

(H. B. 454)

(No. 8-2017)

(Approved February 4, 2017)

AN ACT

To adopt the “Government of Puerto Rico Human Resources Administration and Transformation Act” and, in turn, designate the Government as a Sole Employer and establish the concept of Mobility; repeal Act No. 184-2004, as amended, known as the “Public Service Human Resources Administration Act of the Commonwealth of Puerto Rico”; amend Act No. 15 of April 14, 1931, as amended, known as the “Organic Act of the Department of Labor and Human Resources of Puerto Rico,” in order to add a new paragraph (23) to subsection (h) of Section 3 and amend Section 10; and for other related purposes.

STATEMENT OF MOTIVES

The Government of Puerto Rico began structuring the Human Resources Administration System in 1907. The enactment of Act No. 345 on May 12, 1947, was considered, at the time, the most important effort in the historical evaluation of public administration. Act No. 5, known as the “Public Service Personnel Act,” was approved on October 14, 1975, seeking to elevate the Merit System Principles to constitutional rank. The personnel Administration System adhered to Act No. 5 for approximately twenty-nine (29) years.

Act No. 184, as amended, known as the “Public Service Human Resources Administration Act of the Commonwealth of Puerto Rico” was approved on August 3, 2004, to reform the Human Resources Administration System in the Government of Puerto Rico. Ever since agencies became individual administrators, we have been witnessing the disproportional growth of the government apparatus, as well as the decentralization, excessive bureaucracy, and duplication of the

services offered by the agencies to the People of Puerto Rico, thus increasing government spending and rendering it more burdensome for the people to receive such services.

We have observed the Government's excessive spending in the administration of agencies, as well as the disparity between the wages earned by government officials and their counterparts in other agencies. At present, 118 executive agencies offer 340 services at an approximate cost of \$21,800 million. Given this situation, we must reevaluate the services being offered currently in order to determine which services may be consolidated, delegated to the private sector, or simply eliminated because they are no longer necessary. In this sense, the mobility mechanism may guarantee the rendering of services to our citizens without resorting to the dismissal of government officials.

This Legislative Assembly recognizes the efforts that have been made to structure and update the public administration system. However, the current reality and the fiscal crisis that Puerto Rico has been undergoing requires us to take action responsibly. After conducting a thorough analysis of several documents and studies made by experts in the field of Human Resources Administration within the Government of Puerto Rico, and upon studying the best practices of other jurisdictions, we have concluded that the time has come to conform the Human Resources Administration System to the historic and fiscal realities of the Island and the technological advances of the 21st century.

This requires us to consider the Public Administration System as a whole, and observe the merit system as a pillar of public officials' rights, and Act No. 45-1998, as amended, known as the "Puerto Rico Public Service Labor Relation Act," while providing the Government with the necessary flexibility to satisfy immediate needs when rendering essential services to our people.

Our Government pursues an administration system that promotes the best public administration practices, where the employees of the agencies and instrumentalities of the Central Government are considered employees of the government as a Sole Employer rather than the employees of their respective agencies, and that restores the transparency and credibility of the human resources administration system and the services offered in the eyes of government employees and the People of Puerto Rico.

In the Plan for Puerto Rico, we made a commitment to guarantee the continuity of the jobs of every government career employee. With this measure, we seek to create a new Government that is fair, sensible, efficient, effective, trustworthy, and swift in the public administration. In order to achieve the modernization of the government structure, we further committed to reformulate the current bureaucratic model and reduce spending in government structures by eliminating redundancy, facilitating employee transfers, merging several agencies, decentralizing services, and using technology to streamline processes and interconnect all agencies and public corporations.

With this measure, the Government becomes a Sole Employer and employees shall become employees thereof rather than of their different entities. This shall allow the Government to better use its human resources through mobility wherever a pressing need arises, without requiring the employee to resign from the position he holds and to start over in another government jurisdiction, and eventually even outside of the government's jurisdiction. It is necessary to foster mobility to provide continuity to the public services that the different government and non-governmental components may offer and to make internal recruitment a priority when filling vacant positions. We want to guarantee the continuity of the jobs of every government official holding a career position. Through mobility we seek to strike a balance between the workforce and the rendering of public services.

The Sole Employer takes into account the employee mobility and guarantees the full development of the human resources, ensuring their personal and professional growth within the Government, while safeguarding the jobs of our public officials. Furthermore, it honors the collective bargaining agreements and the employer-employee relations in effect. In this manner, we shall efficiently allocate the Government's human resources and create a swift government structure. We are convinced that the implementation of this initiative shall bring about a culture of change based on a continuous evaluation of needs, thus helping government officials to make adjustments and adaptations as the present fiscal crisis and future challenges warrant.

Furthermore, we must evaluate that, at present, public spending on employee training is estimated to be over \$400 million annually that are invested in training activities with questionable or inconsistent results. It is simply unsustainable for the Government of Puerto Rico to be spending this amount considering the fiscal crisis it is currently facing. Moreover, the University of Puerto Rico has stated that it lacks sufficient resources to operate and improve its services, to the extent that it has even considered the possibility of closing down campuses. In view of this situation, partnerships shall be formed between the University of Puerto Rico (UPR) and other universities to provide academic and technical growth opportunities to government employees. In this manner, the Government may save millions of dollars currently used for employee training and allocate a portion thereof as well as federal funds to said university institution, thus maximizing the efforts geared toward permanently achieving the professionalization of our employees.

Moreover, according to data provided by the Department of the Treasury, Puerto Rico is suffering a 14.6%-economic contraction in the Gross State Product (actual GSP) with a forecast of an additional 3% contraction in the next two (2) years. For years, the Government has operated with a structural deficit that has

been financed with bond issues and loans from the Government Development Bank. The Government has been lacking liquidity for over a year, and the tax refunds, the payments to contractors, the money of pensioners, and intra-governmental loans have been used as a substitute for sources of liquidity.

Access to the Government's financial information as well as the making of adequate predictions have been affected by a divided government structure and obsolete government systems. Revenues are constantly overestimated and continue to decrease despite the imposition of many new taxes. The Government Development Bank has failed to meet its obligations to bondholders since May 1st, 2016, and is no longer fulfilling its duty to provide liquidity. Puerto Rico's obligations portfolio amounts to \$66 billion and includes 18 different issuers whose financial situation is precarious. Debt servicing amounts to an average \$3.5 billion and uses more than one-fourth of the sources of income. Retirement systems are practically insolvent with a \$50 billion debt. All of the foregoing is worsened by a decrease in population caused by the emigration wave that began in 2006 and that is becoming one of the challenges to overcome on our path to recovery.

Taking into account this dismal state of affairs, it is time to leave behind the philosophy of "*me vale*" [I couldn't care less], roll up our sleeves and work hard for the wellbeing of Puerto Rico. It is our duty to build a new Puerto Rico and to set in motion an administration that does not improvise on the implementation of public policy nor manages the Island's finances on a year-to-year basis, but rather strikes a balance between the Government's income and expenses with a long-term goal. Our commitment under the Plan for Puerto Rico is to address these situations responsibly and restore the Island's credibility. We must look to the future and foresee the challenges ahead, rather than simply survive the next crisis. The leaders and officials of the Government of Puerto Rico should concentrate on balancing income and expenditures, reducing the level of government intervention in Puerto

Rico's economy, and creating a competitive business environment governed by good faith, so that investors as well as local and foreign business people may lead the way towards an economic recovery.

In light of the foregoing, the three Branches of the United States Government, in an unprecedented action, have ratified the colonial status of the Commonwealth of Puerto Rico. The policies of the past led the United States Congress to adopt the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), delegating to a Financial Oversight Board (FOB) the power to work with the Government of Puerto Rico to help Puerto Rico overcome the crisis it is currently facing. Our commitment is to work hand in hand with the FOB to push Puerto Rico forward. Thus, on December 20th, 2016, the Financial Oversight Board requested that Puerto Rico's priorities include a plan and a commitment to implement significant changes directed to:

- Restoring economic growth and creating a more competitive economy. In the short-term, the labor market and social programs should be liberalized, energy costs should be lowered, taxation should be rationalized and optimized, and the permit process should be improved to promote investment.
- Restructuring the Government to achieve balanced budgets, while preserving essential services for the People of Puerto Rico.
- Restructuring the pension systems in accordance with PROMESA and reestablishing access to capital markets.

The FOB has required us to restructure the manner in which the government provides services. This compels us to achieve reductions in government spending to be able to continue providing the essential services that our people need. This statute requires us to employ innovative methods to address our current deficit. Failure to do so would be detrimental to government employees, because the Board

established under PROMESA would have the freedom to act, and this could entail mass government employee layoffs.

Therefore, it is necessary to make unprecedented changes to render the government more efficient and fiscally responsible. In fact, the Plan for Puerto Rico endorsed by the People on November 8, 2016, includes measures to achieve fiscal responsibility and develop the Island's economy. Specifically, in pages 79 to 81, we made a commitment to transform the Government into a Sole Employer.

Honoring said commitment and meeting the requirements of the FOB, the purpose of this Act is to reform, transform, and render the Government more efficient in order to improve the quality of the essential services provided, at a much lower cost. Through the mobility mechanism, this legislation addresses and empowers the Government to adopt nontraditional criteria for service rendering in the government sector, as an alternative for employee retention and a better use of resources in the Government. Likewise, this statute sets forth its jurisdiction and scope, and guarantees the retention of thousands of employees who would be dismissed from public service should we persist in keeping the current form of administration.

In light of the foregoing, by virtue of the State's police power and pursuant to Article II, Sections 18-19, and Article VI, Sections 7-8 of the Constitution of Puerto Rico, a state of economic emergency and serious fiscal crisis is hereby declared in Puerto Rico, which compels us to approve this Act. Thus, we exercise said police power, which is defined by the Supreme Court of Puerto Rico as: "that power inherent to the State which is used by the Legislative Assembly to prohibit and regulate certain activities for the purpose of promoting and safeguarding the public peace, morals, health, and general welfare of the community, which power can be delegated to the municipalities." (Translation supplied) *Domínguez Castro v. E.L.A.*, 178 D.P.R. 1 (2010), p. 36.

Likewise, our Highest Court recently expressed itself regarding the use of the State's police power in times of crisis. In this regard, said Court stated that the Statement of Motives of Act No. 7-2009, as amended, known as the "Special Act to Declare a State of Fiscal Emergency and to Establish a Comprehensive Fiscal Stabilization Plan to Salvage the Credit of Puerto Rico," made clear the impending nature of the fiscal crisis declared therein. The Court expressed that the measures taken thereunder were necessary and reasonable to advance the compelling government interest sought by Act No. 7-2009, that is, to prevent said crisis. *See, Domínguez-Castro v. E.L.A., supra*, pp. 88-89. Likewise, it recognized that "our precarious economy is a reality that of necessity carries weight on the definition of the scope of governmental actions under the police power" and that, in exercising said power, "the Legislative Assembly is fully empowered to approve economic regulations geared towards promoting the welfare of the community." (Translation supplied) *Id.*, p. 37.

Subsequently, the Supreme Court upheld the validity of Act No. 3-2013 on the Retirement System for the Employees of the Government of the Commonwealth of Puerto Rico in *Trinidad-Hernández v. E.L.A.*, 188 D.P.R. 828 (2013), since it understood that the Legislature had exercised the State's police power to halt the insolvency of the Retirement System for the Employees of the Government. The Supreme Court argued that, "the statement of motives [...] shows that the measures adopted are necessary and reasonable to properly address the financial crisis that threatens the System's actuarial solvency." It added that, "these measures certainly are in the public interest because they seek to preserve the financial solvency of the Judiciary Retirement System while benefiting all of its members and addressing the fiscal crisis that the Island is undergoing, thus the welfare of the People of Puerto Rico will be safeguarded." *See, Trinidad-Hernández, supra*, p. 837. The Court concluded that it is a constitutional rule, "because, even if it substantially impairs some of the contractual obligations of the

System's participants, the measures implemented are reasonable and necessary to safeguard the actuarial solvency of the Retirement System, and there are no less burdensome measures to attain this goal." *Id.*, p. 839.

Recently, in *Asociación de Maestros de Puerto Rico v. Sistema de Retiro de Maestros de Puerto Rico*, 190 D.P.R. 854 (2014), the Supreme Court emphasized that the measures approved shall be deemed to be constitutional; provided, that they are reasonable and necessary "to further the actuarial solvency and that there are no less burdensome measures to attain this goal." *Id.*, p. 8.

Based on this legal framework, this Legislative Assembly believes that the measures taken in this Act are reasonable and necessary to properly address the fiscal, economic, and budgetary crisis that Puerto Rico is undergoing. Designating the Government as a Sole Employer constitutes the only option we have to allow government employees to keep their jobs. This measure is promulgated pursuant to the power of this Legislative Assembly to approve and promulgate economic legislation aimed at promoting the wellbeing of the Puerto Rican community.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Article 1.- Title.-

This Act shall be known as the "Government of Puerto Rico Human Resources Administration and Transformation Act."

Article 2.- Declaration of Public Policy.-

Section 2.1.- Contents.

The public policy of the Government of Puerto Rico in the Administration the Human Resources of the agencies covered under this Act, shall be the following:

1. To designate the Government as a Sole Employer.
2. To centralize the administration of the human resources of all agencies and instrumentalities of the Central Government.

3. That government employees be employees of the Central Government rather than of the agencies.

4. To unify the classification and pay plans in the central administration, where the employees of different agencies and instrumentalities of the Government of Puerto Rico with the same or similar functions be classified under the classification system directed hereunder.

5. That every employee in the Human Resources System of the Government of Puerto Rico be selected, trained, promoted, or retained in his position on the basis of merit, knowledge, and capability, without being discriminated against because of race, sex, origin, social class, political or religious beliefs, age, color, birth, sexual orientation, gender identity, for being a victim, or being perceived to be a victim of domestic violence, sexual assault, or stalking, or because of his veteran status, or any physical or mental disability.

6. To reiterate that the public service demands technical and professional capabilities, as well as an ethical attitude proven by honesty, self-discipline, respect for human dignity, sensibility, and dedication to the general welfare.

7. To recognize that government employees are the most important asset of the Government of Puerto Rico.

8. To reform the Government's Human Resources Administration System in order to render it compatible with the employees' self-organization and collective bargaining.

9. To establish a uniform performance evaluation system for government employees.

10. To establish an electronic record of the results of evaluations and compliance.

11. To strengthen the human capital development plans aimed at the creation of modern methods using online learning platforms.

12. To broaden the offering of services for the development of training modules through collaboration agreements with public and private universities accredited in Puerto Rico or any state of the United States; for the purpose of training government employees and provide the citizens in general with service excellence in accordance with the best public administration practices.

13. Designating the Central Government as a Sole Employer shall guarantee the best use of the services offered by government employees, thus allowing the continuity of services rendered by the Government to the people through the mobility of government employees to agencies, public corporations, municipalities and Participatory Public-Private Partnerships (PPP+P), among others.

14. To promote internal recruitment to fill vacancies.

15. To recognize the right of government employees to self-organization and the right to bargain collectively protected under Act No. 45-1998.

Section 2.2.- Objectives.

The implementation of the public policy set forth herein seeks to achieve transparency and improve productivity, efficiency, motivation, and commitment in the rendering of public services to the People of Puerto Rico. To attain these objectives, it is necessary:

1. To achieve better public administration practices as a main commitment.

2. To ensure that the development of government employees in Puerto Rico be on a par with that of the world's most developed countries, with the highest values of justice and the absolute enjoyment of the rights set forth in the Bill of Rights of the Constitution of Puerto Rico.

3. To establish a position classification system geared toward reinforcing the merit system and equality among government employees, regardless of the agency in which they are employed.

4. To establish and maintain centralized within the Government of Puerto Rico Human Resources Administration and Transformation Office, through the use of technology, evidence of all personnel transactions, whether appointments, promotions, transfers, demotions, mobility, and application of disciplinary measures.

5. That every government employee of the Central Government and the instrumentalities thereof shall be compensated pursuant to the merit system and in accordance with the salary established for the position he holds.

Section 3.- Definitions.

The following words and phrases shall have the meaning stated below:

(1) Disciplinary Action.- A sanction recommended by the supervisor of the employee and imposed by the appointing authority. A sanction thus imposed shall be filed in the employee's personnel folder. The sanctions to be imposed shall consist of written reprimands, oral admonitions, suspensions without pay, or dismissals.

(2) Agency.- A work unit attached to the Central Government that carries out the set of functions and includes offices and positions all of which constitute the entire jurisdiction of an appointing authority.

(3) Salary Adjustments.- Modifications made to the base salary of an employee.

(4) Promotion.- Constitutes the change of an employee from a position of one class to a position of another class with the functions and base salary of a higher level.

(5) Raise within Salary Scale.- A change in the wages of an employee to a higher rate within the salary scale assigned to the class where his position belongs; provided, that the financial situation so allows.

(6) Merit Pay.- A raise in pay granted to an employee based on an evaluation of the employee's performance during the twelve (12)-month period preceding the date of the evaluation; provided, that the financial situation so allows.

(7) Appointing Authority.- All heads of agency with the legal authority to make appointments to positions in the Government of Puerto Rico.

(8) Scholarship.- The financial aid awarded to an employee for the purpose of pursuing higher education at a university or institution accredited in Puerto Rico or any state of the United States or other jurisdictions, for the purpose of furthering his professional or technical education and assisting the employee in performing the duties of the position to which he was appointed within the Government of Puerto Rico.

(9) Bonus.- A nonrecurring compensation, which has no impact on the base salary of the employee.

(10) Certification of Eligibles.- The names of the candidates who have standing on the centralized register of eligible, or by descending order according to scores and contingent upon their acceptance of the employment conditions. These candidates shall be referred for interview with the appointing authority where a vacancy arises.

(11) Selective Certification.- The special qualifications that a candidate must have to fill a position.

(12) Position Class.- A group of positions whose duties, type of work, authority, and responsibility are the same or so similar that they can be included under the same title or number; that establishes the same minimum requirements for the candidates for the position or the incumbents thereof; for which the same aptitude tests are used for selection purposes; and that are included within the same salary scale.

(13) Position Classification.- The grouping of positions into classes that have the same or similar functions, taking into account their duties and responsibilities.

(14) Commission.- Shall mean the Public Service Appeals Commission.

(15) Competence.- Education, knowledge or skill acquired by an employee which allows him to perform his functions more efficiently, and in compliance with the goals and objectives of his work unit.

(16) Job Posting.- An electronic advertisement to be published by the Government of Puerto Rico Human Resources Administration and Transformation Office announcing vacancies that shall be open or available for a certain period of time in public agencies or instrumentalities and that shall be filled with internal or external personnel. Said posting shall include the minimum requirements, the type of examination, as well as any necessary information to disclose and/or advertise the employment opportunity.

(17) Demotion.- The change of an employee from a position of one class to a position of another class with the functions and the base salary of a lower level.

(18) Differential.- A special and additional compensation, apart from the salary, that may be granted when extraordinary, nonpermanent conditions arise or when an employee is appointed to serve in an acting capacity; provided, that the financial situation so allows.

(19) Director.- The person in charge of the Government of Puerto Rico Human Resources Administration and Transformation Office.

(20) Eligible.- A person certified to hold public office or position.

(21) Sole Employer.- Only for purposes of this Act, it means the Government as the employer of all the government employees of the public agencies and instrumentalities, except as otherwise provided in this Act.

(22) Salary Scale.- The range of pay that provides a minimum rate, a maximum rate, and a series of midpoint levels in order to compensate the level of work entailed in a particular position class, and the adequate and progressive amount and quality of work performed by the employees at a particular position class.

(23) Class Specification.- A general description outlining the essential characteristics of the main work of one or more positions, including the nature, level of job complexity, responsibility, and authority, if any, as well as the minimum requirements that candidates must meet to hold such position.

(24) Salary or Wage Structure.- The compensation structure that includes the salary scales to be used when assigning positions within the Centralized Classification System of the Government of Puerto Rico Human Resources Administration and Transformation Office.

(25) Examination.- Written, oral, or physical tests, or performance exams, as well as evaluations based on experience and education, or other objective criteria used to determine whether a person shall be certified for a register of eligibles.

(26) Salary Scale Extension.- The proportional extension of the range of pay from the maximum rate thereof.

(27) Public Function.- An inherent activity carried out while holding an office or performing any job or position within the public service, whether for pay or not, permanently or temporarily, by virtue of any kind of appointment to, contract with, or designation for the Legislative, Executive, or Judicial Branch of the Government of Puerto Rico, as well as for any of its agencies, departments, subdivisions, instrumentalities, public corporations, or municipalities.

(28) Acting Appointment.- The temporary services rendered by an employee in a career or trust position whose classification is higher than that of the position to which he was officially appointed, by virtue of a written designation

from the appointing authority or its authorized representative and in fulfillment of all other applicable conditions.

(29) Disciplinary Measure.- An oral admonition or written warning given by the supervisor to the employee for violations or repeat violations of the rules of conduct established, but not filed in the employee's personnel folder.

(30) Mobility.- A process to flexibly implement the Government's initiatives by identifying the necessary human resources that allow for the adequate rendering and continuity of the services offered to the citizenry and that, in turn, promote the best use and retention of human resources.

(31) Office.- The Government of Puerto Rico Human Resources Administration and Transformation Office.

(32) Probationary Period.- A period of time during which an employee, upon being appointed to a position, undergoes a training and trial period and is subject to evaluations of the performance of his duties and functions. During said period, the employee does not acquire any right over the position.

(33) Position Classification or Evaluation Plan.- A centralized and standardized job classification system to be administered by the Government of Puerto Rico Human Resources Administration and Transformation Office whereby the same or similar functions are grouped under the same position.

(34) Pay Plans.- A salary scale system established by regulations to compensate government employees in career and trust positions.

(35) Merit System.- Means that all government employees shall be recruited, selected, trained, promoted, transferred, demoted, and retained on the basis of their capabilities and performance of the duties inherent to their position and without being discriminated against on the basis of race, color, sex, birth, age, sexual orientation, gender identity, social condition or origin, political or religious beliefs, veteran status, actual or perceived status as a victim of domestic violence, sexual assault or stalking, or physical or mental disability.

(36) **Reclassification.**- The act of classifying or evaluating a position that has been previously classified or evaluated. Positions may be reclassified into a higher, the same, or a lower level.

(37) **Register of Eligibles.**- A centralized and numbered list of the names of persons who have been previously certified and who are eligible for appointment. The list shall be arranged by descending test scores.

(38) **Rehire.**- The reinstatement or return to service, through a certification, of any regular career employee, after separation from service for any of the following causes:

- (a) A disability which no longer exists.
- (b) Layoff due to the elimination of positions.
- (c) Resignation from a career position held with a regular status.
- (d) Separation from a position of trust without having exercised the right to reinstatement.

(39) **Transfer.**- The change of an employee from one position to another within the same class, or from one position to another having the same or similar functions and a base salary equal or similar to the position held at the time of the transfer.

Article 4.- Government of Puerto Rico Human Resources Administration and Transformation.-

Section 4.1.- Office.

The “Government of Puerto Rico Human Resources Administration and Transformation Office” is hereby created.

Section 4.2.- Appointment of the Director.

The Office shall be directed by a Director who shall be appointed by the Governor of Puerto Rico with the advice and consent of the Senate. The person thus appointed shall have knowledge and experience in the administration of human resources and labor affairs.

Section 4.3.- Powers and Duties of the Office and the Director.

In addition to any other powers and duties conferred under this Act, the Office and the Director shall have the following:

1. Powers and Duties of the Director:
 - a. To appoint the Office's staff pursuant to the provisions of this Act and hire any and all services required for the operations thereof.
 - b. To supervise the Human Resources administration and transformation in accordance with the public policy set forth in this Act.
 - c. To approve, repeal, and promulgate rules and directives, in accordance with the provisions of Act No. 170-1988, as amended, known as the "Uniform Administrative Procedures Act," which shall govern the relations between the Office and public instrumentalities, agencies, and municipalities.
 - d. To approve, promulgate, amend, or repeal regulations as are necessary for the administration of this Act.
 - e. To delegate any power or duty conferred to him except for the authority to adopt, repeal, or approve regulations.
 - f. To advise the Governor and the Legislative Assembly on all that pertains to labor relations and the administration of human resources in the government.
 - g. To perform any other inherent duties as are necessary for the proper administration of the Government of Puerto Rico Human Resources Administration and Transformation Office.
 - h. To implement the public policy of the Central Government as a Sole Employer in every public agency and instrumentality of the Government of Puerto Rico.

2. Powers and Duties of the Office:

a. To centralize the duties of the Government of Puerto Rico Human Resources Administration and Transformation Office that are compatible with the provisions of this Act.

b. To ensure and guarantee transparency in the administration of the merit system, electronically publishing the recruitment, selection, promotion, transfer, demotions, position classification, and retention of the employees of public agencies and instrumentalities, as these are defined in this Act.

c. To implement the operations of the Government of Puerto Rico Human Resources Administration and Transformation System.

d. To contribute to the reengineering and strengthening of the services offered by the Government of Puerto Rico, broadening the offer of educational services for government employees through collaboration agreements with public and private universities accredited in Puerto Rico, in any state of the United States, or other jurisdictions.

e. To provide advice on labor-related matters to the agencies of the Executive Branch governed by “Reorganization Plan of the Puerto Rico General Services Administration of 2011,” in all that pertains to the procedures for election and certification of labor unions; the negotiation and administration of collective bargaining agreements; and any other labor-related areas of the agencies. While discharging its advisory duties relating to collective bargaining pursuant to Act No. 45-1998, the Office shall coordinate and supervise the creation and operations of a Bargaining Committee, composed of its staff as well as the staff designated by the Office of Management and Budget. The Office shall conduct comparative studies on collective bargaining agreements and shall provide training in the field of labor to those agencies that so request.

f. To establish a follow-up and audit plan for the human resources administration program, the application of the merit system and compensation methods in agencies to ensure faithful compliance with the provisions of this Act. Likewise, municipalities shall be audited pursuant to the “Autonomous Municipalities Act”. In the case of agencies and instrumentalities, the audit’s results and findings shall be referred to the head of agency, who shall file his response thereto within five (5) business days, otherwise the report shall be referred to the Office of the Comptroller of Puerto Rico, the Office of the Governor, and the Legislative Assembly. In the case of municipalities, said report shall also be referred to the Office of the Commissioner of Municipal Affairs (OCAM, Spanish acronym).

g. To contract, purchase, or acquire any materials, supplies, equipment, parts, or services deemed to be necessary, subject to the regulations adopted for these purposes, and subject to the general provisions of the “General Services Administration Act”. The regulations shall contain rules as appropriate to ensure that funds are used consistently with the public interest.

h. To accept donations or funds on account of appropriations, as well as materials, properties or other similar benefits from any private person or institution or from the Federal Government and state governments, or from any instrumentality or agency thereof.

i. To enter into compacts, agreements, or contracts as are necessary or convenient for the fulfillment of the purposes of this Act, with entities of the Federal Government, state and municipal governments, agencies of the Government of Puerto Rico, as well as individuals and institutions, whether for-profit or not, among others.

j. To require all government components from the three Government Branches to provide the information needed to develop an Information System on the status of the human resources administration system

and the composition of the workforce of the public sector and keep such system up to date.

k. To administer the Public Service occupation and class directory.

l. To regulate and implement provisions relating to the prohibition against personnel transactions during the electoral prohibition period.

m. To manage the Central Job Posting Register for Recruitment, Promotion, and Training in the Government and keep it up to date. Likewise, it shall keep an online register; provided, that public agencies and instrumentalities as well as public corporations, except for the Office of the Governor, the Municipalities, the Supreme Court, the Office of the Chief Justice, the Office of the Court Administrator, the Legislative Assembly, and the Municipal Legislatures, carry out their duty of forwarding, on a monthly basis, any recruitment and promotion opportunities to the Government of Puerto Rico Human Resources Administration and Transformation Office. The Office shall call for interview candidates from the list maintained by said Office. All applications for training shall be forwarded to the Government of Puerto Rico Human Resources Administration and Transformation Office within at least thirty (30) days before the training's date. The Office shall evaluate the need and convenience of the training and shall approve or deny the same.

n. To establish and create a Register of Certified and Authorized Consultants to devise Position Classification and Pay Plans as well as draft Personnel Regulations as are necessary for the Human Resources Administration.

o. To centralize the personnel administration system, eliminating all the public agencies and instrumentalities of the Government of Puerto Rico from the individual administrator's category.

p. To establish a Uniform Classification System consolidating equal or similar duties.

q. To enable an employee information system for the purpose of expediting and facilitating online personnel transactions.

r. To create a structured interview system to be used by all Government agencies and instrumentalities, which shall be made available to be used by all other agencies, instrumentalities, and municipalities.

s. To maintain an automated performance evaluation register and keep it up to date.

t. To provide agencies with advice, so that the supervisors and the managerial staff thereof are well prepared and trained to work in an environment with union workers.

Both the Director and the Office shall carry out all those duties assigned to them by special laws to the Training and Labor Affairs Advisory and Human Resources Administration Office (OCALARH, Spanish acronym) that have not been repealed by this Act. Likewise, they shall perform the specific duties assigned, as well as any inherent duties as are necessary or convenient to attain the purposes of this Act.

Article 5.- Government Human Resources Administration System.-

Section 5.1.- Creation.

The Government of Puerto Rico Human Resources Administration and Transformation System is hereby created entirely consistent with collective bargaining, for the main purpose of applying, reinforcing, evaluating, and upholding the merit system in the public service.

This system shall be administered by the Government of Puerto Rico Human Resources Administration and Transformation Office and all public agencies and instrumentalities of the Government of Puerto Rico shall be part thereof as Sole Employer, except as otherwise provided by law.

Section 5.2.- Exclusions.

The provisions of this Act shall not apply to the following government agencies and instrumentalities:

1. Legislative Branch.
2. Judicial Branch.

In the event Act No. 45-1998, as amended, known as the “Puerto Rico Public Service Labor Relation Act,” applies to the employees of the Judicial Branch, the categories of auxiliary bailiffs and court stenographers shall be excluded.

3. Public or public-private corporations or instrumentalities that operate as private businesses or companies.
4. University of Puerto Rico.
5. Office of the Governor.
6. Puerto Rico State Elections Commission.
7. Puerto Rico Government Ethics Office.
8. The Municipalities.

The mobility mechanism shall apply to public or public-private corporations, agencies that operate as private companies or businesses such as Participatory Public-Private Partnerships (PPP+P), and to the municipalities, which shall adopt personnel Regulations incorporating the merit system for the administration of their human resources, as provided in this Act, and submit a copy thereof to the Office. The Office is hereby empowered to conduct compliance audits of the essential areas of the merit system.

Article 6.- Public Service Human Resources Administration.-

The Government of Puerto Rico Human Resources Administration and Transformation Office shall ensure that all agencies and instrumentalities under the Central Government offer qualified employees an opportunity to compete in the recruitment and selection process, taking into account the following: academic,

professional, and career achievements, knowledge, capability, abilities, skills, and work ethics; and without discrimination because of race, color, sex, birth, age, sexual orientation, gender identity, social origin or status, political or religious beliefs, because of his status as an actual or perceived victim of domestic violence, sexual assault, stalking, veteran status, or any physical or mental disability.

Section 6.1.- Essential Areas of the Merit System.

The following are the Essential Areas of the Merit System, which shall apply to the Public Service Human Resources Administration and Transformation System established hereunder, except for Appointments to Positions of Trust:

1. Position Classification;
2. Recruitment and Selection;
3. Promotions, Transfers, and Demotions;
4. Training; and
5. Retention.

Section 6.2.- Provisions on Position Classification.

1. By virtue of this Act, the Government of Puerto Rico Human Resources Administration and Transformation Office is hereby directed to begin forthwith the process of centralizing and unifying the classification plans of the public agencies and instrumentalities attached to the Central Government.

2. A written description of each position with the same or similar duties shall be made. The job description shall identify basic, essential, general, and marginal functions. It shall also include the purpose of the function inherent to the position as to allow the Government of Puerto Rico to carry out its essential functions through each agency or instrumentality.

3. Positions shall be grouped into classes taking into account equal or similar elements of the position, in order to impose the same requirements and apply the same selection criteria to the incumbents thereof, so that they may receive the same pay, regardless of the agency where they work.

4. The Office shall maintain a written description of each class or its equivalent. Such description shall contain the basic and common elements of the positions included under said position class, such as the levels of responsibility, authority, and complexity of the group of positions; education, experience, knowledge, abilities, and minimum skills required, and the duration of the probationary period. Each class shall be assigned an official title which shall describe the nature and level of the work entailed, which shall be used for personnel and budget transactions.

5. A copy of the job description of the position held shall be given to the employee.

6. The classification plans of career positions shall be kept separate from those of positions of trust.

7. Every position must be classified under the appropriate career or trust position classification or evaluation plan. No person may be appointed to a position other than those classified under any of the classification plans. Noncompliance with the foregoing shall render the action in question void.

8. The classes included in the classification plans shall be grouped on the basis of an occupational or professional scheme, and said scheme shall be an integral part of the position classification or evaluation plans.

Section 6.3.- Recruitment and Selection Provisions.

When recruiting personnel, the Government as Sole Employer shall provide qualified individuals with the opportunity to compete in its recruitment and selection process, taking into account the following: academic, professional, and career achievements, knowledge, capability, abilities, skills, work ethics, and without discrimination because of race, color, sex, birth, age, sexual orientation, gender identity, social origin or status, political or religious beliefs, because of his status as an actual or perceived victim of domestic violence, sexual assault, stalking, veteran status, or any physical or mental disability. However, while the

fiscal crisis in the Government of Puerto Rico continues, internal recruitment shall be encouraged to fill vacancies. If the Government lacks the human resources to carry out duties, then it shall resort to external recruitment.

1. General Conditions.- Any candidate interested in entering public service shall meet the following general conditions:

- a. Be a United States citizen or a legal alien authorized to work pursuant to the applicable legislation;
- b. Be physically and mentally fit to perform the essential duties of the position;
- c. Comply with the applicable provisions of the “Internal Revenue Code,” as amended, concerning the filing of income tax returns within the five (5) years preceding the job application;
- d. Have not been found guilty of dishonorable conduct;
- e. Have not been convicted of a felony or of any offense involving moral turpitude;
- f. Not make use of controlled substances unlawfully;
- g. Not being a habitual and excessive user of alcoholic beverages;
- h. Have not been removed from public service or convicted of the felonies or misdemeanors listed in Section 6.8(3) of this Act within the jurisdiction of Puerto Rico, the federal jurisdiction or any of the states of the United States of America.

The conditions identified in paragraphs (d) through (h) shall not apply when the candidate has been habilitated by the Department of Labor and Human Resources to hold a position in the public service.

2. Minimum Requirements.- Any person who shall hold a position in the government, whether by original appointment or by any other personnel action, shall meet the minimum education and experience requirements established for the corresponding position class.

3. Job Postings, Disclosure, Probationary Period.- The following general provisions shall govern employee recruitment and selection for regular career positions:

a. Recruitment shall be carried out through a process whereby candidates compete under equal conditions.

b. Job Postings.- Job postings shall include the recruitment rules of each position class, which shall be geared toward attracting the best available resources to the Government. Job postings shall include, but shall not be limited to, the title and number of the position class, nature of the job, salary, the requirement to pass an exam or exams, when applicable, as well as the minimum education and/or experience requirements that the candidates for the position must meet. Minimum education and/or experience requirements shall, in turn, conform to that which is established in the position classification plans or the method used to evaluate positions. Job postings shall establish the kind of competition authorized for each class stating whether the competition shall be limited to employees of the agency in question, employees of the agencies covered under this Act, or open to the general public.

Job postings shall also include the criterion or criteria to be used to sort the names of eligibles in the corresponding registers, such as: grade point average; points obtained in the licensure examination, exam, or group interview; and points awarded when evaluating education and/or experience in addition to that established as minimum requirement or a combination thereof.

Job postings shall also include, where appropriate, aspects such as: exam passing grades; evaluation criteria used in interviews and evaluations of education and/or experience; and relative values given to each criterion used to sort the names in the registers when using more than one criterion. Said job postings shall be reviewed periodically so that they may reflect the changes in the job market and other conditions.

c. Publication.- Job postings shall be posted on the webpage of the Government and disseminated through the most appropriate media for each case, so that they may reach the sources of resources. If the job opportunity announcement establishes a cut-off date for filing applications, it shall be published within at least ten (10) business days before such date. The different media or the medium to be used for dissemination and the cut-off date for receiving applications shall be subject to criteria such as: degree of specialization of the position class, job market, the number of positions to be filled, the duty station, and the type of competition. Each job opportunity announcement shall indicate the title of the position class, the nature of the work, the minimum requirements, the salary scale, the cut-off date for filing applications, and any other necessary information such as the type of competition, the type of exam, and/or the criteria for evaluating or sorting names in the register of eligibles. The Office shall regulate the publication of job postings on the webpage and shall prescribe by regulations that any recruitment which fails to comply with these provisions shall be void.

The Office, upon agreement with the agencies excluded from the personnel system, including the Office of the Governor, the Municipalities, the Supreme Court, the Office of the Chief Justice, the Office of the Court Administrator, the Legislative Assembly, the Municipal Legislatures, may create registers and manage recruitment, promotion, and/or training announcements, as well as administer the webpages and post the appropriate information thereon. Citizens may submit their recruitment, promotion, and/or training applications online, through the webpages created pursuant to the regulations adopted by the Office.

d. Review.- In the event it is determined that recruitment is to be based on the passing of a recruitment exam, any person who has taken the exam may request a score review within a term of fifteen (15) days as of the mailing date of the score notification.

e. Certifications.- Before the Central Government resorts to external recruitment, the Office shall thoroughly verify whether the human resources that may carry out duties whenever they are needed are available in the Government.

f. External Recruitment.- If the internal human resources are not available in the Central Government, the recruitment of external personnel shall proceed; provided, that the financial situation so allows.

g. Register of Eligibles.- Registers of Eligibles shall be strictly arranged by descending test scores or points obtained for the corresponding position class. If there are tie scores, the order may be determined by taking into account one (1) or more of the following factors:

1. general or specialized education;
2. experience;
3. grade point average in academic or specialized education;
4. submission date of the application.

h. Selection.- Vacant regular career positions shall be filled through a selection process that shall include the following stages:

1. The Office shall maintain a list of persons certified as eligible for each vacant position. If the agency or instrumentality has a vacancy, the Office shall refer to the appointing authority not more than ten (10) candidates for interview and selection.

2. Selection by the Appointing Authority of one of the certified candidates within a reasonable time limit which shall be determined by the Office in the regulations adopted by virtue of this Act; provided, that such

eligibles may be included in other certifications even if the corresponding selection has not yet been carried out yet fifteen (15) business days after the date of issue of the certification of eligibles.

3. Certified candidates who are not selected shall be notified in writing. Said notice shall state that they have not been selected and, as a result, they shall be included in the register of eligibles.

i. Probationary Periods.- Executive Branch agencies and public instrumentalities covered under this Act shall strictly comply with the established probationary period. The probationary period shall comprise an entire cycle of the duties of the position. Such period shall not be less than three (3) months nor more than twelve (12) months. Official forms designed for these purposes shall be used and the evaluations to be made shall be discussed with employees. The final action shall be notified in writing to the employee within at least ten (10) days before it takes effect. Upon satisfactorily completing the probationary period, the employee shall become a regular career employee.

j. Appointments to Fixed Duration Positions.- Appointments to fixed duration positions shall be used in the following cases:

1. When the incumbent is out on leave without pay.

2. When an adequate register of eligibles is not available for a position that requires some type of license and the candidate to be appointed holds a provisional license.

3. When the incumbent has been dismissed and has appealed such action before the appellate forum.

4. When the incumbent has been suspended without pay for a specific period.

5. When the incumbent is holding a career position and is subsequently appointed to a trust position.

k. Provisional Appointments.- Agencies and instrumentalities shall avoid, to the greatest extent possible, keeping provisional positions.

l. Recruitment and Selection of Employees for Positions of Trust.- Employees appointed to positions of trust as defined in this Act shall be at-will employees, and shall meet the education, experience, and other requirements that the Appointing Authority deems essential for the proper performance of the duties of the position.

m. Rejection of Applications.- Any applicant who fails to meet the established requirements, or who has furnished or attempted to furnish information with the intent to deceive, defraud, or who has committed or attempted to commit an offense against public property, such as: misappropriation, theft, falsification or tampering with the exams to be administered or already administered, may have his application rejected, his exams cancelled, or his eligibility for the register nullified, or may be declared ineligible for the public service. The preceding, in the case of government employees, may be grounds for dismissal or for the imposition of any other disciplinary action.

n. Cancellation of Registers.- The Office shall provide by regulations for the cancellation of registers when these do not respond to public service needs. The candidates registered therein shall be notified of such cancellation through public notice and the Government's webpage.

Section 6.4.- Provisions on Promotions, Transfers, Demotions, and Mobility.

The Government of Puerto Rico Human Resources Administration and Transformation Office shall be responsible for ensuring that the agencies, public corporations, Government instrumentalities and Municipalities, when required, provide the appropriate mechanisms for the promotion, transfer, demotion, and mobility of employees, in order to relocate positions and employees where these may take greater satisfaction in their work and contribute their efforts to the

achievement of the objectives of the organization with greater efficiency, pursuant to the following provisions:

1. Promotions

a. Upon the approval of this Act, the Government of Puerto Rico Human Resources Administration and Transformation Office in conjunction with the Appointing Authority shall determine the position classes, or their equivalent in other position evaluation plans that, due to the particular needs of the agency or the nature of the duties of such position classes, are required to be filled by promoting employees.

b. Employees holding career positions may be promoted by means of exams that may consist of written, oral, physical or performance test, or an evaluation of their education and experience. In addition to the foregoing, the evaluations from their supervisors, as well as an analysis of employees' personnel folder, and the trainings they have received in connection with the duties of the position to which they intend to be promoted, may be taken into account.

c. Promotion opportunities shall be announced in order for all duly qualified candidates to compete, pursuant to subsection (3)(c) of Section 6.3 of this Act, through the agency, and upon publication thereof in the Central Register and the corresponding agency register. If upon announcing such opportunities, a reasonable number of persons who meet the minimum education and experience requirements established is not available, such positions shall be filled or such services shall be rendered as provided in Section 6.3(3) of this Act for regular recruitment and selection process.

d. Promotions without opposition may be authorized when the special and exceptional demands of the service and the special qualifications of employees so warrant, after having passed the exam. Special and exceptional demands of the service shall mean the assignment or commission of new duties or programs; the extension of the services rendered by the agency; the need to recruit

personnel capable of ensuring continuity in the rendering of services without the need for further instructions; inadequacy of a register of eligibles; urgency to fill a vacant position which renders the regular procedure unfeasible.

Furthermore, special qualifications of the employees shall be understood to be additional experience; academic education beyond minimum requirements; and the results obtained in the Evaluation System adopted by the Agencies.

e. All promoted employees shall complete the probationary period established for the position class to which they have been promoted.

2. Transfers

a. If an agency proves need for a permanent position or a position for a term not to exceed twelve (12) months, the Government of Puerto Rico Human Resources Administration and Transformation Office, depending on the circumstances, shall satisfy the need of such agency or instrumentality, using the transfer or mobility mechanism, as the case may be. Likewise, this method shall also be used when addressing needs for services, unforeseen circumstances, programs or fixed duration *bona fide* projects funded with federal or state funds or a combination thereof. Moreover, when the need for carrying out fixed duration works arises within positions of trust, the Office shall provide the human resources through the transfer or mobility mechanism, as the case may be.

b. Transfers from one position to another within the same class or an equivalent class in other evaluation plans, or from one position in one class to another position in another class may be made; provided, that the employee meets the minimum education and experience requirements of the position class to which he shall be transferred.

c. When the transfer is to a position in another or equivalent class in other evaluation plans, employees shall be subject to the probationary period required for the new position. This requirement may be waived when the transfer arises as a result of duly justified needs for services.

d. Transfer of employees within the same agency, between agencies and municipalities, between agencies and governmental bodies, between agencies and public corporations, between agencies and government instrumentalities and entities of the Executive Branch, pursuant to the rules issued by the Office.

e. Transfers may not be used as a disciplinary measure or be made arbitrarily.

f. In the appropriate cases where it is justified, Appointing Authorities shall be empowered to take all precautionary, provisional, and appropriate personnel transactions in order to preserve a healthy and safe work environment and an optimum rendering of services, such as the movement of personnel, without it constituting a final adjudication of any action or claim. In no case shall the transfer or the precautionary movement of personnel shall constitute a burden for the employees being subject thereto.

3. Demotions

a. Demotions may be made when the employee so requests or when positions are eliminated and employees cannot be moved to a position similar to the position they held. Demotions shall become effective thirty (30) calendar days after the date on which written notice of such demotion is served to the affected employee. Said notice shall inform the employee of the procedure to be followed in the case the employee disagrees with the decision, as well as the effective date of the decision.

b. In the case of requested demotions, employees must state in writing their agreement therewith, in which case the demotion may become effective immediately or before the expiration of the term of the notice set forth in the above paragraph.

c. Demoted employees must meet the minimum requirements established for the position to be held.

d. Demotions shall not be used as a disciplinary measure or made arbitrarily.

4. Mobility

As defined in this Act, Mobility is a process to flexibly implement the Government's initiatives by identifying the necessary human resources that allow for the adequate rendering and continuity of the services offered to the people and that, in turn, promote the best use and retention of human resources.

1. The Government of Puerto Rico Human Resources Administration and Transformation Office in conjunction with the Office of Management and Budget shall have one (1) year after the approval of this Act to devise mobility plans, which shall address the immediate needs for rendering essential services in the Government of Puerto Rico.

2. The Government of Puerto Rico Human Resources Administration and Transformation Office shall be in charge of implementing every mobility plan in connection with the rendering of services in, and the functions of, the Government of Puerto Rico. When devising the mobility plans, firstly, there shall be identified those employees who wish to participate voluntarily. Likewise, the need for services, the education and experience of the employee, years of service, place of residence of the employee, duty station, collective bargaining agreements, and the employee's availability shall be taken into account, in addition to any other requirements to be prescribed by the Office through regulations for the implementation of the mobility mechanism, which shall

clearly state that every movement of personnel that fails to comply with these provisions shall be null.

3. The Office of Management and Budget shall be responsible for quantifying the total number of personnel needed to comply with the established plan, thus, it shall issue the required rules pursuant to the provisions herein.

4. Mobility is a necessary element for the better use and retention of the human resources of the Government of Puerto Rico.

5. Mobility shall not apply to employees appointed by the Governor, whose appointments require the advice and consent of the Senate, employees in positions of trust, teachers or personnel requiring a teacher certification from the Department of Education, and law enforcement officers of the Puerto Rico Police.

6. When implementing each mobility plan in connection with the rendering of services and carrying out duties, the office shall regulate the process whereby employees of other agencies may request to move voluntarily to the understaffed agency.

7. The agency's implementation of the Mobility Plan established by the Office shall neither constitute a violation of the collective bargaining agreements in effect nor an unlawful practice.

8. The guarantees of due process as well as the fringe benefits and base salary that the employees had before making any movement of personnel shall be upheld in every personnel transaction within the mobility plan; except as otherwise agreed by the employee and/or the labor union representing him at the time the movement is made.

9. In order to move a Government employee to a municipality pursuant to a mobility plan, the municipality shall consent to such movement.

10. It is hereby provided that in every Participatory Public-Private Partnership (PPP+P) agreement, those Government employees who are transferred to a PPP+P through the mobility mechanism shall keep the salaries and fringe benefits they had at the time of their movement, and the PPP+P shall be responsible for assuming all the obligations relating to said personnel transaction; except as otherwise agreed by the employee and/or the labor union representing him at the time the movement is made., that, if the “Labor Transformation and Flexibility Act,” is in effect at the time of the movement, such employees shall be exempt from the application thereof.

11. Mobility shall be neither employed as a disciplinary action, nor a burden for the employee, nor made arbitrarily.

12. When moving an employee, said employee shall not be subject to serve a new probationary period, unless the personnel transaction constitutes a promotion. In this case, the employee shall be subject to serve the probationary period of the position class to which he was promoted.

13. The employee’s mobility shall take effect within thirty (30) calendar days after the date on which written notice of such mobility was issued to the employee. Said notice shall inform the employee of the procedure to be followed in the case the employee disagrees with the decision, as well as the effective date of the decision. If the decision is reverted, the employee shall return to his original place of work; provided, that the position has not been eliminated, that the employee may be assigned to a similar position, and that the agency in question is operating. If none of the preceding options is available, a dialogue process shall begin between the employee and/or the labor union representing him in order to seek employment options for the latter.

Section 6.5.- Provisions on Training.

Training constitutes an essential part of the merit system. Thus, it is necessary to adjust the public policy on training to the realities of the 21st century Public Administration.

Bearing this in mind, the Government Career Development Advisory Council is hereby created in order to professionalize the careers of public officials so that these may be prepared to face the organizational challenges and offer a better service to the people. This Council shall be responsible for guaranteeing that the employees' training be focused on the attainment of goals and commitments of each Agency. The composition and functions of the Advisory Council shall be established by means of Executive Order.

Furthermore, for the purpose of complying with the public policy on training, the Government of Puerto Rico Employee Professionalization and Training Institute (IDEA, Spanish acronym) is hereby created to be attached to the Government of Puerto Rico Human Resources Administration and Transformation Office.

1. Purpose of IDEA

Maximizing the public sector's professionalization and efficiency in Puerto Rico through the continuous training and professional growth of government employees in order to optimize their productivity, thus protecting their employment vested rights. Moreover, it shall be the duty of this office to identify and seek the human and financial resources that facilitate the attainment of this goal.

2. Duties

To achieve its purposes, IDEA shall:

a. Develop, based on the determinations of the Government Career Development Advisory Council of the Government of Puerto Rico Human Resources Administration and Transformation Office, and the directions of its

Director, a Five-year Master Plan divided by years for the training and professionalization of the employees of the Government of Puerto Rico (PLAN-MA); provided, that:

1. PLAN-MA shall be revised annually based on a study of programmatic needs and priorities.

2. The decision shall be made concurrently with the budget process.

3. The Director may adjust the plan along the way, as necessary, in accordance with his findings of fact based on official information.

4. Within the first six (6) months after the effective date of this Act, and while the PLAN-MA is drafted, the Director may continue the training program that was implemented by the Training and Labor Affairs Advisory and Human Resources Administration (OCALARH, Spanish acronym) or adjust it if, in his judgment, it is necessary given the circumstances.

b. Establish an appropriate administrative structure and information systems to set the PLAN-MA in motion once it is approved.

c. Operate the Professionalization and Training System directed under the PLAN-MA.

d. Develop a plan to form a Partnership with the University of Puerto Rico (ALI-UPR, Spanish acronym) in order to train and retrain government employees.

e. For the purpose of attracting financial and human resources to the Government, it may negotiate on behalf of the Office, as appropriate:

1. Partnerships, memoranda of understanding, or agreements with the agencies of the Federal Government or the State Government of any of the states or the municipalities thereof;

2. Agreements or Public Private Partnerships with private universities of Puerto Rico or of any of the states of the United States or the Jurisdictions thereof; or

3. Private foundations of Puerto Rico or of any of the states of the United States or the Jurisdictions thereof, or international.

f. Administer the ALI-UPR and all other partnerships with entities of the public and the private sectors.

g. Draft, for the Office's approval, collaboration agreements to provide training and professionalization and, to such ends, develop interactive and distance learning modules through online learning platforms.

h. Broaden the offer of services for the development of training modules through collaborative agreements entered into with public or private university institutions accredited in Puerto Rico.

1. Trainings shall be aimed at strengthening interagency communications and promoting interconnectivity of public services.

2. To collaborate with and assist the Office of the Ombudsman for Persons with Disabilities (OOPD) in training, awareness, information, and education campaigns launched by said Office aimed to government employees regarding the rights of persons with disabilities.

3. To collaborate with and assist the Office of the Ombudsman for the Elderly in training, awareness, information, and education campaigns launched by said Office aimed to government employees regarding the rights of the elderly.

4. To collaborate with and assist the Office of Government Ethics and the office of the Comptroller of Puerto Rico in their training programs.

5. To offer training and continuing education courses on finance and economics to the government employees of the agencies.

6. To offer training courses on Customer Service, providing employees who work directly with the public with knowledge about the newest mechanisms and skills to offer quality services and good care to the citizens.

3. Beneficiaries

a. The following may participate in the training programs developed by the Office:

1. Officials and employees of the Government of Puerto Rico, as well as official and employees of the municipal governments, and of the agencies and public corporations of Puerto Rico.

2. Upon authorization of the Director, there may also participate the personnel from national or international public or private institutions who are funded by said institutions, which shall pay for the services to be rendered.

4. The following are specific provisions that shall govern personnel training and betterment:

1. Those established in the PLAN-MA
2. The needs certified by the agencies
3. The personnel history and training of each employee, stating in

detail:

- a. Education
- b. Previous training
- c. Work experience

5. Scholarship Program: beneficiaries shall be required, upon completion of their education, to render services to the Government of Puerto Rico for a term equal to double their term funded by the Office for their education, without impairment to their constitutional right to resign from employment: Provided, that:

a. To benefit from the scholarship or paid leave a person may commit to reimburse the Office for the total cost, plus interest at the legal rate, from the time the aid were disbursed, whether through a scholarship or a paid leave, if such person resigns to his position before the term provided herein, unless the office exempts him from such obligation due to wrongful dismissal or force majeure.

b. In order to secure the reimbursement, beneficiaries must post a bond at the time of receiving the aid.

6. The Scholarship Program shall meet the following requirements for the granting thereof:

a. The Office shall determine the needs for training and professionalization of the departments, agencies, and public corporations, and develop a Scholarship Program to meet such needs insofar as resources allow.

b. Once such needs are determined, scholarship opportunities shall be announced to all potentially eligible employees.

c. All eligible employees may compete on an equal footing based on their previous qualifications and a Mandatory Study Plan to which they must adhere.

d. Those best qualified and those whose skills and professional career development is envisioned to be more beneficial for the department, agency or public corporation recommending them shall be selected as beneficiaries of the Scholarship Program.

e. Once the scholarship, paid leave or leave without pay is granted, the Office shall freeze the position of the beneficiary; provided, that due to service needs, the position may be filled by means of the transfer or mobility mechanism, or by means of provisional appointments for the duration of the scholarship and while the beneficiary complies with the study plan to which he committed upon accepting the scholarship.

7. The Director may award scholarships without opposition, upon recommendation of an *ad hoc* committee to study the need thereof, when he determines it is warranted due to special and extraordinary demands for services and that the special qualifications of the employees so justify.

Section 6.6.- Provisions on Retention.

1. Career employees with regular status shall have a secure job; provided, that they satisfy the productivity, efficiency, order, and discipline standards that should prevail in the public service. Such standards shall be established, among other factors, on the basis of the duties of the position, the responsibilities, and the obligations set forth hereinbelow, as well as such others that are necessary for the rendering of services according to the operational duties of each agency.

2. The Office shall be responsible for creating and designing a system to evaluate the performance, productivity, execution, and compliance with the established criteria, using quantitative methods for the employees. Agencies and instrumentalities shall be required to evaluate their employees using the performance evaluation system developed by the Office.

3. When an employee's behavior does not conform to the established rules and requirements, each agency shall take the necessary and appropriate disciplinary measures or actions. Among others, they may consider oral admonitions, written warnings, suspension without pay, and dismissal.

4. The Appointing Authority may suspend without pay or dismiss a career employee for just cause, upon written notice of charges and upon being advised of his right to request a hearing before action is taken, in accordance with the progressive disciplinary processes established by regulations.

5. The Appointing Authorities shall be required to impose the appropriate disciplinary action to any official or employee who knowingly, carelessly or recklessly fails to comply with any of the provisions of this Act.

6. When the behavior attributed to an employee constitutes an actual or potential hazard to the health, life, property, or morale of the agency employees or the citizenry in general, the Appointing Authorities may make summary suspensions. In such cases, they shall be required to hold an informal hearing within ten (10) days following the suspension.

7. Agencies may negotiate with their labor union representatives the procedures to be followed when imposing disciplinary measures. Such procedures shall contain the necessary mechanisms to guarantee a due process of law and to protect employees from arbitrary dismissals and severances.

8. The duties listed below shall constitute the essential minimum obligations required from all employees, for which disciplinary measures shall be taken upon noncompliance:

a. To attend work regularly and punctually and comply with the established work schedule.

b. To observe the rules of correct, courteous, and respectful conduct in their relations with their supervisors, coworkers, and citizens.

c. To perform efficiently and diligently the tasks and duties assigned to their position as well as others compatible therewith as they are assigned.

d. To obey such orders and instructions from their supervisors that are compatible with the authority delegated to the latter and with the duties, activities, and objectives of the agency where they work.

e. To maintain the confidentiality of matters related to their work, unless they are formally required or allowed by a competent authority to disclose the same.

f. To perform tasks outside their work hours when the need for services so require; provided, that they have been notified reasonably in advance.

g. To ward, preserve, and safeguard, including but not limited to, all public documents, property, and interests.

h. To comply with the provisions of this Act as well as the rules and orders issued hereunder.

i. To comply with the ethical and moral rules of conduct established in Act No. 1-2012, as amended, known as the “Puerto Rico Government Ethics Act of 2011,” and the regulations thereunder.

9. In accordance with the foregoing, employees are hereby prohibited from engaging in the following or similar actions, to wit:

a. Accepting gifts, donations, or any other reward for the work performed as government employees, except for those authorized by law.

b. Using their official position for partisan political or other purposes that are incompatible with public service.

c. Performing duties or tasks that entail a conflict of interest with respect to their obligations as government employees.

d. Acting or failing to act in contravention of Act No. 1-2012, as amended, known as the “Puerto Rico Government Ethics Act of 2011.”

e. Showing a conduct which is inappropriate or harmful to the good name of the agency or the Government of Puerto Rico.

f. Engaging in prevarication, bribery, or immoral conduct.

g. Carrying out any act that prevents the application of this Act and the rules adopted hereunder; knowingly making or accepting any false statement, certification, or report in connection with any matter covered under the law.

h. Giving, paying, offering, soliciting, or accepting, directly or indirectly, money, services, or any other asset in exchange for an eligible status, appointment, promotion or other personnel action.

i. Engaging in misconduct against the public treasury or the public faith and function, or that involves public funds or property.

10. Layoffs may be implemented, without it constituting a disciplinary action or dismissal, under the following circumstances:

a. Due to the elimination of positions for a lack of work or funds. In these cases, layoffs shall be implemented within the groups of employees whose positions are classified under the same title and considering the status of each employee within the group, as well as their productivity, according to their evaluations, and their seniority in service. In order to determine seniority, all services rendered in positions in the agencies that compose the System shall be considered.

The Appointing Authority of each agency shall serve all employees to be laid off, with a written notice within not less than thirty (30) days prior to the effective date of the layoff. No employee layoff shall be effective unless the notice requirement is met. Each agency shall establish a written procedure for the purpose of implementing layoffs in case these are necessary, and such written procedure shall be disclosed or made available to interested employees for their information.

Before implementing layoffs due to the elimination of positions for a lack of work or funds, all other resources available shall be exhausted in order to prevent such layoffs by taking actions such as:

1. Reallocating personnel in positions of the same or similar classification in departments, offices, or programs where there is a need for personnel.

2. Retraining employees and, through the mobility mechanism, moving them to another position within the same agency, to another agency, municipality, Public Corporation, or Participatory Public-Private Partnership (PPP+P), among others, in order to reallocate the employee in another position prior to the deadline for implementing such layoffs.

3. Use of the vacation leave accrued.

4. Leave without pay until the budgetary crisis lapses, when the agency has decided based on a temporary budget deficit that eliminating the position permanently is not required. In such cases, the preferential order previously established shall be observed when implementing layoffs.

5. Furlough.

6. Demotion of employees as the last recourse to prevent layoffs.

b. When it is determined that employees are physically and/or mentally impaired to perform the essential functions of their position, with or without reasonable accommodation. The Appointing Authority may require employees to undergo medical examination if there is evidence of problems in the performance of tasks or security problems, or when so required under other federal laws, to determine the ability to perform the duties of a position and when voluntary medical examinations are required as a part of health programs. The employee's refusal to undergo the medical examination thus required may be grounds to presume that he is impaired to perform the essential functions of the position. Such action shall be notified to the employee who shall also be advised of his right to request an administrative hearing.

c. When the employee is disabled due to a work-related accident and undergoing medical treatment with the State Insurance Fund for a term greater than twelve (12) months as of the date of the accident, pursuant to Section 5-A of Act No. 45 of April 18, 1935, as amended, known as the "Work-Related Accident

Compensation Act.” Such action shall be notified to the employee who shall also be advised of his right to request an administrative hearing.

11. A career employee may be separated from office during or upon completion of his probationary period, when it is determined that his progress and adaptability to the rules in effect have not been satisfactory, after having been duly counseled and trained. If due to his performance and not because of habits or attitudes an employee were to be separated during the probationary period and immediately before his appointment, he has served satisfactorily as a regular employee in another position, he shall be entitled to be reinstated into a position equal or similar to that which he held with a regular status. If separation from service was due to habits or attitudes of the employee, severance may proceed through the removal procedure established in the agency.

12. Any provisional employee may be separated from service before his term of appointment lapses, for just cause and pursuant to the due process of law.

13. Any employee convicted of any felony or crime involving moral turpitude, or violation of his official duties shall be separated from service pursuant to Article 208 of the Political Code of 1902, as amended. Provided, that in the cases where the convicted employee is given the benefit of serving part or all of his sentence in the community, the provisions of Act No. 70 of June 20, 1963, as amended, known as the “Lift of the Ban Preventing Persons Serving a Suspended Sentence and on Probation or a Penalty Alternative to Imprisonment from Holding Public Offices,” as well as the procedure established in Section 6.8 if this Act shall apply.

14. Any career employee may resign from his position freely and voluntarily through written notice given to the Appointing Authority of the agency. This notice shall be given with not less than ten (10) consecutive days prior to his last work day; however, the Authority may, at its discretion, accept the resignation of an employee when presented within a shorter term. The Appointing Authority

shall, within the term in which such resignation has been submitted, give written notice to the employee of whether it accepts or refuses the same for there being grounds which warrant an investigation of the conduct of the employee. In the case of refusal, the Appointing Authority shall conduct an investigation within the shortest term possible to determine whether it should accept the resignation or bring charges.

Section 6.7.- Rehire.

The following provisions shall govern the rehire of employees into the public service:

1. Regular employees who resign from their positions or are laid off due to the elimination of positions, or recovering from a disability, shall be entitled to have their names included in the register of eligibles of the position class they held with a regular status or a similar class, or its equivalent in other evaluation plans. This right may be exercised in agencies that, under the provisions of this Act, are deemed to be within the Government as Sole Employer.

2. Persons who recover from a disability, after having enjoyed an annuity for work-related disability or other from any of the retirement systems sponsored by the Government, shall be entitled to have their names included in the register of eligibles of the same or similar position classes, or their equivalent in other evaluation plans, as they held at the time they separated from service due to a disability, until they are selected. In these cases, they shall be certified as sole candidates. The Agency shall be required to appoint these candidates if they are available, but it may require such proof or evidence of capability as it deems pertinent.

3. Any person whose rehire has been approved shall be entitled to appear in the register for a maximum period of three (3) years as of the date of separation from service or as of the official date the disability no longer exists. Persons who recover from a disability after having been enjoying an annuity, for work-related or

other disability from one of the retirement systems are exempt from this provision; in this case, they shall remain in the register until they are selected.

4. Persons entitled to rehire who wish to exercise such a right, except for persons laid off due to the elimination of positions or those enjoying an annuity for work-related or other disability, shall file a written application with the agency within of three (3) years after the effective date of the separation from the position they held.

5. The Agency shall give the employee written notice of the action taken in the case of applications for reemployment. In case of layoffs, the employee shall be likewise given written notice of reemployment.

6. When rejecting an application for reemployment, the Appointing Authority shall inform the employee, in its notice, of the cause or causes on which said action was based, and the employee may request reconsideration of the decision within a term of ten (10) days as of the date of the notice. If the decision is upheld, the employee may appeal before the Commission within a term of thirty (30) days after the decision was notified.

Section 6.8.- Habilitation in the Public Service.

Persons who are part of the Public Service should not be guilty of misconduct punishable under our body of laws. However, it is a matter of great interest for the State government that any person who, at any given time, was impaired from holding a position in the public service, be able to overcome the situation that impaired him from doing so, and be employed or rehired, as the case may be, in the public service on his own merits. The following rules shall render such purposes feasible:

1. Any person who has engaged in dishonorable conduct, is a habitual and excessive user of controlled substances and/or alcoholic beverages, has been convicted of a felony or any crime involving moral turpitude, or has been

dismissed from public service, shall be ineligible for employment in, or for entering into a professional services contract with, the government.

2. Any person who is ineligible for public service pursuant to the provisions of subsection (1) of this Section, shall be entitled file a request for habilitation with the Department of Labor and Human Resources one (1) year after the date on which the event occurred or from the date the circumstances that led to a determination of inability had arisen, except for the following cases:

a. In the case of habitual and excessive users of controlled substances or alcohol, the requirement of one (1) year from the date on which the inability occurred, does not apply. The factor to be considered, before the Department of Labor assumes jurisdiction, shall be the certification issued by the Mental Health and Addiction Services Administration indicating that the person is favorably recommended for habilitation.

b. Any convicted government employee who has been granted a suspended sentence or parole and is serving his sentence in the community under those limitations imposed by the entities of the Government's Corrections System, may file a request for habilitation at any time with the Department of Labor and Human Resources or, in default thereof, the Agency where he is employed shall be required to file it. The employee shall continue to hold office until the Director determines otherwise, pursuant to the provisions of Act No. 481-2004, as amended.

c. Any person who has been acquitted may submit his application for habilitation at any time.

d. Any convicted person who has been granted a suspended sentence or parole and is serving his sentence in the community, under those limitations imposed by the entities of the Government's Corrections System, may file his request at any time.

3. Any person who has been convicted, either as a principal or accomplice, in the jurisdiction of Puerto Rico, in the federal jurisdiction, or in any of the states of the United States of any of the crimes listed below as defined in Act No. 146-2012, as amended, known as the Penal Code of Puerto Rico,” or any subsequent law, shall also be permanently ineligible for employment in, or for a professional service contract with, the public service, or for being a candidate for, or holding an elective office:

- a. Aggravated Unlawful Taking;
- b. Extortion;
- c. Sabotage of essential public services;
- d. Document Forgery;
- e. Fraud;
- f. Internet fraud;
- g. Construction fraud;
- h. Fraudulent use, possession, or transfer of magnetic stripe cards;
- i. Illicit enrichment;
- j. Illicit enrichment of public officials;
- k. Unjust enrichment;
- l. Defrauding public works or utilities;
- m. Undue intervention in government operations;
- n. Negotiations incompatible with the discharge of public office;
- o. Defrauding public works or utilities;
- p. Alteration or mutilation of property;
- q. False certifications;
- r. Bribery;
- s. Offer of bribe;
- t. Undue influence;
- u. Embezzlement;

v. Money laundering.

When the conviction results from the commission of any of the crimes listed below, the prohibition provided for in this Act shall be for a term of twenty (20) years, counting from the date of conviction:

- a. Aggravated damages;
- b. Retaining property;
- c. Alteration or mutilation of property;
- d. Recordation of false documents or data;
- e. Unlawful Possession and Use of Tax Information, Receipts and Payment Vouchers;
- f. Unlawful Purchase and Sale of Property for Payment of Taxes;
- g. Submitting forged writings;
- h. Unlawful possession of tax receipts;
- i. Falsification of entries in registers;
- j. Forgery of seals;
- k. Misrepresentation;
- l. Forgery of license, certificate, and other documentation;
- m. Forgery in the practice of professions or trades;
- n. Possession or transfer of forged documents;
- o. Possession of forgery tools.

When the conviction results from the commission of any of the crimes listed below, the prohibition provided for in this Act shall be for a term of eight (8) years, counting from the date of the conviction:

- a. Nonfeasance;
- b. Unlawful sale of goods;
- c. Failure to perform duty;
- d. Dereliction in the performance of duty;
- e. Usurpation of public office;

f. Hindering the inspection of books and documents

4. When a person is convicted in the aforementioned jurisdictions of any of the misdemeanors listed above, said person shall be ineligible for public service for a term of eight (8) years as of the date of conviction.

5. A felony conviction, the removal and revocation of probation or parole, or noncompliance with the conditions imposed by the program by which the habilitated convict is serving his sentence in the community, shall entail the automatic cancellation of the habilitation. If the person is holding a public office or otherwise rendering services for a government entity, he shall also be immediately terminated from the job or from rendering the services, as the case may be, when a felony conviction is issued, when probation or parole is revoked, or when he fails to comply with the conditions of the program by virtue of which the habilitated convict is serving his sentence in the community.

6. One (1) year after the decision of the Secretary of the Department of Labor not to habilitate has become final and binding, any person who wishes to be habilitated may file a new request for habilitation; provided, that the person furnishes new evidence that has not been previously considered and said person is able to prove that he should be habilitated. This provision shall likewise apply to conditioned habilitation cases.

7. Any official or employee who knowingly authorizes an appointment in contravention of the provisions of this Section shall be liable for any amount of money unduly paid to the person thus appointed.

Section 6.9.- Prohibition.

In order to ensure the faithful application of the Merit System in the Public Service during pre and post-electoral periods, the Appointing Authorities shall refrain from making any personnel transaction relating to the essential areas of the Merit System, such as appointments, promotions, demotions, or transfers; nor shall they be able to make changes or take actions in connection with compensation, or

make changes to position categories, nor shall they use the employee's mobility during the election prohibition period. Provided, that during said period, no personnel actions or changes whatsoever with a retroactive effect may be processed or recorded in the employee's personnel folder. Any changes resulting from the completion of a probationary period, and the imposition of disciplinary measures shall be exempt from this prohibition. Noncompliance with this provision shall render any transaction thus carried out null. This prohibition shall comprise the period of two (2) months before and two (2) months after the holding of the General Elections of Puerto Rico.

Upon the Office's approval, exceptions from this prohibition may be made in the event of urgent and unavoidable needs for service duly evinced and certified pursuant to the rules issued by the Office to such effect.

Article 7.- Compensation Provisions.-

Section 7.1.- Public Policy.

The Government of Puerto Rico's public policy on compensation recognizes as main values the capability shown by the employee in the performance of his tasks; the commitment shown to the goals and objectives of his organization; the adherence to order and discipline rules; and the sensible, respectful, and diligent treatment towards our citizens.

To promote these values, government compensation systems shall be geared toward attracting and retaining the most suitable personnel; recognizing group and individual achievements of workers; encouraging team work; and encouraging workers to lead decent lives. All of the foregoing, based on equity and justice, and in consideration of the financial reality of government entities.

This compensation system, in addition to recognizing and fairly compensating the contributions of employees to the achievement of organizational goals, shall allow the Office greater flexibility in the administration of the

compensation system. This shall render the human resources management system more dynamic and effective.

Section 7.2.- General Pay Rules.

The following guidelines shall apply to all government agencies under this Act:

1. The Office shall establish different pay plans for their career employees, union employees, nonunion employees, and employees in positions of trust, in accordance with their fiscal capability, economic reality, and the position classification and evaluation method selected. The pay plan selected shall promote uniformity and justice in fixing the employees' wages.

2. The Office shall recommend to the agencies, according to their needs and appropriated budget, the wage structure for career positions within the classes established in accordance with the position classification plan selected. In addition, agencies shall maintain such structures up to date, in order for these to represent the economic reality, the fiscal capability, and the cost of living in Puerto Rico.

3. Agencies shall administer their pay plan in connection with the essential areas of the merit system. When conducting transactions relating to public service career employees, no agency shall take an action that attempts against or that is contrary to the merit system.

4. The Office may authorize the use of other pay methods to retain, motivate, and recognize personnel, insofar as the financial resources allow. Some of these mechanisms are:

a. Differentials.- A special temporary compensation, in addition to and separate from the employee's regular salary, granted to mitigate extraordinary circumstances that could otherwise be deemed to be burdensome on the employee. Differentials may be granted on:

1) Extraordinary Circumstances. - A temporary work situation that requires greater effort from, or entails a higher risk for, the employee while carrying out the duties of his position.

2) Acting Appointment. - A temporary work situation where the employee performs all the essential functions of a position higher than the one he officially holds. In this case, the following conditions shall be met: to have performed the functions uninterruptedly for thirty (30) or more days; to have been designated officially to discharge the functions in an acting capacity by the director of the department or office; and to meet the requirements of education and experience of the position whose functions he is discharging on an acting capacity. The employee working in an acting capacity may be relieved from his acting capacity at any time as determined by the director of the department or office. In such circumstances, the employee shall return to his previous position and receive the salary he earned before being appointed in an acting capacity, except when the employee has performed supervisory functions in an acting capacity for twelve (12) months or more. In this case, the employee shall be granted a pay raise equal to a pay rate in his position; provided, that the fiscal situation so allows.

No granted differential may be deemed to be an integral part of the regular salary of the employee for purposes of computing the liquidation of leaves or computing the retirement pension.

b. Bonuses. - A special, nonrecurring compensation separate from the salary that may be granted; provided, that the fiscal situation so allows, as a mechanism to recruit, retain, or reward employees or groups of employees who meet the requirements established before the granting thereof. The rules for granting this incentive to employees shall be evaluated and approved by the Appointing Authority.

5. No amendment or modification to the position classification and evaluation plan selected by the agency may adversely affect the base salary of the employee.

6. As a general rule, the salary to be earned by every employee appointed to a career position shall be the minimum rate in the salary scale of the position class he shall hold.

7. Any raises upon promotions to be granted by the agencies may be appraised in percentage terms or the equivalent thereof in midpoint rates. This determination shall depend on the wage structure to which it is assigned. However, the raise shall not be less than the difference between minimum scale rates.

8. In cases of demotions due to needs for service as determined by the Appointing Authority, upon previous notice to the Office and the Office of Management and Budget, to be an urgent need for service, such an action shall not adversely affect the employee's salary, except when such action is taken to avoid layoffs due to lack of funds. When a demotion is made at the request of the employee, his salary shall be adjusted to the base salary of the position class to which he is being demoted, plus the statutory raises he had received in the position previously held.

9. In case of reinstatement after failure to complete a probationary period, the employee shall receive the last salary earned in the position into which he is being reinstated, plus any raises granted to the class. In addition, he shall receive any statutory raises granted during the probationary period.

10. In case of reinstatement after returning from a leave without pay, the employee shall receive the last salary he earned prior to the beginning of the leave, plus any raises granted to the class or any statutory raises granted during the time the employee was on leave.

11. In case of reinstatement after returning from a disability leave, the employee shall receive the last salary earned prior to his separation, plus any raises granted to the class or any statutory raises granted during the period he was on leave.

12. Employees in positions of trust entitled to reinstatement into a career position in accordance with Section 8.2 of this Act, upon reinstatement, shall be entitled to all benefits in terms of classification and salary that have been extended to the career position they had during the term they served as employees in positions of trust. They shall also be entitled to any statutory pay raises.

13. In case of reclassification, the rules on promotions, transfers, demotions, and mobility shall apply as provided by the Office through regulations.

14. As a general rule, transfers shall not entail a pay raise.

15. In case of rehire, the new appointment rule shall apply, except in the case of reinstatement after returning from a disability leave.

Section 7.3.- Specific Rules on Compensation.

The following rules shall only apply to nonunion or managerial employees or to employees excluded from Act No. 45-1998, as amended, known as the "Puerto Rico Public Service Labor Relations Act," who work in the government, and subject to the existence and availability of Government funds.

1. The Office shall draft regulations as are necessary to implement compensation methods in accordance with the budget status and availability, as certified by the Office of Management and Budget. These methods shall recognize the productivity, efficiency, and quality of the work performed by the employees. These alternative compensation methods may be used to: retain the most suitable personnel, recruit qualified personnel for hard-to-fill positions, and motivate employees. Some of these methods are:

- a. Certificates of recognition for performance.
- b. Productivity bonuses equivalent to ten percent (10%) of the salary earned semimonthly; provided, that the fiscal situation so allows.
- c. Activities where employees are informed of the agency's achievements and recognized for their own.
- d. Training inside and outside of Puerto Rico.
- e. Scholarships, in accordance with the provisions of Section 6.5 of this Act.
- f. Child day care.
- g. Lodging, meal, and uniform benefits for all employees, as warranted due to the nature of the service they render.
- h. Days or hours granted without charge to any leave.

2. All employees have the possibility for professional development, whether on their own initiative or by efforts of the organization. Some compensation methods that promote this activity are:

- a. When recruiting personnel, a financial incentive may be included as part of the base salary; provided, that the fiscal situation so allows. Said incentive shall be adjudicated to hard-to-fill position classes, as required, due to the high degree of education and experience warranted.
- b. Granting salary adjustments based on the evaluation of the employee's performance and productivity.

3. Merit Pay. - A compensation that is part of the salary and is granted to recognize employee's outstanding performance; provided, that the final situation so allows. Such pay raise shall consist of one (1), two (2), or three (3) steps within the salary range established for the employee's position. In order to be entitled to such raise, the employee must have discharged the duties of his position for twelve (12) consecutive months before the date of the granting thereof, and the employee's performance evaluations shall be consistent with the raise amount to be

granted. Any period of time worked by the employee under a provisional appointment in a position under the same classification may be credited toward completing the established eligibility period.

Pay raises shall not exceed four percent (4%) of the employee's salary. When for budgetary reasons, the full amount of the granted raise cannot be paid, a partial payment of said raise shall be made and, at any time within the twelve (12) following months, the remainder thereof may be paid; provided, that the fiscal situation so allows. In these cases, the twelve (12)-month eligibility period established for merit pay shall begin on the effective date of the first partial payment.

Article 8.- Types of Categories.-

Section 8.1.- There are two (2) types of Employee Categories within the Personnel System:

1. Employees with Career Appointments.- Those employees who have been admitted into the public service in faithful compliance with the provisions of the code of laws in effect applicable to the recruitment and selection processes for career appointments at the time of their appointment. Such employees are entitled to remain in the service pursuant to the provisions of Section 6.6 of this Act. This category includes confidential employees.

Confidential employees are those who, regardless of their career appointment, discharge duties that by their very nature affect, or who participate significantly in, the policymaking or implementation process, or who discharge duties directly or indirectly in connection with employer-employee relations that actually or potentially entail a conflict of interests, and are excluded from all the appropriate units, as provided in subsection b-1 of Section 4.2 of the "Puerto Rico Public Service Labor Relations Act."

2. Employees in Positions of Trust.- Are those included in the Classification Plan and that, in accordance with their duties, substantially participate in policymaking, or who advise or render services directly to the head of the agency, such as:

a. Officials or employees appointed by the Governor, their personal secretaries and chauffeurs, as well as executive and administrative assistants who answer to them directly;

b. Heads of agencies, their personal secretaries and chauffeurs, as well as executive and administrative assistants who answer to them directly;

c. Deputy heads of agencies, their personal secretaries and chauffeurs, if any;

d. Regional agency directors;

e. Board or standing commission members appointed by the Governor, and their respective personal secretaries;

f. Members and staff of boards and commissions appointed by the Governor with a specific effective period;

g. The staff of the Office of Former Governor's Service Office.

Employees in positions of trust are presumed to be at-will employees. Those employees who, despite being presumed to be at-will employees, may only be dismissed for just cause, or whose appointment is for a specific term as provided by law, shall be likewise deemed to be employees in positions of trust.

Section 8.2.- Reinstatement of Employees in Trust Positions.

1. All career employees with regular status who transfer to a position of trust shall be fully entitled to be reinstated to a position equal or similar to the last career position they held, unless dismissed from their position of trust upon charges brought. Provided, that they shall be entitled to all benefits regarding classification and salary that have been extended to the career position they held during the term they served in a position of trust.

2. All career employees with regular status who are elected or designated as substitutes for holding elective public offices within the Executive or Legislative Branch, shall be fully entitled to be reinstated to a position equal or similar to the last career position they held, unless dismissed from said elective office due to misconduct or impeachment, or unless they have resigned from office due to malfeasance or misconduct that would have led to their dismissal or impeachment. Provided, that they shall be entitled to all benefits regarding classification and salary that have been extended to the career position they held during the term they served in an elective public office.

3. Regular career employees who are recruited to hold a position of trust, or who are elected by the people or designated as substitutes for holding an elective public office, as provided above, shall retain the fringe benefits and leave rights established in this Act.

Once their assignment as employees in positions of trust or elective office ceases, the years of service and seniority accrued shall be credited to the last position they held.

Section 8.3.- Approval of Positions of Trust.

The approved position classification plans shall provide for a maximum of fifteen (15) positions of trust. When the organizational structure, operational complexity, or size of the agency requires a higher or lower number of positions of trust, the approval of the Office of Management and Budget shall be required.

Section 8.4.- Change of Appointment and Category.

1. The appointing authority may recommend the change from a career position to a position of trust and vice versa, when so warranted in the event of an official change in the functions or the organizational structure of the agency, subject to the following:

- a. If the position is vacant;
- b. If the position is filled and the change is from a career position to a position of trust, the incumbent shall expressly consent thereto in writing. If the employee does not consent to the change, such employee shall be reassigned forthwith to a career position with the same salary for which he meets the minimum requirements;
- c. If the position is filled and the change is from a position of trust to a career position, the incumbent shall remain therein, subject to the following conditions:
 1. That he meets the education and experience requirements established for the position class or the equivalent thereof in other position classification plans;
 2. That he has held the position for a period that is not less than the probationary period established for the position class or the equivalent thereof in other position classification plans; and that his services are excellent as ascertained through an evaluation;
 3. That he passes or has passed the exam or has met the selection criteria established for the position class or the equivalent thereof in other position classification plans;
 4. Upon certification, that his services have been satisfactory.

If the incumbent fails to meet all of the aforementioned conditions, he may not remain in the position, unless covered under the right to reinstatement provided for in Section 8.2 of this Act.

Changes in appointment categories may not be used as a subterfuge to grant permanent employee benefits to employees who did not compete for a career position. These shall only be pertinent upon a thorough analysis of the duties of the position or the organizational structure of the agency, and shall require the

evaluation of the Government of Puerto Rico Human Resources Administration and Transformation Office, and the authorization of the Office of Management and Budget.

Article 9.- Fringe Benefits.-

Section 9.1.

Employees whose benefits, as of the effective date of this Act, are other than those provided for herein shall remain entitled thereto in accordance with the regulations, rules, or collective bargaining agreements providing therefor, as well as any emergency laws to be promulgated. The benefits established herein shall apply prospectively only to newly-hired Government employees, except for the paternity leave, and the special breastfeeding leave with pay, which shall apply to all government employees.

Since fringe benefits constitute an area of utmost need and significant effects for government employees, in order to maintain a uniform and fair human resources administration, the following rules are hereby established:

Fringe benefits shall be:

1. Vacation Leave.

a. All employees shall be entitled to accrue two (2) days of vacation leave for each month of service, up to a maximum of sixty (60) workdays at the close of each calendar year. Vacation leave shall begin to accrue upon completion of a three (3)-month period and said leave shall be retroactive to the employment commencement date. Furloughed or part-time employees shall accrue vacation leave proportionately to the number of hours regularly worked.

b. Vacation leave is granted to employees in order to allow them a reasonable annual rest period. As a general rule, said leave shall be used during the calendar year in which it was accrued. Each Agency is required to devise a vacation plan for every calendar year, in collaboration with the supervisors and employees, whereby it shall be established the period during which employees

shall enjoy their vacation time in the manner that is more compatible with the needs for service. Said plan shall be established as soon as possible, so that it takes effect on January 1st of each following year. The agencies and all the employees shall be responsible for the enforcement of said plan. Exceptions shall only be made in the event of a clear, unavoidable, and duly certified need for service.

c. The agency shall devise and implement the vacation plan in order to prevent employees from forfeiting their vacation leave at the close of the calendar year and allow them to use it.

d. All employees shall be entitled to enjoy their vacation leave for a period of twenty-four (24) workdays during each calendar year, of which not less than twelve (12) shall be enjoyed consecutively.

e. Employees who are unable to enjoy their vacation leave during a specific calendar year due to a need for service evidenced in writing and as required by the Agency shall be exempt from the provisions of the preceding paragraph (d). In this case, the employer Agency is required to make the necessary adjustments so that the employee is able to enjoy at least any license accrued in excess of the sixty (60)-day limit at the earliest date possible within the first six (6) months of the following calendar year.

f. When due to extraordinary circumstances in connection with the service which are beyond the employee's control, an employee has been unable to enjoy the excess accrued within the statutory term, the agency shall pay such excess on or before July 31st of each year; provided, that the fiscal situation so allows.

g. Employees may opt to authorize the agency to transfer to the Department of the Treasury any amount of vacation leave accrued in excess, in order to be credited toward the full or partial payment of any outstanding income tax debt at the time the transfer is authorized.

h. The agency shall provide for the granting of the accrued vacation leave prior to a definite and permanent separation from service, and a transfer to render services at a different public agency or instrumentality.

i. Typically, no vacation leave shall be granted for a period longer than twenty-four (24) workdays per calendar year. However, the agency may grant vacation leave in excess of twenty-four (24) workdays, up to a maximum of forty-eight (48) days, during any calendar year, to those employees who have accrued said leave. When granting said leave, the following factors shall be considered together with the need for service:

1. The use of said leave for activities geared to the employee's self-betterment, such as travel, and education, etc.;
2. Long-term illness of an employee after having exhausted the sick leave balance;
3. Personal issues of the employee requiring his attention;
4. If a leave of absence has been cancelled due to a need for service and as required by the agency;
5. The total leave accrued by the employee.

j. Due to extraordinary circumstances, advanced vacation leave may be granted to regular employees who have rendered services in the Government for over one (1) year, if there is certainty that the employee shall return to duty. The advanced vacation leave shall not exceed twenty-four (24) workdays. The granting of advanced vacation leave shall require in all cases the previous written approval of the Appointing Authority. Any employee who has been granted advanced vacation leave and separates from service, voluntarily or involuntarily, before rendering services for the period needed in order to accrue the full amount of unearned leave that was granted in advance shall be required to reimburse the Government of Puerto Rico any sum that has been paid on account of said advanced leave.

k. In the event that an employee is granted a leave without pay, said employee shall not be required to exhaust the accrued vacation leave in order to use the leave without pay.

l. If vacation leave or advanced vacation leave is authorized, the advanced payment of the wages pertaining to said leave period may be also authorized, insofar as it is requested sufficiently in advance. Such authorization shall be made upon the leave's approval.

m. One or more employees may donate, as an exception, up to a maximum of five (5) days of accrued vacation leave to another government employee who works in the same government entity, as provided in Act No. 44-1996, as amended, known as the "Act for the Ceding of Vacation Leave," when:

1. The leave recipient has worked uninterruptedly for at least one (1) year in any government agency;

2. The leave recipient has not shown a pattern of unscheduled absences, which constitutes noncompliance with the rules of the government entity;

3. The leave recipient has exhausted all the leave to which he is entitled due to an emergency;

4. The leave recipient or his representative has shown attesting evidence of the emergency and the need to be absent in excess of the leave accrued and already exhausted;

5. The leave donor has accrued at least fifteen (15) days of vacation leave in excess of the amount of leave to be donated;

6. The leave donor has submitted to the government entity where he is employed a written authorization consenting to the leave donation, including the name of the leave recipient;

7. The leave recipient or his representative has accepted the proposed donation in writing.

2. Sick Leave

a. Every employee shall be entitled to accrue one (1) day of sick leave for every month of service. Furloughed or part-time employees shall accrue sick leave proportionately to the number of hours regularly worked. Said sick leave shall be used when the employee is sick, has a disability, or is suffering from a contagious disease which requires him to be absent from work in order to protect his health or the health of others. Furthermore, all employees shall use up to a maximum of five (5) days per year of the accrued sick leave, insofar as they maintain a balance of at least twelve (12) days, for the purpose of requesting a special leave to be used:

1. To care and tend to their sick children.
2. To conduct any transactions relating to or to care for sick elderly persons or persons with disabilities within their family circle, that is, up to the fourth degree of consanguinity, second degree of affinity, persons living under the same roof, or persons of whom an employee is the legal guardian or has legal custody.

Provided, that the transactions to be conducted are consistent with the purposes for which the sick leave was granted, that is to say, that are related to the health care and attention of the persons mentioned herein.

a) “Elderly persons” shall mean any person who is sixty (60) years of age or older;

b) “Persons with disabilities” shall mean any person who has a physical, mental, or sensory disability that substantially limits one or more essential activities in his life.

3. For the first appearance of any petitioner, victim, or claimant in any administrative and/or judicial proceedings before any Department, Agency, Public Corporation, or Instrumentality of the Government of Puerto Rico in any actions related to child support, domestic abuse, sexual harassment in the

workplace, or gender discrimination. The employee shall furnish attesting evidence of said appearance as issued by the concerned authority.

b. The sick leave shall be accrued up to a maximum of ninety (90) workdays at the close of any calendar year. The sick leave shall begin to accrue upon completion of a three (3)-month period and said leave shall be retroactive to the employment commencement date. The employer Agency is required to make all the necessary adjustments in order to allow employees to use all the sick leave accrued during any calendar year. The employee may exhaust the sick leave accrued during any calendar year. Moreover, the employee shall be entitled to the annual payment of such excess at least by March 31st of each year; provided, that the fiscal situation so allows. Employees may opt to authorize the agency to transfer to the Department of the Treasury any amount on account of sick leave accrued in excess, in order to be credited toward the full or partial payment of any outstanding income tax debt.

c. If an employee were absent for over three (3) days due to an illness, a medical certificate may be required to attest to:

- i. The employee actually being ill, suffering from a contagious disease, or being unable to work during the period he was absent;
- ii. The illness of the employee's children;
- iii. The illness of elderly persons or persons with disability within his family circle, that is, up to the fourth degree of consanguinity, second degree of affinity, persons living under the same roof, or persons of whom the employee is the legal guardian or has legal custody

In addition to the medical certificate, the inability of the employee to attend work due to an illness may be ascertained by any other appropriate means. The foregoing shall not be applied or construed in violation of the provisions of ADA nor of the "Family and Medical Leave Act of 1993" (FMLA).

d. In the event that an employee is sick and has no sick leave accrued, up to a maximum of eighteen (18) workdays of advanced sick leave may be granted to any employee who has served in the Government of Puerto Rico for not less than one (1) year, if there is certainty that the employee shall return to duty. Any employee who has been granted advanced sick leave and separates from service, voluntarily or involuntarily, before rendering services for the period needed in order to accrue the full amount of unearned leave that was granted in advance shall be required to reimburse the Government of Puerto Rico any sum that has been paid on account of said advanced leave.

e. In the event of a long-term illness, once the sick leave is exhausted, an employee may exhaust his accrued vacation leave upon authorization from his immediate supervisor. Should the employee exhaust both leaves and he were still sick, a leave without pay may be authorized.

3. Maternity leave.

a. The maternity leave shall comprise the prenatal and postpartum rest period to which expectant employees are entitled. Likewise, it shall comprise the period to which an employee who has adopted a child is entitled, in accordance with the applicable legislation.

b. Every expectant employee shall be entitled to a four (4)-week rest period before childbirth, and a four (4)-week rest period after childbirth. Provided, that the employee may enjoy four (4) additional weeks to care and tend to the child.

Childbirth shall mean the act of giving birth to a child whether naturally or through lawful surgical obstetrics procedures. It shall likewise include any premature childbirth or miscarriage, even if the latter was legally induced by a medical specialist and takes place at any time during the pregnancy.

c. The employee may choose to enjoy only one (1) week of prenatal rest, and extend up to seven (7) weeks the postpartum rest period to which she is entitled, or up to eleven (11) weeks if the four (4) additional weeks to care and tend to the child are included. In these cases, the employee may submit to the agency a medical certificate attesting to the fact that she is able to work up to one week before childbirth.

d. During the maternity leave, the employee shall earn her full wages.

e. In the case of an employee with a provisional appointment, the maternity leave of said employee shall not exceed the appointment period.

f. If childbirth occurs before the four (4)-week prenatal rest period elapses or before the employee began to enjoy her prenatal rest period, said employee may choose to extend the postpartum rest period for a period of time equivalent to that which she did not enjoy before childbirth.

g. The employee may request to return to her duties before the postpartum rest period elapses, insofar as the employee submits to the agency a medical certificate attesting to her ability to return to her duties. In this case, it shall be understood that the employee is relinquishing the balance of unused maternity leave to which she is entitled.

h. When the estimated date of delivery was wrongly calculated and the employee has enjoyed her four (4) weeks of prenatal rest period without going into labor, said employee shall be entitled to an extension of the prenatal rest period with full pay until childbirth. In this case, the employee shall be entitled still to enjoy the four (4)-week postpartum rest period from the date of delivery as well as the four (4) additional weeks to care and tend to the child.

i. In the event of premature birth, the employee shall be entitled to enjoy the eight (8) weeks of maternity leave from the date of premature birth as well as the four (4) additional weeks to care and tend to the child.

j. Any employee who suffers a miscarriage may claim up to a maximum of four (4) weeks of maternity leave. However, in order to avail herself of said benefit, the miscarriage shall produce the same physiological effects that usually arise as a result of childbirth, according to the determination and certification of the attending physician during the miscarriage.

k. In the event that an employee suffers any postpartum complications that prevents her from returning to work once the rest period after childbirth (postpartum) and the four (4) additional weeks to care and tend to the child have elapsed, the agency shall grant a sick leave to said employee.

In these cases, a medical certificate shall be required stating the condition of the employee and the estimated duration thereof. If the employee has exhausted her sick leave, vacation leave shall be granted. In the event that the employee has exhausted both the sick and the vacation leaves, leave without pay may be authorized for the period recommended by the physician.

l. Any employee who adopts a preschooler, that is, a minor who is five (5) years of age or younger, who is not enrolled in any school, in accordance with the legislation and legal procedures in effect in Puerto Rico or any U.S. jurisdiction shall be entitled to the same benefits of maternity leave with full pay of an employee who gives birth. In the event that an employee adopts a minor who is six (6) years of age or older, said employee shall be granted maternity leave with full pay for a term of fifteen (15) days. This leave shall begin to elapse from the date on which the employee officially receives the minor, which shall be certified in writing.

m. The maternity leave shall not be granted to employees who are enjoying any other leave with or without pay. Any employees who are enjoying sick or vacation leave, or leave without pay due to pregnancy complications shall be exempt from this provision.

n. Any expectant employee or employee who has adopted a minor is required to notify the agency in advance of her plan to enjoy maternity leave and to return to her duties.

o. The agency may authorize the advanced payment of any wages corresponding to the maternity leave period, insofar as the employee so requests in advance, as appropriate. If the employee returns to her duties before the postpartum rest period elapses, the employee shall be required to reimburse the balance pertaining to the unused maternity leave.

p. In the event that the newborn dies before the maternity leave period elapses, the employee shall be entitled to claim only the portion of the postpartum rest period up to the first eight (8) weeks of unused maternity leave. Provided, that the four (4)-week additional period benefit to care for and tend to the child shall cease as of the date on which the child died. In this case, the employee may avail herself of any other leave to which she is entitled.

4. Paternity Leave.

a. The paternity leave shall comprise a period of fifteen (15) workdays from the date of birth of a child.

b. When claiming this right, the employee shall certify that he is legally married or cohabitates with the mother of the child and that he has not committed domestic abuse. Said certification shall be made by submitting the form required by the agency for such purposes, which shall also include the signature of the mother of the child.

c. The employee shall request the paternity leave and submit the birth certificate as soon as possible.

d. The employee shall earn his full wages during the paternity leave period.

e. In the case of an employee with a provisional appointment, the paternity leave shall not exceed the appointment period.

f. The paternity leave shall not be granted to employees who are enjoying any other type of leave with or without pay. The employees who have been granted vacation or sick leave shall be exempt from this provision.

g. Any employee who, together with his spouse or domestic partner, adopts a preschooler, that is, a minor who is five (5) years of age or younger, who is not enrolled in any school, in accordance with the legislation and legal procedures in effect in Puerto Rico or any U.S. jurisdiction shall be entitled to a paternity leave that shall comprise a fifteen (15)-day period to be counted from the date on which he officially receives the minor, which shall be certified in writing. In the event that an employee adopts a minor who is six (6) years of age or older, said employee shall be entitled to paternity leave with full pay for a term of fifteen (15) days. When claiming this right, the employee shall certify that he is legally married, if applicable, and that he has not committed domestic abuse, or a sexual- or child abuse-related offense. Said certification shall be made by submitting the form required by the agency for such purposes, which shall also include the signature of his spouse.

Any employee who individually adopts a preschooler, that is, a minor who is five (5) years of age or younger, who is not enrolled in any school, in accordance with the legislation and legal procedures in effect in Puerto Rico or any U.S. jurisdiction shall be entitled to eight (8) weeks of paternity leave which shall begin to count from the date on which he officially receives the minor, which shall be certified in writing. In the event that an employee adopts a minor who is six (6) years of age or older, said employee shall be entitled to paternity leave with full pay for a term of fifteen (15) days.

When claiming this right, the employee shall certify that he has not committed domestic abuse, nor a sexual- or child abuse-related offense.

Paragraphs (d), (e), and (f) of this subsection shall apply equally in the event that an employee requests the leave benefits set forth in previous paragraphs.

5. Special Breastfeeding Leave with Pay

a. Breastfeeding mothers who return to work after enjoying maternity leave shall be granted the opportunity to nurse their children for a period of one (1) hour during each full-time work day, which may be divided into two (2) thirty (30)-minute sessions or three (3) twenty (20)-minute sessions, to go where the child to be breastfed is being cared for, should the company or employer have a child care center in its facilities, or to express breast milk at the place provided for such purposes in the workplace. Said places shall guarantee nursing mothers privacy, safety, and hygiene. Said place must have electrical outlets and ventilation. If the employee is working on a part-time basis and the work day exceeds four (4) hours, the period granted shall be thirty (30) minutes for every consecutive four (4)-hour working period.

b. Within the workplace, the breastfeeding period shall have a maximum duration of twelve (12) months, to be counted as of the date the employee returns to her duty.

c. Employees who wish to avail themselves of this benefit shall submit to the agency a medical certificate, during the period corresponding to the fourth (4th) and the eighth (8th) months of age of the infant, attesting to the fact and certifying that she is breastfeeding her baby. Said certificate shall be submitted not later than five (5) days before each period. Provided, that the employer shall designate an area or physical space that guarantees the privacy of the breastfeeding mother, as well as her safety and hygiene, without this entailing the creation or construction of physical or organizational structures, contingent upon the availability of resources of the government entities. Agencies shall adopt regulations on the operation of said breastfeeding areas.

6. Leave Without Pay

a. If the cause for which the leave was granted ceases, the employee shall report for duty immediately or notify the Agency of the reasons why he is unavailable, or of his decision not to return to work.

b. In addition to the leaves without pay that each Agency may grant by regulations, the following shall be granted:

1. To career employees with regular status, to render services in other agencies of the Government of Puerto Rico or in a private entity, if it is determined that the experience to be acquired by the employee shall satisfy a proven need for training of the Agency or the Public Service.

2. To career employees with regular status, to protect their status or the rights to which they may be entitled in cases of:

a) A disability claim before the Retirement System of the Government of Puerto Rico or other entity, and the employee has exhausted his sick and vacation leaves.

b) Having suffered a work-related accident and undergoing medical treatment with the State Insurance Fund Corporation or pending a final determination concerning the employee's accident, and the employee has exhausted his sick and vacation leaves.

3. To employees who so request after the birth of their child. Provided, that this type of leave without pay may be granted for a period of time which shall not exceed six (6) months as of the date on which it is authorized.

4. To employees with regular status who are transferred to positions of trust in the Office of the Governor or in the Legislative Assembly, while rendering said services.

5. To employees with a regular status who have been elected in the general elections or have been selected to fill a vacancy of an elective public office within the Executive or Legislative Branch, including the

offices of Resident Commissioner in the United States and Mayor, while rendering said services.

6. Furthermore, special leaves for a justified cause shall be granted, with or without pay, as the case may be, such as but not limited to: court leave; leave with pay to participate in activities where the employee is representing the country; military leave; two (2) work-hour parental involvement leave at the beginning and the end of each school semester; leave of absence for child immunization; leave for volunteer services to the Civil Defense Corps in cases of disaster; leave of absence for volunteer services with the American Red Cross; leave to participate in sports; and blood donation leave. Provided, that the aforementioned leaves shall be governed by the special laws that grant them through regulations.

Article 10.- Work Schedules.-

Section 10.1.

The rules on the work day for government employees are the following:

1. The regular work week for regular career employees shall not exceed forty (40) hours nor be less than thirty seven and a half (37½) hours, on the basis of five (5) workdays, except as otherwise provided by special laws. The workday shall not exceed eight (8) hours. Employees shall be granted two (2) rest days for each regular workweek.

2. The regular work week for employees shall consist of the number of hours that, within a period of seven (7) consecutive days, the employee is under the obligation to render services, pursuant to his regular work schedule. Typically, the regular workweek shall be from Monday through Friday, and Saturday and Sunday shall be rest days. To address needs for service, however, agencies may establish a regular workweek, for all or part of its personnel, beginning and ending on any day of the week, insofar as said week includes two (2) rest days.

3. The regular workday or workweek of employees may be furloughed as an action to prevent layoffs. When a furlough has been established as a measure to prevent layoffs, said furlough may be established on a basis of less than five (5) workdays.

4. Within the aforementioned limits, each agency shall establish the workweek and workday that shall apply to the employees thereof, taking into account the needs for service.

5. As a general rule, the workday schedule shall be fixed on the basis of a fixed starting time and a fixed finishing time. However, agencies may adopt through their bylaws a flexible, tiered, extended, or rotating-shift work schedule.

6. Each agency shall grant all employees a meal break ranging from half (1/2) an hour to one (1)-hour during their regular daily work schedule, while guaranteeing the continuous rendering of services. Through a written agreement between the employee and the appointing authority, the meal-break hour may be reduced to half (1/2) an hour due to needs for service or at the convenience of the employee. The employee shall enjoy said period after having completed the first three and a half (3½) hours but before completing the fifth (5th) consecutive hour of work. In the case of union employees, the agreement shall be approved by the union representative.

7. Agencies shall program their work schedule so that the employee is able to take his meal break. However, in emergency situations, the employee may be required to render services during his meal break or part thereof.

8. Hours worked shall comprise all the time during which an employee is required to render services or to remain in the premises or in a specific workplace and all the time during which he is directed and expressly authorized to work.

9. Any interested employee shall have the option to a voluntarily furlough, upon previous agreement with the employer, by a period equivalent to one workday of his workweek.

The agreement may provide that the employee may be furloughed by one (1) whole workday or the number of hours equivalent to one workday, proportionately allotted between five (5) days; said adjustment may entail a change on either the starting time or the finishing time.

Said agreement may never be for a term of less than two (2) payroll periods and it may be rendered void by the employee, in his discretion, or by the employer, due to the need for service, through a written notice served to the other party within not less than thirty (30) days in advance. The employer may not prevent the employee from returning to his regular work schedule, if so requested by the employee. The option provided for herein may be claimed by the employees as many times as they warrant.

Employees who avail themselves of the furlough option of a four (4)-day workweek shall earn eighty percent (80%) of their gross income. However, these employees shall continue to contribute to the Retirement System as if they were on their regular work schedule.

The Appointing Authority may authorize any work schedule options requested by the employee, without impairment to the rendering of services, insofar as the daily work schedule is uniform and the required total workweek hours are adjusted accordingly to comply therewith.

Section 10.2.- Work in Excess of the Regular Work Schedule.

1. The work schedule of each agency shall be formulated so that the need to work beyond the regular work schedule established for employees by the agency is reduced to a minimum. However, the Appointing Authorities may require employees to render services beyond their daily or weekly work schedule due to the special nature of the services or any emergency situation, or on any

other day when services are suspended by the Governor without charge to any leave. In these cases, the supervisor of the employee shall issue a previous authorization therefor, to be approved by the appointing authority or by the official to whom the appointing authority delegates. The supervisors shall take measures to ensure that when an employee remains working, the employee is doing so by virtue of an express authorization.

2. The employees shall be entitled to receive compensatory time off, at a ratio of one and a half time, for services rendered beyond their regular daily or weekly work schedule, or during their meal break, and for services rendered during holidays, rest days, or days on which the Governor suspends services without charge to any leave. The compensatory time off leave shall be enjoyed by the employee within a period of thirty (30) days as of the date on which the employee has worked overtime. If due to the need for service, this were not possible, compensatory time off may be accrued for up to a maximum of two hundred and forty (240) hours. In the case of employees who hold security- or health-related positions, said employees may accrue up to four hundred and eighty (480) hours. The compensation of overtime through compensatory time off shall not be allowed for hours accrued by the employee in excess of the aforementioned limits.

3. Any employee who discharges administrative, executive, or professional duties, as these terms are defined in the Fair Labor Standards Act shall be exempt from the provisions of subsection (2) above.

Section 11.- Personnel Records.

1. All agencies shall maintain the following records for each of their employees:

a. A folder of the employee's complete history from his original start date in the public service to the date of his definitive separation from service.

b. A separate confidential folder including medical instructions, determinations, and certificates, in accordance with the Americans with Disabilities Act (ADA).

c. A folder including a copy of all Change Reports and all other documents and information required for retirement purposes.

2. Said folders shall be confidential. However, these may be examined for official purposes by authorized employees or officials. All employees shall have the right to examine their personnel folders, upon submitting a written request and in the presence of a Human Resources official or employee authorized therefor. The aforementioned request shall be submitted to the Human Resources office in reasonable advance to the date on which the employee intends to perform the examination. The employee may authorize another person in writing to examine the folder.

All employees shall be entitled to obtain a copy of any or all documents filed in their folder upon payment of printing fees.

3. All matters pertaining to the conservation and disposal of the records of employees who separate from service shall be governed by the provisions of Act No. 5 of December 8, 1955, as amended, known as the "Puerto Rico Public Document Administration Act," and the regulations thereunder, administered by the General Services Administration, or any statutory provision that may substitute it.

4. In the event of transfer or mobility of an employee from one agency to another, the originating agency shall transfer the records to the agency where the employee is being transferred not later than thirty (30) days from the effective date of the transfer.

Article 12.- Employee Status as of the Effective Date of this Act.-

1. Employees who, as of the effective date of this Act, were holding career positions in accordance with the provisions of Act No. 184-2004, as amended, known as the “Public Service Human Resources Administration Act of the Commonwealth of Puerto Rico” or of special laws, who pursuant to the provisions of this Act are classified as career employees shall have the status stated below:

a. employees with a regular status shall be regular career employees;

b. employees with a probationary status shall be career-conditional employees;

c. employees who, as of the effective date of this Act, are holding positions under a provisional appointment shall continue to hold their positions until their appointment expires, which shall never exceed twelve (12) months.

2. Employees who as of the effective date of this Act are rendering services in agencies that constitute Individual Administrators holding career positions or positions of trust, in accordance with the provisions of Act No. 184-2004, as amended, or of special laws, shall keep all their vested rights pursuant to the laws, rules, and regulations applicable thereto; provided, that said rights are compatible with the provisions of this Act. In addition, such employees shall be subject to the same duties and prohibitions.

Article 13.- Paragraph (23) is hereby added to subsection (h) of Section 3 of Act No. 15 of April 14, 1931, as amended, to read as follows:

“Section 3.- Authority of the Secretary.

(a) ...

...

(h) The Secretary of Labor and Human Resources shall have the following powers, authorities, and functions in addition to those conferred by other laws, without it being construed as a limitation:

(1)

...

(23) Be entrusted with the direction, management, and supervision of the Government Career Development Advisory Council.”

Article 14.- Section 10 of Act No. 15 of April 14, 1931, as amended, is hereby amended to read as follows:

“Section 10.- Work Statistics.

The Department of Labor and Human Resources shall be charged with the collection, analysis, and interpretation of the statistical data related to the work of different Government agencies and instrumentalities, trades, businesses, and occupations. The Department shall also prepare and maintain up to date the price and cost of living indexes; conduct socio-economic studies on the living and work conditions of industrial and agricultural workers, labor market indicators of employment and unemployment, wages, income distribution, work-related injuries, illnesses and deaths, occupations, mass layoffs, jobs and salaries covered by the Unemployment Insurance, and statistical data on trends and perspectives related to the labor market in Puerto Rico. The Secretary of Labor and Human Resources shall post on the Department’s website and disseminate on other institutional media official statistics and indexes produced in accordance with the provisions of this Act.”

Article 15.- Transitory Provisions.-

1. The current Training and Labor Affairs Advisory and Human Resources Administration Office (OCALARH, Spanish acronym) shall become the Government of Puerto Rico Human Resources Transformation and Administration

Office; such office shall keep the authorities and responsibilities assigned to OICALARH by virtue of Act No. 184-2004.

2. The Government of Puerto Rico Human Resources Transformation and Administration Office shall have one and a half (1½) years as of the effective date of this Act to devise and complete the Uniform Position Classification and Evaluation Plan as applicable.

3. All agencies deemed to be Individual Administrators as well as the rest of the Executive Branch, as defined in Act No. 184-2004, shall be required to submit to the Office within a term not to exceed thirty (30) days as of the effective date of this Act a copy of every Position Classification and Evaluation Plan as well as any amendments thereto.

4. Any regulations and memoranda of understanding of the Training and Labor Affairs Advisory and Human Resources Administration Office (OICALARH, Spanish acronym) that are in effect as if the date of approval of this Act shall remain in effect until the Office adopts its regulations and issues its memoranda of understanding in accordance with this Act.

Article 16.- Fund Appropriations and Transfer.-

1. Any unencumbered balance from statutory appropriations made to the Central Labor Advisory and Human Resources Administration Office (OICALARH, Spanish acronym) are hereby kept in the Government of Puerto Rico Human Resources Transformation and Administration Office

2. Any documents, supplies, equipment, rights, existing funds, and obligations of the Central Labor Advisory and Human Resources Administration Office (OICALARH, Spanish acronym) are hereby transferred to the Government of Puerto Rico Human Resources Transformation and Administration Office. Likewise, any programs, services, units, divisions, agencies, and persons are hereby transferred not later than thirty (30) days following the date of approval of this Act in order to allow the Government of Puerto Rico Human Resources

Transformation and Administration Office to continue directing and administering them without affecting or interrupting the services.

3. Any documents, supplies, equipment, rights, existing funds, and obligations of the current Government Career Development Advisory Council are hereby transferred to the new Advisory Council created herein. Likewise, any programs, services, units, divisions, agencies, and persons are hereby transferred not later than thirty (30) days following the date of approval of this Act.

4. Any documents, supplies, equipment, rights, existing funds, and obligations of the current Continuing Education School (ECC[sic], Spanish acronym) are hereby transferred to the new Government of Puerto Rico Employee Professionalization and Training Institute (IDEA, Spanish acronym). Likewise, any programs, services, units, divisions, agencies, and persons are hereby transferred not later than thirty (30) days following the date of approval of this Act.

Article 17.- Repeal.-

Act No. 184-2004, as amended, known as the “Public Service Human Resources Administration Act of the Commonwealth of Puerto Rico,” is hereby repealed.

Article 18.- Relation with Other Laws.-

a. Concerning the administration of human resources in the municipalities, the provisions of Act No. 81-1991, as amended, known as the “Autonomous Municipalities Act of the Commonwealth of Puerto Rico of 1991,” shall remain in full force and effect and without any impairment thereto.

b. Concerning the administration, conservation, and disposal of official documents and records of employees who have separated from the service, the provisions of Act No. 5 of December 8, 1955, as amended, and the regulations thereunder shall remain in full force and effect.

c. None of the provisions of this Act shall be construed as to limit the collective bargaining on any matter open to negotiation in accordance with Act No. 45-1998, as amended.

d. Pertaining to the Government as a Sole Employer and the concept of Mobility created under this Act, should there be any discrepancies or inconsistencies between the provisions of any previous law, whether an enabling act, or general or special law, the provisions of this Act shall prevail.

Article 19.- Severability Clause.-

If any clause, paragraph, subparagraph, sentence, word, letter, article, provision, section, subsection, title, chapter, subchapter, heading, or part of this Act were held to be null or unconstitutional, the ruling, holding, or judgment to such effect shall not affect, impair, or invalidate the remainder of this Act. The effect of said holding shall be limited to the clause, paragraph, subparagraph, sentence, word, letter, article, provision, section, subsection, title, chapter, subchapter, heading, or part of this Act thus held to be null or unconstitutional. If the application to a person or a circumstance of any clause, paragraph, subparagraph, sentence, word, letter, article, provision, section, subsection, title, chapter, subchapter, heading, or part of this Act were held to be null or unconstitutional, the ruling, holding, or judgment to such effect shall not affect or invalidate the application of the remainder of this Act to such persons or circumstances where it may be validly applied. It is the express and unequivocal will of this Legislative Assembly that the courts enforce the provisions and application thereof to the greatest extent possible, even if it renders ineffective, invalidates, or holds to be unconstitutional any part thereof, or even if it renders ineffective, nullifies, invalidates, impairs, or holds to be unconstitutional the application thereof to any person or circumstance. This Legislative Assembly would have approved this Act regardless of any determination of severability that the Court may make.

Article 20.- Effectiveness.-

This Act shall take effect upon its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 8-2017 (H. B. 454)** of the **1st Regular Session** of the **18th Legislative Assembly of Puerto Rico**:

AN ACT to adopt the “Government of Puerto Rico Human Resources Administration and Transformation Act” and, in turn, designate the Government as a Sole Employer and establish the concept of Mobility; repeal Act No. 184-2004, as amended, known as the “Public Service Human Resources Administration Act of the Commonwealth of Puerto Rico”; amend Act No. 15 of April 14, 1931, as amended, known as the “Organic Act of the Department of Labor and Human Resources of Puerto Rico,” in order to add a new paragraph (23) to subsection (h) of Section 3 and amend Section 10; and for other related purposes.

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, on this 1st day of November, 2017.

Orlando Pagán-Ramírez
Acting Director