

Puerto Rico Employer Obligations on Election Day

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- Labor & Employment
- Wage & Hour Regulation

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With the upcoming November 3rd Puerto Rico General Election fast approaching, it is time for employers to make plans to facilitate their employees' exercise of their voting rights, while avoiding disruptions to their businesses. Employers should be advised that although it is not a legal holiday for private sector employees, Puerto Rico is known for high voter turnout during Election Day.

On June 20, 2020, a new Electoral Code ("Act 58-2020") was approved which, among other provisions, enhanced employees' voting rights. Act 58-2020 recognizes employees' right to vote in advance or by mail when the employee is scheduled to work on Election Day and the schedule coincides with the polling stations' hours of operation.

Moreover, Act 58-2020 provides that employees who could not foresee they would be scheduled to work on Election Day during the polling stations' hours of operation are entitled to a two-hour paid leave to vote during their workday. Employers must bear in mind that employees may need additional time to vote depending on different factors, including the distance between their workplace and their assigned polling station, and how the COVID-19 safety measures that will be taking place may impact the wait time at the polling station. In this case, employees who take in excess of the two-hour paid leave to vote due to unexpected circumstances may be given the option to charge the additional time to accrued vacation leave or go unpaid.

We note that Act 58-2020 does not contemplate how to manage employee requests for time off to vote when the employee could have anticipated that he or she would be scheduled to work on Election Day during the polling stations' hours of operation, and the employee failed to vote in advance or by mail. This will certainly create potential controversies that employers should handle with caution.

Employers also must keep in mind that Puerto Rico's Act No. 100-1959 prohibits discrimination in employment based on an employee's political affiliation. Employers therefore should ensure that during this election period employees

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are not subject to adverse actions, disparate treatment, comments, or changes in working conditions due to their political affiliation.

It is of utmost importance that you are aware that violations to the employees' leave of absence rights under the new Electoral Code and the anti-discrimination provisions under Act No. 100-1959 entail civil and criminal penalties, plus remedies to the affected employee that may include reinstatement, back-pay and double damages.

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