

Anita Montaner-Sevillano

Capital Member and Chair, Labor & Employment Law Practice Group

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Leader, Immigration Practice Team

Co-Leader, Retail Industry Practice Team

PRACTICES

Hospitality

Immigration

Labor & Employment

Labor Litigation

Retail

Wage & Hour Regulation

BAR ADMISSIONS

- Commonwealth of Puerto Rico
- U.S. District Court District of Puerto Rico
- U.S. Court of Appeals First Circuit

EDUCATION

B.A., *Cum Laude*, Boston College

- Major: Political Science and French Literature

J.D., *Magna Cum Laude*, University of Puerto Rico Law School

MEMBERSHIPS

- Puerto Rico Bar Association, section on Labor and Employment Law

As Chair of the Labor & Employment Law Practice Group Ms. Montaner-Sevillano brings to the table her extensive experience in the field and she is able to provide a deep understanding of the intricacies of conducting business in Puerto Rico as well as a unique awareness of the importance of budget supervision and controls.

Ms. Montaner-Sevillano concentrates her practice in employment rights laws. She provides counseling and litigation defense in cases filed under the Americans with Disabilities Act, the Family and Medical Leave Act, Title VII, the ADEA, WARN, workers' compensation, wage and hour laws, wrongful discharge, and all other types of employment discrimination, retaliation, leave of absence, and whistle-blower laws.

She also provides support in labor and employment matters related to corporate and operational restructures, mergers, acquisitions, spin-offs, transfers of employees, as well as reductions in force, plant closings and mass lay offs. Her legal advice includes filings and registrations for new employer operations or closings, due diligence audits, reductions in force analysis of operational units, retention rights, closing of operational units, revision of separation agreements, consulting agreements, restrictive covenants, preparation of WARN notices, revision of announcements, frequently asked questions and presentations, revision of labor & employment provisions in purchase agreements, advise on successor employer issues, and she interacts with regulatory and corporate counsel, among others. Her input and participation in these projects has ensured 100% labor and employment claim-free transactions.

Throughout her career she has won many complex precedent-setting cases for employers, including *García v. Darex*, which has been repeatedly cited by the P.R. courts, regarding the P.R. Workers Accident Compensation Act, a leave of absence and reinstatement rights of injured workers versus an employer's just cause for discharge under Act 80 of 1976.

- American Immigration Lawyers Association
- Society for Human Resources Management (SHRM)

Recently, Ms. Montaner-Sevillano spearheaded the Practice Group's efforts in guiding and advising clients during the COVID-19 pandemic with the compliance and development of protocols and a myriad of other novel legal issues.

Ms. Montaner-Sevillano is Leader of the Immigration Practice Team, routinely assisting employers and investors with their employment immigration issues. Ms. Montaner-Sevillano provides guidance to international clients who establish new U.S. business operations in Puerto Rico, assisting them in securing employment visas for international employees and their families in the H-1B, L-1, E-1, E-2 and O visa classifications, as well as petitions for immigrant workers to obtain permanent U.S. residence.

As Co-Leader of the Retail Practice Team, she leads all employment law initiatives assisting clients with defense of claims before the PR Department of Labor, State Insurance Fund Corporation (workers compensation); drafting of compliant employment policies and handbooks, employment and services contracts, as well as trainings to local and US-based upper management.

She is an active firm member in Lex Mundi, a leading global association of independent law firms. She is a sought out speaker and has lectured on various topics for the Puerto Rico Chamber of Commerce, the Association of Labor Relations Practitioners, the Society for Human Resources Management where she has acted as Director of Legal Affairs, the Interamerican University of Puerto Rico, as well as other professional organizations. She has contributed several articles to major circulation newspapers in Puerto Rico related to immigration and hot topics in employment law.

Ms. Montaner-Sevillano was the first woman to be elected to the Firm's Policy Committee, where she served as a valuable member for nine consecutive years. She has been repeatedly ranked as one of Puerto Rico's Leading Attorneys in the Labor & Employment field by the renowned guides Chambers & Partners and Legal 500. She is also ranked in the Labor & Employment Law, the Immigration Law and the Litigation fields by the *Best Lawyers in Puerto Rico* guide.

She is President of the Board of Directors of ProTechos Inc., a non-profit organization that helps rebuild damaged roofs in under-served communities throughout Puerto Rico, while providing residents with basic carpentry training. This approach helps improve living conditions by improving housing and

addressing the shortage of skilled construction workers on the island. She is also member of the Board of Directors of the Fundación Comunitaria de Puerto Rico (Puerto Rico Community Foundation), a non-profit organization that helps build the capacity of communities in Puerto Rico to achieve social and economic transformation, while stimulating philanthropic investment and maximizing the impact and return on each contribution.

REPRESENTATIVE CASES

Ms. Montaner-Sevillano has successfully defended international and local businesses in employment claims before local and federal agencies, including Clorox, Kraft, SOL Petroleum, Vitamin World, GNC, Ethicon, McNeil, Macy's, Clarks, Wyndham Worldwide, St Jude Medical, Medtronic, Acadia, USA Environmental, Bristol Myers Squibb, Sanofi Aventis, amongst others.

Some of her representative cases include:

- Obtaining summary judgment on claim of sex discrimination and hostile work environment under Title VII and local laws. The US District Court ruled that Plaintiff failed to bring forth sufficient evidence to create a triable issue, as such evidence of disparate treatment or discriminatory animus was either conclusory or too weak to withstand summary judgment; whereas the employer's evidence was consistent in showing that the non-discriminatory reason for Plaintiff's termination of employment was his unsatisfactory performance. Luis A. Pedraza v. Ethicon LLC, Civil No. 21-1249, 2023 WL 2771768 (P.R.D. 2023).
- Obtaining early dismissal of state and federal claims filed by an older worker dismissed in a RIF, by raising res judicata defense early on and then defending the ADEA claim up to successful entreat of summary judgment dismissing the case. The judgment was recently affirmed by the United States Court of Appeals for the First Circuit. This case illustrates that a carefully planned strategy, along with comprehensive knowledge of the facts and law, are the winning combination for a successful outcome. Héctor Zabala de Jesus, et al. v. Sanofi Aventis Puerto Rico, USDC 15-1803, United States Court of Appeals for the First Circuit.
- Obtaining summary judgment on claims of sexual harassment and retaliation under Title VII and local laws. On an issue of first impression the US District Court ruled that preferential treatment based on a consensual sexual affair between supervisor and subordinate employees did not

- constitute cognizable sex discrimination under Title VII. Vázquez Delucca v. Ikon Benefits Group, 2011 WL 1097640
- Obtaining judgment of dismissal on a claim for discriminatory discharge and failure to accommodate under the ADA. In a novel issue of survivorship rights, the Court denied the substitution of the deceased employee by his estate upon ruling that claims of an employee under the ADA and local discrimination laws did not survive his death. Case settled on appeal. Vaello Carmona v. Siemens Medical Solutions USA, Inc., Civil No. 11-01637 (USDCPR 2012)
 - Successfully defending collective wage & hours claims filed by over 300 employees and ex-employees claiming over \$40M in back wages. Claims included owed salaries for time spent donning and doffing work uniform. After a lengthy trial, the P.R. Court ruled, on an issue of first impression in Puerto Rico, that time spent in donning and doffing of 10 minutes or less was “*de minimis*,” and thus not compensable under the local W&H law. Judgment was affirmed by the PR Court of Appeals and PR Supreme Court denied petition for review. Providencia Cruz et al. v. Ethicon, LLC; Civil No. Epe 1999-0209 (402)
 - In a parallel case of donning and doffing against Ethicon, she successfully obtained dismissal of the claims filed by 90 employees by raising a collateral estoppel defense in favor of Ethicon to preclude further litigation of the donning and doffing claims. The judgment became final in October 2012. Armando Sosa et al v. Ethicon LLC. Civil No. Epe 2002-0545 (611) Consolidated with Epe 2001-0212(611)
 - Successfully defending client in collective wage and hour and wrongful termination claims of over 30 employees for over \$3.5M in back wages. Obtained summary judgment of overtime claims in a critical issue of first impression under Federal and local laws regarding credit/anti-pyramiding doctrines and Federal law preemption. The case also entailed internal audit of payroll practices and successful litigation of meal period claims to achieve an expedient nominal settlement resolution. USA Environmental, Inc., P.R. Court of First Instance.
 - Successfully defending collective wages and hours lawsuit filed by 631 tipped employees alleging \$6M in owed salaries for overtime, sick and vacation benefits related to service charges income not included in calculations of their pay rates. After many years of litigation up to the Puerto Rico Supreme Court; and dispositive motions that were granted throughout the case, claimants were reduced to 56 and their claims were settled for a 5% nuisance value. Issues litigated included the authority of the Secretary of Labor to

- direct and consent settlements for claimants, the doctrine of continuing violations and amendments to complaint, definition of “salary” under local w&h law, among others. P.R. Department of Labor v. WWW Corporation d/b/a Wyndham Rio Mar Beach Golf Resort & Spa
- Successfully defending and obtaining summary judgment in lawsuit filed by 35 laid-off banquet employees claiming \$7.5M for unjust discharge, retaliation, failure to re-call, WARN Act violations and illegal interference with contractual relationships. Addressed controversies of first impression such as the criteria for occupational classifications in a RIF; “protected activity” in retaliation; “just cause” and recall rights of laid off workers vis a vis the outsourcing of their services by the employer, among others. Summary judgment for client was affirmed on appeal and by the PR Supreme Court. WHM CARIB, LL. d/b/a Wyndham Rio Mar Beach and Golf Resort & Spa
 - Successfully handling of complaint filed by older worker under the ADEA, ADA and local discrimination laws alleging mistreatment and retaliation. After careful and strategic advice on the handling of claimant’s performance issues, client as able to settle the litigation early-on in favorable terms which included the employee’s voluntary resignation from employment. This case illustrates how successful and strategic advise early-on avoids a costly litigation, contains risk exposure, and results in a nominal settlement for the client. Díaz Perdomo v. Clorox; Civil No. 16-1379, U DCPR.
 - Representation of employer in a multi-claims lawsuit for \$1M filed by 35 laid-off employees alleging unjust discharge and owed salaries under wages and hours laws. Obtained judgment dismissing claims to compel arbitration. The P.R. Supreme Court confirmed and case was settled before extensive discovery, for less than 25% of the value of original claims. In this his case she was able to handle multiple wage and hour claims in a cost efficient manner, in what otherwise would have resulted in costly and protracted litigation. Francisco Diaz Centeno, et als. v. C.B. Richard Ellis GWS Puerto Rico, Inc.; Case No. HSCI2016-00814, PR Court of First Instance; Case no. KLCE2016-1889, PR Court of Appeals.
 - Obtaining judgment for client in lawsuit filed by a former General Manager under the ADEA, federal and supplemental state law claims for unjust dismissal, age discrimination, retaliation, breach of contract, unpaid wages and negligence with overall exposure of \$4M. Early on obtained agreement to voluntarily dismiss European defendants and obtained summary judgment under ADEA. Controversies involved tolling of the statute of limitations and extraterritorial reach of the ADEA. This case illustrates sophisticated advocacy skills and case management. Ariel Finkelstein-Ponce, et al. v. Alcon Puerto

Rico, Inc., et al., Civil No. 17-CV-2382 (ACD).

- On appeal, she obtained a judgment of dismissal for client based on a time bar defense. This is a leading case under the PR 2017 Labor Reform, (Act 4-2017), as it provides a statutory interpretation of first impression regarding the statute of limitations that applies to employees hired prior to the 2017 Labor Reform but fired after the 2017 Labor Reform. It remained contested whether said employees were grandfathered under a 3 year limitations period since Act 4-2017 preserved their rights under the unjust discharge law. This case clarified and brought certainty in this new area of the law. Jimenez v. Clorox Commercial Company, Inc.