

McV Labor & Employment Law Tidbit Series: Secondments

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Dear Clients & Friends,

Welcome to our first **McV Labor & Employment Law Tidbit Series**, a quick and easy way for you to become aware of the latest trends and developments affecting the way you do business in Puerto Rico.

Because many companies are taking advantage of Article 2.17 of the Puerto Rico Employment Transformation and Flexibility Act, which allows them to stipulate the law that will apply to employees that it seconds or loans, our first topic is secondments.

There are important issues about employee secondments in Puerto Rico that you need to be aware of. For example:

- Did you know that you may second employees from an overseas company to a Puerto Rico employer for up to three consecutive years, and that these employees, if so stipulated, will be covered by the laws of the place where their base is (where the company that lends them operates), except that they will also be covered by the laws of Puerto Rico relating to income tax, discrimination and workers' compensation insurance for work related accidents or injuries? This is why it is crucial that their contracts be carefully drafted and, among other things, state that these employees will be covered by the laws of the place where their base is.
- What does having the seconded employees covered by Puerto Rico workers' compensation entail? All you need to do is have them covered under the Puerto Rico State Insurance Fund Corporation (the "SIF") policy of the entity to whom you are loaning them. The SIF will collect premiums based on the total amount of salaries paid to the seconded employees. The quid pro quo is that, with few exceptions, an insured employer is immune from liability resulting from a work-related accident or illness.
- What does having the local discrimination laws apply to seconded employees mean? The employees that are loaned to the local entity will be covered by all of the Puerto Rico laws that prohibit discrimination. In addition, they will also be covered by whatever discrimination laws exist in

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the State where the loaning company operates, as well as the federal anti-discrimination statutes.

- What is the situation with income tax for these seconded employees? The seconded employees will pay Puerto Rico income tax, but not federal income tax, as such tax does not cover wages earned in Puerto Rico. The choice of law agreement must be carefully drafted and you may also want to consider tax advice and planning.

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