

Puerto Rico Bars Use of Legitimate Absences in Performance Review, Adds Catastrophic Illness Leave

By Juan Felipe Santos

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Just one year after substantial changes to Puerto Rico employment laws became effective, the Governor has enacted two new sick leave laws. One shields employees from adverse consequences from sick leave use. The other creates a special leave for catastrophic illnesses.

Act No. 60 of January 27, 2018

The Puerto Rico Minimum Wage, Vacation and Sick Leave Law mandates paid sick and vacation leave to non-exempt employees and outside salespersons who work at least 130 hours per month. New Act 60 amends this law to prohibit private sector employers from using justified sick leave absences as a measurement in performance evaluations. It likewise prohibits employers from considering an employee's legitimate use of sick leave as a basis for discipline or discharge.

The amendment became effective immediately.

Act 60's stated intent is to prohibit employer policies or practices that consider legitimate sick leave absences as criteria in evaluations, thus affecting the employee's opportunities for promotions or raises.

The law adds the following language:

No employer, supervisor or their representative, may use, as part of a company's administrative procedure or policy, justified absences due to sickness, as criteria for an employee's efficiency in their evaluation process, if they are considered for raises or promotion in the company for which they work. Neither shall absences due to sickness, correctly attributed to sick leave, be used to justify disciplinary actions such as suspensions or terminations.

Act No. 28 of January 21, 2018 – Special Leave for Catastrophic Illnesses

The Governor signed the "Special Leave for Employees with Serious Catastrophic Illnesses Law" on January 21, 2018. This creates a new type of leave that obligates public and private sector employers to provide paid leave of up to six days a year for absences related to specific illnesses defined by the law. This is in addition to sick leave to which employees might be eligible under the Puerto Rico Minimum Wage, Vacation and Sick Leave Act.

Act 28 applies to both exempt and non-exempt employees, as well as temporary employees. The law will become effective on February 20, 2018.

"Serious Catastrophic Illnesses" are defined as those illnesses listed in the Special Coverage of the Puerto Rico Health Insurance Administration (*Administración de Seguros de Salud de Puerto Rico*), as may be amended. At the time of the law's enactment this list includes:

- AIDS
- Tuberculosis
- Leprosy
- Lupus
- Cystic Fibrosis
- Cancer
- Hemophilia
- Aplastic Anemia
- Rheumatoid Arthritis
- Autism
- Post-Organ Transplant
- Scleroderma
- Multiple Sclerosis
- Amyotrophic Lateral Sclerosis (ALS)

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- Chronic Renal Disease in Stages 3, 4, and 5

Employers may require evidence of diagnosis and continuing treatment from the employee's treating physician.

Employees who suffer from one of the illnesses listed are entitled to up to six days of paid leave per calendar year once they have worked for their employer for at least 12 months and worked an average of 130 hours during that period.

The employee must have exhausted any accrued sick leave before using catastrophic illness leave; an employer cannot obligate an employee to use this leave before exhausting regular sick leave.

The special leave cannot be rolled over into subsequent years and does not have to be paid out upon termination of employment. Use of this leave is considered time worked for purposes of benefits accumulation. If requested by the employee, use of this leave may be fractioned or intermittent.

Like regular sick leave, employers may not consider the use of this leave as a criteria for performance evaluations or as a basis for disciplinary action.

Employers found to have denied this leave to eligible employees may be fined of up to \$2,000.

Employers should review their policies and practices with employment counsel to ensure they address specific organizational needs effectively and comply with applicable law. Please contact your Jackson Lewis attorney to discuss these developments.

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