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Puerto Rico's Legislature is at it again, enacting bills that are harmful to the economic development of Puerto Rico.

The Senate is currently evaluating an amendment to Law 80 of 1976, the Unjust Dismissals Law, that business groups said would further complicate the ability of businesses to operate in Puerto Rico and would continue to discourage expansions and new business start-ups.

House Bill 1491, penned by Popular Democratic Party Rep. Luis Raúl Torres, would require employers to notify employees in writing about the reasons they were dismissed and if they are entitled or not to get severance pay. An employer who doesn't notify the employee in writing would have to pay a penalty as high as \$2,000.

Senate Labor, Veterans Affairs & Human Resources Committee Chairwoman Lucy Arce said the "bill appears to be good, but will hurt businesses, especially those without human resources."

She said she is seeking input from different agencies on the bill. The House passed the legislation without input from the business sector or public hearings.

"I have my doubts," Arce said.

The amendment, according to business groups, further penalizes employers under the Unjust Dismissal Law.

The 1976 law was initially enacted to protect an employee from being laid off from a company without just cause by requiring employers to pay employees additional compensation when layoffs are, in fact, not justified. It was meant to give an employee an additional payment while the employee searched for another job.

Under Law 80, employers are required to pay severance pay, known

as a *mesada*, after an employee is terminated. Employees aren't permitted to waive this payment, but employers aren't required to pay the so-called *mesada* if the employee was terminated with "just cause."

Just cause is satisfied in any of the following situations: The employee had a pattern of improper or disorderly conduct; the employee worked inefficiently, belatedly, negligently or at a level of poor quality; the employee repeatedly violated the employer's reasonable and written rules; the employer had a full, temporary or partial closing of operations; the employer had technological or reorganization changes, changes in the nature of the product made and changes in services rendered; or the employer reduced the number of employees due to an actual or expected decrease in production, sales or profits.

While severance pay was originally considered a reasonable amount, in 2005 the government enacted a

law that virtually tripled the amount paid to employees dismissed without just cause.

An employee with less than five years of employment with the employer must receive a severance payment equal to two months of salary and an additional one week of salary for each year of employment. An employee with more than five years but less than 15 years of employment must receive a severance payment equal to three months of salary and an additional two weeks of salary for each year of employment. An employee with more than 15 years of service must receive a severance payment equal to six months of salary and an additional three weeks of salary for each year of employment.

If employees don't agree with the employer's decision not to pay them a *mesada*, they can go to court to claim it.

To make matters worse, several

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years ago, the Puerto Rico Supreme Court ruled in a lawsuit filed against a pharmaceutical company that the *mesada* was separate and distinct from a severance payment the company had paid to employees that were laid off after it had shut down, said Manuel Reyes Alfonso, executive vice president of the Chamber of Food Marketing, Industry & Distribution (MIDA by its Spanish acronym).

He said that until 2005, employers were more willing to pay the severance pay to avoid going to court because the amounts were reasonable. Once the amounts went up, along with hikes in Christmas bonuses and the federal minimum wage, employers became hesitant about creating new jobs or replacing unproductive workers. They also became more unwilling to pay the *mesada*. No other state in the U.S. has a severance law that sets payments so high. In fact, probably no other industrialized country has a severance law like this.

The law also requires that when restructuring, a business must, in most cases, retain employees according to seniority.

"The astronomical sums mandated and some of the vague terms regarding restructuring scare investors and labor lawyers alike," said attorney José Benítez-Mier, head of the labor law division at O'Neill & Borges. The sums are so high that in many cases unproductive employees with seniority are kept on to avoid paying the dismissal pay. Before the 2005 increase, most employers would opt to pay the more reasonable severance rates as "a normal business cost" and as a kind of "insurance" against future lawsuits. However, now that employers can face severance payments that can exceed a full year's pay, more employers are fighting cases in court. Because the severance benefits are tied to years of service, with benefits increasing after five years, 10 years and 15 years, employers are now being more vigorous at the thresholds of the different date. Experts point out Law 80 is one of the few laws that applies to "exempt" or management employees as well, which makes it particularly onerous.



Carlos Colón de Armas, economist

Javier Vázquez, a lawyer with Goldman, Antonetti & Córdova, said he advises clients about keeping written documentation to back up their claim for just cause when dismissing an employee.

"Unless the employee has committed a grave thing, like stealing,

kind of information in writing."

Reyes Alfonso noted that the letter also hurts employees because there will be a fully detailed written record of the reasons they were fired, potentially hurting their chances of finding future employment.

Jorge Capó, a lawyer with O'Neill & Borges and chairman of the Human Resources & Labor Committee of the Puerto Rico Chamber of Commerce, agreed. He said a worker who may not have performed well in one company but could perform well in another will have problems finding another job.

"Right now, employers do not give much information as to why they dismiss an employee. An employer, especially if the dismissal was not for just cause, will end up putting together a long list of more than a page and half and all the complaints as to why he fired an employee. If the worker had a poor attitude or missed work too much, it will be there," Capó said.

Furthermore, the proposed bill puts the employer in the position of having to explain why he dismissed an employee even if the reason was a reduction in profits or production, which is considered just cause under Law 80. This requirement could

"People used to believe government work was sacred, that there was no way you could lose a job in the government. Now, in this economy, no job is assured unless the economic activity making the job possible is assured."

—Carlos Colón de Armas

usually the employer is well documented," he said.

Reyes Alfonso said House Bill 1491 would further complicate the business climate in Puerto Rico and lead to more litigation.

"We believe this measure further complicates the handling of human resources," he said. "This letter places the employer at risk. Some businesses don't have the means to hire lawyers to check these letters, and it is a risk for the employer to put this

cause serious problems, Capó said.

"Now I have to explain why I chose to keep this worker and not the other," he said. "So and so is better than so and so."

Chamber of Commerce Legislative Affairs Adviser Olga de la Torre complained that the Legislature didn't seek the input of business groups when it enacted the bill.

"This bill lingered for two years and didn't have any movement," she said, adding that it would force small

businesses that don't have economic means or human resources departments to incur costs to deal with these letters. "Law 80 should be to make amends, not to punish."

Reyes Alfonso said the government should overhaul Law 80 entirely or repeal it because laid off workers already get unemployment benefits, even though they are no more than \$300 a month.

"I believe that instead of having Law 80, we should increase unemployment benefits given to displaced workers," he said.

The bill, nonetheless, has the support of the Justice and Labor departments.

"We have to remember that the purpose of Law 80 is to ensure workers aren't fired in a capricious manner," the Labor Department said.

The Justice Department, for its part, noted that the only recourse or remedy a worker who was unjustly fired has is Law 80.

FEDERAL RULE ALSO HURTS LOCAL BUSINESS

The local Legislature is not the only one enacting regulations that have the potential to hurt businesses.

A controversial federal National Labor Relations Board (NLRB) rule that would require most private-sector employers to post notices describing employees' rights, including the right to join unions, was postponed for a second time this year until April 30.

The new final rule, issued by the NLRB, covers private-sector employees and unions under the National Labor Relations Act (NLRA), regardless of whether a representation petition was filed with the NLRB, Luis Antonetti, a labor lawyer with Goldman, Antonetti & Córdova, told CARIBBEAN BUSINESS recently.

The new rule is for businesses with a gross volume in revenue of more than \$1 million, he said.

Except for the U.S. Postal Service, which is specifically exempt, the new rule requires employers to post notices listing employees' rights under the NLRA. Besides including the right to unionize, bargain collectively with the employer or engage in other planned activities, the final rule also provides for the notice to include the right to refrain from participating in

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U.S. labor laws offer P.R. workers big benefits, protections

Experts say federal law should be basis for Puerto Rico's labor regulations, most local labor laws not needed

BY JOHN MARINO
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U.S. labor laws protect Puerto Rico's workers against discriminatory actions, including firing. They also ensure the highest standards of safety and comfort at workplaces and guarantee one of the world's best wages.

The U.S. Labor Department alone administers and enforces more than 180 federal laws, while dozens more are handled by other federal agencies, like the Occupational Safety & Health Administration (OSHA), the Employee Benefits Security Administration (EBSA), the Office of Labor-Management Standards (OLMS) and the U.S. Justice Department, Civil Rights Division.

While there is space for Puerto Rico to legislate some labor laws, experts say, federal law by itself provides sufficient protection to employees. Moreover, the excessive amount of local labor laws, built up over decades by "populist, protectionist and vote-hungry" legislators, is literally pricing job creation out of the market in Puerto Rico. Many of our own labor laws are already included in the federal laws.

"Puerto Rico could live without its own labor laws," said attorney José F. Benítez-Mier, who heads the labor law division at O'Neill Borges law firm. "Federal law protects against discrimination, establishes overtime standards and sets a minimum wage, among many other labor laws."

"Puerto Rico has too many labor laws, and this scares potential investors," he added. "The amount of local labor laws and the way they interact with federal laws is incomprehensible to investors."

The U.S. minimum wage, one of the world's highest at \$7.25 per hour, is already a huge benefit to island workers, and a bigger burden to local business than to its stateside counterparts.

For example, when the minimum wage was last raised beginning in

2007, about 70% of the local workforce earned the minimum wage, versus 30% stateside, meaning the increase had a much bigger impact here than in the rest of the U.S.

Yet, the excessive amount of labor legislation is pushing up that cost burden on local business even more. Factoring in mandated sick and vacation days, plus Christmas bonus, boosts the cost of the minimum wage for Puerto Rico businesses to \$8.29 per hour, according to economist Vicente Feliciano, president of Advantage Business Consulting, who has studied the labor law issue extensively.

"The federal minimum wage is a burden on Puerto Rico employers, but something that most would be able to handle if it weren't for all the legislated additional benefits," Feliciano said. "Federal labor law should be the base, and we should benchmark against different states."

There is space for Puerto Rico to legislate some labor laws, because they are a "reflection of the social and economic realities" of a jurisdiction, experts say.

For example, Feliciano points to maternity leave as something most local businesses can live with, although recent amendments have placed the burden of paying for the eight-week leave for maternity on businesses, while before they were shared with the government.

In addition, Benítez-Mier said the dreaded Law 80, before recent amendments that dramatically increased penalties, offered businesses "certainty" about the costs of firing employees unjustifiably. Sometimes, he said, employers would offer employees fired with reason the Law 80 benefits as "insurance" against potential lawsuits. Now, the severance pay is so costly they are more likely to fight in court.

Yet experts also agree there are far too many local labor regulations, which increases the cost of doing business in Puerto Rico and provides a strong barrier to investment.



Attorney José F. Benítez-Mier,
head of the labor law division at
O'Neill Borges law firm

While the laws affect the overwhelming majority of businesses, they are especially onerous for local manufacturers, hoteliers and other industries that compete against jurisdictions that don't face the same labor restrictions.

Some of the most potent evidence that local labor regulations are strangling the island's competitiveness is that, increasingly, Puerto Rico is losing investment to stateside jurisdictions, which at one time were considered to be more costly.

When a plant closed in Puerto Rico 10 years ago, Benítez-Mier said, it was likely relocate to the Dominican Republic or Asia for lower labor costs. Today, it is just as likely to be the continental U.S. The situation is similar in the tourism industry.

"It is shameful that a hotel room in Florida costs less than a hotel room in Puerto Rico," Feliciano said. "Florida has the same minimum wage. It's our high labor costs and high electricity costs."

Even university researchers here

are at a disadvantage with respect to their stateside counterparts, he said, because scientists working locally have to deal with support personnel who aren't there "68 days a year," the sum of the legislated mandatory 20 holidays, 30 vacation days and 18 sick days in Puerto Rico. This doesn't exist anywhere in the U.S. or in any of the countries around the world that today are growing.

Cutting back on local labor laws would still leave island workers with immense protections. The following are among the main U.S. federal labor regulations benefiting Puerto Rico workers.

FEDERAL LABOR PROTECTIONS

- The Civil Rights Act-Title 7 prohibits employers from discriminating against someone on the basis of race, color, religion, national origin, sex, age or pregnancy and from retaliating against employees who complain about discrimination. It also requires employers to accommodate employee religious practices unless doing so would create an undue business hardship. The law covers not only hiring and firing, but also wages, scheduling and related issues.

- Title I of the Americans with Disabilities Act prohibits employers from discriminating against a person with a disability and from retaliating against disabled employees complaining of discrimination.

- The Fair Labor Standards Act establishes a \$7.25-per-hour minimum wage and requires that overtime pay at one and one-half times an employee's regular rate after 40 hours of work in a week. It also sets recordkeeping and child labor standards, but doesn't establish vacation, holiday, severance, sick pay or discharge procedures.

- The National Labor Relations Act protects workers who want to form or join unions from employer reprisals. The law also protects collective bargaining and other actions

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any of these activities.

The NLRB believes most employees protected by the NLRA are unaware of their rights under the act, and is seeking to increase knowledge of the NLRA and its rights and provisions through the notice it is now compelling employers to post.

Employers were originally required to post the notices as of Nov. 14, but the requirement was postponed to January. Recently, it was postponed again, until April, to allow for a decision on a legal challenge in a Washington, D.C. court.

The National Association of Manufacturers and the National Right to Work Foundation have both filed suits alleging the illegality of the NLRB's Aug. 25, 2011 announcement that all employers must post the notice. Both entities assert that the NLRB lacks the authority to issue the rule.

Specifically, the National Right to Work Foundation has said the NLRB's decision exceeds its statutory authority, while the National Association of Manufacturers is arguing that, because the NLRB is an agency of limited jurisdiction, it therefore isn't permitted to coerce employers that aren't engaged in representation elections or unfair labor practices into posting notices to their employees, upon penalty of committing an unfair labor practice.

The U.S. Chamber of Commerce last month also sued the NLRB, alleging the new rule violates the free-speech rights of employers.

Failure to comply with the final rule's posting requirements may be treated as an unfair labor practice under the NLRA. In most cases,

the NLRB may presume employers who fail to comply with this requirement are unaware of the final rule, and may choose not to pursue further action once the employer is in compliance and has posted both the required and a remedial notice.

In a recent interview, the Society for Human Resource Management said the new regulation will force better communication between employers and employees and poses new challenges for human resources officials as they seek to ensure managers deal adequately with the new regulation or are aware of its ramifications.

MIDA's Reyes Alfonso said "again" there is law that further complicates the handling of human resources for companies. Even though, he said, there are very few labor unions in the private sector in Puerto Rico because matters such as working hours are already regulated by law, leaving very little for unions to negotiate, businesses shouldn't be put in the position of having to promote unionization.

"This forces businesses to have to do a campaign in favor of unions when that should be the function of the government or the unions themselves," he said.

Capó said the local Chamber of Commerce agrees with the U.S. Chamber of Commerce in its allegation that the proposed notice is one-sided because it doesn't recognize the employer's right to oppose a union.

"This violates free speech rights," he said.

A LIGHT ON THE HORIZON

Not all news is bad for business on the legislative front. Arce said she is



Vicente Feliciano, president of Advantage Business Consulting

going to bring back her proposed bill to increase the probationary period for new workers from the current three months to six months.

The bill was approved by both chambers, but with an amendment extending the probationary period to one year. After labor unions complained, the Senate asked that the bill be sent back to Arce's committee.

Business groups have said extending the probationary period will give employers more leeway in the training of new employees and will allow them to better evaluate workers.

NEED TO REWRITE LABOR LAWS

Rewriting the island's labor laws is one of the top reforms needed for Puerto Rico to begin to create the tens of thousands of jobs necessary

to return the island to economic growth, labor lawyers and economists said.

Economist Carlos Colón de Armas points out that Puerto Rico has lost more than 200,000 jobs since the start of the local recession in April 2006, and that the great majority of these jobs—182,000—have come from the private sector. He said that for the island to create the jobs it needs, it must create the conditions for businesses to thrive.

"You have to change many things in Puerto Rico to make businesses successful," Colón de Armas said. "Labor laws are one serious piece of the equation."

The laws establish extremely generous vacation, sick time, severance pay and holiday provisions, annual Christmas bonuses, and other benefits that significantly drive up the cost of doing business in Puerto Rico. Meanwhile, by narrowly defining the workday and banning such innovations as the four-day, 10-hour-per-day workweek, the laws place "straightjackets" on businesses and their ability to tailor operations to lower labor costs.

"We are reaching a tipping point at which too few people are working to support too many people," said economist Vicente Feliciano, president of Advantage Business Consulting. "If you have a business and your sales are low, you have a repricing of your products. The number of people employed in Puerto Rico is too low, and we need a repricing of labor costs."

Puerto Rico's labor laws bring down the island's ranking in international surveys by the World Bank and other organizations and are seriously eroding the island's competitiveness,

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by employees whether they are represented by a union or not.

- The Family & Medical Leave Act allows employees to take an unpaid leave for up to 12 weeks in a one-year period for the care of a newborn or adopted child or to care for a serious health condition of an employee or his or her spouse, child or parent. Related legislation grants unpaid leave of up to 26 weeks within a one-year period to care for a service member with an injury or

illness who is a close family member of the employee, such as spouse, child or parent.

- The Uniformed Services Employment & Reemployment Rights Act prohibits discrimination in their civilian careers against employees who are serving or have served in the military.

- The Occupational Safety & Health Act mandates that employers keep workplaces free from health and safety hazards. The law is administered by the Occupational Safety & Health Administration, which also

ensures compliance with public safety and environmental laws that mandate whistleblower protections for employees who complain about violations of the law by their employers. Remedies include job reinstatement and payment of back wages.

- The Worker Adjustment & Retraining Notification Act requires employers to provide 60 days notice of plant closings and other mass layoffs.

- The Patient Protection & Affordable Care Act requires employers to provide a private place other than

a bathroom and "reasonable break time" for employees to breastfeed a nursing child up to one year old.

- The Genetic Information Nondiscrimination Act makes it illegal to discriminate against an employee or job applicant on the basis of genetic information derived from tests or an individual's family medical history, or to take reprisals against a person claiming such discrimination. It also bars group health plans and insurers from denying coverage or charging higher premiums on the basis of such genetic information. ■

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said Benítez-Mier.

"To have so many mandated benefits represents a major cost to businesses and scares off potential investors," he added.

In the private sector, it is well-known that many companies that have thought of setting up operations in Puerto Rico have been scared off by local labor laws.

Most experts believe changes in labor law should be directed at areas that drive up business costs without hurting employee pay. It isn't the pay that is the problem, but rather the costly amount of onerous laws that don't exist anywhere else.

BRINGING MORE FLEXIBILITY

Colón de Armas, who believes cutting power costs and business taxes are among the urgent actions needed to create appropriate conditions for businesses to thrive, said he would allow more flexibility in scheduling as a starting point for labor reform.

In the global economy, we are facing numerous and costly labor laws that put us at a disadvantage as a site to do business.

Feliciano and Benítez-Mier concur, saying Puerto Rico's rigid scheduling rules drive up costs, lessen the ability of employers to best match their labor and production needs and often run counter to the best interests of many employees.

It may seem to help the employed, but it is discouraging job growth for the thousands who want to work but can't find jobs.

For example, four-day workweeks with 10-hour workdays are a growing trend for many employers, from manufacturing plants to hotels to government agencies, especially as power costs have been on the rise. In Puerto Rico, you can't do this because overtime kicks in after working eight hours a day, even if the employee worked one day that week. In the States, overtime pay starts after 40 hours a week. Some legal experts, citing the definition of an eight-hour workday in the Puerto Rico Constitution, believe a stumbling block is the need for a constitutional amendment to enact compressed workweek schedules.

However, Benítez-Mier noted that Law 379, which defines the workday

and sets overtime, predates the Constitution and already exempts all sorts of workers from its provisions, including management employees, traveling salespeople, administrators and others. Adding another clause, exempting employers and employees who mutually agree to compressed workweek arrangements, would be enough to legalize them. He said the Puerto Rico Supreme Court has already validated such exceptions in rulings.

"I am 100% sure that a constitutional requirement is not needed to make this change," Benítez-Mier said.

Such arrangements are essential for the burgeoning film business on the island, which must often work long hours once establishing a set, as well as for hotels and *paradores*, which often lack business during the week but are overly busy on weekends.

"*Paradores* could do much better if they had people working 10 hours a day Friday through Monday," Feliciano said. "The employees would be happier, and they would be able to better compete with locations like the Dominican Republic and Florida."

Benítez-Mier said that while the recent changes in the Closing Law were "a step in the right direction," provisions that grant employees extra pay on Sunday, as well as requiring retail establishments to close on Sundays and certain holidays need to be abolished as well. While employee benefits sound great, they drive up labor costs and directly decrease the number of jobs created on the island, labor reform proponents say.

In Puerto Rico, workers get 15 vacation days and 12 sick days a year by law, in addition to a host of holidays, with public workers enjoying some 20 holidays a year. They also get an annual Christmas bonus. For many employers, the bonus is particularly burdensome because it has nothing to do with performance. These legislated benefits run counter to global trends in which compensation and pay is increasingly tied to production performance, proponents say.

Colón de Armas said true labor reform will require more dialogue between labor and business groups because an "enhanced level of trust" is required for successful labor

law reform. He said low-key efforts at "building bridges" are now underway.

He added that the recent firings of public sector employees have had an impact on staunch union opposition to any changes in labor law.

"People used to believe government work was sacred, that there was no way you could lose a job in the government," Colón de Armas said. "Now, in this economy, no job is assured unless the economic activity making the job possible is assured." Feliciano agreed.

"Let's hope that as our labor conditions have deteriorated, there is the determination of moving away from business as usual," he said. "Things that weren't politically feasible 10 years ago could be today."

Colón de Armas also believes business groups must bring something to the table in negotiations with labor leaders over any proposed reform.

"You need a conversation on both sides," he said. "We have to find a way to avoid imposing solutions. That makes it easier to have changes last, and whatever labor law changes we make should be permanent." ■



Existing Labor Laws in Puerto Rico

BY ALEXANDER LÓPEZ
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CONSTITUTION OF PUERTO RICO

SECTION 15

- Prohibits the employment of minors under 14 years old in occupations damaging to their physical or moral health.

SECTION 16

- Provides the right for all workers to freely choose their occupation and/or resign from it.
- The right to receive equal pay for equal work.
- The right to receive a reasonable minimum wage.
- The right to protection of one's health and personal integrity in the workplace.
- The right to an eight-hour workday, which can only be exceeded with additional compensation.

SECTION 17

- Employees of private companies and public corporations have the right to organize for collective bargaining agreements.

SECTION 18

- In the process of negotiation, employees have a right to strike, picket and conduct concerted activities.

LAW NO. 180 JULY 27, 1998

LAW FOR MINIMUM WAGE, VACATIONS AND SICK LEAVE

- Workers who fall under the classification will be subject to the federal minimum wage.
- All federal regulations will apply to the payment of the minimum wage, such as: how minimum wage is paid, the definition of working hours, which employees and occupations are exempt from minimum wage and what constitutes overtime.
- Companies that are not subject to federal laws will pay a minimum wage equivalent to 70% of the prevailing federal minimum wage.

VACATIONS

- It will be required that to accumulate vacation time a worker must work no fewer than 115 hours a month.
- The worker will accumulate 1.25 vacation days per month.

SICKNESS

- To accumulate sick leave, a worker must work at least 115 hours per month.

- A worker accumulates one sick day per month.

USE OF UNIFORMS

- Any employer that requires its employees to wear uniforms must pay for the acquisition of said uniforms. Under no circumstances shall the employee be required directly or indirectly to assume the expense of acquiring said uniforms.

EXCLUSIONS FROM THE LAW

- Domestic service employees.
- Employees of the governments of Puerto Rico and the United States.
- Municipal employees.
- Administrators, executives and professionals.

LAW NO. 379 MAY 15, 1948

LAW REGARDING TIME OF WORK

- Establishes a workday as one consisting of eight hours.
- Establishes a workweek as consisting of 40 hours.
- Provides for a one-hour break for the consumption of a meal.

OVERTIME

- Overtime consists of any time worked in excess of eight hours during a 24-hour period;
- Or, hours worked in excess of 40 hours during a given week;
- Or, hours worked on a day in which the business is supposed to be closed;
- Or, hours or fractions of hours worked while an employee is supposed to be on their meal break.
- Overtime also consists of any hours worked after the seventh consecutive day of work;
- And, hours worked in excess of those established in the mandatory decree;
- Or, those hours worked in excess of the maximum established by a collective-bargaining agreement.

MEAL TIME

- The time assigned for consumption of meals shall be one hour.
- This period can be reduced to no less than 30 minutes.
- In the case of croupiers, nurses and security guards, it can be reduced to no less than 20 minutes.
- The agreement to the reduction should be conducted in writing between the parties.
- The meal time should not be before the third hour of work nor after the sixth hour of work.
- Break times should be considered as time worked.

- During break times, employees should be completely relieved of their labor duties.

OVERTIME PAY

- Employers and employees covered under the Fair Labor Standards Act shall be paid double their hourly wage for work performed in excess of eight hours per day or 40 hours per week.
- Employers and employees covered but not exempt from the Fair Labor Standards Act shall be paid time and a half for work performed in excess of eight hours per day or 40 hours per week. [If the worker does not belong to an FLSA-covered industry, but has worked for more than eight regular hours during a 24-hour period, the compensation will equal double their regular hourly wage, as long as their work hours do not exceed 40 hours.]
- Employers and employees covered by a decree from the Minimum Wage Board shall be paid according to the mandatory decree for work performed in excess of eight hours per day or 40 hours per week.

LAW NO. 83 JULY 20, 1995

FLEXIBLE WORK TIME

- Can only be implemented by mutual agreement between employer and employee.
- Allows for moving forward or moving back the beginning of the workday and the meal period.
- The workday should consist of a consecutive period of time without interruption.
- The only interruption allowed is the meal period.

LAW NO. 80 MAY 30, 1976

DISMISSAL LAW, AS AMENDED

- Applies to employees dismissed without just cause.
- Applies to executives, administrators and professionals; part-time workers; employees of public corporations; domestic service employees; and construction workers who do not have finite contracts.

LAW NO. 128 OCT. 7, 2005

INDEMNIZATION FOR DISMISSAL

- If dismissal occurs within the first five years of service, the indemnization shall be two months of salary plus one week of salary for each year of service.
- If dismissal occurs between the fifth year of service and the 15th year of service the indemnization shall be three months of salary plus two weeks of pay per year of service.

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Excessive regulation hampers job creation and the economy

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Jorge Luis Capó Matos, chairman of the Puerto Rico Chamber of Commerce's Human Resources & Labor Committee, has been at the forefront of the chamber's efforts to pass meaningful labor reforms. Capó prepared a white paper on labor flexibility that links Puerto Rico's low labor participation and high unemployment to its excessive labor legislation. It further compares Puerto Rico's labor laws and their effects with those of other U.S. jurisdictions.

A report titled "The Impact of State Employment on Job Growth"

prepared by the U.S. Chamber of Commerce (USCofC) concludes that the relationship between employment policies and their effect on economic growth is well documented. So, too, are the negative impacts of excessive regulation on job creation and the economy. The report quotes President Barack Obama saying of employment regulation, "Sometimes those rules have gotten out of balance, placing unreasonable burdens on business—burdens that have stifled innovation and have had a chilling effect on job growth and jobs."

The report features an "Employment Regulation Index" (ERI) based on 34 characteristics related

to employment. The ERI is based on a scale of 1 to 100, with a score of 100 calibrated to represent the most heavily regulated state.

"Applying standard statistical techniques, the report determines that, when the Index is inserted as an explanatory variable, the higher levels of regulation result in both higher rates of unemployment and lower rates of business formation," Capó wrote.

The USCofC reaches the same conclusions as Capó in his white paper.

"If Puerto Rico had been included in the study, it would have been selected as the most burdensome and

least competitive jurisdiction in the United States in terms of labor legislation," added Capó.

The Senate, through resolution No. 718, assigned the Senate Human Resources, Veteran's Affairs & Labor Committee to produce a report on labor legislation. On March 3, 2011, the committee submitted the conclusions of the report, which indicated that for Puerto Rico to regain economic competitiveness, significant labor reforms are indispensable. If we don't own up to the problems of our labor laws, we will continue to discourage job growth and the attraction of new businesses to Puerto Rico. ■

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- If dismissal occurs after the 15th year of service the indemnization shall be six months of salary plus three weeks of pay per year of service.

LAW NO. 230 MAY 12, 1942

MINORS EMPLOYMENT LAW

Purpose: To regulate the employment of minors and impose the compulsory attendance of the minors of Puerto Rico to public schools.

- 14- and 15-year-olds cannot work more than six consecutive days in a single week, nor more than 40 hours in a single week, nor more than eight hours in a single day, nor before 8 a.m. or after 6 p.m., nor in dangerous professions as determined by the regulation.
- For employees between the ages of 16 and 18, the same rules as above apply with the exception of them being able to work until 10 p.m.
- No minor between 14 and 18 years old shall be allowed to work for more than four consecutive hours without being given at least one hour for a meal.
- Law No. 148 June 30, 1969, as amended - Christmas bonus.
- Establishes that workers or employees in the private sector who have worked more than 700 hours during a 12-month period shall receive a bonus of 2% of their salary during the period, up to a maximum of \$10,000.

LAW NO. 124 SEPT. 29, 2005

AMENDMENT TO THE CHRISTMAS BONUS LAW

Employers with more than 15 employees

- December 2006 \$300
- December 2007 \$450
- December 2008 \$600

Employers with fewer than 15 employees

- December 2006 \$250
- December 2007 \$275
- December 2008 \$300

- Excluded from the Christmas bonus laws are agricultural workers, domestic service workers, employees of nonprofit organizations, and employees of the state, federal and municipal government and public corporations.
- Payment of the bonus shall be made between Dec. 1 and Dec. 15 unless the employer and the employees agree to an alternative date.
- If the bonus is not paid within the established period, an amount equal to one and one-half times the bonus must be paid within the first six months of the due date of the bonus. After six months, two times the amount of the bonus must be paid.

LAW NO. 1 DEC. 1, 1989

LAW REGULATING COMMERCIAL ESTABLISHMENTS

- Its purpose is to establish the time of opening and closing of commercial establishments and to identify establishments exempt from the law. It is also intended to provide protection to employees and establish sanctions for noncompliance.

- Sanctioned holidays where establishments are to remain completely closed are Jan. 1, Jan. 6, Good Friday, Easter Sunday, Mother's Day, Father's Day, Election Day, Thanksgiving and Dec. 25.
- Businesses shall not open on Sunday before 11 a.m.

LAW NO. 17 APRIL 17, 1931

REGULATION OF WORK CONTRACT

- Salaries may be paid in cash, by check, through direct deposit, or through wire transfer. Payment may be made weekly, biweekly, or fortnightly.
- If a salary check is returned for insufficient funds, the employer has committed a crime and the penalty makes them responsible for paying the employee an amount equal to twice the amount of the check.

REGULATION NO. 13 - 5TH REVISION (2005)

- Defines the terms administrator, executive and professional.
- Defines rights pertaining to vacation time, sickness time, daily and weekly work time, overtime, meal time, hours worked on Sundays, among others.

REGULATION NO. 7 - 2ND REVISION (2000)

- Establishes the requirement that employers maintain records regarding employee files and the length of time they should be kept on file.