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CLIENT ALERT



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and
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Action Required in Bill 501 to Prohibit and Prevent Workplace Harassment in Puerto Rico

The Puerto Rico Senate and House of Representatives have approved the final version of Senate Bill 501, “Bill to Prohibit and Prevent Workplace Harassment in Puerto Rico.” If it is signed by the Governor, Senate Bill 501, will apply to all employees who suffer workplace harassment, regardless of the nature of their employment, their category, hierarchy or classification, or the duration of the employment contract.

We urge all our clients and friends to take action by contacting the Governor’s Office directly or through any group or association they belong to vehemently oppose this proposed law.

To contact Governor Alejandro García Padilla you may do so via:

Tel. 787.721.7000
Fax. 787.724.4640
PO Box 9020082
San Juan PR 00902-0082

or through the Governor’s legislation office:

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The Bill defines workplace harassment as:

That conduct which is ill-intended, unwelcome, repetitive and abusive, whether it is verbal, written or physical, by the employer, its supervisors or employees, distinct from the legitimate business interests of the company, that creates a hostile, intimidating, humiliating, and offensive atmosphere, hinders the healthy tenure of the employee in the workplace, that may result in the disparagement, belittling or professional impairment the employee, and that threatens his civil and constitutionally protected rights, including his dignity.

Employers will always be responsible for the conduct of their supervisor constituting workplace harassment unless they can establish that they took immediate and appropriate action to correct the situation the moment they knew of the harassment. In such case, however, the individual harasser will still be personally responsible.

Employers will be responsible for workplace harassment on its employees by non-employees if the employer or its supervisors knew of such conduct and did not take immediate and appropriate action to correct the situation.

The following or similar conduct will be considered workplace harassment:

- Injurious, slanderous and harmful expressions about a person, using foul language.
- Hostile and humiliating comments of professional incompetence in the presence of co-workers.
- Unjustified threats of termination stated in the presence of co-workers.
- Multiple accusations of misconduct against the victim, from any of the individuals involved in the harassment, shown to be meritless by the result of the disciplinary process.
- Humiliating rejection of work proposals or opinions.
- Public comments or jokes directed to the employee about his physical appearance or the way he dresses.
- Public references to private, personal or family matters related to the affected employee.
- Assigning work functions clearly unrelated to employment obligations, clearly disproportionate demands to fulfill the work assigned, and the sudden change of workplace or the work contracted for, without any objective business related reason.
- The employer's or other employees' refusal to provide information or materials pertinent and indispensable to fulfill the employment obligations.

Conduct that will not constitute workplace harassment:

The Bill provides that the following conduct will not constitute workplace harassment: (1) the acts of supervisors while exercising their disciplinary authority; (2) demands made to protect the confidentiality of services provided by the employer or requiring loyalty from the employee; (3) the creation and dissemination of regulations or memorandums to direct the operation, maximize efficiency and the evaluation of employees related to the general objectives of the employer; (4) requests to comply with additional functions when it is necessary for the continuity of services or to resolve difficult situations in the employer's operation or services; (5) administrative acts aimed at the termination of an employment contract, with just cause or for a fixed term, as established by law; (6) an employer's affirmative acts requiring compliance with the stipulations of the regulations for the management of human resources or provisions of the employment contracts, and (7) the employer's affirmative acts requiring compliance with the obligations, duties and prohibitions imposed by law.

Dissemination and Establishment of Protocols

The Bill requires employers to post the contents of the law in a visible space and inform the employees of the policies and procedures adopted to prevent, and avoid workplace harassment. Employers will provide employees with written copies of those policies and procedures available to report a case of workplace harassment.

Employers will have a year to adopt and implement a protocol and disseminate the same.

Procedure

The bill requires employees to exhaust the procedures established by the employer by first channeling their complaints through those internal mechanisms. If those are unsuccessful, then the employee must file his complaint at the Bureau of Alternate Dispute Resolution of the Judicial Branch. If the parties do not accept mediation or the mediator does not recommended the same, then the employee may go to Court, with evidence that he exhausted those alternative mechanisms prior to filing his claim.

Anti-Retaliation Provision

The Bill also protects any employee who reports acts of workplace harassment from retaliation unless it is proven that his allegations are false. The employee's complaint or testimony will be protected if it is offered before a union, a human resources office, or employer office, or at an administrative, judicial or legislative forum in PR as long as the information is not defamatory or privileged.

Remedies

Employees who prevail in their claims of workplace harassment will be entitled to the payment of double their compensatory damages. Although it is not clear in Bill 501, it may be inferred that reinstatement is another remedy since the bill makes reference to Law 115 which does establish that remedy.

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We at Goldman remain committed in assisting you and your business to adjust to these changes in the Law. For further information you may contact Luis F. Antonetti, Esq. or any of the attorneys in the Labor & Employment Law Department.



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