

Puerto Rico Heading Towards At-Will Employment

International Labor Law Blog on **June 12, 2018**

On May 30, 2018, the Puerto Rican Senate voted in favor of overturning an Act that provided significant protections to Puerto Rican employees. The repeal would roll back the current law, Act No. 80, which prohibits employees from being terminated without just cause, thus making it significantly easier for employers to terminate employees.

Currently, private and public sector employees in Puerto Rico who are hired for an indefinite period of time cannot be terminated without just cause. This means that under Act No. 80, an employee currently can be terminated only if the employer has legally justified reasons that are: 1) present; 2) can be proven, and; 3) tend to affect the wellbeing and normal course of the business. Under the current law, reasons that constitute just cause can include: improper behavior by the employee, poor job performance, lateness, negligence, inefficiency, failure to follow protocols and security measures, lack of productivity, lack of competence or ability to perform in a reasonable manner as expected by the employer, constant or repetitive complaints by clients, multiple violations of an employer's rules, defamatory comments, or divulging privileged information. If an employer violates the Act, the company is liable for up to two weeks of pay based on the employee's highest recent salary for each year of service completed, potentially leading to a large statutory award.

In order to attempt reforming the current state of the law, the Puerto Rican Governor announced on May 28th a proposal that would have permitted any employee to be terminated for any reason, other than an illegal reason, thereby potentially converting all employees into "at-will" employees. The repeal came about as a part of the restructuring of Puerto Rico's debt. As part of the restructuring, the Junta de Supervision Fiscal ("JSF"), the supervisory board for Puerto Rico's economy, wanted to eliminate Act No. 80 in order to make Puerto Rico more business friendly and increase the availability of jobs. Indeed, it seemed that this broad proposal was a compromise by the Governor and the JSF, as the JSF had previously been advocating for eliminating Christmas bonuses and reducing paid time off.

Nonetheless, the Puerto Rican Senate tempered the broad proposal, and modified the proposal so that only new hires will be employed at-will, and individuals formerly covered by Act No. 80 would remain protected and require just cause for any termination. The Puerto Rican Senate also modified the implementation date so that it would go into effect immediately after passage instead of waiting until January 1, 2019. While the proposal now has passed in the Senate, there may not be the necessary support needed to pass the House of Representatives. The House of Representatives started Public Hearings on the proposal on June 4th, 2018 to determine the expected impact of the repealing of Act No. 80.

The proposal still has significant hurdles to clear before it overturns the current law. Unions, such as the Central Puertorriqueña de Trabajadores (CPT), have called for the House of Representatives to vote against the repeal. Furthermore, the change may have a major impact on the labor force in Puerto Rico as it is expected that if the bill passes the House, Puerto Rican workers may unionize at higher rates in order to secure the same protections through bargaining. Currently, only about [10% of private sector workers](#) in Puerto Rico are in a union. The change also may lead to an increase in litigation for unfair dismissal. While employers do not need to make any immediate changes, we will continue to monitor the progress of this proposal closely and blog about any updates as it may have a major impact on the employment landscape in Puerto Rico.

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