

GUÍA

# Puerto Rico LEYES LABORALES

# Puerto Rico Payroll Compliance Guide

By Torres CPA Group  
Puerto Rico

Understanding the Puerto Rico Payroll system and its interrelation with United States is crucial for individuals and entities doing business in Puerto Rico. Puerto Rico is not a state; it's a territory, with its own Business and Payroll laws and regulations.

The following White Paper is designed to give an insight Payroll Issues in Puerto Rico. It provides relevant background information, which will be of assistance to organizations considering establishing business in the Island. Nonetheless, it is highly recommended to seek advice and counsel from qualified professional sources before undertaking any business.

Certain exclusions and exemptions may apply and when specific problems occur in practice, it will often be necessary to refer to the laws and regulations of Puerto Rico, and to obtain appropriate accounting and legal advice.

It is understood that the following overview does not constitute any formal rendering of either legal, accounting, tax or professional services. If legal advice or other assistance is required, an attorney, CPA or tax adviser should be consulted.

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# PUERTO RICO LABOR LAW EMPLOYMENT CONTRACTING

The labor and employment field is highly regulated in Puerto Rico. There are numerous statutes, regulations and judicial doctrines, as well as several constitutional provisions, that govern this matter. The topics generally cover the start of operations, the hiring of employees, wage and hour issues, employment discrimination and retaliation, leaves of absence, individual rights, welfare benefits, labor law and union matters, and employment termination.

## Labor Reform 2017

The Labor Transformation and Flexibility Act is in effect since January 2017, it is also known as the Labor Reform; and it represents a major overhaul to employment-related legislation. Among others, it includes significant changes to hiring of personnel, wages and hours, flexible work schedules, leaves of absence, breastfeeding breaks, unjust dismissals, Christmas bonus, protection from discrimination and retaliation, employment related taxes and the repeal of all Mandatory Decrees. As a result, it also represents a similar overhaul of human resources management practices, company policies and training, as well as changes to benefits for new employees and payroll systems.

## Employment relations and contracts

The Law states that all employees hired before this law came into effect will continue to have the same rights and benefits as prior to its enactment.

Changes by this law are identify in blue and underscore.

## **EMPLOYMENT CONTRACT**

The employment contract is define as any oral or written agreement by which the employee binds himself or herself to execute work, perform labor or render a service for the employer for wages or any other economic remuneration. If there is no express stipulation as to wages, the employer must pay the employee the minimum wage established by law.

It should be noted that a written contract is not required for an employer-employee relationship to arise. When a termination date is not stipulated in the employment contract, it will be considered that the contract is for an indefinite term.

In Puerto Rico, employee handbooks describing the rights and responsibilities of employees are construed to be part of the employment contract between the employer and the employee.

Therefore, both the employer and the employee have a legal duty to comply with the provisions contained therein, unless the employer modifies them prospectively.

## **PROBATIONARY PERIOD**

For a probationary employment contract to be valid, it must strictly comply with the formal statutory requirements. Therefore, this type of contract: (1) must be executed in writing, (2) must state the dates when the probationary period begins and ends, (3) must be executed before the employee performs any work for the employer, and (4) must not exceed 90 days.

The contract may be extended up to an additional 90 days with the express authorization of the Puerto Rico Secretary of Labor and Human Resources when the nature of the work may so require.

If the aforesaid requirements are not met, the probationary period will be null and void. This statute excludes from its application those employees under a valid probationary employment contract.

If an employee continues to work for the employer after the expiration date of his or her probationary employment contract, the employment relationship becomes one of an indefinite term and the employee. In any event, employees working under a probationary employment contract are protected by all other applicable employment laws, including, for example, those related to employment discrimination and retaliation.

### Probationary Period

Employees classified under the Federal Reasonable Work Rules as executives, managers and professionals will have an automatic probationary period of 12 months. The rest of the employees will have an automatic probationary period of 9 months. Parties may agree to a shorter automatic probationary period.

The probationary period will not limit the accrual of vacation leaves. These employees will accrue vacation leaves once they have reached the six months of service, and will be retroactive to the date in which the employee began working.

NOTE: On future newsletters we will inform you on other subjects included in this law, such as, agreements with independent contractors, wrongful dismissals, and employee cutbacks.

## **TEMPORARY EMPLOYMENT**

There is no statutory limit as to the maximum duration of a contract for a fixed term. Nevertheless, a valid contract: (1) must be executed in writing; (2) must be signed by the employee during his or her first shift or, in the case of employees hired through temporary employment agencies, within 10 days of beginning the assignment; and (3) must set forth the purpose of the employee's hire. To comply with this last requirement, the contract should specify whether the temporary employee is being hired to temporarily replace another employee, to complete a specific job or project, or for any other specific activity of a short or fixed duration.

If the practice or circumstances of the hiring create an expectation of continuity in the employment, the relationship might be regarded as one of an indefinite term. Similarly, if a temporary employee continues to work for the employer after the expiration date of his or her temporary employment contract, the employment relationship becomes one of an indefinite term. A court may determine that an individual classified as a temporary employee was really a regular employee if he or she was hired to engage in the regular and usual work of the employer's business and the need to carry out that work either is indefinite or has such a prolonged duration that for practical purposes it becomes indefinite. This could happen when an employee classified as temporary is engaged in the same duties as regular employees; when a temporary employment contract is renewed automatically for prolonged periods of time; or when, at the end of the temporary assignment, the individual is replaced by another temporary employee to continue doing the same work.

## **DRUG TESTING**

Puerto Rico Act establishes specific requirements for the drug testing of job applicants and employees in the private sector. Although Act does not make drug testing mandatory, an employer that establishes a drug-testing program must adhere strictly to the provisions of Act.

Employers may require every job applicant to submit a drug-screening test as a condition for employment. While applicants have the right to refuse to submit to the drug testing, an applicant's refusal will be considered as a positive result and the employer may withdraw the conditional offer of employment.

Drug testing may also be administered to employees in certain sensitive positions, in cases of reasonable individual suspicion, in cases of certain accidents, as a follow-up to a drug rehabilitation program and as part of a program for random testing.

With respect to implementing disciplinary measures, Act states that an employer may impose sanctions upon its employees for violations of its rules of conduct, subject to the provisions of Puerto Rico's unjust dismissal statute. However, Act provides that the first positive result of a drug test shall not constitute just cause of termination of an employee without first requiring and permitting the employee to attend an appropriate rehabilitation program.

In Puerto Rico, there are no laws, rules or regulations concerning alcohol policies and/or alcohol testing in the private employment sector. However, taking a blood sample to conduct alcohol testing in the employment context may violate the express right to privacy of the. Notwithstanding, many private employers have ventured into this unsettled area of law and have established alcohol policies in their facilities. Employers have counterbalanced employees' constitutional privacy rights against the employer's constitutional and statutory duty to provide a safe workplace and have decided in favor of policies prohibiting alcohol abuse.

## **MINIMUM WAGE**

The Fair Labor Standards (FLSA) currently establishes a minimum wage for non-exempt employees of \$7.25 per hour. On February 12, 2014, the law provides for an increase in the minimum wage to the employees of federal contractors to \$10.10 per hour for contracts that began as of January 1, 2015. Furthermore, for contracts that began as of January 1, 2016, the minimum wage of said employees shall be determined annually by the U.S. Secretary of Labor, based on the parameters set forth in the executive order. Locally the law establishes that every employer not covered by the FLSA has to pay a minimum wage to non-exempt employees of at least 70% of the applicable federal minimum wage.

Under the recent federal law known as PROMESA, the Governor of Puerto Rico, subject to the approval of the Financial Oversight and Management Board established by the statute, set a subminimum wage of \$4.25 an hour for employees who are initially employed after the date of enactment of the Act and who are younger than 25.

## **REGULAR WORK SHIFT**

Puerto Rico law provides that the regular work shift for non-exempt employees is one of eight hours per day and a regular workweek is 40 hours. Any work performed in excess of these limits will be considered overtime work and must be compensated accordingly.

## **OVERTIME**

Puerto Rico Act law along with the federal Fair Labor Standards Act of 1938 (FLSA), govern the overtime requirements for non-exempt employees in Puerto Rico. The FLSA applies to every employer with an annual business volume in excess of \$500,000. It also applies to employers that do not meet the stated annual volume but whose employees are engaged directly in interstate commerce or in the production of goods for interstate commerce.

The FLSA required to pay non-exempt employees an overtime rate of time and a half of the regular rate for all hours worked in excess of eight in any given period of 24 consecutive hours.

To the extent that daily overtime is calculated over any given period of 24 consecutive hours (not based on a calendar day), it is important that non-exempt employees who work full time begin their daily shift and daily meal period at the same times every day.

Section 404 of PROMESA excludes Puerto Rico from the U.S. Department of Labor's final rule regarding "white-collar" exempt employees (those in executive, administrative or professional positions). The exclusion will be in effect for at least two years.

## [Overtime](#)

The definition of overtime, hours worked in excess of eight during a 24 hour period or in excess of 40 in a week, remains the same. All employers must notify in writing any changes in the work schedule, within a five day period previous to the beginning of the new cycle. In addition, an eight hour recess between consecutive shifts must be stated.

Definition of hours worked in excess:

Hours worked when the establishment is required to remain closed to the public, except that hours worked when the establishment must remain closed on Sundays will not be considered overtime merely because it is Sunday's work.

Hours worked during the employee's day of rest.

Hours worked in excess of the maximum established by collective bargaining agreement.

Employers must define the weekly work schedule in which way he determines so, and notify it in writing to the employees. If there is no written notification, the weekly work schedule begins Mondays, at 12:01 of each week. Any changes must be notified in writing to the employees five days in advance.

Uniform overtime rate: one and a half (1 ½) the regular rate of pay. Employees entitled to superior benefits and hired prior to the effective date of this Law will preserve their right to receive overtime compensation at double rate, when applicable.

## **FLEXIBLE WORK SCHEDULE**

P.R. Laws, provides the option of a flexible work schedule by mutual agreement between the employer and the employee. An employee who rejects a flexible work schedule will continue to be subject to the daily overtime norms. Under law, an employer can allow an employee to adjust starting and quitting times for reasons of personal convenience without incurring the obligation to pay the overtime premium that would otherwise accrue when the employee advances the start of the workday from one day to the next or delays the start of the meal period, as explained in the preceding section.

A flexible work schedule will be valid only under the following conditions: (1) the agreement must be voluntary; (2) the employee may start the workday up to three hours earlier or later than his or her regular starting time without incurring daily overtime, as long as no work is performed during a rest period of at least 12 consecutive hours between the end of one shift and the beginning of the next and the employee does not work more than eight hours during the workday; and (3) the employee's shift must be worked consecutively, to be interrupted only by the regular meal period.

Flexible Work Schedules:

Flexible work schedules may be agreed in writing allowing employees to work 40 hours workweeks with daily schedules of 10 hours. Work in excess of 10 hours per day, will be considered overtime payable at 1 ½ the regular rate of pay.

Flexible weekly schedules may be revoked by any of the two parties at any moment. Any of the parties can revoke the agreement unilaterally after a year.

These agreements may be continued by a third party that acquires the business.

No employer can dismiss an employee that rejects a flexible weekly schedule.

Making-up of hours not worked

An employer may grant the employee's request to make-up for hours not worked in a workweek due to absence for personal reasons. These compensatory hours will not be considered overtime when they are worked in the same week of the absence; they cannot exceed 12 hours in a day or 40 hours a week.

## **WEEKLY DAY OF REST**

P.R. Laws provides non-exempt employees with a day of rest for every six consecutive days of work. The day of rest is a calendar period of 24 consecutive hours during a calendar week and need not fall on any particular calendar day. The law requires payment of work performed by a non-exempt employee on the day of rest at twice his or her regular rate of pay, regardless of the total number of hours that the employee worked in the preceding six days. Also, if an hour worked on the seventh day also constitutes weekly overtime, it is sufficient to pay that hour at double rate to comply with both penalties.

Schedules and days of rest

Employers must notify their employees in writing the amount of work hours they require daily during the week; as well as the hours when work begins and ends. In addition, they must notify their employees when their meal time should begin and end. Meal periods must occur before the employee works for five consecutive hours, except in those cases where the employee's workday consists of six hours, in which case the meal period may be waived.

New employees who perform work during their day of rest are entitled to a pay at time and one-half, except those employees hired before January 26, 2017.

## **MEAL PERIOD**

P.R. Laws requires an employer to grant all non-exempt employees a meal period commencing not before the end of the third hour of work and not later than before the beginning of the sixth hour of work. An employee should never be required to work more than five consecutive hours without pausing for a meal period.

If an employee is required or permitted to work during his or her meal period, or if the period is enjoyed outside the time frame mentioned above, the employee will be entitled to payment at twice his or her regular rate. This penalty is independent of overtime requirements.

A meal period must be for one hour, unless the employer and the employee mutually agree to reduce it. A reduction of the time of the meal period must be for the mutual benefit of the employer and the employee, and said reduction must be stipulated in writing. A reduced meal period cannot be for less than 30 minutes, except in the cases of nurses, security guards and croupiers, where it may be reduced to 20 minutes.

Non-exempt employees are also entitled to a second meal period after five consecutive hours of work after the previous meal period. The time of this second meal period may also be reduced. Furthermore, if the employee works only two hours or less of daily overtime, the second meal period may be waived by the employee if it is for the mutual benefit of the employee and the employer and it is so stipulated in writing.

## **PAYMENT OF WAGES**

The payment of wages may be executed on a weekly basis, on a biweekly basis or every 15 days. If the employment ends during any given pay period, the employer is obligated to make the payment for the total number of hours worked by no later than the next official pay day.

The employer is allowed to make the payment of wages by check without the consent of the employees and without having to give them time off with pay to cash their checks. Wages can also be paid by electronic transfer of funds or by direct deposit in a bank account, including payments to a "payroll card" as defined by the statute, but only with the consent of the employees involved; however, although there is no case law on this matter, several Puerto Rico Department of Labor and Human Resources opinions suggest that these payment methods may be presented to new employees as a condition for employment. The employer shall bear the costs of the electronic transfer or direct deposit, if any, and shall submit to the employee a receipt of the funds paid or deposited. The employee has the option of having the voucher delivered through electronic means.

If a check paid by the employer to an employee is returned for insufficient funds or because the employer has closed the bank account, the employee is entitled to an additional 100% of the amount as a penalty. In addition, if the employer does not reimburse the employee for the amount of the check within 10 days after the official pay day, the employer will commit a criminal offense that can carry up to five days in prison for each dollar not paid. The issuance of each check constitutes a separate criminal offense. If a check is returned for insufficient funds or because the employer has closed the bank account, an employee may file a complaint with the Secretary of Labor and Human Resources requesting that the employer be required to post a bond approved by the Commissioner of Insurance to guarantee the payment of wages to the employee.

If an employee selects the electronic transfer or direct deposit method, the employer is required to provide the employee with information regarding electronic fraud and the degree of responsibility of the employee, the employer and the bank in such cases.

Employees who are executives, administrators and professionals are excluded from coverage.

## **SALARY DEDUCTIONS**

P.R. Laws prohibits deductions from non-exempt employees' salaries unless they are covered by one or more of the exceptions summarized below or are otherwise authorized by law:

- For payment of dues of the employee to a non-profit association authorized to render medical-hospital services in Puerto Rico;
- For the purchase of savings bonds issued by the Government of Puerto Rico or the United States Government;
- For payments to a properly organized credit union operating either under the laws of Puerto Rico or the Federal Credit Union Act of 1934, as amended;
- For check-off of union dues stipulated in a collective bargaining agreement;
- As the employee's contribution or payment toward any type of plan not covered by the Employee Retirement Income Security Act (ERISA), such as a pension, savings or retirement plan or an annuity life, life, accident or health insurance plan or any combination of these plans, if the total employee contribution to any combination of these plans does not exceed the total company contribution and prior authorization for the deduction has been obtained from the Secretary of Labor and Human Resources of Puerto Rico, unless the deduction is stipulated in a collective bargaining agreement covering the employees of the employer. Obtaining such approval is normally a routine but time-consuming procedure;
- To cover salary advances from the wages. These advances cannot exceed the salary for the week in which the advance was made; however, no amount can be retained from an employee's wages in excess of the total amount that was advanced;
- For voluntary contributions to charitable institutions or to community schools of the Puerto Rico Department of Education or both, provided that such deductions may not exceed 3% of the employee's annual salary deducted proportionately every month and subject to other conditions and restrictions included in the statute;
- For contributions to individual retirement accounts or, in the case of public employees, the Pension Administration System ("Sistema de Retiro");
- For contributions to benefit plans covered by ERISA;
- For a tax debt payment plan, authorized in writing by the employee and authorized and certified by Puerto Rico's Treasury Secretary;
- For contributions or donations made by the employee to fund-raising campaigns of the University of Puerto Rico, provided the employer makes the corresponding payments and sends them directly to the University of Puerto Rico; or
- For buying stocks issued by the corporation or company for which the employee works, provided the employer complies with certain requirements established by the statute and that the written authorization of the employee to that effect complies with the specific language requirements for such purpose set forth in the same.

All of the above deductions, except the one for salary advances, must be previously authorized in writing by the employee before the deduction is made. Other deductions that are required or authorized by law include those for normal payroll taxes (income taxes, Social Security and Medicare), child support and garnishment of wages, among others.

Failure to comply with this statute could lead to significant liability for the employer, such as the employee claiming reimbursement of the amounts illegally deducted.

## **GARNISHMENT OF WAGES**

P.R. Laws establishes an exemption for the garnishment of wages in the execution of civil judgments. Except for garnishments to collect taxes, child support payments and payments due to bankruptcy trustees under Puerto Rico and federal law, only 25% of any unpaid earned income may be garnished pursuant to a court order.

A worker's unpaid earned income in possession of the government of Puerto Rico, its municipalities, agencies or public corporations may not be garnished except as otherwise provided by special legislation such as Puerto Rico's Child Support Act. This legislation also adopted the maximum garnishment limits set which vary from 50% to 65% depending on the particular facts of each case.

## **BACKGROUND CHECKS OF APPLICANTS AND WORKERS**

The issue of background checks raises the question of potential liability for invasion of privacy under the Puerto Rico and the United States constitutions, regardless of whether the employer conducts its own checks or hires a third party to do so. Misuses of background checks may also give rise to liability if employment decisions based on background-check information have an adverse impact on protected classes in violation of federal and Puerto Rico anti-discrimination laws. Nonetheless, there are some allowable background checks.

Regarding criminal background checks in particular, it is common practice in Puerto Rico to request a certificate of good conduct (i.e., a certification from the police department that a person lacks a criminal record) as a condition or requisite for employment. However, employers may not use criminal records to make employment decisions where such use causes a disproportionate impact on protected classes in violation of federal and Puerto Rico anti-discrimination laws. It has been held that not hiring an applicant because he or she has a criminal record may amount to social-condition discrimination in employment.

Another common type of background check sought by employers is the credit check. To lawfully perform in Puerto Rico a credit check for candidates and employees, these should be performed only for workers assuming roles where financial management and/or transactions are a function of the job. Moreover, the employer must abide by pertinent requirements under the Fair Credit Reporting Act of 1970 (FCRA). Under the FCRA, an employer, through a credit reporting agency, is able to assess a job applicant's background information. When an employer is seeking to obtain a credit report, the FCRA imposes the following obligations for employers:

prior notification, consent by the applicant or worker, a notice of use and a copy of the report to the applicant or worker, and a certification of compliance to the agency.

An employer may verify the educational, licensing and work-experience credentials of an employment candidate insofar as said credentials are either required qualifications for the job in question or otherwise taken into consideration in assessing candidates for the job in order to select the person who is best qualified. Furthermore, under applicable disability laws and privacy rights in Puerto Rico, pre-employment physical examinations are lawful only if they are narrowly tailored to determining the fitness to perform the specific job that is being offered. Finally, the verification of driver's licenses and records are lawful for those employees who either have to drive as a part of their jobs or are given a company car.

## **EMPLOYMENT ELIGIBILITY VERIFICATION**

Puerto Rico is fully under U.S. federal jurisdiction for all immigration matters. As such, employers in Puerto Rico are required to comply with the employment eligibility verification requirements established under the federal Immigration Reform Control Act Under IRCA, employers are required to complete a Form I-9 (Employment Eligibility Verification Form) to confirm that every employee being hired is authorized to work in the U.S. Under Form I-9's verification process, workers being hired must provide, and their employer shall verify, documentation that confirms both the workers' identity as well as their eligibility for employment in the U.S. Form I-9 contains a list of acceptable documents to verify identity and employment eligibility.

Employers should make sure to use the version of Form I-9 that is current on the date when it is completed. The U.S. Citizenship and Immigration Services' website, at [www.uscis.gov](http://www.uscis.gov), contains information regarding the version of Form I-9 that is current at any given time, as well as an employer handbook with instructions for completing Form I-9 in full compliance with the law. Non-compliance with Form I-9 requirements, including incomplete and/or erroneous information on the form, can lead to costly monetary fines and other sanctions against employers, including criminal prosecution in some cases. Moreover, Act, provides that any worker in Puerto Rico who is dismissed without just cause and replaced with an alien who is not authorized to work may seek reinstatement and back pay. Employers must retain I-9 forms for either three years after a worker's employment start date or one year after the date when his or her employment ends, whichever is longer.

Employers also have available the tools of the program known as E-Verify (which is mandatory for covered federal contractors and subcontractors, as well as for federal government agencies). E-Verify is an Internet-based program run by the federal government that allows employers to verify their employees' eligibility to work in the United States. In general terms, the program compares an employee's information included in the I-9 form with millions of records of the U.S. Department of Homeland Security and the Social Security Administration to confirm the eligibility of the candidate for employment. The program is fast and free of cost, and it provides mechanisms and terms to correct discrepancies in the information. Employers may obtain additional information or register with the program at [www.uscis.gov/e-verify](http://www.uscis.gov/e-verify).

Notwithstanding the strict employment eligibility verification requirements under Form I-9, it is unlawful to discriminate against employment candidates or workers due to their national origin and/or citizenship. U.S. federal and Puerto Rico statutes provide multiple penalties against employers and remedies for workers who are discriminated against on those grounds, including monetary penalties, reinstatement and payment of damages.

## **HIPAA**

The Health Insurance Portability and Accountability Act (HIPAA) limits the ability of an employer health plan to exclude coverage for the pre-existing conditions of their new employees and dependent families.

In addition, HIPAA provides additional opportunities to enroll in a group health plan if an individual loses other coverage or experiences certain life events. Employees and dependents who decline coverage due to other health coverage and then lose eligibility or lose employer contributions have special enrollment rights. Also, employees, spouses and new dependents are permitted special enrollment because of marriage, birth, adoption or placement for adoption. The employee must request enrollment within 30 days of the loss of coverage or a life event triggering the special enrollment. The plan must allow enrollment without requiring that the individual wait until the next annual enrollment period.

The statute also prohibits health plans from discriminating against employees and their dependent family members based on any health factors they may have, including prior medical conditions, previous claims experience and genetic information.

### Right to participate in religious services

If the employee requests in writing his wish to participate in any kind of religious service, the employer is obliged to grant reasonable accommodation in order for the employee to carry out such practices.

## **CHILD SUPPORT ADMINISTRATION**

ASUME is an agency established under Title IV-D of the Federal Social Security Act that is in charge of enforcing child support obligations and the Commonwealth of Puerto Rico's public policy regarding child support and the Support of the Elderly Program (PROSPERA, by its acronym in Spanish). Among the services that ASUME provides are locating fathers and mothers whose whereabouts are unknown and whose attendance is necessary to conduct the child support proceedings; establishing paternity and child support; and establishing, modifying, and revising child support garnishment orders, among others.

A court or ASUME may require employers to withhold or deduct from an employee's income the amount indicated in the child support garnishment order to satisfy the payment of support and of any debt for due and unpaid support. Employers shall begin the withholding no later than seven business days from the first date that the amount should have been paid or credited to the employee after receiving the notice of the court or ASUME. Subsequently, employers shall remit to ASUME the amount withheld for each pay period within seven business days from the date the payment is made to the employee. The amount to be withheld from the employee's

salary or wages for the payment of the current child support payment of each month, for the payment in arrears, if any, and to defray the cost of the withholding order by the employer shall not exceed the limits established which vary from 50% to 65% depending on the particular facts of each case.

Employers shall comply with the child support garnishment orders in child support cases. Said orders shall be effective at the time of their notification and shall continue in effect as long as the duty to provide support exists, or until said order is rendered ineffective, suspended, modified or revoked by the court or ASUME. If an employer fails to withhold or remit the income withheld pursuant to a withholding order or fails to comply with any of the duties imposed by ASUME, at the request of the creditor, the court or ASUME, after due notice to the employer and notice for the holding of a hearing, shall enter judgment for the total amount the employer failed to withhold and remit, plus fines, expenses and interest that may be imposed, and shall order the collection of the same on the property of the employer.

In the event that an employee terminates his or her employment, the employer shall notify the court or ASUME of the employee's last known address and the name and address of the new employer, if known, within 30 days following the date of the employee's termination. The employer must also procure an account statement certificate from ASUME and withhold from the employee's liquidation any outstanding amounts for child support or repayment plan in excess of a month.

## **STATE REGISTER OF NEW EMPLOYEES**

Employers that employ or re-employ a person on a full-time, part-time or temporary basis shall furnish the following information to ASUME: the name, address and Social Security number of the employee; and the name, address and federal employer identification number or, if a federal employer identification number is not required, the employer identification number of the Government of Puerto Rico. Employers must provide this information for every person they employ, regardless of whether the employee has child support obligations.

Employers shall notify by mail or by any electronic means of the information required in the RENE on the W-4 form furnished by the U.S. Internal Revenue Service or on the W-5 form furnished by ASUME. Employers may report their new employees through the Commonwealth of Puerto Rico Department of Labor and Human Resources' website at [www.dtrh.gobierno.pr](http://www.dtrh.gobierno.pr).

## **EMPLOYMENT OF MINORS**

P.R. Laws establishes the requirements and obligations that employers have to follow to employ minors. The law specifies various occupations in which a minor may not be employed. Also, every employer must have a special permit or an employment certification issued by the Puerto Rico Department of Labor and Human Resources for every minor it employs between the ages of 14 and 18. Furthermore, employers must have in a visible area of the work area a list of the minors it has employed, their work schedules, the maximum hours the minors can work in a day and the schedule for meal periods.

(1) no minor between the ages of 14 and 18 can work more than six consecutive days in a week, more than 40 hours in a week or more than eight hours in a day; (2) if a minor works and attends school, the maximum combined hours of work and school attendance will be eight; (3) minors between the ages of 14 and 16 can work between 8:00 a.m. and 6:00 p.m.; and (4) minors between the ages of 16 and 18 can work between 6:00 a.m. and 10:00 p.m.

Every minor between the ages of 14 and 18 will have the right to a meal period of one hour after they have worked four consecutive hours. If the minor enjoys a meal period of less than one hour, it will be understood that the consecutive work period was not interrupted.

Employers that violate any of the provisions will be subject to penalties, which may include fines between \$25 and \$1,000 and/or imprisonment for a term of not more than 90 days.

## **MIGRANT WORKERS**

The local statute that regulates the hiring of Puerto Rican workers to work outside of Puerto Rico, commonly known as the Migrant Workers' Act, prohibits the recruitment and/or transportation of workers without the corresponding authorization of the Secretary of Labor and Human Resources of Puerto Rico or the Secretary's authorized representative.

According to the statute, in general terms, those who wish to contract the services of migrant workers will have to formalize a written contract with the persons to be recruited, including certain requirements established by the corresponding regulation.

Any violation of the Act's provisions constitutes a misdemeanor, in addition to being bound to civil responsibility subject to payment of damages.

## **UNEMPLOYMENT COMPENSATION**

The Puerto Rico Employment Security Act provides for unemployment benefits compensation. It requires the payment by the employer of a payroll tax, including wages paid for services rendered outside of Puerto Rico but within the U.S., Virgin Islands and Canada if: (1) the employees are not covered by the unemployment compensation statute of any other state, the Virgin Islands or Canada and (2) the services are controlled or directed from Puerto Rico.

Employers in Puerto Rico must obtain coverage on the effective date of the commencement of operations. For such purpose, they must file the Form PR-SD-1 (Report to Determine Employer Status) with the Employment Security Bureau of the Puerto Rico Department of Labor and Human Resources.

There is experience rating for unemployment compensation in Puerto Rico. Unemployment compensation rates for employers in Puerto Rico vary between 1.7% and 5.4%, depending on the company's experience rate. New companies in Puerto Rico will begin paying unemployment compensation at a rate of 3.3% plus an additional 1% for a special unemployment benefits fund. Only eligible employees are entitled to unemployment benefits.

## **WORKERS' COMPENSATION**

The Puerto Rico Workers' Accident Compensation Act, requires public and private employers in Puerto Rico to insure their employees against work-related accidents.

Act also requires those employers hiring independent contractors to insure the workers hired, unless the contractor is both an independent contractor and already insured. The principal who benefits from the services of the contractor's employees is known as the "statutory employer" of those employees.

Absent a lapse in coverage, and with few exceptions, employers are immune from suits arising from the work-related accidents or illnesses of their employees. Statutory employers are also immune from suits. This means all medical treatment, disability payments and administrative expenses involved in treating or compensating the injured or ill worker are paid for by the insurer.

The Puerto Rico State Insurance Fund Corporation (SIFC) is the sole, monopolistic workers' compensation insurance provider from which all workers' compensation coverage must be purchased in Puerto Rico.

Works of limited duration (e.g., construction projects) are typically insured through temporary policies. Premiums for temporary policies are based on the type of work to be done and the cost of such work, pursuant to the Regulations to Determine the Percentages of Labor in Works Subject to Temporary Policies.

Conversely, premiums for ongoing, so-called permanent policies are calculated as a percentage of every \$100 of payroll, based on the type of work and industry. For these policies, insurance rates are published in the SIFC's Manual of Job and Industry Classifications and Types of Insurance and are periodically revised in hearings open to public comment.

On or before every July 20, employers with permanent policies must report their actual payroll for the policy year that ended June 30 and provide an estimate of their payroll for the following year in the yearly payroll statement form. The policy year runs from July 1 of the prior year to June 30 of the current year. Employers with permanent policies may pay the premium calculated on their anticipated payroll or submit 50% of the prior's year premium with the payroll statement. Although payment at this stage is not due, failure to timely file a payroll statement will result in a lapse in coverage.

The SIFC will subsequently send an invoice with the final calculation of the premium payment due, typically between September and October of the year in course. The final premium amount due will be based on the difference between what was reported as an anticipated payroll on July 20 of the prior year and what was reported as the final payroll on July 20 of the current year, minus whatever premium payment, if any, was submitted with the prior year's payroll statement.

The final balance must be paid on the due date stated on the notice of premium payment due. Failure to pay this amount by the date specified will result in a lapse in coverage.

Premium payments sent by certified mail are considered made on the date of the postmark, provided the postmarked receipt is legible. Otherwise, payments are considered made on the date the payment is received by the SIFC.

If an employee suffers a work-related accident or illness during a lapse in coverage, the employer is liable to the SIFC for the cost of all medical treatment, disability payments and administrative expenses incurred by the SIFC in providing treatment to the injured worker. Such lapses may also expose employers to tort suits brought by the employee.

Every work-related accident must be reported to the SIFC within five days. Employees determined by the SIFC to have suffered a work-related accident or illness may be ordered a leave of absence by the agency. In such cases, the worker is entitled to have his or her employment protected and to be reinstated upon conclusion of the leave, provided he or she is discharged from treatment and requests reinstatement within 360 days of the date of the accident or illness and 15 days from the date of discharge. The employee must also be physically and mentally capable of fulfilling his or her job duties, and the employee's position must still exist.

Absent intervening "good cause" for termination of employment during a workers' compensation leave of absence, the local severance indemnity statute, failure to reinstate an employee on workers' compensation leave will expose an employer to a claim for reinstatement, back pay and consequential damages.

## **NON-OCCUPATIONAL DISABILITY INSURANCE**

Government-administered benefits program for employees who became disabled because of non-occupational illness or injury, known as Temporary Non-Occupational Disability Insurance (SINOT, by its acronym in Spanish).

An employer may substitute the SINOT coverage under the government plan with a private plan. However, such a plan must comply with a series of requirements, the most important of which is that the private plan be at least as beneficial to the employee as the government plan. An employer may also request authorization to become self-insured. To substitute the government plan with a private or self-funded plan, an employer must request approval from the Secretary of Labor and Human Resources no later than April 30 of the year in which the plan is to become effective.

Besides payment of insurance benefits, provides eligible disabled employees a leave of absence and reinstatement rights. That is, upon recovery from disability, the employer must reinstate the employee if:

The employee requests reinstatement within a one-year period from the date of commencement of the disability and within 15 days from the date the worker was discharged from medical treatment;

At the time of the request, the employee is mentally and physically able to perform his or her duties; and

The employee's job has not been eliminated at the time of the request (the job is deemed existing if occupied by another employee or if reopened and filled by another person within 30 days following the date of the reinstatement request).

## **CHAUFFEURS' SOCIAL SECURITY ACT**

Puerto Rico has a mandatory government insurance plan that requires employers to insure any non-exempt employee whose work requires the employee to drive a "motor vehicle" as part of that employee's regular duties. This includes, for example, a forklift car at a warehouse.

Employees covered under the Chauffeurs' Social Security Act are not covered by SINOT. Also, the benefits due to illness will not be paid if such illness is covered primarily by the Workers' Accident Compensation Act or if the insured is receiving pay from his or her employer.

The Chauffeurs' Social Security Act requires that an employer reserve the employee's position for one year and reinstate him or her in his or her position if: (1) the employee requests reinstatement within 30 working days from his or her release from treatment and such petition is made within one year from the beginning of the disability, (2) the employee is mentally and physically capable to occupy the position, and (3) the position exists at the moment of requesting reinstatement.

## **INDEPENDENT CONTRACTOR**

An "independent contractor" can be defined as a person who, due to the nature of her function and the form in which she renders her services, turns out to be her own employer.

To make a Independent Contractor determination, it will be necessary to examine the circumstances in which the parties operated, together with the following factors, among others.

- The nature, extent and degree of control by the principal (this is the principal factor to determine the type of relationship between the parties);
- The degree of initiative or judgment displayed by the individual;
- Ownership of equipment;
- The power to hire and the right to fire;
- Manner of remuneration;
- The opportunity to make a profit and the risk of incurring a loss;

- Tax withholding;
- Economic reality (dependency) of the individual;
- Permanency of the work relationship; and
- Whether the service is an integral part of the business of the principal or whether it is independent.

There are different interpretations and definitions for different purposes such as unemployment benefits, workers' compensation and income taxes, among other things.