

# Puerto Rico Secretary of Labor Issues Opinion on Employer Obligations during COVID-19 Emergency

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The Puerto Rico Secretary of Labor and Human Resources, Hon. Briseida Torres-Reyes, has issued Opinion No. 2020-01 on the applicable legal provisions and measures related to the employer-employee relationship in light of the emergency provoked by the coronavirus (COVID-19). The Opinion was issued only in Spanish.

Highlights include:

- **Obligation to maintain a secure and healthy work environment**

The Opinion reiterates the duty that the Puerto Rico Constitution and federal and local laws impose on employers of securing all employees against risks to their health or personal integrity at the workplace. It also reiterates all employers' duty to complying with Occupational Safety and Health Administration (OSHA) provisions applicable to particular industries regarding personal protective gear. Finally, the Secretary encourages employers to publish or add to their policies the health advice given by the pertinent authorities, such as the Centers for Disease Control and Prevention (CDC), World Health Organization (WHO), and Department of Health Puerto Rico.

- **Measures that employers can implement due to the emergency**

Employers should implement precautionary measure and prepare a plan to avoid the spread of COVID-19. During the pandemic, employers may require employees not to report to work if they have shown any symptoms or has been under risk of contagion. Since there is officially a pandemic, the provisions under the Americans with Disabilities Act has become more flexible. As a result, employers can measure body temperature of employees and request medical certificates before an employee can return to work for absences related to symptoms associated with COVID-19. They can ask employees whether they have or are experiencing symptoms related to the virus, as long as the information is kept confidential. If necessary and feasible, employers are encouraged to implement remote work policies, flexible work schedules, or rotating shifts to promote a less crowded workplace.

- **Requests employees can make during the emergency**

There are alternatives for employees affected by COVID-19, such as flexible work schedules, reductions in work shifts, and changes to the place of work or make-up time, as established in Article 8 of Act No. 379 of May 15, 1948, as amended, and Article X of Regulation No. 9017 of April 4, 2018 of the Puerto Rico Department of Labor.

Employers should respond to these requests in the manner required by the applicable laws. The Secretary advises employers to pay special attention to these requests and to evaluate them considering the current special circumstances. Of course, employers cannot retaliate, terminate, suspend, or in any way affect the terms and conditions of employment of employees who request, under the applicable laws, modification of work schedule, amount of hours, or place of work.

- **Leaves and benefits available for employees affected by COVID-19**

Non-exempt employees or those who regularly are remunerated based on hours worked are covered by the provisions of Act No. 180 of July 27, 1998, as amended. Article 6 of this statute regulates vacation and sick leaves.

The purpose of sick leave is to protect employees against loss of salaries because they need to be absent due to a health condition. Leave under this statute is available when the employee is sick, disabled, or exposed to a contagious disease that requires them to be absent from work to protect their

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health and that of other employees. Sick leave may be used for preventive, routine medical visits or for diagnosing health conditions. The Secretary believes that “employees have at their disposal the use of sick leave to attend any meritorious absence related to COVID-19.” The justified use of sick leave cannot be used as a criterion for evaluating employee efficiency.

Private sector employees who work for employers with more than 15 employees can use up five accrued days of sick leave, as long as they maintain a balance of five days, to attend to the care and attention due to illness of their children, daughters, spouse, mother or father, and minors, elderly, or disabled persons over whom they have legal custody or guardianship.

On the other hand, employees also can request vacation leave for situations that they deem convenient, which will be granted by the employer at its discretion. In addition, the employer may provide any other type of leave that it has adopted in its personnel policies. Finally, the Secretary encourages employers to provide adequate tools so employees can attend to medical situations.

Exempt employees, or those classified as executives, professionals, and administrators under the Fair Labor Standards Act and Regulation No. 13 (Fifth Revision - 2005) of the Department of Labor and Human Resources, are excluded from the employment legislation related to vacation and sick leave. Therefore, the rights of these employees are those that arise from the Employee Manual, employment contract, or agreements agreed with their employer. The Secretary encourages employers to grant applicable sick leave and, if that is exhausted, apply any other leave provided under their employment policies.

#### • Additional Benefits

Exempt and non-exempt employees who suffer from a serious catastrophic illness can resort to the special paid leave that provides up to six working days per year under 29 L.P.R.A. § 508 et seq. In addition, the Family and Medical Leave Act (FMLA) allows an employee to be absent for 12 weeks within 12 months, without pay and with job protection for various reasons, such as a serious health condition of the employee or immediate family (such as children, spouse, and parents), as defined by the law. The FMLA applies to employers with at least 50 employees and to employees who have worked at least one year for the employer and at least 1,250 hours during the past year.

If an employee needs to be absent from work due to COVID-19, after having exhausted the applicable leaves, they may request the benefits of Temporary Non-Occupational Disability Insurance (SINOT). SINOT provides benefits to insured workers who have lost their wages as a result of a disability caused by a non-employment-related illness or injury.

On the other hand, if it is established that a particular exposure or contagion of COVID-19 occurs in the workplace, the employee could obtain certain guarantees and benefits under the Workmen's Compensation Act, Act No. 45 of April 18, 1935, as amended.

Finally, if the employer is forced to close totally or partially due to COVID-19, an employee may be eligible for compensation under the Unemployment Insurance, pursuant to Act No. 74 of June 21, 1956, as amended.

Jackson Lewis attorneys and the dedicated [COVID-19 Task Force](#) are ready to assist with any questions.

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