

Executive order limits access to federal licenses

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The federal government approved two special sick leave to ensure continuity of wages, but the closing order decreed two weeks ago by Governor Wanda Vázquez Garced to deal with the coronavirus (Covid-19) limits the access of Puerto Rican workers to the help.

The Families First Coronavirus Act —approved by US President Donald Trump— requires companies with fewer than 500 employees to comply with two paid sick leave that will be active until the end of the year, but applies only to companies that close after April first.

"The employees of the employers who closed in response to the executive order - which are mostly those with less than 500 employees - cannot use the licenses to economically compensate their absences," explained Juan Felipe Santos, an expert in federal labor law. , to **EL VOCERO** .

Santos emphasized that the legislation applies equally to workers in the United States, Puerto Rico and other territories, but stressed that its application is not retroactive. "This will only apply to employers who are operating as of April 1 and to employees who are actively working," he said.

In mid-March, Vázquez Garced ordered the commercial stoppage of any business or company that did not offer an essential service, which means that these businesses - which are mostly small and medium-sized companies (SMEs) with less than 500 employees - do not come obliged by law to meet this salary burden.

According to data from the Department of Development and Commerce (DDEC), SMEs constitute 95% of the 43 thousand companies or private businesses in Puerto Rico and generate more than half of the jobs in the private sector. The statute leaves most of these employees unprotected.

“There was a very big confusion when the law was passed because the guidelines were not ready and many thought that it would be salvation and that the absences would be covered by licenses, but the reality is that this is not the case. Now, this does not mean that it does not apply to Puerto Rico, ”said the lawyer.

Given the situation, the secretary of the Department of Labor and Human Resources (DTRH), Briseida Torres, sent a letter to the federal Department of Labor to review the applicability guidelines. As he understands, as they provide, they prevent the welfare of Puerto Rican workers from being promoted.

“We are surprised by the new restrictive vision of the federal government, which punishes Puerto Rican employees and Puerto Rico for taking the proactive measures necessary to prevent the spread of the coronavirus among the population. This determination weakens the recovery and economic sustainability capacity of Puerto Rican employees in the face of the current emergency, ”said Torres.

For his part, Santos added that the regulations have not yet been published, although they must be ready on or before 15 days from the approval of the statute. He estimates that the guide is ready no later than this week and other questions that still remain are clarified.

Scope of licenses

The Families First Coronavirus Act amends the Family and Medical Leave Act (FMLA) and the Fair Labor Standards Act (FLSA), which determine the compensation that employees can receive in established illness situations and applies to employees who have worked at least 30 days consecutive with the same employer.

The law adds the Emergency Paid Sick Act, which seeks to protect employees who cannot work in person or remotely due to reasons related to the coronavirus, among them a contagion, a preventive quarantine, a decreed closure or the care of their children. .

With this provision, full-time employees who do qualify can receive up to 80 hours of paid leave in the two-week period. Part-time employees will receive payment for two weeks of work that will be averaged based on hours worked in the past six months.

Starting in April, if the license is requested for isolation ordered by the government, quarantine recommended by a doctor or because the person has symptoms of coronavirus and is waiting for a diagnosis, the pay is based on 100% of the salary, up to a maximum of \$ 511 per day and \$ 5,110 in the aggregate.

However, if requested to care for a child whose school has been closed or another affected family member, the employee may receive two thirds of his salary with a maximum of \$ 200 per day and \$ 2,000 in aggregate.

In addition, the statute establishes the extension of 10 additional weeks of paid family and medical emergency leave for employees who need it, because they are taking care of their sons or daughters, whose study or care centers remain closed due to related situations. to the Covid-19.

The first ten days of this leave are unpaid, but then the employee is entitled to receive two thirds of his regular salary with a maximum of \$ 200 per day and \$ 10,000 for the duration of the leave.

It is not the same as unemployment

The lawyer also pointed out that if the company remains open - as in the cases of supermarkets, pharmacies and hotels - but the employee was laid off as a result of the crisis, he does not qualify for either of the two licenses.

"If the employer - despite operating - is not generating and told the employee that he has to stay at his house until further notice because he cannot pay him, the worker is not applicable for the licenses. This is a candidate for unemployment benefits offered by the DTRH, "said Santos.

SMEs could be exonerated

On the other hand, Santos explained that companies that can meet the payments of these licenses will receive tax incentives in exchange to alleviate the economic burden that may represent them.

Also, the expert noted that SMEs have an obligation to comply with all provisions. However, they may only be exempt from applying for childcare licenses if they demonstrate that complying with this provision may render their business unfeasible and affect their finances.

Christian Ramos, THE SPEAKER