

Financial Oversight & Management Board for Puerto Rico requests the Governor of Puerto Rico to suspend implementation and enforcement of Act 41-2022; Governor acknowledges request for additional information but refuses to suspend implementation of Act

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An McV Labor & Employment Law Alert

July 20, 2022

On July 19, 2022, the Financial Oversight & Management Board for Puerto Rico (“Fiscal Board”) sent a strong letter to the Executive Director of the Puerto Rico Fiscal Agency and Financial Advisory Authority, with copies to the Governor of Puerto Rico, the President of the Senate and the Speaker of the House of Representatives, stating that the government had failed to comply with Section 204(a) of the Puerto Rico Oversight Management and Economic Stability Act (“PROMESA”) upon the **enactment of Act 41-2022**. Section 204(a) of PROMESA required the Governor to certify within seven (7) business days of the enactment of Act 41-2022 whether it is significantly inconsistent or not with the certified 2022 Commonwealth Fiscal Plan (the “Fiscal Plan”) and to provide a formal estimate of the economic impact of the law on government expenditures and revenues.

The Fiscal Board further asserts that the Government must immediately suspend the implementation and enforcement of Act 41-2022 and its applicability to private sector employers, until the Government and the Fiscal Board have fully exchanged their views concerning Act 41-2022 and the Fiscal Board changes its determination based on new economic impact information. The Fiscal Board emphasizes in the letter that such essential information was never supplied during the legislative process nor after the Governor signed the bill which became Act 41-2022. The Fiscal Board directs the Governor to comply with the required certification and economic impact estimates by no later than July 22, 2022.

The Fiscal Board also urges the Governor to issue a public statement confirming the suspension of Act 41-2022, to avoid confusion for private sector employers.

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The Fiscal Board reiterates that Act 41-2022 impairs and/or defeats the purposes of PROMESA to promote economic growth and market competition and that it reserves its rights under PROMESA to bar and nullify the implementation and enforcement of Act 41-2022.

Governor Pedro Pierluisi addressed the issues raised by the Fiscal Board's letter in his Facebook page. He stated that although he intends to comply with the request for additional information, he will not suspend the implementation of Act 41-2022. He stated that, in accordance with PROMESA, the proper way to halt the implementation of a validly enacted legislation is through a judicial review process in the Federal District Court.

Act 41-2022 becomes effective today, July 20, 2022.

A subsequent McV Alert to be sent later today will address the Puerto Rico Secretary of Labor's Opinion dated 7/19/22 on this matter, and his belief that Act 41-2022 is valid and its implementation this month should continue according to the initial Government's schedule.

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