

# Puerto Rico Labor Laws:

## *Recent Amendments to Christmas Bonus Act and Law 80*

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The island of Puerto Rico is a self-governing commonwealth associated with the United States of America. As a result of Puerto Rico's commonwealth status, both local and federal labor laws apply.

In the employment context, Puerto Rico is one of the most heavily regulated jurisdictions within the United States. Two of Puerto Rico's more unique local labor laws have undergone recent amendments as the local government strives to provide even greater protections and rights for employees on the island. This article provides a brief summary of the recent amendments to Puerto Rico's "Christmas Bonus" Act and its mandatory severance law.

### **A. Christmas Bonus Act<sup>3</sup>**

Under Puerto Rico law, every employer who employs more than one employee in the twelve-month period commencing on October 1st and ending on September 30th of any year has an obligation to pay each qualified employee<sup>4</sup> who works 700 hours or more per year a mandatory annual bonus or "Christmas Bonus" as it is commonly known in Puerto Rico.<sup>5</sup> The Christmas Bonus must be paid between December 1st and December 15th unless the employer and the employees mutually agree on a different date for its payment.<sup>6</sup>

The Christmas Bonus Act was amended several months ago to increase the amount of the Christmas Bonus, which had not been revised since the enactment of the statute in 1969.<sup>7</sup> Prior to the amendment, the Christmas Bonus Act required qualified employers to pay their employees who worked 700 hours or more (or 100 hours or more in the case of dock employees) a bonus equivalent to 2% of the total salary of the employee up to a maximum of US\$10,000.<sup>8</sup> This meant that an employee whose salary was US\$10,000, for instance, would be entitled to a bonus of only US\$200 at the end of the year.

Now, an employer who employs fifteen employees or less is obligated to

pay qualified employees the following bonus: (i) 2.5% of the total salary of the employee up to a maximum of US\$10,000 for the 2006 bonus; (ii) 2.75% of the total salary of the employee up to a maximum of US\$10,000 for the 2007 bonus; and (iii) 3% of the total salary of the employee up to a maximum of US\$10,000 for the 2008 bonus.<sup>9</sup> Those employers who employ more than fifteen employees are obligated to pay qualified employees the following bonus: (i) 3% of the total salary of the employee up to a maximum of US\$10,000 for the 2006 bonus; (ii) 4.5% of the total salary of the employee up to a maximum of US\$10,000 for the 2007 bonus; and (iii) 6% of the total salary of the employee up to a maximum of US\$10,000 for the 2008 bonus.<sup>10</sup>

Payment of the Christmas Bonus under Puerto Rico labor law is mandatory, and failure to pay it will lead to penalties and fines for the employer.<sup>11</sup>

### **B. Employment Termination**

Under Puerto Rico labor law, severance pay also is mandatory for all employees who are unjustly discharged from their employment, that is, employees who are terminated without "just cause."<sup>12</sup> This right to severance pay cannot be waived by the employer or the employee.<sup>13</sup>

"Just cause" is defined as one or more of the following:

(i) That the employee indulged in a pattern of improper or disorderly conduct;

(ii) That the employee did not perform his work in an efficient manner, or did it belatedly and negligently or in violation of the standards of quality of the product(s) produced or handled by the employer;

(iii) That the employee repeatedly violated the reasonable rules and regulations established by the employer for its business operations (provided a written copy thereof was opportunely

furnished to the employee) ;

(iv) That there was a full, temporary, or partial closing of the operations of the employer;

(v) That there were technological or reorganization changes as well as changes of style, design or the nature of the product made or handled by the company, and changes in the services rendered to the public;

(vi) That there were reductions of the employment force made necessary by a reduction in the anticipated or prevailing volume of production, sales or profits at the time of the employee's discharge.<sup>14</sup>

The Puerto Rico Legislature recently amended the amount of statutory unjust dismissal indemnity.<sup>15</sup> Prior to the amendment, employers had to pay employees terminated without "just cause" the following severance: (i) (a) an amount equal to one month of the employee's salary for those employees who had less than five years of service; (b) an amount equal to two months of the employee's salary for those employees who had at least five years but less than fifteen years of service; or (c) an amount equal to three months of the employee's salary for those employees who had more than fifteen years of service; and (ii) an amount equivalent to one week of salary for every year of service of the employee.<sup>16</sup>

Under the new amendment, employees who are unjustly terminated, that is, without "just cause," are entitled to the following mandatory severance pay:

(i) 2 months of salary if the employee has less than 5 years of service; or 3 months of salary if the employee has at least 5 years but less than 15 years of service; or 6 months of salary if the employee has more than 15 years of service;

and

(ii) an additional compensation consisting of 1 week of salary for each year of service if the discharge occurs within the first 5 years of employment; or 2 weeks of salary for each year of service if the discharge occurs after 5 years of service but before 15 years of service; or 3 weeks of salary for each year of service if the discharge occurs after completing 15 years or more of service.<sup>17</sup>

Even if the employee is not entitled to a mandatory severance, an employer may pay an amount equivalent to the required "severance" under the law to help the former employee in the transition period between jobs, to avoid possible future litigation costs, or for any other reason expressed by the employer. The mere offering of this payment or its actual payment to the former employee, however, does not constitute an admission by the employer that the

dismissal was "unjust."

In short, Puerto Rico offers employees within its jurisdiction special protections and rights, and employers must be aware of these laws or face significant penalties or court challenges from their employees.

#### Endnotes:

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3 Copies of the Puerto Rico laws and/or amendments cited in this article may be obtained upon written request to Hogan & Hartson L.L.P., c/o Maria Eugenia Ramirez, 1111 Brickell Avenue, Suite 1900, Miami, Florida 33131.

4 Employees engaged in farming activities, housekeeping, charitable entities, local government, or who receive annual bonuses through

a collective bargaining agreement (with a few exceptions) are not qualified employees under the law. See P.R. Laws Ann. tit. 29, §505. Executives, administrators, and professionals, however, are covered under the law.

5 See P.R. Laws Ann. tit. 29, §§501-507 ("Christmas Bonus Act" or "La Ley del Bono de Navidad" as it is known in Puerto Rico).

6 See *id.* §502.

7 See Puerto Rico Law No. 124 of September 29, 2005 ("Law 124").

8 See P.R. Laws Ann. tit. 29, §501(2005) (amended 2005).

9 See Puerto Rico Law No. 124.

10 See *id.*

11 *Id.*

12 See P.R. Laws Ann. tit. 29, §§185a-185l (colloquially known in Puerto Rico as "Law 80").

13 See *id.* §185i ("Law 80").

14 *Id.* §185b ("Law 80").

15 Puerto Rico Law No. 128 of October 7, 2005 ("Law 128"). This amendment does not appear to be retroactive to claims where the alleged unjust discharge occurred prior to the October 2005 enactment of Law 128.

16 See P.R. Laws Ann. tit. 29, §185a (2005) (amended 2005).

17 See Puerto Rico Law No. 128 (emphasis added).



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