

PUERTO RICO ENACTS STATUTE TO PROMOTE REMOTE WORK

On January 16, 2024, the Governor of Puerto Rico, Hon. Pedro Pierluisi, signed into law House Bill 1745, titled “Act to Facilitate the Implementation of Remote Work in the Private Sector and to Promote the Establishment of Air Operation Bases in Puerto Rico” (hereinafter the “Act”). The Act seeks to clarify the application of Puerto Rico labor legislation to employees that work remotely in Puerto Rico for companies that do not operate, and are not present, in the Island. The Act also seeks to encourage that employers and employees without a local presence or business consider Puerto Rico as the ideal place to work remotely, temporarily or permanently. Finally, the Act seeks to clarify the laws that apply to employees that are subject to a collective bargaining agreement (“collectively bargained employees”) and who work for airlines that establish operations in Puerto Rico starting from the Act’s effective date.

Who is covered by the Act?

The Act only applies to “*covered employers*”, defined by this legislation as those that *are not* engaged in industries or businesses in Puerto Rico, or *do not* sell items taxable in Puerto Rico. The Act also creates two categories of remote workers: those who are *domiciled* in Puerto Rico, (that is, those that are physically present in Puerto Rico and have the intention of remaining in Puerto Rico indefinitely), and those who are *not domiciled* in Puerto Rico.

Domiciled Employees

Puerto Rico’s labor and employment legislation will generally not be applicable to domiciled employees who work for covered employers, and their rights will be governed by their employment agreement, if they meet the following requirements:

- A. They are classified as an exempt executive, administrator or professional under the Fair Labor Standards Act (FLSA) and the regulations of the Puerto Rico Department of Labor and Human Resources; and
- B. They work remotely, that is from their home or any other location outside of a place of employment.

There are, however, some exceptions to this rule. Unless providing private coverage with greater benefits than those afforded by local legislation, covered employers must provide domiciled employees

- (a) workmen’s compensation insurance (through the State Insurance Fund Act 45-1935); and
- (b) short term non-occupational disability insurance under either Puerto Rico’s Short-Term Non-Occupational Disability Act (Act 139-1968, known as SINOT) or Puerto Rico’s Chauffeur’s Social Security Act (Act 428-1950), when applicable.

Lastly, if the domiciled employee may not apply to unemployment benefits in another jurisdiction, the employer must comply with the Puerto Rico Employment Security Act (Act 74-1956).

The tax treatment of domiciled remote workers covered by the Act will be determined by the provisions of Puerto Rico Act 1-2011, “Internal Revenue Code for a New Puerto Rico” as amended, or any successor law and any other tax legislation in effect in Puerto Rico.

Non-Domiciled Employees.

Non-domiciled employees who voluntarily choose to relocate to Puerto Rico to work remotely for a covered employer will not be entitled to benefits provided by any local labor and employment legislation, including those pertaining to benefits, obligations, insurance, and any other legal provision applicable to that employment relationship in Puerto Rico. Their employment relationship will rather be governed solely by the terms and conditions of the employment

agreement. In the absence of an employment agreement, the relationship will be governed by the laws applicable in the employee's domicile. If the employee later chooses to establish his/her domicile in Puerto Rico, the rules applicable to domiciled remote workers will apply, provided the employer consents to such change.

This legislative measure continues the public policy recently effected by Act No. 52-2022 geared towards promoting the hiring of remote employees located in Puerto Rico. Under Act No. 52-2022, provisions were incorporated into the Puerto Rico Internal Revenue Code of 2011 to establish that an employer will not be considered to conduct a trade or business in Puerto Rico, and therefore would be locally exempt from registration with the Puerto Rico Treasury Department, including the payment of Puerto Rico income taxes and the requirement to withhold income taxes on salary payments made to *remote workers*, if it met the following requirements: (a) the employer at no time during the taxable year has an office or other fixed place of business in Puerto Rico; (b) the employer at no time has an economic nexus with Puerto Rico; (c) the employer is not considered a merchant for sales and use tax purposes; (d) the remote worker is not an officer, director or majority shareholder of the employer; (e) the services provided by the remote worker are provided for the benefit of customers or businesses of the employer that do not have a nexus with Puerto Rico; and (f) the employer reports the income paid to the remote worker on a Federal W-2 Form or on a Form 499R-2/W-2PR. If the previous requirements are met, then the remote workers would be responsible for making quarterly payments of estimated Puerto Rico taxes throughout the year to cover their individual income tax obligations (currently the maximum individual income tax rate is 33% for taxable income in excess of \$61,500). The term "*remote worker*" is defined to include an individual who performs *services* as an employee for the benefit of a nonresident person, which may include any of the following persons: (a) an individual who is not a Puerto Rico resident; (b) a trust whose beneficiaries, grantors and trustees are not residents of Puerto Rico; (c) an estate whose decedent, heirs, legatees or executors are not, or, in the case of the decedent, have not been residents of Puerto Rico; or (d) a foreign entity. The term "*services*" for such purposes includes those services that do not have a nexus with Puerto Rico and that are rendered to an employer that meets the foregoing requirements.

COLLECTIVELY BARGAINED EMPLOYEES WORKING FOR AIRLINES

Collectively bargained employees working for an airline will be excluded from coverage of Puerto Rico's labor and employment legislation, provided the airline sets up an air operation base in Puerto Rico after the Act's effective date. The terms and conditions of employment of these employees will be governed exclusively by their collective bargaining agreement.

The Act, effective immediately, requires the Puerto Rico Department of Labor and Human Resources (PRDOL) to provide guidance to covered employers and employees regarding their duties and responsibilities under the new law.

If you have questions or need assistance, please reach out to one of our attorneys.

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