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**GUIDE**

# Puerto Rico EMPLOYEE BENEFITS



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# EMPLOYEE BENEFITS

## VACATION AND SICK LEAVE

Statutory requirements regarding the accrual and enjoyment of vacation and sick leave for non-exempt employees and outside salespersons in Puerto Rico. However, in Puerto Rico there are industries specifically covered by mandatory decrees issued by the Puerto Rico Department of Labor and Human Resources that must offer current employees hired prior to August 1, 1995.

Employees in the categories of executives, administrators and professionals are excluded from, as well as the mandatory decrees' coverage.

Accrual of vacation is at the rate of one and one-quarter day per month, for a total of 15 days per year, provided that the employee works at least 115 hours during the month in which the accrual takes place. Accrual of sick leave is at the rate of one day per month, for a total of 12 days per year, provided that the employee works at least 115 hours during the month in which the accrual takes place. The use of vacation and sick time will be considered time actually worked for purposes of accrual of these benefits.

Vacation and sick-leave benefits are to be accrued on the basis of the regular workday during the months in which the benefits were accrued. In the case of employees whose daily work schedules vary, the regular workday will be determined by dividing the total regular hours worked during the month by the total amount of days worked. In the case of employees whose work schedules cannot be determined, the regular workday will be computed on the basis of an eight-hour workday.

Sick leave will be accrued from the start of an employee's probationary period, if any is established as a condition of employment. Vacation benefits are not accrued during the probationary employment period; however, once an employee has passed the probationary period, he or she will accumulate vacation leave retroactively to the first day of employment.

Vacation time off and sick leave will be used and paid on the basis of a regular workday at the time when the benefit is used or paid. To that effect, the employer may take into consideration a period of no more than two months prior to the use or the payment of the benefit.

Vacation and sick-leave pay will be equivalent to at least the regular hourly rate earned by the employee during the month in which said leave was accrued, except in the case of employees whose salary is based on non-discretionary commissions or other incentives. In those instances, the employer may calculate the regular hourly salary by dividing the total commissions or incentives earned during the year by 52 weeks.

An employee is not entitled to enjoy vacation time until it has been accrued for an entire year. Under statutory provisions, vacation time should be granted annually in such a way that it does not interrupt the normal operations of the employer, to which end the employer will establish the vacation schedule. In addition, vacation time should be enjoyed consecutively. However, by mutual agreement between the employer and the employee, vacation leave may be fractioned, as long as the employee enjoys at least five consecutive working days of vacation leave during the year.

In addition, vacation time may be accrued up to two years by mutual agreement between the employer and the employee. To that effect, an employer that fails to provide vacation leave to an employee after he or she has accrued the same in excess of two years must grant the employee vacation leave for the total number of days accrued and pay the employee twice the amount for the vacation accrued in excess of two years.

Also, at the written request of the employee, an employer may allow that vacation time include those non-working days within the period in which the employee will enjoy his or her vacation and/or non-working days immediately before or after said vacation period. Likewise, at the written request of the employee, an employer may partially "liquidate" or pay off the vacation leave accrued by the employee in excess of 10 days.

When an employee's employment is terminated for whatever reason, the employer must pay the employee the total vacation leave he or she has accrued, even if it involves less than one year's worth of accrual of the benefit.

With respect to sick leave, except in cases of *force majeure*, employees are required to notify the employer about an illness that prevents them from showing up to work as soon as it is foreseeable and not later than the same day of his or her absence. The enjoyment of sick leave cannot be used as an excuse by the employee for lack of compliance with rules of conduct validly established by the employer, such as adhering to attendance policies, providing a medical certificate if the absence exceeds two working days and providing periodic reports about the continuation of the illness. Sick time that is not taken by the employee during the year will remain accrued for successive years up to a maximum of 15 days.

In case of a violation by the employer, the employee will be entitled to the salaries owed by the employer and a statutory double penalty, plus compensatory damages.

### [Vacations and sick leave](#)

[New employees hired after January 25, 2017, must work at least 130 hours per month to accrue vacation or sick leave benefits. Monthly vacation leave accrual will be as follows:](#)

- [1/2 day per month for the first year](#)
- [3/4 day per month after the first year up to five years of service](#)

- [1 day per month after the fifth year up to 15 years of service](#)
- [1 ¼ day per month after 15 years of service](#)

[For employers with 12 or less employees the minimum monthly accrual for vacation leave will be of ½ day per month for new employees.](#)

[Sick leave accrual will be 1 day per each month the employee works 130 hours.](#)

## **CLOSING LAW**

The commercial establishments that have not been excluded by the Act are required to close to the public on the following days:

- January 1 and 6
- Good Friday
- Easter Sunday
- Mother's Day
- Father's Day
- General Elections Day
- Thanksgiving Day
- December 25

## **ANNUAL (CHRISTMAS) BONUS**

P.R. Laws provides that every employer will be required to pay an annual bonus to each employee who worked 700 hours or more during the period of 12 months between October 1 of the preceding year and September 30 of the current year.

Those employers that employ more than 15 employees will have to pay to the qualifying employees a bonus equivalent to 6% of the salary of each employee, up to a maximum of \$10,000 (i.e., up to \$600 of bonus per employee). Those employers that employ up to 15 employees will pay, instead, a bonus equivalent to 3% of the salary of each employee, also up to a maximum of \$10,000 (i.e., up to \$300 of bonus per employee).

The bonus must be paid to each employee between December 1 and December 15 of each year, subject to a penalty should it be paid late. This date, however, can be modified by written agreement between employer and employee, in compliance with the applicable regulation. Likewise, the Act's dispositions will not apply in those instances when employees receive an annual bonus by virtue of a collective agreement.

The total of the amounts to be paid by reason of said bonus should not exceed 15% of the net annual profit of the employer for the period from October 1 of the preceding year to September 30 of the current year. Should the total exceed that percentage, the

employer may submit a request for an exemption to the Secretary of Labor and Human Resources. The request must include a general balance sheet and a profit and loss statement, duly certified by a certified public accountant, for the 12-month period from October 1 of the preceding year to September 30 of the current year. This statement must be submitted by no later than November 30 of the year to which the bonus corresponds. The Department of Labor and Human Resources has the authority to conduct an investigation on the financial situation of any employer that requests an exemption.

#### Schedules and days of rest

Employers hired after January 25, 2017, 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.

### **PERMITS THAT EMPLOYERS MUST OBTAIN FROM THE SECRETARY OF LABOR AND HUMAN RESOURCES**

- Permit to extend the probationary period of an employee up to a maximum of six months.
- Approval of judicial transactions or extrajudicial claims by non-exempt employees for compensation of services rendered.
- Permit to deduct from the wages of a non-exempt employee a sum stipulated by the employee as an assessment or payment toward any plan or group, pension, saving, retirement, allowance, annuity life, life, accident, and health and hospital insurance policy, any combination of these plans, or any similar social security plan in case of the non-existence of a duly certified or recognized labor organization.
- Permit for the employment of minors between 14 and 16 years of age in any gainful occupation.
- Permit to authorize that the period for taking meals may be enjoyed between the second and third consecutive hour of work.

### **MATERNITY LEAVE**

P.R. Laws provides paid maternity leave for a pregnant employee for the birth of a child. A pregnant employee is generally entitled to eight weeks of maternity leave. The employee must present a medical certificate indicating that she is pregnant and the estimated date of birth. The leave is made up of four weeks of prenatal leave and four weeks of postnatal leave. However, an employee may remain at work up to one week prior to the estimated date of birth, provided she presents a medical certificate that authorizes her to work up to that time. An employee may also return to work as early as two weeks after giving birth, if she presents a medical certificate from her doctor

certifying that she is able to return to work. If the date of birth is delayed, the employee may continue on prenatal leave until the birth of the child without affecting the postnatal leave. Also, if postnatal complications arise, maternity leave may be extended up to an additional 12 weeks of unpaid leave.

Law also protects pregnant employees from discrimination and dismissal under certain circumstances. Expressly provides that an employee may not be dismissed due to diminished productivity or a reduction in the quality of work insofar as these reasons will not be considered just cause for termination. Law also grants pregnant employees reinstatement rights. Therefore, unless the employee's job has been eliminated for just cause, the employee must be reinstated in the same position that she occupied prior to commencing her maternity leave.

If an employer is found liable for discriminating against an employee due to pregnancy, it will be responsible for double compensatory damages. The employer may also be found guilty of a misdemeanor.

## **UNIFORMS**

An employer that requires its employees to wear uniforms to work must furnish them, free of charge. Employers in the health care industry are required to supply uniforms, or the equivalent amount of money to purchase the same, to nurses, laboratory technicians, radiology technicians, therapists or any other health professional technician whose practice requires the use of uniforms.

It should be noted that the Puerto Rico Department of Labor has taken the position that an employer must defray the cost of laundering any uniforms it requires its employees to wear. However, this is not a statutorily required action and the department has been lax on the enforcement of its position.

## **MATERNITY LEAVE FOR ADOPTION**

P.R. Laws provides maternity leave for adopting mothers of pre-school minors. Under such circumstances, an adopting mother is entitled to the same maternity leave benefits as a mother who gives birth.

To enjoy maternity leave, the adopting mother must give her employer a 30-day notice of her intention to adopt a child, use maternity leave and return to work. Also, the adopting mother must submit evidence crediting the adoption procedures issued by the adequate entity. Adoption leave will begin on the date the minor joins the family nucleus. The adopting mother may choose to return to work at any time, waiving her right to the unused part of the leave.

## **LEAVE FOR BREASTFEEDING OR TO EXPRESS MILK**

P.R. Laws Ann provides working mothers with leave for breastfeeding or to express milk. The employer has to designate for this purpose an adequate area that must comply with reasonable privacy, accessibility and sanitary conditions.

A woman who returns to work after maternity leave has a right to breastfeed her baby or express milk for one hour each full working day. This hour may be divided into two 30-minute breaks or three 20-minute breaks. Businesses covered by the Small Business Administration need only provide breastfeeding mothers a period of 30 minutes per working day, which may be divided into two periods of 15 minutes each.

Breastfeeding leave shall be available for a maximum duration of 12 months from the date the employee has returned to work after her maternity leave. To enjoy breastfeeding leave, the employee must present a medical certificate during the infant's fourth and eighth month of age that certifies that the working mother is breastfeeding her baby.

[Employers hired after January 25, 2017, must ensure nursing employee's privacy, security and ventilation to breastmilk or express breastmilk. These employees are entitled to a 30 minute break for each period of four consecutive hours.](#)

## **FAMILY AND MEDICAL LEAVE**

The Family and Medical Leave Act requires private employers with 50 employees or more to provide certain employees with up to 12 weeks of unpaid leave in a given 12-month period:

- For the birth and care of a newborn child;
- For the placement of a son or daughter for adoption or foster care;
- To care for a spouse, son, daughter or parent with a "serious health condition";
- To take medical leave when the employee is unable to work because of a "serious health condition"; or
- For any "qualifying exigency" arising out of the fact that the employee's spouse, son, daughter or parent is on active duty or is called to active duty status as a member of the National Guard or reserves in support of a contingency operation.

An eligible employee who is the spouse, son, daughter, parent or next of kin of a current member of the armed forces (including members of the National Guard or the reserves) with a serious injury or illness is also entitled to a total of 26 workweeks of unpaid leave during a "single 12-month period" for the care of the service member.

Upon their return from FMLA leave, employees are entitled to be restored to their original job or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment.

Under some circumstances, employees may take FMLA leave intermittently or on a reduced work schedule. When leave is needed for planned medical treatment, employees must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer's operation.

Only employees who have been employed by the employer for at least 12 months (need not be consecutive) and who have worked 1,250 hours or more over the last 12 months are eligible for benefits under the FMLA.

The FMLA also requires employers to maintain employees' group health insurance coverage during the pendency of the leave.

FMLA benefits may apply concurrently with other Puerto Rico laws providing leave for the same covered reasons, such as maternity, workers' compensation and non-occupational disability leaves. Any paid or otherwise compensated leave may also count toward the 12-week leave entitlement provided by the FMLA.

## **MILITARY LEAVE**

Military and veteran employees have a variety of rights under federal and local statutes.

### **Uniformed Services Employment and Reemployment Rights Act ("USERRA")**

This federal statute provides for unpaid leave for members of the armed forces of the United States (Army, Marine Corps, Air Force, Navy and Coast Guard, as well as its reserves), National Guard, the Commission of the United States Public Health Services and others designated by the President of the United States during war or an emergency when called to serve voluntarily or involuntarily. The statute also prohibits discriminatory acts, as well as a hostile environment and acts of retaliation, against employees, former employees or employment candidates because of their service in the military.

USERRA also provides for the reinstatement of employees who are not temporary and who, having served honorably, return to work or request re-employment within the period of time provided by law. Once reinstated, the employee's seniority and all of his or her seniority benefits will remain as if the employee had continued to work uninterruptedly.

### **Puerto Rico's Military Code**

This local statute applies to members of Puerto Rico's military forces: Puerto Rico's National Guard (Ground, Aerial and Inactive, and others designated by the President of the United States or by the Governor of Puerto Rico) and Puerto Rico's State Guard.

Under penalty of a criminal offense, the Act provides that employers may not obstruct or otherwise disallow a member of Puerto Rico's military forces to be absent from work to serve during a training or in response to a call to serve in the active state military. Also, the Act prohibits the dismissal of, and discrimination against, an employee because of absences while serving or for being a member of Puerto Rico's military forces. To prevent a member of Puerto Rico's military forces from obtaining employment or to dissuade him of enlisting in said forces constitutes a misdemeanor.

The statute also provides for unpaid leave for employees of the private sector who are members of Puerto Rico's military forces to be absent and serve as part of their annual training or to comply with any call to serve. Members of Puerto Rico's State Guard who are also employees in the private sector, upon honorable completion of their service or training, have a right to re-employment subject to the conditions provided by the Act.

### **Puerto Rican Veterans' Bill of Rights of the XXI Century**

Any person who has served honorably in the armed forces of the United States and its reserves, as defined by the statute, and those who, according to law, are veterans have certain employment rights. The same applies to individuals who serve in the National Guard.

According to this statute, the employer is obliged to:

- Pay for the employer's and the individual's contributions to the employee's retirement plan during active military service;
- Reinstatement the veteran or reservist in the position he or she occupied before beginning military service or in an equivalent or similar position, if the employee requests it within 180 days, following his honorable discharge from the military;
- Add 10 points or 10%, whichever is greater, to the score obtained by the veteran in tests for admission, readmission or promotion if the veteran obtained the minimum score to qualify; and
- Offer the veteran any tests that, because of his or her military service, he or she was not able to take, as long as the employee requests it within 180 days after returning to work.

### **Act for the Protection of Members of the Armed Forces of the United States**

This statute provides members of the uniformed services of the United States, as defined by the statute, the Army Corps of Engineers and the National Disaster Medical System payment equal to the difference between their net salary as a private-sector employee and their net income during their military service.

Also, the statute grants preference for appointment, promotion or employment opportunities to members of the uniformed services, the State Guard, the Army Corps of Engineers and the National Disaster Medical System with equal academic and technical conditions or experience as other employees. It also provides an extra 10 points or 10%, whichever is greater, in addition to any other bonus, to the score obtained by these employees in employment or promotion tests. These employees also have a right to take tests that, because of their military service, they were not able to take, as long as the employee requests it within 180 days following his or her return to work.

According to this statute, the period of military service and the training sessions will be credited for purposes of employment evaluations, as long as they relate to the functions performed on the civil job.