

Puerto Rico Issues Guidelines Implementing Law Against Workplace Bullying

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The Puerto Rico Department of Labor (PRDOL) has issued Guidelines and a sample protocol for employers to follow in complying with Puerto Rico's [prohibition against workplace bullying](#), Act 90-2020.

Employers have until August 2, 2021 (180 days from publication of the Guidelines) to adopt, implement, and notify their workforce of the required protocol to manage workplace bullying situations. Even though employers have until August 2 to adopt their protocol, Act 90-2020 already is in effect and liability has not been stayed.

Act 90-2020 requires the PRDOL to issue uniform guidelines for employers on how to handle complaints in the workplace related to the provisions of the Act. The Guidelines expressly state that they do not create rights or obligations.

The Guidelines state that conduct meeting the following factors is considered unlawful bullying:

1. Must be malicious;
2. Must be unwanted;
3. Must be repetitive and abusive;
4. Must be arbitrary, unreasonable, or capricious;
5. Can be verbal, written, or physical;
6. Must have occurred repeatedly by the employer, its agents, supervisors, or employees;
7. Must be oblivious to the legitimate interests of the company;
8. Must violate the employee's protected constitutional rights, such as the inviolability of the dignity of the person, protection against abusive attacks on their honor, reputation, and private or family life, and protection of the worker against risks to their health or personal integrity in their work or employment; and
9. Must create an intimidating, humiliating, hostile, or offensive work environment not suitable for a reasonable person to perform their duties or tasks in a normal way.

The Guidelines indicate that an isolated event will not satisfy the definition of the statute and thus, will not constitute unlawful bullying. However, the Guidelines state that employers must investigate any allegations of bullying, even when the allegation identifies one incident.

The Guidelines also clarify that the protocol employers must adopt has a dual purpose: to inform employees about the prohibited conduct in order to promote a workplace free from bullying and to establish an internal process to investigate complaints of bullying.

In addition, the Guidelines provide that the handling of complaints of bullying can be incorporated into policies already in place to handle similar situations, such as sexual harassment and domestic violence.

However, any policy under Act 90-2020 must include:

1. A statement against bullying, as well as the employer's responsibilities.
2. Examples of conduct that could amount to prohibited bullying, including the definition and examples provided by the statute.
3. A statement that disciplinary action will be taken against employees who engage in prohibited conduct and personal liability may be incurred.
4. The responsibilities of supervisors and managers in preventing and identifying bullying, including the duty to report such conduct or any verbal or written allegation.
5. A confidentiality statement and anti-retaliation protection for employees denouncing bullying.
6. The process to file a complaint.
7. The process to investigate, with the applicable time frame to conduct an investigation. The Guidelines indicate that the fact the alleged conduct stopped should not be sufficient to not investigate the allegations. In addition, they describe what the investigation file must include.
8. An explanation of remedies employees must exhaust, including the applicable statute of limitations and remedies available under Act 90-2020.
9. A statement as to how the protocol will be distributed, the effective date, and how it can be revised.

Employers also must post a notice of the rights under the law in a visible place. For employees working remotely, the Guidelines provide that posting can be done by email or on a webpage that employees frequently access. If the workforce includes employees working remotely and at an office or site, the posting must be at the site and done electronically.

The Guidelines include a sample protocol that can be used by employers when adopting their own protocols.

It is essential that employers adopt a compliant policy and ensure its distribution to their workforce within the time frame provided. Please contact a Jackson Lewis attorney with any questions about the new law or on harassment policies, training for management and employees, and other preventive practices.

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