

**MAJOR CHANGES TO PUERTO RICO EMPLOYMENT LAWS  
PUERTO RICO ACT 41-2022**

On June 20, 2022, Governor Pedro Pierluisi signed Act 41-2022, that amends several employment laws including Act 4-2017 (Labor Reform Act). While the Financial Oversight and Management Board (“FOMB”) has already expressed its opposition to Act 41-2022 and anticipated it would move to prevent its implementation, Act 41-2022 is currently set to be effective on July 20, 2022, by which date most employers will need to comply with its requirements, unless there is a successful challenge. Micro, small and medium businesses have until September 18, 2022 to comply with the requirements of the Act.

What follows is a summary of Act 41-2022 major amendments:

Act 4-2017 (Labor Reform):

1. Amends Article 2.12 to state that any ambiguity in an employment agreement or in an employer’s policies and regulations will be interpreted liberally in favor of the employee. Employers wishing to reserve their right to interpret their own policies and rules – right that will only be exercisable when not arbitrary or capricious or in violation of a special law - must do so in writing.
2. Increases from 1 to 3 years the statute of limitations to bring forth causes of actions that arise from an employment agreement or for benefits arising from said agreement– unless a special law or the employment agreement stipulates otherwise.

Act 379 of May 15, 1948 (Work Schedule):

1. Restricts daily overtime to any hours worked in excess of 8 in a calendar day, eliminating the any alternate 24-hour cycle.
2. Still allows for the enjoyment of meal periods between the 2<sup>nd</sup> and 3<sup>rd</sup> consecutive hours of work, but now only by written agreement between the employer and employee. Absent such agreement, the meal period must commence not earlier than at the end of the third hour of work. Meal periods may be reduced, but only if there is a written agreement signed by the employee. In any event, such written agreement may be revoked by the employee at any time. Second meal periods must be granted if the employee works more than 10 hours in the day but can be waived if the employee has taken the first meal period, does not work more than 12 hours and there is a written agreement to that effect signed by the employee.
3. Requires that if an employer conditionally grants a petition of an employee for a change in work schedule, work hours or place of work, the conditions must be laid out in a written agreement signed by the employee.

Act 289 of April 9, 1949 (Employee’s rest day):

Requires employers to pay enrolled college or postgraduate level students at double (instead of at time and a half) their regular rate of pay for any work performed during the seventh consecutive day of work. Micro, small, or medium employers, however, may still pay a time and a half their regular rate of pay.

The law does not make a distinction between students who are hired and current employees that enroll as students, or between full time or part time students.

Act 180 of July 27, 1998 (Vacation and sick leaves):

1. Reverts the “hours worked” requirement to accrue vacation days from 130 to 115 per month. Employees that comply with this requirement will accrue 1 ¼ days of vacation leave and 1 day of

sick leave per month. Employees working at least 115 hours per month for employers that are Puerto Rico residents and have 12 employees or less, will accrue monthly vacation at ½ day per month and 1 day per month sick leave.

2. Introduces vacation and sick leave accrual for part-time employees. They will accrue ½ day of vacation and sick leave for each month in which they work at least 20 hours per week but less than 115 hours per month. Employees working for employers that are Puerto Rico residents and have 12 employees or less, will accrue monthly vacation of ¼ day and ½ day sick leave if they work at least 20 hours per week and less than 115 hours per month.
3. Allows employers to agree to liquidate all or some of the accrued vacation leave, at the employee's written request.
4. Permits employers to adopt attendance incentives programs.
5. Increases from 1 to 3 years the statute of limitations for claims arising under this law.

Act 148 June 30, 1969 (Christmas Bonus):

1. For employees hired before the enactment of Act 4-2017 (January 26, 2017) Act 41-2022 keeps the requirement of 700 hours of work between October 1<sup>st</sup> and September 30<sup>th</sup> to be eligible for the Christmas Bonus. The bonus is still 6% of the total wages paid, up to the first \$10,000.00 earned (\$600.00).
2. Employees hired on or after the enactment of Act 4-2017 (January 26, 2017) that work for an employer that has more than 20 employees during more than 26 weeks in the 12-month period are entitled to a bonus of 3% (now 2%) of the total wages paid up to a bonus of \$600.00.
3. Employees hired before the enactment of Act 4-2017 that work for an employer that has 12 employees or less during more than 26 weeks in the 12-month period, are entitled to a bonus of 3% of the total wages paid, up to \$600.
4. For employees hired after January 26, 2017, and that work for small to mid-size employers, the hours worked threshold remains at 900.
5. Act 41-2022 eliminates the provision that during the first year of employment the applicable bonus is reduced to 50%.

Act 80 of May 30, 1976 (Wrongful Discharge):

1. Reduces the automatic probationary period for exempt and non-exempt employees to 3 months (90 calendar days) and establishes that this period may be automatically extended for up to another 3 months (90 calendar days) by notifying the Puerto Rico Secretary of Labor with the reasons why the nature of the job justifies the extension. The Act does not expressly give the Secretary the authority to reject the extension. It does not specify, either, if the notification can be given generically for any future hires or if it must be given every time an employee is hired. The provision that employees became entitled to vacation leave accrued during the probationary period, at the end of the 6<sup>th</sup> month of the probationary period, was eliminated. On June 28, 2022, the Secretary of Labor issued Opinion No. 2022-01, to clarify that the reduced probationary period will apply prospectively, and automatically to employees hired after the effective date of Act 41-2022, but will not affect the probationary period of those hired before its effectiveness.
2. Increases from 1 to 3 years the statute of limitations for employees to bring forth claims under Act 80.
3. Eliminates the 9 months' salary cap for the statutory severance (*mesada*) for employees hired after the effectiveness of Act 4-2017. Adopts the following formula:

- a. 3 months' salary plus 2 weeks' salary for every year of employment if the termination occurs within the first 15 years of employment.
  - b. 6 months' salary plus 3 weeks' salary for every year of employment if the termination occurs after 15 years of employment.
4. Provides that all amounts paid in connection with the termination of employment will be exempt from income tax. Previously, the tax exemption was limited to the amount equivalent to the statutory severance.
  5. Establishes that voluntary payments made to the employee in connection with the termination of employment will not be credited to any statutory severance compensation granted by a court or administrative entity judgment. This appears to be inconsistent with Article 9 of Act 80, that was not amended.
  6. Modifies the definition of just cause by eliminating the employer's need to increase its competitiveness and productivity as valid reasons for implementing a reduction in force. It also eliminates from the examples of just cause the employee's lack of productivity and the receipt of client grievances.
  7. Eliminates the provision that constructive discharge requires the employee to establish that the conduct of the employer left the employee with no other reasonable alternative than resigning.
  8. Reestablishes that if, at any stage of the proceedings and upon a party's request, the Court determines that there is grave risk that the employer will not have enough funds to pay an adverse judgment, it may order the employer to deposit with the Court, within 15 days, either the total sum of the statutory severance pay or a bond for said amount, plus at least 15% for attorney's fees.
  9. Redefines *a bona fide* temporary employment contract in a more restrictive way, and, thus, makes it easier to find that the plaintiff was hired for an indefinite period and subject to Act 80 remedies.

Act 100 of June 30, 1959 (Presumption of discrimination):

Reinstates the rebuttable presumption that an adverse employment action taken without just cause was motivated by one of the discriminatory reasons prohibited by law.

Act 28-2018 (Leave available for catastrophic illnesses):

Adds "bleeding conditions similar to hemophilia" to the definition of catastrophic illnesses.

Please note that this is a summary of the more significant amendments to current laws. If you have any questions or concerns, please contact us.

María Isabel Rey Cancio  
[mrey@pmalaw.com](mailto:mrey@pmalaw.com)  
 +1 (787) 274-5243

Juan C. Pérez Otero  
[jcperez@pmalaw.com](mailto:jcperez@pmalaw.com)  
 +1 (787) 274-5252

Héctor Santaella Santé  
[hsantaella@pmalaw.com](mailto:hsantaella@pmalaw.com)  
 +1 (787) 274-5254

Rosangela Sanfilippo Resumil  
[rsanfilippo@pmalaw.com](mailto:rsanfilippo@pmalaw.com)  
 +1 (787) 274-4929

Marcia C. Laurido Soto  
[mlaurido@pmalaw.com](mailto:mlaurido@pmalaw.com)  
 +1 (787) 274-5247  
[www.pmalaw.com](http://www.pmalaw.com)