
Sancroft

NHS Supply Chain Country Profile: Puerto Rico

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Puerto Rico – Labour Standards and Ethical Trade Profile



Population	3,598,357 ¹
Main Religion	Roman Catholic 85%, Protestant and other 15% ²
Minimum working age	14 years old*
Minimum wage (per hour per month)	<p>USA Minimum Wage Laws apply</p> <p>US\$ 7.25 Per Hour for employees covered by the FLSA[†] US\$5.08 Per Hour for employees not covered by the FLSA</p> <p>US\$ 1160 Per Month for employees covered by the FLSA US\$812.8 Per Month for employees not covered by the FLSA</p>
Maximum working hours	40 hours work week under the FLSA, with no limit on the number of hours overtime worked. Overtime will be paid at a rate of 1.5x normal pay.
Working week	Monday-Friday
Main exports	Pharmaceuticals, medical equipment, computers, apparel, canned tuna, rum, beverage and concentrates. ³⁴

* Restrictions on young workers (15-18) are in place for employment considered hazardous

[†] Fair Labour standards Act see p.3. for political context – <http://www.dol.gov/whd/flsa/>

Context

Politics

Puerto Rico, officially the Commonwealth of Puerto Rico, is a self-governing unincorporated territory of the USA – which means that it is controlled by the US Government and is ruled by Federal Laws. Puerto Ricans are American citizens under the US Constitution and enjoy the same fundamental rights and protection as all US mainland citizens. The territory also has its own Constitution which lays out local laws and regulations to govern the island. In 2012, Puerto Ricans voted in favour of becoming a full US state, however the process to start this legislation has not yet commenced.

The country's current debt crisis has become deeply politicised. Democrats and Republicans are divided in their opinion of an appropriate response (including whether to grant the island's public utility companies and other institutions the right to declare bankruptcy and restructure debts, which is the same right Puerto Rico's mainland counterparts enjoy). Meanwhile on the island, statehood supporters argue the crisis demonstrates why the island should become the 51st US state whilst Independence activists say it demonstrates US indifference towards the island's welfare⁵.

Economics

The World Bank classifies Puerto Rico as a high-income economy. According to the World Economic Forum it is the most competitive economy in Latin America.⁶⁷ Largely an urbanised and industrialised territory, Puerto Rico's economic model of industrialisation has developed from 'Operation Bootstrap'[†] which encouraged the establishment of factories. A series of projects carried out from 1948 under Operation Bootstrap transformed the Puerto Rican economy from one based on an agricultural to an industrial core, and thus a high-income nation. Tourism is also an important constituent of the Puerto Rican economy.

Despite the success of Puerto Rico's manufacturing sector, growth in Puerto Rico has been negative for the past 9 years and debt is high; approximately \$70 billion for a population of only 4 million people, making Puerto Rico poorer than any US state. It has been estimated that up to 45.4% of inhabitants live below the poverty line (2013).⁸ In large part this recession has been attributed to the removal of development initiatives including favourable tax breaks.

Though its economic situation has been depressed for almost a decade, the perilousness of Puerto Rico's economic situation came to the fore in the summer of 2015 when the governor admitted the country would likely default on a number of repayments. Puerto Rico's worsening debt crisis has thus become a focus of political attention⁹. There has been concern that the austerity programmes favoured by Washington's political elite will be felt disproportionately by Puerto Rico's poor and working class families. A particularly controversial suggestion has been the abolition of its minimum wage.

Demographics

Puerto Rico is currently suffering from population loss, caused by migration. 34% of people born in Puerto Rico migrate to live on the US mainland, in particular the young and well educated¹⁰. This, combined with a rapidly falling birth rate, has led the government to begin analysing what the effects of this declining population might have on economic development. In the current economic situation and prevailing debt crisis, the US Treasury Secretary has estimated as many as 3,000 Boricuas are fleeing the island each week¹¹.

[†] Operation Bootstrap began in 1948, led by the US Government. It invested millions of dollars into the Puerto Rican economy in order to help transform it from an agricultural base to an industrial and developed economy, mainly by encouraging the creation and encouragement of factories and industrial facilities.

Labour Market Profile

Puerto Rico has a highly competitive, educated and skilled labour force that enjoys American citizenship. However it has been subjected to significant 'brain drain' with much of the working age population is migrating to mainland USA for better employment opportunities. Unemployment however is very high on the island, with the World Bank estimating it to be as much as 14%¹².

Industry Summary:

Labour Force Occupation (2005) ¹³	
Services	79%
Industry	19%
Agriculture	2%

The Puerto Rican economic profile has transitioned from an agricultural to an industrial focus, and it is now slowly transforming further towards the service sector as advances in technology reduce demand on industrial labour. ¹⁴

Manufacturing however currently remains the primary source of economic activity and income. Almost half (46.3%) of Puerto Rico's GDP comes from manufacturing, followed by 19.5% from finance, insurance and real estate.

Pharmaceutical industry

Over half of the significant manufacturing sector in Puerto Rico is attributed to the pharmaceutical industry - with over 80 plants, it is globally the fifth largest area for pharmaceutical manufacturing in the world. It also has more than 50 facilities for medical-device manufacture, making it the seventh largest device manufacturer in the world. ¹⁵

Key Risk Areas

Companies sourcing from Puerto Rico will need to be aware that there is a risk of labour rights abuse within their supply chain. No global supply chain will be categorically free of issue and buying organisations have a responsibility to ensure that they are doing all they can to mitigate the risk of occurrence within their realm of business and, where an issue is discovered, take steps towards remediation. The below outlines the key risk areas pertinent to Puerto Rico and the areas in which a company sourcing from Puerto Rico may want to be particularly vigilant.

Modern Slavery and Human Trafficking

The Trafficking in Persons (TIP) 2014 report found that The Commonwealth of Puerto Rico is a source, transit, and destination location for men, women, and children subjected to forced labour and sex trafficking. It is worth noting that this issue is particularly problematic as the penal code has not been updated in recent years to reflect modern anti-trafficking laws. Three sections of the penal code address human trafficking and slavery, yet, as human trafficking is not defined as a crime, the victims do not receive any tangible protection or benefits.¹⁶

Although Puerto Rico is more often considered a transit location for trafficked peoples being trafficked through the Caribbean into the United States, a study by the Ricky Martin Foundation discovered that, in some cases Puerto Rico remains the final destination. The majority of human trafficking victims within Puerto Rico come from the Dominican Republic or have been internally trafficked.¹⁷

Puerto Rico does not have a local anti-trafficking law – trafficking falls under US Federal Law. This creates a further challenge as there is a shortfall between the identification of trafficked persons in the Commonwealth and the escalation to national prosecution – fewer people are prosecuted in the USA than are identified in Puerto Rico.

Companies sourcing from Puerto Rico must therefore be vigilant to the possibility of trafficked migrants working either illegally or forcedly within their supply chain. A very limited amount of information on where, how and to what extent human trafficking is occurring in Puerto Rico is available, adding to the challenge of identifying the issue in supply chains.^{18,19} The prevalence of pharmaceuticals manufacturing in Puerto Rico, combined with the occurrence of human trafficking and a large informal economy (described below) indicates that organisations sourcing from the country should remain vigilant when investigating the processes suppliers have in place to assure the legality of their employees. Robust evidence-based due diligence techniques would be advised when assessing the risk of human trafficking in Puerto Rican supply chains.

Informal Economy

Informal and illegal activities, often facilitated by money laundering and corruption, constitute around 30% of the Puerto Rican economy (RMF foundation, 2014)²⁰. These activities range from large companies to individuals operating on a cash only basis, all of whom are evading national taxes and fees. There poses a dilemma for the Puerto Rican government as it desperately needs the income from this informal sector in order to continue servicing the national debt, but has a responsibility to ensure that companies operate legally, therefore must be encouraged and motivated to do so. This will require more stringent regulatory enforcement, which may in fact jeopardise the motivation for the 30% to become legal.

A large informal workforce poses a risk for worker rights and ethical employment conditions due to a lack of formal and regulatory worker protection. There is a higher risk of unsafe working conditions in an informal economy as the employer is often not subject to regulatory checks. Additionally, workers employed in the informal sector have less access to support for other workplace issues, such as if they are victim of human trafficking. If and where appropriate, workers are also much less likely to be given social benefits such as pensions, sick pay or health insurance. An organisation sourcing from Puerto Rico should therefore ensure all of its suppliers undertake robust due diligence to ensure workers are fully regulated within the country’s legal system.

Governance

National Legislation

Labour Laws in Puerto Rico are governed by the Constitution of the Commonwealth and Federal Labour Laws, including the Fair Labor Standards Act (FLSA). The FLSA, also referred to as the Wages and Hours Bill, regulates working hours, minimum wage, overtime and child labour. It applies to all employees engaged in interstate commerce or employed by an organisation operating or producing goods, unless the employer claims exemption from coverage.²¹

There are certain aspects of labour law that are governed by US Federal Law, and some governed by Puerto Rican Labour Law. The following table delineates the two:

<i>US Federal Labor Law (Administered by the Wage and Hour Division)</i>	<i>Puerto Rico Labor Law (Puerto Rico’s Labor Standards Division)</i>
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Federal Minimum Wage (under the FLSA)	Ley de Seguridad y Salud (Safety and Health Act)
Equal Employment Opportunity Is the Law	SINOT Sistema de Compensacion por Accidentes del Trabajo (Workers' Compensation)
Employee Polygraph Protection Notice	Antidiscrimen (Discrimination Is Illegal)
Family and Medical Leave Act (FMLA)	Negociado De Normas de Trabajo (Normal Labour Standards)
Job Safety and Health (OSHA)	Working hours (<i>29 L.P.R.A. § 283</i>)
Uniformed Services Employment and Reemployment Rights Act (USERRA)	Minimum wage for workers not covered by the FLSA, overtime, student learners, child labour, workers with disabilities and equal pay
Fair Labour Standards Act	
Migrant and Seasonal Agricultural Worker Protection Act	
Davis-Bacon and Related Acts	
Service Contract act	

The Constitution of the Commonwealth of Puerto Rico establishes the framework for the labour law (affirms the right of employees to choose their occupation, to have a reasonable minimum salary, a regular workday not exceeding eight hours, and to be paid overtime for work beyond this – see box below), and the Puerto Rico Department of Labour and Human Resources governs legislation affecting employment and workers. Puerto Rican law favours employee rights more than other states in the US.

The table below outlines the relevant sections of the Puerto Rican constitution:

Section 15: The employment of children less than fourteen years of age in any occupation which is prejudicial to their health or morals or which places them in jeopardy of life or limb is prohibited.

Section 16: The right of every employee to choose his occupation freely and to resign there from is recognized, as is his right to equal pay for equal work, to a reasonable minimum salary, to protection against risks to his health or person in his work or employment, and to an ordinary-workday which shall not exceed eight hours. An employee may work in excess of this daily limit only if he is paid extra compensation as provided by law, at a rate never less than one and one-half times the regular rate at which he is employed.

Section 17: Persons employed by private businesses, enterprises and individual employers and by agencies or instrumentalities of the government operating as private businesses or enterprises, shall have the right to organize and to bargain collectively with their employers through representatives of their own free choosing in order to promote their welfare.

Section 18: In order to assure their right to organize and to bargain collectively, persons employed by private businesses, enterprises and individual employers and by agencies, enterprises and individual employers and by agencies or instrumentalities of the government operating as private businesses or enterprises, in their direct relations with their own employers shall have the right to strike, to picket and to engage in other legal concerted activities. Nothing herein contained shall impair the authority of the Legislative Assembly to enact laws to deal with grave emergencies that clearly imperil the public health or safety or essential public services.

Source: <http://www.lawforchange.org/images/lfc/PuertoRicoEmployment.pdf>

In 2010 the US Department of Labour and the Puerto Rico Department of Labour signed a partnership agreement to ensure Puerto Rican employers comply with both federal and commonwealth labour laws. ²²

International Trade Union Confederation (ITUC) Rights Index

The ITUC rights index uses a methodology that considers the standards of fundamental rights at work, in particular the right to freedom of association, the right to collective bargaining and the right to strike.²³ Using this methodology, countries are ranked on a scale of 1-5, with a high score suggesting a government is failing to guarantee these rights. The USA received a rank of 4.

International Standards

Puerto Rico has made the following ILO Ratifications:

- Fundamental Conventions: **0 of 8**

- Governance Conventions (Priority): **1 of 4**
- Technical Conventions: **7 of 17724**

Other Useful Resources

Further information is available on the following websites:

- ILO Labour Law Database -
http://www.ilo.org/dyn/natlex/natlex_browse.country?p_lang=en&p_country=USA
- Transparency International Corruptions Perception Index
<http://www.transparency.org/country/#PRI>
- US State Department Database on Forced and Child Labour per product
<http://www.dol.gov/ilab/reports/child-labour/list-of-goods/>

¹ <https://www.cia.gov/library/publications/the-world-factbook/geos/rq.html>

² <https://www.cia.gov/library/publications/the-world-factbook/geos/rq.html>

³ <http://www.tradingeconomics.com/puerto-rico/exports>

⁴ <https://www.cia.gov/library/publications/the-world-factbook/geos/rq.html>

⁵ <http://www.bbc.co.uk/news/world-us-canada-35368786>

⁶ <http://data.worldbank.org/country/puerto-rico>

⁷ <http://reports.weforum.org/global-competitiveness-report-2014-2015/report-highlights/#rankings>

⁸ <http://www.census.gov/content/dam/Census/library/publications/2014/acs/acsbr13-01.pdf>

⁹ <http://www.thenation.com/article/bernie-sanders-says-us-must-end-colonial-type-relationship-with-puerto-rico/>

¹⁰ <http://www.usatoday.com/story/news/nation/2014/08/11/puerto-rico-population-loss/13891661/>

¹¹ <http://www.bbc.co.uk/news/world-us-canada-35368786>

¹² <http://data.worldbank.org/indicator/SL.UEM.TOTL.ZS>

¹³ <https://www.cia.gov/library/publications/the-world-factbook/geos/rq.html>

¹⁴ <http://www.gdb-pur.com/economy/fact-sheet.html>

¹⁵ http://www.caribbeanbusinesspr.com/cbdirectory/cb_manufacturing.php?cat_id=11

¹⁶ <http://www.state.gov/documents/organization/226849.pdf>

¹⁷ http://www.rickymartinfoundation.org/images/20351-Libro_ingles_sm.pdf

¹⁸ <http://www.globalministries.org/news/lac/challenging-the-invisibility.html>

¹⁹ <https://elliott.gwu.edu/sites/elliott.gwu.edu/files/downloads/acad/lahs/puerto-rico-human-trafficking-2012.pdf>

²⁰ http://www.rickymartinfoundation.org/images/20351-Libro_ingles_sm.pdf

²¹ <http://www.dol.gov/whd/regs/statutes/FairLabourStandAct.pdf>

²² <http://www.dol.gov/opa/media/press/whd/WHD20101414.htm>

²³ http://www.ituc-csi.org/IMG/pdf/survey_ra_2014_eng_v2.pdf

²⁴ http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103598