

requirement is not made after one (1) year has elapsed from the date of the beginning of the disability.

(2) that the worker is mentally and physically able to perform such job at the time he requests his employer for reinstatement; and

(3) that said job exists at the time the worker requests his reinstatement. It shall be understood that the job exists when it is vacant or held by another worker. It shall be presumed that the job is vacant when the same is filled by another worker within thirty (30) days, following the date on which the request for reinstatement was made.

If the employer fails to comply with the provisions of this subsection, he shall be under the obligation to pay the worker or his beneficiaries the wages that said worker would have received if he had been reinstated, and he shall also be liable for the damages caused. The worker or his beneficiaries may file and process the corresponding claim for reinstatement, or both, in Court through a regular action or through the wage claims procedure, established in Act No. 2 of October 17, 1961, as amended."

Section 2.—Sections 16, 17 and 18 of Act No. 428 of May 15, 1950, as amended,<sup>27</sup> are hereby renumbered as Sections 17, 18 and 19, respectively.

Section 3.—This Act shall take effect immediately after its approval.

**Labor—Sexual Harassment in Employment**

(S.B. 1437)

[No. 17]

[Approved April 22, 1988]

**AN ACT**

To prohibit sexual harassment in employment; establish responsibilities and fix penalties.

<sup>27</sup> 29 L.P.R.A. §§ 694, 695, 695 note.

**STATEMENT OF MOTIVES**

Our Constitution, in its Bill of Rights, establishes that the dignity of human beings is inviolable and that all men are created equal before the law. It clearly states that there shall be no discrimination on account of race, color, sex, birth or social origin or condition, or political or religious ideas.

In addition to our Constitution, we have other laws in our legal ambit that guarantee the right that there shall not be any discrimination against an employee on account of their sex.

The practice of sexual harassment in employment, in any of its manifestations, infringes the inviolability of the human being and clearly discriminates against men and women in any field of work. It hinders their work, depriving them of the achievement and enjoyment of a full life to which all human beings are equally entitled before the law, as is stated in the Constitutional mandate, and is one of the ways that sexual discrimination is manifested. This includes men as well as women, although the typical victims tend to be women. This is mainly due to existing cultural patterns where men are placed predominantly above women.

The extent of this problem should interest and concern all of us, because sexual harassment in employment constitutes a repudiable offense against the dignity of all human beings.

Sexual harassment in employment is any undesirable sexual behavior which occurs in a working relationship and affects job opportunities, the job itself, its terms and conditions, or the person's working environment. It is manifested in many ways, from direct or indirect sexual insinuations that could extend from the most subtle and furtive physical contact to simple or aggravated sexual aggression.

Most of the persons that experience sexual harassment in the workplace prefer and chose not to report it, due to their fear of losing their jobs, reprisals from their superiors, the possible rejection of their spouses and family because of the cultural patterns that prevail in our society.

The Congress of the United States has legislated to prohibit discrimination on account of sex in employment, and the Supreme Court of the United States through judicial interpretation, and the Federal Equal Employment Opportunity Committee has approved special rules to define sexual harassment in employment and impose responsibilities therefor.

In Puerto Rico, the legislation in effect has also established that discrimination in employment on account of political ideology, race or color, age, national origin and social origin or condition, will be the employer's absolute responsibility when it results from the actions of his supervisors, agents or representatives.

This measure establishes the employer's definite liability in the prevention of sexual harassment in employment, as well as for its commission. The degree of employer liability for sexual harassment in his workplace shall be determined by the relationship of the person who is harassing another to the employer. When the sexual harassment is propitiated by an employee of an equal rank with the person being harassed or when it proceeds from a client or visitor, the employer shall only be held liable if he knew or should have known of the harassment and did not take immediate and adequate corrective action.

When adjudicating liability in the latter cases, the degree of control that the employer could have on the conduct of said client or visitor shall be taken into consideration.

With this legislation we are raising sexual harassment in employment to the same juridical level as the other types of discrimination existing on the federal and local levels.

We all deserve and should aspire to a healthy coexistence in an equality of conditions in our employment that will allow us to enjoy our democratic rights in a society of excellence. On the basis of these democratic postulates, this Legislature has the purpose of contributing to the eradication of this social evil by enacting this measure.

*Be it enacted by the Legislature of Puerto Rico:*

Section 1.—This Legislature resolves and declares as the public policy of the Commonwealth of Puerto Rico that sexual harassment in employment is a type of sexual discrimination and, as such, constitutes an illegal and undesirable practice that goes against the established constitutional principle that the dignity of a human being is inviolable. It is the intention of this Legislature to prohibit sexual harassment in employment, to impose responsibilities and fix penalties.

Section 2.—Definitions.

For the purposes of this Act, the following terms shall have the meaning stated hereinbelow:

(1) Employee—Any person who works for an employer and receives compensation therefor, or any job applicant. For the purposes of the protection conferred through this Act, the term employee shall be interpreted in the broadest sense possible.

(2) Employer—means any natural or juridical person of any kind, the Government of the Commonwealth of Puerto Rico, including each of its three Branches, and its instrumentalities or public corporations, municipal governments and any of its municipal instrumentalities or corporations, which employ persons through any kind of compensation, for profit or non-profit purposes, and their agents and supervisors. It also includes labor unions and other organizations, groups or associations in which employees participate for the purpose of negotiating the terms and conditions of their employment with the employers, as well as employment agencies.

(3) Person—means any natural or juridical person.

(4) Supervisor—means any person that exercises some kind of control or whose recommendation is taken into consideration for the contracting, classifying, discharging, promoting, transfer, fixing compensation or the working hours, places or conditions, or the tasks or duties that an employee or group of employees perform or may perform, or on any other terms or conditions of employment, or any person that performs day-to-day supervisory tasks.

Section 3.—Sexual harassment in employment consists of any type of undesired sexual approach, demand of sexual favors and any other verbal or physical behavior of a sexual nature, when one or more of the following circumstances occur:

(a) When the submission to said conduct becomes, implicitly or explicitly, a term or condition of the person's employment.

(b) When the submission or rejection of such conduct by the person becomes the grounds for decisions on the job, or regarding the job, that affect that person.

(c) When that conduct has the effect or purpose of interfering unreasonably with the performance of such person's work or when it creates an intimidating, hostile or offensive working environment.

Section 4.—In order to determine whether the alleged conduct constitutes sexual harassment in employment, all of the circumstances surrounding the facts that occurred shall be taken

into consideration. The determination of the legality of an action shall be based on the findings of each particular case.

Section 5.—An employer shall be guilty of sexual harassment in employment according to his actions and those of his agents or supervisors, regardless of whether or not the specific acts being disputed were authorized or prohibited by the employer and regardless of whether the employer knew or should have known about said behavior.

The particular employment relationship, shall be examined in order to determine whether the person that committed sexual harassment acted in his position as the employer's agent or supervisor.

It shall not be necessary to establish that the agent or supervisor that committed sexual harassment was the claimant's immediate supervisor.

Section 6.—An employer shall be held responsible for any acts of sexual harassment towards the employees in the work place if the employer or his agents or his supervisors knew or should have been informed of such conduct, unless the employer proves that he took immediate and appropriate action to correct the situation.

Section 7.—An employer shall be held responsible for the acts of sexual harassment towards his employees in the work place by persons not employed by him, if the employer or his agents or supervisors knew or should have known of such conduct and did not take immediate and adequate action to correct the situation. For the purposes of this Article, the extent of the employer's control and any other legal liability that the employer should have with respect to the behavior of persons not employed by him, shall be taken into consideration.

Section 8.—When the employer grants employment opportunities or benefits as the result of a person's submission to sexual approaches and demands of the employer or of his agents or supervisors, the former shall be held liable for sexual harassment in employment with regard to the persons who were denied such opportunity or benefit.

Section 9.—An employer shall be held liable pursuant to the provisions of this Act, when he carries out any action that results in adversely affecting the opportunities, terms and working conditions of any person who has rejected the employer's practices

that are in conflict with the provisions of this Act, or who has filed a complaint or suit, has given testimony, collaborated or participated, in any other manner, in an investigation, procedure or hearing that is initiated under this Act.

Section 10.—Every employer has the obligation of keeping the work place free from sexual harassment and intimidation, and shall clearly express his policy against sexual harassment to his supervisors and employees, and shall guarantee that they shall work with safety and dignity. In compliance with the obligation imposed on the employer of preventing, discouraging and avoiding sexual harassment in employment, he shall take whatever measures that are necessary or convenient for that purpose, including, but not being limited to the following:

(a) Clearly express to his supervisors and employees that the employer has a strong policy against sexual harassment in employment.

(b) Put into practice the methods needed to create awareness and make the prohibition of sexual harassment in employment known.

(c) Give sufficient publicity in the workplace so that the job applicants will know the rights and protection they are entitled to and granted pursuant to this Act, to Act No. 69 of July 6, 1985, Act No. 100 of June 30, 1959 as amended, and the Constitution of the Commonwealth of Puerto Rico.

(d) Establish an adequate and effective internal procedure to handle sexual harassment complaints.

Section 11.—Sanctions.

Any person responsible for sexual harassment in employment, as defined by this Act, shall incur civil liability: (1) for a sum equal to double of the amount of the damages that the action has caused the employee or job applicant; or (2) for a sum of not less than three thousand (3,000) dollars at the discretion of the Court, in those cases in which pecuniary damages cannot be determined.

In the judgment that is rendered in civil actions filed under the above provisions, the Court shall order the employer to hire, promote or reinstate the employee in his job, and to cease and desist of the act in question.

Section 12.—The party that is found guilty of the behavior prohibited pursuant to the provisions of this Act, shall pay the attorney fees and costs of the proceedings as established by a competent Court.

Section 13.—It shall not be necessary to exhaust all administrative remedies for the purpose of initiating judicial procedures under this Act.

Section 14.—This Act shall take effect sixty (60) days after its approval.

Compiled School Law—Amendment

(H.B. 1297)

[No. 18]

[Approved April 22, 1988]

AN ACT

To amend Section 87 of the Act approved on March 12, 1903, as amended, known as the Compiled School Law so that Monday of the Land Week—Arbor Day—be celebrated during the last week of the month of April of each year.

STATEMENT OF MOTIVES

The Puerto Rican Land Week is celebrated in Puerto Rico during the first week of May of each year pursuant to Act No. 50 of May 25, 1955.

Agropecuary expositions, ornamental plants exhibitions and activities and contests are held during said week to promote the interest of the people in the values of our land and other natural resources of our island and to stimulate and exalt the love and enthusiasm of the Puerto Rican people for their conservation and enrichment.

Pursuant to Section 87 of the Compiled School Law of March 12, 1903, Arbor Day has been celebrated on Monday of the Puerto Rican Land Week in order to carry out activities directed to improve the planting, protection and preservation of trees and shrubs, to acquaint the people with the best methods to accomplish said results, and to emphasize the importance of trees and forests in Puerto Rican life.

We find that the planting, maintenance and preservation of trees and forests is an essential means to preserve our ecosystem. We support these activities because we believe they are of profound

educational importance for our students and for all the People of Puerto Rico.

The bill proposed has the purpose of changing the date of the celebration of Arbor Day to the Monday of the last week of the month of April of each year.

We find that the proposed change of date will promote a greater participation of the students because said celebration would not coincide with other festivities celebrated during the month of May, such as Teacher's Day, Mother's Day and other activities at the end of the school year.

*Be it enacted by the Legislature of Puerto Rico:*

Section 1.—Section 87 of the Act approved March 12, 1903, as amended,<sup>28</sup> is hereby amended to read as follows:

“The Monday of the Puerto Rican Land Week which is celebrated each year during the last week of the month of April by virtue of Act No. 50 of May 25, 1955, as amended, shall be known throughout the Commonwealth of Puerto Rico as Arbor Day. The Secretary of Education shall be responsible for all schools of the Commonwealth to celebrate appropriate activities and such exercises as shall tend to improve the planting, protection and preservation of trees and shrubs, and to become acquainted with the best methods to be adopted to accomplish such results. The teaching activities of the day shall emphasize the importance of trees and forests in the life of the People.”

Section 2.—This Act shall take effect immediately after its approval.

Puerto Rican Land Week—Amendment

(H.B. 1298)

[No. 19]

[Approved April 22, 1988]

AN ACT

To amend the title and Section 1 of Act No. 50 of May 25, 1955,

<sup>28</sup> 1 L.P.R.A. § 120.