

(S. B. 1241)

(No. 36-2020)

(Approved April 9, 2020)

AN ACT

To create the “Government of Puerto Rico Remote Work Act,” for the purpose of directing the agencies, instrumentalities, and public corporations of the Government of Puerto Rico to adopt the necessary measures to implement a Telework Program through which participating employees shall be allowed to partially or fully discharge the duties and responsibilities of their position from their homes or other branch offices of the government entity in which they are employed; to amend subsection (2) of Section 4.3 of Article 4 of Act No. 8-2017, as amended, known as the “Government of Puerto Rico Human Resources Administration and Transformation Act,” for the purpose of establishing the functions of the Government of Puerto Rico Human Resources Administration and Transformation Office to enforce compliance with the provisions of this Act ; and for other related purposes.

STATEMENT OF MOTIVES

With the approval of Act No. 8-2017, as amended, known as the “Government of Puerto Rico Human Resources Administration and Transformation Act,” the Government sought to eliminate excessive spending, and the duplication of processes and offices among other matters to achieve savings for the Treasury. In order to achieve this purpose, the figure of Sole Employer was created which allows for the mobility of government employees between agencies and other entities according to the service needs. To such effects, the Act provides that:

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.

Consistent with the foregoing, this Legislative Assembly is committed to making the workweek more flexible and easier for Government employees through this Program and the use of technology. Telework is a work program that enables an employee to perform some or all of his duties from an area other than the location from which they would otherwise work. The number of services rendered and works performed, both in the public and private sectors, which require an employee to be physically present at a determined center of operations in order to achieve the goals or meet the expectations of an employer keeps decreasing.

At the federal level, this concept was approved in 2010 through the Telework Enhancement Act of 2010. Such statute directs each head of agency of the Federal Government to implement a public policy under which eligible employees may be authorized to perform their duties from their home or from a worksite other than the location from which the employee would otherwise work. The enforcement of this Act has yielded positive results for the agencies from a financial, social, and moral standpoint as stated in the *Guide to Telework in the Government* [sic] of the United States Office of Personnel Management in 2011.

Telework programs are primarily established by the Federal Government to meet agency mission and operational needs. Telework achieves operational savings by reducing real estate and/or maintenance costs, energy, water, and other utility costs, as well as other expenses related to the operations that are conducted regularly in a government agency while promoting efficient administration; and it promotes resiliency by exploring alternatives to ensure the continuity of government production and the rendering of services during emergency or unfavorable

situations. Furthermore, Telework helps improve the quality of life of employees and increases employment opportunities for persons with disabilities.

Advances in communications technology have paved the way for Telework to be adopted by several states including Georgia, Florida, Maryland, and California. However, Telework is not a new concept and is not necessarily dependent on the use of technology. In fact, most state legislation was enacted prior to the approval of the Telework Enhancement Act of 2010. The key is for the heads of agency and employees to define the work expectations and objectives of each agency, in order to be able to provide the tools and flexibility needed to get the job done effectively.

As recently as 2017, the United States Office of Personnel Management issued a report directed at the U.S. Congress entitled *Status of Telework in the Federal Government, Report to Congress* where it concluded that agencies are taking steps to improve and expand their telework programs in support of a wide range of valuable outcomes. In the report it is stated that the use of Telework has considerably improved employees' attitudes towards their work and that it facilitates the recruitment of new employees because it is more flexible, thus promoting employee retention.

The Telework Enhancement Act of 2010 and state laws are worded in such a manner that they constitute a directive to the agencies to adopt Telework. The reasoning behind this is that each agency has particular and different needs, therefore, the aforementioned statutes establish the rulemaking authority of each agency so that they may adopt Telework under the parameters they deem pertinent. Puerto Rico is no exception. In light of the foregoing, this Legislative Assembly adopts the "Government of Puerto Rico Remote Work Act," for the purpose of directing the agencies, instrumentalities, and public corporations of the Government of Puerto Rico to adopt the necessary measures to implement a Telework Program

through which participating employees shall be allowed to partially or fully discharge the duties and responsibilities of their position from their homes or other branch offices of the government entity in which they are employed.

Therefore, the purpose of this measure is to transform how the Government of Puerto Rico operates to make it more practical and effective by establishing the legal framework to effectively implement Telework in the government agencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Title.

This Act shall be known and may be cited as the “Government of Puerto Rico Remote Work Act.”

Section 2.- Public Policy.

It shall be the public policy of the Government of Puerto Rico to implement and develop Telework or Remote Work as a work option for all eligible government employees. Under this concept, we seek to expedite processes, reduce utility and real estate costs, and provide a more flexible work alternative to our workforce.

Section 3.- Definitions.

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

a) 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.

b) Appointing Authority- all heads of agency, or the persons designated by them, with the legal authority to make appointments to positions in the Government of Puerto Rico.

c) Employee- any natural person who works in an agency and receives compensation for his services. It does not include independent contractors or labor union officers or organizers when acting as such.

d) Office- refers to the Government of Puerto Rico Human Resources Administration and Transformation Office.

e) PRITS- refers to the Puerto Rico Innovation and Technologies Service Office within the Office of Governor.

f) Program- refers to the Telework or Remote Work Program that enables an eligible employee to perform some or all of his duties from an area other than the location from which they would otherwise work. Telework may be performed for the entirety of the employee's workweek or for a part thereof, at the discretion of the appointing authority.

g) Teleworkers- any agency employee participating in the Remote Work Program.

Section 4.- Duties of the Agencies of the Government of Puerto Rico with Regards to the Remote Work Program.

a) To prescribe by regulations the public policy of the agency under which eligible employees may be authorized to Telework.

b) To determine the eligibility of employees to participate in Telework.

c) To notify all employees of the agency of their eligibility to Telework.

d) To provide an interactive telework training program to eligible employees and their supervisors which enables them to perform their work effectively.

e) o establish a Program assessment plan.

f) To establish the criteria that the agency shall take into account when appraising the performance of employees participating in the Program.

g) To establish the minimum performance standards that shall be required from each employee according to their duties.

h) To establish reasonable measures to ensure the proper use and maintenance of the agency equipment to be used by the teleworkers, if any.

Section 5.- Remote Work Program Requirements

In order for the Program to be implemented, each agency must meet, without it being construed as a limitation, the following requirements:

- a) To ensure that an employee's participation in the Program shall not diminish such employee's or the agency's performance;
- b) the mandatory participation of every employee who wishes to Telework in the training provided by the agency prior to entering into the agreement required by this Section, provided that the agency may exempt an employee from meeting the training requirement set forth in this subsection when it is determined that the employee Teleworked before this Act took effect and that the programs and systems to be used are the same as or similar to those used by the employee to perform his work;
- c) to enter into an agreement, undersigned by the appointing authority and the employee authorized to Telework, which specifies the work to be performed;
- d) to establish a system to monitor the performance of teleworkers in order to ensure that the Program meets the goals of the agency in a satisfactory manner and that the duties and responsibilities of each position are eligible for Telework; and
- e) to establish the appropriate security control systems that the teleworker shall use for the physical and digital information stored and/or used at the location where the Telework shall be performed.

Section 6.- Prohibitions.

The following employees shall not be eligible for the Program to be established by each agency:

- a) Except in emergency situations and upon prior authorization, employees whose daily responsibilities and work include the following:

1. the handling of material and/or information determined to be inappropriate for Telework by the agency;
2. activities that require the employee to be present at a determined location and cannot be handled remotely or at an alternate worksite due to their nature; or
3. any other function or work when the appointing authority believes the employee's presence is necessary or when the Telework is deemed inadequate or inconvenient.

b) Any employee who has been penalized or submitted to a disciplinary process for being absent from his workplace for more than seven (7) days in a year without prior authorization or without justification. This shall not apply if three (3) years have elapsed from such penalty or from the final determination in the disciplinary process.

Section 7.- Interagency Support.

a) Every agency shall consult with the Office when developing its institutional policy on the Program.

b) The Office shall provide Program support and guidance in what pertains to payroll payments, employee classification, performance, recruitment, retention, and reasonable accommodation for employees with disabilities, among others.

c) The Office and PRITS shall provide assistance to every agency in order to establish the appropriate standards so as to ensure the quality and goals of the Program.

Section 8.- Security Measures.

Not later than one hundred twenty (120) days from the effective date of this Act, the director of the Office, in coordination with PRITS, shall issue guidelines to establish the minimum security requirements to ensure the reliability and

confidentiality of the information, and to ensure the proper use of the information systems through the Program.

The guidelines issued shall include, at a minimum and without it being construed as a limitation, what is necessary to:

- a) Control access to agency information and information systems.
- b) Protect agency information, including personal information.
- c) Protect information systems not under the control of the agency that are used in the Program.
- d) Prevent the inappropriate use of agency time and equipment, while maintaining the high standards of quality and internet security.
- e) Limit and identify system vulnerabilities.
- f) Safeguard the agency equipment used to implement the Program.

Section 9.- Disclosure.

PRITS shall maintain a webpage for the Program. The webpage shall include, at a minimum, the following:

- a) The minimum guidelines adopted by the Office.
- b) The Telework guidelines provided by the United States Office of Personal [sic] Management.
- c) Announcements regarding the Program.
- d) Links to approved legislation and regulations concerning the Program.
- e) The reports filed pursuant to this Act.
- f) The reports submitted to Congress on the status of Telework by the United States Office of Personal [sic] Management.

Section 10.- Remote Work Officer.

The appointing authority of every agency shall designate an employee thereof as the Remote Work Officer. The Remote Work Officer shall be within the Human Resources Office of the agency or its equivalent.

The duties of the Remote Work Officer shall include the following:

- a) To develop and implement the minimum guidelines of the agency's Program.
- b) To serve as an advisor and as a resource for the agency and its employees regarding the Program's operation.
- c) To serve as the point of contact for the Office in the agency.
- d) To perform any other duty applicable or delegated by the agency.

None of the above shall be construed to prohibit a person holding another position in the agency from being appointed as the Remote Work Officer.

Section 11.- General Rules.

- a) Every agency shall incorporate the Program within two (2) years from the effective date of this Act.
- b) The agency shall ensure that teleworkers are subject to the same rules and disciplinary actions as the nonteleworkers.
- c) The teleworker shall, under no circumstance, call, set an appointment for, or hold a meeting for the purpose of having a citizen appear at the location where he Teleworks. This prohibition shall not apply when the Telework is performed from a branch office where services are rendered to the public, as provided by the agency.
- d) The employee may become ineligible for Telework if after having entered into the agreement required herein, he does not comply with the stipulations or with the rules and regulations.
- e) The implementation of this Program shall not constitute a violation of existing collective bargaining agreements, an unlawful practice, nor shall it be inconsistent with the seniority principle.

Section 12.- Reports

Not later than eighteen (18) months from the date of enactment of this Act, the Office, in coordination with PRITS, shall submit a report to the Legislative Assembly that includes, without it being construed as a limitation, the following:

- a) The degree of participation by employees of each agency in the Program.
- b) The total number of employees participating per agency.
- c) The number and percent of employees per agency who are eligible for the Program.
- d) The number and percent of employees per agency who are Teleworking; including the number of days per month they are Teleworking.
- e) The method for gathering the data provided in the report.
- f) The reasons for positive or negative variations in Program participation.
- g) The status of the agency's implementation of the Program and the savings achieved, if any.

After the first report has been submitted, the Office shall continue to submit them on or before March 1st of each year.

Section 13.- Subsection (2) of Section 4.3 of Article 4 of Act No. 8-2017, as amended, known as the "Government of Puerto Rico Human Resources Administration and Transformation Act," is hereby amended to read as follows:

"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:

v.[sic] Powers and Duties of the Director:

a...

2. Powers and Duties of the Office:

a....

u. To assist every agency in the development of its institutional policy on the Remote Work Program.

v. To provide support and guidance to the Remote Work Program regarding payroll, employee classification, performance, recruitment, retention, and reasonable accommodation for employees with disabilities, among others.

...”

Section 14.- Rulemaking.

The agencies of the Government of Puerto Rico, as they are defined in this Act, shall promulgate the pertinent regulations for the implementation of the Program not later than one hundred and eighty (180) after the approval of this Act.

Section 15.- Severability Clause.

If any provision of this Act were held to be null or unconstitutional by a Court with jurisdiction, the holding to such effect shall not affect, impair, or invalidate the remainder of this Act. The effect of said holding shall be limited to the paragraph, subsection, or section of this Act thus held to be unconstitutional.

Section 16.- Effectiveness.

This Act shall take effect immediately after its approval. However, this Program shall be implemented as of Fiscal Year 2020-2021.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 36-2020 (S. B. 1241)** of the **7th Regular Session** of the **18th Legislative Assembly of Puerto Rico**:

AN ACT to create the “Government of Puerto Rico Remote Work Act,” for the purpose of directing the agencies, instrumentalities, and public corporations of the Government of Puerto Rico to adopt the necessary measures to implement a Telework Program through which participating employees shall be allowed to partially or fully discharge the duties and responsibilities of their position from their homes or other branch offices of the government entity in which they are employed; to amend subsection (2) of Section 4.3 of Article 4 of Act No. 8-2017, as amended, known as the “Government of Puerto Rico Human Resources Administration and Transformation Act,” for the purpose of establishing the functions of the Government of Puerto Rico Human Resources Administration and Transformation Office to enforce compliance with the provisions of this Act ; 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 15th day of September, 2020.

Orlando Pagán-Ramírez
Director