

Employment-at-Will Comes to Puerto Rico?

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Puerto Rico’s Financial Oversight and Management Board and Governor Ricardo Rosselló have sent bills to the Puerto Rico legislature to repeal the Unjust Dismissal Act, Act No. 80 of May 30, 1976 (Act 80). If either bill is enacted, employers in Puerto Rico will no longer be required to have “just cause” to dismiss employees hired for an indefinite term.

Puerto Rico’s Unjust Dismissal Act

Puerto Rico is one of the few U.S. jurisdictions that does not recognize employment-at-will. Employers in Puerto Rico must have “just cause” for dismissal of any employee. Employers who are found in violation of Act 80 must pay a statutory severance for terminations without “just cause.”

Act 80 establishes six general categories of just cause dismissals. They relate to employee performance and conduct, as well as employer reorganizations and layoffs. For reductions in force, with some exceptions, Act 80 generally requires seniority as the selection criteria. Act 80 also provides for severance in transfers of ongoing businesses and establishes statutory probationary periods during which an employer is exempted from the just cause requirement, among others things.

To address Puerto Rico’s fiscal crisis, in 2016, President Barack Obama enacted the “Puerto Rico Oversight, Management, and Economic Stability Act” (known as “PROMESA”). PROMESA established the Oversight Board to assist the Government of Puerto Rico in managing its public finances. (For more on PROMESA, see our article, [Puerto Rico Does Not Have to Comply with DOL’s Final Rule Amending ‘White Collar’ Overtime Regulations, For Now.](#)) The Oversight Board has long-believed that Act 80 hinders economic development in Puerto Rico and recommended its repeal, among other austerity measures.

Senate Bill 919

On May 9, 2018, the Oversight Board presented Senate Bill 919 (SB 919) to establish a Puerto Rico minimum wage of \$7.50 an hour (conditioned upon the repeal of the local Christmas bonus law) and to reduce the accrual vacation (up to 15 days) and sick leave (12 days) to seven days each. (For more on the Christmas bonus law, see our article, [Puerto Rico Labor Department Updates Regulations on Payment of Annual \(Christmas\) Bonus.](#)) Staggered increases of the minimum wage are dependent on an increase in the local labor participation rate.

SB 919 is pending before the Puerto Rico Senate’s Federal Relations Committee for public hearings, but it does not have the general support of the Legislature or Governor Rosselló.

Senate Bill 1101

After conferring with the Oversight Board, Governor Rosselló presented Senate Bill 1101 (SB 1101) on May 29, 2018. In its original form, SB 1101 would repeal Act 80 for all employees effective January 1, 2019, but would not eliminate the Christmas bonus or reduce statutory vacation and sick leave benefits for eligible employees.

The Senate approved SB 1101, but with amendments to provide that it would apply only to employees recruited after its enactment. That is, Act 80's just cause requirement would continue to apply to dismissal of employees hired before the enactment of SB 1101. The bill is before the House of Representatives, which is holding public hearings. The Oversight Board has stated publicly that it opposes prospective application of the Act 80 repeal.

The San Juan office of Jackson Lewis will continue to monitor SB 919 and SB 1101 and will provide updates on any developments. Please contact us if you have any questions.

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