

Puerto Rico Employers Required to Submit Self-Certification and COVID-19 Protocol

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PRACTICE AREAS

- Labor & Employment

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As anticipated in our **April 28, 2020 Alert**, the Governor of Puerto Rico, through **Executive Order 2020-038** (“EO 2020-038”) issued on May 1, 2020, eased the government’s orders for the closing and lockdown of non-essential businesses, allowing for the reopening of certain industries and service providers effective May 4, 2020, as long as these businesses comply with certain safety requirements.

EO 2020-038 specifically mandates that, prior to resuming operations, employers must develop and implement comprehensive COVID-19 safety and contagion mitigation plans (“COVID-19 Protocol”). The COVID-19 Protocol should be based on applicable OSHA, CDC, and P.R. Department of Labor (“PR DOL”) guidelines. Employers are responsible for conducting individualized risk assessments at their workplaces, establishing appropriate risk and contagion mitigation controls based on the industry in which they operate, and developing a COVID-19 Protocol that is specific to their business.

On May 1, 2020, the Secretary of the PR DOL issued Circular Letter 2020-03 (“CL 2020-03”) under the directive of EO 2020-038. The letter provides guidance on the employers’ responsibility to provide a safe workplace and the protective measures that can be put in place to accomplish such end in the context of the coronavirus pandemic. It also emphasizes each employer’s obligation to perform an individualized risk evaluation (which must be specific to the workplace and industry) and to implement any corresponding safety measures.

In accordance with EO 2020-038, CL 2020-03 also provides that **employers must complete and submit a self-certification form** certifying that their COVID-19 Protocol complies, at a minimum, with the twenty-two essentials elements established by the PR DOL. **Prior to reopening their business, employers must submit the completed self-certification form along with their respective COVID-19 Protocol.** Employers may begin operating their businesses once these documents are submitted, via email, to autocertificacionprosha@trabajo.pr.gov.

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Please note that employers who are currently operating under the authorization of prior Executive Orders must also prepare and submit to the PR DOL their self-certification forms and Protocols. EO 2020-038 provides that these employers must complete this process as soon as possible.

The PR DOL will publish on its webpage a list of all employers that have complied with the self-certification requirement and are therefore presumptively operating in compliance with their COVID-19 Protocol. Governor Vázquez-Garced announced the creation of a special team composed of the heads of five agencies to enforce these mandates. Furthermore, Governor Vázquez-Garced also encouraged employees to file complaints if they understand their employer is not complying with EO 2020-038. Failing to properly adopt a COVID-19 Protocol exposes each company to DOL and/or OSHA investigations, which in turn may lead to significant sanctions and potential liability.

Both EO 2020-038 and CL 2020-03 require employers to protect employees at higher risk of contracting the coronavirus and must consider these circumstances when reinstating their personnel. Employers are also reminded that they may not terminate, discipline or in any way discriminate or retaliate against employees for exercising their rights under employment laws, including the recently enacted **Families First Coronavirus Response Act** and **P.R. Act 37-2020**.

This prohibition extends not only to requests for leaves of absence, but also for filing a complaint, testifying or attempting to testify against their employer. Employers must be particularly aware of this, as the reopening of businesses during this pandemic will necessarily create tension between the employers' right to operate and the employees' rights and expectations to work in a safe environment. This tension could trigger situations that may give rise to potential retaliation claims.

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