



ESTADO LIBRE ASOCIADO DE PUERTO RICO
DEPARTAMENTO DEL TRABAJO Y RECURSOS HUMANOS
Oficina de la Procuradora del Trabajo

Lcdo. Víctor Rivera Hernández
Secretario

June 16, 2003

Inquiry Number 15120

We are referring to your letter of January 10, 2003, that reads as follows:

"I am an assistant to Deputy General Counsel Michael Randall, Esq. of Educational Testing Service (ETS), which employs a small number of office staff in Puerto Rico. ETS is considering going to a 40-hour work week (from 37.5), to be more in line with other employers. ETS wants to make sure it remains in full compliance with Puerto Rico wage and hour law. Therefore, Ms. Randall would very much appreciate specific answers to these questions about non-exempt staff:

- 1. Must an employer pay overtime to non-exempt persons who work more than 40 hours in one work week?*
- 2. Is there any requirement that overtime be paid after a certain number of hours worked in a single day? In other words, if an employee works for 11 hours one day and only five the next, and only 40 hours total for the week, must overtime be paid for the day when extra hours were worked?*
- 3. May the employer count only hours actually worked when computing time for overtime purposes? (In other words, if a non-exempt employee takes Monday off and receives eight hours of either vacation or sick time, and then works 33 hours during the*

remainder of the week, does he or she receive an hour of overtime pay, as though he or she worked a 41-hour week?)

4. Must the employer increase the pay of non-exempt employees when it increases their working hours?

....

In your first question, you are asking about the maximum time of the working hours by day or week that an exempt employee can work. In Puerto Rico, the Constitution for the Commonwealth establishes the following at the Section 16 of the Article II:

“Section 16. The right of every employee to choose his occupation freely and to resign there from is recognized, as is his right to equal pay for equal work, to a reasonable minimum salary, to protection against risks to his health or person in his work or employment, and to an ordinary-workday which shall not exceed eight hours. An employee may work in excess of this daily limit only if he is paid extra compensation as provided by law, at a rate never less than one and one-half times the regular rate at which he is employed.”

Also the Act Number 379 said the following related to daily working hours and weekly working hours in its Article 2:

“Article 2. –
Eight (8) hours of work constitute the legal workday in Puerto Rico.
Forty (40) hours of work constitute a workweek.”

The Article 4 of the Act 379 said the following related to the extra hours:

“Working hours- - Extra hours

Extra working hours are:

- (a) The hours that an employee works for his employer in excess of eight (8) hours during any period of twenty-four (24) consecutive hours.
- (b) **The hours that an employee works for his employer in excess of forty during any week, unless the hours worked daily in excess of eight are paid at double time rates.**
- (c) The hours that an employee works for his employer during the days or hours when the establishment in which he render services should remain closed to the public by legal provision; Provided, however, That the hours worked by an employee for his employer during the days or hours in which the establishment must remain closed to the public shall not be considered extra hours, when the employer has obtained from the Secretary of Labor and Human Resources the permit required by § § and 290 of this title, and the total number of hours worked by the employee during said day do not exceed eight (8) hours, nor the total number of hours worked during the week exceed forty (40) hours.
- (d) The hours that an employee works for his employer during the day of rest heretofore or hereafter fixed by law in the case of businesses and industries not subject to the closing of their establishments; and the hours that an employee works for his employer on Sundays in those business establishments that continue to operate during that day and are subject to the provisions of § § 301 et seq. of this title; Provided, That the hours worked on Sundays in the business establishments covered by said act shall be paid at a rate equivalent to twice the rate agreed upon for regular hours.
- (e) The hours that an employee works for his employer in excess of such maximum working hours a day as the Minimum Wage Board may have fixed or may fix for the occupation, business, or industry in question.
- (f) The hours that an employee works for his employer in excess of the maximum number of working hours a day fixed in a collective labor agreement.”

Therefore, an employer must pay overtime to non-exempt persons who work more than forty (40) hours in one week.

Related to your question number two about the requirements to pay overtime of a day of work, the Article 4 of the Act Number 379 said that the extra hours are "The hours that an employee works for his employer in excess of eight (8) hours during any period of twenty-four (24) consecutive hours."

About your question number three, the answer is yes. If an employee work forty-one (41) hours during a week, the employer must pay one (1) hour of overtime according with the section (b) of the Article of the Act Number 379. This section said: "The hours that an employee works for his employer in excess forty during any week, unless the hours worked daily in excess of eight are paid at double time rates."

In your last question, you are inquire if an employer must increase the pay to non-exempts employees when have increase the working hours. No. The general rule is that the employer does not have to increase the pay to non-exempt employees when it increases their working hours. The non-exempt employees receive its pay by hour; different of the exempt employees, who have fixed pay. However, if the employer and the employee make an agreement, in which states that the salary will be increase in this specific situation, then the employer must increases it.

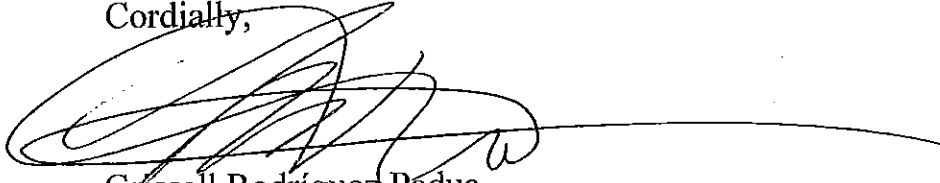
Consultation Num. 15120

Lee Waks

Page 5

We hope that our reply can be useful to you.

Cordially,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Grissell Rodríguez Padua
Solicitor of Labor

ep/LVGT