



GOVERNMENT OF PUERTO RICO
DEPARTMENT OF LABOR AND HUMAN RESOURCES

July 14, 2000

Re: Inquiry No. 14779

This is in reply to your inquiry pertaining to the application of Act No. 1 of December 1, 1989, as amended, 29 LPRA §§ 301-312, popularly known as the Closing Law, to a client of your law firm, a large department store that is scheduled to begin operations in Puerto Rico within the next few months. Your inquiry is as follows:

In order for a successful commencement of operations, there are several matter[s] that should be addressed which require the intervention and cooperation of your office in the following areas:

1. Extensions of probationary period agreements which will be sought pursuant to Article 8 of Law number 80 of May 30, 1976, as amended, 29 LPRA section 185(h). As you are well aware, the retail industry nowadays is a much more complex, exacting and demanding employment arena, which requires in all of its phases the use of computerized registers, which double as data entry stations, inventory control and cash security media. The exempt and non-exempt employee in the modern retail industry is a highly trained professional who must master many sales, marketing, computer, security, safety and customer [sic] relations policies which demand constant training and re-training. [Our client] will most assuredly be submitting to your consideration petitions for extensions of the ninety (90) day probationary period, as their experience in the mainland USA has demonstrated that in most case[s] ninety (90) days are not sufficient to adequately evaluate the capability and proficiency of such candidates for regular employment.

As you point out, Article 8 of Act No. 80, *supra*, provides for a regular 90-day probationary period, which at the employer's request may be extended for another 90 days when, in the Secretary's judgment, such extension is warranted. The Secretary will certainly give due consideration to such requests when submitted and every effort will be made to process applications for extension on a timely basis.

2. We need to establish a mutually agreeable method to expedite authorizations to work on Sundays so that when the store is opened to the public these permits required by the Puerto Rico Closing Law are in place and available for future inspection at the employees["] personnel files and the company's personnel records, pursuant to the provisions of Law number 1 of December 1, 1989, (29 LPRA sec. 301 to 312). This logistical arrangement can also be utilized to process requests for authorizations of meal period reductions and modification of the commencement of the meal period pursuant to 29 LPRA sec. 283.

As in the case of requests for extension of the probationary period, the Department will do its best to expedite the processing of authorizations to work on Sundays. On the other hand, pursuant to Article 15 of Act No. 379 of May 15, 1948, as amended by Act No. 83 of July 20, 1995, the 1-hour meal period may be reduced to 30 minutes "by reason of mutual convenience for the employee and the employer, and by written stipulation of both". Accordingly, the Secretary's authorization is no longer required for this purpose. Similarly, in accordance with Article 5 of the amended law, the starting and ending times of meal periods may be changed without the Secretary's authorization, but only if a flexitime agreement is in place between the employee and the employer.

3. We enclose a list of the technical positions which we believe are covered by 29 LPRA 306 subsection (b). We need your written acquiescence of our understanding, in order that the requests for individualized authorization be dispensed with.

As you point out, Article 7(b) of the amended Act authorizes the employment of technical workers on Sundays, except that they may not work on two consecutive Sundays. The enclosure you submitted lists a total of ten (10) "technical" positions, i.e., (1) Vault; (2) Administrative Team; (3) Security Agent; (4) Staffing Coordinator; (5) Bridal Associate; (6) Customer Service Managers; (7) Alterations; (8) Assistant Sales Manager; (9) Human Resources Administrator; and (10) Personal Shopping Service. During the legislative debate that led to the adoption of Act No. 1, *supra*, the Hon. Ramón Díaz Gómez, who at the time was President of the Labor and Veterans' Affairs Committee of the House of Representatives, made the following statement:

"Those technical employees who are indispensable ... may work or may be required by their employers to work every other Sunday." [Our translation].

On the assumption that the duties of the above "technical workers" are "indispensable", the authorization to work every other Sunday would be within the intent of Act No. 1, *supra*.

4. Probationary period - We formally request a waiver of exemption from the prohibition to employee [sic] probationary employees to work on Sunday, assuming that such employees will voluntarily agree to such waiver. Your response to our request is very important in order to set our scheduling of employees, [e]specially during the first ninety (90) days of [our client's] opening [in Puerto Rico].

As you are aware, Article 7 of the Act flatly states that "[u]nder no circumstances shall probationary employees work on Sundays." On the other hand, the Secretary of Labor has no authority to waive that prohibition. However, Article 7 does provide that "[t]hose persons that are not expressly included in subsections (a), (b), and (c) of this section may work on Sundays ... only if the person voluntarily agrees to it with the employer in writing, and with the authorization of the Secretary of Labor ... Provided, that none of the latter may work on two consecutive Sundays." It is the Department's opinion that the prohibition against Sunday work by probationary employees does not apply to part-time employees who work no more than 22 hours per week. In addition, the prohibition against required Sunday work as a condition for employment applies only to regular employees and to part-time employees who work more than 22 hours per week.

The Department's interpretation regarding the application of Act No. 1, *supra*, is summed up in Opinion No. 90-4, issued by the Secretary of Labor on June 11, 1990. Regarding employees who may work on Sundays, the relevant passage of that opinion states the following:

As provided in the aforementioned Article 7, those employees who during the week do not work in excess of 22 hours per week may be utilized [on Sundays]. That is, working 22 or fewer hours per week is in these cases a requirement or condition for working on Sundays. The hours to be worked on Sundays are not included in computing the 22 hours.

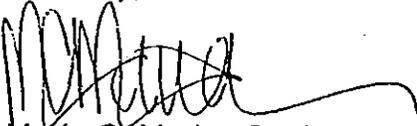
In the case of these employees, they may be hired to work consecutive Sundays as a condition of employment and they may be subjected to the probationary period of Act No. 80 of May 30, 1976. However, in the remaining cases, employees who will work on Sundays may not be subjected to a probationary period, nor may they be required to work on Sundays as a condition of employment.

Similarly, no employee, except those who work part-time, may work on two consecutive Sundays. [Our translation]

In summary, absent any legislative provision that would exempt a new establishment from the prohibition on Sunday work by regular employees who are undergoing probation, the other alternative would be for the employer to waive probationary status for all employees during the first 90 days of operations. Pursuant to Act No. 80, *supra*, such employees would acquire permanent status immediately and thus could be fired only for just cause.

We appreciate your efforts on behalf of your client to ensure compliance with all applicable labor laws and regulations and to that end will provide all required assistance.

Cordially,

A handwritten signature in black ink, appearing to read 'M. Marina Durán', with a long horizontal flourish extending to the right.

María C. Marina Durán
Solicitor of Labor