

Puerto Rico Secretary of Labor Issues Opinions to Clarify Act 41-2022 Provisions on Vacation and Sick Leave for Part Timers and the law's Applicability of Special Treatment for Small Employers

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PRACTICE AREAS

- Labor & Employment

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As informed in the Labor & Employment Law Alert we distributed earlier today, the newly enacted law Puerto Rico Act 41-2022, which reverts provisions of the 2017 Labor Reform and expands workers rights, becomes effective today notwithstanding the objections of the Puerto Rico Fiscal Oversight and Management Board.

On July 19, 2022, the Puerto Rico Secretary of the Department of Labor (DOL) issued Opinion 2022-03, to clarify the criteria for part-time employees to accrue vacation and sick leave pursuant to Act 41-2022, which accruals start as of today.

Act 41-2022 amended the vacation and sick leave law, Act 180-1998, to create a new right of accrual of vacation and sick leave for non-exempt employees who work less than one hundred and fifteen (115) hours per month, but at least twenty (20) hours per week. Employees who comply with these work hours requirements will, as of today, accrue ½ day of vacation and ½ day of sick leave per month, except that if the employee works for an employer with twelve (12) or less employees, the vacation accrual is ¼ per month.

Because this new provision in Act 41-2022 has been subject to multiple interpretations since the law's enactment, the DOL Opinion 2022-03 clarifies that to accrue vacation and sick leave non-exempt part-time employees must: (i) work less than one hundred and fifteen (115) hours per month and, (ii), work at least twenty (20) hours each and every week of the month in question. In other words, the part-time employee must meet a minimum of twenty (20) work hours each week of the month to earn the right to accrue both leaves, as the weekly hours requirement is ongoing and must be met every week of the month so as not to disrupt accrual.

The DOL Opinion 2022-03 also clarifies that the hours worked over a week that spans between different consecutive months will be considered towards both months accruals.

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The Secretary of Labor also issued DOL Opinion 2022-02 on July 19, 2022, to clarify how small employers may determine if they qualify as micro, small or medium business enterprises for purposes of their special treatment under Act 41-2022, which includes a deferred date of effectiveness on September 18, 2022. The DOL Opinion 2022-02 explains that to qualify for special treatment under Act 41-2022 employers must meet the definitions of micro, small and medium enterprise, as provided in Puerto Rico Act 62-2014, which generally requires that their gross income not exceed \$10 million dollars and their number of employees not exceed 50 in total.

The DOL Opinion 2022-02 further recommends a methodology and time period to consider when determining if the business qualifies for special treatment under Act 41-2022. To determine size of the business as micro, small or medium, the employer may add the number of employees for each pay period during the 12 months of a natural year and divide it by the number of pay periods during said 12 months term, for its total number of employees. To determine the gross income of the business, the employer may consider the information in its financial and income statements, as certified by a CPA, or in its income tax returns, whatever best represents the financial condition of the enterprise during its last fiscal year.

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