

FLSA, LEY DE ESTANDARES LABORALES JUSTOS

DERECHOS DE LOS TRABAJADORES

BAJO LA LEY DE NORMAS JUSTAS DE TRABAJO (FLSA-síglas en inglés)

SALARIO MÍNIMO FEDERAL \$7.25 POR HORA
A PARTIR DEL 24 DE JULIO DE 2009

La ley exige que los empleadores exhiban este cartel donde sea visible por los empleados.

PAGO POR SOBRETIEDO Por lo menos tiempo y medio (1½) de la tasa regular de pago por todas las horas trabajadas en exceso de 40 en una semana laboral.

TRABAJO DE MENORES DE EDAD El empleado tiene que tener por lo menos 16 años para trabajar en la mayoría de los trabajos no agrícolas y por lo menos 18 años para trabajar en los trabajos no agrícolas declarados peligrosos por la Secretaría de Trabajo. Los menores de 14 y 15 años pueden trabajar fuera del horario escolar en varias ocupaciones que no sean de manufactura, de minería, y que no sean peligrosas con ciertas restricciones al horario de trabajo. Se aplican distintos reglamentos al empleo agrícola.

CRÉDITO POR PROPINAS Los empleadores de "empleados que reciben propinas" que cumplan con ciertas condiciones, pueden reclamar un crédito de salario parcial basado en las propinas recibidas por sus empleados. Los empleadores les tienen que pagar a los empleados que reciben propinas un salario en efectivo de por lo menos \$2.13 por hora si ellos reclaman un crédito de propinas contra su obligación de pagar el salario mínimo. Si las propinas recibidas por el empleado combinadas con el salario en efectivo de por lo menos \$2.13 por hora del empleador no equivalen al salario mínimo por hora, el empleador tiene que compensar la diferencia.

MADRES LACTANTES La FLSA exige que los empleadores le proporcionen un tiempo de descanso razonable a la empleada que sea madre lactante y que esté sujeta a los requisitos de sobretiempo de la FLSA, para que la empleada se extraiga leche manualmente para su niño lactante por un año después del nacimiento del niño, cada vez que dicha empleada tenga la necesidad de extraerse leche. A los empleadores también se les exige que proporcionen un lugar, que no sea un baño, protegido de la vista de los demás y libre de la intrusión de los compañeros de trabajo y del público, el cual pueda ser utilizado por la empleada para extraerse leche.

CUMPLIMIENTO El Departamento tiene la autoridad de recuperar salarios retroactivos y una cantidad igual en daños y perjuicios en casos de incumplimientos con el salario mínimo, sobretiempo y otros incumplimientos. El Departamento puede litigar y/o recomendar un enjuiciamiento criminal. A los empleadores se les pueden imponer sanciones pecuniarias civiles por cada incumplimiento deliberado o repetido de las disposiciones de la ley del pago del salario mínimo o de sobretiempo. También se pueden imponer sanciones pecuniarias civiles por incumplimiento con las disposiciones de la FLSA sobre el trabajo de menores de edad. Además, se pueden imponer sanciones pecuniarias civiles incrementadas por cada incumplimiento con el trabajo de menores que resulte en la muerte o una lesión seria de un empleado menor de edad, y tales evaluaciones pueden duplicarse cuando se determina que los incumplimientos fueron deliberados o repetidos. La ley también prohíbe tomar represalias o despedir a los trabajadores que presenten una queja o que participen en cualquier proceso bajo la FLSA.

INFORMACIÓN ADICIONAL

- Ciertas ocupaciones y establecimientos están exentos de las disposiciones sobre salario mínimo, y/o pago de horas extras.
- Se aplican disposiciones especiales a trabajadores de Samoa Americana, del Estado Libre Asociado de las Islas Marianas del Norte y del Estado Libre Asociado de Puerto Rico.
- Algunas leyes estatales proporcionan protecciones más amplias a los trabajadores; los empleadores tienen que cumplir con ambas.
- Algunos empleadores clasifican incorrectamente a sus trabajadores como "contratistas independientes" cuando en realidad son empleados.

GUIDE

Puerto Rico Employers LEGALLY MANDATED NOTIFICATIONS

LEGALLY MANDATED NOTIFICATIONS

Every employer shall affix in a conspicuous place in the establishment, shop, factory, plantation, office or place of work, as the case may be, the following printed notices:

Anti-Discrimination Unit

- "Sexual Harassment"
- "Discrimination is Illegal" (Includes sex, pregnancy, nursing period, sexual harassment and disability discrimination, and the General Regulation of the Antidiscrimination Unit, Preventive Action and Records)
- Poster regarding the rights and responsibilities under Act (sexual orientation and sexual identity), to be issued by the local Department of Labor and Human Resources.

Equal Employment Opportunity Commission

- "Equal Employment Opportunity is the Law" (Includes race; color; religion; sex; national origin; disability; age and genetic information discrimination; sex discrimination in the payment of salaries; retaliation; and, for employers that are federal contractors, veterans with medals for armed forces services and disabled veterans, recently separated veterans and other protected status)

Labor Standards Bureau

- Summary of some of the legislation that the Labor Standards Bureau administers for the protection of workers and employees (Includes Act for Severance Payment in Terminations without Cause; Day of Work; Day of Rest for Every 6 Days of Work; Vacation and Sick Leave; Definition of the Terms "Administrator," "Executive," and "Professional"; Annual (Christmas) Bonus; Act for the Regulation of Commercial Establishments; Act for the Employment of Minors; and Preparation and Keeping of Payrolls, Registers and Filing System)
- Notice, Work Hours for Workers and Employees
- Notice, Alternate Work Hours for Workers and Employees
- About the Restrictions in the Use of the Social Security Number

Employment Security Bureau

- Summary of benefits

Non-Occupational Disability Insurance Program

- Summary of benefits

Puerto Rico Administration of Occupational Security and Health

- The Security and Health in Employment Act of Puerto Rico (Puerto Rico OSHA and the U.S. Department of Labor Occupational Safety and Health Administration).

Employers in Puerto Rico are also required to display in a conspicuous place in the establishment, shop, factory, plantation, office or place of work, as the case may be, the following printed notices of federal statutes that may apply:

- The Fair Labor Standards Act (FLSA)
- Title VII of the Civil Rights Act of 1964*
- The Americans with Disabilities Act (ADA)*
- The Age Discrimination in Employment Act of 1967 (ADEA)*
- The Rehabilitation Act of 1973*
- The Vietnam Era Veterans Readjustment Assistance Act and the Veterans with Special Disabilities Act*
- Affirmative Action Appropriate under Title VII*
- The Office of Federal Contract Compliance Programs (OFCCP)*
- The Family and Medical Leave Act of 1993
- The Occupational Safety and Health Act of 1970
- The Employee Polygraph Protection Act of 1988
- The Genetic Information Nondiscrimination Act of 2008

**The corresponding notices to these statutes and regulations are included in "Equal Employment Opportunity is the Law" poster.*

The Puerto Rico Department of Labor and Human Resources provides posters that include several of these notifications in a single document. These are available in the central office or in the regional offices of the department.

RIGHT TO PRIVACY

An individual's right to privacy is guaranteed by the Constitution of Puerto Rico. The constitution states that "every person has the right to the protection of the law against abusive attacks on his honor, reputation, and private or family life." The constitutional right to privacy operates *ex proprio vigore* and may be enforced by an individual against his or her private employer without the need for state action. Although fundamental, the right to privacy is not absolute and may yield to compelling circumstances.

In the employment context, to prevail in an action for this type of constitutional violation, the employee must present evidence of the employer's concrete actions that infringe upon the employee's private or family life. In such claims alleging a violation to an employee's constitutional right to privacy, the central focus must be on whether the employee had a legitimate expectation of privacy, given the particular circumstances at hand. In this regard, it is imperative to examine any alleged violation of the constitutional right of privacy, always keeping in mind considerations of time and place. The employee must have a real expectation that his or her privacy be respected, and such expectation must be one that society is objectively willing to recognize as legitimate or reasonable. Notwithstanding, the individual's reasonable expectation of privacy must be weighed against the legitimate business interests that his or her employer is seeking to protect through the measures under attack.

To guarantee an individual's constitutional right to privacy, case law has established the conditions employers must observe when, among other things, they implement the use of electronic surveillance in the workplace. These will be discussed below.

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.

ELECTRONIC SURVEILLANCE

The Supreme Court of Puerto Rico held that a telephone company's video-recording security system, part of which recorded the activities of working employees, was not *per se* a violation of the constitutional right to privacy. The court emphasized that an employer has a right to protect its private property through reasonable and legitimate means, such as electronic surveillance.

However, the court left open the possibility that, depending on the circumstances, an employer's electronic surveillance system could breach an employee's constitutional right to privacy. The court laid down a number of rules that the employer must comply with to ensure that its electronic surveillance systems are valid.

When implementing electronic surveillance measures in the workplace, an employer must provide prior notice to its employees, except in cases where extreme circumstances justify otherwise. This notification could include, among other things, information regarding: (1) the type of electronic surveillance to be used, (2) the nature of the data or information to be obtained, (3) the frequency with which the surveillance system is to be used, (4) its technical specifications, (5) the place where the surveillance system will be installed, (6) the location of the monitoring equipment, (7) the group of employees that will be observed through the surveillance system and (8) the administrative mechanism available to channel employee grievances or complaints concerning the electronic surveillance system.

As a general rule, employers should not install a system of electronic surveillance in areas where, by their own nature, employees will have an enhanced expectation of privacy (i.e., restrooms, showers, dressing rooms). Employers must also create and distribute among their employees a clear and adequate policy detailing the use, access and disposition of the information collected and/or recorded by the electronic surveillance system.

RESTRICTIONS ON THE USE OF EMPLOYEES' SOCIAL SECURITY NUMBERS

PR Act prohibit the use of employees' Social Security numbers on identification cards or any document of general circulation. Employees' Social Security numbers may not be displayed in places that are visible to the public, may not be included in personnel directories, and may not be included in any list that is made available to persons who do not have a need to know or access authorization to this information.

The prohibitions provided in Act may be waived by the employee in writing and voluntarily. Said waiver cannot be a condition for or of employment. Some exceptions to Act include situations in which a local or federal statute or regulation specifically authorize or require the divulgence of the Social Security number.