(H. B. 1244)

(No. 41-2022)

(Approved June 20, 2022)

AN ACT

To amend Sections 2.12, 2.18, and 2.21 of Act No. 4-2017, better known as the "Labor Transformation and Flexibility Act"; amend Section 4, 8, 10, 11, and 14 of Act No. 379 of May 15,1948, as amended; amend Sections 1 and 4 of Act No. 289 of April 9, 1946, as amended; amend subsections (a), (k), and (q) of Section 4, subsection (b) of Section 3, as well as subsection (a) of Section 10 of Act No. 180-1998, as amended; amend Sections 1 and 7 of Act No. 148 of June 30, 1969, as amended; amend subsections (a) and (b) of Section 1, subsections (b), (d), (e), and (f) of Section 2, Sections 3, 5, 7, and 8, subsections (a) and (b) of Section 11 and Section 12, as well as eliminate Section 3-A of Act No. 80 of May 30, 1976, as amended; amend Section 3 of Act No. 100 of June 30, 1959, as amended; and amend subsection (c) of Section 2 of Act No. 28-2018, as amended; in order to restore and broaden the labor rights applicable to the private sector; reduce the probationary period, restore the protections against wrongful termination and the formula to calculate the accrual of vacation and sick leave, and extend such benefit to part-time employees; restore the statute of limitations for workers to claim benefits derived from an employment contract; and for other related purposes.

STATEMENT OF MOTIVES

Article II, Section 16 of the Constitution of the Commonwealth of Puerto Rico provides the protections granted to the working class, which is the most vulnerable sector within the employer-employee relationship. This mandate specifically states that:

> The right of every employee to choose his occupation freely and to resign therefrom is recognized, as is his right to equal pay for equal work, to a reasonable minimum salary, to protection against risks to his health or person in his work or employment, and to an ordinary-workday

> which shall not exceed eight hours. An employee may work in excess of this daily limit only if he is paid extra compensation as provided by law.

Likewise, the Constitution validates the right of persons employed by the private sector and by government agencies and instrumentalities operating as private businesses or enterprises to organize, bargain collectively, strike, and engage in other legal concerted activities to achieve better work conditions. In this context the Constitution itself recognizes the power of the Legislative Assembly to broaden these guarantees based on its authority to "enact laws for the protection of the life, health and general welfare of the people," given that the rights listed in the Constitution shall not be construed restrictively or as to exclude other protections.

The fight for labor rights headed by workers worldwide achieved the recognition of important rights in the Universal Declaration of Human Rights adopted by practically every government in the world in 1948. Said Declaration establishes that everyone has the right "to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment" (Article 23); "to equal pay for equal work" and "to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection" (Article 23); "to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control" (Article 25); "to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay" (Article 24); "freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its

benefits" (Article 27). Moreover, it recognized that "[e]veryone has the right to form and to join trade unions for the protection of his interests" (Article 23).

However, the preceding Legislative Assembly adopted a new public policy upon the approval of Act No. 4-2017, titled the "Labor Transformation and Flexibility Act." The Legislative Assembly established in the Statement of Motives that the new legal structure attempted to create "a clear and consistent public policy geared toward becoming an attractive jurisdiction for establishing businesses and creating job opportunities; promoting private sector employment level growth; and providing new job opportunities for unemployed persons." The formula to transform Puerto Rico into "an attractive jurisdiction" was concentrated exclusively in persuading employers to create more jobs within a structure of reduced rights, protections, and fringe benefits.

Precisely to justify its approval, said Act used the Global Competitiveness Index of the World Economic Forum, a study based on the perception of the surveyed business owners. This publication establishes that "restrictive labor regulations" are one of the most problematic factors for transforming Puerto Rico into a more attractive jurisdiction for investment, in addition to "inefficient government bureaucracy," "tax regulations," "tax rates," and "access to financing." Dr. Morales Cortés explains that:

> In times of economic crisis, the labor reforms have proven to be regressive in nature. Austerity measures cast uncertainty over the terms and conditions of employment of the working class. Such practices constitute a form of institutional violence and lead to greater inequality, inequity, and injustice. A regressive legal framework tends to adversely affect: the quality of life and wellbeing, employee retention, motivation, and create work performance and organizational challenges… not all people in Puerto Rico have access to work, much less

> decent work. The freedom to choose a job takes place within the context of limited job offers and a high emigration rate due to poor compensation.[1] (Our translation)

For example, one of the main protections recognized for the working class is the existence of a probationary period during which the employer determines whether the employee is suitable to discharge certain duties. Thus, the employee assumes new responsibilities and begins an evaluation period in preparation for becoming a permanent employee in the company. In the words of the Supreme Court of Puerto Rico:

> The labor laws in effect in Puerto Rico enable an employer to hire a person as a permanent employee, but subject to compliance with a probationary period that allows the employer to assess the performance of said employee. Therefore, the employer may terminate the probationer at the end of the probationary period without granting severance pay if the probationer's performance is unsatisfactory during said period. In fact, the employer may terminate the employment relationship during the probationary period if the employee fails to discharge his duties… If the employee continues to work for the employer upon expiration of the probationary period established in the contract or a valid extension thereof, such employee shall acquire full employment rights of a permanent employee as if such employee had been hired for an indefinite term.[2] (Our translation)

Prior to this revision, the probationary period could be extended for a maximum of three (3) months. However, this statute allowed a six (6)-month extension in exceptional cases, upon written authorization of the Secretary of the Labor and Human Resources. The reform extended this period to nine (9) months.

---

[1] Dr. Morales Cortés, Comentario a la Reforma Laboral 2017, *Políticas Laborales Regresivas: Un atentado a la Calidad de Vida y al Bienestar de los Trabajadores*, p. 115.

[2] *Whittenburg v. Col. Ntra. Sra. del Carmen*, 182 D.P.R. 937, p. 30 (2011).

Another very important change was made to the rule applicable to vacation and sick leave accrual rates. The previous legal structure, codified in Section 6 of Act No. 180-1988, as amended, established that these workers would accrue vacation leave at a rate of one and one fourth (1 ¼) days per month; and vacation leave at a rate of one (1) day per month. It only required the employee to work a minimum of one hundred fifteen (115) hours per month.

The new structure increased the minimum number of required hours to one hundred thirty (130) hours per month. Moreover, it imposed a new vacation leave accrual structure, that consists of the following rates:

1. One half (½) day per month during the first (1) year of service.

2. Three-fourths (¾) day per month after one (1) year of service up to the fifth (5) year of service.

3. One (1) day per month after the fifth (5) year of service up to the fifteenth (15) year of service.

4. One and one-fourth (1¼) days after the fifteenth (15) year of service.

Therefore, at present, the employees covered under this labor reform must remain in their jobs for fifteen (15) years in order to accrue the same number of days per month as in the repealed legal structure.

Likewise, Act No. 4, *supra*, reduced the statute of limitations for workers to claim any noncompliance related to their employment contract and eliminated the text in the law which enabled a dismissal to be classified as a wrongful termination.

This Legislative Assembly reaffirms a public policy that recognizes:

(1) The fundamental need of the people of Puerto Rico to increase their production capacity to the highest possible level in order to achieve the highest possible standard of living for its population. It is the duty of the Commonwealth of Puerto Rico to adopt such measures as may be conducive to the maximum development of this production in order to remove the risk that a day might come

when, as a result of the continuous population growth and the impossibility of maintaining an equivalent increase in production, the people shall have to face an irremediable catastrophe; and it is the purpose of the Government to develop and maintain such production through the comprehension and education of all the elements composing the people with respect to the fundamental need to increase production to the highest level and distribute such production as equally as may be possible.

(2) Industrial peace, suitable, stable, and reliable salaries for employees, and the uninterrupted availability of goods and services as essential factors for the economic development of Puerto Rico. The achievement of these objectives is contingent upon fair, friendly, and mutually satisfactory relations between employers and employees, and upon the provision of adequate means for the peaceful resolution of employer-employee controversies.

(3) To eliminate the causes of certain labor disputes by developing and establishing an appropriate, effective, and impartial judicial process that honors and implements this policy.

Therefore, this Legislative Assembly hereby proposes to revert some of the changes made under the 2017 labor reform, in accordance with a work plan that focuses on two key areas: (1) restoring and broadening the labor rights applicable to private sector employees; and (2) exercising the power of the Legislative Assembly to conduct investigations in order to inquire into the prevailing working conditions in Puerto Rico and propose new protections for the benefit of the working class.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Section 2.12 of Act No. 4-2017, as amended, is hereby amended to read as follows:

“Section 2.12.- Interpretation: Ambiguous Provisions.

If any provision of an employment contract is ambiguous, such provision shall be interpreted liberally in favor of the employee.

The foregoing shall also apply when interpreting the policies or rules established by the employer. However, if the employer reserves the right to interpret his policies or rules, such a reservation shall be recognized; provided, that the interpretation is reasonable and not arbitrary or capricious, or as otherwise provided in a special law."

Section 2.- Section 2.18 of Act No. 4-2017, as amended, is hereby amended to read as follows:

"Section 2.18.- Statute of Limitations.

The statute of limitations on actions arising out of an employment contract or the benefits thereunder shall be three (3) years from the time the action accrues, except as otherwise expressly provided in a special law or the employment contract."

Section 3.- Section 2.21 of Act No. 4-2017, as amended, is hereby amended to read as follows:

"Section 2.21.- Periodic Reports to the Legislative Assembly.

The Secretary of the Department of Labor and Human Resources is hereby required to submit reports on the application of this Act every three (3) months to the Secretary of the Senate and the Clerk of the House of Representatives of the Legislative Assembly."

Section 4.- Section 4 of Act No. 379 of May 15, 1948, as amended, is hereby amended to read as follows:

"Section 4.- Overtime is:

(a) Hours that an employee works for his employer in excess of eight (8) hours during any calendar day.

(b) Hours that an employee works for his employer in excess of forty (40) hours during any workweek.

(c) Hours that an employee works for his employer during the days or hours in which the establishment should remain closed to the public as required by law. However, hours worked on Sundays, when the establishment should remain closed to the public as required by law, shall not be considered overtime just by the mere fact that such hours had been worked during that period.

(d) Hours that an employee works for his employer during the weekly rest day, as provided by law.

(e) Hours that an employee works for his employer in excess of the maximum number of hours per day agreed on in a collective bargaining agreement."

Section 5.- Section 8 of Act No. 379 of May 15, 1948, as amended, is hereby amended to read as follows:

"Section 8.- An employee may request, in writing, a change in work schedule, number of hours, or location. The employee's written request shall specify the change requested, the reason for the request, the effective date, and the duration of said change. In no case shall an employee be required to use or include specific terms or concepts in the preparation or presentation of any request under this Act. Every employer shall establish the applicable internal procedure to record these requests.

The employer shall be required to provide a written response, which shall be included in the employee' personnel file, within twenty (20) calendar days from the receipt of the request. Employers with fifteen (15) employees or more shall provide the required response in writing. If the employer meets with the employee within twenty (20) calendar days from the receipt of the request for a change, the notice of the response may be given within fourteen (14) calendar days from said meeting.

The employer may approve or deny the employee's request. The approval of a request may be subject to the conditions and requirements agreed-upon between the employee and the employer. A denial shall state the specific reasons for the decision and include any alternatives to the request submitted. In cases in which the

denial is based on the fact that the employer cannot provide an alternative to the requested change, the employer shall state so in the response. The employer shall give priority to the requests made by heads of household who have legal or sole custody of their minor children.

The provisions of this Section shall only apply to employees who regularly work thirty (30) hours or more per week, and who have worked for the employer for at least one (1) year. However, the provisions of this Section shall not apply to any other request submitted within six (6) months from the receipt of a written decision of the employer, or the granting of the request for change, whichever is shorter."

Section 6.- Section 10 of Act No. 379 of May 15, 1948, as amended, is hereby amended to read as follows:

"Section 10.-

(...)

No employer may retaliate against, discharge, suspend, or otherwise affect the employment or working conditions of any employee for having refused to accept an alternate weekly work schedule as authorized in Section 6 of this Act or for having submitted a request for change in work schedule, hours, or location as provided in Section 8 of this Act. Any employer that engages in said conduct may be held liable for civil damages in an amount equal to the damages that said action has caused to the employee, and if it is proven that the employer engaged in such conduct with malice or reckless disregard for the employee's rights, punitive damages may be imposed in a maximum additional amount equal to the actual damages caused. The employer's financial situation, the reprehensibility of the employer's wrongdoing, the duration and frequency thereof, the sum of the damages caused, and the size of the company shall be taken into consideration, among other factors, in order to determine the sum to be imposed as punitive damages. The employer may also be

required to reinstate the worker in his employment and to cease and desist of the act in question.

(...).”

Section 7.- Section 11 of Act No. 379 of May 15, 1948, as amended, is hereby amended to read as follows:

“Section 11.- Work Hours - Posting Notice of Work Hours.

(...)

The employer who requires or allows an employee to work for a period longer than five (5) consecutive hours, without providing a meal period, shall pay the employee an extraordinary compensation for the time worked as is provided in this Section. The meal period may be waived by written agreement between the employee and the employer without the intervention of the Secretary of Labor and Human Resources in cases in which the meal period takes place outside of the regular work schedule of the employee.

The meal period shall not begin before the conclusion of the third hour, or after the sixth consecutive hour of work begins. Provided, that the meal period may be enjoyed between the second and third consecutive hours of work by written agreement between the employee and the employer.

An employer shall not employ an employee for a work period that exceeds ten (10) hours per day without providing an employee a second meal period. In cases in which the total of hours worked does not exceed twelve (12) hours, the second meal period may be waived; provided, that the employee took the first meal period and there is a written agreement between the employee and the employer.

The length of meal periods within or outside the regular work schedule shall be one (1) hour. As an exception, the length of the meal period may be reduced to not less than thirty (30) minutes; provided, that there is a written agreement between the employer and the employee. In the case of croupiers, nurses, security guards, and

others authorized by the Secretary of Labor and Human Resources, the meal period may be reduced up to twenty (20) minutes when there is a written agreement between the employer and the employee without requiring the approval of the Secretary of Labor and Human Resources. Nonetheless, all other provisions of this Section shall apply.

Agreements to reduce the meal period shall be valid as long as both the employee and the employer consent thereto. Such agreements shall continue in effect when a third party acquires the business of the employer.

Any employer that employs or allows an employee to work during the meal period shall be required to pay said period or fraction thereof at a pay rate equal to one and one-half times the regular pay rate agreed on. Provided, that employees who have the right to a pay rate higher than one and one-half times prior to the effective date of the 'Labor Transformation and Flexibility Act' shall keep said benefits.

When the employees are members of a labor union, the agreement to reduce the meal period may only be made by collective bargaining or written agreement between the union and the employer, and the individual consent of the employees represented by the union or the approval of the Secretary of Labor and Human Resources shall not be necessary. In such cases, the reduction shall be effective[sic] collective bargaining agreement or as provided in the collective bargaining agreement or agreement."

Section 8.- Section 14 of Act No. 379 of May 15, 1948, as amended, is hereby amended to read as follows:

"Section 14.- Work Hours - Regulations by Secretary of Labor and Human Resources.

The Secretary of Labor shall draft rules and regulations as are necessary or the proper administration of this Act. Said rules and regulations shall be promulgated within a period not to exceed ninety (90) days from the approval of this Act."

Section 9.- Section 1 of Act No. 289 of April 9, 1946, as amended, is hereby amended to read as follows:

"Section 1.- Every employee of a commercial or industrial establishment, enterprise or business, whether for profit or not for profit, including those operated by nonprofit associations or organizations and charitable institutions, shall be entitled to one (1) day of rest for every six (6) days of work. For the purposes of this Act, one (1) day of rest shall be understood as a period of twenty-four (24) consecutive hours."

Section 10.- Section 4 of Act No. 289 of April 9, 1946, as amended, is hereby amended to read as follows:

"Section 4.- Any employer who employs or allows an employee to work on the day of rest provided in this Act shall be required to pay said employee for the hours worked during such day of rest at a pay rate equal to one and one-half times the regular rate of pay agreed on. However, if the employee working on the day of rest is a student, the employer shall be required to pay that employee at a pay rate equal to two (2) times the regular rate of pay agreed on. For the purposes of this Section, a student shall be deemed to be a person who is enrolled in a higher education institution or college or in any graduate program. However, microbusiness, or small- and medium-sized business employers, as such terms are defined in subsections (4), (5), and (6) of Section 2 of Act No. 62-2014, as amended, may pay such employees at a pay rate equal to one and one-half times the regular rate of pay agreed on. Provided, that employees entitled to greater benefits prior to the effective date of the 'Labor Transformation and Flexibility Act,' shall keep said benefits."

Section 11.- Subsections (a), (k), and (q) of Section 4 of Act No. 180-1998, as amended, are hereby amended to read as follows:

"Section 4.- Provisions on Vacation and Sick Leave.

(a) All employees in Puerto Rico, except for those listed in Section 6 of this Act, who work not less than twenty (20) hours per week, but less than one hundred fifteen (115) hours per month shall accrue vacation leave at a rate of one-half (1/2) day per month; and sick leave at a rate of one-half (1/2) day per month. All employees in Puerto Rico, except those listed in Sections 3 and 6 of this Act, who work not less than one hundred fifteen (115) hours per month shall be entitled to accrue vacation leave at a minimum rate of one and one-fourth (1¼) days per month and sick leave at a minimum rate of one (1) day per month.

However, the minimum monthly accrual rates in the case of employers that are Puerto Rico residents and have no more than twelve (12) employees, shall be: employees who work not less than twenty (20) hours per week, but less than one hundred fifteen (115) hours per month shall accrue vacation leave at a rate of one-fourth (1/4) day per month and sick leave at a rate of one half (1/2) day per month. The employees who work for such employers not less than one hundred fifteen (115) hours per month shall be entitled to accrue vacation leave at a minimum rate of one half (1/2) day per month and sick leave at a minimum rate of one (1) day per month. This exception shall be available to employers; provided, that the number of employees does not exceed twelve (12) employees and shall cease the calendar year following that in which the number of employees under such employer's payroll exceeds fifteen (15) employees for more than twenty-six (26) weeks on each one of the two (2) consecutive calendar years.

The use of vacation and sick leaves shall be considered time worked for purposes of the accrual of these benefits.

(b) ...

(c) ...

(d) ...

(e) ...

(f) ...

(g) ...

(h) ...

(i) ...

(j) ...

(k) The employer may authorize the partial or total liquidation of accrued vacation leave upon written request from the employee.

(l) ...

(m) ...

(n) ...

(o) ...

(p) ...

(q) No employer, supervisor, or representative thereof shall use, as part of their company's administrative procedure or policy, excused sick leave as performance criteria for the employee evaluation process, if said employee is being considered for a raise or promotion in the company he works for. No sick leave or special emergency leave provided in this Section correctly charged against sick leave, with or without pay, shall be used as grounds for disciplinary actions such as suspensions or dismissals. This provision shall not preclude employers from establishing attendance incentive programs for their employees in accordance with their operational needs."

Section 12.- Subsection (b) of Section 3 of Act No. 180-1998, as amended, is hereby amended to read as follows:

"Section 3.- Industries that Provide Greater or Lesser Benefits.

(a) ...

(b) Any employee who had been working for an employer before the effective date of the 'Labor Transformation and Flexibility Act,' and who was

entitled by law to monthly vacation and sick leave accrual rates higher than those provided in the 'Labor Transformation and Flexibility Act,' shall continue to enjoy the monthly leave accrual rates previously applicable to such employee. These provisions shall apply as long as said employee works for the same employer.

It shall constitute an unlawful employment practice for an employer to dismiss, discharge, or indefinitely suspend an employee for the purpose of rehiring or replacing him with a new employee so that their employment rights are less than those they had prior to the approval of a subsequent law. Any employer who violates the provisions of this Section shall be guilty of a misdemeanor and punished by a fine of not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000) or by imprisonment for a term of not less than one hundred twenty (120) days nor more than one (1) year, or both penalties at the discretion of the Court. Such employer shall also be held liable for civil damages for an amount equal to twice the amount of the damages that his actions may have caused to the employee. If the person settling the dispute is unable to determine the amount of the damages caused to the employee, such person may, in his discretion, impose a penalty of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000)."

Section 13.- Subsection (a) of Section 10 of Act No. 180-1998, as amended, is hereby amended to read as follows:

"Section 10.- Statute of Limitations.

(a) The statute of limitations for an employee to file a wage claim against his employer under this Act or a mandatory decree whether approved now or in the future, in accordance with this Act or any contract or law shall be three (3) years. The statute of limitations shall run from the time the employee ceased to work for the employer. The above statute of limitations shall be tolled and resume running upon notice of unpaid wages, in court or out of court, given by the employee or

worker, his representative, or an official of the Department with authority to do so, and upon the employer's acknowledgment of the unpaid wage debt.

The statute of limitations for claims arising under this Act shall be three (3) years from the time the action prohibited by this Act is taken.

(b) ...

(c) ...

(d) ...

(e) ..."

Section 14.- Section 1 of Act No. 148 of June 30, 1969, as amended, is hereby amended to read as follows:

Section 1.- Any employer who employs one or more workers or employees within the period of twelve (12) months comprised from October 1st of any year through September 30th of the following calendar year shall be required to pay to each one of said employees, who has worked seven hundred (700) hours or more, or one hundred (100) hours or more in the case of dock workers, within the aforementioned period, a bonus equal to six percent (6%) of the total maximum wage of ten thousand dollars ($10,000) earned by the employee or worker within said period of time. It is hereby provided that any employer who employs twelve (12) employees or less for a period of twenty-six (26) weeks within the twelve (12)-month period comprised from October 1st of any year through September 30th of the following calendar year shall pay a bonus equal to three percent (3%) of the total maximum wage of ten thousand dollars ($10,000).

As for employees hired after the effective date of the 'Labor Transformation and Flexibility Act,' any employer who has more than twenty (20) employees for more than twenty-six (26) weeks within the twelve (12)-month period comprised from October 1st of any year through September 30th of the following calendar year, shall be required to pay to each employee who has worked at least one seven hundred

(700) hours or more during said period, a bonus equal to three percent (3%) of the total wage earned up to six hundred dollars ($600.00). If an employer has twenty (20) employees or less for more than twenty-six (26) weeks within the twelve (12)-month period comprised from October 1st of any year through September 30th of the following calendar year, such employer shall be required to pay to each employee who has worked at least seven hundred (700) hours or more during said period, a bonus equal to three percent (3%) of the total wage earned up to three hundred dollars ($300.00).

However, microbusiness or small- and medium-sized business employers, as such terms are defined in subsections (4), (5), and (6) of Section 2 of Act No. 62-2014, as amended, shall be required to grant the benefit established in the paragraph above to every employee who has worked nine hundred (900) hours or more within the aforementioned period.

The total amounts paid on account of said bonus shall not exceed fifteen percent (15%) of the annual net profit of the employer, within the period comprised from October 1st of the preceding year through September 30th of the bonus year. In computing the total hours worked by an employee to receive the benefits of this Act, the hours worked for the same employer, even if the services have been rendered in different businesses, trades, and other activities of that employer, shall be counted. In order to determine net profit, the amount of the net loss carryover of previous years and account receivables yet to be paid at the end of the period covered in the balance sheet as well as in the profits and loss statement shall not be included.

This bonus shall constitute a compensation in addition to any other wages or benefits of any other kind to which the employee is entitled. The employer may credit against said obligation any other bonus previously paid to the employee during the year on any account; provided, that the employer has given written notice to the

employee of his intent to apply such other bonus toward the payment of the bonus required under this Act.

Provided, that in the event of ambiguities in the provisions of this Section, such provisions shall be interpreted liberally, in favor of the employee."

Section 15.- Section 7 of Act No. 148 of June 30, 1969, as amended, is hereby amended to read as follows:

"Section 7.- The Secretary of Labor and Human Resources is hereby authorized to adopt those rules and regulations as he may deem necessary for the best and due administration of this chapter.

The Secretary is likewise authorized to request and require employers to furnish, under oath, any available information with regard to the balance sheets, profit and loss statements, accounting books, payment schedules, wages, hours of work, statement of changes in the financial status, and the corresponding notations, and any other information deemed necessary for the proper administration of this Act. To such effects, the Secretary of Labor and Human Resources may prepare forms such as schedules which may be obtained by employers through the Department of Labor and Human Resources and be completed and filed with the offices of the Department of Labor and Human Resources within the deadline established by the Secretary.

The Secretary is also empowered to audit and examine the employer's books, accounts, files, and other documents, on his own or through his subordinates, to determine their liability to their employees under this Act.

In order for an employer to avail himself of the provisions of Section 1 of this Act, which exempts employers from paying all or part of the bonus established therein when the employer has not obtained profits from his business, industry, trade, or company or when its profits are insufficient to cover the total amount of the bonus without exceeding the fifteen percent (15%) limit of its annual net profit, such

employer shall submit to the Secretary of Labor and Human Resources, not later than November 30th of each year, a general balance sheet and a profit and loss statement for the twelve (12)-month period comprised from October 1st of the previous year to September 30th of the current year, duly certified by a certified public accountant, as evidence of said financial status. In those cases, in which the fiscal year of the employer requesting the exemption provided in this Section does not end on September 30th of each year, the balance sheet and the profit and loss statement required may be that corresponding to the fiscal year of the business. The balance sheet and the profit and loss statement required herein may be prepared or reviewed by a certified public accountant and shall be signed and have the seal of the College of Certified Public Accountants affixed thereto. The foregoing shall not be construed as to limit the powers of the Secretary of Labor and Human Resources to conduct, within his oversight duties, an intervention by way of an audit, of any employer requesting an exemption and to verify the accuracy of the information furnished.

…"

Section 16.- Subsections (a) and (b) of Section 1 of Act No. 80 of May 30, 1976, as amended, are hereby amended to read as follows:

"Every employee of a trade, industry, or any other business or place of employment henceforth designated as the establishment wherein he works for any kind of compensation, who has been hired for an indefinite period and is terminated without just cause, shall be entitled to receive from his employer, in addition to the wages he has earned, the following:

(a) A severance pay equal to three (3) months of salary, if the employee is terminated before fifteen (15) years of service; and equal to six (6) months of salary, if the employee is terminated after fifteen (15) years of service.

(b) An additional progressive severance pay equal to two (2) weeks for each year of service, if the employee is dismissed before fifteen (15) years of service; or three (3) weeks for each year of service, if the employee had completed fifteen (15) years of service or more.

The years of service shall be determined on the basis of all cumulative employment periods worked by the employee for the employer prior to the layoff, but shall exclude those periods that, due to termination or previous separation, have already been compensated or have been the object of a court judgment.

Notwithstanding the first paragraph of this Section, the mere fact that an employee is rendering services under a fixed-term contract does not automatically deprive such employee of protection under this Act if the practice and circumstances involved or any other evidence relating to the contracting were of such a nature as to give rise to an expectation of continued employment or appear to be a bona fide indefinite-term employment contract. In such cases, the employees thus affected shall be considered as having been contracted for an indefinite term. Except for employees hired for a bona fide fixed term or for specific bona fide projects or works, the separation, termination, or layoff of employees hired for a fixed term or for a specific project or work, or the non-renewal of a contract shall be presumed to be a termination without just cause under this Act.

The severance pay provided in this Act, as well as any equivalent voluntary payment made by the employer to an employee by reason of said employee's discharge shall be exempt from income taxes, regardless of whether such payment is made at the time of the discharge or later, or whether it is made by reason of a settlement agreement or pursuant to a court judgment or administrative order."

Section 17.- Subsections (b), (d), (e), and (f) of Section 2 of Act No. 80 of May 30, 1976, as amended, are hereby amended to read as follows:

"Section 2.- An employee shall be deemed to have been terminated for cause, if terminated due to the following:

(a) The employee engages in a pattern of improper or disorderly conduct.

(b) The employee fails to perform the work efficiently and to meet deadlines, the employee's negligent performance or in violation of the quality standards established for the product being manufactured or handled by the establishment.

(c) The employee's repeated violations of the reasonable rules and regulations established for the operation of the establishment; provided, that a written copy thereof has been timely furnished to the employee.

(d) Full, temporary, or partial closing of the operations of the establishment.

(e) Technological or reorganization changes, or the nature of the product manufactured or handled by the establishment, and changes in the services rendered to the public.

(f) Downsizing made necessary by a reduction in the foreseen or prevailing volume of production, sales, or profits at the time of the discharge.

It shall not be considered termination for cause when an employee is discharged on a mere whim of the employer or without cause related to the proper and regular operations of the establishment. Furthermore, the collaboration of or expressions made by an employee in relation to his employer's business in an investigation before any administrative, judicial, or legislative forum in Puerto Rico shall not be considered cause for termination, if said expressions are not of a defamatory character nor constitute disclosure of privileged information according to law. In this last case, the employee thus discharged shall have the right to —in addition to any other award to which he may be entitled— immediate reinstatement of employment and to receive a compensation in an amount equal to the unearned

salaries and benefits from the date of discharge until a court orders the reinstatement of employment."

Section 18.- Section 3 of Act No. 80 of May 30, 1976, as amended, is hereby amended to read as follows:

"Section 3.-

In any case where employees are discharged for the reasons stated in subsections (d), (e), and (f) of Section 2 of this Act, it shall be the duty of the employer to retain those employees with most seniority on the job with preference; provided, that there are vacant positions or positions filled by employees with less seniority within the job classification that may be held by the latter; provided, that preference shall be given to the employees discharged in the event that within the six (6) months following their layoff the employer needs to employ a person in like or similar work to that which said employees were doing at the time of their discharge, within their job classification, also following the order of seniority in their reinstatement. However, in both instances and in cases in which there is a reasonably clear or evident difference in favor of the capability, productivity, performance, competence, efficiency or conduct record of the compared employees, the employer may make a selection based on such criteria. Provided, that:

(a) In the case of layoffs or downsizing due to the reasons stated in subsections (d), (e), and (f) of this Act, companies that have several offices, factories, branches or plants, where the transfer of employees between offices, factories, branches, or plants, and such units substantially operate independently from one another in terms of personnel is not a standard and common practice, seniority within the job classification subject to reduction shall be calculated by taking into account only the employees of the office, factory, branch, or plant where the downsizing shall take place.

(b) In the case of companies that have several offices, factories, branches, or plants where the transfer of employees from one unit to another and such units substantially operate in an integrated manner with regards to personnel is a standard and common practice, the seniority shall be calculated by taking into account all of the offices, factories, branches, or plants within the job classification subject to downsizing."

Section 19.- Section 3-A of Act No. 80 of May 30, 1976, as amended, is hereby repealed.

Section 20.- Section 5 of Act No. 80 of May 30, 1976, as amended, is hereby amended to read as follows:

"Section 5.- For purposes of this Act, discharge shall mean, in addition to an employee's layoff, his indefinite suspension or a suspension for a period exceeding three (3) months, except in the case of employees of seasonal trades or businesses, or the resignation of the employee caused by the actions of the employer directed to induce or compel him to resign, such as imposing or trying to impose on the employee more onerous work conditions, reducing his salary, demoting or subjecting him to derogatory criticisms or humiliations by deed or word."

Section 21.- Section 7 of Act No. 80 of May 30, 1976, as amended, is hereby amended to read as follows:

"Section 7.- The compensation and progressive severance pay allowance for termination without just cause provided in Section 1 of this Act, shall be computed on the basis of the highest number of regular work hours of the employee during any period of thirty (30) consecutive calendar days within the year immediately preceding the discharge. In the case of discharge on the grounds stated in subsections (d), (e), and (f) of Section 2 of Act No. 80 of May 30, 1976, as amended, any sum of money received by the workers as severance pay or as a result of the winding down or shutdown of a business, or of an employee profit sharing plan shall be

considered a special compensation. The aforementioned sums shall in no way affect the computation or right to claim compensation or progressive severance pay provided in Section 1 of Act No. 80 of May 30, 1976, as emended."

Section 22.- Section 8 of Act No. 80 of May 30, 1976, as amended, is hereby amended to read as follows:

"Section 8.-

The probationary period shall be automatic and shall not exceed three (3) months unless the employer gives written notice to the Secretary of Labor and Human Resources. The notice shall state the reasons why, in the employer's judgment, the nature of the work so requires. Once said notice is given, the probationary period shall be deemed to have been extended up to a maximum of three (3) additional months, for a total of six (6) months. In the case of unionized employees, the probationary period may be extended up to a maximum of six (6) months as agreed by collective bargaining or written agreement between the union and the employer.

If, upon expiration of the term established in the probationary contract, or a valid extension thereof, or upon expiration of the automatic probationary period established by this Act when no probationary contract has been executed, the employee continues to work for the employer, such employee shall acquire full employment rights as if such employee had been hired for an indefinite term.

The probationary period set forth in this Section shall not have the effect of limiting the accrual of vacation leave of the employees who are entitled thereto by law.

The probationary period of an employee who avails himself of a leave authorized by law, shall be interrupted automatically and shall continue for the remainder of the probationary period once he returns to his job.

Any employer who retains the services of an employee hired through a temporary employment agency or hired directly through a temporary or fixed-term contract or for a specific project, shall credit the time worked by a temporary employee up to a maximum of six (6) months; provided, that the work to be performed involves the same functions or duties he had when he was a temporary employee.

For the purposes of this Section, the term 'month,' shall be mean a period of thirty (30) consecutive calendar days."

Section 23.- Subsections (a) and (b) of Section 11 of Act No. 80 of May 30, 1976, as amended, are hereby amended to read as follows:

"Section 11.-

(a) In every action brought by an employee claiming the benefits under this Act, the employer shall be required to state in its answer to the complaint, the facts that led to the employee's termination and provide proof of a valid termination for cause in order to be exempted from compliance with the provisions of Section 1 of this Act. Likewise, in any action brought by an employee claiming the benefits under this Act, if such employee was hired for a fixed-term or for a specific project or work, the employer shall be required to state such facts in the answer to the complaint, and provide proof of the existence of a bona fide contract in order to be exempted from compliance with the remedy provided by this Act, unless the employer provides proof of a valid termination for cause.

A fixed-term employment contract or a contract for a specific project or work shall be deemed to be a bona fide contract if it is made in writing, on the employee's first day of employment, or in the case of employees hired by client companies through temporary employment agencies, within ten (10) days from the start of the contract, the stated purpose of which is, to replace an employee who is on any leave established by law or by the employer or to carry out special or short-term tasks

including, but not limited to, annual inventories, repair of business equipment, machinery, or facilities, casual loading or unloading of cargo, jobs during certain seasons of the year such as Christmas, production increase temporary orders, and any other specific short-term project or activity.

'Temporary Employment Agency' means a person or organization engaged in the business of recruiting employees to render temporary services to a client through them. 'Client Company' means a person or organization that seeks or hires temporary employees through temporary employment agencies.

(b) In every action brought under this Act, the court shall hold a pre-trial conference not later than thirty (30) days from the filing of the answer to the complaint. At the end of this conference, if in the court's judgment, there is sufficient cause, beyond the circumstances of conflicting allegations, to believe that termination was unlawful, the court shall order the sued employer to deposit with the clerk of the court, within a not extendable period of fifteen (15) days, a sum equal to the total compensation to which the worker would have been entitled to, plus an additional amount for attorney's fees, which shall never be less than fifteen percent (15%) of the total compensation. The sued employer may post an appropriate bond to cover these amounts. Said amounts or bond shall be returned to the employer if a final and binding judgment is rendered in his favor. At any stage of the proceedings in which, at the request of a party, the court determines that there is a serious risk that the employer lacks sufficient property to satisfy the judgment that may be rendered in due time in the case, the court may demand the aforesaid deposit or the corresponding bond."

Section 24.- Section 12 of Act No. 80 of May 30, 1976, as amended, is hereby amended to read as follows:

"Section 12.- The statute of limitations to enforce the rights granted hereunder shall be three (3) years from the effective date of the discharge."

Section 25.- Section 3 of Act No. 100 of June 30, 1959, as amended, is hereby amended to read as follows:

"Section 3.- Discrimination on the basis of age, race, color, sex, social or national origin, social status, political affiliation, or political or religious beliefs, or for being a victim or perceived as a victim of domestic violence, sexual assault or stalking- Presumptions.

It shall be presumed that any of the acts mentioned in the previous Sections were committed in violation of this Act when such acts have been committed without just cause. This shall be a disputable presumption.

It shall not be presumed that the employer had knowledge of the personal situation of any employee in cases of discrimination against victims or presumed victims of domestic violence, sexual assault or stalking, unless the employer was actually in a position to have such knowledge.

The employer shall make reasonable adjustments or accommodations in the workplace as are necessary to protect its employees from a potential aggressor, once he receives notice of the potential occurrence of a dangerous situation. Failure to do so shall be presumed to be discriminatory conduct."

Section 26.- Subsection (c) of Section 2 of Act No. 28-2018, as amended, known as the "Special Leave for Employees Who Suffer from Catastrophic Illnesses," is hereby amended to read as follows:

"Section 2.- Definitions.

...

(c) Catastrophic Illness: It is defined as that illness listed in the Special Coverage of the Health Insurance Administration, as it may be amended from time to time, and currently includes the following serious illnesses: (1) Acquired Immune Deficiency Syndrome (AIDS); (2) Tuberculosis; (3) Leprosy; (4) Lupus; (5) Cystic fibrosis; (6) Cancer; (7) Hemophilia; (8) Aplastic anemia; (9) Rheumatoid arthritis;

(10) Autism; (11) Post organ transplant; (12) Scleroderma; (13) Multiple sclerosis; (14) Amyotrophic lateral sclerosis (ALS); and Chronic kidney disease levels 3, 4, and 5. Furthermore, it shall include bleeding disorders similar to Hemophilia."

Section 27.- Severability Clause.

This Act shall be construed in accordance with the Constitution of Puerto Rico and the Constitution of the United States of America. 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 void 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 void 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 void 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.

Section 28.- Supremacy.

The provisions of this Act shall prevail over any other provision of law, regulation, or rule that is inconsistent therewith.

Section 29.- Applicability and Validity.

This Act shall take effect thirty (30) days after its approval. However, it is hereby provided that microbusiness, or small- and medium-sized business employers, as such terms are defined in subsections (4), (5), and (6) of Section 2 of Act No. 62-2014, as amended, shall have a period of ninety (90) days to implement the provisions of this Act.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 41-2022 (H. B. 1244) o**f the **3rd Regular Session** of the **19th Legislative Assembly of Puerto Rico:**

AN ACT amend Sections 2.12, 2.18, and 2.21 of Act No. 4-2017, better known as the "Labor Transformation and Flexibility Act;" amend Section 4, 8, 10, 11, and 14 of Act No. 379 of May 15,1948, as amended; amend Sections 1 and 4 of Act No. 289 of April 9, 1946, as amended; amend subsections (a), (k), and (q) of Section 4; subsection (b) of Section 3, as well as subsection (a) of Section 10 of Act No. 180-1998, as amended; amend Sections 1 and 7 of Act No. 148 of June 30, 1969, as amended; amend subsections (a) and (b) of Section 1, subsections (b), (d), (e), and (f) of Section 2, Sections 3, 5, 7, and 8, subsections (a) and (b) of Section 11 and Section 12, as well as eliminate Section 3-A of Act No. 80 of May 30, 1976, as amended; amend Section 3 of Act No. 100 of June 30, 1959, as amended; and amend subsection (c) of Section 2 of Act No. 28-2018, as amended; in order to restore and broaden the labor rights applicable to the private sector; reduce the probationary period, restore the protections against wrongful termination and the formula to calculate the accrual of vacation and sick leave, and extend such benefit to part-time employees; restore the statute of limitations for workers to claim benefits derived from an employment contract; 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 30th day of June, 2022.

Mónica Freire-Florit, Esq.
Director