1. **Do you have a plant closing law in your jurisdiction and if so, what does it require?**
(For U.S. jurisdictions, please answer: Is there a Baby WARN Act in your state and if so, what does it require?)

There is no Baby WARN Act in Puerto Rico.

2. **Are there special rules on releases/waivers in your jurisdiction?**

There are no special rules on employment related releases/waivers in Puerto Rico, except that if a release is given in settlement of salary claims brought under the Puerto Rico wages and hours law, Act No. 379 of May 15, 1948, 29 L.P.R.A. 271 et seq., (such as claims for overtime, salaries, meal hours), the release must be verified and approved by the Puerto Rico Secretary of Labor or his/her authorized representative when the amount exceeds $10,000. Also, in some instances, before an employee signs a release, it is customary to require the employee to seek an orientation with an authorized representative of the Puerto Rico Department of Labor as to its terms and legal consequences, more so, if the employee is not represented by legal counsel.

3. **What are the equal employment opportunity/ non-discrimination categories in your jurisdiction? (For U.S. jurisdictions, please answer: Are there protected categories beyond Title VII in your state?)**
Yes. Puerto Rico Act 100 of June 30, 1959, 29 L.P.R.A. sec 146 et seq., includes the protected categories of age, race, sex, color, religion, matrimony, political ideas, national origin, social condition or origin, and being a victim of or being perceived as a victim of domestic abuse, sexual aggression or stalking. Also, Puerto Rico Act No. 3 of March 13, 1942, 29 L.P.R.A sec 467 et seq., protects female employees against pregnancy, maternity, and/or adoption discrimination. Furthermore, Act No. 69 of July 6, 1985, 29 L.P.R.A sec. 1321 et seq., includes gender as a protected category and Act No. 44 of July 2, 1985, protects employees against discrimination based on disability.

4. **What are the minimum wage and overtime rules (and exemptions) in your jurisdiction?**

Wage and hour coverage in Puerto Rico for non-exempt employees is governed by both federal and local legislation. The Constitution of Puerto Rico, (Article II, Section 16) guarantees workers the right to equal pay for equal work, to a reasonable minimum salary, and to an ordinary work day which shall not exceed eight (8) hours.

In addition, Puerto Rico’s Act No. 379 of May 15, 1948, 29 L.P.R.A. 271 et seq., provides, among others, rights for overtime compensation, day of rest and mandatory meal periods; and Puerto Rico Act No. 180 of July 27, 1998, 29 L.P.R.A. 250 et seq., provides for a minimum wage and paid vacations and sick leave.

Similar to the FLSA, "administrators", "executives", and "professionals", as these terms are defined by the Regulation No. 13 of the Commonwealth’s Minimum Wage Board, are excluded from application of the overtime and related salary provisions under Acts No. 379 and 180. Also excluded are “outside salespersons.” These employment categories are defined similarly to the U.S. Department of Labor regulations issued under the FLSA, as amended in 2004.

The current minimum hourly wage for a Puerto Rico businesses covered by the FLSA is $5.85 as of July 24, 2007. This amount is scheduled to increase to $6.55 in July 24, 2008, and $7.25 on July 24, 2009. All non-exempt employees must be paid at least the required minimum wage. Enterprises not covered by the FLSA are required to pay at least 70% of the applicable federal minimum wage, thus, $4.95, pursuant to Act No. 180 of 1998.

Puerto Rico’s overtime pay applicable to businesses and employees covered by the FLSA is the same provided by the federal statute, or, time and one half (1½) for all hours in excess of forty (40) during the workweek. For local companies and employees not covered by the FLSA, weekly overtime has to be paid at a rate of two (2) times for all hours worked in excess of forty (40) during the week.

Under Puerto Rico Act No. 379 of 1948, FLSA covered employers are also required to pay daily overtime at the rate of time and a half (1½) for hours worked by their employees in excess of eight (8) in any given period of twenty-four (24) consecutive hours, unless a Mandatory Decree or Wage Order of the Puerto Rico Minimum Wage Board established a higher overtime rate. The higher daily overtime rate is only available to those employees who were working for an employer on August 1, 1995, in an industry covered by a mandatory
decree which provided a higher overtime rate for hours worked in excess of eight (8) during the workday.

Act No. 379 also requires payment for work performed by a non-exempt employee on a day of rest at twice (2) his/her regular rate of pay. No work should be performed during the day of rest if any work has been performed during all the other six (6) calendar 24 hour periods of the week. The day of rest need not fall on any particular calendar day.

5. **Is there employment-at-will, or some other rule, in your jurisdiction? What are the exceptions?**

There is no employment-at-will in Puerto Rico. Act No.80 of May 30, 1976, P.R.L. A, 29 sec. 185 et seq., (“Act No. 80”) requires employers to have just cause for employment termination. Pursuant to Act No. 80, any person hired for an indefinite period of time, and discharged without just cause, is entitled to receive a severance payment that is calculated according to the years of service. The severance amount will be the equivalent of two (2) months’ pay plus one (1) week of pay for each full year of service, if the termination occurs during the first five (5) years of service. If the employee has at least five (5) years of service but less than fifteen (15) years of service, he/she is entitled to receive a severance of three (3) months’ pay plus two (2) weeks per year of service. Lastly, when the employee has more than fifteen (15) years of service at the moment of termination from employment, he/she is entitled to receive six (6) months’ pay plus three (3) weeks per year of service. The severance is a penalty for any termination that is without “just cause”.

Act No 80 defines “just cause” as follows:

a) The employee’s engaging in a pattern of improper or disorderly conduct;

b) The employee’s not working in an efficient manner, or working belatedly and negligently, or in violation of the standards of quality of the product produced or handled by the establishment;

c) The employee’s repeated violations of reasonable rules established for the operation of the establishment, provided a written copy of the rules has been provided to the employee;

d) Full, temporary, or partial closing of the operations of the establishment;

e) Technological or reorganizational changes, as well as changes of style, design or the nature of the product made or handled by the establishment and in the services rendered to the public;

f) Reductions in employment made necessary by a reduction in the volume of production, sales or profits, anticipated or prevalent at the time of discharge.

Act No. 80 applies to all employees, including executives, professionals, administrative employees and outside salespersons. Act No. 80 does not apply however, to bona fide independent contractors or bona fide term/temporary employees.

6. **What are the legal obligations upon terminating an employee in your jurisdiction?**
There are several obligations that employers must meet whenever terminating an employee in Puerto Rico.

a) Just Cause Termination under Act No. 80

As mentioned, Act No. 80 requires that terminations be for just cause, as defined by the Act. Employees who are terminated without just cause are entitled to a severance payment pursuant to the provisions of Act No. 80. The amount of severance payment varies depending on the employee’s length of employment with the company. See Answer No. 5 above. New employees who are terminated during a probationary period (usually 90 days) are not subject to the “just cause” requirement of Act No. 80, provided that the requirements of a valid probationary period contract have been met.

b) Accrued Vacation Leave

Upon termination of employment, non-exempt employees are entitled to liquidation of their accrued, unused vacation leave. As general rule, non-exempt employees accrue 1½ days of vacation for each month in which they work at least 115 hrs.

c) Annual “Christmas” Bonus

Terminated employees are entitled to the payment of a statutory “Christmas” bonus under Act No. 148 of June 30, 1969, 29 L.P.R.A., sec. 501 et.seq., (“Act No. 148”), if they accrued the required number of work hours at the time of termination. An employee is entitled to Christmas Bonus if he/she has worked at least 700 hours during the period from October 1 of any year until September 30 of the following year. The amount of the bonus depends on the number of employees in the Company. Employers with more than fifteen (15) employees must pay 6% in 2008 of the employees’ annual compensation (up to $10,000). Employers with fifteen (15) or less employees, must pay employees 3% (up to $10,000). The total sum payable by the Company need not exceed fifteen percent (15%) of the net profits in its Puerto Rico operations.

Payment of the accrued annual bonus to terminated employees may be made at the time of termination or else, between the 1st and 15th of each December, except when a different date is mutually agreed upon by the Company and its employees. If the Company delays payment beyond December 15, it will be subject to penalties.

d) Other Obligations

Pursuant to Puerto Rico Supreme Court case law, the company’s Employee Handbook is an employment contract between the employer and the employee. Therefore, if the Employee Handbook contains any promises, benefits or other type of obligation that is triggered upon termination or owed upon termination, the employer must comply with the same in order to avoid a breach of contract claim.
7. Are there any family and/or medical leave laws in your jurisdiction, and if so, what do they require? (For U.S. jurisdictions, please answer: Are there family and/or medical leave laws in your state beyond FMLA and if so, what do they require?)

There are two principal related local statutes: Act No. 180 of July 27, 1998 (Act No. 180), and Act No. 3 of March 13, 1942 (Act No. 3).

Act No. 180 of 1998, 29 L.P.R.A 250 et seq., provides for the statutory accrual of sick leave at a rate of one (1) day per month, if the employee works at least 115 hours during said month. Act No. 180 also provides for the statutory accrual of vacation leave at a rate of one and a fourth (1¼) per month, if the employee works at least 115 hours during the month. Sick leave under Act No. 180 is limited to the employee’s own health problems. However, the employee may choose to use his/her accrued vacation leave to care for any family member or a spouse. Leave under Act No. 180 is with full pay and applies only to non-exempt employees. Act No. 180 contains a number of provisions on calculation, method of payment and use of these paid leave benefits.

Act No. 3 of 1942, 29 L.P.R.A sec. 467 et seq., provides female employees eight (8) weeks maternity and adoption leave with full pay (generally, four prenatal and four postnatal), for the birth or adoption of a child. Employers are required to pay the total amount of the leave benefit at the commencement of the maternity or adoption leave. Maternity or adoption leave under this Act applies to all working mothers regardless of the number of hours worked, length in employment or the position occupied within the Company.

Paid leave under both, Act No. 180 and Act No. 3, may be applied concurrently and may count against an eligible employee’s FMLA accrued leave balance.

There are other leave benefits with pay for employees who become injured or disabled, such as under the Puerto Rico Workers Accident Compensation Act, 11 L.P.R.A. sec. 1 et seq., and the Puerto Rico Non-Occupational Disability Act, 11 L.P.R.A. sec. 201 et seq. These leave of absence benefits and reinstatement rights may be for up to 12 months or one (1) year, respectively, and the employee receives partial pay. These leave benefits may also count towards an eligible employee’s FMLA accrued leave balance.

8. Please list any miscellaneous, interesting or oddball laws in your jurisdiction, and state under what circumstances they pertain.

a) Temporary Assignment for Injured Workers

Puerto Rico does not have a specific law that requires employers to provide temporary assignment to injured workers. It should be noted, however, that the Americans with Disabilities Act (ADA) applies fully to Puerto Rico, and as such, employers are required to make reasonable accommodations for disabled employees. A temporary assignment for an injured worker who may also qualify as a disabled individual under the ADA (and its local counterpart Act No. 44 of 1985) may be a reasonable accommodation.
b) Breast feeding and Expressing Breast Milk


This law grants a woman who returns from her maternity leave the right to breast feed her baby for one (1) hour each full working day, which may be divided in two thirty (30) minutes breaks or three twenty (20) minutes breaks, to breast feed at work, when the employer has a day care center in its facilities, or to extract her own milk at a designated area at work, which is one that has been established for this purpose by the employer. The breast feeding entitlement is for a maximum period of one (1) year as of the date on which the employee has returned to work from her maternity leave.

c) Weekly Payment of Wages

Under Act No. 17 of April 17, 1931, 29 L.P.R.A sec. 173, wages of non-exempt employees may be paid on a weekly basis, on a biweekly basis, or every fifteen (15) days.

d) Criminal History in Job Applications

There are no laws that regulate the practice by employers of verifying the criminal history of an applicant. However, in the 2005 case of Rosario Diaz v. Toyota de Puerto Rico, 2005 T. S.P.R. 154, three Supreme Court justices concluded that, under the Constitution of Puerto Rico and local Act No. 100 of 1959, former convicts are protected against discrimination based upon their social condition as convicts. Under the context of this expansive view, denial of an employment opportunity based upon the applicant’s past criminal record could be a form of discrimination due to social condition that is prohibited by local laws. As an exception, an employer may consider an applicant's conviction record to determine whether he/she is fit for a job, subject to the following considerations:

- The nature and seriousness of the crime;
- The relation, if any, between the crime, the position sought, and the job requirements;
- Whether the applicant has been rehabilitated;
- The circumstances surrounding the crime, including the existence of extenuating circumstances;
- The subject's age at the time of the commission of the crime;
- The length of time intervening between the conviction and the application for employment;
- Whether the employer has a legitimate interest in the protection of his property, security, and welfare.

9. Does your jurisdiction have a law requiring employers to give employees access to, or a copy of, their personnel records?

Please contact firm for more information.
10. Does your jurisdiction outlaw or restrict drug tests, alcohol tests, genetic tests or any other kind of testing?

Please contact firm for more information.

11. Does your jurisdiction have any special rules on the payment of sales commissions?

Please contact firm for more information.

12. What are the basic rules on enforcing non-competes and related agreements in your jurisdiction?

Please contact firm for more information.