

(H. B. 1521)

(No. 160-2014)

(Approved September 19, 2014)

AN ACT

To add a subsection (c) to Section 9 of Act No. 180-1998, as amended, known as the “Puerto Rico Minimum Wage, Vacation and Sick Leave Act,” to provide a civil penalty, in addition to the criminal penalties for violations of its provisions; amend subsection (2) of Section 13 of Act No. 15 of April 14, 1931, as amended, known as the “Organic Act of the Department of Labor and Human Resources of Puerto Rico,” in order to empower the Office of Mediation and Adjudication to impose the civil penalties provided herein in disputes under Act No. 180-1998, as amended.

STATEMENT OF MOTIVES

The right to enjoy vacation was established for the purpose of providing employees with a period of rest to allow them to recover physically and emotionally after a period of work and so they could spend a calm and relaxing time with their family. The goal is to provide workers with a period of time that helps them periodically replenish the energy spent in the daily hustle and bustle, as well as provide them with an opportunity to spend quality time with their family, which could perhaps be the only opportunity they have to enjoy their company for a reasonable and uninterrupted period of time.

Act No. 84-1995 amended Act No. 96 of June 26, 1956, among other things, to establish by law the rules that would govern vacation and sick leaves as well as to provide by law certain benefits granted by mandatory decrees which were repealed by said legislation and which had been promulgated under repealed Act No. 8 of April 5, 1941.

Act No. 180-1998, as amended, better known as the “Puerto Rico Minimum Wage, Vacation, and Sick Leave Act,” was subsequently approved and currently governs sick and vacation leaves.

Both Act No. 84, *supra*, and Act No. 180, *supra*, included provisions which clearly protected the right of the employees of the Commonwealth of Puerto Rico to enjoy vacation leave. Such was the protection that the Legislative Assembly sought to provide, that the provisions on vacation leave on various occasions established, as a requirement, that vacation leave could be apportioned, enjoyed, and partially liquidated through an agreement between the employer and the employee. It specifically provided the following:

Vacation leave shall be enjoyed consecutively, however, through an agreement between the employer and the employee, it may be apportioned, provided that the employee enjoys at least five (5) consecutive working days of vacation leave during the year.

By agreement between the employer and the employee, up to a maximum of thirty (30) days of vacation leave may be accrued. The employer who does not grant vacation after said maximum has been accrued shall grant the total of leave accrued as of that time, by paying the employee two (2) times the wages corresponding to the period in excess of said maximum.

Upon written request of the employee, the employer may allow vacation leave to include non-working days comprised in the period he will enjoy his vacation leave.

The employer may allow the partial liquidation of accrued vacation leave in excess of ten (10) days upon written request of the employee.

In other words, in some of the abovementioned situations the employee must consent to or authorize the use and enjoyment of his vacation leave. However, we

have seen, on multiple occasions, how employers disregard this requirement and use the vacation leave of employees without the employees' consent.

The Legislative Assembly sought to protect the right to vacation leave as well as other provisions of Act No. 180, *supra*, to such extent that it provided that any violation of the provisions of said Act would constitute a misdemeanor and prescribed penalties for such violations just like its predecessor, Act No. 84. However, the legislative measure failed to include a general civil penalty for violations of the rights therein established.

Act No. 180, *supra*, provides:

[t]hat any employee or worker who receives compensation for his work which is less than that prescribed by this Act or a collective bargaining agreement or an individual work contract, shall be entitled to collect through a civil suit, the difference owed up to the total amount of the corresponding compensation for wages, vacation and sick leave, or any other benefit, plus an amount equal to that which has not been paid to him as additional compensation, plus costs interest, expenses and fees of the lawyers in the case, notwithstanding any other agreement to the contrary.

The Act, however, failed to provide a civil remedy for violations that are not pecuniary in nature, but rather pertain to the use of leaves, specifically the use of vacation leave, and thus the courts have been deciding such violations on a case by case basis.

In 2007, the Supreme Court had the opportunity to issue an opinion on this particular matter in *Jiménez Marrero v. General Instruments Inc.*, 170 D.P.R. 14 (2007), in which, allegedly, the vacation leave of an employee was unlawfully apportioned. The Supreme Court, however, indicated that our code of laws does not provide for any penalty or remedy in the event that an employee's vacation leave is

apportioned without his consent such as in the aforementioned case. Therefore, even when the vacation leave is not apportioned in strict compliance with the law, the Court has no civil remedy to provide the employee. The Supreme Court relied on its previous decisions on labor-related matters, which concluded that penalties cannot be presumed and that their imposition is justified only when the law so expressly provides. It thus concluded that, in the absence of an express legislative intent, the Supreme Court of Puerto Rico cannot, by way of interpretation, extend a civil penalty to cases not specifically included in the Act.

This situation could have changed a little at the juridical level with the holding Supreme Court's decision in *Orsini García v. Secretario de Hacienda*, 177 D.P.R. 596 (2009), in which the supreme court held that Puerto Rico's labor laws focus on promoting social justice for the working class and ensuring the greatest protection of their labor rights, and that such laws are remedial in nature. Therefore, these laws must be interpreted liberally and broadly so they can achieve the purposes for which they were created. In the event there is doubt with regards to the application of a labor law provision, it shall be construed in favor of the employee.

Nevertheless, civil penalties are imposed according to the judge's interpretation and subjective criteria which creates inequality in the remedies awarded to workers. In light of the foregoing, it is imperative for this Legislative Assembly to explicitly provide for a civil penalty for employers that violate the provisions of Act No. 180, *supra*.

The Office of Mediation and Adjudication (OMA) was created by virtue of Act No. 384-2004, as a body within the Department of Labor and Human Resources to conciliate and adjudicate disputes between employers and employees on the following matters: (1) Claims for violations of the right to reinstatement under Act No. 45 of April 18, 1935, as amended and generally known as the "Workmen's Accident Compensation Act," when no claim for damages is made; (2) claims for

standards on wages, vacations and sick leave under Act No. 180-1998; (3) claims under Act No. 17 of April 17, 1931 on the payment of wages; (4) Act No. 80 of May 30, 1976 on termination without cause in which no claims for damages on additional grounds is made other than the right to severance pay and compensation payments for the act of dismissal pursuant to said Act; (5) Act No. 148 of June 30, 1969 on the Christmas bonus; (6) Act No. 379 of May 15, 1948 on work hours; and (7) Act No. 3 of March 13, 1942, Sec. 7 on maternity leave in cases where no claim for damages is made, and there are no penalties for other additional or separate grounds, other than the severance pay, or the payment or granting of the leave claimed.

In order to ensure the effective application of this Act and make the remedy more accessible to the affected employees, this Legislative Assembly deems it necessary to amend Section 13 of Act No. 15 of April 14, 1931, as amended, known as the “Organic Act of the Department of Labor and Human Resources of Puerto Rico,” in order to grant OMA the power and capacity to impose civil penalties as appropriate, in claims filed therewith under Act No. 180-1998, as amended.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- A subsection (c) is hereby added to Section 9 of Act No. 180-1998, as amended, known as the “Puerto Rico Minimum Wage, Vacation, and Sick Leave Act,” to read as follows:

“Section 9.- Violations; Penalties.

(a) ...

(b) ...

(c) In addition to the criminal penalties established above, any person who, as employer or administrator, official, agent, employee or person in charge of a firm, partnership or corporation, or of another person or persons, violates, refuses to comply or neglects to comply with any provision of this Act, or with any decree or regulation in effect that has been validated by the provisions of this Act, shall be

subject to civil liability in an amount equal to twice the amount of the damages sustained by the employee as a result of said act. If the arbitrator is unable to determine the amount of the damages sustained by the employee, such arbitrator may, in his discretion, impose a penalty of not less than five hundred dollars (\$500) nor more than three thousand dollars (\$3,000).”

Section 2.- Section 13 of Act No. 15 of April 14, 1931, as amended, known as the “Organic Act of the Department of Labor and Human Resources of Puerto Rico,” is hereby amended to read as follows:

“Section 13.- Mediation, Conciliation, and Arbitration.

The Department shall provide mediation and conciliation services, and it shall intervene in and mediate, disputes, conflicts, or controversies of an agricultural, industrial, or any other nature, that may arise between workers and employers in connection with the application of labor laws, for the purpose of maintaining industrial peace.

The Department shall also have an Office of Mediation and Arbitration that shall conciliate and settle labor disputes related to the following matters:

(1) ...

(2) Claims for wages, vacation and sick leave, pursuant to Act No. 180-1998, as amended. When settling disputes under Act No. 180-1998, as amended, the Office shall be empowered to impose the civil penalties provided therein in favor of the affected employee.

(3) ...

(4) ...

(5) ...

(6) ...

(7) ...

Upon receiving a complaint from the Bureau of Labor Standards, the Office of Mediation and Arbitration shall summon the parties in a controversy to a conciliation hearing or session to be held within twenty (20) days from the filing date of the complaint. The parties shall be advised of their right to be represented by counsel in said conciliation hearing or session. If the parties fail to reach a satisfactory agreement after the mediation and conciliation proceedings are conducted before the Office, such proceedings shall be concluded and the steps and procedures to settle the dispute before a Hearing Examiner or an Administrative Judge shall be followed.

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...

The court shall give priority to these cases in its docket and shall summon the parties to appear at a hearing within a period not to exceed thirty (30) days from the filing date of the Secretary's request.”

Section 3.- Effectiveness Clause.

This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 160-2014 (H. B. 1521)** of the **4th Regular Session** of the **17th Legislative Assembly of Puerto Rico**:

AN ACT add a subsection (c) to Section 9 of Act No. 180-1998, as amended, known as the “Puerto Rico Minimum Wage, Vacation and Sick Leave Act,” to provide a civil penalty, in addition to the criminal penalties for violations of its provisions; amend subsection (2) of Section 13 of Act No. 15 of April 14, 1931, as amended, known as the “Organic Act of the Department of Labor and Human Resources of Puerto Rico,” in order to empower the Office of Mediation and Adjudication to impose the civil penalties provided herein in disputes under Act No. 180-1998, as amended.

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, on this 3rd day of March, 2022.

Mónica Freire-Florit, Esq.
Director