

## Deadline to Request Exemption from Christmas Bonus Payment is November 30, 2017

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### PRACTICE AREAS

- Labor & Employment

### An McV Labor & Employment Law Alert November 16, 2017

P.R. Act 148 of June 30, 1969, as amended, and its implementing Regulation, which was amended on September 18, 2017, require employers to pay an annual bonus (“Christmas Bonus”) to employees who have worked 700 hours (or 1,350 hours for employees hired on or after January 26, 2017) during the period between October 1 of the previous year and September 30 of the year in which the Christmas Bonus will be paid. The payment must generally be made between November 15 and December 15.

Act 148 provides that the employer may request an exemption from payment of the Christmas Bonus if the total gross amount that would be payable to its employees exceeds 15% of its total net income for the mentioned period. An employer must notify the P.R. Department of Labor (“P.R.D.O.L.”) **on or before November 30, 2017** if it will not be able to pay the bonus, in full or partially, because doing so would exceed 15% of its net income. Under the Regulation, “net income” must exclude losses from previous years, include any extraordinary income and losses, and is limited to income in its Puerto Rico operations.

To request the exemption, an employer must send a letter to the P.R. Secretary of Labor or the Director of the Bureau of Labor Standards specifying the reason for the exemption, and file a form containing the following information: (1) the employer’s legal and commercial names, (2) physical and mailing address, (3) phone and fax numbers, (4) e-mail address, (5) name of the employer’s president or owner, (6) authorized representative, (7) authorized representative’s phone number, (8) amount of employees hired before and after January 26, 2017, (8) employer’s Social Security number, (9) nature of business, and (10) if there is a collective bargaining agreement (“CBA”), the union’s number and classification of covered employees.

Most important, the employer must enclose original financial statements and their notes for the period between October 1, 2016 and September 30, 2017, compiled, revised and audited by a Certified Public Accountant, with a valid license issued by the Puerto Rico Accounting Board. If the employer’s fiscal year does not end on September 30, the employer may submit, in the alternative,

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financial statements corresponding to its fiscal year, which must also be compiled, revised and audited by a Certified Public Accountant, and interim financial statements for the remaining period between the end of its fiscal year statements and September 30, 2017.

If there is a CBA, the employer may not request the exemption to the P.R.D.O.L. and it must comply with the terms of the CBA, or negotiate with the union any necessary changes thereto. Should the CBA provide for a lesser Christmas Bonus payment, the employer is required to satisfy the difference, in compliance with P.R. Act 148.

Please be advised that the P.R.D.O.L. may order employers to prorate the Christmas Bonus payment among its employees, which may not exceed 15% of its net income.

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