LEXOLOGY
Getting The Deal Through

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LEXOLOGY
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START READING

Puerto Rico

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Summary

LEGISLATION AND AGENCIES

Primary and secondary legislation

1 What are the main statutes and regulations relating to employment?

Puerto Rico is a jurisdiction with a highly regulated labour and employment arena, which is generally protective of employee rights. As an unincorporated territory of the United States, US federal laws apply in Puerto Rico, including federal labour and employment laws.

The Puerto Rico Constitution, multiple labour and employment statutory and regulatory provisions, and court decisions also govern the employment relationship. The main statutes have historically included, among many others:

- Law No. 80 of 30 May 1976 on unjust dismissals, as amended by Law No. 4 of 26 January 2017;
- various anti-discrimination and anti-retaliation provisions;
- extensive wage and working hours laws and regulations;
- statutory leaves of absence; and
- a workers' accident compensation statutory scheme.

Law No. 4 of 26 January 2017 ushered in sweeping changes and flexibility to Puerto Rico's employment landscape. Law No. 4 of 26 January 2017 brought about the island's first significant labour reform in decades, making significant changes to more than a dozen existing statutes, including those governing employment discrimination, wrongful termination, wages and working hours, entitlement to vacation and sick leave, lactation breaks, and employee benefits. Also, it required that all Puerto Rico employment laws or regulations, in matters similar to those regulated by US federal laws or regulations, be interpreted consistently with US federal laws or regulations unless Puerto Rico law expressly requires a different interpretation.

The Puerto Rico Department of Labor and Human Resources issued the first edition of its Guide for the Interpretation of Puerto Rico's Employment Legislation on 8 May 2019, containing discussions, interpretations and analysis of the changes brought forth by Law No. 4 of 26 January 2017.

Puerto Rico Governor Pedro Pierluisi signed Law No. 41-2022 into law on 20 June 2022. The stated goal of Law No. 41-2022 was to reverse some of the changes brought about by Law No. 4 of 26 January 2017 through a work plan with two priorities:

- to restore and broaden the labour rights for workers in the private sphere; and
- to have the Legislative Assembly inquire into prevailing work conditions and propose new protections for members of the working class.

As such, Law No. 41-2022 revised or repealed many of the amendments under Law No. 4 of 26 January 2017 to multiple local employment statutes. The Puerto Rico Fiscal Oversight and Management Board brought suit seeking to overturn Law No. 41-2022. On 3 March 2023, US District Judge Laura Taylor Swain, who presides over cases related to Puerto Rico's bankruptcy, declared Law No. 41-2022 void ab initio. Although the decision has been appealed and bills have been introduced to reinstate the amendments under Law No. 41-2022, currently, the amendments under Law No. 4 of 26 January 2017 are still in force.

Protected employee categories

2 Is there any law prohibiting discrimination or harassment in employment? If so, what categories are regulated under the law?

There are US federal laws and local laws in Puerto Rico prohibiting discrimination and harassment in employment.

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Local anti-discrimination laws include:

- Law No. 100 of 30 June 1959 on general anti-discrimination measures, as amended in 2013 by Laws No. 22 and No. 107;
- Law No. 44 of 2 July 1985 on disability discrimination;
- Law No. 69 of 6 July 1985 on sex discrimination;
- Law No. 17 of 22 April 1958 on sexual harassment in employment; and
- Law No. 3 of 13 March 1942 on the protection of working mothers, containing the law regarding maternity leave.

Some of these laws were amended by Law No. 4 of 26 January 2017. Protected categories under local law include age; race; skin colour; sex; sexual orientation; gender identity; social or national origin; social condition; political affiliation; political or religious beliefs; being or being perceived as a victim of domestic violence, stalking or sexual aggression; veteran status; physical or mental disability; pregnancy, maternity and adoption; and others.

Law No. 130 of 8 May 1945 on labour relations in Puerto Rico prohibits discrimination based on certain labour-related activities.

Law No. 16 of 8 March 2017 on equal pay in Puerto Rico prohibits gender discrimination in compensation. Law No. 150-2019 on the protection of employee credit information prohibits employers (or potential employers) from, among other things, taking adverse employment actions based on an employee's or applicant's credit history report.

Law No. 17 of 22 April 1958 on sexual harassment in employment was amended by Law No. 82-2022 to expand its coverage to interns, require employers to adopt a protocol for reporting and investigating sexual harassment concerns, and directed the Puerto Rico Department of Labor and Human Resources to provide a model protocol. The Puerto Rico Department of Labor and Human Resources issued its Model Protocol in October 2022, including such topics as its legal basis, applicability, definitions, and complaint and investigation processes.

Law No. 90 of 2020 prohibits workplace bullying and abusive conduct, even if it is not related to protected categories.

Enforcement agencies

3 What are the primary government agencies or other entities responsible for the enforcement of employment statutes and regulations?

Aside from US federal agencies, such as the Equal Employment Opportunity Commission and the US Department of Labor, Puerto Rico has local agencies responsible for the enforcement of employment statutes and regulations. The primary local agencies are the Puerto Rico Department of Labor and Human Resources and its various divisions (eg, the Bureau of Work Norms and the Anti-Discrimination Unit) and the local workers' compensation agency, the Puerto Rico State Insurance Fund Corporation.

WORKER REPRESENTATION

Legal basis

4 Is there any legislation mandating or allowing the establishment of employees' representatives in the workplace?

As in the United States, the National Labor Relations Act (NLRA) applies in Puerto Rico to covered employers engaged in interstate commerce. The NLRA provides covered employees with the right to self-organisation or to join or assist labour unions, to bargain collectively through union representatives of their own choosing, and to engage in other concerted activities for collective bargaining or other mutual aid or protection.

The Puerto Rico Constitution, in sections 17 and 18 of article II, provides that employees of private employers, or agencies or instrumentalities of the government operating as private employers, have the right to organise and to bargain collectively with their employers through representatives of their choosing and to engage in legal concerted activities.

Other local laws (ie, Law No. 130 of 8 May 1945 on labour relations and Law No. 45 of 1998 on public service labour relations) also provide rules for union recognition comparable to the NLRA.

Powers of representatives

5 What are their powers?

As in the United States, the NLRA applies in Puerto Rico to covered employers engaged in interstate commerce. The NLRA provides covered employees with the right to self-organisation or to join or assist labour unions, to bargain collectively through union representatives of their own choosing, and to engage in other concerted activities for collective bargaining or other mutual aid or protection.

The Puerto Rico Constitution, in sections 17 and 18 of article II, provides that employees of private employers, or agencies or instrumentalities of the government operating as private employers, have the right to organise and to bargain collectively with their employers through representatives of their choosing and to engage in legal concerted activities.

BACKGROUND INFORMATION ON APPLICANTS

Background checks

6 Are there any restrictions or prohibitions against background checks on applicants? Does it make a difference if an employer conducts its own checks or hires a third party?

Law No. 16 of 8 March 2017 on equal pay in Puerto Rico prohibits employers covered under the Law from asking a job applicant, or the applicant's current or former employer, about the applicant's current or past compensation rate, subject to the following exceptions:

- if a job applicant voluntarily discloses his or her current or past wages, the potential employer may confirm or allow the applicant to confirm the information; and
- the potential employer may inquire into or confirm an applicant's current or past wages if it negotiated the compensation rate with and made an offer of employment to the applicant.

Further, except for certain exempt positions (eg, positions for which a credit report is required by federal law), Law No. 150-2019 prohibits covered employers from verifying or investigating an employee's or applicant's credit history, or requesting or obtaining an applicant's or employee's credit report from a credit agency.

Private employers in Puerto Rico can perform background checks (including criminal and credit checks) on job applicants subject to federal parameters, including the federal Fair Credit Reporting Act, and recent guidance from the Equal Employment Opportunity Commission concerning the potential disparate impact of background checks.

Puerto Rico courts attach great importance to the constitutional provisions protecting human dignity and privacy from invasion by both public and private parties. These provisions include article II, section 1 ('The dignity of the human being is inviolable') and section 8 ('Every person has the right to the protection of the law against abusive attacks on his honour, reputation and private or family life') of the Puerto Rico Constitution.

Law No. 4 of 26 January 2017 enumerates certain rights conferred upon employees, including respect for dignity and protection of privacy, subject to the employer's legitimate interests in protecting its business, property and workplace or as provided by law.

In *Rosario Diaz v Toyota de Puerto Rico, Corp*, 2005 TSPR 154 (2005), the Puerto Rico Supreme Court held that discrimination based on a prior criminal conviction is prohibited under Puerto Rico law and falls under the category of 'social condition', which is protected under Law No. 100 of 30 June 1959, as amended in 2013 by Laws No. 22 and No. 107 (the local general anti-discrimination statute), and set out factors that employers had to consider in connection with an applicant who has criminal convictions. However, in July 2020, the Puerto Rico Supreme Court overturned this decision by holding that conviction status is not a protected class under the Puerto Rico Constitution or local anti-discrimination laws in *Garib Bazain v Hosp Espanol Auxilio Mutuo de Puerto Rico*, 2020 TSPR 69 (2020).

The aforementioned considerations apply irrespective of whether the employer conducts its own background or criminal checks, or hires a third party to do so.

Medical examinations

7 Are there any restrictions or prohibitions against requiring a medical examination as a condition of employment?

Subject to limited exceptions, employers may not require an applicant or employee to provide information regarding their genetic record, medical history or disability. US federal law applies in this area.

Drug and alcohol testing

8 Are there any restrictions or prohibitions against drug and alcohol testing of applicants?

Act No. 59 of 8 August 1997 on the regulation of controlled substances detection testing in the private work sector permits (but does not require) private employers to establish a testing programme for the detection of controlled substances to promote the health and welfare of its employees through random selection methods. Under this Law, controlled substances are defined as substances included in the Controlled Substances Act of Puerto Rico or any other legislation of Puerto Rico or the United States (eg, cocaine and heroin), but specifically excludes controlled substances used legally (eg, under a medical prescription).

Under certain circumstances, employers are allowed to require employees, candidates for employment and candidates for re-hiring to submit to a controlled substances detection test as a condition of employment or continued employment. These circumstances include:

- when an accident occurs in the workplace, attributable to the employee, in connection with his or her functions and during working hours;
- when there is reasonable individualised suspicion that the employee is using controlled substances (such tests must be made within 24 hours); and
- as a precondition for recruitment, as part of a general physical medical examination required by all candidates for employment.

In addition, employees engaged in certain activities (eg, driving railway trains, transporting passengers in a motor vehicle, handling drugs or controlled or dangerous substances, or providing security guard services) are required to submit to mandatory testing.

Before implementing a drug-testing programme, the employer must provide written notice of the programme to employees 60 days in advance of its implementation and to candidates upon the submission of an employment application.

The notice must include specific information about the programme (eg, its effective date and the specific law authorising its adoption).

The testing must be carried out under the programme adopted by the employer through regulations provided to all employees and candidates for employment. The regulations implemented as part of a drug-testing programme must include:

- a statement including a description of the sanctions and penalties that apply to the production, distribution, possession or illegal use of controlled substances under Puerto Rico and federal law;
- a statement specifying that the possession, distribution, use, consumption and illegal trafficking of controlled substances is conduct forbidden by the employer;
- a plan, developed by the employer, to educate and inform employees of the health risks associated with the illegal use of controlled substances;
- the adoption and description of programmes for assistance, treatment or orientation on the rehabilitation available to the employees;
- the employer's rules of conduct on the use of controlled substances by its employees;

- a description of the sanctions to be imposed on employees if rules of conduct on the use of controlled substances are violated or an employee tests positive for the use of a controlled substance;
- a warning that the employees or candidates for employment shall be subject to drug tests;
- a detailed description of the procedures to be followed to conduct the tests (which must be urine tests, except in very limited circumstances), including the mechanism for the resolution of disputes over the results of the test; and
- a provision to the effect that the result of the tests shall be deemed to be and kept as confidential information.

The unjustified refusal of an employee to submit to a required drug test shall constitute prima facie evidence that the result would have been positive and shall result in the application of disciplinary measures.

An employee's first positive drug test result shall not constitute just cause for dismissal without first requiring and allowing the employee to attend an appropriate rehabilitation programme. If the employee expressly refuses to participate in a rehabilitation programme, or if the result of the additional test is positive, the employer may impose corresponding disciplinary actions according to the regulations implemented by the employer. The employer may require an employee with a positive test result to periodically submit to additional tests as part of the rehabilitation programme.

When imposing disciplinary measures, the employer shall do so while taking into account the relationship between the employee's conduct and his or her duties, its effect on the proper and normal function of the enterprise, and the risk to the safety of other employees and the public generally.

Before the employer can take any disciplinary action based on the positive result of a test, the result must be verified through a confirmatory laboratory test. The employee or candidate for employment shall have the opportunity to notify the laboratory of any information that is relevant to the interpretation of the result, including the use of prescribed or over-the-counter drugs.

A positive drug test result cannot be used as evidence in a criminal suit against the employee unless it is used by the employee in his or her defence.

The employer has to cover the expenses associated with the drug tests. Further, employees must be compensated for any time spent submitting to the tests.

Tests must be confidential and administered by a certified laboratory according to scientifically accepted analytical and chain-of-custody procedures, and under the Mandatory Guidelines for Federal Workplace Drug Testing Programs. Every sample with a positive result shall be submitted for a second corroborative analysis. The employee shall be advised in writing that he or she is entitled to contact another laboratory to obtain a second result from the same sample should he or she wish to do so, and the employer (or its testing agent) will be required to provide the minimum amount required of the sample to the employee's independent laboratory. If the employer's laboratory's test is positive and the employee's own laboratory's test is negative, the employer may suggest three laboratories

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from which the employee is to choose one to conduct a third final and binding test at the employer's expense.

An employee may have a cause of action against an employer if:

- the employer took disciplinary action or refused to hire the employee based on an erroneous test result and the employer relied on the erroneous test result through fraud, fault or negligence; or
- the employer damages the reputation of the employee by revealing the test results through fraud, fault or negligence.

Also, in lieu of filing suit, an employee who suffers damages as a result of a drug test performed on his or her sample may seek benefits under Puerto Rico's workers' compensation statute (ie, Law No. 45 of 18 April 1935). However, where a drug test is a precondition for recruitment required by all candidates, refusal to submit to a test may constitute an unjustified refusal.

HIRING OF EMPLOYEES

Preference and discrimination

9 Are there any legal requirements to give preference in hiring to, or not to discriminate against, particular people or groups of people?

Employers are prohibited from discriminating against applicants or employees based on:

- sex;
- age;
- race or skin colour;
- marital status;
- political affiliation, or political or religious ideas;
- national origin;
- social origin or condition;
- disability;
- pregnancy;
- genetic information;
- being, or being perceived as, a victim of domestic violence, stalking or sexual aggression;
- sexual orientation or gender identity;
- veteran status; and
- other categories protected by law.

Further, Law No. 80 of 30 May 1976 (the Unjust Dismissal Act), as amended by Law No. 4 of 26 January 2017, requires that preference based on length of service be given to employees who were laid off owing to business necessities recognised under the Unjust Dismissal Act if the employer needs to employ a worker in the same or similar occupational classification to that held by the employee at the time of discharge within six months following the lay-off, except in cases in which there is a reasonably clear and evident difference in favour of the capacity, productivity, performance, competence, efficiency or conduct record of the

workers compared, in which case the employer may select the worker who has worked at the company for a shorter time based on such criteria.

Written contracts

10 | Must there be a written employment contract? If yes, what essential terms are required to be evidenced in writing?

Generally, employment contracts do not have to be in writing. However, certain employment-related provisions (eg, agreements with non-exempt employees to reduce statutory meal periods, alternate workweek agreements and non-compete agreements) require valid written agreements that require the inclusion of certain specific terms to be enforceable.

Fixed-term contracts

11 | To what extent are fixed-term employment contracts permissible?

Temporary employment contracts for fixed periods are permissible in Puerto Rico. If valid, such a contract forms an exception to the just cause requirement contained in the Unjust Dismissal Act. Before the enactment of Law No. 4 of 26 January 2017, to be valid, a temporary employment contract was required:

- to be in writing;
- to last for a fixed term of a fixed project or for the replacement of a regular employee during a temporary absence;
- to expressly state the purpose of the temporary contract and the duration of the employment period; and
- to be signed during the employee's first workday or within the first 10 days of work, if the employee was hired through a temporary employment services company.

Law No. 4 of 26 January 2017 expanded the definition of temporary employment by identifying some of the situations where it may exist, such as a specific project, fixed work, replacing a regular employee during leave or temporary absence, or an extraordinary or short-term project (including, without limitation, equipment or facility repairs, cargo loading or unloading, seasonal work, temporary orders for production increases, annual inventories, or any other particular project or activity). After the enactment of Law No. 4 of 26 January 2017, written temporary agreements are no longer required, although they remain advisable.

There are no specific limitations as to the maximum duration of temporary employment contracts but, by their very nature, they must be temporary and reasonably limited in duration. If the employee continues working after the end of the contracted period, he or she will likely be deemed to have become a regular employee.

Law No. 4 of 26 January 2017 also recognises fixed-term employment contracts, defined as contracts for a specific period or a particular project. Written agreements are not required, although are advisable. Although fixed-term contracts may be renewed, if the employer's or employee's practice creates an expectation of continuity, the relationship will not be interpreted as being for a fixed term. Fixed-term contracts not exceeding three years will be

presumed to be valid and bona fide. In the case of exempt executive, administrative and professional employees, fixed-term contracts will be interpreted by the parties' wills as expressed in the contract.

Probationary period

12 What is the maximum probationary period permitted by law?

Law No. 4 of 26 January 2017 created the following automatic probationary periods (no written agreement required) for employees hired on or after 26 January 2017:

- exempt executive, administrative and professional employees have an automatic probationary period of 12 months; and
- all other employees have an automatic probationary period of nine months.

Law No. 41-2022 reduced the automatic probationary periods to three months, but was declared void in March 2023.

Employers are not required to demonstrate just cause for termination under the Unjust Dismissal Act if an employee is discharged during the probationary period.

Classification as contractor or employee

13 What are the primary factors that distinguish an independent contractor from an employee?

Unless another special law applies, Law No. 4 of 26 January 2017 created an irrebuttable presumption that a person is an independent contractor if:

- the person possesses, or has requested, an employer identification number or employer Social Security number;
- the person has filed income tax returns claiming to own a business;
- the client–independent contractor relationship is established by a written contract;
- the person is contractually required to have licences or permits; and
- the person fulfils at least three of the following factors:
    - he or she has control or discretion in the way the work is performed;
    - he or she has control over the timing of the work;
    - he or she is not required to work exclusively for the contracting party;
    - he or she may hire their own employees to assist in the work;
    - he or she has invested to provide the services (eg, buying or renting tools, equipment or materials, or space or equipment from the principal); and
    - he or she must obtain permission from the contracting party to access the worksite.

If the factors to establish the independent contractor presumption are not met, a 'common law' test is used to determine whether there is an employer–employee or a client–independent contractor relationship, including what the parties expressed in their contract and the degree of direct control exercised over how the work is performed. Under Law No. 4 of 26 January 2017, unless required by US federal law applicable to Puerto Rico, an economic

reality test should not be used to evaluate whether a client–independent contractor relationship exists.

Temporary agency staffing

14 Is there any legislation governing temporary staffing through recruitment agencies?

Law No. 26 of 22 July 1992 regulates the provision of temporary employees to client companies by temporary service companies. As a general rule, under Law No. 26 of 22 July 1992, both the temporary service company and the client company are considered joint employers. However, this Law delineates certain responsibilities of the temporary service company and those of the client company.

For acts constituting unlawful job discrimination, sexual harassment or unjustified dismissal, whichever party discriminates against or dismisses the temporary employee, or takes other actions sanctioned by law, will be responsible, be it the temporary service company or the client company.

Regarding an employer's obligation to retain a temporary employee's position during the effective term of the contract when the employee takes a leave of absence, the temporary service company is responsible for retaining the employee's position. But if the temporary service company does not comply, the client company where the employee was rendering services at the time he or she took the leave will be held responsible.

The temporary service company is responsible for the payment of a temporary employee's Christmas bonus, unless the temporary employee has worked for the client company for more than 700 hours (1,350 hours for employees hired on or after 26 January 2017, when Law No. 4 of 26 January 2017 came into effect), as required by law. In any case, if the temporary service company does not comply with its obligation, the client company will be responsible instead.

Further, under Law No. 26 of 22 July 1992, temporary employees may not be contracted:

- as a method or mechanism for destroying or keeping labour unions out of the workplace;
- to perform any act of discrimination prohibited by law;
- as a means of evading compliance with the Unjust Dismissal Act; or
- as a means of breaking, weakening or interrupting strikes or work stoppages.

FOREIGN WORKERS

Visas

15 Are there any numerical limitations on short-term visas? Are visas available for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction?

Puerto Rico is subject to US federal immigration laws governing foreign workers.

Spouses

16 Are spouses of authorised workers entitled to work?

Puerto Rico is subject to US federal immigration laws governing foreign workers.

General rules

17 What are the rules for employing foreign workers and what are the sanctions for employing a foreign worker who does not have a right to work in the jurisdiction?

Puerto Rico is subject to US federal immigration laws governing foreign workers.

Resident labour market test

18 Is a labour market test required as a precursor to a short or long-term visa?

Puerto Rico is subject to US federal immigration laws governing foreign workers.

TERMS OF EMPLOYMENT

Working hours

19 Are there any restrictions or limitations on working hours and may an employee opt out of such restrictions or limitations?

The US federal Department of Transportation's limitations on hours of work for covered drivers apply in Puerto Rico, and the US federal Fair Labor Standards Act (FLSA) applies to covered employers and employees in Puerto Rico.

Non-exempt employees are entitled to overtime pay for work of more than 40 hours per week or eight hours in any calendar day (or, instead of a calendar day, an alternative 24-hour cycle determined by the employer, subject to certain requirements). Employees generally may not opt out of these statutory limitations.

Under Law No. 4 of 26 January 2017, an employer and employee may agree in writing to establish an alternate working week in which an employee works for 10 regular hours for four days (which do not have to be consecutive) each week, without incurring the employer's obligation to pay daily overtime. However, if, under the alternate working week, an employee works more than 10 hours in a day, the employee is owed overtime. Alternate week schedule agreements must be in writing and voluntary.

Law No. 379 of 15 May 1948 (the Working Hours and Days Act), as amended by Law No. 4 of 26 January 2017, establishes that non-exempt employees must be allowed a fixed meal break of no less than one hour. A shorter break of at least 30 minutes (or 20 minutes, for a limited number of professions) is by written agreement. Unionised employees may

only agree to reduce the meal period via a collective bargaining agreement or other written agreement between the employer and the union.

Generally, per the Law No. 4 of 26 January 2017 amendments to the Working Hours and Days Act, a meal break must start between the conclusion of the second consecutive hour of work and the beginning of the sixth so that employees are not required to work for more than five consecutive hours without a meal break. Under these amendments, if an employee does not work for more than six hours a day, the employer is not required to provide a meal break.

Non-exempt employees are also entitled to a second meal break if they work more than 10 hours a day. However, under these amendments, if an employee does not work for more than 12 hours a day, the second meal break may be obviated if the employee took the first meal break. Minors are entitled to a second meal break after four consecutive hours of work.

Law No. 41-2022 amended the Working Hours and Days Act to require, among other things:

- the meal period to start between the conclusion of the third consecutive work hour and the beginning of the sixth (and the employer and employee could agree in writing to a meal break between the second and third hour of work); and
- a written agreement to obviate the second meal period under the circumstances noted above.

Law No. 41-2022 was declared void in March 2023.

Further, non-exempt employees covered by Law No. 289 of 1946, as amended by Law No. 4 of 26 January 2017, who work for six consecutive days have the right to take a day of rest or are entitled to premium pay for work on the seventh consecutive day of work.

Employees may not opt out of these statutory protections.

Overtime pay – entitlement and calculation

20 What categories of workers are entitled to overtime pay and how is it calculated?

Regulation No. 13 of the Puerto Rico Minimum Wage Board defines the administrative, executive and professional exemptions to overtime requirements, mirroring the current regulations under the FLSA. Regulation No. 13 also recognises the outside sales exemption and that certain computer-based professions may qualify for the professional exemption and all exemptions under the FLSA.

Overtime pay is required for non-exempt employees who work more than 40 hours per week or eight hours on any calendar day (or, under Law No. 4 of 26 January 2017, an alternative 24-hour cycle determined by the employer, subject to certain requirements). As a general rule, the Working Hours and Days Act requires the payment of overtime at a rate equal to twice the employee's regular rate if the employee was hired before 26 January 2017. In *Vega v Yiyi Motors*, 146 DPR 373 (1998), the Puerto Rico Supreme Court stated in dicta that, in the

case of employers covered by the FLSA, the employer should pay overtime at a rate not less than one-and-a-half times the employee's regular rate of pay.

Under Law No. 4 of 26 January 2017, overtime for employees hired on or after 26 January 2017 is compensated at one-and-a-half times the regular rate. Employees with a right to greater benefits before 26 January 2017 preserve the greater benefit while they work for the same employer.

Overtime pay – contractual waiver

21 | Can employees contractually waive the right to overtime pay?

Employees cannot contractually waive the right to overtime pay.

However, under Law No. 4 of 26 January 2017, an employer and employee may agree in writing to establish an alternate working week in which an employee works 10 regular hours for four days (which do not have to be consecutive) each week, without incurring the employer's obligation to pay daily overtime. However, if, under the alternate working week, an employee works more than 10 hours in a day, the employee is owed overtime. Alternate week schedule agreements must be in writing and voluntary.

Also, under Law No. 4 of 26 January 2017, an employer may (but does not have to) allow an employee who had days or hours off for personal leave to work additional hours on another day to make up for the time lost. These make-up work hours will not be considered extra hours that require overtime if the work hours are made up in the same week of the absence, the employee does not work more than 12 hours in a day and the employee does not work more than 40 hours per week.

Vacation and holidays

22 | Is there any legislation establishing the right to annual vacation and holidays?

There is legislation establishing the right to vacation time in Puerto Rico. Before the enactment of Law No. 4 of 26 January 2017, under Law No. 180 of 27 July 1998, all workers in Puerto Rico employed on or after 1 August 1995 (except for exempt administrators, executives and professionals) accrued vacation at the rate of one-and-a-quarter days for each month in which the employee worked at least 115 hours. Per the amendments in Law No. 4 of 26 January 2017 to Law No. 180 of 27 July 1998, the minimum hours worked to accrue vacation was increased from 115 to 130 hours per month.

Under these amendments, for covered employees hired after 26 January 2017, the minimum monthly accrual of vacation leave is:

- half of one day during the first year of service;
- three-quarters of one day after the first year until the fifth year;
- one day after five years until 15 years; and
- one-and-a-quarter days after 15 years.

However, under these amendments, if an employer has no more than 12 employees, the minimum monthly accrual of vacation leave is a fixed half of one day per month. Employees who worked for an employer before 26 January 2017 and had rates of accrual of vacation superior to that provided for in Law No. 4 of 2017, continue to have the same accrual rates while they work for the same employer.

Law No. 41-2022 amended the changes to Law No. 180 of 27 July 1998 under Law No. 4 of 26 January 2017 to provide that:

- covered employees who work 115 hours or more per month accrue vacation at the rate of one-and-a-quarter days per month;
- covered employees who work at least 20 hours per week but less than 115 hours per month accrue vacation time at half of one day per month; and
- for employers with 12 or fewer employees, covered employees who work no less than 20 hours per week but less than 115 hours per month will accrue vacation at a rate of a quarter of one day per month and covered employees who work no less than 115 hours per month accrue half of one day of vacation per month.

Law No. 41-2022 was declared void in March 2023.

There is no general law establishing the right to holidays in the private sector. However, establishments in industries previously covered by the now-repealed Law No. 1 of 1 December 1989 must be closed on Good Friday and Easter Sunday.

Sick leave and sick pay

23 | Is there any legislation establishing the right to sick leave or sick pay?

There is legislation establishing the right to sick leave in Puerto Rico. Before the enactment of Law No. 4 of 26 January 2017, under Law No. 180 of 27 July 1998, all workers in Puerto Rico employed on or after 1 August 1995 (except for exempt administrators, executives and professionals) accrued paid sick leave at the rate of one day per month for each month in which the employee worked at least 115 hours. Per the amendments to Law No. 180 of 27 July 1998 under Law No. 4 of 26 January 2017, the minimum hours worked to accrue paid sick leave was increased from 115 to 130 hours per month.

Law No. 41-2022 amended the changes to Law No. 180 of 27 July 1998 under Law No. 4 of 26 January 2017 to provide that:

- covered employees who work 115 hours or more per month accrue sick leave at the rate of one day per month;
- employees who work at least 20 hours per week but less than 115 hours per month accrue sick leave at half of one day per month; and
- for employers with 12 or fewer employees:
    - covered employees who work no less than 20 hours per week but less than 115 hours per month accrue sick leave at a rate of half of one day per month; and
    - employees who work no less than 115 hours per month accrue one day of sick leave per month.

Two laws were passed in 2018 that provided more rights and benefits to Puerto Rico workers by granting protections on the use of sick leave by public and private employees. First, Law No. 60 of 2018 amended Law No. 180 of 27 July 1998 and forbade employers in the private sector to use excused, justified sick leave as a criterion in evaluations, promotions or salary increases, or to justify disciplinary measures. Also, Law No. 60 of 2018 made it clear that sick leave does not excuse non-compliance with validly established employer rules, such as attendance and punctuality, among others. Second, Law No. 28 of 2018 on special leave for employees with grave illnesses of a catastrophic character creates a special paid sick leave of six days annually for employees in the private or public sectors who have certain illnesses, including AIDS, tuberculosis, leprosy, lupus, cystic fibrosis, cancer, haemophilia, aplastic anaemia, rheumatoid arthritis, autism, post-organ transplantation, scleroderma, multiple sclerosis, amyotrophic lateral sclerosis, and chronic kidney disease at levels 3, 4 and 5. Law No. 41-2022 amended Law No. 28 of 2018 to also include bleeding conditions similar to haemophilia.

Law No. 41-2022 was declared void in March 2023.

Law No. 37 of 9 April 2020, which amends Law No. 180 of 27 July 1998, provides that any employee covered by Law No. 180 of 27 July 1998 who suffers (or is suspected to suffer) a disease that results in a state of emergency declared by the governor or the secretary of health:

- can use any paid leave available once the sick leave under Law No. 180 of 27 July 1998 has been exhausted; and
- if the employee continues to be sick, he or she will receive a special five days of emergency sick leave, once all other available leave has been exhausted.

Law No. 37 of 9 April 2020 also prohibits using the leave provided by law as a basis for disciplinary actions (eg, termination or suspension), or as criteria for evaluating employees for promotions or wage increases.

Leave of absence

24 In what circumstances may an employee take a leave of absence? What is the maximum duration of such leave and does an employee receive pay during the leave?

US federal leave laws (eg, the US federal Family and Medical Leave Act) apply in Puerto Rico.

Also, there are multiple types of leaves of absence or time off available in the private sector in Puerto Rico, including vacation and sick leave, under legislation, such as:

- Law No. 428 of 15 May 1950 (the Social Security for Chauffeurs Act);
- Law No. 138 of 26 June 1968, which created the Puerto Rico Automobile Accident Compensation Administration (ACAA);
- Law No. 139 of 26 June 1968 (the Non-Occupational Disability Benefits Act), as amended by Law No. 4 of 26 January 2017;
- Law No. 45 of 18 April 1935, which created the Puerto Rico State Insurance Fund Corporation;

- Law No. 3 of 13 March 1942 (the Working Mothers Protection Act), which covers maternity leave; and
- Law No. 427 of 16 December 2000 (the Breastfeeding Statute), which provides breaks at work for breastfeeding mothers.

There are many other local laws regarding leaves of absence, each with different durations and requirements (including eligibility). Leave for jury duty and leave for other reasons (eg, certain sports activities, testifying as a witness in a criminal case or renewing a driver's licence) are also available.

Aside from vacation and sick leave, the following Puerto Rico laws provide leaves of absence.

Working Mothers Protection Act

The Working Mothers Protection Act grants pregnant employees the right to enjoy paid maternity leave of four weeks before childbirth and four weeks after childbirth independent from any type of leave to which the pregnant employee may be entitled under other laws.

Maternity leave benefits must be paid in full at the time the employee commences her prenatal leave period.

In calculating maternity leave pay, the average salary received by the employee during the six months immediately preceding the commencement of leave is used as the basis for payment.

Law No. 54 of 10 March 2000 amended the Working Mothers Protection Act to extend maternity leave benefits to adoption.

Breastfeeding Statute

The Breastfeeding Statute requires that employers provide full-time employees (ie, those who work at least seven-and-a-half hours per day) who are nursing mothers the opportunity to breastfeed or express breast milk for one hour each day. This period can be broken into two 30-minute periods or three 20-minute periods.

Law No. 4 of 26 January 2017 extended the right to lactation breaks to part-time employees whose workday exceeds four hours. Their lactation break must be 30 minutes for each period of four consecutive hours of work.

In small businesses, lactation breaks must be half an hour each workday, which can be broken up into two 15-minute periods.

Social Security for Chauffeurs Act

The Social Security for Chauffeurs Act establishes a social security plan that provides sick, accident, death and other benefits to chauffeurs and other covered employees whose employers require or permit them to drive a motor vehicle in the performance of their work, as well as drivers who work for themselves in authorised public transportation.

The Social Security for Chauffeurs Act's leave requirements do not apply to executive, administrative or professional employees, as defined by Regulation 13 of the Puerto Rico Minimum Wage Board.

Besides payment of insurance, the Social Security for Chauffeurs Act provides reservation of employment and reinstatement rights, which requires an employer to reinstate an employee if:

- the employee requests reinstatement within 30 business days (almost one-and-a-half months) of the date on which the employee is discharged from medical treatment, provided that the request is made within one year of the date of commencement of the disability;
- 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.

ACAA

The ACAA is a government-owned corporation that provides compensation for medical and disability expenses resulting from traffic accidents in Puerto Rico.

The coverage offered by the ACAA is mandatory, but private insurance companies are allowed to provide supplemental policies.

Besides payment of medical or disability expenses, Law No. 138 of 26 June 1968 provides reservation of employment and reinstatement rights. The employer must reinstate the employee if:

- the employee requests reinstatement within 15 days of the date on which the employee is discharged from medical treatment, provided that the request is made within six months of the date of commencement of the disability;
- 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.

Non-Occupational Disability Benefits Act

The Non-Occupational Disability Benefits Act was specifically enacted for the benefit of employees who lose time away from work, and their wages, as a result of a non-occupational illness or accident. This Act does not cover wage loss from workers' compensation accidents or injuries, or accidents or injuries arising from automobile accidents, since other Puerto Rico government laws and programmes apply to such cases.

Employees pay 0.05 per cent of their wages (with the employer making a matching contribution), up to a maximum of US$9,000 per year, to the government Disability Benefits Fund from which benefits are paid to covered employees suffering from a temporary disability.

Besides payment of insurance benefits, the Non-Occupational Disability Benefits Act provides disabled employees with leaves of absence and reinstatement rights. Upon recovery from

a non-occupational disability, the employer must reinstate the employee if the employee requests reinstatement within 15 days of the date on which he or she is discharged from medical treatment, provided that the request is made:

- within 12 months of the date of commencement of the disability (or six months for employers that had 15 or fewer employees at the date of the accident or incapacitation);
- 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.

Puerto Rico State Insurance Fund Corporation

The Puerto Rico State Insurance Fund Corporation is the local workers' compensation agency. Besides payment of insurance benefits, including partial wage replacement payments, the law provides disabled employees with leaves of absence and reinstatement rights.

The employer must reinstate the employee if the employee requests reinstatement within 15 days of the date on which he or she is discharged from medical treatment, provided that the request is made within 12 months (not one year) of the date of commencement of the disability.

Law No. 45 of 18 April 1935, known as the Puerto Rico Compensation System for Work-Related Accidents Act, establishes that every employer must secure compulsory insurance to cover their employees' work-related accidents or illnesses. This insurance, which is entirely employer-funded, is administered and can be provided only by the State Insurance Fund Corporation.

Mandatory employee benefits

25 | What employee benefits are prescribed by law?

Such benefits include, among others, vacation time, sick leave, leaves of absence or time off (eg, maternity leave), and compensation for medical and disability expenses resulting from traffic accidents.

Further, employers are mandated by law to provide workers' compensation and unemployment insurance coverage.

Part-time and fixed-term employees

26 | Are there any special rules relating to part-time or fixed-term employees?

Temporary and fixed-term employees are not subject to Law No. 80 of 30 May 1976 on unjust dismissals, as amended by Law No. 4 of 26 January 2017.

Also, various laws provide different entitlements for part-time and full-time employees. For example, the amendments to the Breastfeeding Statute introduced by Law No. 4 of 26 January 2017 provide that if an employee works part-time (ie, less than seven-and-a-half hours per day) and the workday exceeds four hours, the employee is to be provided with

a lactation break of 30 minutes for each period of four consecutive hours of work. There are also specific vacation and sick leave accrual rates that apply to employees who work a certain number of hours.

Public disclosures

27 Must employers publish information on pay or other details about employees or the general workforce?

The US federal EEO–1 reporting requirements apply in Puerto Rico. US federal law applies in this area.

Law No. 16 of 8 March 2017 on equal pay in Puerto Rico prohibits gender discrimination in compensation. It also imposes prohibitions on an employer's ability to enquire about a job applicant's prior salary data, limits restrictions on employee wage discussions and inquiries, and imposes related civil damages and penalties.

POST-EMPLOYMENT RESTRICTIVE COVENANTS

Validity and enforceability

28 To what extent are post-termination covenants not to compete, solicit or deal valid and enforceable?

In *Arthur Young & Co v Vega III*, 136 DPR 157 (1994), as clarified in *PACIV, Inc v Perez Rivera*, 159 DPR 523 (2003), the Puerto Rico Supreme Court stated that, for a non-compete covenant to be enforceable, it must comply with the following general elements:

- it must be in writing and voluntary;
- the duration of the covenant should not exceed one year;
- adequate consideration is required, comprising that:
    - continued employment is not sufficient consideration; rather, the employee must receive additional consideration for agreeing to the new restrictive condition; and
    - employment is considered sufficient consideration for applicants;
- the restriction must be clearly necessary to protect the legitimate interests of the employer;
- the geographic area must be specified and limited to those needed to prevent true competition between the employer and the employee; and
- any client limitations must be specified and should be limited to those previously serviced by the employee.

Post-employment payments

29 Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?

Generally, no.

LIABILITY FOR ACTS OF EMPLOYEES

Extent of liability

30 In which circumstances may an employer be held liable for the acts or conduct of its employees?

A person is generally liable only for his or her own acts or omissions, except for instances of vicarious liability enumerated in the Puerto Rico Civil Code. Article 1803 of the Puerto Rico Civil Code provides that owners or directors of an establishment or enterprise are liable for any damages caused by their employees in the course of employment. Courts consider the following three elements in deciding whether to impose liability under the doctrine of *respondeat superior* consistent with Puerto Rico law:

- the employee's desire to serve, benefit or further his or her employer's business or interest;
- whether the act is reasonably related to the scope of the employment; and
- whether the agent has not been prompted by purely personal motives.

In *Vernet v Serrano-Torres*, 566 F3d 254, 261 (First Circuit 2009), the court stated that, among these elements:

> *The fundamental consideration for determination of an employer's liability is whether or not the employee's acts fall within the scope of his or her employment in the sense that they furthered a desire to serve and benefit the employer's interest, resulting in an economic benefit to the employer.*

TAXATION OF EMPLOYEES

Applicable taxes

31 What employment-related taxes are prescribed by law?

Employers in Puerto Rico are responsible for withholding contributions to the following from employees' wages:

- for income tax;
- taxes under the US Federal Insurance Contributions Act (ie, Social Security and Medicare taxes) and the US Federal Unemployment Tax Act;
- state unemployment tax;

- disability tax; and
- Puerto Rico's chauffeurs' social security and workers' compensation funds.

Puerto Rico employees are required to pay US federal income tax on income from federal sources outside of Puerto Rico; otherwise, they are exempt from US federal income taxes. Puerto Rico imposes a separate income tax in lieu of US federal income tax.

Law No. 4 of 26 January 2017 clarified that the severance payments under Law No. 80 of 30 May 1976 on unjust dismissals are only subject to deductions for Medicare and Social Security, not to US federal or local income taxes.

EMPLOYEE-CREATED IP AND CONFIDENTIAL BUSINESS INFORMATION

Ownership rights

32 Is there any legislation addressing the parties' rights with respect to employee inventions?

Employee inventions are handled under the federal legal framework concerning 'works made for hire' under the US federal Copyright Act.

Trade secrets and confidential information

33 Is there any legislation protecting trade secrets and other confidential business information?

The US model Uniform Trade Secrets Act was adopted by Puerto Rico as Law No. 80 of 3 June 2011 on industrial and trade secret protection. Under this statute, a person who misappropriates a commercial secret is liable for damages to the owner of the trade secret. Available relief includes money damages, injunctive relief and attorney fees.

DATA PROTECTION

Rules and employer obligations

34 Is there any legislation protecting employee privacy or personnel data? If so, what are an employer's obligations under the legislation?

The right to privacy is recognised under the Constitution of the Commonwealth of Puerto Rico and extends to private employers. For example, under articles 1, 8 and 16 of the Constitution, employers must keep the personnel files of employees confidential. As another example, fingerprints are protected by the Constitution's Bill of Rights as being information the disclosure or unjustified retention of which may be a violation of the employee's privacy.

Law No. 4 of 26 January 2017 enumerates certain rights conferred upon employees, including respect for dignity and protection of privacy, subject to the employer's legitimate interests in protecting its business, property and workplace or as provided by law.

Additionally, federal and local laws recognise the confidential nature of certain information gathered by businesses (eg, medical information). Depending on the nature of the information, particular degrees of confidentiality and reasonableness apply to the data.

Privacy notices

35 Do employers need to provide privacy notices or similar information notices to employees and candidates?

In the area of applicable notice obligations, US federal law applies. Under Puerto Rico local law, the obligation to provide a written notice arises in a variety of contexts.

Act No. 111 of 7 September 2005 (the Citizen Information on Data Banks Security Act) requires that every entity that owns or is the custodian of a database containing the personal information of citizens that are residents of Puerto Rico, or that provides access to such a database, notify citizens of any security breach in the system. Personal information encompasses an individual's:

- Social Security number;
- driver's licence number;
- voter's identification or other official identification;
- bank or financial account numbers of any type, with or without passwords or access codes that may have been assigned;
- usernames, and passwords or access codes to public or private information systems;
- medical information protected by the Health Insurance Portability and Accountability Act;
- tax information; and
- work-related evaluations.

In addition to the Citizen Information on Data Banks Security Act:

- the Puerto Rico Department of Consumer Affairs Regulation No. 7367 obligates entities to notify citizens of any security breach or irregularity when a database contains all or part of their personal information and the information is not protected by cryptographic code;
- constitutional case law requires employers to provide notice before implementing an employee surveillance programme; and
- Act No. 59 of 8 August 1997 on the regulation of controlled substances detection testing in the private work sector requires employers implementing a drug-testing programme to provide written notice containing specific information.

Employee data privacy rights

36 What data privacy rights can employees exercise against employers?

Under local law, privacy rights can be asserted in a variety of contexts.

Puerto Rico's Constitution guarantees an individual's right to privacy under sections 1 and 8 of article II. Specifically, section 8 states that 'every person has the right to the protection of the law against abusive attacks on his honour, reputation, and private or family life'. The

constitutional right to privacy operates *ex propio vigore* and may be enforced by an individual against his or her private employer without the need for state action. To prevail, the employee must present evidence of the employer's concrete actions that infringe upon his or her private or family life under circumstances where he or she had a legitimate expectation of privacy. Under case law that has developed in this area of constitutional law, an employer must generally provide prior notice to employees when implementing electronic surveillance systems.

Law No. 22 of 29 May 2013, which prohibits discrimination owing to sexual orientation and gender identity, requires employers to keep information about gender identity and sexual orientation confidential.

Under Act No. 83 of 1 August 2019, employers in Puerto Rico must also take steps to protect the identity of domestic violence victims who are at risk in the workplace.

Law No. 150-2019 on the protection of employee credit information prohibits employers from verifying or investigating credit history or credit reports concerning employees or candidates, or from obtaining or ordering credit reports from a credit agency. With some exceptions, the Law also prohibits employers from taking adverse employment actions based on credit history or information contained in a report.

Act No. 59 of 8 August 1997 requires employers who perform drug tests on job applicants and employees in the private sector to treat test results and related data confidentially.

Law No. 207 of 17 September 2006 prohibits employees' social security numbers:

- being displayed on:
    - identification cards;
    - any document of general circulation; or
    - in any place where the number would be visible to the public; and
- from inclusion in:
    - personnel directories; or
    - any list that is made available to persons who do not need to know or access them.

An employee can bring a cause of action for failure to follow the disclosure requirements of the Citizen Information on Data Banks Security Act.

Finally, Act No. 234 of 19 December 2014 requires private and governmental entities to destroy, dispose of, or otherwise make personal information unreadable or indecipherable.

BUSINESS TRANSFERS

Employee protections

37 Is there any legislation to protect employees in the event of a business transfer?

Law No. 80 of 30 May 1976 (the Unjust Dismissal Act), as amended by Law No. 4 of 26 January 2017, requires that termination of employment be for just cause or is accompanied by the payment of a statutory severance amount.

The Unjust Dismissal Act further provides that, in the case of a transfer of an ongoing business, if the new acquirer continues to use the services of the employees who were working with the former owner, those employees shall be credited with the time that they have worked in the business under the former owner for seniority and other purposes.

If the new acquirer chooses not to continue with the services of all or any of the employees and, hence, does not become their employer, the former employer shall be liable for the statutory severance and the purchaser shall retain the corresponding amount from the selling price stipulated concerning the business.

If the new owner discharges the employees without just cause after the transfer, the new owner shall be liable for the benefits to the employee laid off, and a lien will be established on the sold business to answer for the amount of the claim.

Law No. 4 of 26 January 2017 defines 'transfer of ongoing business' as an employer selling a substantial portion of passive or active assets of the business to another business, without interruption of operations for six months or more, after which the purchaser:

- continues operating the same type of business as the vendor in the same location or a different location but with the same equipment, machinery and inventory;
- continues to provide the same services as the vendor;
- retains the same or similar business name or marks as the vendor; and
- employs the majority of those employed by the vendor at the time of transfer for any time period up to six months following the transfer.

TERMINATION OF EMPLOYMENT

Grounds for termination

38 May an employer dismiss an employee for any reason or must there be 'cause'? How is cause defined under the applicable statute or regulation?

Law No. 80 of 30 May 1976 (the Unjust Dismissal Act), as amended by Law No. 4 of 26 January 2017, requires that termination is made for just cause or the payment of a statutory severance is made if not.

Termination is for just cause if it is not motivated by legally prohibited reasons or the product of the employer's caprice. The term 'just cause' is understood as reasons affecting the good and normal operation of the establishment, including, per the amendments under Law No. 4 of 26 January 2017 to the Unjust Dismissal Act, as follows:

- The employee engages in a pattern of improper or disorderly conduct. The term 'improper conduct' is defined as a voluntary infraction of the employer's norms or instructions that are not contrary to law; illegal or immoral acts; or acts or omissions that adversely and significantly impact the employer's legitimate interests or others' well-being, done in a premeditated, intentional or indifferent manner. The term 'disorderly conduct' is defined as a voluntary infraction that alters the peace, tranquillity, good order and respect that must exist in the workplace.
- The employee engages in a pattern of performance that is inefficient, unsatisfactory, poor, tardy or negligent, including:

    - failure to comply with the employer's norms and standards of quality and security;
    - low productivity;
    - showing a lack of competence or ability to perform the work at reasonable levels required by the employer; and
    - performing work that causes repeated complaints from the employer's clients.

- The employee repeatedly violates the reasonable rules and regulations established for the operation of the establishment, provided that a written copy thereof has been opportunely furnished to the employee.
- Full, temporary or partial closing of the operations of the establishment occurs.
- Technological or reorganisation changes, changes in style, design, or the nature of the product made or handled by the establishment, or changes in the services rendered to the public occur.
- Reductions in employment are made necessary by a reduction in the anticipated or prevailing volume of production, sales or profits at the time of the discharge or to increase the establishment's productivity or competitiveness.

If the employer relies on any of the last three causes based on business necessities, it must retain employees who have worked at the company for a longer period of time, provided that some positions are vacant or filled by employees who have worked at the company for a shorter period of time within their occupational classification (order of retention analysis), except in cases in which there is a reasonably clear or evident difference in favour of the capacity, productivity, performance, competency, efficiency or record of comparable employees (in which case, the employer may choose based on those criteria).

Under the Law No. 4 of 26 January 2017 amendments to the Unjust Dismissal Act, employers with multiple locations in Puerto Rico must generally consider the employees within the particular location that is to be impacted for the order of retention analysis. However, under these amendments, occupational classifications in other locations should be considered for the order of retention analysis if, during the year prior to the termination, the employees within the impacted occupational classification usually or regularly transferred from location to location and the employees are under direct common supervision concerning day-to-day personnel administration. The fact that the employees in the various locations are covered by common policies or participated in common benefits is irrelevant. Only the

locations that fit within these characteristics have to be considered, as opposed to all locations on the island.

The Unjust Dismissal Act also provides certain recall rights for six months following a group lay-off if the same or similar work is needed during that time.

Law No. 41-2022 amended some of the definitions of 'just cause' under the Unjust Dismissal Act; however, Law No. 41-2022 was declared void in March 2023.

Notice requirements

39 Must notice of termination be given prior to dismissal? May an employer provide pay in lieu of notice?

The US federal Worker Adjustment and Retraining Notification Act (WARN) applies in Puerto Rico to mass layoffs requiring advance notice under certain circumstances. Under WARN, pay in lieu of notice may be provided in certain circumstances. Puerto Rico does not have a local WARN statute.

Dismissal without notice

40 In which circumstances may an employer dismiss an employee without notice or payment in lieu of notice?

WARN applies in Puerto Rico, including its payment in lieu of notice provisions, which provide that an employer that violates the WARN notice requirement is liable to each affected employee for an amount equal to back pay and benefits for the period of violation up to 60 days.

Severance pay

41 Is there any legislation establishing the right to severance pay upon termination of employment? How is severance pay calculated?

Under the Unjust Dismissal Act, indefinite-term employees actually or constructively discharged without just cause are entitled to severance payments. Per the Law No. 4 of 26 January 2017 amendments to the Unjust Dismissal Act, for employees hired on or after 26 January 2017, severance pay is an amount equivalent to three months' salary plus an amount equivalent to two weeks' salary for each year of service. For employees hired on or after 26 January 2017, the severance is capped at nine months.

Employees hired before the effective date of Law No. 4 of 26 January 2017 are not subject to the cap, and severance pay is based on years of service and the individual's highest salary in the previous three years, as set out in the table below.

Years of service	Part A (months)	Part B (weeks per year of service)
Zero–5	2	1
5–15	3	2
15+	6	3

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Any voluntary payment made by the employer to the employee solely because of the termination of employment can be credited to the Unjust Dismissal Act's severance obligation.

Law No. 41-2022 amended the formula for severance under the Unjust Dismissal Act; however, Law No. 41-2022 was declared void in March 2023.

Procedure

42 | Are there any procedural requirements for dismissing an employee?

No prior government agency approval is required for termination.

Employee protections

43 | In what circumstances are employees protected from dismissal?

The Unjust Dismissal Act requires that termination of employment is justified by a just cause, as defined by law, or the payment of the statutory severance if there is no just cause.

Various federal and local laws prohibit discriminatory or retaliatory terminations, or termination based on whistle-blowing or other protected activities. Also, various local leave laws provide for the reservation of employment during covered leave periods.

Mass terminations and collective dismissals

44 | Are there special rules for mass terminations or collective dismissals?

WARN applies in Puerto Rico.

Further, if the employer relies on a business necessity just cause as defined by the Unjust Dismissal Act, as amended by Law No. 4 of 26 January 2017, it must retain employees who have worked at the company for a longer period of time, provided that some positions are vacant or filled by employees who have worked at the company for a shorter period of time within their occupational classification (order of retention analysis), except in cases in which there is a reasonably clear or evident difference in favour of the capacity, productivity, performance, competency, efficiency or record of comparable employees (in which case, the employer may choose based on those criteria).

Per the Law No. 4 of 2017 amendments to the Unjust Dismissal Act, employers with multiple locations in Puerto Rico must generally consider the employees within the particular location that is to be impacted for the order of retention analysis. However, under these amendments, occupational classifications in other locations should be considered for the order of retention analysis if, during the year prior to the termination, the employees within the impacted occupational classification transferred usually or regularly from location to location and the employees are under direct common supervision concerning day-to-day personnel administration. Only the locations that fit within these characteristics have to be considered, as opposed to all locations on the island.

Law No. 41-2022 amended the provisions regarding which locations or employees are to be considered for the order of retention analysis under the Unjust Dismissal Act; however, Law No. 41-2022 was declared void in March 2023.

The Unjust Dismissal Act also provides certain recall rights for six months following a group lay-off if the same or similar work is needed during that time.

Class and collective actions

45 Are class or collective actions allowed or may employees only assert labour and employment claims on an individual basis?

Class and collective (representative) actions are allowed in Puerto Rico.

Mandatory retirement age

46 Does the law in your jurisdiction allow employers to impose a mandatory retirement age? If so, at what age and under what limitations?

There are no Puerto Rico-specific statutes regulating employers' decisions to impose a mandatory retirement age. With few exceptions, the US federal Age Discrimination in Employment Act, which applies in Puerto Rico, specifically prohibits private-sector employers from imposing mandatory retirement on employees over the age of 40 if the retirement is based on the employee's age.

DISPUTE RESOLUTION

Arbitration

47 May the parties agree to private arbitration of employment disputes?

Yes.

Employee waiver of rights

48 May an employee agree to waive statutory and contractual rights to potential employment claims?

Generally, employees may release employment claims for valid consideration, unless otherwise prohibited by law. US federal law concerning valid releases of US federal Age Discrimination in Employment Act and Fair Labor Standards Act claims applies.

Law No. 80 of 30 May 1976 (the Unjust Dismissal Act), as amended by Law No. 4 of 26 January 2017, expressly prohibits agreements in which an employee prospectively waives the Unjust Dismissal Act's severance entitlements. However, under the Law No. 4 of 26 January 2017 amendments to the Unjust Dismissal Act, once a discharge or notification of an intent to discharge has occurred, there can be a compromise as to the Unjust Dismissal Act severance whenever all the requirements for a valid settlement agreement are present.

Limitation period

49 What are the limitation periods for bringing employment claims?

Different statutes of limitations govern the different local employment statutes.

Under Law No. 4 of 26 January 2017, actions arising from an employment contract or the benefits that arise from an employment contract have a one-year statute of limitations, unless otherwise provided in a special law or the employment contract. Causes of action that arose before Law No. 4 of 26 January 2017 took effect have statutes of limitations prescribed under prior applicable law.

Claims for unjust termination under the Unjust Dismissal Act that arose before Law No. 4 of 26 January 2017 took effect are subject to a three-year statute of limitations and claims that arose once this Law took effect have a one-year statute of limitations.

The statute of limitations for wage and hour claims that arose before Law No. 4 of 26 January 2017 took effect is three years, and claims that arose once this Law took effect have a one-year statute of limitations, counted from the end of the employee's employment.

The statute of limitations for retaliation claims under Law No. 115 of 1991 is three years. Other employment claims have different limitation periods.

Law No. 41-2022 repealed the one-year statute of limitations set forth in Law No. 4 of 26 January 2017 for certain employment-related claims to provide for a three-year statute of limitations for employment-related claims including breach of contract, wage and hour, unjust dismissal and discrimination claims. However, Law No. 41-2022 was declared void in March 2023.

UPDATE AND TRENDS

Key developments and emerging trends

50 Are there any emerging trends or hot topics in labour and employment regulation in your jurisdiction? Are there current proposals to change the legislation?

Law No. 41-2022 amendments to Law No. 4 of 2017

Law No. 41-2022 amended and repealed certain sections of Law No. 4 of 26 January 2017:

- to restore and broaden the labour rights for workers in the private sphere; and
- to have the Legislative Assembly inquire into prevailing work conditions and propose new protections for members of the working class.

However, Law No. 41-2022 was declared void in March 2023. As litigation continues (including a pending appeal of the decision) and bills have been introduced to restore the

amendments introduced by Law No. 41-2022, employers in Puerto Rico must pay close attention to further legal developments.

Amendments to Law No. 17 of 22 April 1958

Law No. 17 of 22 April 1958 on sexual harassment in employment was amended by Law No. 82-2022 to expand its coverage to interns, require employers to adopt a protocol for reporting and investigating sexual harassment concerns, and directed the Puerto Rico Department of Labor and Human Resources to provide a model protocol. The Puerto Rico Department of Labor and Human Resources issued its Model Protocol in October 2022, including such topics as its legal basis, applicability, definitions, and complaint and investigation processes.

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