

Puerto Rico Expands Coverage of Sexual Harassment Law, Requires Employers to Adopt a Protocol

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October 3, 2022

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Puerto Rico has amended its sexual harassment law to expand coverage to interns and to require employers to adopt a protocol to investigate sexual harassment allegations.

Act 17-1988 prohibits sexual harassment and set forth penalties against employers and individuals that engage in the prohibited conduct. On September 28, 2022, the Governor of Puerto Rico signed into law Act 82-2022, which amends Act 17-1988 to expand its coverage and require employers to adopt a protocol.

Under the law, sexual harassment is:

- Any type of unwelcome sexual advances;
- Making sexual favors a condition of employment or the basis for employment decisions; or
- Subjecting an employee to a hostile work environment.

If employment opportunities or benefits are granted to one employee for submitting to sexual advances, other employees not so favored may also have a cause of action under the law.

With the amendment, not only employees and candidates of employment are protected by the statute, but also interns who provide services with or without pay.

The amendment, which entered into effect on September 28, 2022, requires employers to adopt and implement a protocol to manage sexual harassment allegations. Although not stated, the employer's workforce should be notified of the protocol. The Puerto Rico Department of Labor (PRDOL), in coordination with the Women's Solicitor Office, must provide technical assistance to employers and have the duty to verify compliance.

Under the amendment, employers can adopt a model protocol to be designed by the PRDOL. Oddly, the law does not provide a date by which the PRDOL must make available the model protocol.

If the model protocol is not adopted, then employers can design and adopt their own protocols. At a minimum, the protocol must provide the following:

1. A statement providing that sexual harassment is illegal;
2. Legal provisions under which the protocol is been adopted;
3. Its purpose, including zero tolerance policy;
4. Definitions;
5. Person in charge of handling sexual harassment allegations, duties of the person/position, description of the process to report complaints, including persons and contact information of the persons to whom the complaints should be sent;



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6. Who can file an internal complaint for sexual harassment, including the process to follow, which must allow for verbal, written, or anonymous complaints;
7. Measures to maintain confidentiality;
8. An anti-retaliation statement;
9. Examples of the prohibited conduct;
10. Process to designate the person who will investigate the complaint;
11. Provisional measures that can be adopted to protect the victim;
12. Other remedies available, including judicial and administrative, and instructions on how to contact these agencies;
13. Information about the federal and local provisions regarding sexual harassment; and
14. A form that could be used to report sexual harassment allegations.

Act 82-2022 also directs the PRDOL to create a special portal for employees to report to the PRDOL sexual harassment complaints.

It is essential that employers adopt a compliant protocol and ensure its distribution to their workforce. Please contact a Jackson Lewis attorney if you need assistance revising or preparing a protocol or if you have any questions about the new requirements.

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