

DEPARTMENT OF JUSTICE (DOJ) DEADLY FORCE POLICY

2.4 CHAPTER II SUMMARY

- CSOs are contract employees and not employees of the U.S. Government. However, in order to fully provide security services required by the contract, it is deemed essential that all CSOs have the power to enforce Federal law while on a Federal work site during duty hours and while performing contract duties.
- ◆ In this regard, all CSOs receive special, limited deputation through the U.S. Marshal. This deputation is limited to the extent that it will only apply while the CSO is on duty at the Federal worksite and in the performance of duties.
- ◆ The Firearms Policy states:

A federal law enforcement officer may use deadly force only when necessary, that is, when the officer has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or to another person.
- ◆ The key elements of the Firearms Policy are:
 - ◆ Necessary
 - ◆ Reasonable Belief
 - ◆ Imminent Danger
 - ◆ Death or Serious Physical Injury

Firearms Qualification

- ◆ The course of fire is designed to simulate real situations and no deviation of ammunition, clothing, stance, or scoring is permitted. This qualification course of fire will be conducted with the following criteria:
 - A. Weapon
 - B. Ammunition
 - C. Firing Distance
 - D. Target
 - E. Clothing
 - F. Scoring
 - G. Qualification
 - H. Safety

2.2 FIREARMS POLICY/DEADLY FORCE

The Firearms Policy states:

A federal law enforcement officer may use deadly force only when necessary, that is, when the officer has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or to another person.

Key elements of the firearms policy are:

- ◆ Necessary
- ◆ Reasonable Belief
- ◆ Imminent Danger
- ◆ Death or Serious Physical Injury

Deadly force

Any force that is likely to cause death or serious physical injury.

Permissible Uses

The need to use deadly force arises when all other available means of preventing imminent and grave danger to officers or other persons have failed or would be likely to fail. Thus, employing deadly force is permissible when there is no safe alternative to using such force, and without it the officer or others would face imminent and grave danger. An officer is not required to place him or herself, another officer, a suspect, or the public in unreasonable danger of death or serious physical injury before using deadly force.

Determining whether deadly force is necessary may involve instantaneous decisions that encompass many factors, such as the likelihood that the subject will use deadly force on the officer or others if such force is not used by the officer; the officer's knowledge that the subject will likely acquiesce in arrest or recapture if the officer uses lesser force or no force at all; the capabilities of the subject; the subject's access to cover and weapons; the presence of other persons who may be at risk if force is not used; and the nature and the severity of the subject's criminal conduct or the danger posed.

Deadly force should never be used upon mere suspicion that a crime, no matter how serious, was committed, or simply upon the officer's determination that probable cause would support the arrest of the person being pursued or arrested for the commission of a crime. Deadly force may be used to prevent the escape of fleeing subject if there is probable cause to believe:

1) the subject has committed a felony involving the infliction or threatened infliction of serious physical injury or death, and
2) the escape of the subject would pose an imminent danger of death or serious physical injury to the officer or to another person. As used in this policy, "imminent" has a broader meaning that "immediate" or "instantaneous."

The concept of "imminent" should be understood to be elastic, that is, involving a period of time dependent on the circumstances, rather than the fixed point of time implicit in the concept of "immediate" or "instantaneous." Thus, a subject may pose an imminent danger even if he or she is not at that very moment pointing a weapon at the officer if, for example, he or she has a weapon within reach or is running for cover, carrying a weapon, or running to a place where the officer has reason to believe a weapon is available.

Reasonable Belief

For purposes of this policy, "probable cause", "reason to believe" and "reasonable belief" mean, that facts and circumstances, including the reasonable inferences drawn therefrom, known to the officer at the time of the use of deadly force would cause a reasonable officer to conclude that the point at issue is probably true. The reasonableness of a belief or decision must be viewed from the perspective of the officer on the scene, who may often be forced to make split-second decisions in circumstances that are tense, unpredictable, and rapidly evolving. Reasonableness is not to be viewed from the calm vantage point of hindsight.

Intermediate Force

If force other than deadly force could reasonably be expected to accomplish the same end, such as the arrest of a dangerous fleeing subject, without unreasonably increasing the danger to the officer or to others, then it must be used.

Verbal Warning

If possible and if to do so would not increase the danger to the officer or others, a verbal warning to submit to the authority of the officer shall be given prior to the use of deadly force.

Warning Shots and Shooting to Disable

Warning shots are not authorized. Discharge of a firearm is usually considered to be permissible only under the same circumstances when deadly force may be used, that is, only when necessary to prevent loss of life or serious physical injury. Warning shots themselves may pose dangers to the officer or others.

United States Marshals Service



Policy Directive

Subject Index:

Non-Lethal Devices
OC Spray
Baton, Expandable
Stun-Gun
STUNBELT

No. 99-09
January 29, 1999
File No. 0220

NON-LETHAL DEVICES

- I. **PURPOSE:** The purpose of this policy directive is to consolidate the previously issued policy notices that address the use and issuance of U.S. Marshals Service (USMS) approved intermediate weapons and devices. In addition, this policy directive indicates which devices are authorized by the Service, and establishes procedures and reporting responsibilities.
- II. **AUTHORITY:** The Director's authority to issue this directive governing non-lethal devices is set forth in 28.U.S.C. Section 561 (g).
- III. **POLICY:**
- A. **Authorized Devices:** Only the following non-lethal devices are authorized for use by a Deputy U.S. Marshal:
1. Oleoresin Capsicum Aerosols (OC Spray);
 2. Expandable Baton, 21" electro less nickel with foam handle;
 3. Stun-Gun;

4. Electronic Restraint Belt (STUNBELT); and
 5. Items approved by the USMS for use by the Special Operations Group.
- B. Only the devices designated by the USMS may be used while in the performance of official duties. Identical equipment used by other law enforcement agencies may be substituted if prior consent has been obtained from district management. For the STUNBELT, substitution requires prior written consent from the Prisoner Services Division.
- C. Non-lethal devices shall be concealed from the general public when and where appropriate. A device should not be inspected or handled in view of the public unless for an operational purpose.

IV. PROCEDURES:

A. *Use of OC Spray:*

1. Whenever possible, a deputy should be upwind from the subject before using OC spray and should avoid entering the spray area. The deputy should maintain a safe distance from the subject of between two and ten feet. A single spray burst should be directed at the subject's eyes, nose and mouth. Additional burst(s) may be used if the initial or subsequent burst proves ineffective.
2. A subject sprayed with an OC aerosol should not normally require medical treatment. However, when the person sprayed has been placed in a safe environment, the person should be decontaminated as directed in the approved USMS OC training program. If the subject's symptoms do not decrease after 45 minutes, the subject exhibits symptoms that are not consistent with the normal reactions to OC, or the subject requests medical attention, medical attention will be provided as soon as possible. Most OC substances will naturally dissipate and decontamination of clothing should not be necessary.
3. Subjects that have been sprayed shall be monitored continuously for indications of medical problems and shall not be left alone while in USMS custody.
4. OC spray may be employed against dogs and other animals when the deputy reasonably believes that the animal poses a danger to USMS personnel or other persons.

B. Use of the Expandable Baton:

1. There are several areas of the human body that if struck by an expandable baton would provide a measure of control over a resistant subject. Since the objective is to control with a minimum possibility of permanent injury to the subject, certain body areas as identified in basic training and re-certification should be avoided if possible.
2. The expandable baton should be carried in the issued holster on the deputy's non-handgun side. While in the holster, tip end down, the baton is ready to be tactically drawn and utilized.
3. Each deputy shall re-certify annually to continue carrying the expandable baton.

C. Use of the Stun-Gun or STUNBELT:

1. Before using a Stun-Gun or STUNBELT, the Deputy will undertake all reasonable measures to ensure that the prisoner has no existing medical conditions that would preclude use of the device. The Stun-Gun or STUNBELT will not be used on prisoners known to have the following medical conditions:
 - a. Pregnancy;
 - b. Heart disease;
 - c. Multiple sclerosis, muscular dystrophy, or epilepsy; or
 - d. Any other medical condition known to pose a risk to the prisoner.
2. Use is allowed where there is a reasonable belief that the prisoner poses a substantial escape risk or risk of injury or death to the deputy or others. Activation of the STUNBELT is allowed when the prisoner purposely tampers with the device or takes actions to avoid constant visual supervision by the deputy.
3. Before the STUNBELT can be applied, a deputy must first obtain verbal approval from an immediate supervisor or the official in charge of the assignment, if the supervisor is not available. An employee who intends to carry a Stun-Gun should also first receive verbal approval from district management. Use of the baton or OC Spray does not require prior approval.
4. Prior to applying the STUNBELT, the deputy will advise the detainee that the belt is going to be placed on him or her, and that the belt will be activated under certain circumstances. This notification will be accomplished by reading the *Notification of Electronic Restraint Belt Use* (Form USM-536) aloud to the detainee or by allowing the person to read the form. The detainee will be given the opportunity to sign the

notification. If this is not possible, or the individual refuses, the deputy should record this information on the form.

5. Before using a STUNBELT in any court proceeding, the presiding judge will be fully informed of the USMS's intention to use the STUNBELT for security purposes. The responsible U.S. Attorney and the detainee's representative should also be informed of the rationale for STUNBELT usage and be given a description of how the STUNBELT operates. The STUNBELT will be covered to preclude any prejudicial influence of a jury member.

D. **Technical Problems:** If a non-lethal device does not function as designed, or should other technical problems occur, the deputy will complete the following steps:

1. Write a memorandum describing the problem, the conditions under which the problem occurred, and the identification (brand) or other nomenclature.
2. Send a copy of the memorandum to both the Assistant Director for Training and the Health and Safety Officer. It is not necessary to send the faulty device or weapon unless requested to do so.

E. **Aircraft Restrictions:**

1. OC Spray shall not be carried on commercial or USMS aircraft, either on the person or in checked baggage. Devices containing OC-based materials are designated as hazardous substances, and federal regulations prohibit the transport of such items aboard aircraft.
2. STUNBELTS may not be used aboard aircraft because FAA has not approved their usage. Batons and Stun-Guns may be carried subject to the restrictions set by the carrier.

F. **Storage:** Each deputy issued a non-lethal device is responsible for keeping the device under lock and key or in a protected area where limited or controlled access can be reasonably assured. The OC spray, when carried, will be in a secure, safe, and readily accessible location. Aerosol devices should not be stored in areas where externally high temperatures are likely to occur.

G. **Required Training:** Before using any non-lethal device, each deputy shall have successfully completed the required training program, including the re-certification. In addition, deputies will review the training material for the baton and OC spray annually. Initial and refresher training for non-lethal devices will be conducted by a certified

instructor and will be documented by the district/division office. Documentation of training will serve as the authorization to possess, carry, and employ non-lethal devices. If a deputy is unable to qualify with an authorized non-lethal device, the instructor will conduct and document remedial training necessary to attain qualification before the deputy is authorized to carry the device.

V. RESPONSIBILITIES:

A. *Deputy (U.S. Marshal)*: If a non-lethal device is used on a subject/detainee, the following steps will be taken:

1. Provide medical attention immediately to any person who is obviously injured, alleges an injury, or requests medical attention. When a chemical agent has been applied, first aid shall be administered as soon as practicable. An injured subject will be transported to a medical facility for examination prior to further processing. During transportation, the injured subject will be constantly monitored. If the subject is unconscious or, in the opinion of the concerned deputy or supervisor, has an injury requiring medical attention beyond the capability afforded by training and issued first aid items, the deputy will request that an ambulance or emergency medical service respond to the scene;
2. Report the incident to the immediate supervisor as soon as possible;
3. Complete Form USM-133, *Firearms Discharge Assault Report*. Submit, by mail or FAX, the completed form within 24 hours to the Office of Internal Affairs, U.S. Marshals Service, 600 Army Navy Drive, Suite 907 CS-3, Arlington, VA 22202-4210. If a STUNBELT is activated, the Office of Internal Affairs will notify the Deputy Director, and
4. Photograph and/or videotape any marks or injuries. These should be documented with a measuring tape or ruler. The photographs or videotape will serve as documentation of the size and location of the injuries related to the use of the device. This material will be maintained with the incident documentation (Form USM-133) in a secure file.

VI. DEFINITIONS:

A. *Deputy (U.S. Marshal)*: Includes operational employees assigned to the 1811 job series, U.S. Marshal, an employee who has a valid special deputization, or an employee (or contract employee) who has been authorized specifically by the USMS to carry a non-lethal device as a requirement of his/her duty assignment. (i.e., Detention Enforcement Officer, Aviation Enforcement).

- B. **Non-lethal Force Device:** An authorized device that is intended to be used to subdue a subject but not to cause serious physical injury or death.
- C. **Oleoresin Capsicum Aerosols (OC Spray):** An inflammatory agent that occurs in various peppers. Oleoresin is a mixture of resin and essential oil occurring naturally in various plants. Capsicum is any of several varieties of red peppers such as chili, cayenne, and bird.
- D. **Stun-Gun:** A device that directs an electrical charge that can be used to control a violent person. This electrical charge can disorient, temporarily immobilize, and stun a person without causing permanent injury.
- E. **STUNBELT:** A restraining device that transmits an electrical charge that can be used to control a violent person. The STUNBELT is activated by a remote control device. For eight continuous seconds, the belt emits a 50,000 volt charge that can disorient, temporarily immobilize, and stun a person without causing permanent injury.

Effective Date:

2/11/99

By Order of:



Eduardo Gonzalez
Director
U.S. Marshals Service

Cancels: United States Marshals Service *Policy and Procedures Manual*, paragraph 2.8-3, *Electronic Stun-Gun (XR-500)*, dated 2/22/85; Policy Notice 94-003, *Expandable Batons*; Policy Notice 94-020, *Oleoresin Capsicum (OC) Aerosols*, and Policy Notice 96-002, *Electronic Restraint Belt*.

Cross Reference: Policy Directive 99-08, Use of Force.

Proponent: Executive Services Division, Policy Center, 202/307-9480; FAX 202/307-9831.

This policy directive has been negotiated and approved by the International Council of U.S. Marshals Service Local American Federation of Government Employees.

Section J - Attachment 4(C)

**Solicitation MS-02-R-0002
Questions-and-Answers**

1st Circuit specific

1. **Question:** Can the regulations noted in Articles XIII and XIV of the Puerto Rico CBA be provided? The regulations referenced are Puerto Rico's Mandatory Decree No 74 (5th revision) and the Puerto Rico Act. No. 84 of 1995.

Answer: These articles are attached to the questions-and-answers. Reliance on this information is at the discretion of the offeror.

2. **Question:** Is the Courthouse in Boston a 24-hour site? How many leads are authorized for this site?

Answer: One Courthouse Way, Facility F, Boston MA is a 24-hour facility. This will be changed by amendment to the solicitation. IAW para C-5 (c), for facilities operating on a 24-hour basis, the contractor must provide 3 Lead Court Security Officers (LCSOs).

3. **Question: Section J Attachment 1 (A) Applicable Wage Determination (WD) & Collective Bargaining Agreements (CBA)...** For the city of Manchester, NH there is no WD reference listed on this matrix. Article I of the CBA between MVM and the Court Security Officers/First Circuit Court of Appeals (New England) includes New Hampshire as a state for union coverage, however, there is no DOL Wage Determination included in Section J for Hillsborough County. What WD covers the CSO/LCSOs in Manchester, NH?

Answer: The CBA between MVM and the Court Security Officers/First Circuit Court of Appeals (New England) will apply to the city of Manchester, Hillsborough County, NH. A wage determination for that location was requested from the Department of Labor but has yet to be received by USMS.

4. **Question: Section J, Attachment 1(A)** included a list of Wage Determination numbers for the 1st Circuit, Manchester, NH has no WD/CBA number listed on this summary page. Please confirm that Manchester, as well as all other locations except Puerto Rico, is covered by the same CBA.

Answer: The CBA between MVM and the Court Security Officers/First Circuit Court of Appeals (New England) will apply to the New England districts.

2nd Circuit specific

5. **Question:** The SSO program in Southern New York currently has a Site Supervisor and 6 LSSOs. The USM69 indicates only 5 LSSOs. Does the USMS want to retain the current status at 6 LSSOs?

Answer: The number in Section B, Specification and Pricing Proposal Sheets (USM-69) are estimates. Offerors are to prepare their proposals based on what is in the solicitation.

6. **Question:** The CBA for Brooklyn ENY and SNY have recently been accepted by the DOL and are now the governing document for those employees. The WDs for these locations were provided in Section J rather than the CBAs. Since the CBAs have now been accepted by DOL, will the RFP be amended to replace the WDs with the CBAs?

Answer: The CBAs for Brooklyn E/NY and S/NY will be incorporated as the governing documents by amendment to the solicitation.

7. **Question: Section J Attachment 1 (A) Applicable Wage Determination (WD) & Collective Bargaining Agreements (CBA)...** What WD or CBA applies to the work sites in Central Islip? It appears this city is in Suffolk County, however, there is no local WD or CBA for this county. Will the government please provide the applicable local WD or CBA for the locations in Central Islip?

Answer: The CBA for Central Islip, Suffolk county, NY will be incorporated by amendment into the solicitation.

8. **Question: Section J Attachment 1 (C) Actual Wages and Benefits for Sites covered by Non-CBA WD's...** It appears from this section's spreadsheets, for the cities in the Eastern and Southern NY Districts, that the DOL will incorporate a CBA shortly but at this point only the local WD is included. For Brooklyn, New York, Foley Square and White Plains NY, the CSO pay rate on these spreadsheets is \$21.18, which is LESS than the prevailing WD rate of \$23.64. Please advise which rate you want the offeror to use? Also, for Poughkeepsie NY the CSO pay rate on these spreadsheets is \$19.27, which is LESS than the prevailing WD (#94-2379 Rev 17) rate of \$23.64. Please advise which rate you want the offeror to use?

Answer: The offerors are to use the rate in the CBA, which will be incorporated into the solicitation by amendment. For sites in the 2nd Circuit that are now covered by CBAs, that information in Section J Attachment 1 (C) for the 2nd Circuit will be deleted from the solicitation.

4th Circuit specific

9. **Question:** In CBA 2001-0455 (rev 1), Article 19, paragraph C, it states that after ten years and one day of employment, employees shall receive “four and one half (4 ½) weeks paid vacations based on one hundred and sixty (160) hours...” Does this mean employees get 180 hours (4 ½ weeks) or 160 hours of vacation? Is the 160 hours a typographical error?

Answer: Employees get 180 hours.

10. **Question:** In CBA 2001-0455 (rev 1), Article 20, paragraph 4, changes have been made by hand. Which is the approved version; is sick/personal leave accrued from year to year?

Answer: According to the CBA, sick Leave can accrue.

11. **Question:** In CBA 2001-0455 (rev 1), Article 26, paragraph C has been crossed out. Do the employees get a shoe allowance of \$150/year?

Answer: There is no shoe allowance.

12. **Question:** What is the number of billable hours per LCSOs and CSOs by individual locations within the 4th Judicial Circuit? Please provide the number of personnel identified as LCSOs and CSOs at each location.

Answer: Section B, Specification and Pricing Proposal Sheets for the 4th Circuit specify the number of LCSOs and CSOs required for each facility. The estimated number of hours for each position is 2008 per year.

13. **Question:** Para J 1 (A), 4th Circuit, West Virginia USGOA Local #87 CBA Is there a corresponding DOL WD issued for this CBA?

Answer: The CBA between Akal Security Inc and USGOA Local #87 will apply to the cities of Eikins, Wheeling, Martinsburg, and Clarksville WV. The CBA between Akal Security Inc and USGOA Local #92 will apply to the cities of Charleston, Huntington, Bluefield, Beckley, and Parkersburg WV. A wage determination for these locations (Charleston, Huntington, Bluefield, Beckley, and Parkersburg WV) was requested from the Department of Labor but has yet to be received by USMS.

Section B

14. **Question: Para B-1 (b) (1) Basic Rate** How does the Government derive the 2,008-hour estimate for the Basic Rate category? Is this some type of calculation that starts with the typical 2,080 available annual hours? Further clarification would be appreciated.

Answer: The 2008 hours are derived from the number of working days per month multiplied by 8 hours a day for each position. This number of hours includes allowances for night differential, medical exam time, weapons proficiency standards, in-service training, and Orientation Phases I and II. The 10 federal holidays are not included in the 2008 hours.

15. **Question: Para B-1 (c) Wages & Benefits** Since successor contractors must abide by the wages and benefits of the applicable CBA (for the base year), offerors will need a quantity of the night hours worked in each circuit where a shift differential is paid in order to project this cost. The information provided by the USMS indicates 24-hour sites but does not give data on how many hours of work are required between 6pm and 6am at any site. The contractor must pay a premium for this work under some CBA's. Please provide the quantity of night hours to be worked in each circuit with shift differential.

Answer: The following are the **estimated** number of hours worked from 6PM to 6AM by circuit:

1 st Circuit	Average # of 6PM to 6AM hours worked Hours/Month
Boston, MA	2,174
Worcester, MA	0
Springfield, MA	0
Portland, ME	0
Bangor, ME	0
Concord, NH	45
Manchester, NH	0
Providence, RI	43.3
Hato Rey, San Juan,PR	2,393

2 nd Circuit	Average # of 6PM to 6AM hours worked Hours/Month
CT	143
N/NY	6
E/NY	2005
S/NY	8720
W/NY	2
VT	2

4 th Circuit	Average # of 6PM to 6AM hours worked Hours/Month
MD	1435
E/NC	0
M/NC	0
W/NC	0
SC	102
E/VA	381
W/VA	124
N/WV	55
S/WV	165

6 th Circuit	Average # of 6PM to 6AM hours worked Hours/Month
District of Western Kentucky	0
District of Eastern Kentucky	0
District of Eastern Tennessee	0
District of Middle Tennessee	** 67.5 (August only)
District of Western Tennessee	0
District of Northern Ohio	345
District of Southern Ohio	2.5
District of Eastern Michigan	** 200 (October only)
District of Western Michigan	4.25

16. Question: Section B Specification and Pricing Proposal Sheets Some sites are listed as 'reimbursable'. Please explain what effect this categorization has on pricing.

Answer: A site being categorized as a reimbursable site has no impact on the offerors pricing. The designation "reimbursable" indicates that the contractor services are to be provided by Special Security Officers vs. Court Security Officers.

17. **Question:** Para B-1(b)(1) indicated that the Basic Rate for LSSOs and SSOs should include the Contract Hourly rate, start-up costs, radios, leather goods, and gun locks. Does this mean that all of those costs should be bundled into the Basic Rate? Does this apply to Boston only, or to all SSO programs?

Answer: Only for the 1st Judicial Circuit, 1 Courthouse Way, Boston MA LSSOs and SSOs does the Basic Rate include the start-up costs, radios, leather goods, and gun locks.

18. **Question:** Para B-1(b)(1) also indicated that “leather goods” should be included in the Basic Rate. Please define “leather goods”.

Answer: Leather goods for the 1st Judicial Circuit, 1 Courthouse Way, Boston MA LSSOs and SSOs include the holster (belt type), equipment belt/trouser belt, flashlight holder, handcuff case, magazine case, speed loader case and radio case.

19. **Question:** How will a potential offeror be required to propose (i.e. per man-hour, per position, total staffing)?

Answer: Offerors are to propose IAW Section B, Specification and Pricing Proposal Sheet (Basic Rate and Overtime Rate per hour rate and Start-up Cost – cost for each position).

20. **Question:** How many judicial districts are located in each circuit (by state and city)?

	Total Districts
Answer: 1 st Circuit	5
2 nd Circuit	6
4 th Circuit	9
6 th Circuit	9

Section B, Specification and Pricing Proposal Sheets are divided by circuit and separated by district. States can be divided into several Districts. Districts can include several cities.

21. **Question:** What is the current level of staffing for each court/court building/judicial district/and circuit?

Answer: The anticipated number of LCSO/CSO positions for this requirement is included in the Specification and Pricing Proposal Sheets.

22. **Question:** Please confirm that medical exams, Firearms Qualification training and the annual 8 hour training course are billable at the Basic Rate. Although the cover letter indicated that medicals and weapons training are billable at 2 hours each and Para C-7 indicated that the 8-hour training is billable, Para B-1 paragraph (b) (1) could be interpreted to mean that those costs should be included as costs in the Basic Rate.

Answer: Medicals and weapons training are allowed 2 hours each and billable at the Basic Rate. The 8-hour training is billable at the Basic Rate. Para B-1 (b)(1) will be revised by amendment to provide clarification.

23. **Question:** A maximum of 2 hours for each category (medical exams and weapons proficiency tests) has been allowed. However, our experience is that the new medical exams take from 3 to 4 hours or more to complete, depending on the availability of blood testing and EKG equipment in the locally available doctor or clinic offices. Is the Offeror expected to include the estimated time for medical exams and weapons proficiency tests in the Basic Rate? Will the USMS reimburse the new contractor for additional time required to take medical exams?

Answer: A maximum of 2 hours each has been allowed for undergoing medical exams and weapons proficiency tests.

24. **Question:** Are "jury duty pay" and "bereavement leave pay" billable at the Basic Rate?

Answer: Jury duty and bereavement leave pay, if included, must be estimated and detailed as part of the Basic Rate in the Business Proposal. Contractors will not be directly reimbursed at the Basic Rate while CSOs are on jury duty or bereavement leave.

25. **Question:** We have noted that several of the Collective Bargaining Agreements are due to expire on 9/30/02. Are the wages and benefits that are required by the Department of Labor to be paid effective 10/1/02 consistent with the highest wages and benefits under the present CBA, or any extensions of that agreement, or under the applicable wage determination? Are Offerors required to propose and pay at least as much as the CBA wages and benefits for FY 01 / 02?

Answer: The successful offeror is required to pay, at a minimum, the wages and benefits of the current Wage Determination or Collective Bargaining Agreement in the solicitation.

26. **Question:** Since the DOL generally updates WD's in June or July of each year, will the successful offeror be entitled to an equitable adjustment for any increase that occurs between the health and welfare rate used with the offer and the actual rate in effect on October 1, 2002?

Answer: These WDs/CBAs in the solicitation will be incorporated into the contract at time of award. No adjustment will be made.

27. **Question:** Is the security operation run 24/7 or during business hours only?

Answer: Section B, Specification and Pricing Proposal Sheets indicate which facilities operate on a 24 hour basis.

28. **Question:** How many number wise will each District need to man the operations?

Answer: The number of LCSOs and CSOs are specified in Section B, Specification and Pricing Proposal Sheets.

29. **Question:** What is the pay scale for the Districts?

Answer: The pay rates are dictated by the applicable Collective Bargaining Agreements or Wage Determinations.

30. **Question:** When will the new contractor assume the operational function of providing security under the new contract?

Answer: The period of performance begins on October 1, 2002. Note para H-6, FACILITY SURVEY PRIOR TO ASSUMING/COMMENCING CONTRACT PERFORMANCE – "After the award, but prior to performance, the Contractor must coordinate a facility survey with the COTR for purposes of familiarizing each Contractor personnel with the CSO post assignment records and the Judicial Security Plan designed specifically for that facility. A facility survey must also be performed on the first day of duty for each Contractor personnel hired after implementation of the contract."

31. **Question:** Will the current Contract Manager and his/her staff will be eligible to be included in a transition? If so, how many staff members work for the Contract Manager? Please provide a break-down by job title/function to include current salary and benefits of the Contract Manager and staff.

Answer: The Contract Manager and his/her staff are part of the current contractor's operation. There is no transition provision in the contract. See Section C-5 (a) for Contract Manager duties.

32. **Question:** Is the Contract Manager and/or any members of his/her staff included under any of the conditions outlined in the Collective Bargaining Agreements?

Answer: The Contract Manager or members of his/her staff are not included in the Collective Bargaining Agreements or Wage Determinations.

33. **Question:** By reference to the cover letter indicating that the prices applicable to the base period of the solicitation will be applied to all option periods, upon completing the Specification and Pricing Proposal Sheet do we or do we not input a price quote in those columns even if it will be the same as that input in the column reflected for the base period?

Answer: Offerors need to completely fill out the entire Specification and Pricing Proposal Sheets for the circuit(s) for which it is proposing.

34. **Question:** What information is available relating to accrued vacation and sick days that would be carried over in the transition?

Answer: The CBAs include vacation and sick leave information for CSOs under CBAs. For CSO under Wage Determinations, see Section J Attachment 1(D) for this information.

35. **Question:** By definition is the Senior LCSO the same as the non-billable site supervisor? There is a wage classification for Senior LCSOs. Can you provide information on the number of Senior Leads at each location?

Answer: The Government does not have a requirement for Senior Lead Court Security Officers only Lead Court Security Officers and Court Security Officers. Site Supervisors are specified in Section B, Specification and Pricing Proposal Sheets and described in Section C-5 (b).

Section C

36. **Question:** Based on the RFP SOW requirements, do the incumbent CSOs meet the qualification requirements?

Answer: Incumbent CSOs currently meet the contractual requirements.

37. **Question:** When calculating staffing for a facility, are Level I or Level II court attendance requirements considered a Post? If so, how is that staffing number determined?

Answer: The number of LCSOs and CSOs to be utilized for a Level I or Level II proceeding are included in the number of LCSOs and CSOs in Section B, Specification and Pricing Proposal Sheets.

38. **Question:** Please clarify **Para C-4** wherein it states “The Contractor must not apply any other charges nor profit or fee to the items being purchased.” Please indicate why a contractor would not be entitled to recover its General and Administrative costs or a material handling fee both of which are allowable and reasonable costs?

Answer: The offerors are to decide on how to include this in their proposal. Offerors are not prohibited from including this in their G&A.

39. **Question:** Please confirm that the Contract Manager and administrative staff described under **Para C-5** are all to be priced as indirect costs under the Basic Hourly Rate for LCSO/ CSO?

Answer: The manner in which the offeror chooses to calculate these costs would be a business decision made by the offeror.

40. **Question: Para C-5, b:** We understand that office space is provided by the USMS for Site Supervisors. Does the USMS provide phone service, internet access, etc.?

Answer: The USMS does not provide space, phone service or internet access for site supervisors. Space is provided for CSOs for storage such as a break room or locker room.

41. **Question:** Please clarify **Para C-5, d,4 Full-time/shared positions** wherein it states “In the event that a facility has only one CSO position, this position may be classified as a shared position.” We note that various locations under Section B list requirements for 2 or 1 positions which are listed as “Full”. Are these positions listed correctly? Is the statement that the position may be classified as a shared position discretionary? Does USMS envision that these single or twin positions could be changed from “Full” to “Shared” without a change order? Is there a minimum or maximum number of Shared positions required for facilities with only one CSO position?

Answer: The positions specified in Section B, Specification and Pricing Proposal Sheets are the Government’s requirement. The total number of positions includes both the full and shared positions. The positions are either full or shared. This is not discretionary. The only method to change a position from full to shared or shared to full is by a modification to the contract. See Section B for positions and Section C-5(d)(3) for shared description.

42. **Question:** Please clarify **Para C-5, e** wherein it states "Lead Special Security Officers and Special Security Officers duties, wages and benefits remain in accordance with the LCSO and CSO duties, wages, and benefits to the contract, respectively." Are these positions covered under this contract or another contract or vehicle? If the LSSO and SSO are not covered under this contract, how and why is this provision applicable to this contract?

Answer: Included in this contract are facilities that are under an inter-agency agreement with the USMS such as the US Tax Court and US Court of Veterans Appeals. The USMS is responsible for providing the services required by this contract to these organizations. Lead Special Security Officers and Special Security Officers may be designated as Lead Court Security Officers and Court Security Officers. Duties, wages and benefits are the same for LSSOs and LCSOs and SSOs and CSOs.

43. **Question: Para C-8 (c) Medical Standards and Procedures** At what point after contract award will the Government require the submittal of designated licensed physician resumes?

Answer: Physician resumes must be submitted to the USMS within 30 calendar days after contract award. This will be added to Section C by amendment.

44. **Question: Para C-10.** Does the USMS provide the ammunition for the annual weapon proficiency standards?

Answer: IAW Section C-26 para (a), the Government will furnish the ammunition (including ammunition for qualification) to the contractor for each Lead CSO and CSO.

45. **Question: Para C-10.** Does the USMS provide a safe area for clearing and cleaning weapons?

Answer: The CSO will coordinate this with the COTR.

46. **Question: Para C-12, paragraph 3** wherein it states "In cases where a uniform was issued to a CSO under a previous contract award or option period, less than four months prior to the start date of the current contract, the Contractor will not be required to reissue a new uniform nor will the Government be liable to pay the start-up cost for such situations." Does this mean that the Government will furnish uniforms for any individual who was hired within the four month period prior to the contract start to the successful offeror?

Answer: The CSO will use the same uniform received within that 4 month period and the Government will not pay Start-up costs for that CSO.

47. Question: Para C-12, paragraph 4. Is the contractor obligated to turn in to the Government used uniforms belonging to former CSOs each time there is a separation of employment or are uniforms only to be turned in upon completion of the full contract term? Does the Government intend that the contractor hold on to or dispose of any and all used and or worn uniforms until the completion of the contract?

Answer: At time of contract completion, disposal of the uniforms is to be coordinated with the COTR.

48. Question: Section C-12, paragraph 4 wherein it states "... all uniforms must remain the property of the Government..." Does this mean that the uniforms are Government Property at the time the uniform is purchased and assigned to the CSO? Or does this become Government Property only at the end of the contract?

Answer: The Uniforms are Government property that are assigned to the contractor's CSOs.

49. Question: Para C-12, paragraph f. Are uniform items that are defined as uniform variations such as V-neck blue vests, sweaters, outer wear and rain wear reimbursable under the "Start-up costs"? Or are these costs considered supplemental uniforms?

Answer: Uniform variations are reimbursable items IAW C-4 and not included in Start-Up Costs.

50. Question: Para C-15 (e), page C-27 The RFP indicated that the CSOs receive a "...2 hour lunch" rather than a ½ hour lunch. We believe this to be a typographical error. Was an allowance for ½ hour for lunch what was really intended? As a 2-hour lunch break has major pricing ramifications, please clarify the lunch break period for CSOs.

Answer: Para C-15(e) states the following: "No CSO is authorized to leave their station during their shift except when the CSO is authorized to take breaks or lunch. Each CSO position will be allowed a 15-minute morning "break", a 15-minute afternoon "break", and a 1/2-hour lunch..." To provide clarification, this will be changed by amendment to the solicitation. The paragraph will be rewritten to state a "30 minute lunch".

51. Question: Para C-23(a). How many hours are required for the In-District Orientation Phase I? Are these training hours reimbursable at the Basic Rate?

Answer: In-District training is reimbursed at the Basic Rate.

52. Question: Para C-23 Orientation/Training Does the Government provide the Phase I training or is this a contractor responsibility?

Answer: The Government provides the Phase I training.

53. **Question: Para C-25.** Are the costs attributed with the preliminary background check reimbursable as "start-up costs"? Please reference page **F-3 and H-1**.

Answer: Cost attributed with the preliminary background check are not reimbursable as start-up costs. It is at the contractor's discretion on how it incorporates these costs

54. **Question: Section C-25 Background Investigations.** Are we correct in our assumption that the statement "and other Contractor personnel working on this contract" includes only contractor personnel who are directly assigned to the contract such as the Program Manager and Site Supervisors, and would not apply to administrative support staff who work offsite?

Answer: IAW Section C-25 para (b) (3), the Government may conduct a background investigation on any of the contractor's corporate officers or any other employees or subcontractors as determined necessary by the Government.

55. **Question: Para C-26 (a) Government Furnished Property (GFP)** We understand that the Government provided property in this paragraph must be stored at the location designated by the Government. Does the government also provide the storage cabinet(s) for this equipment or is the Contractor responsible for purchasing gun lockers, etc.?

Answer: The Government does provide a location for weapons and/or radio storage at each facility. The Government does provide a safe for weapons storage.

56. **Question:** Will specific required equipment be identified that the contractor will be required to provide?

Answer: There is no requirement for contractor provided equipment included in the solicitation at this time. *However*, the requirement for the contractor to provide bulletproof vests is anticipated to be incorporated into the solicitation. Information is being provided by amendment that only offerors included in the competitive range will be required to provide a proposal (see para M-8 (c)).

57. **Question: Para C-27** states that the US Marshal may authorize CSOs to carry OC Spray devices. If this occurs, does the USMS provide the instructor and facilities for the initial and annual training? Is this training billable at the Basic Rate? How many hours for this training? Would travel expenses, if any, be reimbursed to the contractor?

Answer: The Government provided training is billable at the Basic Rate.

58. **Question:** Does USMS continue to require CSOs to lock weapons at the close of daily duty in the USMS office?

Answer: LAW Section C-26 para (c), "The Contractor is responsible for ensuring that all CSOs return these items to their place of storage at the completion of the CSO's shift"... "Under no circumstances is a CSO take any of the items from the duty station..."

59. **Question: Para C-29 (e), page C-38 and Para F, para (a)(1-2), page F-1.** These paragraphs direct submission of a CSO Monthly Activity Report and the recipients of this report. The solicitation is silent with regard to a similar report for the SSOs. Is a Monthly Activity Report required for SSOs and to whom is the report submitted?

Answer: The Monthly Activity Reports for LSSO and SSOs is required to be submitted to the Contracting Officer for the Circuit.

60. **Question:** Does USMS require more than one CSO in the courtroom during any abnormal or high profile situations?

Answer: The COTR will determine on a case-by-case basis.

61. **Question:** Are these armed or unarmed positions, or a combination of both, what is the breakdown?

Answer: All positions are armed.

62. **Question:** Does security screening equipment to be utilized in each court building exist now? If yes, will use of such equipment be permitted? Do you have a need to install additional cameras and security devices in these districts? Who may I contact about contracting this type of work out?

Answer: The Government has security equipment in place that the CSOs will be using (see C-26(d)).

63. **Question:** Will CSOs provide court building entrance security also? How many courts in which districts/cities have more than one entrance to be secured?

Answer: CSOs are required to provide entrance security. The USMS has determined the number of personnel needed as stated in Section B.

64. **Question:** Would the USMS provide the turnover rates in each of the judicial districts?

Answer: The national average turnover rate is 8%.

Circuit	Turnover Rate
1 st Circuit	5%
2 nd Circuit	10%
4 th Circuit	7.5%
6 th Circuit	3%

65. **Question:** In FY 2002, Temporary CSO positions have been added to enhance security as a result of September 11th. Is it anticipated that this will continue in FY 2003? If yes, are Temporary CSO positions included when determining if a Site Supervisor is required for a district?

Answer: Congress has only funded the TCSO positions through 9/30/02.

66. **Question:** Are CSOs to be present in each courtroom while court is in session?

Answer: The COTR will determine on a case-by-case basis.

67. **Question:** Are CSOs to provide court building entrance security?

Answer: CSOs duties include entrance control (sec C-5(d)).

68. **Question:** How many courts/judges are in each court building in each judicial district?

Answer: The number of CSOs required has been determined by the USMS and is what is included in Section B.

69. **Question:** Are there any court buildings in any judicial district which have only visiting judges? Identify district and city? that would require CSO on site on non-regular basis or to travel to such site?

Answer: There are court buildings that have visiting judges which vary depending on the judicial calendar. The USMS reimbursed travel as actual expenses IAW JTR.

70. **Question:** Will all U.S. Magistrates courts require CSO coverage while court is in session? If yes, please identify how many in each district by city and number?

Answer: Section B, Specification and Pricing Proposal Sheets provide the facility locations for services to be provided under this contract.

71. **Question:** Would the USMS please advise the city and location in each of the judicial circuits where Contract Managers, Contracting Officers, and Contracting Officer Technical Representatives are to be located?

Answer: The location of the Contract Manager is at the discretion of the contractor. The Contracting Officers for each circuit are located at Headquarters, USMS, Arlington VA. A COTR will be appointed for each district. The location of the COTR varies in each district.

72. **Question:** What equipment will the Federal Government provide?

Answer: The property furnished by the Government is listed in Section C-26 para (a).

73. **Question:** Are vehicles necessary?

Answer: There are no vehicles required by this contract.

74. **Question:** Will credentials and badges be provided by USMS or contractor?

Answer: IAW C-12 (c) and C-26 (a), the Government will issue CSOs a pocket identification and name tag to be worn while on duty. IAW C-28, the Contractor must provide company identification cards.

75. **Question:** Please clarify that start-up costs attributed to a new hire who is assigned to the contract for reasons that are not stated under C-30 or at initial contract start are not reimbursable as "Start-up Costs" and could only be recovered as indirect costs. If, for example, a new hire were to fill a position that had been held by a former CSO who had been employed for less than 18 months, and none of the conditions under C-30 2, 3, or 4 were to apply, then according to the definition for "Start-up costs", are we correct that these costs would not be reimbursable as "Start-up costs"?

Answer: The Contractor is liable for the background investigation if the CSO leaves their employment in less than 18 months.

Section F

76. **Question:** Please clarify why F-3 lists SF-294 & 295 as deliverables when subcontracts are generally precluded?

Answer: Subcontracting possibilities such as uniform purchase, office supplies and training materials are available under this procurement. Subcontracting restrictions are IAW H-1. Offerors are to submit subcontracting plans IAW 52.219-9 and Section L-4. Since a subcontracting plan is required, the SF294 and SF295's are required to be submitted as stated in F-3.

Section G

77. **Question: Para G-7(b)** wherein it states: "No adjustment will be made for business expenses such as uniform costs, medical exams, weapons qualifications or any other item listed in a wage determination or included in a CBA that is not considered a direct labor cost." Please clarify this statement as it appears to contradict paragraph (a) which states that price adjustments will be processed in accordance with FAR 52.222-43. FAR 52.222-43 states at paragraph (e) "any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (c) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but shall not otherwise include any amount for general and administrative costs, overhead, or profit." Social security, workers' compensation, and fringe benefit costs are not considered direct labor but are subject to the price adjustment pursuant to FAR 52.222-43.

Answer: Under FAR 52.222-43, any adjustment will be limited to increases or decreases in wages and fringe benefits. Uniform costs, medical exams and weapons qualifications are business expenses and are not adjustable under FAR 52.222-43. Taxes including all federal (e.g., FICA), state (e.g. unemployment), and local taxes that are directly chargeable to the direct labor rate are included in the price adjustment.

Section H

78. **Question: Para H-9.** Please clarify if the costs for the Background Investigations for which the contractor is liable will be considered an indirect cost since the Government will not reimburse these as "start-up costs"? Please indicate the availability of incumbent CSO to work on the successor contract? Does this provision imply that the Government will reimburse background investigation costs for Lead Court Security Officers?

Answer: Costs attributed with the preliminary background check are not reimbursable as start-up costs. The contractor is to determine how to allocate their costs. CSO may be available to work on the successor contractor. The Government does the background investigation. The contractor does a preliminary background screening. Background checks are done on LCSOs, CSOs, LSSOs, SSOs and may be done on any other contractor officer or employee as determined by the Government.

79. **Question: Para H-10,e.** What amount of notification would the Government provide if it were to unilaterally increase its requirement by 500%? Would an increase of this magnitude be subject to the Changes clause?

Answer: The 500% will be changed to 100% by amendment to the solicitation. The Government would provide adequate time to the contractor to provide service if the start-up services were increased by 100%. Since this is a requirement of the contract, the Changes clause would not apply.

80. **Question: Para H-10.** Also note that similar references to LSSO and SSO positions are made in the RFP. Please clarify that where these references are made that these mean LCSO and CSO?

Answer: LSSOs and LCSOs and SSOs and CSOs are the same with respect to duties, wages and benefits. However in determining the minimum guarantee, LSSOs and SSOs are not included in the calculation.

81. **Question: Para H-13.** Are the costs attributed with Blood Borne pathogen instructions considered reimbursable under the “start-up costs” or are these indirect costs under the “Basic Rate”?

Answer: Each offeror is to determine how to allocate these costs.

82. **Question:** What is the minimum level of liability insurance that is required to be carried by the contractor?

Answer: Section H-4 provides contractor insurance information.

Section I

83. **Question:** Will FAR 52.219-4 and/or 52.219-23 Price Evaluation Adjustments for HubZone and SDB businesses be implemented into this procurement?

Answer: This procurement is being issued under Full and Open Competition. Clauses 52.219-4 and 52.219-23 are incorporated by reference in Section I.

Section J

84. **Question: Section J Attachment 1(A) - Various CBAs** Several CBAs stipulate that the health & welfare allowance must be paid in accordance with the prevailing Wage Determination, or, state that the Company will adjust the health & welfare payments based on the Wage Determinations every year (on October 1st). Where this language occurs, no current health & welfare rate is listed. In these instances, should the offeror use the health & welfare rate from the applicable prevailing WD in effect at the time of proposal submission?

Answer: If there is not a CBA, the offeror should use the WD for health and welfare rates or the rate that is currently being paid.

Section L

85. **Question:** How do we arrange a site visit?

Answer: Contact the Contracting Officer for the appropriate circuit IAW para L-12. The Contracting Officer will in turn contact/or have you contact the Contracting Officer's Technical Representative (COTR) at the site you wish to visit to determine when a site visit can be arranged.

86. **Question: Para L (1) Proposal Submission – Volume II Business Proposal.** "...pricing data is required on diskette for data in Para L-4 paragraphs (d)(2) and (d)(7)." In Para L-4 paragraph (d)(6), the Cost Summary Sheet is also required on diskette. Will the Government please confirm exactly which data from Para L-4 is required on diskette?

Answer: For the Business Proposal, information that is required to be submitted on diskette is as follows: Section B, Specification and Pricing Proposal Sheets (L-4 (d)(2)), Cost Summary Sheet (L-4 (d)(6)), and Hourly Rate Computation (L-4 (d)(7)).

87. **Question: Para L-1(c)(2), page L-2.** This lists those proposal submission pages that are not included in the 100 sheet page limitation. This does not exclude the Past Performance Survey forms, which consist of 2 pages each. Because of the solicitation requires offerors to identify all current and past related federal, state, local, and private contracts performed during the past 3 years, this could potentially result in the submission of 15 or more surveys totaling 30 or more pages. This significantly reduces the pages available to fully describe the contract management and technical ability. Will the Government consider excluding the Past Performance Survey forms from the page count limitation?

Answer: The Past Performance Survey forms are excluded from the page limitation. This will be changed by amendment to the solicitation.

88. **Question:** Section L-2 (d)(3) Introduction and Summary Is it the intent to have the separate Section 1 **Introduction and Summary** address only the portion of "*the overall approach to meeting the Government's needs and requirements*" that relates to Contract Management and separately address in Section 3 Introduction and Summary the portion of the overall approach that relates to technical ability? Please confirm or clarify.

Answer: See para L-2(d) – The contract management section and the technical section should at least include the following: (1) *Table of Contents*, (2) *Listing of Tables and Drawings*, (3) *Introduction and Summary*.

89. **Question:** Section L-1 (b) Responsiveness Paragraph (1) and (2) Paragraph 1 requests *“The offeror must submit a proposal based on the designated circuits. The proposal must also clearly identify the circuit for which the proposal is being submitted.”* Paragraph 2 clearly states *“A separate business proposal must be submitted for each Judicial Circuit that the offeror is to be considered for an award.”*

Is a separate Technical Proposal and a separate Business Proposal required for each Judicial Circuit *that the offeror submits upon in consideration of award.”*

Answer: The offeror may submit the same contract management/past performance/technical ability proposal for the circuits for which it is proposing. A separate business proposal must be submitted for each circuit.

90. **Question: Para L-4.** Please clarify how the costs for shift differentials as prescribed by the CBA should be incorporated in the BASIC RATE?

Answer: This is at the discretion of the offeror.

91. **Question: Para L-1, (c) General Instruction (2) Configuration:** The RFP limits the combined Contract Management, Past Performance and Technical Ability proposal to 100 sheets, including appendices. No reference could be found requiring submittal of information in appendices. Please clarify.

Answer: If the offeror submits its proposal with appendices, the pages of the appendices will be included in the page limitation.

92. **Question: Para L-1, (c) General Instruction (2) Configuration:** RFP requires proposals to be prepared in single type space, 12 pitch Times New Roman Font. This is a very large font for use in tables and drawings. Can the text within graphics be smaller than 12 pitch as long as it is legible? What is the limitation, if any, on the font for tables and drawings?

Answer: The font size for tables and drawings can be less than 12 pitch; however, it should still be legible.

93. **Question: Standard Form 33, Item 9:** This requires no hand carried proposals be submitted. May we assume that this limitation is met using any licensed and bonded local or national delivery service such as FEDEX. Is this correct?

Answer: See Section L-14 for revised guidance of submitting proposals.

Hand carrying proposals is strongly recommended. The delivery address for Fed Ex, UPS and commercial companies has been changed. These addresses will be added/changed by amendment.

As an additional precaution to ensure receipt of all offers, offerors submitting proposals will be required to fax a notice on its company letterhead to the USMS, Attn. Sheryl Pierce at (202) 307-9360 that they are submitting a proposal and include the method of delivery.

94. **Question:** If a contract exist now and in the recent past, will USMS provide a copy of that contract?

Answer: There are currently contracts awarded for each of these circuits (1st Circuit MS-98-D-0001, 2nd Circuit MS-98-D-0023, 4th Circuit MS-99-D-0043, and 6th Circuit MS-99-D-0039). To obtain a copy of a contract that is currently in place, a request must be submitted IAW the Freedom of Information Act.

Section M

95. **Question: Para M-5, EVALUATION OF CONTRACT MANAGEMENT and M-7 EVALUATION OF TECHNICAL ABILITY,** In ParaM-5 “The contractor will be evaluated on its ability to perform, administer and manage the contract”. In Para M-7 it states “. . .Specifically the offeror will be evaluated on the following: . . . How it performs contractual duties.” These two requirements appear to be very similar. Please clarify the distinction between the two requirements

Answer: Para M-5 provides information on the offeror’s proposed contract management efforts. M-7 provides information on the offeror’s proposed technical ability to perform the contract. Para M-7 “how it performs contractual duties” will be revised as follows by amendment: “conceptual approach in the performance of contract requirements”.

96. **Question: Para M-5 EVALUATION OF CONTRACT MANAGEMENT,** This paragraph requires “The contractor will be evaluated on its ability to perform, administer and manage the contract. Among other things, this would include the following: Evaluating corporate and administrative staffing levels.” Are we being evaluated on our ability to evaluate these levels or are we being evaluated on the appropriateness or reasonableness of our proposed staffing levels? Please clarify.

Answer: The offeror will be evaluated on its corporate and administrative staffing levels. This paragraph will be revised in an amendment to delete the word “evaluating”.

97. **Question: Para M-8.** Are we correct to assume that the Start Up Costs are applicable to the total number of full/part-time time equivalents and not total positions since the number of shared positions actually equates to two individuals?

Answer: Start-up costs are applicable for LCSOs, CSOs, LSSOs and SSOs (see Section B-1 para (b) (2)) except for LSSOs and SSOs in the 1st Judicial Circuit, 1 Courthouse Way, Boston MA.

Additional Questions-and-Answers

98. **Question:** For Puerto Rico, the wage scale isn't clear. It lists 8 wage levels but doesn't explain how to determine who is at what level. The also have a list of people and their wages, but that is from 1998 and not current.

Answer: Using the seniority information along with the CBA should assist the offerors in determining the wage rate.

99. **Question:** The SSO's in New York City receive different uniforms and extra equipment/uniform items that the CSO's. Annually they receive ESU style shirts and trousers, safari boots, baseball cap, and a fur lined hat. On a one-time basis they receive the following: 36 inch long waterproof jacket, slash-proof gloves, raincoat with USMS silkscreen, wool sweater, holster, equipment belt, flashlight and holder, handcuffs and case, speedloader and case, radio case, and belt keepers. Should these items be included in startup or will the contractor be reimbursed for these items?

Answer: For Start-up, offeror's should propose for uniforms specified in the Statement of Work. If the above stated items are required during the term of the contract, the contract will be modified accordingly.

100. **Question:** Section C-5 (c) 1 This paragraph states that the Contractor must provide an LCSO at each facility. At the sites where there is only one (fulltime or shared) position, (i.e. 2nd Circuit – Watertown), should the offeror assume that this position is staffed by an LCSO?

Answer: If there is only one position, that position will be a LCSO position.

101. **Question:** Section C-5 (c) 1 Would the Government please clarify the number of LCSO's at the sites in each Circuit?

Answer: The Contractor must provide an LCSO at each facility. For facilities operating on a 24-hour basis, the Contractor must provide three LCSOs.

102. **Question:** Section C-5 (c) 1 This Many CBA's possess a two-tier LCSO pay rate structure; one for a Senior LCSO and one for a LCSO, or, identify an LCSO1 and LCSO2 labor categories. Please differentiate these categories and how the offeror should select which rate is in effect at each site?

Answer: The Government has no requirement for a senior LCSO or LCSO1 or LCSO2.

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MANDATORY DECREE NUMBER 74

FIFTH REVISION (1991)APPLICABLE TO THE
WATCHING AND PROTECTIVE SERVICE INDUSTRYArticle I - Definition of the Industry

This decree shall be applicable to all the employees covered by the definition of the Watching and Protective Service Industry, as defined below:

The Watching and Protective Service Industry shall include but without limitation, all activities related to detective, private investigators, patrolling, and night watching services; to personal, burglary, fire or other risk protection services, and to armored car, finger printing, and similar services.

Likewise, it shall include any work or service necessary or related to the aforementioned activities.

The minimum wages and other working conditions of this industry are applicable to an employee of the same considering his occupational activity together with the industrial activity of the enterprise or employer who has employed him, except in cases where the Minimum Wage Board expressly provides or has provided differently.

The minimum wages and other working conditions established in other mandatory decrees for the occupational groups of other industries shall not be applicable either by interpretation or in any other way to the employees who work in the Watching and Protective Service Industry.

Establishments engaged in activities or services to which any mandatory decree of the Minimum Wage Board of Puerto Rico is currently applicable or may be applicable in the future are excluded from this definition.

Article II - Minimum Wage

Every employer of the Watching and Protective Service Industry shall pay the employees covered by this decree a wage per hour not lower than those provided hereinafter:

Classifications and Occupations	Minimum Wage Per Hour
<u>I. Security Guards, Private Detectives and Other Related Services</u>	
All Workers	
a) During First Year of Effectiveness	\$ 3.65
b) From Second Year of Effectiveness On	3.80
<u>II. Transportation of Money and Other Valuables in Armored Vehicles</u>	
1. Armored Vehicle Operator	5.00
2. All other workers	
a) During First Year of Effectiveness	3.65
b) From Second Year of Effectiveness On	3.80

Article III - Definitions of Classifications and Occupations

The classifications and occupations of this industry shall have the meanings provided hereinafter:

I. Security Guards, Private Detectives and Other Related Services

This classification shall comprise, without limitation, activities related to watching and protective services such as: Security Guards, Private Detectives, night watching, personal, burglary and fire protection, finger printing, alarms, watching with Guard Dogs and similar services.

II. Transportation of Money and Other Valuables in Armored Vehicles

This classification shall comprise, without limitation, activities related to the transportation of money and other valuables in armored trucks. It includes occupations such as: Armored Vehicle Operator, Office Employees, Janitors and other occupations related to these services.

1. Armored Vehicle Operator

This occupation includes the driver and all occupants of the armored vehicle.

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2. All Remaining Employees

This occupation includes office employees, secretaries, janitors, mechanics and other activities related to Classification II.

Article IV - Vacation Leave

Every employee covered by this decree shall be entitled to vacation leave with full pay to become effective when he begins to enjoy the same at the rate of the monthly workdays stated below and according to the months of service with the enterprise.

Months of Service	Working Days Per Month	Working Days Per Year	Working Hours Per Month
12 months or less	1	12	110
Over 12 months	1 1/4	15	110

The employee shall accrue vacation leave during the first twelve (12) months of service with the enterprise at the rate of one (1) working day for each month in which he has worked at least one hundred and ten (10) hours. Provided that if he continues working for the same employer, he shall accrue vacation leave in succeeding months at the rate of one and one fourth (1 1/4) working days, whenever he meets the requirement of one hundred and ten (10) monthly hours. The employee who works less than one hundred and ten (10) hours, but not less than sixty (60) in any month shall accrue vacation leave at the rate of half (1/2) a working day. The employee who works less than sixty (60) hours in any month shall not accrue any vacation leave for that month. Nevertheless, said month shall be reckoned for determining the months of service the employee has.

Vacation leave shall be taken consecutively by the employee and shall be granted annually in such a way that it does not interfere with the normal operation of the enterprise, to which end, the employer shall establish the proper schedule. The employee shall preferably enjoy this vacation leave once he has accrued it for one (1) year. In case of urgent need and through written agreement with the employer, the employee may enjoy, in advance, what he has accrued up to then.

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By mutual agreement, the vacation may or may not include the non-working days comprised within the vacation period. When the employee includes non-working days in his vacation, these shall be with pay.

Every vacation period accrued in excess of two (2) years shall be computed and paid at a double rate. In the event the employee ceases in his work, the employer shall pay him the total thus far accrued even if for less than one (1) year. / If the wage has been stipulated per hour, the wage corresponding to each day of vacation shall be computed by multiplying by eight (8), or by the average number of hours worked daily, the highest regular rate per hour received by the employee during the last month of work.

Any contract whereby the employee waives, for money or other consideration, his right to actually enjoy his vacation leave, shall be unlawful and void, unless a special permit is obtained from the Secretary of Labor or any agent duly authorized by him. In enterprises having a bargaining agreement or a written agreement between the union and the employer, the intervention of the Secretary of Labor shall not be required.

Article V - Sick Leave

Every employee covered by this decree who becomes ill and is certified as unable to work by a doctor authorized to practice medicine in Puerto Rico, or is hospitalized subject to verification, shall be entitled to sick leave with full pay at the rate of one (1) working day for each month during which he has worked at least one hundred and ten (110) hours, and at the rate of half (1/2) a working day for each month during which he has worked less than one hundred and ten (10) hours but not less than sixty (60). Provided that the employee who works less than sixty (60) hours during any month shall not accrue sick leave for that month.

Sick leave not taken by the employee during the course of the year shall be accrued for succeeding years up to a maximum of twenty-four (24) days by employees accruing at a rate of one (one) working

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day and up to a maximum of twelve (12) days by employees accruing at a rate of half (1/2) a working day. If the days of sick leave accrued exceed eleven (11) days for those accruing up to a maximum of 24 days and five (5) days for those accruing up to a maximum of twelve (12) days, on the date the employee begins to enjoy his regular vacation, the employer shall be bound to pay in cash the excess of eleven (11) days to the former and the excess of five (5) days to the latter at a rate of eight (8) daily hours and on the basis of the regular wage rate he is receiving at the time.

Except in cases of acts of God, the employee shall notify his employer of his sickness the same day he is absent, at least five (5) hours before his shift. If the wage has been stipulated per hour, the wage corresponding to each day of sick leave shall be computed by multiplying by eight (8), or by the average number of hours worked daily, the regular rate per hour the employee was earning at the time of his sickness.

Article VI - Definition of "Day", "Week" and "Month"

1. Day - Shall mean any period of twenty four (24) consecutive hours.
2. Week - Any period of seven (7) consecutive days.
3. Month - A period of thirty (30) consecutive days counted successively as a unit from the date the mandatory decree goes into effect or subsequently from the employee's date of employment.

Approval and Publication of Decree

This Mandatory Decree was approved by the Minimum Wage Board of Puerto Rico on Wednesday, May 15, 1991. The notice of its approval was published in the newspaper El Nuevo Día on Friday, May 24, 1991.

Effectiveness of Decree

This decree shall become effective on Saturday, June 8, 1991. However, it shall be retroactive to Wednesday, June 5, 1991 by express provision of Section 11 of Act 96 of June 26, 1956 (Minimum Wage Act of Puerto Rico).

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Coverage of the Definition

The preceding definition is the same as that contained in Mandatory Decree Number 74 - Fourth Revision (1982) applicable to the Watching and Protective Service Industry and covers the same activities. As in the previous definition, the Board has decided to mention as an illustration, the services to be included since to enumerate every service rendered in this industry would be very difficult. For this reason, the definition is not limited to the establishments specifically mentioned.

It is the purpose of the Board to include agencies engaged in providing detectives or private investigators to individual persons with the purpose of conducting investigations to obtain information on public offenses, habits, credibility, conduct, movements, whereabouts, associations, transactions, reputation or character of any person; location of stolen property and collection of evidence to be used in court.

It is also the purpose of the Minimum Wage Board to include establishments engaged in providing patrolling, night watching, guarding and armored car services for the protection of persons or real or personal property; or for preventing thefts, embezzlement or illegal appropriation of money or any kind of securities or documents. Likewise, it is the Board's intention to expressly include those establishments rendering protective and watching services of persons or movable or real property by the use of trained dogs.

When the definition states that "likewise it shall comprise any work or service necessary or related to the aforementioned activities", it is the purpose of the Board to include not only the activities previously mentioned in said definition, but any work or service necessary, related or incidental to said activities. That is to say, those employees of the industry who perform office, repair or maintenance work should be considered as included in the definition, as well as the transportation activities carried on by the employers of the industry in their own vehicles.

When the definition states that the minimum wages and other working conditions of this industry are applicable to an employee of the same, considering his occupational activity together with the industrial activity of the enterprise or employer who has employed him, it is intended to mean that in order to determine the minimum wage of an employee, his occupation simultaneously with the industrial activity of the enterprise, has to be considered, except in cases in which the Minimum Wage Board expressly provides or has provided differently.

Therefore, the minimum wages the Minimum Wage Board approves as previously recommended by the Minimum Wage Committee appointed for that purpose for each occupational group of the mandatory decree for said industry shall be applicable to all workers and employees of this industry.

The minimum wages, vacation, sick leave and other working conditions (if any) that are established for the employees of this industry shall be based on the economic and financial conditions shown in the economic reports prepared on the industry and shall depend, therefore, on the economic ability of the industry to pay the same. On account of this, it would not be proper to make applicable to the employees of this industry the minimum wages fixed in other decrees for similar occupations in or for other industries.

The storage, custody or parking of motor vehicles in garages, parking lots or premises for such purpose are excluded from the definition. Such services are covered by Mandatory Decree Number 89 applicable to the Commercial Services Industry. Likewise, all those establishments engaged in teaching (schools) guards or private detectives are excluded. These will be covered by Mandatory Decree No. 75 applicable to the Educational Service Industry.

In the case of enterprises engaged in activities covered by other mandatory decrees that hire personnel directly to work as watchman, guards or in similar activities in their own establishment the workers thus hired would be covered by the mandatory decrees applicable to said enterprises and excluded from the definition of this industry.

Statement of motives.

See Laws of Puerto Rico
Sept. 17, 1996, No. 234.

ANNOTATIONS

1. Generally. The standard for proving constructive discharge is that the new working conditions would have been so difficult or unpleasant that a reasonable person in the employee's shoes would have felt compelled to resign; this is an objective standard in which the focus is upon the reasonable state of mind of the putative "discriminate". *Flamand v. American International Group, Inc.*, 876 F. Supp. 356 (1994).

A spouse and a conjugal partnership do not have standing under the Age Discrimination in Employment Act, Puerto Rico Law 80 and Law 100 because they do not meet the description of "employee" or of an individual who may bring suit under the statutes. *Flamand v. American International Group, Inc.*, 876 F. Supp. 356 (1994).

A supervisor is not an "employer" under Law 80, because the remedies available under the law are based on wages, and it does not make sense that a supervisor should pay wages to an employee. *Flamand v. American International Group, Inc.*, 876 F. Supp. 356 (1994).

Severance pay under Act 80 should not be awarded where compensatory damage under other statutes is greater than the amount of the severance pay mandated under Act 80. *Selgas v. American Airlines*, 858 F. Supp. 316 (1994).

Puerto Rico courts have not recognized a right for at-will employees to sue for wrongful discharge outside the remedies given under § 185(a) of this title, for discharge without cause. *Hogwood v. Merrill Lynch, Pierce, Fenner & Smith*, 839 F. Supp. 98 (1993).

Section 185a has been found to be the exclusive remedy for wrongful termination under Puerto Rico law. *In re El San Juan Hotel Corp.*, 149 Bankr. 263 (Bankr. D. Puerto Rico 1992).

In Puerto Rico, the employment-at-will doctrine which is found in most states has been modified to offer the employee some protection; but that in no way creates any fiduciary duty on part of the trustee toward an employee. *In re El San Juan Hotel Corp.*, 149 Bankr. 263 (Bankr. D. Puerto Rico 1992).

In some states, a whistle-blower is protected by a public policy exception to the employment-at-will doctrine where he refuses to participate in illegal or unethical acts; that is not the case in Puerto Rico. *In re El San Juan Hotel Corp.*, 149 Bankr. 263 (Bankr. D. Puerto Rico 1992).

Although *Arroyo v. Rattan Specialties, Inc.*, 117 D.P.R. 35 (1984) discusses public policy, it refers to that public policy which states that a worker should have adequate remedies to effectively vindicate his constitutional rights and not to a more general public policy concerning remedies of whistleblowers. *In re El San Juan Hotel Corp.*, 149 Bankr. 263 (Bankr. D. Puerto Rico 1992).

2. Law governing. The indemnification for employment termination without just cause provided by this section is not subject to deduction of social security; the salary is a compensation to a person for services, while the amount paid to a terminated employee is by nature an indemnity as provided in this section. *Alvira Cebalón v. SK & F Laboratories Co. y otros*, HE-90-682 (04/04/97).

4. Exception. The only exceptions to the application of § 185a in cases involving wrongful termination are: if plaintiff is a member of a group protected by other social legislation, if plaintiff has an independent cause of action for tort committed in the course of the discharge, or if the termination of the plaintiff violated his constitutional rights. *In re El San Juan Hotel Corp.*, 149 Bankr. 263 (Bankr. D. Puerto Rico 1992).

Chapter 11. Minimum Wages

SECTION ANALYSIS

- 245. Declaration of principles
- 245i. Minimum Wage Committees
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- 245p. [Repealed.]
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- 246j. Authority to amend the definitions for industries and industry divisions
- 246k. Saving clause
- 246l. Separable clause
- 246ra. [Repealed.]
- 247. Vested rights

§ 245. Declaration of principles

(a) The Legislature of Puerto Rico hereby finds that the existence of substandard wages, hours of work and other working conditions in industry:

(1) Is detrimental to the health, efficiency and general well-being of workers.

- (2) is detrimental to the sound and full development of economy;
- (3) constitutes an unfair method of competition in production and trade;
- (4) leads to disputes between workers and employers which obstruct the progressive development of Puerto Rican economy, and
- (5) represents a state of manifest social injustice.

(b) It is hereby declared to be the policy of the Commonwealth of Puerto Rico as rapidly as possible to eliminate substandard working conditions in industries; promote living, health and safety standards for workers; step up the development of agriculture, industry and businesses in Puerto Rico; eliminate unfair competition, and achieve the highest possible wage level compatible with such development, without substantially curtailing employment or impairing the opportunities to obtain the highest wages.

(c) It is hereby further declared to be the public policy of §§ 245 et seq. of this title to guarantee equality in the automatic application of the federal minimum wage to workers in Puerto Rico. For those activities not covered under the Federal Fair Labor Standards Act of 1938, as amended, the policy of fixing minimum wages and vacation and sick leave shall be maintained, so as to insure the highest wages and benefits for the workers that the conditions of the industry will allow.

(d) It is hereby further declared to be the policy of §§ 245 et seq. of this title that the minimum wage level for workers employed in industries producing or shipping their products for sale in the United States in competition with industries located there, should, so far as possible, equal or approximate the minimum wages provided by §§ 245 et seq. of this title for workers in the respective competitive industries.

(e) It is hereby further declared to be the policy of the Legislature of Puerto Rico to encourage collective bargaining between laborers and employers which will serve as an effective social instrument progressively to raise the level of minimum wages, reduce the working day, and insure those other working conditions requisite to the health and welfare of workers.

(f) It is hereby likewise declared to be the policy of the Legislature of Puerto Rico that the procedures authorized herein for the fixing and revision of minimum wages and vacation and sick leave be conducted in a quasi-legislative manner.

(g) It is hereby further declared to be the policy of the Government of the Commonwealth of Puerto Rico, that the Minimum Wage Board, in discharging the duties assigned to it by §§ 245 et seq. of this title, shall establish priorities for revising the decrees of industries, businesses, and trades, based on the date of the last revision, the effective date of the last

amendments to the Fair Labor Standards Act of 1938, as amended, and the working conditions.—June 26, 1956, No. 96, p. 622, § 1; June 14, 1960, No. 81, p. 136; June 6, 1967, No. 110, p. 348; June 21, 1968, No. 116, p. 266, § 1; July 9, 1973, No. 17, p. 789, § 1; July 17, 1979, No. 114, p. 266, § 1; Sept. 23, 1983, No. 21, p. 408, § 1; July 15, 1988, No. 101, p. 422, § 1; July 20, 1995, No. 84, § 1, eff. Aug. 1, 1995.

HISTORY

Amendments—1995.

Subsection (c): Act 1995 amended this subsection generally.

Subsection (f): Act 1995 repealed subsection (f), redesignated former subsection (g) as (f), and amended it generally.

Subsection (g): Act 1995 redesignated former subsection (h) as (g), and amended it generally.

Statement of motives.

See Laws of Puerto Rico:

July 20, 1995, No. 84

§ 245i. Minimum Wage Committees

(a) Whenever the Board shall consider it necessary to fix or revise minimum wages or that which concerns vacation or sick leave accrual, it shall designate a Minimum Wage Committee for such purposes, composed of an equal number of persons representing the public interest, the employers' interest, and the employees' interest. In the event the Committee so appointed is composed of an even number of members, the Chairperson of the Board shall also designate an additional member representing the public interest to be on the Committee, who may participate in the hearings as any other member of the Committee. The additional member shall be present in the deliberations, decisions, and voting of the Committee, but shall only intervene when the Committee is unable to recommend a draft of the decree due to a tie vote and his/her presence and intervention is requested by at least one-half of the members integrating the Committee. The additional member shall not be counted for a quorum until he/she is requested to intervene to settle a tie, as provided herein.

(b) The Chairperson shall designate a member representing the public interest from each Minimum Wage Committee to chair said committee.

(c) The Board shall furnish to the Minimum Wage Committees the services of lawyers, economists, stenographers, translators, clerks, and other personnel required for the discharge of their functions, as needed.

(d) A majority of the members of a Minimum Wage Committee shall constitute a quorum, and a majority of those present may adopt decisions and resolutions. A vote of at least a majority of all members constituting

the Committee shall be required, to recommend a draft decree to the Board.

(e) Minimum Wage Committees are hereby empowered to take oaths, summon witnesses, and issue subpoenas under the same conditions and subject to the same court action as provided in § 245c of this title.

(f) In addition to reimbursement of travel expenses, the members of Minimum Wage Committees shall receive a per diem of fifty-five (55) dollars, except for the Chairperson of each Committee, who shall receive seventy-five (75) dollars, for each day they attend a meeting or engage in official business or any other activity needed to fulfill their duties, according to the regulations the Board may approve for such purpose. The members of a Minimum Wage Committee shall cease as such when the Board approves the mandatory decree for the industry for which they were appointed, or when the Board decides to appoint a new Committee.

For the purposes of this subsection, a member of the Minimum Wage Committee who receives a pension or annuity from any retirement system of the Government of Puerto Rico or any of its agencies, dependencies, public corporations, or political subdivisions, may receive payment of the per diem provided in this subsection without affecting his right to a pension or retirement annuity.—June 26, 1956, No. 96, p. 622, § 10; June 19, 1958, No. 55, p. 119; June 25, 1968, No. 103, p. 241; June 21, 1968, No. 116, p. 266, § 2; renumbered as § 7 and amended on July 17, 1979, No. 114, p. 266, § 7; Sept. 23, 1983, No. 21, p. 408, § 2; July 20, 1995, No. 84, § 2, eff. Aug. 1, 1995.

HISTORY

Amendments—1995.

Subsection (a): Act 1995 amended this subsection generally.

Subsection (b): Act 1995 deleted subsection (b) and redesignated the remaining subsections accordingly.

Subsection (c): Act 1995 added "as needed."

Subsection (d): Act 1995 amended the translation of this subsection generally.

Subsection (e): Act 1995 substituted "administer" with "take".

Subsection (f): Act 1995 amended the first paragraph of this subsection and the translation of the second paragraph generally.

Statement of motives.

See Laws of Puerto Rico:

July 20, 1995, No. 84.

§ 245j. Hearings

(a) Whenever the Board finds that proceedings must be instituted to fix or revise minimum wages, or to establish provisions regarding the minimum accrual of vacation and sick leave, it shall issue a call for a public

hearing before the pertinent Minimum Wage Committee, which shall be announced by the Chairperson of the Board by publishing a notice in a newspaper of general circulation in Puerto Rico, at least ten (10) days prior to the date of the hearing. Such notice shall contain the definition that the Board approves for the industry concerned, which may not be altered by the Committee in any way.

(b) In the exercise of its quasi-legislative functions, the Committee shall hold the hearing in the fashion of a public consultation so that all interested persons may participate in the drafting of a decree by submitting pertinent data, information, remarks, or arguments, which may, at the discretion of the Committee, be presented either in writing or orally. A complete record of the proceedings shall be made. Subject to such regulations as the Board may prescribe, the Committee Chairperson shall control its proceedings and shall determine to what extent cumulative information may be received.

(c) At the hearing, the Board shall make available to the Committee all studies, reports, statistics, and any other pertinent data or information for the proper discharge its duties.—June 26, 1956, No. 96, p. 622, § 11; May 8, 1959, No. 4, p. 14, § 1; June 21, 1968, No. 116, p. 266, § 3; renumbered as § 8 and amended on July 17, 1979, No. 114, p. 266, § 8; Sept. 23, 1983, No. 21, p. 408, § 3; July 20, 1995, No. 84, § 3, eff. Aug. 1, 1995.

HISTORY

Amendments—1995.

Subsection (a): Act 1995 amended this section generally.

Subsection (b): Act 1995 substituted "working out" with "drafting," "written" with "in writing," and "Chairman" with "Chairperson."

Subsection (c): Act 1995 substituted "of the duties thereof" with "its duties."

§ 245k. Action by Committee

At the close of the public hearing and once its deliberations have been concluded, the Committee shall dispatch a report to the Board containing its findings of fact, the grounds in support thereof, and a draft of the decree recommending the minimum wage rate or rates which shall be paid and the provisions concerning the mandatory minimum accrual of vacation and sick leave for the industry concerned.

The recommended raises of the minimum wages shall take into consideration the rise in the cost of living from the date of the last revision and the economic capacity of the particular industry to absorb them.

The Chairperson of the Committee shall send the complete, duly certified, record of the hearing to the Board no later than thirty (30) days after the Committee has remitted its report.—June 26, 1956, No. 96, p. 622,

§ 12; June 14, 1957, No. 60, p. 145; June 14, 1960, No. 81, p. 136; June 6, 1967, No. 110, p. 348; June 21, 1968, No. 116, p. 266; § 4, July 9, 1973, No. 17, p. 289, § 3; renumbered as § 9 on July 17, 1979, No. 114, p. 266, § 9; Sept. 23, 1983, No. 21, p. 408, § 4; July 15, 1988, No. 101, p. 422, § 2; July 20, 1995, No. 84, § 4, eLT Aug. 1, 1995.

HISTORY

Amendments—1995:

Act 1995 substituted "submit" with "dispatch," "draft decree" with "draft of the decree," and "vacation and sick leave, and the guaranteed minimum wage if any, for the industry being investigated" with "the mandatory . . . concerned," in the first paragraph, and in the third paragraph, substituted "submitted its report to the Board" with "remitted its report."

§ 245n. Minimum wage standards

(a) The minimum wages of employees not covered under the Federal Fair Labor Standards Act of 1938, as amended, shall be fixed with due regard to the ends and purposes of this chapter. They shall be the highest minimum wages that can be reasonably paid by the industry concerned without substantially curtailing employment in such industry and taking into consideration the cost of living and the needs of the employees as well as the economic and competitive condition of the industry in question.

(b) In the case of industries covered by the Federal Fair Labor Standards Act of 1938, as amended, and which are in substantial competition with industries of the states of the Union, consideration shall also be given to the prevailing wages and fringe benefits of the latter and to the competitive situation existing between industries in Puerto Rico and similar industries in the United States.

(c) A minimum accrual of vacation leave is hereby provided, at a rate of one and one-fourth (1 1/4) days per month, and a minimum accrual of sick leave, at a rate of one (1) day per month. For the accrual of such leave, it shall be required that the employee work at least one hundred and fifteen (115) hours in the month. Provided, That the use of vacation and sick leave shall be deemed to be time worked, for the purposes of the accrual of these benefits.

The minimum benefits mentioned above shall apply immediately to all employees who, as of the effective date of this Act, were covered by mandatory decrees of which the accrual levels are equal to the latter. Those employees who on the effective date of this Act are covered by Board decrees which provide greater minimum leave benefits shall remain entitled to the same, pursuant to the provisions of § 45 of this Act (sic).

Those employees whose mandatory decrees provide, as of the effective date of this Act, benefits below those established in this subsection, shall

continue under the protection of said mandatory decrees. The Board shall procure the minimum vacation and sick leave benefits consigned by this subsection for these employees as soon as possible and according to the financial capability of each industry. Upon attaining the aforementioned minimum benefits, the jurisdiction of the Board over said employees shall cease to exist.

(d) Vacation and sick leave shall be accrued based on the regular work day in the month in which the accrual occurred. For employees whose working schedules fluctuate, the regular work day shall be determined dividing the total of regular hours worked during the month by the total of days worked. For employees whose working schedules cannot be determined, it shall be computed on the basis of regular 8 hour days.

(e) Vacation and sick leave shall be used and paid based on the regular work day when used, or the benefit is paid. For these purposes, a period not greater than two (2) months may be taken into account before using or paying said benefit.

(f) Vacation and sick leave shall be paid on the basis of an amount not less than the regular wage per hour earned by the employee in the month the leave was accrued. For employees who receive a commission or other incentives which are not entirely at the employer's discretion, the total commission or incentive earned during the year shall be divided by fifty-two (52) weeks, so as to compute the regular wage per hour.

(g) Should a probation period authorized by law be established, vacation leave shall be accrued upon termination of said probation period. However, any employee who passes said trial period shall accrue vacation leave from the date the job commences.

(h) The employee shall not claim the use of vacation leave until he has accrued it for one year. Vacation leave shall be granted annually, in such a way as to not interrupt the normal operation of the business, for which the employer shall establish the corresponding schedule.

(i) Vacation leave shall be enjoyed uninterruptedly; however, it may be fragmented by agreement between the employer and the employee, provided the employee enjoys a vacation of at least five (5) consecutive working days a year.

(j) By agreement between the employer and the employee, a maximum of thirty (30) days of vacation leave may be accrued. An employer who does not grant vacation leave after said maximum has been accrued shall grant the total accrued until then, and pay the employee twice the corresponding salary for the period in excess of said maximum.

(k) Upon written request of the employee, the employer may allow the vacation leave to include non working days comprised within the period during which the vacations are to be taken.

(l) In case the employee ceases in the job, the employer shall liquidate the total accrued until then in cash, even if for less than a year.

(m) Upon written request of the employee, the employer may allow the partial liquidation of vacation leave accrued in excess of ten (10) days.

(n) The sick leave not used by the employee during the course of a year shall be carried over to subsequent years, up to a maximum of fifteen (15) days.

(o) Except in circumstances beyond the control of the employee, he/she shall notify his employer of his/her illness as soon as noncompliance with his/her regular work schedule becomes a foreseeable fact, and not later than the day of his absence.

(p) The use of the sick leave is no excuse for failure to comply with those norms of conduct validly established by the employer, such as attendance, punctuality, medical certificates if the absence exceeds two (2) working days, and periodical reports on continuing illness.

(q) Any employer who requires the employees to wear uniforms shall defray the expense entailed by the acquisition thereof. Under no circumstance shall the employee be required in any way whatsoever to assume, directly or indirectly, the total or partial cost, entailed by the acquisition of such uniforms.

Employees who upon the effective date this Act have been covered by mandatory decrees that provide for holidays with pay or minimum daily compensation guarantees, and for the payment of special compensation for daily overtime, shall continue to enjoy said benefits as provided in § 245i of this title.—June 26, 1956, No. 96, p. 622, § 15; renumbered as § 12 on July 17, 1979, No. 114, p. 266, § 12; July 20, 1995, No. 84, § 5, eff. Aug. 1, 1995.

HISTORY

Text references.

References in text "this Act" are to §§ 245 et seq. of this title.

Amendments—1995.

Subsection (a): Act 1995 substituted "for each industry" with "of employees . . . as amended".

Act 1995 added subsections (c) through (q).

Statement of motives.

See Laws of Puerto Rico:
July 20, 1995, No. 84.

§ 245p. Repealed. Act July 20, 1995, No. 84, § 6, eff. Aug. 1, 1995.

HISTORY

Repeal.

This section, which was derived from § 14 of Act June 25, 1956, No. 96, p. 622, provided for revision of minimum wages by the Board, vacation and sick leave, and guaranteed minimum wages.

Prior to repeal, this section had been amended by Acts June 23, 1958, No. 82, p. 85; June 14, 1960, No. 81, p. 136; June 6, 1967, No. 110, p. 348; June 21, 1968, No. 116, p. 206, § 6; July 9, 1973, No. 17, p. 789, § 4; renumbered as § 14 and amended by July 17, 1979, No. 114, p. 266; Sept. 23, 1983, No. 21, p. 408, § 6; and July 15, 1988, No. 101, p. 420, § 3.

ANNOTATIONS UNDER FORMER § 245p

1. Generally. In granting vacation with pay and sick leave in a mandatory decree, the Minimum Wage Board is not bound to make classifications within the regulated industry when such determinations find consistent support in the economic study of the balance sheet of the industry. *Cereceris Coronis, Inc. v. M.W.B.*, 98 P.R.R. 784 (1970).

§ 245q. Charges and deductions prohibited

No employer shall charge his employee who lives in or occupies a dwelling, house, lot, or tract of land belonging to him, any lease rental whatsoever which he has not been already lawfully charging said employee on January 1, 1956, nor shall such employer increase the rent which at that time he may have been collecting from the employee; nor shall he demand of said employee or deduct from his wages, any amount whatsoever for lodging, meals served, or services furnished in the course of the employment, whether by the employer himself or by another person or entity, which he is not authorized to demand of him or deduct from his wages by provision of a mandatory decree in force at the time §§ 245 et seq. of this title are approved.—June 26, 1956, No. 96, p. 622, § 18, renumbered as § 15 on July 17, 1979, No. 114, p. 266; renumbered again as § 14 on July 20, 1995, No. 84, § 7, eff. Aug. 1, 1995.

HISTORY

Statement of motives.

See Laws of Puerto Rico:
July 20, 1995, No. 84.

§ 245z. Employers' liability

The employer shall always be bound to pay the minimum wages and to grant the vacation and sick leave which may be fixed by law, mandatory decree, order of the Board, federal wage order, or collective bargaining agreement, even though the employer uses middlemen, agents, adjusters, contractors, or subcontractors for the employment of workers, without prejudice to the obligation which such middlemen, agents, adjusters,

contractors, or subcontractors shall also have with regard to the payment of said minimum wages and the granting of vacation and sick leave.—June 26, 1956, No. 96, p. 622, § 19; June 21, 1968, No. 116, p. 266, § 7; renumbered as § 16 on July 17, 1979, No. 114, p. 266, § 16; Sept. 23, 1983, No. 21, p. 408, § 6; renumbered again as § 15 and amended on July 20, 1995, No. 84, § 8 eff. Aug. 1, 1995.

HISTORY

Amendments—1995.

Act 1995 deleted "to comply with the provisions on minimum compensation guarantees", changed "he" to "the employer", and deleted "compliance with the provisions on minimum compensation guarantees".

§ 245s. Homework regulation

The Board is hereby empowered, through order to that effect, to regulate homework whenever it shall deem it necessary or proper in order to prevent frustration or evasion of §§ 245 et seq. of this title and to safeguard the minimum wage fixed in §§ 245 et seq. of this title, in a mandatory decree, or in an order of the Board for an industry which is carrying out homework. The order issued by the Board shall become effective fifteen (15) days after its publication in a newspaper of general circulation in Puerto Rico. June 26, 1956, No. 96, p. 622, § 20, renumbered as § 17 on July 17, 1979, No. 114, p. 266, § 17; renumbered again as § 16 on July 20, 1995, No. 84, § 9, eff. Aug. 1, 1995.

§ 245t. Standards set by law; contracts subject to decrees; wage reductions

(a) In no industry shall there be established minimum wages or vacation or sick leave less than what is fixed by law in Puerto Rico for the industry in question.

(b) Any collective bargaining agreement, award, or other labor contract whereby an employee agrees to accept lower wages or vacation and sick leave less than what is fixed in a mandatory decree, an order of the Board, or a federal wage order, shall be void.

(c) No reduction shall be made in the wages of those workers who, on the effective date of this Act, or of a mandatory decree, an order of the Board, or a federal wage order, are receiving, by virtue of a collective bargaining agreement, conciliation act, arbitration award, or any other labor contract, wages higher than those fixed in §§ 245 et seq. of this title, or in said decree, order of the Board, or federal wage order, while such agreement, acts, awards, or contracts are in force.—June 26, 1956, No. 96, p. 622, § 21; June 21, 1968, No. 116, p. 266, § 8; renumbered as § 18 on July 17, 1979,

No. 114, p. 266, § 18; Sept. 23, 1983, No. 21, p. 408, § 7; renumbered again as § 17 and amended on July 20, 1995, No. 84, § 10, eff. Aug. 1, 1995.

HISTORY

Text references.

Reference to "this Act" in subsection (c) is to Act July 23, 1995, No. 84, eff. Aug. 1, 1995.

Amendments—1995.

Subsection (a): Act 1995 amended this subsection generally.

Subsection (b): Act 1995 deleted "minimum compensation guarantees" and changed "which are inferior to those" to "less than what is".

§ 245u. Special permits for disability

For any industry in which a minimum wage has been fixed by §§ 245 et seq. of this title, or by mandatory decree or order of the Board, the Secretary of Labor and Human Resources may issue to any worker whose earning capacity may be impaired by reason of age, physical disability or injury, or for any other reason, a special permit authorizing his employment for a wage lower than that fixed in §§ 245 et seq. of this title, or in a decree or order of the Board, but in no case shall said wage, which shall be fixed in the permit by the Secretary, be less than fifty (50) percent of the minimum rate fixed for the trade or occupation involved.—June 26, 1956, No. 96, p. 622, § 22; June 23, 1977, No. 100, p. 225, § 1; renumbered as § 19 on July 17, 1979, No. 114, p. 266, § 19; renumbered again as § 18 on July 20, 1995, No. 84, § 11, eff. Aug. 1, 1995.

§ 245v. Special permits for apprentices

Any person may be employed as an apprentice, subject to the following provisions:

(a) The employer shall first obtain from the Secretary of Labor and Human Resources a special permit setting forth the working conditions, and the said permit shall be valid for the period determined by the Secretary according to regulations approved by him to that effect.

(b) The wage to be earned during the apprenticeship period by any person employed as an apprentice shall not be less than fifty (50) percent of the minimum rate fixed in §§ 245 et seq. of this title, in the decree, or in the order of the Board applicable to the trade, occupation or work involved in such apprenticeship.

(c) The provisions of the foregoing subsections shall not apply to the employment of any person as apprentice under the sponsorship, administration, or supervision of the Apprenticeship Council of Puerto Rico, in which case, the said council shall determine the working conditions.

(d) The provisions on employment of apprentices contained in the mandatory decrees in force, as well as any regulation of the Minimum Wage Board on the same subject, will stand repealed as soon as the Secretary of Labor and Human Resources shall approve the regulations on employment of apprentices provided for in subsection (a) of this section.—June 26, 1956, No. 96, p. 622, § 23; June 23, 1977, No. 100, p. 225, § 1; renumbered as § 20 on July 17, 1979, No. 114, p. 266, § 20; renumbered again as § 19 on July 20, 1995, No. 84, § 11, eff. Aug. 1, 1995.

§ 245w. Discrimination by employers; penalties; presumption; damages

(a) Every employer who discharges, suspends, refuses to admit or reinstate, reduces the wages, demotes in category, increases the working hours, or imposes more onerous working conditions on any of his employees or ex-employees or in any way discriminates or threatens to do against him any of these acts so as to evade compliance with §§ 245 et seq. of this title or any other labor law or regulation promulgated thereunder, or with any decree or order of the Board because said employee or ex-employee has filed a complaint, or has offered or given testimony, or is willing to offer or give testimony, in any investigation, complaint, or claim, or at any hearing or administrative or judicial proceeding that may be or has been made, filed, held or instituted in relation with the application of §§ 245 et seq. of this title or any other labor act or regulation promulgated thereunder, or of any decree, order, regulation, resolution, or decision of the Board, or because he has served, is serving, or intends to serve as member of a minimum wage committee, shall be guilty of a misdemeanor and upon conviction punished by a fine of from one hundred (100) to one thousand (1,000) dollars, or by confinement in jail for a term of from one (1) month to six (6) months, or by both penalties, in the discretion of the court.

(b) It shall be presumed that any of the said acts are due to the filing of a complaint or to the offering or giving of testimony, or to the willingness to offer or to give the same, or to the belief that the same will be offered or given, or to service on a Minimum Wage Committee, as the case may be, when the employer has performed the act before six (6) months have elapsed since the end of the investigation, complaint, claim, hearing, proceeding, or functions of the Minimum Wage Committee, unless it is satisfactorily shown by the employer that he had stated to the employee or ex-employee the purpose he really had before the investigation, complaint, claim, hearing, proceeding, or proposal to serve on a Minimum Wage Committee existed.

(c) The employer shall reinstate the laborer in his employment and discontinue the act in question. To compel him to fulfill this obligation, the Court of First Instance shall have jurisdiction through simple, speedy and preferential proceedings, in which the interested parties shall be given an opportunity to be heard. In said proceedings shall also be investigated the damages which the act may have caused the employee or ex-employee, for whom judgment shall be rendered for double the amount of the damages caused, in addition to granting him costs and a reasonable sum, which shall never be less than fifty (50) dollars, for attorney's fees.—June 26, 1956, No. 96, p. 622, § 24; June 26, 1964, No. 105, p. 324, § 2; renumbered as § 21 on July 17, 1979, No. 114, p. 266, § 21; renumbered again as § 20 on July 20, 1995, No. 84, § 11, eff. Aug. 1, 1995.

§ 245x. Violations; penalties

(a) Any person who as employer or as manager, officer, agent, employee, or person in charge of a firm, partnership, or corporation, or of another person or persons, violates, or refuses or neglects to comply with any provision of §§ 245 et seq. of this title, or of any decree, order, decision, rule, or regulations adopted by the Secretary or by the previous Minimum Wage Board and which have been validated by the provisions hereof, shall incur a misdemeanor and shall be punished by a fine of not less than one hundred (100) nor more than one thousand (1,000) dollars, or by confinement for a term of not less than thirty (30) nor more than ninety (90) days, or by both penalties, at the discretion of the Court.

(b) In case of recidivism in the violations mentioned in this section, a fine of not less than five hundred (500) nor more than three thousand (3,000) dollars, or imprisonment for a term of not less than ninety (90) days nor more than one (1) year, or both penalties, in the discretion of the court, shall be imposed.—June 26, 1956, No. 96, p. 622, § 25, renumbered as § 22 on July 17, 1979, No. 114, p. 266, § 22; renumbered as § 21 and amended on July 20, 1995 No. 84, § 12 eff. Aug. 1, 1995.

HISTORY

Amendments—1995.

Subsection (a): Act 1995 substituted "Every" with "Any," added "adopted by . . . previous" and "and which . . . hereof" substituted "be guilty" with "incur," and deleted "in jail".

Statement of motives.

See Laws of Puerto Rico:

July 20, 1995, No. 84.

§ 245y. On cooperative organizations

In the case of workmen or other cooperative associations or organizations, the advance or payment made to the cooperative associates or members for work done to the cooperative and chargeable to the profits they are to receive therefrom, shall not be less than the minimum wage rate fixed by §§ 245 et seq. of this title or by a mandatory decree or an order of the Board for the occupation in question and there shall be granted the enjoyment of the vacations and sick leave established by decree or order of the Board.—June 26, 1956, No. 96, p. 622, § 26; June 21, 1968, No. 116, p. 266, § 9, renumbered as § 23 on July 17, 1979, No. 114, p. 266, § 23, renumbered again as § 22 on July 20, 1995, No. 84, § 13, eff. Aug. 1, 1995.

§ 245z. Authority of Court of First Instance

Authority is hereby vested in the Court of First Instance of Puerto Rico to take cognizance of actions instituted for the commission of the offenses established in §§ 245 et seq. of this title. Such cases shall be heard by a court without a jury and it shall be the duty of the Secretary of Justice to prosecute the pertinent indictments.—June 26, 1956, No. 96, p. 622, § 27, renumbered as § 24 on July 17, 1979, No. 114, p. 266, § 24, renumbered again as § 23 on July 20, 1995, No. 84, § 13, eff. Aug. 1, 1995.

HISTORY

Codification.

"Superior Court" was changed to "Court of First Instance" pursuant to Reorg. Plan No. 1A of July 28, 1994, known as the "1994 Judiciary Act", §§ 22-23n of Title 4.

§ 246. Injunction and other proceedings

It shall be the duty of the Secretary of Labor and Human Resources, personally or through his duly authorized agents, to enforce §§ 245 et seq. of this title and all the decrees, orders, rules and regulations promulgated hereunder. To this end, whenever, in his opinion, any employer is violating or contemplates [violating] any provisions of §§ 245 et seq. of this title, or has done or is about to do any act prohibited by §§ 245 et seq. of this title, or by a decree, order, rule or regulation; or has failed, omitted, neglected, or refused, or is about to fail, omit, neglect, or refuse to perform any duty imposed on him by §§ 245 et seq. of this title, or by a decree, order, rule or regulation, the Secretary of Labor and Human Resources may institute injunction or any other proceedings that may be necessary [to] effectively to enforce the provisions of §§ 245 et seq. of this title and the decrees, orders, rules or regulations promulgated hereunder. The Court of First Instance shall have authority to hear and decide all the aforesaid actions.—June 26, 1956, No. 96, p. 622, § 28; June 23, 1977, No. 100, p. 225,

§ 1; renumbered as § 25 on July 17, 1979, No. 114, p. 266, § 25; renumbered again as § 24 on July 20, 1995, No. 84, § 13, eff. Aug. 1, 1995.

HISTORY

Codification.

"Superior Court" was changed to "Court of First Instance" pursuant to Reorg. Plan No. 1A of July 28, 1994, known as the "1994 Judiciary Act", §§ 22-23n of Title 4.

§ 246a. Judicial review

(a) The findings of fact at which a Minimum Wage Committee, acting within its powers, may arrive shall, in absence of fraud, be conclusive. Any person aggrieved by any mandatory decree or order issued hereunder may file a petition for its review with the Supreme Court of Puerto Rico within the term of fifteen (15) days following the date of publication of an order or notice of the Board informing of the approval of a decree in a newspaper of general circulation in Puerto Rico. Various petitions for review may be joined in a single action when the questions raised therein are identical.

(b) The Court may affirm, annul, or remand to the Board the decree or order objected to for further action; but the annulment or remanding of a decree shall only be on the grounds that the Minimum Wage Committee acted without authority or ultra vires, provided said question has been expressly and timely raised before the Committee and later before the Board; or before the Board in the memorandum provided for by § 245l if the petitioner did not have the opportunity to bring it before the Committee originally; or because the Board acted without authority or ultra vires, if the question was expressly and appropriately raised before the Board through a motion for reconsideration; or because the decree was procured through fraud.

(c) The annulment or remand of an order shall only be on the grounds that the Board acted without authority or ultra vires. Provided, That the question was expressly and appropriately raised through a motion for reconsideration before the Board, or because the order was procured through fraud.

(d) The Board may consider a motion for reconsideration in connection with an order or decree if such motion is filed before the Board with the first ten (10) days following the publication of the order or notice informing about the approval of the decree. If the petitioner is not in agreement with the decision of the Board, he shall have a term of ten (10) days, reckoning from the date the decision was notified to him, to file the petition for review provided in this section before the Supreme Court of Puerto Rico.

(e) After a petition for review has been filed, if a writ therefor is issued, it shall be the duty of the Board to forward the record of the case, as well as any other proceedings had in same to the court.

(f) The writ for review shall operate to stay the decree or order appealed from, solely as to the petitioning party or parties, and provided the court so directs, upon the giving of an undertaking conditioned upon the payment in full of the wages involved in each proceeding or of the damages caused, when not concerning salaries, plus a reasonable amount, which shall never be less than three hundred (300) dollars, that shall be imposed for attorney's fees on each petitioning party against whom judgment is rendered, unless said party has been allowed to litigate in forma pauperis.

(g) It is hereby provided, That the petition for judicial review provided by this section shall be exclusive and shall be given preference by the court.—June 26, 1956, No. 96, p. 622, § 29; June 21, 1968, No. 116, p. 266, § 10; renumbered as § 26 and amended on July 17, 1979, No. 114, p. 266, § 26; renumbered again as § 25 and amended on July 20, 1995, No. 84, § 14, eff. Aug. 1, 1995.

HISTORY

Amendments—1995.

Subsection (b): The 1995 Act substituted "timely" with "appropriately"

Subsection (c): The 1995 Act substituted "timely" with "appropriately."

Subsection (e): The 1995 Act added "to the court."

Statement of motives.

See Laws of Puerto Rico:

July 20, 1995, No. 84.

§ 246b. Claims by employees

(a) Any laborer or employee who receives a lower compensation than that fixed in §§ 245 et seq. of this title or in a mandatory decree, order or regulation of the Minimum Wage Board or in a collective bargaining agreement or an individual work contract shall be entitled to recover through a civil action the unpaid difference up to the total amount of the compensation to which he is entitled for wages, vacation, sick leave or any other benefit, plus an amount equal to the unpaid amount as additional compensation, besides the costs, expenses, interest and attorney's fees for the proceedings, which fees shall be in a reasonable amount, in no case lower than fifty (50) dollars, all this irrespective of any agreement to the contrary.

(b) The claims which several or all the workers or employees may have against a common employer for work done in the same establishment, enterprise, or place, may be joined in a single action.

(c) Claims may be prosecuted by ordinary action or through any proceeding for the recovery of wages, established in other laws of Puerto Rico.

(d) The District Court and the Court of First Instance may take cognizance of all wage claims in which the amount in dispute, including the additional compensation, does not exceed ten thousand (10,000) dollars, not including interest, costs, expenses and attorney's fees.

(e) The Court of First Instance shall take cognizance of all wage claims in which the amount in dispute, including the additional compensation, exceeds ten thousand (10,000) dollars, not including interest, costs, expenses and attorney's fees.

(f) In connection with the enforcement of §§ 245 et seq. of this title or of any mandatory decree, order or regulation of the Board, the Secretary of Labor and Human Resources may demand, motu proprio or at the instance of one or more laborers or employees having an interest in the matter, and in representation and for the benefit of one or more such laborers or employees who are in a similar position, payment of any sum owed to them for wages, additional compensation, interest, costs, expenses, and attorney's fees to which subsection (a) of this section refers. In every action so instituted by the Secretary of Labor and Human Resources, any laborer or employee having an interest in the matter may act as plaintiff or intervenor in every judicial action or proceeding instituted by any person in connection with the application of §§ 245 et seq. of this title or of a decree, order or regulation of the Board.—June 26, 1956, No. 96, p. 622, § 30; June 23, 1977, No. 100, p. 225, § 1; renumbered as § 27 and amended on July 17, 1979, No. 114, p. 266, § 27; renumbered again as § 26 on July 20, 1995, No. 84, § 15, eff. Aug. 1, 1995.

HISTORY

Codification.

"Superior Court" was changed to "Court of First Instance" pursuant to Reorg. Plan No. 1A of July 28, 1994, known as the "1994 Judiciary Act", § 22-23n of Title 4.

§ 246c. Annual report

The Minimum Wage Board shall every year submit to the Governor and to the Legislature a report of its activities during the preceding year, including information, data and recommendations in connection with the matters the subject of §§ 245 et seq. of this title.—June 26, 1956, No. 96, p. 622, § 31, renumbered as § 28 on July 17, 1979, No. 114, p. 266, § 28; renumbered again as § 27 on July 20, 1995, No. 84, § 15, eff. Aug. 1, 1995.

§ 246d. Limitation of actions

(a) The right to institute an action to recover wages which an employee may have against his employer under §§ 245 et seq. of this title, under the mandatory decrees heretofore or hereafter approved pursuant to its provisions, under the orders promulgated by the Board, or under any contract, agreement or law, shall prescribe upon the lapse of three (3) years. For the purpose of the prescription of such action the time shall be reckoned from the date the employee ceased in his employment with the employer. The limitation of actions abovementioned shall be discontinued and shall begin to elapse again for the recovery of the indebted wage from the employer, judicially or extrajudicially, by the worker, his representative or officer of the Department empowered to do so and for any act of acknowledgment of the debt by the employer.

(b) Where the employee is working with the employer, the claim shall include only the wages to which the employee may be entitled, on any score, during the last ten (10) years immediately preceding the date on which he may institute the judicial action.

(c) In the event the employee has ceased in his employment with the employer, the claim shall include only the last ten (10) years immediately preceding the date of his ceasing.

(d) In connection with the limitation of actions provided in this section, a change in the nature of the work of the employee shall not constitute a novation of the contract of hire.

(e) The provisions of this section shall in no wise affect the cases already filed in court or that may be filed within one (1) year after §§ 245 et seq. of this title take effect. —June 26, 1956, No. 96, p. 622, § 32; June 6, 1967, No. 106, p. 342, § 1; renumbered as § 29 on July 17, 1979, No. 114, p. 266, § 29; renumbered again as § 28 on July 20, 1995, No. 84, § 16, eff. Aug. 1, 1995.

§ 246e. Persons excluded

(a) Sections 246 et seq. of this title shall not apply to:

- (1) Persons employed in the domestic service in a family residence with the exception of chauffeurs;
- (2) persons employed by the Government of the United States of America or by the Government of the Commonwealth of Puerto Rico, with the exception of those agencies or instrumentalities of the latter which operate as private businesses or enterprises;
- (3) persons employed by municipal governments; and
- (4) artisans employed by artisan-employers in artisan workshops.

(b) The provisions of §§ 245 et seq. of this title shall not apply to managers, executives and professionals. The Board shall define said terms by regulation. —June 26, 1956, No. 96, p. 622, § 33; July 21, 1960, No. 142, p. 505; renumbered as § 30 on July 17, 1979, No. 114, p. 266, § 30; renumbered again as § 29 on July 20, 1995, No. 84, § 17; June 29, 1996, No. 60, § 1.

HISTORY**Editor's notes.**

The Spanish version of Act 1996 included in this amendment that the workshops need to be certified according to §§ 1205 et seq. of Title 18, but the official English translation does not mention this requirement.

Amendments—1996.

Act 1996 added clause (4) to subsection (a).

Effectiveness.

Section 2 of Act June 29, 1996, No. 60, provides: "This Act [which amended this section] shall take effect immediately after its approval, however, artisan-employees who are working for artisan-employers on the date of approval of this Act [June 29, 1996], shall continue enjoying the benefits already acquired under mandatory decree."

Statement of motives.

See Laws of Puerto Rico:

June 29, 1996, No. 60.

§ 246f. Right to strike and to collective bargaining

Nothing herein contained shall authorize government officers or courts of justice to construe §§ 245 et seq. of this title in the sense of limiting, restraining, curtailing or in any manner impairing the right to strike and of picketing which laborers have for procuring their economic betterment, or the principle of collective bargaining. —June 26, 1956, No. 96, p. 623, § 34; renumbered as § 31 on July 17, 1979, No. 114, p. 281, § 31; renumbered again as § 30 on July 20, 1995, No. 84, § 17, eff. Aug. 1, 1995.

§ 246g. Cooperation with Federal Government

The Secretary of Labor and Human Resources is hereby authorized and empowered to furnish such facilities and other assistance as may be requested by the Secretary of Labor of the United States or by the Wage and Hour Administrator in connection with the application to Puerto Rico of the Federal Fair Labor Standards Act of 1938, as amended. —June 26, 1956, No. 96, p. 622, § 35; June 23, 1977, No. 100, p. 225, § 1; renumbered as § 32 on July 17, 1979, No. 114, p. 266, § 32; renumbered again as § 31 on July 20, 1995, No. 84, § 17, eff. Aug. 1, 1995.

§ 246h. General definitions

In §§ 245 et seq. of this title, the following definitions of words and phrases used herein shall be accepted, unless otherwise deduced from the context hereof:

Agriculture.—Includes agriculture in all its branches, and, among other things, the following agricultural activities:

- (a) Cultivation and tillage of the soil.
- (b) The sowing, cultivation and harvesting of any farm or horticultural crop, including, among others, sugarcane, coffee, tobacco, pineapples, vegetables, cereals, fruits and legumes.
- (c) The sowing, cultivation and felling of lumber trees (silviculture).
- (d) The sowing, cultivation and production of flowers (floriculture).
- (e) Cattle raising and dairy (dairying).
- (f) The raising of any other kind of cattle, including swine, goats, horses, sheep, and fur-bearing animals.
- (g) Aviculture and apiculture.
- (h) The sowing, cultivation and cutting of pasture.
- (i) The growing of any crop with aqueous solution in gravel or washed sand, without the use of soil (hydroponics).

The term "agriculture" also comprises any work carried out by an employer on a farm or estate as incidental to the abovementioned agricultural activities, including maintenance work in connection with the farm or estate, the implements or equipment thereof, and the preparation of the products for marketing in their natural state, or their delivery to the warehouse or the market, or to carriers for transportation to the market.

Committee.—Means Minimum Wage Committee.

Employer.—Includes every natural or artificial person of whatever nature who or which, whether or not for profit, employs any number of laborers, workmen or employees, or allows them to work for compensation of any sort; and includes the chief, director, official, manager, officer, managing partner, administrator, superintendent, supervisor, foreman, overseer, agent, or representative of any such natural or artificial person.

Labor conditions.—Includes wages, working hours and any other condition related with the services rendered by workmen to their employers.

Mandatory decree.—Means a decree fixing minimum wages approved by the Minimum Wage Board under the provisions of §§ 245 et seq. of this title or of Act No. 8 of April 5, 1941.

To employ.—Means to compel, tolerate or permit anyone to work.

Industry.—Means any field of economic activity and embraces agriculture, silviculture, and fishery; mining; construction; manufacture; wholesale and retail trade; finance, insurance and real estate business; transpor-

lation, communications and other utilities; and personal (except domestic), professional and commercial services.

Manufacturing industry.—Includes every work, labor or service done or rendered for the fabrication, construction, creation, assembling, or the final conversion of one or more products into finished goods.

Board.—Means the Minimum Wage Board.

Workman, employee, or laborer.—Includes every person who exercises, performs, or carries out any art, trade, employment, or work under the orders or for the benefit of another, on the basis of a contract of hire of services, or for remuneration of any kind or an express or implied promise to receive same, in any industry.

Federal order or federal wage order.—Means an order fixing minimum wages for an industry in Puerto Rico under the provisions of the Federal Fair Labor Standards Act of 1938.

Chairman.—Means the Chairman of the Minimum Wage Board.

Production on a commercial scale.—Means production for sale on the market in the normal course of business, in quantities and at the prices justified by the operation of a plant, establishment, factory, machinery or machinery assembly with capacity to carry out the main functions involved in the production on a commercial scale of a manufactured article.

Water irrigators.—Includes those field workers who direct or control water for irrigation in the sugarcane field.

Wage.—Includes salary, wage, and any sort of compensation, whether in money, kind, services, facilities, or a combination of any of them; but it shall include money only in the case of the minimum wage prescribed under the provisions of §§ 245 et seq. of this title, unless otherwise provided or authorized by the Board.

Minimum wage fixed in §§ 245 et seq. of this title.—Or "minimum wage fixed", or "legal minimum wage" shall comprise the minimum wages fixed by §§ 245 et seq. of this title in § 245h of this title, as well as the minimum wages heretofore or hereafter fixed by mandatory decrees.—June 26, 1956, No. 96, p. 622, § 36, renumbered as § 33 and amended on July 17, 1979, No. 114, p. 266, § 33; renumbered again as § 32 on July 20, 1995, No. 84, § 17, eff. Aug. 1, 1995.

§ 246j. Authority to amend the definitions for industries and industry divisions

Besides the power vested in it by § 245j(a) of this title to define industries, upon establishing proceedings for fixing or revising minimum wages and establishing the right to enjoy vacation and sick leave, or for the revision of the provisions regarding minimum compensation guarantees

fixed in the mandatory decrees promulgated under Act No. 8 of April 5, 1941, as amended, of this title, the Board may amend the definitions of the industries or industry divisions whenever it may deem it necessary to conform the same to the interpretations, variations or amendments of the corresponding definitions contained in a federal wage order. The Board may not, however, amend a definition in such a way as to bring about an increase or reduction of the minimum wage fixed by §§ 245 et seq. of this title, by a federal order or by an order or by an order or decree of the Board, without complying with the provisions of §§ 245i, 245j, 245k, 245l and 245m of this title—June 26, 1956, No. 96, p. 622, § 38; June 21, 1968, No. 116, p. 226, § 11; renumbered as § 34 and amended on July 17, 1979, No. 114, p. 266, § 35; Sept. 23, 1983, No. 21, p. 408, § 8; renumbered as § 33 on July 20, 1995, No. 84, § 17, eff. Aug. 1, 1995.

§ 246k. Saving clause

(a) [Repealed.]

(b) Nothing provided in §§ 245 et seq. of this title shall have the effect of reducing any minimum wage rate fixed by a mandatory decree in force or approved as of the date this Act takes effect.

(c) Nothing provided in this section shall deprive the Supreme Court of authority to consider and decide any petition for review under Act No. 8 of April 5, 1941, as amended, which may be pending before said court on the day this Act takes effect.

(d) Notwithstanding the repeal of former §§ 6, 7, 8 and 37 of this act [§§ 245e, 245f, 245g and 246i of this title], if there exists at the present time any industry of those mentioned in the repealed sections which is not covered by any mandatory decree of the Minimum Wage Board of Puerto Rico, federal wage order or by any other act, the provisions of said sections regarding such industry shall continue in full force and effect, in all their terms, until the Board determines otherwise—June 26, 1956, No. 96, p. 622, § 40; June 23, 1971, No. 75, p. 266, § 1, 2; renumbered as § 35 and amended on July 17, 1979, No. 114, p. 266, § 37; Sept. 23, 1983, No. 21, p. 408, § 9; renumbered as § 35 and amended on July 20, 1995, No. 84, § 17, 19, eff. Aug. 1, 1995.

HISTORY

Amendments—1935.

Subsection (a): Act. 1935 repealed this subsection and redesignated the text of subsections (b)-(e) as (a) (b) without redesignating the letters.

Effectiveness.

The effective date of this Act, mentioned throughout this section, refers to Act Aug. 1, 1956, No. 84.

§ 246l. Separable clause

If any clause, paragraph, article, section or part of §§ 245 et seq. of this title is adjudged unconstitutional by a court of competent jurisdiction, said judgment shall not affect, impair or invalidate the remainder of this act, but its effect shall be limited to the clause, paragraph, article, section or part of this act so declared unconstitutional—June 26, 1956, No. 96, p. 622, § 42, renumbered as § 38 on July 17, 1979, No. 114, p. 266, § 33; renumbered as § 37 on July 20, 1995, No. 84, § 17, eff. Aug. 1, 1995.

§ 246m. Repealed. Act July 20, 1995, No. 84, § 5, eff. Aug. 1, 1995.

HISTORY

Repeal.

This section, derived from § 43 of Act No. 96 of June 26, 1956, provided for revision of minimum wages by the Board, vacation and sick leave, and guaranteed minimum wages. Before repeal, this section had been renumbered as § 39 on July 17, 1979, No. 114, p. 256, § 40.

§ 247. Vested rights

Neither the minimum wage nor the vacation or sick leave accrual rate of any employee shall be reduced as of the effective date of this Act, is entitled by virtue of a mandatory decree, to a minimum wage or an accrual rate of either leave, greater than what is provided in §§ 245 et seq. of this title. Nor shall said employee be required to work a number of hours per month for leave accrual purposes, greater than what is provided in the mandatory decree, as of the effective date of this Act. However, all other aspects of a mandatory decree, than those previously stated, shall be governed by the provisions of §§ 245 et seq. of this title.

Any unused sick leave accrued under a mandatory decree which exceeds fifteen (15) days upon the effective date of this Act, may be liquidated by agreement between the employer and the employee.

Any employee who works in an industry which on the effective date of this Act is covered by a mandatory decree which provides for the periodic liquidation of sick leave accrued in excess of certain levels provided therein, shall retain his right to said liquidation under the previously-existing terms, provided the employee agrees to said liquidation.

Any employee who at present or in the future works in an industry for which a mandatory decree provides a minimum wage greater than the federal minimum wage in effect on the effective date of this Act, shall be guaranteed the minimum wage which most benefits the employee.—July 20, 1995, No. 84, § 20, eff. Aug. 1, 1995.

History

Text references.

References to "this Act" are to Act July 20, 1995, No. 84, eff. Aug. 1, 1995.

Codification.

Article 20 of Act July 20, 1995, No. 84, even though it does not form part of Act June 26, 1966, No. 96, p. 622, has been classified in this chapter because of the pertinence of its 1995 amendments to Act 1956.

Statement of motives.

See Laws of Puerto Rico:
July 20, 1995, No. 84.

Chapter 13. Working Hours and Days

SECTION ANALYSIS

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§ 271. Working hours—Per day and week

Eight (8) hours of work constitute the legal workday in Puerto Rico.

Forty (40) hours of work constitute a workweek.—May 15, 1948, No. 379, p. 1254, § 2; July 23, 1974, No. 223, Part 2, p. 161, § 1; July 20, 1995, No. 83, § 1.

History

Amendments—1995.

Act 1995 amended this section generally.

Statement of motives.

See Laws of Puerto Rico:
July 20, 1995, No. 83.

Applicability.

Section 6 of Act July 20, 1995, No. 83, provides: "The provisions of this Act (this chapter) with regard to the meaning and scope of the terms 'workday', 'workweek' and 'period for taking meals' also apply to the Mandatory Decrees of the Minimum Wage Board of Puerto Rico still in effect, approved under the repealed Act No. 8 of April 5, 1941, as amended (former §§ 211 et seq. of this title), which contain norms to regulate compensation for overtime and for the periods for taking meals."

§ 272. —Regular hours

Regular working hours are eight (8) hours during any workday and forty hours (40) during any workweek.—May 15, 1948, No. 379, p. 1254, § 3; July 23, 1974, No. 223, Part 2, p. 161, § 2; July 20, 1995, No. 83, § 2.

History

Amendments—1995.

Act 1995 substituted "period of twenty-four consecutive hours," with "workday."

Statement of motives.

See Laws of Puerto Rico:
July 20, 1995, No. 83.

§ 272a. —Flexible work schedule

An alternate or optional flexible work schedule may be established solely by agreement between the employee and the employer, which will allow advancing or delaying the hour to begin the workday and the period assigned for taking meals. This hourly work schedule shall be completed consecutively, without fractioning it. The aforesaid may be interrupted only for the period of time provided for or agreed upon for taking meals as established by law. Any such agreement shall also provide for a rest period of not less than twelve (12) consecutive hours between daily work schedules. When these requirements are complied with, those hours which are the result of having advanced or delayed the work schedule or the time for taking meals during the workday shall not be deemed as overtime. Nevertheless, those hours worked during the periods reserved for resting or for taking meals and those hours worked in excess of the daily 8-hour workday or the 40-hour workweek, shall be deemed to be and paid for as overtime, as provided in this chapter.—May 15, 1948, No. 379, added as § 5 on July 20, 1995, No. 83, § 5.