

(H. B. 1545)  
(Conference)

**(No. 166-2018)**

(Approved July 29, 2018)

## **AN ACT**

To amend Section 9.1 of Article 9 of Act No. 8-2017, as amended, known as the “Government of Puerto Rico Human Resources Administration and Transformation Act”; amend Section 2.04 of Act No. 26-2017, as amended, known as the “Fiscal Plan Compliance Act”; amend Sections 1, 2, 3, 4, 5, 6, and 10 of Act No. 44-1996, known as the “Act for the Ceding of Vacation Leave”; and amend Section 11.020 of Act No. 81-1991, as amended, known as the “Puerto Rico Autonomous Municipalities Act,” in order to authorize public and municipal employees to donate, as an exception, up to a maximum of five (5) days a month of accrued vacation and/or sick leave to another public employee who works in any government or municipal entity, for a maximum of twenty (20) days a year between both leaves; and for other related purposes.

### **STATEMENT OF MOTIVES**

Presently, the “Government of Puerto Rico Human Resources Administration and Transformation Act,” as well as the “Fiscal Plan Compliance Act” and “Act for the Ceding of Vacation Leave,” as amended, enable one or more public employees to donate, as an exception, up to a maximum of five (5) days a month of accrued vacation leave to another public employee who works in the same government entity, up to a maximum of fifteen (15) days a year.

These provisions were granted basically under the premise that it was critical to recognize the difficult situations of public employees arising from an illness or other more serious events; hence, it was fair, meritorious, and reasonable to adopt them. The specific purpose of these provisions was to authorize vacation leave

donation, as an exception, between employees of the same government entity when an employee or an immediate family member has an emergency that practically prevents the employee from discharging his duties in the entity for a considerable period of time.

However, at present, this leave donation only includes accrued vacation leave, but does not allow for the donation of accrued sick leave between public employees. We see no reason for limiting the use of sick leave for donation purposes when this type of leave is accrued and any excess thereof is not paid. Hence, public employees must be authorized to donate it when warranted. Upon the approval of Act No. 26-2017, as amended, known as the “Fiscal Plan Compliance Act,” the vacation leave accrual rate for public employees was reduced to a one and one-fourth ( $1 \frac{1}{4}$ ) of a day for every month of service for a maximum total of fifteen (15) days a year. Moreover, the sick leave accrual rate for employees who began working in the Government of Puerto Rico prior to the approval of Act No. 8-2017, as amended, known as the “Government of Puerto Rico Human Resources Administration and Transformation Act,” was not reduced, hence, they accrue sick leave at a rate of one and a half ( $1\frac{1}{2}$ ) days for every month of service for a maximum total of eighteen (18) days a year. Therefore, it is logical to allow them to donate their accrued sick leave.

Consistent with the foregoing, this measure seeks to further maximize the benefits granted by Act No. 44-1996 by expanding the definition of government entity to include municipalities, in order for their employees to be able to enjoy the benefits to be implemented in this Act. It also allows for the donation of vacation and/or sick leave from one or more employees to another, even when they work in different government entities and/or municipalities. The proposed measure would provide government employees with greater benefits and would render the

Government of Puerto Rico more efficient, while ensuring compliance with the provisions of Act No. 8-2017 and Act No. 26-2017, as amended, respectively.

It is our intent that the provisions herein become a social justice mechanism for public employees who need to address adverse family situations for extended periods of time.

Therefore, and in order to provide government employees with greater flexibility to use their vacation and sick leaves in exceptional cases that so warranted, this Legislative Assembly deems it pertinent to amend Act No. 44-1996, better known as the “Act for the Ceding of Vacation Leave,” as well as Act No. 81-1991, as amended, known as the “Puerto Rico Autonomous Municipalities Act,” and the other aforementioned laws, in order to establish that an employee of any government entity, including municipalities, in addition to be able to donate vacation leave to another employee or fellow worker within the same government entity, shall be also allowed to donate vacation and/or sick leave to employees working in other government entities, including municipalities.

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

Section 1.- Section 9.1 of Article 9 of Act No. 8-2017, as amended, is hereby amended to read as follows:

“Article 9.- Fringe Benefits.

Section 9.1

Employees whose benefits, as of the effective date of this Act, are other than those provided for herein shall remain entitled thereto in accordance with the regulations, rules, or collective bargaining agreements providing therefor, as well as any emergency laws to be promulgated. The benefits established herein shall apply prospectively only to newly-hired Government employees, except for the paternity leave and the special breastfeeding leave with pay, which shall apply to all government employees.

Since fringe benefits constitute an area of utmost need and significant effects for government employees, in order to maintain a uniform and fair human resources administration, the following rules are hereby established:

Fringe benefits shall be:

1. Vacation leave.

a. ...

...

m. One or more public employees may donate, as an exception, up to a maximum of five (5) days a month of accrued vacation leave to another government employee who works in any Government Entity, as provided in Act No. 44-1996, known as the 'Act for the Ceding of Vacation Leave,' when:

1. ...

2. ...

3. ...

4. ...

5. The leave donor has accrued at least fifteen (15) days of vacation leave in excess of the amount of leave to be donated;

6. ...

7. ...

2. Sick leave.

a. ...

b. ...

c. ...

d. ...

e. ...

f. One or more employees may donate, as an exception, up to a maximum of five (5) days a month of accrued sick leave to another government

employee who works in any Government Entity, as provided in Act No. 44-1996, known as the ‘Act for the Ceding of Vacation Leave,’ when:

1. The leave recipient has worked uninterruptedly for at least one (1) year in any government entity;
2. The leave recipient has not shown a pattern of unscheduled absences, which constitutes noncompliance with the rules of the government entity;
3. The leave recipient has exhausted all the leave to which he is entitled due to an emergency;
4. The leave recipient or his representative has shown attesting evidence of the emergency and the need to be absent in excess of the leave accrued and already exhausted;
5. The leave donor has accrued at least twelve (12) days of sick leave in excess of the amount of leave to be donated; and
6. The leave donor has submitted to the government entity where he is employed a written authorization consenting to the leave donation, including the name of the leave recipient.

...”

Section 2.- Section 2.04 of Act No. 26-2017, as amended, is hereby amended to read as follows:

“Section 2.04.- Fringe Benefits.

The Government of Puerto Rico shall be responsible for ensuring that employees are able to enjoy the fringe benefits granted to them, and overseeing that they do so in accordance with a plan that maintains a proper balance between the needs for service, the employees’ needs, and the responsible use of the available resources. In order to manage human resources uniformly, responsibly, reasonably, equitably, and fairly, the following fringe benefits shall be available to

union or nonunion employees or officials of the Government of Puerto Rico, including public corporations, subject to the provisions of Section 2.03 of this Act.

The fringe benefits of the employees of the Executive Branch shall be:

1. Vacation Leave

a. ...

...

m. One or more public employees may donate, as an exception, up to a maximum of five (5) days a month of accrued vacation leave to another government employee who works in any Government Entity, as provided in Act No. 44-1996, known as the 'Act for the Ceding of Vacation Leave,' when:

1. ...

2. ...

3. ...

4. ...

5. The leave donor has accrued at least fifteen (15) days of vacation leave in excess of the amount of leave to be donated;

6. ...

7. ...

2. Sick Leave

a. ...

b. ...

c. ...

d. ...

e. ...

f. ...

g. ...

h. ...

i. ...

j. ...

k. One or more public employees may donate, as an exception, up to a maximum of five (5) days a month of accrued sick leave to another government employee who works in any Government Entity, as provided in Act No. 44-1996, known as the ‘Act for the Ceding of Vacation Leave,’ when:

1. The leave recipient has worked uninterruptedly for at least one (1) year in any government entity;

2. The leave recipient has not shown a pattern of unscheduled absences, which constitutes noncompliance with the rules of the government entity;

3. The leave recipient has exhausted all the leave to which he is entitled due to an emergency;

4. The leave recipient or his representative has shown attesting evidence of the emergency and the need to be absent in excess of the leave accrued and already exhausted;

5. The leave donor has accrued at least twelve (12) days of sick leave in excess of the amount of leave to be donated; and

6. The leave donor has submitted to the government entity where he is employed a written authorization consenting to the leave donation, including the name of the leave recipient.

...”

Section 3.- Section 1 of Act No. 44-1996 is hereby amended to read as follows:

“Section 1.- Title.

This Act shall be known as the “Vacation and Sick Leave Donation Act.”

Section 4.- Section 2 of Act No. 44-1996 is hereby amended to read as follows:

“Section 2.- Definitions.

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

(a) ‘Public Employee’- means every official, employee, and personnel working for a Government Entity.

(b) ‘Leave Recipient’- means a public employee to whom vacation and/or sick leave is donated due to a personal emergency.

(c) ‘Leave Donor’- means a public employee who donates part of his vacation and/or sick leave in favor of a leave recipient.

(d) ‘Emergency’- means a serious or terminal illness or an accident that entails a prolonged hospitalization or requires a continuous treatment under the supervision of a health professional, suffered by a public employee or an immediate family member that makes it practically impossible for the employee to discharge his functions for a considerable period of time.

(e) ‘Government Entity’- means any branch of the Government, agency, department, municipality, instrumentality, or public corporation of the Government of Puerto Rico, whether or not covered by Act No. 8-2017, as amended, known as the ‘Government of Puerto Rico Human Resources Administration and Transformation Act.’”

Section 5.- Section 3 of Act No. 44-1996 is hereby amended to read as follows:

“Section 3.- Requirements.

One or more public employees may donate, as an exception, accrued vacation and/or sick leave to another public employee who works in any

Government Entity, up to a maximum of five (5) days a month on account of each of the aforementioned leaves, when:

- (a) ...
- (b) ...
- (c) ...
- (d) ...
- (e) The leave donor has accrued at least fifteen (15) days of vacation leave or at least twelve (12) days of sick leave in excess of the amount of leave to be donated.
- (f) The leave donor has submitted to the Government Entity where he is employed a written authorization consenting to the leave donation, including the name of the leave recipient, the Government entity in which the latter works, and the amount of vacation and/or sick leave to be deducted from his leave balance.
- (g) ...”

Section 6.- Section 4 of Act No. 44-1996 is hereby amended to read as follows:

“Section 4.- Vacation Leave Donation Regulations and Deductions.

The appropriate Government Entity shall deduct the amount of leave to be donated from the leave donor and apply it to the leave recipient, upon verifying the correctness of the donation, as provided in this Act and in accordance with the applicable human resources regulations of the pertinent Government Entities. The donated vacation and/or sick leave shall be credited in proportion to the salary of the leave recipient.”

Section 7.- Section 5 of Act No. 44-1996 is hereby amended to read as follows:

“Section 5.- Prohibitions.

A public employee shall not donate to another public employee more than five (5) days of accrued vacation leave and five (5) days of accrued sick leave, for a total of ten (10) days during one (1) month, and the total number of days to be donated between both leaves shall not exceed twenty (20) days per year.”

Section 8.- Section 6 of Act No. 44-1996 is hereby amended to read as follows:

“Section 6.- Effect of the Donation on the Leave Donor.

The leave donor shall forfeit his right to be paid for any vacation and/or sick leave thus donated. However, he shall be entitled to receive payment for or to enjoy any leave balance accrued in excess of the donated leave.”

Section 9.- Section 10 of Act No. 44-1996 is hereby amended to read as follows:

“Section 10.- Penalties.

The donation of accrued vacation and/or sick leave shall be made free of charge. Any person who directly or through an intermediary gives to another person, or accepts from another person money or any other benefit, in exchange for the granting of vacation leave as authorized in this Act, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed five hundred (500) dollars, or imprisonment for a term not to exceed six (6) months, or both penalties, at the discretion of the court.”

Section 10.- Section 11.020 of Act No. 81-1991, as amended, known as the “Puerto Rico Autonomous Municipalities Act,” is hereby amended to read as follows:

“Section 11.020.- Donation of Vacation and Sick Leave.

One or more municipal officials or employees may donate, as an exception, to another municipal official or employee who works in the same municipality or in any Government Entity, their accrued vacation and/or sick leave when:

(a) The leave recipient has worked uninterruptedly for at least one (1) year in the municipality;

(b) The leave recipient has not shown a pattern of unscheduled absences, which constitutes noncompliance with the rules of the municipality;

(c) The leave recipient has exhausted all the leave to which he is entitled due to an emergency;

(d) The leave recipient or his representative has shown attesting evidence of the emergency and the need to be absent in excess of the leave accrued and already exhausted;

(e) The leave donor has accrued at least fifteen (15) days of vacation leave and twelve (12) days of sick leave in excess of the amount of leave to be donated, respectively;

(f) The leave donor has submitted to the personnel office of the municipality where he is employed a written authorization consenting to the leave donation, including the name of the leave recipient; and

(g) The leave recipient or his representative accepted in writing the proposed donation.

The personnel office of the appropriate municipality shall deduct the amount of leave to be donated from the leave donor and apply it to the leave recipient, upon verifying the correctness of the donation, as provided in this Act and in accordance with the applicable human resources regulations. The donated vacation and/or sick leave shall be credited in proportion to the salary of the leave recipient.

No official or employee may donate to another public employee more than five (5) days of accrued vacation leave and/or sick leave, during one (1) month, and the total number of days to be donated shall not exceed twenty (20) days per year.”

The leave donor shall forfeit his right to be paid for any vacation and/or sick leave thus donated. However, he shall be entitled to receive payment for enjoy any leave balance accrued in excess of the donated leave.

When the special reason for which the leave recipient has had to be absent no longer exists, said leave recipient shall return to work without enjoying the remaining balance donated, and said balance shall revert to the leave donor as a credit in proportion to his salary at the time the donation was made.

No leave recipient may enjoy the benefits granted in this Section for a period in excess of one (1) year, including the period during which the employee enjoyed his own paid leave and benefits until exhausted. The municipality shall not hold the job position of the leave recipient for a term greater than the term established herein.

The donation of accrued vacation and/or sick leave shall be made free of charge. Any person who directly or through an intermediary gives to another person, or accepts from another person money or any other benefit, in exchange for the granting of vacation leave as authorized in this Act, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed five hundred (500) dollars, or imprisonment for a term not exceed six (6) months, or both penalties, at the discretion of the court.

For the purposes of this Section the following terms shall have the meaning expressed below:

(a) Municipal Official or Employee.- means any official, employee, and staff member who works for any municipality of Puerto Rico.

(b) Leave Recipient- means an official or employee of a municipality or any other Government Entity to whom vacation and/or sick leave is donated due to a personal emergency.

(c) Leave Donor- means an official or employee of a municipality or any other Government Entity who donates part of his vacation and/or sick leave in favor of a leave recipient.

(d) Emergency - means a serious or terminal illness or an accident or a medical condition that entails a prolonged hospitalization or requires a continuous treatment under the supervision of a health professional, suffered by an official or employee of a municipality or any Government Entity or an immediate family member which makes it practically impossible for the employee or official to discharge his functions for a considerable period of time.

(e) Government Entity- means any branch of the Government, agency, department, municipality, instrumentality, or public corporation of the Government of Puerto Rico, whether or not covered by Act No. 8-2017, as amended, known as the ‘Government of Puerto Rico Human Resources Administration and Transformation Act.’

(f) Municipality.- shall have the same meaning provided for this term in Section 1.003 of this Act.”

Section 11.- Any law or part thereof that is inconsistent with this Act is hereby repealed.

Section 12.- The provisions of this Act shall prevail over any other provision of law that is inconsistent with the provisions established herein.

Section 13.- If any part of this Act were held to be void or unconstitutional by a court of competent jurisdiction, said holding shall not affect nor invalidate the remainder of this Act. The effect of said holding shall be limited to the object thereof.

Section 14.- Every Government branch, agency, department, municipality, instrumentality, or public corporation of the Government of Puerto Rico shall adopt rules and regulations as are necessary to implement this Act immediately.

Section 15.- This Act shall take effect immediately after its approval.