

Puerto Rico Does Not Have to Comply with DOL's Final Rule Amending 'White Collar' Overtime Regulations, For Now

By Juan Felipe Santos and Jeffrey W. Brecher

June 30, 2016

The U.S. Senate has approved the controversial "Puerto Rico Oversight, Management, and Economic Stability Act" ("PROMESA"), [H.R. 5278](#), which will establish an Oversight Board to assist the Government of Puerto Rico in managing its public finances and for other purposes. The Senate acted on June 29, 2016. The U.S. House of Representatives approved the measure on May 18, 2016. President Barack Obama signed the bill on June 30, and the law is effective immediately.

PROMESA, among other things, addresses the applicability to Puerto Rico of the U.S. Department of Labor's Final Rule updating regulations under the Fair Labor Standards Act ("FLSA") governing overtime exemptions for executive, administrative, and professional employees (commonly known as the "white collar exemptions" or "EAP exemptions"). The changes are scheduled to go into effect on December 1, 2016. Under Section 404 of PROMESA, the Final Rule will have no force or effect in Puerto Rico until:

1. The Comptroller General of the United States completes an assessment and transmits a report to Congress assessing the impact of applying the regulations to Puerto Rico, taking into consideration regional, metropolitan, and non-metropolitan salary and cost-of-living differences. The report should be submitted not later than two years after the enactment of PROMESA.
2. The Secretary of Labor, taking into account the assessment and report of the Comptroller General, provides a written determination to Congress that applying such rule to Puerto Rico would not have a negative impact on the economy of Puerto Rico.

Based on the above, the Final Rule likely will not apply to Puerto Rico for at least the next two years, until these requirements are met.

Section 403 of PROMESA also amends the FLSA to allow employers in Puerto Rico to pay employees aged 25 or younger, who are employed initially after the enactment of PROMESA, a wage which is not less than \$4.25 an hour. But an employer may not take any action to displace employees (including partial displacements, such as reduction in hours, wages, or employment benefits) for purposes of hiring individuals at the \$4.25 rate. Any employer disregarding this prohibition shall be considered to have violated the non-retaliatory provisions found in section 15(a)(3) of the FLSA.

The San Juan, Puerto Rico, office of Jackson Lewis will continue to monitor PROMESA and report on any developments and implications on Puerto Rico wage and hour laws.

For further information on the Final Rule or whether the same will be applicable in Puerto Rico, please contact the Jackson Lewis attorney with whom you regularly work.

©2020 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on labor and employment law since 1958, Jackson Lewis P.C.'s 950+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help

Meet the Authors



[Juan Felipe Santos](#)

Office Managing Principal and Office
Litigation Manager
San Juan 787-522-7315
Email



[Jeffrey W. Brecher](#)

Principal
New York Metro
Long Island 631-247-4652
Email

employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged, stable and diverse, and share our clients' goals to emphasize inclusivity and respect for the contribution of every employee. For more information, visit <https://www.jacksonlewis.com>.

©2020 Jackson Lewis P.C. All rights reserved. Attorney Advertising. Prior results do not guarantee a similar outcome. No client-lawyer relationship has been established by the posting or viewing of information on this website.

*The National Operations Center serves as the firm's central administration hub and houses the firm's Facilities, Finance, Human Resources and Technology departments.