

(H. B. 96)
(Conference)

(No. 60-2018)

(Approved January 27, 2018)

AN ACT

To amend Section 6 of Act No. 180-1998, as amended, known as the “Puerto Rico Minimum Wage, Vacation and Sick Leave Act,” in order to prohibit the employers of the private sector from using excused absences because of illness as performance criteria for the annual employee evaluation process.

STATEMENT OF MOTIVES

Act No. 180-1998, as amended, better known as the “Puerto Rico Minimum Wage, Vacation and Sick Leave Act,” was created, in part, to standardize how the employees of the private sector of Puerto Rico accrue the vacation and sick leaves.

Subsection (a) of Section 6 of said Act, as amended by Act No. 4-2017, provides that every employee in Puerto Rico shall be entitled to a sick leave accrual rate of one (1) day for every one hundred and thirty (130) worked hours. Moreover, it established that the use of vacation and sick leaves shall be considered time worked for purposes of the accrual of these benefits.

However, subsection (o) of Section 6 provides the following:

(o) The enjoyment of sick leave does not excuse compliance with those standards of conduct validly established by the employer, such as attendance, punctuality, medical certificates if the absence exceeds two (2) business days, and periodic reports on the continued illness. The medical certificate requirement shall also apply to illnesses or conditions of the employee’s children, spouse, and parents, and of

minors, elderly persons, or persons with disabilities of whom the employee is a legal guardian or custodian, as provided in subsection (n) of this Act.

Hence, the employee is also entitled to use the sick leave in cases that so warrant it. The fact that the employer establishes an internal policy to consider excused absences as unexcused absences during the employee's evaluation process thus painting the employee in a bad light when the latter is being considered for a raise or promotion in the company he works for, constitutes a violation of this right, which is guaranteed under the aforementioned act.

It is a contradiction for the same act to grant employees the right to enjoy a sick leave and, in turn, allow the employer to punish employees for exercising such right. Expecting a citizen to show up to work when he is ill could violate the individual's civil and constitutional rights. The employer has available the mechanisms to ascertain if said employee is properly exercising his right to enjoy a sick leave such as, for instance, verifying the correctness of the medical certificate or seeking a second medical opinion.

This Legislative Assembly amends Act No. 180-1998 in order to safeguard the interests and vested rights of working citizens and to provide the government authorities that regulate labor standards in Puerto Rico with the statutory provisions to achieve these goals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Section 6 of Act No. 180-1998, as amended, known as the "Puerto Rico Minimum Wage, Vacation and Sick Leave Act," is hereby amended to read as follows:

"Section 6.- Provisions on Vacation and Sick Leave.

(a) ...

...

(o) The enjoyment of sick leave does not excuse compliance with those standards of conduct validly established by the employer, such as attendance, punctuality, medical certificates if the absence exceeds two (2) business days, and periodic reports on the continued illness. The medical certificate requirement shall also apply to illnesses or conditions of the employee's children, spouse, and parents, and of minors, elderly persons, or persons with disabilities of whom the employee is a legal guardian or custodian, as provided in subsection (n) of this Act.

(p) No employer, supervisor, or their representative shall use, as part of a company's administrative procedure or policy, excused absences because of illness 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 excused absences because of illness correctly charged to sick leave, shall be used as grounds for disciplinary actions such as suspensions or dismissals."

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