

(H. B. 306)

(No. 90-2020)

(Approved August 7, 2020)

## **AN ACT**

To create an “Act to Prohibit and Prevent Workplace Bullying in Puerto Rico”; establish a strong and robust public policy against bullying in the local workplace; define the scope of application, procedures, prohibitions, and sanctions; authorize the Department of Labor and Human Resources, as well as the Government of Puerto Rico Human Resources Administration and Transformation Office, the Legislative Branch, and the Judicial Branch to adopt and promulgate regulations as are necessary for the administration and enforcement of the provisions of this Act; and for other related purposes.

### **STATEMENT OF MOTIVES**

Our code of laws provides employees with a series of statutory and constitutional protections that place Puerto Rico at the forefront of the labor field. In fact, Article II, Section 16 of the Constitution of Puerto Rico provides the right of every employee to choose his occupation freely, to resign therefrom, and to equal pay for equal work, to a reasonable minimum salary, to protection against risks to his health or person in his employment, among other protections. Our code of laws also prohibit discrimination in the workplace.

The Anti-discrimination Unit of the Department of Labor and Human Resources receives complaints of workplace discrimination on the basis of age, race, color, sex, social origin or condition, national origin, political or religious beliefs, marital status, or disability pursuant to the following legal provisions: Act No. 3 of March 12, 1942, as amended; Act No. 100 of June 30, 1959, as amended; Act No. 69 of July 6, 1985; Act No. 44 of July 2, 1985, as amended; Act No. 17 of April 22, 1988, as amended; Act No. 427-2000, as amended; Act No. 217-2006, as amended;

Act No. 271-2006, as amended; Act No. 4-2017, as amended; and Act No. 16-2017. Likewise, the Anti-discrimination Unit as the delegate of the Equal Employment Opportunity Commission, receives claims filed under Title VII of the Civil Rights Act of 1964, the Equal Pay Act of 1963, the American with Disabilities Act of 1990 (ADA), and the Age Discrimination in Employment Act of 1967 (ADEA). Said provisions prohibit discrimination in employment at any stage of the employment process —hiring, promotions, wages, salaries, compensation, categories, layoffs, reemployment, retaliation, terms and conditions of employment, and other fringe benefits— however, they do not expressly include one of the worst situations that an employee may face in a work environment: workplace bullying or mobbing. Particularly, when in a professional environment bullying is not related to the discriminatory acts or retaliation covered by the aforementioned laws.

With the approval of this legislation, this Administration reasserts that human dignity is inviolable.

Workplace bullying is a repeated infliction of verbal, written, or physical abuse by the employer, its supervisors or employees, unrelated to the legitimate interests of the employer's business, unwelcomed by targeted employee, which infringes upon the targeted employee's constitutionally protected rights. Experts on this subject have established that workplace bullying involves hostile and unethical communication which is directed in a systematic manner by one or more individuals, mainly toward one individual, who, due to mobbing, is pushed into a helpless and defenseless position and held there by means of continuing mobbing activities. These actions occur on a very frequent basis and over a long period of time. Because of the high frequency and long duration of hostile behavior, this maltreatment results in considerable mental, psychosomatic, and social misery. Regarding this, it must be noted that this conduct is not necessarily related to hierarchy, because it can also occur among peers and even subordinates. The Puerto Rico Psychological

Association stated that this conduct has serious psychological consequences for the victims, such as posttraumatic stress, susceptibility to stress, depression, panic attacks, hypervigilance, breakdown, suicide, chronic fatigue syndrome, changes in personality, and the deterioration of relationships. It is also necessary to consider the damage caused to the victim at the family, social, professional, and economic level.

This legislative measure is adopted in recognition of the serious issue that many industrial psychologists and researchers have identified as the epidemic of the 21<sup>st</sup> century in the labor field. According to the investigation conducted by late professor Heinz Leymann who pioneered research into mobbing in Europe in the 1980s, 3.5% of workers experienced this problem. As stated by Iñaki Piñuel and Zabela, a human resources expert and one of the first specialists in workplace bullying research and disclosure, this figure has increased considerably over the last decades. In fact, workplace bullying is an issue that entails serious consequences for the physical and/or emotional health of workers, as well as for their productivity. According to a survey conducted in the European Union, nearly 8% of surveyed workers, which represents a total of 12 million workers, identified themselves as victims of workplace bullying. The United States is facing a similar situation. For such reason, several states, including Massachusetts and Oregon, have introduced similar measures to combat workplace bullying. See, H. Bill 2310 (Massachusetts); H. Bill 2410 and H. Bill 2639 (Oregon, 2005). At the international level, countries such as Sweden, the Netherlands, France, Belgium, Denmark, Finland, Colombia, and Cuba have enacted legislation against workplace bullying.

It is true that the lack of legislation in Puerto Rico which specifically regulates this abusive conduct of workplace bullying does not preclude employers from being civilly liable for misconduct under the Civil Code of Puerto Rico; however, we deem it necessary and pertinent to provide legislation that addresses the particularities and complexities of this modality. In this sense, it is important to make a distinction

between the concept of constructive discharge, as provided in Act No. 80 of May 30, 1976, as amended, and the provisions on workplace bullying included herein. Certainly, workplace bullying may be considered as an element to aid in the application of the constructive discharge concept; this measure, however, does not contemplate an employee's resignation as the only element to be considered when evaluating a potential cause of action for workplace bullying as defined herein. In this sense, while constructive discharge requires the employee to resign from his employment, a potential cause of action for workplace bullying does not. Lastly, it is important to clarify that not all conduct that shares certain characteristics defined in this Act constitutes workplace bullying, but rather, it is such malicious and unwanted conduct in the workplace that creates a hostile, intimidating, humiliating, or offensive work environment for employees, and is prompted by an interest other than the interest to safeguard the effective work performance, or conduct that includes clearly derogatory or defamatory remarks which injure the employee's dignity.

Workplace bullying may implicitly or explicitly alter a person's employment terms and conditions, and unreasonably interfere with such person's work performance, physical or emotional health, job stability or security, career and/or pay progression, as well as with the peace and quiet of the employee and his family.

Workplace bullying goes against the most basic principles of equality and dignity recognized in Article II, Section 1 of the Bill of Rights of the Constitution of Puerto Rico, and the right of every worker to protection against risks to their health or person in their work or employment, as provided in Article II, Section 16. For such reason, this Legislative Assembly deems it necessary and imperative to promulgate the "Act to Prohibit and Prevent Workplace Bullying in Puerto Rico," thus establishing a robust dynamic public policy against any type of workplace bullying that hinders the performance of an employee, alters the peace therein, and

endangers the workers' dignity, regardless of their job type or classification. By virtue of this Act, Puerto Rican workers are provided with a cause of action to prevent workplace bullying and receive compensation for any damages resulting therefrom.

***BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:***

Section 1.- Title

This Act shall be known as the "Act to Prohibit and Prevent Workplace Bullying in Puerto Rico."

Section 2.- Public Policy

This Legislative Assembly declares and reasserts that the values of equality, dignity, and personal integrity set forth in the Constitution of Puerto Rico are fundamental rights of the utmost priority in our jurisdiction. It is our duty to ensure strict compliance with the constitutional guarantee that the dignity of human beings is inviolable, particularly in the workplace.

This Act sets forth a strong public policy against any type of workplace bullying that hinders the performance of an employee, alters the peace therein, and undermines the dignity of the workers, regardless of their job category or class.

Section 3.- Scope of Application

This Act shall apply to all employees who are subject to workplace bullying, regardless of the nature of their job category, rank, or class or the duration of their employment agreement.

Section 4.- Definitions

For the purposes of this Act, the terms used herein shall have the meanings set forth in this Section:

(1) "Employee" - Means any person who renders services to an employer and receives compensation therefor. For purposes of the protection granted under this Act, the term employee shall be interpreted broadly.

(2) “Employer” - Means any natural or juridical person, the Government of Puerto Rico, including the Executive, Legislative, and Judicial Branches as well as the instrumentalities or public corporations thereof, municipal governments and any of the instrumentalities or municipal corporations thereof that, whether for profit or not, hires personnel for any type of compensation. Moreover, it includes organizations or businesses of the private sector, whether for profit or not, labor organizations, groups, or associations, wherein the employees participate, as well as employment agencies.

(3) “Workplace Bullying” - means the malicious, unwanted, repetitive, abusive, biased, unreasonable, and/or willful conduct; repeated infliction of verbal, written, and/or physical abuse by an employer, its agents, supervisors, or employees unrelated to the legitimate interests of the employer’s business unwelcomed to the targeted employee, and which infringes upon the employee’s constitutionally protected rights: the dignity of human beings is inviolable; the protection of law against abusive attacks on his honor, reputation, and private or family life; the protection against risks to his health or person in his work or employment. This workplace bullying conduct creates a threatening, intimidating, humiliating, hostile, and offensive environment that a reasonable person would find unsuitable to perform his regular duties and tasks.

#### Section 5.- Employer Liability

Any employer that engages in, promotes, or allows workplace bullying shall be civilly liable to the affected persons. Every employer shall be responsible for taking measures as are necessary to eliminate or reduce to a minimum the incidents of bullying in the workplace. Hence, every employer shall adopt and implement internal policies as are necessary to prevent, discourage, and avoid bullying in their workplaces, and shall investigate all allegations on the matter and impose sanctions as are appropriate if the case so warrants.

In case of employers that have entered into a collective bargaining agreement with its employees under Act No. 130 of May 8, 1945, as amended, known as the “Puerto Rico Labor Relations Act”; Act No. 45 of February 25, 1998, as amended, known as the “Puerto Rico Public Service Labor Relation Act”; and the “National Labor Relations Act,” which agreement contains provisions prohibiting workplace bullying, it shall be understood that they have fulfilled the obligation imposed by this Section; provided, that said clause is similar or more stringent than that required under this Act.

Every employer shall be held liable always for the actions of the supervisory personnel, or other employees thereof, which constitute workplace bullying, if the employer, its agents, or supervisors knew or should have known of said conduct, unless the employer shows that it exercised reasonable care to prevent and promptly correct the abusive conduct and the aggrieved employee unreasonably failed to take advantage of appropriate preventative or corrective opportunities provided by the employer to avoid any harm. This defense shall not be available when the employer itself engages in this conduct.

If the employer shows to have exercised reasonable care to prevent and promptly correct the conduct, such employer shall be held harmless from any claim under the provisions of this Act. Such immunity shall not be extended to the person who engaged in workplace bullying in his personal capacity.

When workplace bullying occurs between employees of different employers, such as employees of temporary employment agencies, security companies, maintenance companies, or other contractors, who interact in a common workplace, all employers concerned shall be responsible for investigating the allegation of workplace bullying, regardless of whether or not they are the direct employer of the complainant.

An employer shall be liable for any incident of workplace bullying towards its employees by persons who are not employed by such employer, if the employer, its agents, or supervisors were aware or should have been aware of said conduct and failed to exercise reasonable care to prevent and promptly correct the conduct.

#### Section 6.- Denial of Employer Immunity

Every employer that engages in workplace bullying, as defined in this Act, may not invoke the employer immunity provided under Act No. 45 of April 18, 1935, as amended, the “Compensation System for Work-Related Accidents Act,” before the aggrieved party, given that workplace bullying is an misconduct committed with the intent to harm. The employee, however, may receive the services offered through the Workers Accident Compensation System (the Fund), and once it is determined that the health condition was caused by a pattern of workplace bullying, the State Insurance Fund Corporation may collect from the employer the expenses incurred in treating the aggrieved employee.

#### Section 7.- Scope of the Protection

Any person who reports an incident of workplace bullying shall be protected by this Act, in accordance with the provisions of Act No. 115 of December 10, 1991, known as the “Retaliation against Employees for Offering Testimony and Cause of Action Act”; provided, that the statements are not defamatory or constitute a disclosure of privileged information as provided by law. Every employer shall be liable for engaging in any act that affects the employment opportunities and conditions of any employee who has opposed to practices constituting workplace bullying, or who has reported, offered testimony, contributed to, or otherwise participated in, a workplace bullying investigation or procedure, or for failing to take the appropriate measures to provide such employee with proper protection.



Provided, that:

(a) No employer shall terminate, threaten, or discriminate against an employee as to the terms, conditions, compensation, location, benefits, or privileges of employment, because the employee offers or attempts to offer, verbally or in writing, any testimony, statement, or information to a labor union, human resources office, or employer office, a legislative, administrative, or judicial forum in Puerto Rico, insofar as such statements are not defamatory or constitute a disclosure of privileged information as provided by law.

(b) The employee shall show proof of the violation through direct and circumstantial evidence. Furthermore, the employee may bring a *prima facie* case of violation of the law by proving that he reported an incident of workplace bullying and was subsequently terminated, threatened, or discriminated against in his employment. Once the foregoing is established, the employer shall allege and provide a legitimate and nondiscriminatory ground for the termination. If the employer alleges and provides such grounds, the employee shall show that the ground alleged by the employer was a mere pretext for termination.

#### Section 8.- Determination of Workplace Bullying

A determination of whether or not a conduct constitutes workplace bullying shall depend on the totality of the circumstances and the facts proven in each particular case.

Conduct that may constitute workplace bullying include, but is not limited to the following:

- (1) Offensive, defamatory, or harmful statements about a person, using foul language.
- (2) Hostile and humiliating remarks undermining the employee's performance in the presence of colleagues.
- (3) Unjustified threats of dismissal in the presence of colleagues.

(4) Multiple disciplinary actions by any of the active subjects of the harassment, whose recklessness is shown by the result of the respective disciplinary processes.

(5) Discounting a person's work proposals or opinions.

(6) Making comments or jokes about the targeted employee's personal appearance or clothing, in public.

(7) Disclosing private facts about the targeted employee or his family.

(8) Assigning tasks that are beyond the employee's duties, establishing unrealistic demands for job duties, and a sudden reassignment of the work location or the contracted work without an objective reason regarding to the employer's business or services.

(9) The refusal by the employer or other employees to provide materials and information which is pertinent and necessary for discharging his duties.

Conduct that does not constitute workplace bullying includes, but is not limited to the following:

(1) Acts intended to exercise a supervisor's authority to discipline his subordinates.

(2) Demands for protecting the confidentiality of the services provided by the employer or the employee's loyalty toward his employer.

(3) The formulation or promulgation of regulations or memoranda to direct the operations, maximize efficiency, and evaluate employees' performance based on the general objectives of the employer.

(4) The assignment of additional duties, when necessary to ensure the continuity of services or to address a difficult situation involving the employer's operations and services.

(5) Administrative actions directed to the completion of an employment agreement, for cause, or for a fixed term, as provided in the code of laws of Puerto Rico.

(6) Employer's affirmative actions to enforce the provisions of a human resources regulation or clauses of employment agreements.

(7) Affirmative actions by the employer to enforce the obligations, duties and prohibitions established by law.

#### Section 9.- Dissemination and Information

Pursuant to the provisions of this Act, every employer, whether public or private, shall have the obligation to display the content of the scope of this Act in a visible place for all employees and inform them of the measures, policies, and processes adopted in the workplace.

The Secretary of the Department of Labor and Human Resources, the Government of Puerto Rico Human Resources Administration and Transformation Office, with regard to employers of the Executive Branch over which they have jurisdiction, the Legislative Branch, and the Judicial Branch shall adopt within a period not to exceed one hundred and eighty (180) days from the effective date of this Act, uniform guidelines on the adoption and implementation of the protocols to be adopted by employers in order to handle workplace complaints related to the provisions of this Act.

Within one hundred and eighty (180) days from the publication of the guidelines mentioned in the above paragraph, employers shall adopt, implement, and disseminate protocols in the workplaces.

#### Section 10.- Procedure

Any person who claims to be a victim of workplace bullying shall state so by following the procedure and protocol established by his employer, which, as provided above, shall be based on the uniform guidelines established by the

Department of Labor and Human Resources, the Government of Puerto Rico Human Resources Administration and Transformation Office, the Legislative Branch, and the Judicial Branch, as applicable.

If the steps taken in accordance with the procedure and protocol established by the employer are unsuccessful, the aggrieved employee shall resort to the Alternative Dispute Resolution Bureau of the Judicial Branch. If, after having received mediation orientations, the parties decide not to submit to mediation or the mediator does not recommend mediation, the parties may resort to the appropriate part of the competent court by presenting evidence showing that the alternative method has been exhausted, and file the civil action provided in this Act.

#### Section 11.- Civil Liability

Any person liable for workplace bullying as such term is defined in this Act, shall be held civilly liable for an amount equal to double the amount of damages caused by the conduct to the employee, in addition to any other criminal liability, as appropriate.

#### Section 12.-Statute of Limitations

Any person who has a cause of action under the provisions of this Act shall have a period of one (1) year to file said cause of action from the time the employee allegedly felt bullied in the workplace.

#### Section 13.- Summary Proceeding

In any judicial proceeding instituted for violations of the provisions of this Act, the aggrieved person may choose to bring his cause of action through the summary proceeding provided in Act No. 2 of October 17, 1961, or through the ordinary proceeding provided in the Rules of Civil Procedure of 2009.

#### Section 14.- Rulemaking Authority

The Secretary of the Department of Labor and Human Resources, as well as the Director of the Government of Puerto Rico Human Resources Administration and Transformation Office are hereby authorized to adopt and promulgate rules and regulations as are necessary for the administration and enforcement of the provisions of this Act, subject to the provisions of Act No. 38-2017, as amended, known as the “Government of Puerto Rico Uniform Administrative Procedure Act.” However, a period of one hundred and eighty (180) calendar days is hereby granted to these officials to implement the regulations adopted under this Act. Likewise, the Legislative Branch and the Judicial Branch shall adopt rules and regulations as are necessary to implement the provisions of this Act.

#### Section 15.- Severability Clause

If any clause, paragraph, subparagraph, article, provision, section, or part of this Act were held to be unconstitutional or void, the holding to such effect shall not affect, impair, or invalidate the remainder of this Act. The effect of said holding shall be limited solely to the clause, paragraph, subparagraph, article, provision, section, or part thereof thus held to be unconstitutional or void.

#### Section 16.- Effectiveness

This Act shall take effect after its approval.