

Puerto Rico Labor Department Updates Regulations on Payment of Annual (Christmas) Bonus

By Juan Felipe Santos and Maralyssa Álvarez-Sánchez

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Employers in Puerto Rico must comply with updated regulations on the payment of the generally required annual bonus to eligible employees. The Puerto Rico Department of Labor (DOL) updated the regulations, effective October 18, 2017, following legislation adopted early in the year.

Under Puerto Rico Act No. 148 of 1969, employers in Puerto Rico are generally required to pay eligible employees an annual bonus, referred to as the “Christmas” bonus because it must be paid between November 15 and December 15 of each year.

The 2017 Employment Reform amended the annual bonus law to change eligibility requirements for employees hired after its enactment, among other changes. (For more on the Reform, see our article, [Governor Signs Puerto Rico Employment Law Reform](#).)

Eligible Employees and Amount

Eligibility for the annual bonus is determined by all hours effectively worked by an employee for the same employer between October 1 of the previous year and September 30 of the bonus year.

Employees hired on or after January 26, 2017, must work at least 1,350 hours during the applicable period. Employees hired before this date are grandfathered into the previous threshold of 700 hours (100 hours for dock workers).

Former employees who are not employed at the time of the bonus payment, but who worked the requisite number of hours, are entitled to receive the annual bonus. Upon termination, employers must advise these employees as to the date and form of payment of the bonus. The payment can be delivered in person, by mail, electronic means, or any other form agreed upon with the employee. If an employee cannot be located to deliver payment, the amount must be deposited with the DOL within 15 days of the statutory deadline for payment.

The amount and formula of the bonus will depend on the employer’s number of employees and hire date:

Employees Hired Before January 26, 2017

Number of Employees	Amount – percentage of up to first \$10,000 of salary
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15 employees or less	3% (no more than \$300)
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More than 15 employees	6% (no more than \$600)
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During an employee’s first year of employment, they are entitled only to 50% of the bonus provided by law.

Employees Hired On or After January 26, 2017

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Number of employees during more than 26 weeks of the bonus period	Amount - Percentage of total salary
20 employees or less	2% up to a maximum bonus of \$300
More than 20 employees	2% up to a maximum bonus of \$600

Offset for “Additional Voluntary Compensation”

The bonus law states that *“any other bonus previously paid during the year for any reason”* can be used to offset the annual bonus, as long as notice is provided to the employee. The updated regulations go further. They provide that, in order to offset the bonus, the creditable amount has to be “additional voluntary compensation.” They do not define this term beyond stating that the “additional voluntary compensation” cannot have been negotiated between the employee and employer as a salary condition. They further require that notice of the intent to offset be provided to the employee in writing within five business days of payment of the creditable amount.

Exemption from Payment

The law provides an exemption for payment (or payment of less than the statutory amount) for employers whose operations in Puerto Rico have no profits or when such profits are insufficient to cover total payment of the annual bonus. In such cases, however, the employer must notify the DOL to that effect by November 30. The notice must include relevant financial documents, including a profit-and-loss statement certified by a CPA admitted to practice in Puerto Rico. This notice is not required when employees are covered by a collective bargaining agreement. In such cases, payment of the bonus is subject to negotiation with the union.

Jackson Lewis attorneys are available to assist employers and answer inquiries regarding this and other workplace developments.

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