

**O&B LABOR NEWS ALERT**

DEVELOPMENTS IN LABOR RELATIONS & EMPLOYMENT LAW FOR PUERTO RICO

July 1, 2016

**PROMESA APPROVED: UNDERSTANDING ITS  
LABOR PROVISIONS**

On Wednesday, June 29, 2016, the U.S. Senate approved H.R. 5278, legislation to establish a seven-member fiscal oversight board to manage the restructuring of Puerto Rico's \$70 billion government debt and oversee the island's finances. The "Puerto Rico Oversight, Management and Economic Stability Act" (known by its acronym "PROMESA"), was passed in the Senate 68-30; previously, the U.S. House of Representatives passed the bill 297-127. President Obama signed the bill.

PROMESA contains two significant pro business labor-related provisions applicable only to employers operating in Puerto Rico. Accordingly, closer examination of these provisions is now merited. Our initial insight on these provisions follows.

**DOL's New "White Collar" Salary Requirements Delayed**

On May 18, 2016, the U.S. Department of Labor (DOL) announced the publication of its Final Rule, increasing the minimum weekly salary level for the executive, administrative, and professional employee exemptions under the Fair Labor Standards Act (FLSA) to \$913 per week (\$47,476 per year). This new salary threshold-which will become effective on December 1, 2016-more than

doubles the current minimum weekly salary level requirement of \$455 per week (\$23,660 per year).

"White collar" employees who are not compensated at least at this new guaranteed salary level, will lose their exempt employee status under the FLSA, and accordingly, be entitled to overtime premium pay. In Puerto Rico, the loss of the exempt status would also result in entitlements to weekly and *daily* overtime, mandatory meal periods, vacation and sick leave, among others, under local law.

Section 404 of PROMESA bars the extension of these increased salary levels for exempt employees in Puerto Rico, until certain administrative determinations and reports are filed.

*First*, the Comptroller General of the United States must examine Puerto Rico's economic conditions and transmit a report to Congress assessing the impact of applying the DOL's new higher salary levels to Puerto Rico, taking into consideration regional, metropolitan, and non-metropolitan salary and cost-of-living differences. This assessment and report to Congress must be conducted no later than *two years* after PROMESA is enacted.

*Second*, the U.S. Secretary of Labor, taking into account the assessment and report of the Comptroller General, must then provide a written determination to Congress that applying the new higher salary rules to Puerto Rico will not have a negative impact on Puerto Rico's economy.

By adopting this cautionary approach to extending the new (and significantly higher) white collar minimum salary requirements to Puerto Rico, PROMESA addresses the Puerto Rico government and business organizations requests that employers in Puerto Rico be exempt from

the salary increases established by the DOL's Final Rule.

These requests for exemption were previously presented to the DOL, but the Final Rule discarded the pleas from the Puerto Rico government and the private sector. The requests for exemption were based on the significantly lower wage structures prevailing in Puerto Rico (even when compared with the national regions with the lowest wage averages), a reality that would cause greater financial hardship on employers in Puerto Rico than on their counterparts in the States.

Since the white-collar exemption requirements apply to government employees, extending the minimum guaranteed salary increase to Puerto Rico would also adversely impact the local government's finances.

#### Special youth minimum wage for Puerto Rico

Since 1996, Section 6(g) of the Fair Labor Standards Act ("FLSA") allows employers to pay a youth minimum wage of not less than \$4.25 an hour to employees who are under 20 years of age during the first 90 consecutive calendar days after initial employment. This was initially envisioned as a mechanism to reduce the adverse employment effects on inexperienced youth when the federal minimum wage is increased. The reduced minimum wage was viewed as an incentive for employers to hire inexperienced young workers.

While initially only slightly lower than the regular federal minimum wage; as the federal minimum wage increased, the youth minimum wage level has remained unchanged. With the passage of time and increases in actual average wages, this youth subminimum rate provision has become irrelevant. While the \$4.25 rate remains in the law, labor market dynamics presently require employers to pay closer to the general federal

minimum wage.

Section 403 of PROMESA amends this existing FLSA provision to permit the Governor of Puerto Rico, subject to the approval of the Financial Oversight and Management Board, to designate a time period, not to exceed four years, during which employers in Puerto Rico may pay employees under 25 years of age and hired after the date of enactment of such Act, a wage which is not less than the existing youth minimum wage of \$4.25 an hour. Notwithstanding the time period designated, such special wage youth minimum wage shall not continue in effect after Board terminates operations in accordance with the PROMESA provisions.

The federal minimum wage has been set at \$7.25 since July 24, 2009, and the local economy has adjusted to same over time. With the passage of time, the statutory authority for the existing youth subminimum wage has become academic. Simply put, the existing youth minimum wage of \$4.25 is not being used.

This could change, however, if in the future Congress approves an increase in the federal minimum wage to a level that would hinder the hiring of young and inexperienced employees in Puerto Rico. In the past, federal minimum wage increases have initially caused job losses or chilled the hiring of younger employees, until the local economy has been able to absorb these new labor costs.

If the federal minimum wage were to increase in the future, this special youth minimum wage for Puerto Rico may help to cushion the adverse employment impact of such an increase. For example, if the federal minimum wage were to increase in the near future to \$12 an hour, the authority granted under PROMESA would permit the Governor, subject to the approval of the Financial

Oversight and Management Board, to establish a lower minimum wage for employees under 25 years of time for a period of time not to exceed four years.

What should local employers do now?

It is unlikely the Governor of Puerto Rico will seek to establish the special youth minimum wage, at least not while the minimum wage is set at \$7.25 per hour. Therefore, employers should not expect any change in the existing youth subminimum wage at this time.

While PROMESA provides relief to employers in Puerto Rico from the new DOL white collar minimum salary requirements, employers should evaluate the consequences of not granting significant salary increases to their exempt personnel in the near future. For example, once the new guaranteed salary for exempt employees becomes effective on December 1, 2016, stateside and local employers who will be paying higher guaranteed salaries to their exempt employees will be in a better position to attract top talent.

Employers who maintain lower compensation levels for their exempt personnel may experience significant losses in their managerial staff.

O'Neill & Borges, LLC is available to assist you in evaluating and developing executive compensation plans. For further information, please contact our labor and employment lawyers.

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*Because of the general nature of this Labor Newsletter, nothing herein should be considered as legal advice or a legal opinion. For further information, please contact our labor and employment lawyers.*



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