



GOVERNMENT OF PUERTO RICO
DEPARTMENT OF LABOR AND HUMAN RESOURCES

October 19, 2023


Honorable Julie A. Su
Acting Secretary of Labor

Ms. Jessica Looman
Principal Deputy Administrator
Wage and Hour Division
U.S. Department of Labor
200 Constitution Ave., N.W.
Washington, DC 20210

**RE: PROPOSED RULE TO REVISE EXEMPTION REGULATIONS FOR EAP WORKERS-
EFFECT OF STANDARD SALARY LEVEL APPLICATION TO PUERTO RICO**

Honorable Secretary Su:

On September 8, 2023, the Wage and Hour Division of the U.S. Department of Labor (DOL) published a Notice of Proposed Rulemaking (Proposed Rule) announcing projected amendments to regulations established under the Fair Labor Standards Act concerning exemptions from minimum wage and overtime requirements for executive, administrative, professional, outside sales, and computer employees. Key proposed changes encompass increasing the standard salary level to the 35th percentile of earnings of full-time workers in the lowest-wage Census Region (currently the South), equivalent to \$1,059 per week (\$55,068 annually for a full-year worker). The proposed rule seeks to guarantee overtime pay for most salaried workers earning less than \$1,059 per week. The DOL also seeks to apply the standard salary level to all territories (except American Samoa) subject to the federal minimum wage, including Puerto Rico.

 In the proposal, the DOL considers that the salary levels for Puerto Rico and other territories have not been updated since 2004 when the salary level was set at \$455 per week (except for American Samoa). Thus, the increases in those salary levels will be more pronounced



than in the 50 states and the District of Columbia, where the salary level threshold was subject to the 2019 overtime rule adjustment, increasing to \$684 per week. This, despite the DOL pointing out that due to a lack of comprehensive data for the territories, it is not possible to fully assess the impact of the increased salary level in the territories.

In the context of analyzing and assessing the potential effects of implementing the proposed Overtime Rule in our jurisdiction, entailing an increase in the annual salary level threshold from \$23,660 to \$56,628, it is crucial for the DOL to consider the notable wage discrepancies between workers in Puerto Rico and those on the mainland. For instance, according to the Occupational Employment and Wage Statistics of May 2022, the annual mean wage in Puerto Rico stood at \$32,330, significantly lower than the nationwide average of \$61,900. Even the lowest-earning state, Mississippi, had an average wage of \$45,180, evidencing the income disparities.

This pattern is consistent across various occupations; for example, food service managers in Puerto Rico earned an average of \$36,020, reflecting a 31% difference compared to their counterparts in the lowest-earning state, West Virginia, with an average wage of \$52,030. Furthermore, this average in Puerto Rico is 46% less than the nationwide average of \$67,130 for the same occupation. These examples highlight the substantial income disparity that exists in Puerto Rico compared to the mainland. While we aim to narrow this gap, it is important to acknowledge that the strategies necessary to achieve this objective may need to be tailored differently for Puerto Rico as compared to the states.

Moreover, in addition to the Fair Labor Standards Act, workers and employers in Puerto Rico are subject to various state laws and regulations which include numerous benefits for non-exempt employees and additional overtime regulations that extend beyond the weekly overtime and include: an 8-hour legal workday with daily overtime for additional hours worked, mandatory meal periods with penalties if worked, paid sick leave, paid vacation leave, weekly day of rest with overtime compensation if worked, specific days some commercial establishments must remain closed with overtime compensation for all hours worked during those days, and special rules for wage payment and permissible deductions, among others. Consequently, we urge the DOL to thoroughly evaluate these implications to formulate a definitive decision.

On the other hand, while it is true that Puerto Rico is showing a positive trend in its labor market and other economic indicators, what the DOL is proposing could have adverse implications that could stop this positive momentum. For the above reasons, the Puerto Rico Department of Labor and Human Resources (PRDOL) feels compelled to respectfully express its concerns about the application of the proposed increase of the standard salary threshold to Puerto Rico. The increase of the standard salary threshold would represent an increase of more than 130% of the actual weekly salary, which would have a detrimental effect on small and medium-sized enterprises, which represent the vast majority of businesses on Puerto Rico. This would pose an added complication to the many challenges, which are not limited to labor costs, that these businesses already face, despite booming economic activity.

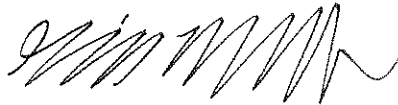
Finally, the Governor of Puerto Rico enacted the Puerto Rico Minimum Wage Act in 2021,

known as Act No. 47-2021. This legislation is set to gradually increase the state minimum wage while also establishing the Minimum Wage Review Commission (the Commission) within the PRDOL. Recognizing that an increase in the minimum wage will lead to reducing the existing gap between exempt and non-exempt employees, Act No. 47-2021 authorized this Commission to promulgate a mandatory decree to adjust the salaries of exempt employees. Therefore, it is public policy of the Government of Puerto Rico to increase the weekly salary of exempt employees, but in accordance with Puerto Rico's economic and labor context. Hence, the Government of Puerto Rico does not oppose an increase for these workers through federal regulatory action, but has concerns regarding the amount and the timeframe it would take for its implementation.

Therefore, in order to thoroughly discuss the matters addressed herein, the PRDOL proposes to schedule a meeting with the leadership of the DOL and Wage and Hour Division to further explore the potential implications of the Proposed Rule for Puerto Rico. Our intention is to discuss the context of Puerto Rico due to our labor laws, economic situation, and lack of specific data.

Thank you for your attention to this important matter. We look forward to the opportunity to engage in a productive discussion.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gabriel Maldonado-González', with a stylized, flowing script.

Gabriel Maldonado-González
Secretary