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Opinions

Vindicated the Labor Reform of 2017

The former Secretary of Labor addresses Judge Laura Taylor Swain's determination to declare the amendments to the Labor Reform null and void.

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One of the first structural reforms that was carried out in the four-year period from 2017 to 2021 was Law 4-2017, colloquially known as the 2017 Labor Reform. Taking into consideration economic studies by renowned economists and measures carried out in other jurisdictions , that reform amended more than a dozen labor laws, modernized the regulatory scheme of employment law in Puerto Rico, and incorporated new rights. After 5 years of approval, the results of the 2017 Labor Reform were undeniable: accordin approximately 110,000 additional people were working on t



However, in June of last year, Law 42-2022 was promulgated. That law introduced some amendments to the 2017 Labor Reform. The reasons that the Executive and the Legislative Assembly had for approving those amendments were never clear. But after the approval of the PROMESA Law, the Government can no longer fall into the past practices of blindly legislating and “waiting to see” what the results of a new law will be. Therefore, they would have to explain to the Fiscal Oversight Board the purposes of Law 42, with accurate data and without speculation.

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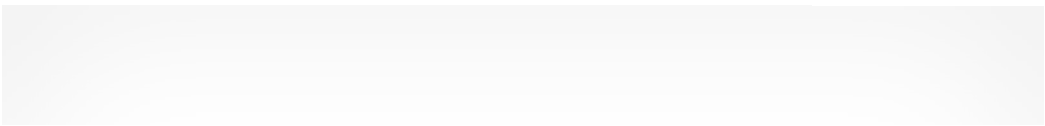
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Before the Governor signed Law 42, the Fiscal Oversight Board had notified the Governor and the Legislature that that legislation was materially inconsistent with the Government's Fiscal Plan. The reason was simple: the certified Fiscal Plan clearly stated that the Government could not pass legislation rescinding the 2017 Labor Reform. Despite that clear mandate, the Government of Puerto Rico still had a chance under Section 204 of the PROMESA Act. of trying to convince the Junta that Law 42 was salvageable. To do this, the Government had to demonstrate that the amendments to the labor reform would not have a negative impact on the economic development of Puerto Rico. The government never did.

All this saga came to an end on Friday, March 3. In a clear and forceful Opinion, Judge Swain sided with the Fiscal Oversight Board and declared Law 42 null and void. In legal terms, this means that Law 42 never existed. Therefore, as of that decision, the 2017 Labor Reform, in its entirety, was once again in force in Puerto Rico.

The arguments outlined by the Government regarding the need to “wait and see” what the results of Law 42 were were dispatched by Judge Swain. In this regard, Judge Swain wrote that “[t]he Governor's arguments that the fiscal impact analyzes [of Law 42] are impossible to obtain, and his suggestion that the Law remain in force while the Board and the Government 'wait and see' their impact do not meet the PROMESA requirements, and are useless”. What is more, the Judge concluded her Opinion with a direct order to the Governor and any other Government official: “Law 41, and any action taken to implement it, are null and void ab initio. Besides, the Court permanently prohibits the Governor or other persons who are in active concentration or participation with the Governor, from helping private persons to enforce Law 41”. With those words, Law 41 disappeared from the books, as if it had never existed.

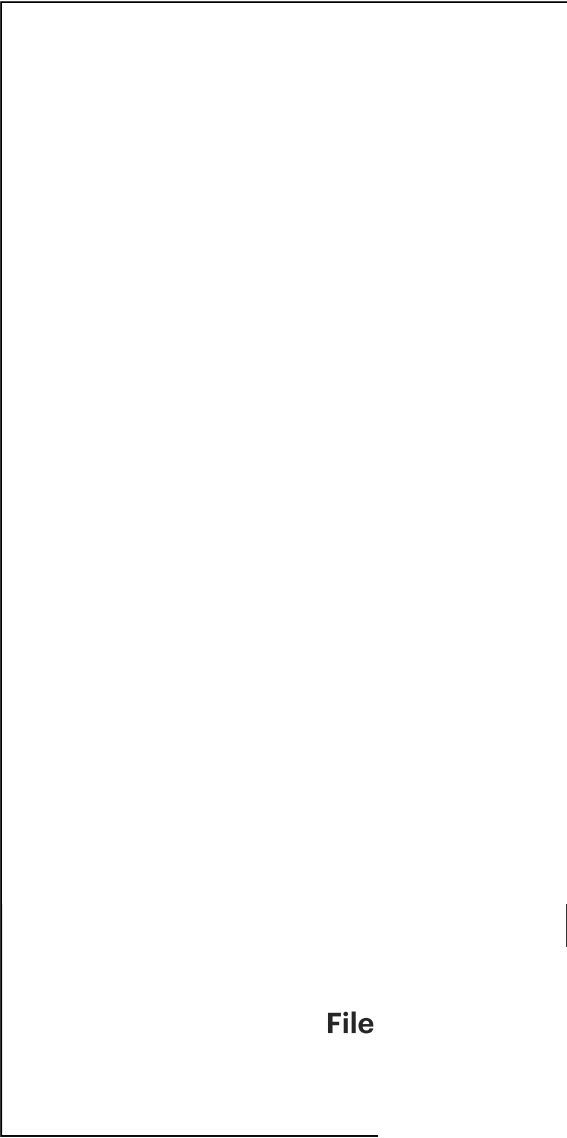


Although after 6 years of the PROMESA Act it might be a cliché to describe an opinion of Judge Swain as “historic”, the reality is that the result of the Law 41 litigation is amazing. For the first time, the federal court in charge of Puerto Rico's bankruptcy makes it clear that the Fiscal Oversight Board has the power to request that laws that exclusively affect the private sector be annulled. Furthermore, it is the first time since the passage of the PROMESA Act that a decision by Judge Swain has the effect of “reviving” a previous law. Again, as of last Friday, the 2017 Labor Reform is in full effect.

The total annulment of Law 41 undoubtedly has effects on the employer sector in Puerto Rico. Preliminarily, this impact can be divided into two groups: on the one hand, those employers who introduced changes in their manuals and internal policies to incorporate the provisions of Law 41, and, on the other, those who did not and only made technological changes. to meet statutory minimums. The first group must analyze whether they want to revert to the previous rule of law and, if they want to, they must amend their internal policies. Otherwise, despite the elimination of Law 41, they are exposed to arguments that contractually they are still tied to the amendments introduced by that statute. In the same way, the second group must analyze whether they want to revert to the 2017 Labor Reform,

Indeed, the full effects of Judge Swain's decision remain to be seen. But there should be no doubt about the impact of the Court Order on the Government: it does not matter if a law affects only the private sector, the days of passing laws without studies and analysis are long gone. The repercussions of proceeding in this way are dire for our jurisdiction. Take the example of labor reforms: in less than a year, the rules of the game were changed three times for the entire private sector in Puerto Rico. That instability is totally unnecessary and harmful to our future economic development. Let's hope it doesn't happen again.

Carlos J. Saavedra



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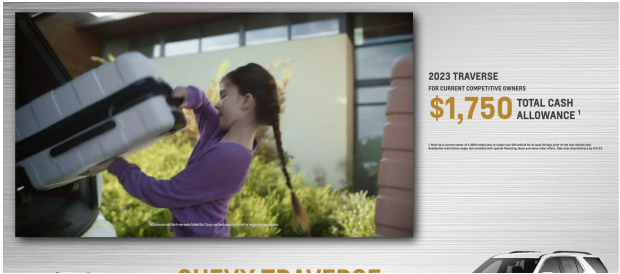
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