



Puerto Rico COVID-19: Employee Rights and Employer Obligations +

March 2020 »

The Puerto Rico Secretary of Labor, Hon. Briseida Torres, issued Secretary of Labor Opinion No. 2020-02 on March 23, 2020, providing further guidance to Puerto Rico employers on the application of local and federal statutes on payroll and attendance to local employees during the current lockdown ordered by Executive Order 2020-23 (E.O.) dealing with COVID-19 pandemic.

As the result of the decreed lockdown most of Puerto Rico's public and private sector employees have remained home and businesses have been closed since the provisions of the E.O. came into effect at 6:00 p.m. on March 15, 2020. Those employees that have been designated as "essential" in the E.O. have continued working since then. The following industries have been exempted from the E.O.'s closing obligations because of their essential nature: healthcare, pharmaceutical and medical equipment, private and public security, food and goods manufacturing, grocery store, drug store, restaurant, and banking industries and those industries in the food and goods manufacturing and supply chain. The following summarizes the Secretary of Labor's Opinion 2020-02.

COMPENSATION FOR NON-EXEMPT EMPLOYEES DURING THE LOCKDOWN

Sick Leave and Vacation Leave

Employers do not have an obligation to pay non-exempt employees any compensation for days in which the business remains closed as the result of a lockdown. However, the Secretary encourages those employers that are able to continue paying their non-exempt employees their regular pay to do so, without charging the paid amounts against any of the employees' accrued leaves, in order to allow them to tend to their family and their own basic needs. If for economic reasons, employers are unable to continue paying its employees their full pay, the Secretary urges employers to provide these employees a portion of their compensation, bonuses or any other type of compensation to assist their employees during the emergency. When total or partial payment is not possible, the time the non-exempt employee does not work must be charged to the employee's accrued vacation time, only if the employee authorizes it to pay a fraction of that leave. If the employee objects to using his or her vacation time to cover for time he or she did not work, the employee will not be entitled to receive any compensation. In the alternative, the Secretary states that employers may allow non-exempt employees to charge this time to any other accrued leave, such as sick leave, if it applies and the employee requests it.

Probationary Employees

The Secretary encourages employers to allow their employees to use accrued vacation time after they have completed six (6) months of employment or the totality of their probationary period if it is less than six (6) months.

In her Opinion, the Secretary reminds employers that when an employee avails him or herself of their accrued vacation or sick leave, or any other special paid leave, the probationary period is automatically interrupted until the employee returns to work. Although the Opinion does not expressly state so, it could be argued that the same should apply for time the employee is not working as the result of the lockdown when the employee has objected to the use of his or her sick or vacation leave during the quarantine or during his or her employer's partial closing of operations.

Finally, in her Opinion, the Secretary encourages employers to be flexible in light of these unprecedented circumstances in the application of their personnel policies so that their actions are consistent with the public health guidelines the Centers for Disease and Control Prevention ("CDC") have adopted related to this pandemic. She explains that policies should be applied in a manner that

[back to Client Alerts](#)

Labor & Employment Attorneys

Alberto J. Bayouth-Montes
José F. Benítez-Mier
Jorge L. Capó-Matos
Natalia Marín-Catalá
Lorena Y. Gely-Rojas
Carlos E. George
Dimitri González-Izquierdo
Yldefonso López-Morales
Adriana Moreno-Casanova
Filex E. Rosado-Rodríguez
Carlos A. Vazquez-Alberty



[download PDF here](#)

employees do not feel that their compensation or job security will be jeopardized if they apply any of the preventive measures recommended by the CDC (for instance, self-quarantine when feeling sick) to prevent the spread of the virus.

COMPENSATION FOR EXEMPT EMPLOYEES DURING THE LOCKDOWN

The Secretary reminds employers the exempt employees³/₄executives, administrative employees, and professionals³/₄must be compensated for every workweek in which they perform any task for the employer, regardless of the number of hours worked, even when they have worked only a portion of one day. As explained by the Secretary, the employer may, at its discretion, charge the hours or days in which the exempt employee did not perform any work to any available leave. Because these benefits are not statutorily regulated, employers do not have an obligation to charge the days the exempt employee did not work against any leave. However, the Secretary encourages employers during this period to pay the exempt employee any vacation time they may be entitled to receive or to voluntarily compensate the employee for that period without charging the days against any paid leave. Like with non-exempt employees, the Secretary also urges employers to pay its exempt employees a portion of their compensation, bonuses or any other type of compensation if they are unable to continue paying their full salaries.

NEW LEAVES AVAILABLE TO EMPLOYEES UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT ("FFCRA")

In this section of the Opinion, the Secretary describes the new emergency extended family and medical leave (Emergency FMLA Leave) and the emergency paid sick leave (Emergency Sick Leave) that were included in the FFCRA the President signed on March 18, 2020. For a summary of these leaves, kindly refer to our March 20, 2020 newsletter. The Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act will be effective on or before April 2, 2020 and will be available to eligible employees until December 31, 2020.

In her Opinion, the Secretary explains that both the Emergency FMLA Leave and the Emergency Paid Sick Leave are available to exempt, non-exempt and probationary employees in Puerto Rico provided they meet the applicable requirements. The probationary period of any employee who needs to take any or both leaves will be automatically interrupted upon commencement of the leave(s) and will resume upon reinstatement in his or her employment.

Further, the Opinion encourages employers with 500 or more employees, which are not covered by the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act to voluntarily adopt personnel policies and benefits to attend to the needs of their employees during the COVID-19 pandemic, at least on a temporary basis.

Emergency Unemployment Insurance Stabilization and Access Act of 2020

In the Opinion, the Secretary states that enactment of the Emergency Unemployment Insurance Stabilization and Access Act of 2020 will allow the Puerto Rico Department of Labor and Human Resources (PRDOL) to expedite unemployment benefit applications and the payment of these benefits. This Act assigns one billion dollars in emergency subsidies to Puerto Rico and the States and has the purpose of expediting the processing and payment of unemployment benefits. Further, jurisdictions that experience an increase of at least 10% for unemployment benefit applications will be eligible to receive additional subsidies. All these subsidies will be administered by the PRDOL.

EMPLOYER LOANS TO EMPLOYEES DURING THE CURRENT STATE OF EMERGENCY

The Secretary suggests in her Opinion that, in light of this current emergency, employers can provide its employees salary advances, respiratory equipment, materials to prevent contamination, and other goods for the prevention and treatment of COVID-19. The repayment of these advances should not be subject to the payment of interest and the employer may only recover an amount that should not exceed the amount paid by the employer for the equipment, material or good provided. The salary discount should not exceed 20% of the net amount paid to the employee during their regular payroll cycle, after all applicable deductions, including those required by law as well as the voluntary deductions allowed by Act 17. The written authorization of the employee should include a payment schedule that includes the amounts that will be discounted in each payroll cycle until the due amount is paid in full. The authorization document should also include how the employer will recover the amounts due if the employment relationship ends before the debt is paid in full.

As to exempt employees, the Opinion asserts that the employer is free to reach any type of agreement with its exempt employees regarding repayment of the salary advance, equipment, material or good he or she receives from the employer.

EMPLOYEES AND EMPLOYERS EXEMPTED FROM THE LOCKDOWN

This section of the Opinion highlights that essential employees, as defined in E.O., may apply for work schedule adjustments, reduction of work schedules, workplace transfers, or agreements to replace work hours, which employers have an obligation to consider. It also asserts that employer may not take retaliatory action against employees requesting any of these adjustments.

The Opinion also reminds employees exempted from the E.O. that, because the services they provide are necessary for the continuity of essential services, employers may apply the measures contained in their policies and procedures to penalize their unjustified absences, as well as their violation of any workplace procedure. The Opinion then goes on to make a call to employers to be sensible to their employees' needs and recommends that E.O. exempted employees' applications for leaves be carefully considered in light of the possibility that they may have a health condition, particularly those with a compromised immune system, which may require a reasonable accommodation under the Americans with Disabilities Act or its local counterpart, in order to continue performing the essential functions of their position. It also makes a call to E.O. exempted employers to carefully and responsibly consider how many employees they really need to operate and reinforce its safety measures to safeguard its employee's health and safety, as required by OSHA. The Secretary also reiterates that the PRDOL will be closely monitoring employers' compliance with OSHA obligations. Among other OSHA obligations, the Opinion highlights the following:

Adopt protocols to identify personnel and visitors who exhibit COVID-19 symptoms.

Review the COVID-19 OSHA obligations applicable to their operation.

Distribute and publish educational posters which include risk prevention strategies.

Promote the frequent and thorough washing of hands.

Limit the number of employees in each work shift.

Create alternate work shifts.

Maintain proper distance among employees.

Separate work units.

Avoid sharing work tools.

Broaden the amount of time given to employees to disinfect work areas and tools.


Employers in the health care industry must comply with the established cleanliness, disinfection, and engineering and administrative controls. They must also provide the protection equipment necessary to all its employees and must train them on the established protocols.

Finally, the Opinion encourages employees to report workplace risks anonymously to OSHA through www.trabajo.pr.gov.

Note: O'Neill & Borges will continue to monitor these Opinion letters and providing updates. O'Neill & Borges, LLC is available to assist you with any concerns or implications the foregoing may have on your business. For further information, please contact our labor and employment attorneys.

For any questions or inquiries regarding this topic do not hesitate to contact us at info@oneillborges.com or your prime contact attorney at O'Neill & Borges.

< [previous](#) | [next](#) >

O'Neill & Borges LLC 250 Muñoz Rivera Avenue, Suite 800, San Juan, Puerto Rico 00918-1813
T 787.764.8181 / 787.622.8181 F 787.753.8944 E info@oneillborges.com 

© O'Neill & Borges LLC / Sitemap / Disclaimer / design by knox design strategy