

New Law Regulates Remote Work, Promotes Establishment of Airline Home Bases in Puerto Rico

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Meet the Authors



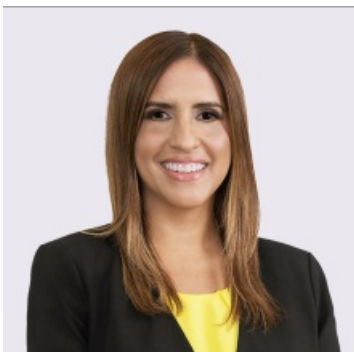
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The “Law to Facilitate the Implementation of Remote Work in the Private Sector and to Incentivize the Establishment of Airline Home Bases in Puerto Rico” regulates the employment relation of employees who work remotely from Puerto Rico. Governor Pedro Pierluisi signed Act 27-2024 into law on Jan. 17, 2024, and it became effective immediately.

Remote Employee Rule

The legislation expands on the provisions of Act 52-2022, which amended the Puerto Rico Internal Revenue Code (PR Code) to provide that, for taxable years after Dec. 31, 2021, businesses with employees working remotely from Puerto Rico were not deemed “engaged in business in PR” if certain conditions were met (the “remote employee rule”). Employers who comply with the remote employee rule do not have to withhold income taxes under the PR Code on salary payments made to employees working remotely. Under Act 52, the remote employee must make estimated tax payments on a quarterly basis.

New Law

Act 52-2022, however, was silent on the employment laws that would apply to employees working remotely. Act 27-2024 fills in this gap.

In passing this law, the legislature recognized that with the COVID-19 pandemic, many employers implemented alternative work structures, including remote work. Nonetheless, a lack of guidelines or rules regarding remote work deterred U.S. and international employers from allowing employees to work remotely from Puerto Rico. Thus, the new law aims to facilitate and encourage remote work in Puerto Rico.

It also seeks to incentivize airlines to establish hubs in Puerto Rico to create new jobs, promote tourism, and increase economic activity. To further these goals, Act 27-2024 provides that certain remote employees of covered employers and employees of airlines with home bases in Puerto Rico covered by a collective bargaining agreement are not subject to Puerto Rico employment laws.

Key Provisions

Act 27-2024 provides that employment relationships involving remote work will be governed exclusively by what is agreed in the employment contract when the relationship complies with the following:

1. The employee is classified as an executive, administrator, or professional under the Fair Labor Standards Act and regulations of the Puerto Rico Department of Labor and Human Resources;
2. The employee is domiciled in Puerto Rico;
3. The employer is covered by Act 27-2024; and

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4. The employee performs the work remotely.

Accordingly, these employment relationships are excluded from local labor laws, unless expressly provided otherwise. Importantly, the employer must provide equal or superior coverage than that provided under local laws regarding certain benefits, including workers' compensation (Act 45-1935) and nonoccupational insurance (Act 139-1968). Moreover, the employer must comply with local unemployment laws, except where the employee may apply for the benefit in another jurisdiction.

Act 27-2024 also provides:

In cases where a *non-domiciled employee voluntarily decides* to relocate to Puerto Rico to work remotely for an employer covered by this Act, the employer will be exempt from complying with all local labor laws; including benefits, obligations, insurance, and any other provisions applicable to such employment relationship in Puerto Rico. This employment relationship shall be governed solely by what is agreed in the employment contract or, in the absence of an agreement, by the applicable law of the jurisdiction where the employee is domiciled. The provisions of this Article *shall cease when the employee becomes domiciled in Puerto Rico* after the employer's consent to this determination, in which case the employment relationship shall be in accordance with Article 4 of this Law.

The new law further confirms that an employer covered by the statute is one that is not engaged in business in Puerto Rico as the term is defined under the PR Code and as provided by Act 52-2022. An employer is not deemed to be engaged in business in Puerto Rico if:

1. It does not have an office or a fixed place of business in Puerto Rico at any time during the taxable year;
2. It does not have an "economic nexus" with Puerto Rico at any time during the taxable year (there is no "economic nexus" even if the office at the employee's home is necessary, there is a business purpose for allowing the use of a home as an office, the remote employee must carry out some work-related duties from an employer's location, and the employer reimburses the employee working remotely for some home office expenses);
3. It is not considered a merchant under the sales and use tax provisions of the PR Code;
4. The employee working remotely is not an officer, director, or controlling shareholder of the taxpayer;
5. The services performed by the employee working remotely are rendered for the benefit of clients or businesses of the taxpayer that have no nexus with Puerto Rico; and
6. The taxpayer reports the income paid to the employee working remotely in an IRS W-2 Form or counterpart W-2 form in Puerto Rico.

Airline Industries

Finally, albeit unrelated to remote work, Act 27-2024 provides benefits aimed at attracting

airlines to establish home bases or hubs in Puerto Rico by establishing:

Employees who are covered by a collective bargaining agreement of airlines that establish air bases in Puerto Rico as of the effective date of this Act are excluded from the labor protection legislation in Puerto Rico. The terms and conditions of employment of these unionized employees will be governed exclusively by the provisions of their collective bargaining agreement.

This last provision is not limited to covered employers as defined by the statute nor does it require that employees work remotely.

The Puerto Rico Department of Labor is in charge of providing advice to employers and employees about the provisions of the new statute.

Please contact a Jackson Lewis attorney with any questions.

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