

(H.B. 1510)

(No. 180)

(Approved July 27, 1998)

AN ACT

To establish the Puerto Rico Minimum Wage, Vacation and Sick Leave Act; to provide that the Federal Minimum Wage Act shall apply in Puerto Rico in the same manner and with the same criteria as in the United States of America; provide coverage for workers of local firms not covered by the Federal Fair Labor Standards Act of 1938; establish all factors related to vacation and sick leave; empower the Secretary of Labor and Human Resources to implement this Act; provide for the elimination of the Puerto Rico Minimum Wage Board created by Act No 96 of June 26, 1956, as amended, known as Puerto Rico Minimum Wage Act, in order to transfer the quasi-legislative powers delegated to it, to the Department of Labor and Human Resources; provide for the relocation of its employees and the protection of their rights; establish penalties; and repeal Act No. 96, cited above.

STATEMENT OF MOTIVES

The first minimum wage act of Puerto Rico approved in 1941, established a complicated and time-consuming mechanism to raise the workers' salaries. After 15 years of innumerable amendments, the Legislature decided to repeal it and pass new, more agile legislation which would be attune to the economic and social changes in the field of labor at that time.

Forty-two years have passed since that change. As with the original minimum wage act, the second act was subject to innumerable amendments in order to adequately represent the prevailing economic, industrial, technological, business and services development.

This Legislature deems that the time is ripe to create a new Minimum Wage Act which will establish a more agile mechanism, in harmony with the developments in the Commonwealth as well as the Federal field of labor. Said new law shall also recognize that the conditions of the Puerto Rican workers have improved through the years. By means of Act No. 84 of July 20, 1995, it was ensured by statute, that the Island's public policy was for federal minimum wages to apply automatically and immediately in Puerto Rico to those workers covered by the Federal statute. On the other hand, this legislation also recognized a need to ensure that the statutory mandates regarding other fringe benefits such as vacation and sick leave, do not operate in detriment of our opportunities for economic development and the creation of new jobs. The concession of benefits over and above the statutory mandate has to be established pursuant to the reality of the present economic and market conditions.

To implement the above, this Act affirms the public policy that is stated in Act No. 84, and establishes as a local fundamental right that the minimum wage for those enterprises that are covered by Federal legislation, shall be the Federal minimum wage. For the workers of firms that are not covered by said Federal legislation, an agile tool is provided for their protection in compliance with the Constitutional mandate established in Article II, Section 16, which recognizes that workers must have a reasonable minimum wage. Sick leave and vacation leave are regulated uniformly for all Puerto Rican workers, while protecting the higher benefits enjoyed under previous legislation, by the workers that were hired prior to the effectiveness of this Act.

As a result of this change, and pursuant to the present public policy to eliminate unnecessary government structures, the Minimum Wage Board of Puerto Rico, the quasi-legislative body of the Commonwealth created by Act

No. 96 of June 26, 1956, as amended, must be eliminated. This Act provides for its orderly phasing-out, the relocation of its career employees, and the protection of their vested rights.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- Title

This Act shall be known as the Puerto Rico Minimum Wage, Vacation and Sick Leave Act.

Section 2.- Federal Minimum Wage.-

The Federal minimum wage fixed by the Fair Labor Standards Act approved by the Congress of the United States of America on June 25, 1938, as it has subsequently been amended, shall automatically apply to the workers in Puerto Rico covered by the Federal Act.

Upon applying the Federal minimum wage, the provisions in Federal legislation and regulations shall be recognized with regard to how the minimum wage shall be paid, what working hours are, which employees and jobs are exempted from minimum wages, and to establish the minimum hours of work or maximum work week.

Section 3.- Protection for Local Enterprises not Covered by the Federal Statute. -

Those enterprises or activities that do not meet the criteria of the Federal Fair Labor Standards Act, and are therefore exempted from the Federal minimum wage, shall pay a minimum wage equivalent to seventy percent (70%) of the prevailing minimum wage. Every other phase of Federal legislation and regulations regarding how the minimum wage is to be paid, working hours, which employees and occupations are exempted from the federal minimum wage, and what a working day or week is, are applicable. Provided, that the Secretary of Labor and Human Resources shall have the

authority to reduce the prevailing percent if he/she shows that its implementation will substantially affect the employees in the enterprises covered by this Section.

Section 4.- Definitions. -

(a) 'Mandatory Decree' means a decree passed by the Minimum Wage Board under the provisions of Act No. 96 of June 26, 1956, as amended, or by the Secretary, under this Act.

(b) 'Department' refers to the Department of Labor and Human Resources of Puerto Rico.

(c) 'Employ' means to hire, allow or put to work.

(d) 'Industry' shall mean any field of economic activity and comprises agriculture, silviculture, fishing, mining, construction, manufacture, wholesale and retail trade, finances, insurance and real estate business, transportation, communications and other public and personal (except household services), professional and business services.

(e) 'Board' means the Minimum Wage Board.

(f) 'Worker', 'employee' or 'laborer' includes any person who works, practices or engages in any art, skill, trade or labor under the orders of, or for the benefit of another person, based on a contract for the leasing of services, or by some type of remuneration, or an express or tacit promise to receive it, in any industry. It does not include independent contractors.

(g) 'Employer' includes any natural or juridical person of any nature who, for profit or not, employs or allows any number of laborers, workers, or employees to work for any type of compensation.

(h) 'Salary' includes wages, pay, remuneration and any type of compensation, whether in cash, in kind, services, facilities, or any

combination thereof; but shall not include anything but money when it is a minimum wage prescribed under the provisions of this Act, unless otherwise provided or authorized by the Secretary.

(i) 'Minimum Wage' comprises the minimum wages established pursuant to this Act for workers of enterprises or for activities not covered by the Federal Fair Labor Standards Act.

a minimum wage prescribed under the provisions of this Act, unless otherwise provided or authorized by the Secretary.

(j) 'Federal Minimum Wage' is the minimum wage established by the Fair Labor Standards Act approved by the Congress of the United States of America on June 25, 1938, as amended.

(k) 'Secretary' refers to the Secretary of the Department of Labor and Human Resources of Puerto Rico."

Section 5.- Industries that Provide Greater or Lesser Benefits. –

(a) Those industries that on the effective date of this Act are paying higher wages under a mandatory decree and are not covered by the Federal minimum wage, shall continue to pay them to their workers. However, those industries that are covered by the federal act and are paying wages that are higher than the Federal minimum wage, shall continue to pay them to the workers.

(b) An employee who was covered by a mandatory decree as of August 1, 1995, which provided for the monthly accrual of vacation and sick leave rates higher than what is provided in this Act, or who was entitled to accrue such benefits with less hours of work than what is provided in this Act, shall continue to enjoy such benefits under the same terms that existed before

August 1, 1995. This provision shall apply as long as he/she works for the same employer.

- (c) Those industries that on the effective date of this Act, were regulated by mandatory decrees with a monthly accrual rate of vacation and sick leave lower than what is provided in this Act, or with requirements of minimum hours of work to be entitled to said accrual rates greater than what is provided in this Act, shall continue to be subject to the provisions of said mandatory decree to such effects. In the shortest time possible, and according to the economic capacity of each industry, the minimum vacation and sick leave benefits established by said mandatory decrees shall be adjusted to the levels provided in this Act.
- (d) In the process of revising the mandatory decrees, the Secretary shall take into consideration the cost of living and the special needs of the employees, as well as the economic conditions and the competition of the industry in question, so that there will be no substantial reduction in employment in said industries. In revising the decrees, the Secretary shall comply with the Uniform Administrative Procedures Act of Puerto Rico, Act No. 170 of August 12, 1988, as amended. Provided, that public hearings notified at least sixty (60) days in advance, shall be held in the revision process, and the determination shall be subject to judicial review.

Section 6.- Provisions on Vacation and Sick Leave .-

- (a) All workers in Puerto Rico with the exception of those listed in Sections 3 and 8 of this Act, shall accrue vacation leave at a

rate of one and one quarter (1 ¼) days each month, and sick leave at a rate of one (1) day each month. It shall be a requirement for the employee to work no less than one hundred and fifteen (115) hours a month to accrue said leave. Provided, that the use of vacation and sick leave shall be deemed as time worked, for the accrual of said benefits.

- (b) Vacation and sick leave shall be accrued as of the regular working day in the month that the accrual occurred. For employees whose schedules fluctuate, a regular working day shall be determined by dividing the total number of regular hours worked by the total number of days worked. For employees whose hours of work cannot be determined, they shall be computed on the basis of eight (8) regular working hours a day.
- (c) Vacation and sick leave time shall be used and shall be paid on the basis of a regular working day when the benefit is used or paid. To such effect, a period which is not greater than two (2) months shall be taken into consideration before taking or paying this benefit.
- (d) Vacation and sick leave shall be paid on the basis of an amount which is not less than the regular hourly wage earned by the employee in the month the leave was accrued. For employees who receive commissions or other incentives that are not at the full discretion of the employer, the total commissions or incentives earned for the year, can be divided between fifty-two (52) weeks, to compute the regular hourly wage.

- (e) If a probation period authorized by law is established, sick leave shall accrue from the beginning of said probation period. However, any employee who completes the probation period shall accrue vacation leave from the date his/her employment commenced.
- (f) An employee shall not claim vacation leave until it has accrued for one year. Vacation leave shall be granted annually, in such a way as not to disrupt the normal operation of the enterprise, to which ends, the employer shall establish the corresponding schedule.
- (g) Vacation leave shall be enjoyed consecutively, however, through an agreement between the employer and the employee, it may be apportioned, provided that the employee enjoys at least five (5) consecutive working days of vacation leave during the year.
- (h) Through an agreement between the employer and the employee, up to two (2) years of vacation leave may be accrued. An employer who does not grant vacation leave after accruing the above maximum, must grant the total leave accrued to date, and pay the employee twice (2) the corresponding salary for the period in excess of said maximum.
- (i) Upon written request of the employee, the employer may allow vacation leave to include non-working days comprised in the period he will enjoy his vacation leave, and/or the non-working days immediately before or after said period of vacation leave.

- (j) In the event the employee terminates his/her employment, the employer shall pay the employee the total leave accrued to such date, even though it is less than a year.
- (k) The employer may allow the partial liquidation of accrued vacation leave in excess of ten (10) days upon written request of the employee.
- (l) Sick leave not used by the employee in the course of the year shall be accrued for subsequent years up to a maximum of fifteen (15) days.
- (m) Except in cases of *force majeure*, the employee shall notify the employer of his/her illness as soon as it is foreseeable that he/she shall be absent at the beginning of his/her regular hours of work and no later than the same day of his/her absence.
- (n) The enjoyment of sick leave does not excuse compliance of those standards of conduct validly established by the employer, such as attendance, punctuality, medical certificates if the absence exceeds two (2) working days, and periodic reports on the continued illness.

Section 7.- Use of Uniforms. -

Every employer who requires his/her employees to use uniforms must defray the expense of acquiring them. Under no circumstances shall the employee be required to contribute in any way, directly or indirectly, in assuming the full or partial expense of acquiring said uniforms.

Section 8.- Persons Excluded from the Act.

- (a) The provisions of this Act shall not apply to:
 - (1) persons employed in domestic service in a family residence, except chauffeurs;

- (2) persons employed by the Government of the United States of America, the Government of Puerto Rico, except by those agencies or instrumentalities thereof that operate as private businesses or enterprises, and;
 - (3) persons employed by the Municipal Governments.
- (b) The provisions of this Act shall not apply to “Administrators”, “Executives” and “Professionals” as said terms are defined by Regulation Number 13 of the Minimum Wage Board, or as subsequently amended by the Secretary of Labor and Human Resources under the powers granted by this Act.

Section 9.- Violations; Penalties.-

- (a) Any person who as an employer, or an administrator, official, agent, employee or person in charge of a firm, partnership or corporation, or of another person or persons, violates or refuses to comply or is reticent in complying with any provision of this Act, or any decree or regulation adopted by the Minimum Wage Board, and which has been validated by the provisions of this Act, or that is subsequently issued by the Legislature pursuant to the provisions of this Act, shall be guilty of a misdemeanor and shall be punished by a fine of not less than five hundred (500) dollars nor more than one thousand (1,000) dollars, or imprisonment for a term of not less than ninety (90) days nor more than one hundred and twenty (120) days, or both penalties, at the discretion of the Court.
- (b) In the event of a second violation of the infractions mentioned in this Section, a fine which shall not be less than one thousand (1,000) dollars or more than five thousand (5,000) dollars, or

imprisonment for a term of not less than one hundred twenty (120) days nor more than one (1) year, or both penalties, shall be imposed at the discretion of the Court.

Section 10.- Injunction and other Proceedings. -

- (a) It shall be the duty of the Secretary of Labor and Human Resources or through any of his/her duly authorized employees or agents to ensure compliance of this Act. To such effects, whenever the Secretary believes that any employer is violating or is going to violate any provision of this Act, shall file an injunction or any other remedies that may be needed to enforce the terms of this Act. The Court of First Instance, Superior Part, shall have the authority to hear and decide all the above-mentioned suits.
- (b) To such effects, every employer:
 - (1) Shall allow the Secretary of Labor and Human Resources or any of his/her duly authorized employees or agents, free access to all sites and properties in which or with which any type of work is performed, in order to perform any investigation on the prevailing working conditions therein.
 - (2) Shall allow the Secretary of Labor and Human Resources or any of his/her authorized employees or agents to inspect his/her accounting books, reports, contracts, lists, payrolls, and all records of the employees' working conditions in order to perform any investigation related to compliance of any provision of this Act.
- (c) Any employer who does not comply with or violates any of the duties or obligations stated in this Section shall be guilty of a

misdemeanor and shall be punished by a fine of not more than six hundred (600) dollars, or a maximum term of one (1) month of imprisonment, or both penalties, at the discretion of the Court, and in case of a second offense, he/she shall be punished with a fine of fifteen hundred (1,500) dollars or imprisonment for a term of ninety (90) days, or both penalties, at the discretion of the Court.

Section 11.- Claims Filed by Employees. -

- (a) Any employee or worker who receives compensation for his/her work which is less than that prescribed by this Act or a collective bargaining agreement or an individual work contract, shall be entitled to collect through a civil suit, the difference owed up to the total amount of the corresponding compensation for wages, vacation and sick leave, or any other benefit, plus an amount equal to that which has not been paid to him/her as additional compensation, plus costs interest, expenses and fees of the lawyers in the case, notwithstanding any other agreement to the contrary.
- (b) All claims that several or all of the workers or employees have against an employer in common for work performed in the same establishment, firm or site may be joined in a single suit.
- (c) Claims may be handled by regular suit or through any procedure for wage claims that are established in other laws of Puerto Rico.
- (d) With regard to compliance of this Act, the Secretary of Labor and Human Resources may file suit on his own account or at the request of one or more workers or employees with an interest therein, and in representation and benefit of one or more of the

same who are in similar circumstances, for the payment of any indebted amount for wages, additional compensation, interests, costs, expenses and lawyers fees that are indicated in subsection (a) of this Section. Any worker with an interest therein may become a plaintiff in any suit that is thus brought by the Secretary of Labor and Human Resources.

- (e) The Secretary of Labor and Human Resources may become a plaintiff or intervener in any judicial suit or proceeding that is filed by any person under this Act.

Section 12.- Prescriptive Term. -

- (a) An employee's suit to claim salaries against his/her employer under this Act or any mandatory decree approved or to be approved according to the provisions of this Act, shall prescribe within a term of (2) years. The term for this action to prescribe shall be counted from the time that the employee ceased to work for the employer. The prescriptive term indicated above, shall count from the time the worker ceased his job with the employer. The prescriptive term indicated above shall be interrupted and shall begin anew through the judicial or extra judicial claim for the wage debt filed by the worker, his representative or an official of the Department empowered to do so, and by any act by the employer acknowledging the debt.
- (b) When the employee is working with the employer, the claim shall only include the salaries to which the employee is entitled for any reason during the three (3) years prior to the date the judicial action was filed.

- (c) In the event the employee has ceased working for the employer, the claim shall only include the last three (3) years prior to the date he/she stopped working.
- (d) With regard to the prescriptive term provided in this Section, a change in the nature of the employee's work shall not constitute a novation of the employment contract.
- (e) The provisions of this Section shall in no way affect the cases that have already been filed in the courts, or those that are filed within one (1) year after this Act becomes effective.

Section 13.- General Provisions.-

- (a) The Minimum Wage Board of Puerto Rico, created by virtue of Act No. 96 of June 26, 1956, as amended, is hereby repealed.
- (b) The quasi-legal powers delegated on said Board are hereby transferred to the Department of Labor and Human Resources, as well as the current administrative records, personnel, property and equipment assigned to the Minimum Wage Board.
- (c) The provisions of this act shall not affect the contractual obligations pending on the effective date of this Act.
- (d) The Governor of Puerto Rico is authorized to adopt such transitory measures and make any decisions that are needed for the purposes of this Section.
- (e) All vested rights under the personnel laws and regulations, as well as all rights, privileges, obligations and status regarding any existing pension, or retirement, or savings and loan funds system or systems to which the career employees of the Board are affiliated upon the effectiveness of this Act, are hereby guaranteed.

Section 14.- Subsection (n) is repealed and subsection (o) is re-designated as subsection (n) of Section 11 of Act No. 15 of April 14, 1931, as amended, to read as follows:

“Section 11. –

The Department of Labor and Human Resources shall be composed of the following services, bureaus and divisions:

- (a) ...
- (n) Labor Relations Board.”

Section 15.- Section 2 of Reorganization Plan No. 2 of May 4, 1994, is hereby amended to read as follows:

“Section 2.- Reorganization of the Department

The Department of Labor and Human Resources is hereby reorganized on the basis of the following operational components:

- (a) Right to Employment Administration
- (b) Volunteer Corps in Service to Puerto Rico
- (c) Programs in effect in the Department
- (d) Occupational Development and Human Resources Council.”

Section 16.- Clause 8 of Section 4 of Reorganization Plan No. 2 of May 4, 1994, Department of Labor and Human Resources, is hereby amended to read as follows:

“Section 4.- Powers and Functions of the Secretary

The Secretary of Labor and Human Resources, in addition to the powers, authority and functions conferred by other acts, shall have the following, without being construed as a limitation:

- 1. ...
- 8. Approve the regulations to be adopted by the components of the Department as well as any amendment or repeal thereof. The

directors of the components of the Department shall draft and submit for the approval of the Secretary, the needed regulations, including any amendments or their repeal, and develop and implement rules, norms and procedures of general application in the Department. The regulations in effect on the date of approval of the Plan shall remain in effect until the Secretary amends or repeals them.

9. ...”

Section 17. –

- (a) Act No. 96 of June 26, 1956, as amended is hereby repealed and any other Act or part thereof that is in contravention of the present Act. Any provision of a Mandatory Decree that is in contravention of the provisions of this Act or which refers to matters that are not minimum wages, vacation or sick leave, are also repealed.
- (b) Any provision of regulations or mandatory decrees promulgated under Act No. 96 of June 26, 1956, as amended, and which is in effect on the date of this Act, shall remain in effect until it is revised or repealed by the Secretary of Labor and Human Resources, pursuant to the provisions of this Act. Periodically, and not less than every two (2) years, said regulations shall be examined to adjust them to the requirements and definitions contained in the Federal Fair Labor Standards Act, and make any amendment that is pertinent to advance the purposes of this Act.
- (c) Every employee who works in an industry which, according to the legislation in effect on the effective date of this Act, has the

obligation of recognizing holidays with pay, minimum daily compensation guarantees, and/or special payment for overtime as formerly provided by mandatory decrees under Act No. 8 of April 5, 1941, shall continue to enjoy said benefits.”

Section 18.- This Act shall take effect immediately after its approval.

September 28, 1999

Luis G. Hidalgo, Director of the Office of Legislative Services of the Legislature of Puerto Rico, hereby certifies to the Secretary of State that he has duly compared the English and Spanish texts of Act No. 180 (H.B. 510) of the 3rd Session of the 13th Legislature of Puerto Rico, entitled:

AN ACT to establish the Puerto Rico Minimum Wage, Vacation and Sick Leave Act; to provide that the Federal Minimum Wage Act shall apply in Puerto Rico in the same manner and with the same criteria as in the United States of America; provide coverage for workers of local firms not covered by the Federal Fair Labor Standards Act of 1938; establish all factors related to vacation and sick leave; empower the Secretary of Labor and Human Resources to implement this Act; provide for the elimination of the Puerto Rico Minimum Wage Board created by Act No 96 of June 26, 1956, as amended, known as Puerto Rico Minimum Wage Act, in order to transfer the quasi-legislative powers delegated to it, to the Department of Labor and Human Resources; provide for the relocation of its employees and the protection of their rights; establish penalties; and repeal Act No. 96, cited above,

and finds the same are complete, true and correct versions of each other.

Luis G. Hidalgo