

Recent Developments Affecting Labor & Employment Law in Puerto Rico

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PRACTICE AREAS

- Labor & Employment

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Recent developments and news you should be aware of:

■ **Act 60 Enacted**

On January 27, 2018, P.R. Act 60 was enacted to amend Article 6 of P.R. Act 180 of 1998, as amended, to prohibit employers, supervisors and any employer representative, from considering an employee's justified sick leave absences in the evaluation process, for purposes of granting salary increases or promotions within the company. Employers are also prohibited from considering an employee's properly used sick leave to justify disciplinary actions, such as suspensions and terminations of employment. This amendment is effective immediately.

Every violation to Act 180, as amended, constitutes a misdemeanor punishable by fine and/or imprisonment. Also, the employee affected by the violation may be entitled to compensatory damages. Therefore, we recommend that employers revise their attendance policies, performance evaluation policies and employee manuals to adapt them to this amendment.

■ **Puerto Rico Labor Reform**

On January 26, 2017 Governor Ricardo Rosselló signed into law the Labor Transformation and Flexibility Act, P.R. Act 4 of 2017, known as the Labor Reform. Act 4 amended many local employment statutes, such as the Wrongful Termination Act (P.R. Act 80 of 1976), the Minimum Wage, Vacation and Sick Leave Act (P.R. Act 180 of 1998), the Puerto Rico Working Hours and Days Act (P.R. Act 379 of May 15, 1948), and the Annual Bonus Act (P.R. Act 148 of 1969), among others.

These amendments affected many aspects of the employment relationship and of employees' statutory benefits, such as the automatic probationary period, the accrual rates of vacation leave for newly hired employees, the amount of the annual Christmas bonus, the daily overtime calculation, the rest day and meal period penalty, and the statute of limitations for filing wrongful

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termination and salary claims. Other amendments challenged the traditional work schedules, providing for a compressed workweek of, for example, four days of ten hours, and establishes a procedure for an employee's request for a change of the work schedule, amount of hours per shift or the place of work. These amendments were particularly useful during the emergency period after the passing of hurricanes Irma and María.

The Labor Reform of 2017 introduced new provisions regarding the employment contract, the independent contractor, reasonable accommodation to attend religious services or follow religious practices, interpretation of company policies, and others.

One year after the enactment of the Labor Reform employers are strongly encouraged to evaluate how it has affected or benefited their operations, whether their policies need to be re-evaluated, and whether their Human Resources personnel and supervisors need additional training.

■ *Puerto Rico Equal Pay Act*

Last year Governor Rosselló enacted the Puerto Rico Equal Pay Act, P.R. Act 16 of 2017, to prohibit salary discrimination based on sex, unless the salary difference is due to specific circumstances detailed in our March 13, 2017 Alert. The P.R. Equal Pay Act created an additional cause of action for employees to recover any salary differences that the employee would have been entitled to receive in the absence of discrimination, and an equal amount as additional penalty, plus costs and attorney's fees.

The P.R. Equal Pay Act also provided that an employer will not be liable for the additional penalty if it can prove that it initiated or completed a good-faith auto-evaluation process about its compensation practices and has made reasonable progress in eliminating salary differences based on sex.

Employers are strongly encouraged to initiate an auto-evaluation process regarding their compensation practices, to identify any salary gaps, analyze the reasons behind them, and amend their compensation policies as needed, in order to avoid liability for the additional penalty, should a court of law find that a difference in salary between employees was based on the claimant's sex.

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