

(H.B. 2364)

(No. 218)

(Approved September 29, 2006)

AN ACT

To repeal Section 3 of Act No. 99 of May 5, 1941, as amended, in order to temper to the legislation in effect the overtime pay for the employees of the Government of Puerto Rico, including those of the Senate and the House of Representatives of Puerto Rico, who are employed to work at the Legislature.

STATEMENT OF MOTIVES

Section 3 of Act No. 99 of May 5, 1941, as amended, establishes that the Secretary of the Treasury is authorized to give overtime pay to the employees of the Government of Puerto Rico, including those of the Senate and the House of Representatives of Puerto Rico, who are employed to work overtime at the Legislature of Puerto Rico, or its Committees, whose pay shall not exceed seventy-five cents (75¢) per hour.

At present there are laws and provisions that offer better protection, rights and benefits to the public service employees, turning the Section to be repealed by this measure obsolete.

According to Special Memorandum No. 27-2004 of the Office of Human Resources of the Commonwealth of Puerto Rico, Titled *Disposiciones Federales Referentes al Personal Exento de la Ley Federal de Normas Razonables de Trabajo*, IV, subsection (A), [Federal Provisions

Referring to the Personnel Exempted from the Fair Labor Standards Act], “there shall be excluded from the Fair Labor Standards Act of 1938” (F.L.S.A.), 29 U.S.C.A. sec 201, the popularly elected officials, the personnel that constitutes the immediate staff of these officials and their advisors and collaborators in the formulation of public policy; and the personnel of the legislative bodies, except for the personnel of the libraries of said bodies. Also excluded shall be the volunteers who are individuals who render voluntary services to units of the Commonwealth and the Municipal governments.” [Our translation.]

Furthermore said memorandum provides that the F.L.S.A. permits that the public employees accrue compensatory time at the rate of time and a half instead of receiving cash pay for overtime worked. A government entity may provide compensatory time when this is agreed to through a collective bargaining agreement or established by law or regulations, prior to employment. Public employees shall accrue up to 240 hours of compensatory time while the public employees in charge of the public safety or emergencies shall accrue a maximum of up to 480 hours. The overtime worked in excess of the 240 or 480 hours of compensatory time, as may be pertinent, shall be paid in cash within the payment period in which the extra work was performed or during the following period. Compensatory time shall be paid at the rate of not less than time and a half for each overtime hour. Thus, the accruable 480 hour compensatory time limit represents not more than 320 hours of overtime worked and the 240 hour limit represents not more than 160 hours of overtime worked.

In 1974, the Congress of the United States provided that the employees of the public sector would be covered by the Fair Labor Standards Act of 1938 (F.L.S.A.). Said statute was later supported by the

García v. San Antonio Metropolitan Transit Authority, 469 U.S. 528(1985) decision and it is from then on that the F.L.S.A. applies to the governments and municipalities with certain specific provisions that were included by the Congress through a 1986 amendment. The pertinent 1986 amendment permits the government to compensate the hours in excess of forty (40) hours per week to non exempt employees for compensatory time at the rate of time and a half for up to a maximum of 480 hours for the public employees in charge of the public safety or emergencies and a maximum of up to 240 hours for all other employees. The effect of not permitting non exempt employees of public employers to enjoy compensatory time is that the accrued time in excess of the limits mentioned has to be paid in cash, which is the way in which to compensate non exempt employees of private employers covered by F.L.S.A. As regards the work day, the F.L.S.A. only regulates hours in excess of the work week of forty (40) hours. It establishes that the hours in excess of forty (40) hours per week must be paid at the rate of at least time and a half of the regular wage per week, except for executives, administrators or bona fide professionals, 29 U.S.C.A. sec. 213(a)(1). The F.L.S.A. does not regulate the work day, the time for taking nourishment, free days, holidays and vacation or sick leave. The Federal minimum wage is fixed by the herein mentioned law and shall automatically apply in Puerto Rico to those employees covered by the Federal Act which excludes the employees of the House of Representatives and the Senate of Puerto Rico.

The House of Representatives of Puerto Rico, according to Administrative Order No. 2005-27, *Manual para el Control de la Asistencia y el Manejo y Disfrute de Licencias*, [Handbook for the Control of Assistance and the Management and Enjoyment of Leave] (Our translation)

in its Article VII, Section 7.5, defines as overtime the time worked in excess of 37.5 hours during a regular work week. The same points out that no extra pay shall be given for work performed on Saturdays, Sundays, Holidays or regular free days if the employee has not worked in excess of the work week provided. Under this Section, the accrued compensatory time shall be computed at time and a half.

The instructions that refer to the authorization for crediting and compensating overtime shall be through the enjoyment of the compensatory time leave indicated in Article VIII, Section 8.2c, Fringe Benefits; Compensatory Time Leave. The aforementioned Section makes reference to the Federal Fair Labor Standards Act, 29 U.S.C. 8503 (e)(2) which excludes state legislatures from the application of the Act. However, the Act does not deprive the House of Representatives from approving regulations which would provide its employees with benefits equal or similar to those promoted by the Federal Act for the employees covered by the latter.

Therefore, the Legislature of Puerto Rico deems it prudent and reasonable to repeal Section 3 of Act No. 99 of May 5, 1941, as amended.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.-Section 3 of Act No. 99 of May 5, 1941, as amended, is hereby repealed.

Section 2.-This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 218 (H.B. 2364) of the 4th Session of the 15th Legislature of Puerto Rico:

AN ACT to repeal Section 3 of Act No. 99 of May 5, 1941, as amended, in order to temper to the legislation in effect the overtime pay for the employees of the Government of Puerto Rico, including those of the Senate and the House of Representatives of Puerto Rico, who are employed to work at the Legislature,

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, today 27th of November of 2006.

Francisco J. Domenech
Director