«español»

Puerto Rico Discharge Without Just Cause Act

Act No. 80 of May 30, 1976, as amended

(Contains amendments incorporated by:
Act No. 16 of May 21, 1982
Act No. 65 of July 3, 1986
Act No. 67 of July 3, 1986
Act No. 146 of July 18, 1986
Act No. 9 of October 3, 1986
Act No. 7 of March 1, 1988
Act No. 45 of August 6, 1991
Act No. 115 of December 20, 1991
Act No. 234 of September 17, 1996
Act No. 306 of December 23, 1998
Act No. 128 of October 7, 2005
Act No. 95 of July 30, 2007
Act No. 278 of August 15, 2008
Act No. 4 of January 26, 2017)

[Amendments non-incorporated:
~~Act No. 41 of June 20, 2022~~ *(repealed by In re: FOMB v Pierluisi Urrutia 17-BK3283-LTS (Adv. Proc. 22-00063-LTS)*

To provide that every employee in commerce, industry or any other business or place of employment where he works for compensation of any kind under contract without a fixed time who is discharged from his employment without good cause shall be entitled to receive from his employer, in addition to the amount of the salary earned, a one-month salary compensation and an additional progressive indemnity equivalent to a one-week salary for each year of service; and to repeal Act No. 50 of April 20, 1949.

STATEMENT OF MOTIVES

The protection offered by the present legislation to workmen who are discharged from their employment is inadequate and ineffective, especially because of the restricted remedy it offers to an employee who may be the victim of an unjustified discharge.

It is high time that the right of the Puerto Rican worker to the tenure of his employment be protected more effectively by the enactment of a law which affords more just remedies commensurate with the damages caused by an unjustified discharge and at the same time discourages the incidence of this sort of discharge.

The purpose of this Act is to guarantee that employees discharged without good cause be entitled to receive from their employer a one-month salary compensation plus an additional progressive indemnity equivalent to at least a one-week salary for each year of service.

Excluded from the scope of this Act are cases of displacement due to technological or reorganization changes; or of partial or full stoppage of operations of the establishment where they work, or due to an immediate or foreseeable reduction in the volume of business or profits that renders it necessary or advisable to reduce the personnel in order to keep the establishment running; or by reason of any other action of the employer leading exclusively to a more efficient administration of the establishment.

Be it enacted by the Legislature of Puerto Rico:

Section 1. — (29 L.P.R.A. § 185)

Every employee who works for an employer for compensation, hired without a fixed term, who is wrongfully terminated shall be entitled to receive from his employer as severance pay, the following:

(a) An amount equal to three (3) months of salary as severance pay; provided, that he has completed the applicable probationary period as provided in this this act, or a different probationary period as agreed by the parties; and

(b) An amount equal to two (2) weeks of salary for every full year of service.

In no case the severance pay required under this Act shall exceed the salary corresponding to nine (9) months of salary. The nine (9)-month cap shall not apply to employees hired before the effective date of the "Labor Transformation and Flexibility Act". Severance pay for such employees in the event of wrongful termination shall be computed using the laws in effect prior to the effective date of the "Labor Transformation and Flexibility Act". For purposes of this section, it shall be understood that one (1) month consists of four (4) weeks.

The severance pay provided in this act, as well as any equivalent voluntary payment made by the employer to an employee by reason of said employee's discharge shall be exempt from income taxes, regardless of whether such payment is made at the time of the discharge or later, or whether it is made by reason of a settlement agreement or pursuant to a judgment or administrative order. Any amount paid in excess of the severance pay provided in this act, shall be subject to income taxes.

If the severance pay is made pursuant to a judgment or administrative order, any payment previously made by the employer to the employee by reason of wrongful termination, shall be credited to the severance provided in this act, regardless of whether the payment by reason of termination of employment is made pursuant to the terms of a contract between the parties, policy, plan, or practice of the employer.

Years of service shall be determined on the basis of all the preceding accrued work periods during which the employee worked for the same employer prior to his discharge; provided, that the employment relationship has not been interrupted for more than two (2) years and the services have been rendered in Puerto Rico. There shall also be excluded, years of service that by reason of discharge, separation or termination of employment, or transfer of business operations are compensated to an employee voluntarily or pursuant to an award by the court or an out of court settlement agreement.

The provisions of this Act shall not apply to persons who, at the time of their discharge, were rendering services to an employer under a temporary employment contract or fixed-term contract.

The provisions of this section, as amended by the "Labor Transformation and Flexibility Act", shall take effect as of the date of approval of said act.

[Amendments: Act No. 7 of March 1, 1988; Act No. 45-1991; Act No. 234-1996; Act No. 128-2005; Act No. 4-2017]

Section 2. — (29 L.P.R.A. § 185b)

Just cause for discharge of an employee shall be understood to be that which is not based on legally prohibited reasons and on a whim of the employer. Moreover, it shall be understood as just cause such reasons that affect the proper and regular operations of an establishment, including, among others:

(a) That the employee engages in a pattern of improper or disorderly conduct.

(b) That the employee engages in a pattern of deficient, inefficient, unsatisfactory, poor, slow or negligent performance. This includes noncompliance with the employers' quality and safety rules and standards, low productivity, lack of competence or ability to perform the work at reasonable levels as required by the employer and repeated complaints from the employer's customers.

(c) The employee's repeated violations of the reasonable rules and regulations established for the operation of the establishment, provided, that a written copy thereof has been timely furnished to the employee.

(d) Full, temporary, or partial closing of the operations of the establishment.

In those cases in which the employer has more than one office, factory, branch or plant, the full, temporary or partial closing of operations of any of these establishments where the discharged employee works shall constitute just cause for discharge pursuant to this section.

(e) Technological or reorganization changes as well as changes of style, design, or the nature of the product made or handled by the establishment, and changes in the services rendered to the public.

(f) Downsizing made necessary by a reduction in the foreseen or prevailing volume of production, sales, or profits at the time of the discharge or for the purpose of increasing the establishment's competitiveness or productivity.

An employee's collaboration or expressions relating to his employer's business in an investigation before any administrative, judicial or legislative forum in Puerto Rico shall not be considered just cause for discharge, if said expressions are not of a defamatory character nor constitute disclosure of privileged information according to law. In this last case, the employee thus discharged shall have the right to -in addition to any other award to which he may be entitled- immediate reinstatement of employment and to receive a compensation in an amount equal to the unearned salaries and benefits from the date of discharge until a court orders the reinstatement of employment.

[Amendments: Act No. 65 of July 3, 1986; Act No. 9 of October 3, 1986; Act No. 115-1991; Act No. 234-1996; Act No. 128-2005; Act No. 95-2007; Act No. 4-2017

Section 3. — (29 L.P.R.A. § 185c)

In any case where employees are discharged for the reasons indicated in subsections (d), (e) and (f) of Section 2 of this Act, it shall be the duty of the employer to retain those employees of greater seniority on the job with preference, provided there are positions vacant or filled by employees of less seniority in the job within their occupational classification which may be held by them, it being understood that preference shall be given to the employees discharged in the event that within the six (6) months following their layoff the employer needs to employ a person in like or similar work to that which said employees were doing at the time of their discharge, within their occupational classification, also following the order of seniority in their reinstatement. However, at the time of the discharge and the rehiring, if there is a reasonably clear or evident difference in favor of the capacity, productivity, performance, competence, efficiency or conduct record of the compared employees, the employer may make a selection based on such criteria.

[Amendments: Act No. 146 of July 18, 1986; Act No. 4-2017]

Section 3A. — (29 L.P.R.A. § 185c-1)

In the case of discharges by the reasons set forth in subsections (d), (e), and (f) of Section 2 of this Act, if the employer has several offices, factories, branches, or plants in Puerto Rico, the selection criteria set forth in Section 3 of this Act shall be applied only within the establishment affected by the downsizing of personnel. However, if during the year immediately preceding: (1) the employees of the affected job classifications were usually and frequently transferred from one establishment to another; and (2) the employees were under common direct supervision in the daily administration of personnel, the employees of the establishments so integrated shall be compared. The fact that employees shared common benefits or were governed by common standards and rules shall not be deemed pertinent for the application for the selection method set forth in this Section. Furthermore, in situations where said criteria apply by exception, the criteria shall be used solely with respect to job classifications and the establishments where said integrated operations characteristics are present.

[Amendments: Act No. 4-2017]

Section 4. — (29 L.P.R.A. § 185d)

The indemnity established in Section 1 of this Act shall be paid on the basis of the highest rate of salary earned by the employee during the three (3) years immediately preceding his/her discharge.

[Amendments: Act No. 128-2005]

Section 5. — (29 L.P.R.A. § 185e)

For purposes of this act, discharge shall be understood to be, besides the employee's layoff, his indefinite suspension or for a term of over three (3) months, except in the case of employees

of seasonal trades or businesses or the resignation of the employee caused by the actions of the employer directed to induce or compel him to resign, such as imposing or trying to impose on him more onerous work conditions, reducing his salary, demoting, or submitting him to derogatory criticisms or humiliations by deed or word.

Provided, That any actions taken to induce or compel an employee to resign shall only constitute discharge when the only reasonable option left to the employee was to abandon his job. A merely uncomfortable or unpleasant situation shall not suffice, but rather, it shall be the arbitrary, unreasonable, and capricious actions of the employer that cause a hostile work environment where it is so intolerable that the employee is unable to rationally stay. These actions shall be the result of motives, other than the legitimate interest of the employer of safeguarding the welfare of the business. In the case of derogatory criticisms or humiliations, the extent of these should be substantial.

The mere allegation of an employee that he was forced to resign shall not be sufficient to prove or establish that he was discharged. The employee shall show specific facts that establish that the actions of the employer were intended to impair or harm his condition as employee.

[Amendments: Act No. 4-2017]

Section 6. — (29 L.P.R.A. § 185f)

In the case of transfer of a going business, if the new acquirer continues to use the services of the employees who were working with the former owner, such employees shall be credited with the time they have worked in the basis under former owners. In the event that the new acquirer chooses not to continue with the services of all or any of the employees and hence does not become their employer, the former employer shall be liable for the compensation provided herein, and the purchaser shall retain the corresponding amount from the selling price stipulated with respect to the business. In case he discharges them without good cause after the transfer, the new owner shall be liable for any benefit which may accrue under this Act to the employee laid off, there being established also a lien on the business sold, to answer for the amount of the claim.

Section 7. — (29 L.P.R.A. § 185g)

The allowance for compensation and progressive severance pay for wrongful termination provided in Section 1 of this Act, shall be computed on the basis of the highest number of regular working hours of the employee during any period of thirty (30) consecutive calendar days within the year immediately preceding the discharge.

[Amendments: Act No. 278-2008; Act No. 4-2017]

Section 8. — (29 L.P.R.A. § 185h)

Employees classified as executive, administrative or professional employees under the Federal Labor Standards Act and the regulations of the Department of Labor and Human Resources shall have an automatic probationary period of twelve (12) months. All other workers who are employees, shall have an automatic probationary period of nine (9) months. However, the

employer and the employee may agree on a probationary period, should the probationary period be shorter than the automatic period provided in this act. If the employee is represented by a labor union, the employer and the labor union shall agree on the applicable probationary period. The discharge of an employee on a probationary period shall not be subject to the severance requirements provided in this act. The effect of the twelve (12)-month or nine (9)-month probationary period, as the case may be, shall be prospective to the approval of the "Labor Transformation and Flexibility Act".

The probationary period set forth in this section shall not have the effect of limiting the accrual of vacation leave of the employees who are entitled thereto by law. These employees shall accrue vacation leave upon being employed for six (6) months and such accrual shall be retroactive to the starting date of employment.

The probationary period of an employee who avails himself of a leave authorized by law, shall be interrupted automatically and shall continue for the remainder of the probationary period once he returns to his job.

Any employer who retains the services of an employee hired through a temporary employment company or hired directly through a temporary or fixed-term contract or for a specific project, shall credit the time worked by a temporary employee up to a maximum of six (6) months; provided, that the work to be performed involves the same functions or duties he had when he was a temporary employee.

For purposes of the provisions of this section, "month" shall be construed as a period of thirty (30) consecutive calendar days.

[Amendments: Act No. 16 of May 21, 1982; Act No. 306-1998; Act No. 4-2017]

Section 9. — (29 L.P.R.A. § 185i)

It is hereby declared that the right of an employee who is wrongfully terminated from his employment without just cause, to receive the severance pay provided in Section 1 of this Act shall not be waived.

Any contract or part thereof in which the employee waives the severance to which he is entitled to, pursuant to this act, shall be null and void. However, once the discharge has occurred or the notice of discharge has been issued, the right to severance pay provided in this Act may be settled, provided that all the requirements of a valid settlement agreement are met.

Any voluntary payment made by the employer to the employee solely by reason of termination of employment shall be credited to the severance pay provided in this act.

[Amendments: Act No. 16 of May 21, 1982; Act No. 4-2017]

Section 10. — (29 L.P.R.A. § 185j)

No payroll deduction or withholding shall be made on the severance pay provided in this act, except for such deductions or withholdings required by the laws approved by the Congress of the United States of America.

[Amendments: Act No. 16 of May 21, 1982; Act No. 278-2008; Act No. 4-2017]

Section 11. — (29 L.P.R.A. § 185k)

(a) In every suit based solely on this Act, the court shall hold a conference not later than sixty (60) days after the answer to the complaint is filed, to which the parties shall be compelled to appear or be represented by a person authorized to make decisions, including to settle the complaint. During said hearing, the pleadings of the parties shall be considered, the main disputes shall be identified, and the possibility of an immediate settlement of the complaint shall be discussed. If the complaint is not settled, the court shall order any pending discovery and shall expedite the scheduling of a pretrial conference.
(b) In every suit based on this Act, the court shall hold a pre-trial conference not later than thirty (30) days after the complaint is answered. At the end of this conference, if in its opinion there are sufficient reasons, beyond the circumstances of conflicting allegations, to believe that the discharge was without a just cause, the court shall order the employer who has been sued to deposit, in the office of the court clerk, within a not extendable term of ten (10) days, a sum equal to the total compensation to which the worker would be entitled to, and an additional amount for covering attorney fees, which shall never be less than a percentage of the total compensation or one hundred dollars ($100), whichever is higher. The employer who has been sued may post an adequate bond to cover these amounts. Said amounts or bond shall be returned to the employer if final and binding judgment is rendered in his/her favor. At any stage of the proceedings in which, at the request of a party, the court determines that there is a serious risk that the employer lacks of sufficient property to satisfy the judgment that may be rendered in due time in the case, the court may demand the aforesaid deposit or the corresponding bond.

[Amendments: Act No. 16 of May 21, 1982; Act No. 45-1991; Act No. 128-2005; Act No. 4-2017]

Section 12. — (29 L.P.R.A. § 185l)

The rights granted hereunder shall prescribe after one (1) year has elapsed from the effective date of the discharge. Complaints for discharges filed prior to the effective date of the "Labor Transformation and Flexibility Act" shall be subject to the statute of limitations previously in effect.

[Amendments: Act No. 16 of May 21, 1982; Act No. 4-2017]

Section 13. — (29 L.P.R.A. § 185m)

The Secretary of Labor and Human Resources is hereby empowered to adopt and promulgate the regulations needed to administer the provisions of this Act.

[Amendments: Act No. 67 of July 3, 1986]

Section 14. — (29 L.P.R.A. § 185n)

For purposes of this act, the following terms, words or phrases shall have the meaning expressed below:

(a) 'Misconduct' An employee's willful violation of the employer's rules or standards that are not contrary to the law; unlawful or immoral acts; or actions or omissions that adversely and significantly affect the legitimate interests of the employer or the wellbeing of others, which violation is premeditated, deliberate, or in disregard of the adverse consequences thereof.

(b) 'Disorderly conduct' An employee's willful violation involving breach of the peace, tranquility, good order, and respect that must prevail in a healthy work environment.

(c) 'Temporary employment contract' Means a written or oral employment contract based on a working relationship that is established for carrying out a specific project, certain works, substituting an employee during any leave or absence, carrying out special or short-term tasks including, but not limited to, annual inventories, repair of equipment, business machinery or facilities, casual loading or unloading of cargo, jobs during certain seasons of the year such as Christmas, production increase temporary orders, and any other specific project or activity.

(d) 'Fixed-term contract' Means a written or oral employment contract based on a working relationship that is established for a specific period of time or a specific project. Although the contract may be renewed, if the practice, circumstances, and frequency of the renewals were of such a nature as to create an expectation of continued indefinite employment, it shall be understood that the employment is established without definite term. Any fixed-term contract whose initial term or total renewals do not exceed three (3) years shall be considered a valid and bona fide contract. In addition, in the case of executive, administrative or professional employees, as such terms are defined by the Secretary of Labor and Human Resources through regulations, these shall be governed by the will of the parties as expressed in the fixed-term employment contract.

(e) 'Employee' Means any person who works for an employer and receives compensation for his services. The term does not include independent contractors, government employees, employees covered under a collective bargaining agreement in effect, or employees who work under a temporary employment contract for a fixed term or project.

(f) 'Establishment' Means the geographic or physical site or location where an employer operates a business or company.

(g) 'Employer' Means any natural or juridical person that employs or allows any employee to work for compensation. This term does not include the Government of Puerto Rico and each one of the three branches thereof, its departments, agencies, instrumentalities, public corporations, and municipal governments as well as municipal instrumentalities or corporations. It does not include the Government of the United States of America either.

(h) 'Wage' Means the salary regularly earned by an employee for his services, including commissions and other incentives regularly paid. This term shall not include the value of fringe benefits, disability benefits, sick or vacation leaves, bonuses voluntarily paid or required by law, deferred compensation, stocks, stock options, the portion of tips earned in excess of the amount used to comply with the payment of the legal minimum wage, or service charges required by an employer that are subsequently shared, in whole or in part, with its employees.

(i) 'Transfer of business operations' Means the purchase of a business or company, whereby an employer sells to another employer a substantial portion of the assets and/or liabilities of a

business, without interrupting or ceasing the operations thereof for longer than six (6) months and continues operating the same type of business in the same or a different establishment, with basically the same equipment, machinery, and inventory, producing basically the same products and/or rendering the same services, retaining the same name of the business and commercial brands or a similar name, provided, that most of the employees who work in the business at any time during the six (6) months following the transfer worked for the selling employer at the time of the transfer of the business.

[Amendments: Act No. 4-2017]

Section 15. — (29 L.P.R.A. § 185a note)

Act No. 50 of April 20, 1949 is hereby repealed without prejudice to the workmen affected to bring any action which may have arisen thereunder at the time this Act takes effect.

Section 16. — This Act shall take effect immediately after its approval.

Note. This compilation was prepared by the Puerto Rico Office of Management and Budget staff who have striven to ensure it is complete and accurate. However, this is not an official compilation and may not be completely free of error. It contains all amendments incorporated for reading purposes only. For accuracy and exactitude please refer to the Act original text and the collection of Laws of Puerto Rico Annotated LPRA. The state links acts are property of Legislative Services Office of Puerto Rico. The federal links acts are property of US Government Publishing Office GPO. Compiled by the Office of Management and Budget Library.

See also the **Original version Act**, as approved by the Legislature of Puerto Rico.