

July 20, 2004

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Opinion Number 15287

This is in reply to your letter of June 28, 2004, that reads as follows:

“I am researching Puerto Rico’s labor and employment laws and I have a question related to Puerto Rico’s wage and hour laws. Thank you in advance for your assistance!

*Question: Some states such as California require employers to pay employees “reporting pay” or “show-up”, which means that **employers must pay employees for a minimum number of hours when such employees report to work, but there is no work available.** For example, if an hourly employee is scheduled to work from 9:00 a. m. to 5:00 p. m. and when he/she arrives, there is no work, some states require a minimum of 3 hours or 4 hours paid time. Does Puerto Rico have a similar requirement or other laws regarding this issue?*

If so, can you please provide a citation to the applicable statute or regulation . . .” (Emphasis given.)

Your inquiry is related to how to pay the salaries of your employees, specifically, when they are reporting to work and then there is no work available.

Under the Puerto Rico Labor Laws and Regulations, it is established that the employer must pay for all “worked hours”. “Worked hours” includes the hours in which an employee is working and also the hours that the employee is required to stay available to do some job.

Also, there are some Mandatory Decrees that contains dispositions about “Minimum Daily Compensatory Warranty”. The number of hours that an employer must compensate depends from one Mandatory Decree to another. According with information provided by the “Area de Revisión de Salarios, Vacaciones y Licencia por Enfermedad” of our Department, we can mention the following Mandatory Decrees that have this clause are: (1) Mandatory Decree Number 25, Applicable to the Lumber and Wood Products: Metal Furniture, Door and Windows; and Straw, Hair, and Related Products Industry; Eleventh Revision (1991); (2) Mandatory Decree Number 33, Applicable to the Food and Related Products Industry, Ninth Revision (1990); (3) Mandatory Decree Number 37, Applicable to the Laundry and Dry Cleaning Business, Ninth Revision (2000); (4) Mandatory Decree Number 38, Applicable to the Transportation Industry, Eighth Revision (1989); (5) Mandatory Decree Number 44, Applicable to the Construction Industry; Seventh Revision (1994); (6) Mandatory Decree Number 48, Applicable to Theatres and Movies Industry, Eleventh Revision, (1994); (7) Mandatory Decree Number 50, Applicable to the Sugar Industry in its Agricultural Phase, Third Revision (1967); (8) Mandatory Decree Number

57, Applicable to General Agriculture Activities, Fifth Revision (1999); (9) Mandatory Decree Number 58, Applicable to the Coffee Industry in its Agricultural Phase, Fourth Revision (1967); (10) Mandatory Decree Number 67, Applicable to Stone, Clay, Glass, Cement and other Products Related, Seventh Revision (1994) and (11) Mandatory Decree Number 83, Applicable to Paper, Paper Products; Prints and Publications, Fourth Revision (1994), enclosed are some Mandatory Decrees for your knowledge.

In the case, that a Mandatory Decree does not have a “Minimum Daily Compensatory Warranty”, the employer only have to pay to the employee the time that they stay and were waiting in the office before they can go out by this day, except that a collective agreement or individual labor agreement establish greater benefits.

It is very important, that every employer have the duty to pay for these hours whenever the employee had go to work and “was available to do some job”. By other hand, if the employees does not assist to the working area or were notified that the labors were suspended that day because there is not water, power supply or telephone service, as examples, the employer do not have the duty to pay for the hours of that day. This opinion only applies to non-exempt employees.

On the other hand, have a fixed salary based on individual labor contract. In such cases, the employer must pay the whole salary. The same rule applies to non-exempt employees, who by collective agreement or individual labor agreement have a fixed salary.

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We trust the information provided is responsive to your inquiry.

Cordially,

Hon. Román M. Velasco González
Secretary of Labor and Human Resources

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