



Puerto Rico Labor & Employment Alert

US SUPREME COURT RULES FEDERAL LAW PROHIBITS HOMOSEXUAL AND TRANSGENDER DISCRIMINATION

On June 15, 2020, the US Supreme Court issued a decision extending anti-discrimination protection in employment to homosexual and transgender employees and applicants for employment. In Bostock v. Clayton County, Georgia the Court held that an employer who fires an individual merely for being homosexual or transgender violates Title VII of the Civil Rights Act of 1964.

The Court explained that an employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Thus, sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids. Because discrimination on the basis of homosexuality or transgender status requires an employer to intentionally treat individual employees differently because of their sex, an employer who intentionally penalizes an employee for being homosexual or transgender also violates Title VII.

It is important to note that Puerto Rico Act 100 of June 30, 1959, Puerto Rico Anti-discrimination Act, prohibits discrimination on the basis of sexual orientation and gender identity. Employers must review their employee handbook and training programs to ensure they comply with the Supreme Court's ruling and Act 100.

PUERTO RICO LEGISLATURE APPROVES SENATE BILL 992 TO PROHIBIT DISCRIMINATION IN EMPLOYMENT DUE TO CRIMINAL RECORD

On June 9, 2020, the Puerto Rico Legislature sent Governor Wanda Vázquez Garced Senate Bill 992. The Bill aims to create the "Act Against Discrimination in Employment on the Grounds of Having Been Found Guilty of a Crime", in order to establish limits for the consideration of criminal records by employers.

The Bill would apply to government employees and to any person, agent, authorized representative or entity within the jurisdiction of the Government of Puerto Rico which hires one or more employees as well as any person or entity that directly or indirectly acts in the interest of the employer or who receives compensation for hiring or providing opportunities for hiring.

The Bill provides that no employer may inquire about the criminal history of an employment applicant in an employment application or application form or during the process of recruitment or consideration for employment until a conditional employment offer has been made. After such offer, the employer may request that the applicant furnish a criminal record certificate and may inquire about the applicant's criminal history that is directly related to employment. For a criminal history to be directly

related to employment, the employer must consider whether said history is directly related to the position's duties and responsibilities.

If the employer determines that the applicant's criminal history is directly related to employment, the employer must consider the following factors before rejecting the applicant:

- 1) The time that has passed from the acts that led to the applicant's conviction;
- 2) The nature and severity of the offense;
- 3) The age of the applicant at the time of committing the crime;
- 4) The circumstances under which the crime was committed, including attenuating and particular circumstances.

The Bill would amend Act 100 to add discrimination for having been convicted of a crime as one of the prohibited actions. However, the employer will not be deemed to have discriminated when by regulation or law, its actions are regulated by the Public Corporation for the Supervision and Insurance of Cooperatives, the Office of the Financial Institutions Commissioner or by any agreement with any federal agency as this is required or permitted by the norms of the government of the United States of America.

We must note that the Bill does not exclude any ex-convict applicant, regardless of the seriousness of their conviction, including those who have been convicted of such crimes as first degree murder, rape, aggravated assault and drug trafficking. In view of the very broad restrictions that this legislation would impose on employers' ability to consider an applicant's criminal record when making employment decisions, we recommend that our clients contact the Governor's Office to express their opposition to this legislation.

If you have any question or concern, please **Contact us**.

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