WHITE PAPER

PUERTO RICO ELECTRIC POWER AUTHORITY

LABOR ASPECTS OF ITS TRANSFORMATION PROCESS

Dated as of November 10, 2020

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I. INTRODUCTION[1]

The Government of Puerto Rico desires to establish a public-private partnership for the management, operation, maintenance and decommissioning, as applicable, of some or all of the base-load generation plants and gas turbine peaking plants of the Puerto Rico Electric Power Authority ("**PREPA**"). The terms of such partnership would be established in a partnership contract (a "**Partnership Contract**") by and between PREPA and any proponent that is ultimately selected through the public procurement process (the "**Generation Contractor**").

Act 120-2018, as amended ("**Act 120**"), known as the Puerto Rico Electric Power System Transformation Act, established the "legal framework for the sale, disposition, and/or transfer of [PREPA's] assets, operations, functions, and services,"[2] including by amending existing legislation, as needed, to facilitate such transactions. As further discussed below, certain provisions of Act 120, including those related to PREPA's employees, were amended by the Puerto Rico Energy Public Policy Act, Act 17-2019 ("**Act 17**").

The statutory authority provided by Act 120 was recently used for the first time in connection with the establishment of a public-private partnership between PREPA and LUMA Energy (the "**T&D Contractor**") for the operation and maintenance of PREPA's transmission and distribution system. The terms of such partnership are established in the *Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement* dated as of June 22, 2020 (the "**T&D Contract**").[3]

Part II of this White Paper explains the statutory landscape affecting PREPA's transformation and its impact on current PREPA employees, including existing requirements applicable to Contractors under Act 120 and certain other statutes of general applicability. *Part III* of this White Paper explains the labor relations landscape (including the existing collective bargaining agreements ("**CBAs**")) relevant to the PREPA transformation. Finally, *Part IV* of this White Paper provides a summary of the employment benefits applicable to the PREPA employees hired by a Contractor in connection with a PREPA Partnership Contract in accordance with the statutory provisions discussed in this White Paper.

II. STATUTORY LANDSCAPE AFFECTING PREPA'S TRANSFORMATION

A. Act 120

1. Generally. Act 120 establishes the legal framework for the sale, disposition, and/or transfer of PREPA's assets, operations, functions, and services. Included in this framework are

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[1] This document may not be construed as giving legal advice and any statement made within the document may not be used against the Puerto Rico Electric Power Authority, the Puerto Rico Public-Private Partnerships Authority, the Central Office of Recovery, Reconstruction and Resiliency, any other agency or instrumentality of the Government of Puerto Rico and/or the authors. All proponents are encouraged to seek independent legal advice regarding the matters addressed in this document. In the event that there are inconsistencies in this document and the Partnership Contract, the Partnership Contract shall control.

[2] Act 120, Statement of Motives .

[3] Each of the Generation Contractor, the T&D Contractor and any other contractor in a public-private partnership established under Act 120 is referred to herein as a "**Contractor**" and, collectively, as "**Contractors**."

certain protections described in this Section II.A. for current PREPA employees. Act 120 provides that all the provisions of Act 29-2009 ("**Act 29**"), known as the Public-Private Partnership Act, shall apply to the establishment of any public-private partnership with respect to a function, service, or facility of PREPA, or to the sale of any PREPA assets, except as otherwise specified in Act 120.[4]

Act 120 requires that the Government of Puerto Rico ensure that no transaction under Act 120 will be the basis for dismissing current PREPA employees. Accordingly, pursuant to Act 120, current PREPA employees who are not assumed or hired by a Contractor (*i.e.*, either the T&D Contractor, the Generation Contractor or any other Contractor) shall retain their positions or be transferred to other positions in PREPA or another government entity.

2. No Obligation to Employ PREPA Employees. Generally, neither Act 120 nor Act 29 requires a Contractor to employ current PREPA employees. Under Act 29, however, one of the criteria to be used to evaluate the Contractor's proposals is "[t]he commitments or the priorities that the contractor is willing to establish in order to hire employees from the partnering government entity affected by the partnership, as well as the risks to be assumed by the contractor."[5,6] Furthermore, pursuant to Section 10(g) of Act 29, the Contractor will be required to give preference in hiring to PREPA employees over other candidates. A smooth transition of PREPA's operations to Contractors is critical to the Government of Puerto Rico. Hence, the hiring of PREPA employees who already have the required skills, experience, and knowledge of such operations may help ensure a smoother transition.

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[4] Act 120, Section 4.

[5] Act 29 Sec. 9(c)(xi).

[6] Section 10(g) of Act 29 provides that a CBA provision that would preclude a public-private partnership transaction shall be deemed to be inapplicable if the partnering government entity has (or has had in any prior year) an operating deficit or if such entity is in a precarious financial condition, as certified by the Puerto Rico Fiscal Agency and Financial Advisory Authority ("**AAFAF**"), provided that, in such event, the Contractor shall be required to give preference over other employment candidates to the government entity's employees. Pursuant to such provision, the parties to a Partnership Contract shall establish a transition plan to offer other employment opportunities or for the retraining of the government entity's employees, and the cost of the plan must be shared equally by the contracting parties.

PREPA's CBAs do not have successorship articles or other provisions that expressly prohibit, condition, or otherwise address the sale or transfer of PREPA's business. However, the subcontracting and unit work articles of such CBAs severely limit PREPA's ability to subcontract or transfer functions, services, and facilities, and significant financial penalties are imposed on PREPA if those articles are violated. These articles, although significantly restricted by Sec. 14 of Act 3 (because they are non-economic provisions that have an economic impact, as further discussed below), could conceivably be interpreted to prohibit the establishment of public-private partnerships for major PREPA functions, including the operation of the generation facilities, because any such partnerships may be deemed to constitute a subcontracting or a transfer of PREPA functions or services for purposes of the CBA. Given PREPA's precarious financial condition, however, such subcontract and unit work articles should be deemed to be inapplicable pursuant to Section 10(g) of Act-29. As a result, pursuant to Section 10(g) of Act 29, the Contractor will be required to give preference in hiring to PREPA employees over other candidates. This is also consistent with the legislative intent expressed in the Statement of Motives of Act 120, which provides that "…the existing structure for the establishment of public-private partnership requires that the Contractors give priority to PREPA employees in the process of recruitment of employees."

3. Employee Acquired Rights. Section 15 of Act 120, as amended by Act 17, provides that any current PREPA employee that becomes an employee of a Contractor as a result of the transaction will retain all (i) "acquired rights" under applicable laws, regulations, and collective bargaining agreements and (ii) privileges, obligations and status related to an existing pension, retirement or savings plan established by law in which the employee participated before the enactment of Act 120, that are compatible with the provisions of Act 26-2017, as amended ("**Act 26**"), as further discussed under "Fringe Benefits" below. Given the recent enactment of Act 120, no court has yet interpreted which employment terms, benefits or conditions should be considered "acquired rights" for purposes of this provision.[7]

4. Fringe Benefits. For most government employees (including PREPA's non-union and union employees), fringe benefits are currently governed by Act 26. Act 26 established a uniform fringe benefit system governing vacation leave, sick leave, maternity and paternity leave, special breastfeeding leave with pay, leave without pay, special leave (*e.g.*, court or jury duty leave, blood donation leave, parental involvement leave, and military leave), overtime and meal period compensation, holidays, healthcare coverage, annual bonus, and compensatory time off. Under Act 120 (as amended by Act 17), the Contractor would need to offer these fringe benefits to all PREPA employees employed by the Contractor.[8] See Appendix A for a more detailed summary of the uniform fringe benefits established under Act 26.[9]

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[7] The Puerto Rico Supreme Court (the "**PRSC**") has held that an "acquired right" is one that "has been definitively incorporated into the patrimony of a person and that, as a general rule, must be respected by future laws." *See* Hernández Colón v. Policía de Puerto Rico, 177 D.P.R. 121 (2009). The PRSC has distinguished acquired rights from mere expectations that a party may have with respect to a right, for which there is no degree of legal protection. "Acquired rights are incorporated into the patrimony of the holder of the right and are constitutionally protected against any government action that intends to intervene with such rights." Id. *See also* Domínguez Castro v. Gobierno del ELA, 178 D.P.R. 1 (2010).

[8] We understand that PREPA did not consider the fringe benefits provided under its CBAs, even before they were substantially reduced or eliminated by Act 26, or its existing wage rates, to be extraordinary hurdles to achieving an efficient operation.

[9] Even though fringe benefits have been limited to those recognized under Act 26, because of the state of emergency declared due to the COVID-19 pandemic, the Governor of Puerto Rico signed Executive Order EO-2020-021, which recognizes a special leave applicable to government employees diagnosed with COVID-19 or that are suspected of being infected by said virus. This special leave will not be charged against any other leave provided to the employee and will have a duration of fourteen (14) days, counted from the date of the medical certificate or diagnosis of COVID-19. If the government employee requires additional rest periods, the employee will use the available sick leave and vacation leave. After exhausting all available leaves, the employee who still requires additional rest, may request a leave without pay.

EO-2020-021 also provides that if the person suffering or suspected of suffering COVID-19 is immediate family of a government employee that lives under the same household or with whom the employee may have direct contact, the employee may use the special leave created by the Executive Order. EO-2020-021 will remain in effect while the state of emergency declared by the Government of Puerto Rico subsists.

EO-2020-021 does not apply to employees in the private sector. Private employees, who suffer or are suspected of being infected by COVID-19, have a right, under Act 180-1998, as amended by Act 37-2020, to a special emergency paid leave of up to five (5) days, after having used all available leaves the employee may have a right to. Since EO-2020-021 recognizes greater benefits to government employees than the special leave provided to private employees, a Contractor may be required under Act 120 to offer PREPA employees the special leave provided by EO-2020-021, to the extent that the emergency declaration is still in effect at the time of hiring.

5. Act 3 Suspension. Certain rights and benefits that would otherwise be applicable to PREPA employees are limited by the provisions of Act 3-2017, as amended ("**Act 3**"). For example, Sec. 7 of Act 3 suspended increases in economic benefits, including wages, and extraordinary compensation to all employees of the executive branch, including public corporations, until June 30, 2021 (whether such benefits or extraordinary compensation were previously provided by law, regulation or a CBA).[10, 11]

Sec. 14 of Act 3 also extended the effectiveness of all non-economic clauses in existing CBAs, including those of PREPA, until June 30, 2021, but required all public corporations to suspend until June 30, 2021 the effectiveness of all "non-economic clauses that have a direct or indirect economic impact," including all provisions that require the recruitment, appointment or reclassification of employees, or any other provision that in any way impinges on the right of management to determine the number or type of employees to be used.

Pursuant to Sec. 14 of Act 3, the "non-economic clauses" that are deemed to have an economic impact, and are therefore suspended, are those listed in Article 17 of Act 66-2014, as amended, which are the following:

1) training plans, unless direly necessary;

2) paid leaves for studies;

3) paid leaves that are not charged to a specifically established leave;

4) any provision that interferes with the right of management to assign functions to an employee or group of employees, to reclassify jobs, to modify compensation levels, or to assign work outside of a bargaining unit, that makes the operation more efficient;

5) any provision that impedes management from fractioning the functions of employees or group of employees, or assigning or changing their work shifts, or reclassifying them to make the operation more efficient;

6) any provision that impedes subcontracting functions actually performed by employees or functions actually included in a bargaining unit, which would make the operation more efficient;

7) any provision that interferes with the right of the employer to administer or manage the operations in a more efficient manner;

8) seniority rights or systems that limit the right of management to make changes in employee functions, promotions, demotions, transfers or any employment transaction that would result in a more cost-effective operation; and

[10] Sec. 7 of Act 3 lists certain exceptions, including child care, employee assistance, and scholarship programs.

[11] Wage increases, increases in employer contributions to benefits plans, and wage differentials were prohibited. Act 3 also prohibited liquidation of vacation or sick leaves (except in case of retirement), Christmas bonuses in excess of $600, summer bonuses in excess of $200, and any other kind of bonuses. Under Act 3, all collective bargaining agreements were extended with respect to non-economic articles that do not have an economic impact until June 30, 2021.

9) any other provision that AAFAF determines has a similar impact, within 60 days of receiving a consultation.

Sections 6 and 14 of Act 3, as amended by Act 162-2019 ("**Act 162**"), provide that the suspension of non-economic clauses that may have an economic impact, as stated in Act 3, will not apply to non-statutory leaves related to workplace accidents suffered by employees that occupy high-risk or dangerous positions that constitute an imminent, constant and inherent danger to the employee, that may be reasonably considered to result in death, serious bodily harm or illness and that may result in a temporary disability of the employee. Any such clauses in a CBA, previous to the enactment of Act 3, will be considered to continue in effect. Pursuant to sections 6 and 14 of Act 3, the following are considered high-risk positions or dangerous positions, among others: jobs that require working at heights, as a mechanic, or in the maintenance of electrical substations or power generating facilities, or that handle dangerous substances or dangerous energy, or that operate heavy vehicles or workloads, or work as masons, carpenters, or handling fuels such as diesel or gasoline, or are in charge of public safety. This also applies to employees who supervise these high-risk jobs.

All four PREPA CBAs provide leaves for all employees that substantially exceed the benefits and leaves established for work-related accidents by the P.R. Workmen's Compensation Insurance Act and the P.R. Chauffer's Insurance Act. Therefore, pursuant to Act 162, PREPA employees in "high-risk jobs" continue to benefit from the leaves provided by the CBAs related to workplace accidents notwithstanding the suspension of non-economic benefits made by Act 3.

6. Retirement Benefits. Any PREPA employees who are hired by the Contractor and currently participate in the Electric Power Authority Employees Retirement System (the "**PREPA Retirement System**") will remain vested and may choose to continue to make individual contributions to the PREPA Retirement System, in which case, the Contractor must make the corresponding employer contribution.[12] However, "[i]n the case that the new employer has its own retirement system and the employee chooses to avail him/herself of the same," the Contractor would no longer be required to make employer contributions to the PREPA Retirement System for that employee.[13]

B. Act 4-2017 ("**Act 4**"), Labor Transformation and Flexibility Act

Act 4 amended certain labor laws applicable to private employers that the Government of Puerto Rico determined were adversely affecting the Government's ability to accomplish its goals related to economic stability and development, including creating job opportunities, promoting private sector growth, and reducing unemployment.

Most of the amendments apply to employees regardless of date of employment, but some apply only for employees hired after January 26, 2017.[14] Under Act 120, and in accordance with Section 6.4, subsection 4(10), of Act 8-2017 ("**Act 8**"), however, current PREPA employees

[12] Under the T&D Contract, any such employer contributions would be considered "T&D Pass-Through Expenses," which are paid by the T&D Contractor from an account required to be funded by PREPA.

[13] Act 29, Sec. 10(g).

[14] Act 4 Sec. 1.2.

transferred to a Contractor will be exempt from the application of Act 4. Therefore, any current PREPA employee transferred to a Contractor will not be subject to the labor law amendments made by Act 4. An employee and/or labor union representing an employee at the time of hire, however, can agree that the employee will be subject to the amendments implemented under Act 4. [15,16] The offers of employment made by the Contractor, however, would still be subject to the minimum requirements under Act 120, as discussed herein.

For employees subject to Act 4 (*i.e.*, new hires who are not current PREPA employees or who waive their right to be exempt), the amendments include employer-friendly changes to laws governing the enforceability of employment contracts, overtime, and certain scheduling, work hour, and day-off requirements.[17] Act 4 also amended the requirements for vacation and sick leave benefits and required annual bonuses. Such employees are also covered by applicable Puerto Rico labor law requirements that were not amended by Act 4.

Appendix B to this document contains a summary of some of the amendments made by Act 4.

III. LABOR RELATIONS LANDSCAPE AFFECTING LABOR TRANSFORMATION

Puerto Rico has a long history with organized labor, and PREPA's workforce has included unionized employees since the 1940s. PREPA has longstanding relationships with the four current unions, which have at times been challenging, including periods of labor unrest. PREPA is prepared to leverage its relationships with the unions as much as possible to ensure a smooth labor transition into the public-private partnership. Currently, approximately 3,600 employees are covered by one of four CBAs: (i) Union of Workers in the Electric and Irrigation Industry of Puerto Rico (UTIER), (ii) Union of Independent Professional Employees (UIPE), (iii) Insular Industrial and Electric Construction Workers Union (UITICE), and (iv) Union of Pilots of the Electric Power Authority of Puerto Rico (UPAEE). Approximately 600 of the unionized employees work on PREPA's Generation Directorate and are part of the UTIER and UIPE unions. All four agreements have expired but contain "evergreen" clauses and, therefore, remain in full force and effect, except as modified by law (such as Act 26 and Act 3, discussed above, governing fringe benefits of public employees and non-economic clauses of a CBA that have an economic impact, respectively). Also, as mentioned before, Act 3 extended the effectiveness of the non-economic clauses that do not have an economic impact until June 30, 2021.

If the Contractor is deemed a successor employer under the Federal National Labor Relations Act ("**NLRA**"), it may have an obligation to bargain with any of the four unions representing PREPA employees. A Contractor may be considered a successor employer under the

[15] See Act 120, Sec. 15 (incorporating by reference Act 8 Sec. 6.4, subsec. 4(10).

[16] A Contractor cannot condition an employee's hiring on the employee's agreement that the employee will be subject to the amendments implemented under Act 4.

[17] Employees classified as administrative, professional, or executive employees under the Federal Fair Labor Standards Act are exempt from certain Puerto Rico labor law requirements, including the overtime, scheduling, vacation, and sick leave requirements, as amended by Act 4. However, current administrative, professional, and executive PREPA employees assumed by the Contractor would benefit from Act 120, and thus retain their "acquired rights" under applicable laws, regulations and collective bargaining agreements, as modified by Act 3 and Act 26.

Federal NLRA if a majority of its employees in an appropriate bargaining unit at a significant moment are former PREPA employees. If it is found to be a successor employer, the Contractor will have to recognize the union as the exclusive representative of those employees and may choose to either adopt the current CBA or set initial working rules and conditions at the time of hiring, but will subsequently be required to negotiate and enter into collective bargaining with the union.

As a practical matter, a potential Contractor should understand the risk that unions may insist on continuing to represent employees under all or some of the terms and conditions provided under the current CBAs.

IV. SUMMARY OF EMPLOYMENT BENEFITS APPLICABLE TO PREPA EMPLOYEES

Pursuant to Act 120, a Contractor is not required to employ any current PREPA employees. However, it is required to give preference in hiring to PREPA employees over other candidates. Moreover, to the extent that a Contractor decides to offer employment to any existing PREPA employees, it is required by Act 120 to offer to such employee: (i) a base salary or regular hourly wage rate at least equal to the base salary or wage rate provided by PREPA; (ii) the fringe benefits established by Act 26,[18] and (iii) any other rights determined to be "acquired rights" for purposes of Act 120, as any such benefits may have been modified or restricted by Act 3 and Act 26.

[18] As discussed above, while the state of emergency related to the COVID-19 pandemic is in effect, employees would also have the leave benefits provided by Executive Order EO-2020-021.

List of Referenced Materials

(a) Act 29-2009 (Public-Private Partnership Authority Act)

(b) Act 66-2014 (Government of the Commonwealth of Puerto Rico Special Fiscal and Operational Sustainability Act)

(c) Act 3-2017 (Act to Address the Economic, Fiscal, and Budget Crisis to Guarantee the Operations of the Government of Puerto Rico)

(d) Act 4-2017 (Labor Transformation and Flexibility Act)

(e) Act 8-2017 (Government of Puerto Rico Human Resources Administration and Transformation Act)

(f) Act 26-2017 (Fiscal Plan Compliance Act)

(g) Act 120-2018 (Puerto Rico Electric Power System Transformation Act)

(h) Act 17-2019(Puerto Rico Energy Public Policy Act)

(i) Act 162-2019 (To amend Sec. 6 and 14 of Act 3 and Sec. 17 of Act 66)

(j) Act 176-2019 (To amend Subsections 1 and 2 of Act 8 and Subsections 1(a) and 2(b) of Sec. 2.04 of Act 26)

(k) Act 95-2020 (To amend Sec. 2.04 of Act 26)

(l) Act 180-1998 (Puerto Rico Minimum Salary, Vacation and Sick Leave Act)

(m) Act 37-2020 (To amend Sec. 6 of Act 180)

(n) Executive Order EO-2020-021 (To create a special leave to government employees that suffer or are suspected of suffering COVID-19)

(o) PREPA-UTIER Collective Bargaining Agreement

(p) PREPA-UIPE Collective Bargaining Agreement

(q) PREPA-UITICE Collective Bargaining Agreement

(r) PREPA-UPAEE Collective Bargaining Agreement

APPENDIX A

Summary of Fringe Benefits Under Act 26-2017

1. Vacation leave. [19]

    a) Accrual of two and a half (2 ½) days of vacation leave for every month of service.

    b) Furloughed or part-time employees accrue vacation leave proportionately to the number of hours regularly worked.

    c) Vacation leave may be accrued up to a maximum of sixty (60) workdays at the end of any calendar year.

    d) No less than ten (10) days of vacation leave must be enjoyed consecutively.

2. Sick leave. [20]

    a) Accrual of one and a half (1 ½) days of sick leave for every month of service.

    b) Furloughed, or part-time employees accrue sick leave proportionately to the number of hours regularly worked.

    c) Employees can use up to a maximum of five (5) days per year of the accrued sick leave, insofar as they maintain a balance of at least twelve (12) days, for the purpose of caring for their sick child or caring for sick elderly persons or persons with disabilities within their family circle, that is, up to the fourth degree of consanguinity, second degree of affinity, persons living under the same roof, or persons of whom an employee is a legal guardian or has legal custody.

    d) Sick leave shall be accrued up to a maximum of ninety (90) workdays at the end of any calendar year.

    e) Up to a maximum of eighteen (18) workdays of advanced sick leave may be granted to any employee who has served in the Government of Puerto Rico for not less than one (1) year, if there is reasonable certainty that the employee shall return to duty.

3. Maternity Leave. [21]

    a) A four (4)-week rest period before childbirth, and a four (4)-week rest period after childbirth. Provided that the employee may enjoy four (4) additional weeks to care and tend to the child. The employee may choose to enjoy only one (1) week of prenatal rest, and extend up to seven (7) weeks the postpartum rest period to which she is entitled, or up to eleven (11) weeks if the four (4) additional weeks to care and tend to the child are included. Maternity leave is with full pay.

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[19] As amended by Act 176-2019 ("Act 176").

[20] As amended by Act 176.

[21] On August 8, 2020, the Puerto Rico Governor signed Act 95-2020 ("Act 95") to amend article 2.04 of Act 26 to grant 5 weeks of maternity leave where the adopted minor is six (6) years or more of age.

b) An employee who suffers a miscarriage may claim up to a maximum of four (4) weeks of maternity leave, if the miscarriage produces the same physiological effects that usually arise as a result of childbirth.

c) An employee who adopts a minor who is five (5) years of age or younger, who is not enrolled in any school shall be entitled to the same full pay maternity leave benefits as an employee who gives birth. If an employee adopts a minor who is six (6) years of age or older, she will have maternity leave with full pay for a term of five (5) weeks.

4. Paternity Leave. Fifteen (15) workdays from the date of birth of a child. Employee must certify that he is legally married or cohabitates with the mother of the child and that he has not committed domestic abuse. An employee who adopts a child, together with his spouse or domestic partner, is entitled to fifteen workdays. An employee who individually adopts a minor who is five (5) years of age or younger, who is not enrolled in any school, is entitled to eight (8) weeks of paternity leave and an employee who (as a single parent) adopts a minor who is six (6) years of age or older, is entitled to paternity leave with full pay for a term of fifteen (15) days.[22]

5. Special Breastfeeding Leave with Pay. One (1) hour during each full-time work day, which may be divided into two (2) thirty (30)-minute sessions or three (3) twenty (20)-minute sessions with a maximum duration of twelve (12) months. For part-time employees, the period granted is thirty (30) minutes for every consecutive four (4)-hour working period.

6. Leave Without Pay. In addition to the leaves without pay that each agency or public instrumentality may grant by regulation, the following leaves may be granted:

    a) To career employees with regular status, to render services in other agencies of the Government of Puerto Rico or in a private entity.

    b) To career employees with regular status, to protect their status or the rights to which they may be entitled in a disability claim before the PR Retirement System or other entity, when the employee has exhausted sick and vacation leaves or when the employee has exhausted his sick and vacation leaves having suffered a work-related accident and is undergoing medical treatment with the State Insurance Fund Corporation or pending a final determination concerning the employee's accident.

    c) After the birth of a child for a period that shall not exceed six (6) months.

    d) To employees with regular status who are transferred to positions of trust in the Office of the Governor or in the Legislative Assembly, while rendering said services.

    e) To employees with regular status who have been elected in the general elections or have been selected to fill a vacancy of an elective public office within the Executive or Legislative Branch, including the offices of Resident Commissioner in the United States and Mayor, while rendering said services.

[22] Although Act 95 extended the term of the maternity leave available to adopting employees, it left unaltered the paternity leave for an adoption regardless of the age of the minor.

7. Special Leaves. These leaves are governed by the special laws that provide therefor.

    a) Court leave to serve as witness. The employer is prohibited from making deductions from the employee's salary or vacation or sick leave for the days and time spent by an employee duly summoned by the Department of Justice or a court, serving as a witness in a criminal action.

    b) Court leave for jury duty. An employee summoned for jury duty is entitled to a leave with pay and to receive compensation for meals and mileage, in accordance with the regulations adopted by each agency, instrumentality, or public corporation, as if it were an official duty.

    c) Official duty. An employee summoned in an official capacity to appear before any Court of Justice, the State Attorney's office, or administrative or government body, or government agency is entitled to a leave with pay for the period he was absent from work.

8. Blood donation leave. Blood donation leave with pay for a period of four (4) hours per year.

9. Parental involvement leave. Four (4) work hours with pay at the beginning of each school semester and four (4) work hours at the end of each school semester for employees to visit their children's school to learn about their academic achievements. Employee whose children are enrolled in the Special Education Program of the Department of Education have up to ten (10) hours per semester to conduct any transaction relating to their children.

10. Leave without pay to participate in sports. Leave without pay for every government employee duly selected and certified as an elite athlete or high-performance trainer for the Olympic, Paralympic, Pan-American, and Central America and the Caribbean Games, and Regional or World Championships. This leave has a term of up to one (1) year with the right to renewal.

    During the leave period, the Board for the Development of Full-Time High-Performance Puerto Rican Athletes is responsible for the participants' wages.

11. Special leave to participate in sports. A special leave for employee duly certified by the Puerto Rico Olympic Committee as an athlete to represent Puerto Rico in the Olympic Games, Paralympic Games, Pan-American Games, and Central America and the Caribbean Games, and Regional or World Championships. This leave is cumulative and does not exceed thirty (30) workdays per calendar year.

12. Leave of absence to renew driver's license. Two (2) hours with pay to renew the employee's driver's license, if the license is an essential job requirement.

13. Leave of absence for volunteer emergency service. Every employee who is a disaster service certified volunteer of the American Red Cross may be granted a leave of absence with pay for a period not to exceed thirty (30) calendar days within a twelve (12)-month period in order to render special disaster services for the American Red Cross, at the Red Cross's request and upon approval of the agency.

14. Military leave. An employee who is a member of the Puerto Rico National Guard or of the Reserve components of the United States Armed Forces shall be entitled to a leave with pay

for a maximum of thirty (30) days every year when on military service, as part of a training, or to attend drills or camp, as required.

15. Leave of absence for child immunization. Upon request, an employee may be granted up to two (2) hours to take his children for immunization, every time a vaccine is required, as established in the child's immunization card.

Note: These will be the only valid employee leaves, and no other leave, provided by regulation, collective bargaining agreement or custom (such as funeral leave) will be granted during the duration of Act 26, except for the temporary 14 day leave granted by EO-2020-21 to employees ill or infected by COVID 19, as described above, while the EO remains in effect; and the work related disability leave provided by the CBA's but only to employees in high-risk positions.

16. Holidays. The holidays to be observed by government employees are the following:

    1. New Year's Day, January 1st.
    2. Three Wise Men Day, January 6.
    3. Birthday of Martin Luther King Jr., the third Monday in January.
    4. George Washington's Birthday, Presidents' Day, and the Puerto Rican Illustrious Persons Day: Eugenio María de Hostos, José de Diego, Luis Muñoz-Rivera, José Celso Barbosa, Ramón Emeterio Betances, Román Baldorioty-de Castro, Luis Muñoz-Marín, Ernesto Ramos-Antonini, and Luis A. Ferré, the third Monday in February.
    5. U. S. Citizenship Day, March 2.
    6. Abolition Day, March 22.
    7. Good Friday, according to the date on which it occurs every year.
    8. Memorial Day, the last Monday in May.
    9. Independence Day, July 4.
    10. Labor Day, the first Monday in September.
    11. Columbus Day, the second Monday in October.
    12. Veterans Day, November 11.
    13. Discovery of Puerto Rico and Puerto Rican Culture Day, November 19.
    14. Thanksgiving Day, the fourth Thursday in November.
    15. Christmas Day, December 25.

17. Uniform Employer Contribution to the Healthcare Plan. Employer contribution to be determined by the Fiscal Plan Compliance Committee using as a basis the metrics established in the Fiscal Plan, but it shall be no less than one hundred dollars ($100). However, every employee, or dependent thereof, of a public corporation who is currently enrolled in the healthcare plan and who suffers from a preexisting catastrophic, chronic, or terminal illness shall continue to receive the employer contribution in effect for his healthcare plan, without any change, for the term he remains in the public service.

18. Bonus. The only financial bonus is the Christmas Bonus in the amount of six hundred dollars ($600) if the employee has rendered services for at least six (6) months.

19. Overtime or Compensatory Time.

a) Employees shall be entitled to receive a compensatory time off, at the rate of one and one-half time, for services rendered beyond their regular daily or weekly work schedule, or during their meal break, and for services rendered during holidays, days off, or days on which the Governor suspends services without charge to any leave. The compensatory time off shall be enjoyed by the employee within six (6) months as of the date of accrual. If due to the need for the service, this were not possible, compensatory time off may be accrued for up to a maximum of two hundred and forty (240) hours.

b) Employees of public corporations shall be entitled to overtime pay at a rate of one and one-half time from the first overtime hour accrued, except when the applicable collective bargaining agreement provides for the accrual of compensatory time off.

20. Liquidation of Excess Accrued Vacation and Sick Leave. No government employee shall be entitled to receive a payment on account of the liquidation of vacation or sick leave accrued in excess.

21. Lump-Sum Payments for Vacation Leave Upon Separation from Public Service. A government employee shall only be entitled to a lump-sum payment for accrued vacation leave as of the date of separation from service, which shall in no case exceed sixty (60) days. The employee may authorize the transfer of said balance and/or excess existing prior to the approval of Act 26 to the Retirement System to be credited as time worked.

APPENDIX B

Summary of Certain Amendments Made by Act 4-2017

This summary does not purport to summarize or otherwise address Act 4-2017 in its entirety. It may not be construed as giving legal advice and any statement made herein may not be used against PREPA, COR3 and/or the authors. All Private Partners are encouraged to review the full text of the statute and seek legal advice regarding all applicable Federal and Puerto Rico laws, regulations and policies.

1) Amendments to Unjust Dismissal Act (Law 80).

   a) The statute of limitations is reduced from three years to one year for claims filed after Act 4-2017 took effect.

   b) The formula for the indemnity for unjust dismissals after the expiration of the probationary period for those employed after Act 4-2017 took effect increased to three months, plus two weeks' pay per year of service, capped at the equivalent to nine months of "Salary" (upon which the indemnity is computed) is now clearly limited to basic salary and commissions. All other compensation (including bonuses, stock grants, stock options, deferred compensation, etc.) is expressly excluded from the computation of the formula.

   c) The automatic probationary employment period for employees hired after the enactment of Act 4-2017 increased to one year for executive, administrative, and professional employees, and to nine months for all other employees. This period can be reduced by mutual consent.

   d) The types of misconduct that constitute just cause for disciplinary dismissals are expanded and more clearly defined.

   e) For layoffs, a new instance of just cause is added "to make the company more competitive." Also, the exception to the rule that inverse seniority in the affected classification must be applied in the selection of the employees to be laid off (in order for the dismissal to be considered with just cause) is liberalized. Now, the less senior employee may be retained over the more senior employee if it is reasonably clear that he/she is better qualified or more efficient or has a better performance or disciplinary record. Also, in multi-plant, -store, or -branch operations only the seniority in the affected classifications in the affected unit need be considered unless substantial employee interchange exists between two or more units in the affected classifications and said units and classifications have common supervision of day-to-day operations.

   f) Years of service before an interruption in employment of more than two years will not be counted for seniority or for the indemnity formula.

   g) The transfer of a going concern is limited to the purchase of all or part of a business and, among other things, where over 50% of the total employees of the purchaser are former employees of the seller during the first 6 months after the sale.

h) Any severance indemnity, regardless of whether it is mandatory or voluntary, is exempt from income taxation but up to an amount equal to the Act 80 formula.

i) Constructive discharge will require intentional acts of the employer so severe that they leave no other alternative to the employee but to resign.

j) Act 80 severance indemnity can be settled for a lesser amount once the decision of the discharge is communicated.

k) Temporary employment that does not exceed three years (or such term provided in a temporary employment contract of an executive, administrator or professional) is presumed to be valid and, thus, not subject to Act 80.

l) The dismissed employee now has the burden of proving that the dismissal was without cause.

2) Amendments to Christmas Bonus.

a) The required hours of work to qualify are increased to 1,350. The bonus will be 2% of salary earned up to a bonus of $600 if the employer has more than 20 employees; and $300 if the employer has 20 employees or less. During the first two years of employment, the Bonus will be 50% of said amounts.

b) The Bonus must be paid between November 15 and December 15.

c) The income statement to apply for the exemption from payment of the bonus may be for the accounting year of the employer.

d) Other bonuses paid during the year may be credited to reduce the Christmas bonus if prior written notice was given to the employee.

3) Amendments to Overtime, Meal Period and Closing Law.

a) All overtime (and work rendered during meal periods) is payable at 1.5x the regular rate of pay.

b) The definition of the term "day" for purposes of the calculation of daily overtime has changed from any 24-hour period to a calendar day. This will eliminate "technical" overtime caused by changes in the time that the employee begins a workday or takes the meal period. The employer can designate an alternate 2- hour cycle, as long as five days' prior written notice is given to the employee, and there are at least eight hours between consecutive workdays. (It is not clear whether the eight-hour hiatus applies also to the calendar day alternative.)

c) Work performed during Sundays is not overtime unless it is in excess of eight hours in the day, 40 hours in the workweek or during a seventh consecutive day of work. No special compensation has to be paid for work on Sundays after 11:00 am.

d) The meal period must begin not before the end of the second hour of work and not after the beginning of the sixth hour of work. If the workday is six or less hours of work, the meal period can be waived.

e) The categories of exempt employees are increased and more clearly defined, and more aligned with the exemptions in the FLSA.

4) Amendments to Vacation and Sick Leaves.

a) Employees hired after the enactment of Act 4-2017 accrue vacation leave at: 1/2 day per month during the first year of employment; 3/4 days for years two through five of employment; one day for years six through 14 of employment; and 1 1/4 days for year 15 and beyond of employment. If the employer has up to 12 employees, the accrual is 3/4 days per month. Discharging employees to replace them to benefit from this amendment is illegal. One day of Sick leave is accrued per month.

b) All employees must work at least 130 hours in a month to accrue vacation or sick leave.

5) Statute of Limitations. The statute of limitations to present a salary claim is reduced from three years to one year, except for claims made prior to the enactment of the Act 4-2017.

6) Amendments for Independent Contractors.

a) An indisputable legal presumption is established that a person is an independent contractor if he/she meets several specified requirements.

b) If the person does not meet all such requirements, independent contractor status shall be determined by the traditional "common law" test, which depends primarily on the degree of independence that the contractor has in the manner in which it provides the service vis-a-vis the principal's degree of control.

c) Courts are prohibited from using the test of "economic dependence," under which it is easier to prove that a person is an employee.

7) Amendments for Discrimination in Employment.

a) Damages for mental anguish, compensatory, or punitive damages are limited to: $50,000 if the employer has fewer than 101 employees; $100,000 if the employer has 101 up to 200 employees; $200,000 if the employer has 201 up to 500 employees; and $300,000 if the employer has more than 500 employees.

b) The presumption of discrimination that applied to the employer, if an alleged discharge or other adverse employment action was without just cause, is eliminated.

c) The employer is not presumed to have known of the situation of an employee who alleges discrimination because he/she is a victim of domestic violence, sexual aggression or stalking.