

PUERTO RICO'S CLOSING LAW AMENDED

On November 16, 2009 the Governor signed House Bill 1233, which *repeals* most of the restrictive employment provisions of Puerto Rico's Closing Law (Law No. 1 of December 1, 1989, as amended); *eliminates* the restrictions on the hours retail establishments can remain open to the public from Monday to Saturday; *significantly expands* the amount of hours retail establishments can remain open to the public on Sundays; *substitutes* the "double rate of regular pay" provision for work on Sundays with minimum rate of \$11.50 per hour; and *eliminates* the Closing Law provision that invalidates contractual lease, concession or franchise clauses requiring stores to remain operating or to open on Sundays, or imposing a maximum or minimum number of operating hours during working days (including mechanisms that have the effect of increasing the fixed operational costs of business establishments that decide not to open on specific dates or hours).

The amendments to the Closing Law are effective *immediately*. The amendment changes the Closing Law in several aspects of particular significance. An examination of what has changed and what remains the same follows.

What operations are covered?

The amendment maintains the language adopted in 2006, which *excluded* from coverage commercial establishments with combined wholesale and retail sales. Accordingly, the Closing Law coverage remains limited to "*commercial establishments*," defined as any locale, stores or similar place where *retail sales* or *transfers* of articles take place.¹ As indicated below, the Closing Law will continue to *exempt* certain specific commercial establishments from its provisions.

¹ The amendment retains the ambiguous language that extends coverage to retail stores or sites "belong[ing] to the same corporation, natural person or legal entity."

Permissible working hours (working days from Monday through Saturday).

The amendment *repeals* the restriction prohibiting businesses to open to the public before 5:00 a.m. from Monday through Saturday. Therefore, during these days, 24 hour continuous operations will be permissible.

Given market realities, it is not foreseen that this amendment will alter the hours most stores will operate.

Eve of Christmas holiday restrictions eliminated.

The amendment also *eliminates* the prohibition to open to the public before 5:00 a.m. or remaining open after 9:00 p.m. on the "Eve of Christmas holidays" of January 5, December 24 and 31.

Full Holidays.

The amendment maintains the list of full holidays contained in the Closing Law since 1997. These are the only holidays in which the covered retail establishments (that are not otherwise *exempt* from the statute) must remain *closed to the public*. These days are:

New Year's Day	January 1
Three Kings Day	January 6
Good Friday	
Easter Sunday	
Mothers' Day	
Fathers' Day	
Thanksgiving	3rd Thursday in November
Christmas	December 25
General Elections	(every 4 years)

The amendment permits, however, that during the time the commercial establishment must remain *closed to the public*, the business may continue tasks related to the continuity of operations and maintenance and require that employees work during said period.

Sunday Hours.

The only hours covered commercial establishments must remain *closed to the public* on Sundays, is from 5:00 a.m. to 11:00 a.m. The amendment permits, however, that during the time the establishment must remain closed to the public, the business may continue tasks related to the continuity of operations and maintenance and require that employees work during said period.

Pharmacies and commercial establishments that operate pharmacies can operate *before* 11:00 a.m. on Sundays, but only selling prescribed or over-the-counter medications and health articles as defined by Law No. 247 of September 3, 2004, as amended, and its regulation, as well as baby, grooming and personal hygiene articles, confections, school supplies, newspapers, books and magazines and those other articles authorized by regulation by the Puerto Rico Department of Consumer Affairs.

Which employees may work on Sundays?

Probably the most significant employment related aspect of the amendment is that it eliminates all existing restrictions related to work on Sundays. These restrictions controlled which employees an employer can require to work on Sundays (those who work less than 22 hours from Monday through Saturday); required that the employer obtain voluntary yearly agreements from all other employees (meaning those who work more than 22 hours from Monday through Saturday) as well as the approval from the Puerto Rico Department of Labor and Human Resources, in order to authorize such employees to work on Sundays; prohibited submitting a probationary employee to a Sunday work requirement; prohibited requiring or permitting those employees for whom such agreements and approvals are required, as well as the "exempt" employees who work in such stores, from working on two consecutive Sundays; and prohibited that the working hours of employees of covered commercial establishments be "fractioned" or "altered in any manner", without the agreement of the worker and the express authorization of the

Secretary of Labor and Human Resources of Puerto Rico.

How must you pay hours worked on Sundays?

The Amendment provides that every employee who works on Sundays in a covered (and non-exempt) commercial establishment must be paid at a minimum rate of \$11.50 per hour.

This minimum rate for Sunday work applies irrespective of the amount of hours worked during the week. In our opinion, by virtue of the federal and local overtime laws, if the amount of hours worked on Sundays exceeds forty (40) hours in the work-week, the applicable rate for hours worked would be time and a half (1 ½) the "regular rate of pay," provided said amount is *greater* than the Sunday minimum pay rate.

In the event that Sunday work coincides with the seventh consecutive day of work, by virtue of Puerto Rico's law prescribing one day of rest after six consecutive work days, the minimum amount due would be *double* the "regular rate of pay," provided said amount is greater than the Sunday minimum pay rate.

How must you pay the hours worked during periods when the business is required to remain closed to the public?

The amendment does not amend a pre-existing provision under local overtime legislation which requires that non-exempt employees be paid double the regular rate of pay, when they work during days or hours during which the establishment must remain "closed for the public" by legal mandate. Now, this double rate of pay provision will *only* apply to work performed on the full holidays recognized by law and on Sundays, from 5:00 to 11:00 a.m.

Which "commercial establishments" are exempt?

The following "commercial establishments" are *exempt* from the "closing to the public" requirements for the full holidays and Sunday from 5:00 a.m. to 11:00 a.m.:

- ✚ Those that operate within hotels, inns, condo hotels, airport terminals, sea ports or located within the demarcation of an old or historic zone dedicated predominantly to the sale of services or articles of touristic interest.
- ✚ Those that operate in places dedicated to cultural, artisan, recreational or sports activities.
- ✚ Those dedicated primarily to the manufacturing of food stuff and the direct sale to the public of cooked meals or other food stuff.
- ✚ Pharmacies (see above for the restrictions on the type of sales permissible on Sundays, from 5:00 a.m. to 11:00 a.m.).
- ✚ Gasoline stations and convenience stores located therein.
- ✚ Book stores and booths or kiosks for the sale of books, magazines, newspapers and literary or musical publications or recordings.
- ✚ Those that operate as part of the facilities of a funeral home or cemetery.
- ✚ Those located in market places.
- ✚ Those operated exclusively by their owners, relatives within a second degree of consanguinity or affinity.
- ✚ Those owned by natural or legal entities that do not have more than twenty five (25) employees on their weekly payroll, including “contract” employees.

These operations exempt from the “closing to the public” restrictions for full holidays and Sunday from 5:00 to 11:00 a.m. may only conduct the type of exempt operations.

Most of the above listed commercial establishments exempt from the “closing to the public” provisions for the full holidays and Sunday from 5:00 a.m. to 11:00 a.m., are also exempt from

the \$11.50 per hour minimum pay requirement for work on Sundays.

Of the above list of exemptions, only pharmacies, gasoline stations and the convenience stores located in the gas stations are required to pay the prescribed minimum rate for work on Sundays. In our opinion, however, if such operations can invoke exemption based on *another* exempt characteristic, the Sunday minimum pay rate requirement should not apply.

Penalties

The amendment maintains the provision that any violation of the Closing Law is deemed a practice or method of unfair competition. The amendment assigns to the Department of Consumer Affairs the responsibility to ensure compliance with the law with respect to the permissible hours of operations.

The amendment also maintains the provision for administrative fines, which are no less than \$5,000 and no more than \$50,000 per violation.

Temporary Suspension

The amendment maintains the provisions permitting the temporary suspension of the Closing Law. The Governor of Puerto Rico may suspend the effectiveness of the full closing (i.e., the full holiday) provisions upon the occurrence of special circumstances, such as storms, hurricanes, earthquakes, tidal waves and other meteorological phenomena of great force, floods, fires of great proportion, wars, strikes and other disasters of a similar nature. The suspension of the effectiveness of the full holiday “closing to the public” requirement may also be decreed by municipality. The maximum duration of the suspension is sixty (60) days.

Author: Jorge L. Capó Matos, Esq.

O'NEILL & BORGES

American International Plaza, Suite 800

#250 Muñoz Rivera Ave.

San Juan, P.R. 00918-1813

Tel. 787-764-8181

Fax. 787-753-8944