



## Puerto Rico Labor & Employment Alert

### **GOVERNOR SIGNS PUERTO RICO ACT 90-2020 TO PROHIBIT AND PREVENT WORKPLACE HARASSMENT IN PUERTO RICO**

On August 7, 2020, the Governor of Puerto Rico signed into law an Act to prohibit workplace harassment, which became effective immediately. It applies to public, private and non-profit employers.

The Act creates a new cause of action for workplace harassment, which is defined as:

malicious, unwanted, repetitive and abusive conduct that is arbitrary, unreasonable and/or capricious, whether verbal, written or physical, repeatedly performed by the employer, his agents, supervisors or employees, unrelated to the employer's legitimate business interests, which violates the employee's protected constitutional rights, such as: the right to personal dignity; protection against abusive attacks to the employee's honor, reputation and private or family life; and the protection against risks to his/her health or personal integrity in the workplace.

Employers must take necessary measures to eliminate or reduce workplace harassment by adopting and implementing internal policies, investigating all allegations of harassment and imposing appropriate disciplinary actions. The Act provides that the employer will be held liable for the actions of its supervisors or other employees in violation of the Act's prohibition against workplace harassment, if it knew or should have known about such actions, unless the employer can prove that it took immediate corrective measures, and the affected employee unreasonably failed to take advantage of the preventive or corrective measures provided by the employer. In multi-employer settings, where contract, temporary or regular employees, among others, interact in a common workplace, all employers involved are required to investigate allegations of workplace harassment, regardless of whether or not they are the direct employer of the employee claiming harassment. Employers will also be liable for harassment by a non-employee, if it knew or should have known of the harassing conduct and did not take immediate corrective measures.

The Secretary of the Puerto Rico Department of Labor and Human Resources must issue, within 180 days from the effectiveness of the Act, uniform guidelines for the adoption and implementation of the protocols employers must adopt to process and manage workplace harassment claims. Once the guidelines are issued, employers will have 180 days to adopt and implement the required protocols, and to inform employees of the same.

Employers must inform employees of the provisions of the Act by posting information about the Act in a visible place at the workplace and must provide guidance to all employees regarding the measures, policies and processes adopted.

Before filing a lawsuit, employees are required to exhaust the employer's internal claims procedure and, if this is ineffective, employees must resort to the Alternative Dispute Resolution Bureau. If either of the parties refuses mediation or the mediator does not recommend it, then the employee can file a civil action under the Act, submitting evidence that the mediation alternative was exhausted. The Act provides a 1-year statute of limitations to file a claim under the Act, from the date the employee feels he or she was subjected to workplace harassment.

Employees who file complaints under Act 90 are protected by the provisions of Act 115 of December 10, 1991, the Anti-Retaliation Act.

Finally, Act 90 provides that the employer that engages in workplace harassment will not be able to claim the immunity from workplace injuries provided by the Puerto Rico Workers Compensation Act. However, the affected employee can receive treatment from the State Insurance Fund and, once it is determined that the injuries were caused due to workplace harassment, the State Insurance Fund can recoup from the employer the treatment's cost.

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

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