leaves for nonexempt employees.

If you have any questions or concerns, please **contact us**.

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