

(H.B. 4536)
(Conference)

(No. 538)

(Approved September 30, 2004)

AN ACT

To add new subsection (c) and (f) and rename subsections from (c) to (l) as subsections (d) to (n) of Section 1.3; amend the first paragraph of Section 2.3 and add a new Form II, renumber Form II as Form III and renumber Form III as Form IV of Section 5.4 of Act No. 54 of August 15, 1989, as amended, known as the “Domestic Abuse Prevention and Intervention Act,” in order to include the definitions of male and female employee and of employer and establish a procedure to allow an employer to solicit a protective order in favor of the personnel of his/her workplace.

STATEMENT OF MOTIVES

Our Constitution provides that the dignity of the men and women of Puerto Rico is inviolable. Domestic violence is one of the most terrible manifestations of the effects of the violation of this constitutional precept and the inequalities in the relationships between men and women. According to the Global Report of the Statistics Division of the Puerto Rico Police, four thousand nine hundred and forty-one (4,941) domestic violence incidents were reported in Puerto Rico between the months of January and March of the year 2003. By the month of September 2003, the number of murders due to domestic violence had claimed the lives of twenty-two (22) persons. During the first six (6) months of the year 2002, ten thousand fifty-five

(10,055) domestic violence incidents were reported and by the end of the year, there were reported seventeen (17) murders provoked by domestic violence. During the first month of the year 2004, four (4) women have been murdered at the hands of their aggressors.

The problem of domestic violence is such that besides disrupting the family environment, it directly affects the working environment of those women and men who work outside their homes. The above cited statistics indicate that the work area of the victims of domestic violence was the fifth place where the greatest number of the cases reported occurred during the period between January and September 2003. Information provided by the Statistics Divisions of the Puerto Rico Police indicate that between January and September 2003, the number of incidents of that type was 133; and that 243 incidents were reported between January and December 2002; that 35 incidents were reported in the year 2001; and 188 in the year 2000; and 290 were reported in the year 1999; and 196 in the year 1998, and 222 in the year 1997. This information suggests that the number of incidents of domestic violence reported in the work area has remained relatively constant between the years 1997 and 2002, with the exception of the year 2001 during which 35 incidents were reported. The reason for the relative reduction of cases of this type is not known.

Two (2) decades ago domestic violence in the workplace was a nonexistent subject. Sadly, now, at the beginning of the 21st Century, this matter represents for supervisors and employers in general a major employment security problem. (Domestic Violence in the Workplace Programs, Family Violence Prevention Fund, 1/9/04, www.endabuse.org).

It is a common occurrence that the aggressor, knowing the hourly schedule for beginning and ending the work day and the route the victim

takes for arriving at and leaving his/her workplace, lies in wait for or intimidates his/her victim in the vicinity of the workplace. The aggressor also intervenes directly with the victim at his/her workplace through incessant phone calls, constant stalking and visits to the victim at the workplace to commit acts of physical, verbal and emotional aggression in front of the victim's workmates.

Other manifestations of domestic violence at the workplace include stalking or intimidation through the telephone, faxes and e-mails as well as threats, aggression and even murder. As a consequence of these violent manifestations the victims fear that the aggressor may show up at their place of employment.

At present, the above cited "Domestic Abuse Prevention and Intervention Act," gives the courts the power to issue protective orders to the victims of domestic violence that specifically prohibit the aggressor to come near or make phone calls to the petitioner at his/her workplace. However, even under a protective order, the aggressor provokes situations that endanger the personnel of the workplace who are not covered by the protective order issued. It is precisely for this reason that it is necessary to establish additional measures to protect the victim as well as the personnel employed at his/her place of work that would reinforce the efforts of the employer for complying with his/her duty to maintain a safe and free of risk work environment.

The Bill of Rights of our constitutional system provides guarantees for the protection of the employee at his/her place of employment. The Constitution establishes that employers have the duty of guaranteeing *"protection against risks to his health or person in his work or*

employment.” (Constitution of the Commonwealth of Puerto Rico Art. II sec. 16).

The problem set forth is not exclusive to Puerto Rico. In the North American jurisdiction, according to data reported by the Bureau of Justice Statistics for the years between 1993 and 1999, close to four (4) million crimes were committed against women at their workplace. (*Violence in the Workplace 1993-1999, U.S. Department of Justice, Bureau of Justice Statistics Special Report, December 2001*).

Other statistics provided by the National Institute for Occupational Safety and Health of the United States indicate that between one hundred and fifty (150) and one hundred and eighty (180) women are murdered at their place of work every year. (*Workplace Guide for Employers, Unions and Advocates, Family Violence Prevention Fund, January 1998; provided by the California Department of Justice, www.peaceforfamilies.org 05/02/04*). In view of this situation the federal government has undertaken the task of approving laws that protect the safety of employees and prevent disturbances to labor peace. Among these are included the legislation known as *Occupational and Safety Health Act (OSHA)* (29 USC sec. 651-678) and the *Violent Crime Control Law Enforcement Act* (42 USC sec. 13931-1440) which in turn creates the *Violence Against Women Act* (42 USC sec. 14011-1440).

The aforementioned *Occupational and Safety Health Act* is the “Law that Regulates Safety and Health Standards at the Workplace.” It demands that employers design occupational and safety regulations in order to protect employees and their families. On the basis of this, the Occupational Health Administration has developed, together the Department of Labor of the United States certain guidelines for the intervention and prevention of

violence in the workplace. In consonance with the public policy of the federal government, several states have developed statutes directed to protecting the victims of domestic violence in the workplace as well as to provide employers with the wherewithal for requesting that the court issue the civil remedy of a protective order in favor of the enterprise so as to maintain a peaceful atmosphere within the work environment and for all workers.

Some of the states that have approved granting protective orders in favor of the employer for his/her place of employment are: Arizona (ARIZ.REV.STAT. sec.12-1810(2003)), Colorado (COLO.REV.STAT. sec. 13-14-102(2003)), Indiana (IND.CODE.ANN. sec. 34-26-6-1(2003)), Arkansas (ARK.CODEANN. SEC. 11-5-115(2003)), and Maine (ME.REV.STAT.ANN. sec. 5-4653(2003)). The jurisprudence of the state of Massachusetts has also spoken in that respect by establishing that an employee who has been dismissed because he/she was a victim of domestic violence shall have cause for civil action against his/her employer, (*Apossos v. Memorial Group*, No. 01-1474-A, 2002, 404 Mass. Super. Ct. Sep. 30, 2002.)

In order to sustain the public policy of repudiating domestic violence within Puerto Rico society, it is necessary to promote the development, establishment and strengthening of effective remedies to provide protection and aid victims. One of these remedies consists of allowing employers to request that the court issue the civil remedy of a protective order so as to prevent the aggressor from interrupting the peace of the work environment and at the same time permit them to comply with their constitutional responsibility of guaranteeing the physical and emotional protection of all employees.

For the reasons set forth above, for preventing situations of domestic violence in the workplace and preserving a safe and peaceful work environment for the victims of domestic violence and for all employees who work there, the “Domestic Abuse Prevention and Intervention Act, “ (Act No. 54 of August 15, 1989, as amended), is hereby amended.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- Subsections (c) and (f) are hereby added and subsections from (c) to (1) renamed as subsection (d) to (n) of Section 1.3 of Act No. 54 of August 15, 1989, as amended, known as the “Domestic Abuse Prevention and Intervention Act, to read as follows:

“Section 1.3.- Definitions

- (a) ...
- (b) “Employee (male or female)” means any person who provides a service to any person, partnership or corporation that employs one or more persons under any express or implicit, oral or written service contract, including among these those men or women whose work is of an accidental nature.
- (d)
- (e) “Employer” means any natural or juridical person who employs one or several male or female employees, laborers, workers and the male or female chief, officer, manager, official, agent, administrator, superintendent, foreman or forewoman, steward, agent or representative of said natural or juridical person.
- (f) ...
- (g) ...”

Section 2.-Section 2.3 of Act No. 54 of August 15, 1989, as amended, known as the “Domestic Abuse Prevention and Intervention Act,” is hereby amended to read as follows:

“Section 2.3-Procedure

Any person may request the civil remedies established in this Chapter for him/herself or on behalf on any other person when said person suffers from a mental or physical disability, in case of an emergency or when the person is unable to request said remedies personally.

An employer may request a protective order in favor of female or male employees or visitors and of any other person found at his/her workplace if:

- (1) one of his/her female or male employees is or has been the victims of domestic violence or of conduct constituting a crime as typified in this Act; and if the acts of conduct constituting domestic violence have occurred at his/her workplace.

Before initiating this procedure, the employer must give notice about his/her intention of requesting the protective order to the female or male employee who is or has been the victim of domestic violence or of conduct constituting a crime as typified in this Act.

The right to request the remedies herein established shall not be affected because the petitioning party has abandoned his/her residence to avoid domestic violence.

- (a) ...”

Section 3.-A new Form II is hereby added, and Forms II and III renumbered as Forms III and Form IV, respectively, of Section 5.4 of Act No. 54 of August 15, 1989, as amended, to read as follows:

“Section 5.4.-Forms

The forms that must be provided by the Office of the Clerks of the Court of Justice to the persons who requested protective orders shall be designed so that the information, circumstances and data contained in the forms identified as I, II, III and IV may be substantially consigned or stated. However, the Office of Court Administration may modify them when deemed convenient to achieve the purposes of this Act.

Form II

AT THE _____ COURT OF PUERTO RICO

_____ PART

NO. _____

Petitioner

RE: Protective Order

V.

Petitioned Party

**REQUEST BY EMPLOYER FOR PROTECTIVE ORDER IN FAVOR
OF HIS/HER WORKPLACE**

TO THE HONORABLE COURT:

The petitioning party hereby appears and respectfully states and requests that:

1. The petitioning party (name)_____ is a _____ natural person _____ partnership _____ corporation _____ another (specify)_____ that is being represented by (name)_____. The petitioning party is requesting this civil remedy in favor of the female and male employees and visitors and of any other person found at his/her workplace.

2. The address of the petitioning party is _____
(Street, Number, Urbanization or *Barrio*, Municipality).
3. (Name)_____ is _____ employee of the petitioning party.
4. The petitioned party resides at _____
(Street, Number Urbanization or *Barrio*, Municipality).
5. The employee is a victim of domestic violence or of conduct constituting a crime as typified in Act No. 54 of August 15, 1989, as amended, known as the Domestic Abuse Prevention and Intervention Act.
6. The acts of conduct constituting domestic violence ___ have occurred at the workplace, or ___ it is believed that they may responsibly occur at the workplace.
7. The employee _____ is or _____ has been victim of domestic violence at his/her place of work provoked by the petitioned party, consisting that through the use of force, violence, intimidation or threat the latter has:
 - Caused physical harm.
 - Intended to cause physical harm.
 - Caused serious emotional harm.
 - Provoked fear of suffering physical harm.
 - Provoked fear of causing damage to his/her property.
 - Deprived him/her from his/her freedom of movement.
 - Deprived him/her from proper rest.
 - Forced him/her to have sexual relations through the use of force, violence, threat, intimidation.

8. The abuse suffered occurred on or the _____
(day, month, and year) in _____.

9. I request that this Court grant the following remedies:

Order the petitioned party to abstain from harassing, intimidating, threatening or in any other way interfering with the female and male employees and visitors and with any other person found at my place of work.

Order the petitioned party to abstain from entering my place of work.

Order the petitioned party to abstain from making phone calls directed to creating situations of violence among the employees.

Other _____ (specify)

For which the petitioning party respectfully requests that the remedies solicited in paragraph (9) of this Petition and any other remedy which the Court may deem pertinent be granted to him/her.

Petitioning Party

Address at which to notify me:

Telephone _____

Section 4. Effectiveness

This Act shall take effect sixty (60) days after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 538 (H.B. 4536) (Conference) of the 7th Session of the 14th Legislature of Puerto Rico:

AN ACT to add new subsection (c) and (f) and rename subsections from (c) to (l) as subsections (d) to (n) of Section 1.3; amend the first paragraph of Section 2.3 and add a new Form II, renumber Form II as Form III and renumber Form III as Form IV of Section 5.4 of Act No. 54 of August 15, 1989, as amended, known as the “Domestic Abuse Prevention and Intervention Act,” in order to include the definitions of male and female employee and of employer and establish a procedure to allow an employer to solicit a protective order in favor of the personnel of his/her workplace,

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

In San Juan, Puerto Rico, today 26th of January of 2007.

Francisco J. Domenech
Director