

LABOR PERSPECTIVES

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A LESSON IN ACCOUNTABILITY: CRIMINAL CONSEQUENCES FOR FAILED UNION LEADERSHIP

Membership in a labor organization is akin to a contract: members pay dues and abide by union bylaws in exchange for the union's efforts to negotiate better benefits for the membership. Union members assume that elected union leaders will adhere to ethical standards. Many do; others do not. This article examines three recent criminal cases where the justice system caught up with failed union leaders' actions.

In the last five years, the presidents of three labor organizations have been accused, tried, and convicted in the Federal District Court for the District of Puerto Rico. The leaders of the three organizations were caught with their hands in the cookie jar. Sitting behind bars are José de Jesús Serrano and Rafael Morales Rodríguez, President, and Vice-President respectively, of Federación Unida de Policías Organizados ("FUPO"), a labor organization of police officers; Hector René Lugo and ten other members of the Board of Directors of the Unión Independiente Auténtica ("U.I.A."), the largest public employee union in Puerto Rico covering active and retired employees of the Sewer and Aqueduct Authority ("AAA"); and Jorge Aponte, President of Unión Trabajadores de Muelles ("UTM") Local 1740, an American Federation of Labor and Congress Industrial Organizations ("AFL-CIO") affiliate. What did these 'leaders' do? Why were they convicted? How did the membership react? What are the lessons from these cases?

FUPO: the police organization

Ironically, the first scheme to come to light was that of the labor organization whose membership is in charge of law enforcement in Puerto Rico. FUPO was the largest police organization with over eighteen thousand members.¹ Its members were mostly active and retired police officers. FUPO's President, José de Jesús Serrano, founder of the organization, and the Vice-President, Rafael Morales Rodríguez, were in power for over 20 years.

De Jesús Serrano and Morales Rodríguez, who had absolute power over FUPO's finances, embezzled more than \$2,500,000 in membership dues. They opened accounts at different banks and transferred monies between the accounts. Once the monies were transferred, de Jesús Serrano and Morales Rodríguez issued hundreds of checks to themselves for personal use. On a monthly basis, de Jesús Serrano and Morales Rodríguez embezzled over \$40,000. Since the bank statements were only available to de Jesús Serrano and Morales Rodríguez, the scheme went undetected for many years. Upon discovery of the scheme, de Jesús Serrano reached an agreement with the United States Attorney's Office. He pled guilty to conspiracy to commit mail fraud and was sentenced to five years in prison. Morales Rodríguez opted to go to trial. He was indicted by a Grand Jury for mail fraud, money laundering, embezzlement of labor union dues, and structuring.

He was convicted on all counts and sentenced to a 121 months imprisonment.

The UTM Local 1740 Union Dues Embezzlement Scheme

While the convictions of de Jesús Serrano and Morales Rodríguez were still sending ripples through FUPO's membership,

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a Grand Jury issued an indictment against Jorge Aponte, President of UTM Local 1740, an AFL-CIO affiliate, and twelve other defendants, including the Director and Sub-Director of an ERISA covered plan, the plan's Comptroller, five businessmen, and three corporations. The indictment charged two conspiracies: eight defendants were indicted for embezzling over \$2,800,000 in labor union dues; six defendants were indicted for embezzling over \$8,000,000 from an ERISA qualified plan. Jorge Aponte was charged in both conspiracies. He was also charged with falsifying reports to the United States Department of Labor. All defendants were charged with money laundering.

The case was bifurcated for trial purposes. The union embezzlement and related charges case was tried first. Seven of the eight defendants pled guilty prior to trial. Jorge Aponte, the President, decided to put his case before the jury.

The evidence at trial tracked what the indictment alleged. Companies such as Intership, Luis A. Ayala Colón Sucrs., and Island Stevedoring, that hired members of the UTM Local 1740 to work at the ports, deducted membership dues from employees' checks. By agreement with the union, the companies prepared a monthly check of union dues. As President, Aponte maintained control over the incoming union dues.

Day by day, the jury learned each defendant's role in the scheme. Following Aponte's orders, Enrique Sosa, Sub-Director of the ERISA plan, personally picked up the union dues checks. The checks were delivered to Aponte who would give some of the checks to the union's Treasurer for deposit in the union's account. Aponte instructed Sosa to cash the remaining checks. Sosa took the checks to defendant Fernando Sánchez Bencon at Puerta de Tierra Discount. Sánchez Bencon would either cash the checks himself or would take them to other defendants to cash. The corporations and the businessmen that participated in the scheme were

charged with money laundering. Each person participating in the process kept a "commission" fee. The "commission" was simply a fee for laundering the proceeds of a specified unlawful activity, embezzlement of union dues. The remaining cash was delivered to Aponte by Sosa.

Aponte was convicted of all charges on April 2, 2007. Upon conviction, the Judge Juan M. Pérez-Giménez committed Aponte to prison where he awaits the ERISA embezzlement trial.

The ERISA Plan Embezzlement Scheme

The ERISA trial is scheduled to start on August 20, 2007. There are two defendants left for the ERISA trial; Aponte and the Director of the ERISA plan. Four others, including the plan's Comptroller, pled guilty. Aponte was the President of the Board of Trustees that oversaw the ERISA plan.

According to the indictment issued by the Grand Jury, the Council negotiated collective bargaining agreements that included contributions by employers for an employee benefit plan known as the Plan de Bienestar UTM-PRSSA, an ERISA qualified plan. Employer contributions for this plan ranged from \$15 to \$18 per hour worked by each union member. Millions of dollars were deposited in the plan by employers.

The indictment alleges that the defendants charged in the ERISA scheme enriched themselves through a series of repeated financial transactions designed to divert monies from the plan while making them appear as legitimate transactions. The alleged scheme involved payments of millions of dollars to shell corporations for non-existent services. The Grand Jury charged various businessmen and corporations with serving as conduits to launder the money taken out of the ERISA plan. The amount alleged to have been laundered exceeds \$8,000,000. The businessmen allegedly received a "commission" for their "services."

The U.I.A.

Before the UTM Local 1740 President was indicted, the premises of the U.I.A. were searched by F.B.I. and I.R.S. agents. Through press reports of the search warrants, Puerto Rico knew that the U.I.A. leadership was under scrutiny. The indictment came within six months of Jorge Aponte's arrest.

In United States v. Héctor René Lugo, et al., Crim. No 05-354 (JAF), the Grand Jury charged eleven members of the Plan de Salud U.I.A., Inc.'s Board of Directors, who were also the U.I.A. directors, with embezzlement of health care funds, conspiracy, and money laundering. The use of earmarked health care premiums for uses not related to the health plan is prohibited by law.

Through collective bargaining, the U.I.A. obtained health plan contributions from the employer, AAA, for union members.² During 1998-2004, the AAA contributions ranged from \$232 - \$355 per active AAA employee. AAA forwarded millions of dollars to the U.I.A. for the health plan. The U.I.A., presided by Lugo, created its own health plan. While AAA was obliged to make contributions for other benefits for the U.I.A. members, the health plan contribution was undoubtedly the golden pot.

In essence, the defendants were charged with misappropriating health plan funds for themselves and the union. Lugo alone was paid over \$1,700,000 over a six year period (1998-2004) as President of the U.I.A. and the U.I.A. health plan while he was also getting paid by the AAA under a paid labor leave.³ Lugo had presided over the U.I.A. and the U.I.A. health plan for over two decades.

In this case, all defendants opted to go to trial. It took the expertise of an outstanding public employee from the Insurance Commissioner's Office and an F.B.I. financial analyst to unravel the mystery. Through six weeks of testimony, the jury learned the details of a complicated scheme. The U.I.A. and

related corporations had seven different bank accounts at the same financial institution. Monies were constantly moved between accounts. The payments to the directors were hidden in an “infrastructure account” funded with monies that were transferred from the health plan’s account. To obtain the monies from the health plan, Lugo, as President of the U.I.A., entered into an “administration” contract with the health plan he also presided. The health plan transferred 6% of its funds to the union. The funds were then used to pay the Board of Directors. When the Insurance Commissioner’s Office audited the plan, it did not find the payments to the directors. They were hidden as an “administration fee.”

In addition to payment to the directors, health plan funds were used to cover costs related to, among others, union assemblies, union anniversary jackets, and automobiles for Lugo.

A money laundering scheme was also revealed during the trial. To launder the health plan funds illegally kept in the union, the union signed loan agreements with the health plan. When the loans were scrutinized it turned out that the funds the union used to lend monies to the health plan were actually health plan funds retained by the union. The scheme was to have the loans paid back to the union thus “cleaning” the money by making the payments appear as legitimate loan payments from the health plan to the union. The defense argued that there was never an intent to have the health plan pay back the monies “lent” by the union. The jury disagreed. On June 16, 2006, the jury returned a guilty verdict against all defendants on all charges.⁴

The District Court instructed the jury as to the legal responsibility of members of a Board of Directors. The case is significant since it highlights the fiduciary duties owed by a Board of Directors and the criminal liability that can arise from non-compliance with those duties. Although the case involved members of a Board of Directors of a Health Plan, the same general principles can be applied to any Board of Directors.

Even though many of the financial decisions questioned during the trial were made by the health plan’s Executive Committee composed of the President, Vice-President, and Treasurer of the Board of Directors, the remaining members of the Board of Directors were also held accountable. While members of the Board of Directors had varying degrees of participation and knowledge of the complex scheme, they all had a duty to act in the best interests of the health plan. The scheme was not possible without the acquiescence of all the members of the Board of Directors.

Lessons Learned

The members of all three labor organizations were shocked by the indictments against their leaders. As the evidence flowed at trial, denial was followed by anger, and finally acceptance that trusted leaders had gone astray.

There are lessons to be learned from these cases. All three cases evidence a combination of powerful leadership and followers who blindly trusted their leaders. The indicted leaders had been in power for over two decades. Their strong hold on their organizations did not allow for effective auditing mechanisms. The few members who raised questions were marginalized or ignored. Blind trust by most members of each organization was the main ingredient that allowed their leaders to embezzle and misappropriate millions of dollars. Ultimately, the victims of the leaders’ crimes were the members of each organization. Members of any type of organization must be vigilant to ensure that their elected leaders comply with their obligations: to serve and not to be served.

Employers can also learn lessons from these three cases. Any employer that has agreed to deduct union dues from employees’ salaries should follow their normal course of business for delivering the checks to the union. If a special arrangement is requested it should be considered a red flag. When the cancelled checks are returned, the company would do well to check the endorsements and bank depositing information. The union embezzlement scheme in the UTM Local

1740 case would have been detected years earlier if any of the companies had checked the endorsements. The checks were cashed at Puerta de Tierra Discount and at a jewelry store.

The Commonwealth of Puerto Rico also learned some lessons. Prior to the FUIPO case, labor organizations had no duty under Puerto Rico law to audit their financial statements. After the FUIPO leaders were convicted, the resulting outcry moved the legislature to enact laws 333 and 358 of September 16, 2004. Now, unions and labor organizations have to submit audited financial reports to the Department of Labor. The legislation fell short, however. According to testimony of an employee of the Department of Labor during the Lugo trial, the Labor Department does not have the authority to conduct independent audits. They can only do so upon request of the organizations themselves. Amending the law to include auditing power can serve organizations well in their quest to keep leaders in line. It was precisely an audit of the United States Department of Labor that initially discovered the UTM Local 1740 fraud.⁵ *M&V*

About the Author

Nereida Meléndez Rivera was the Deputy Chief of the White Collar Crime Unit for the United States Attorney’s Office (“USAO”) for the District of Puerto Rico. Ms. Meléndez supervised the FUIPO and Héctor René Lugo investigations and participated in both trials. She headed the Jorge Aponte investigation that culminated in the indictment of Jorge Aponte and twelve others.

Ms. Meléndez is a Special Counsel in the Litigation Practice Group and Co-Chair of the Government Enforcement and White Collar Defense (“GEWD”) Practice Area. GEWD specializes in internal company investigations, compliance work, and defense of white collar crimes. Other members of GEWD are Sonia Torres Pabón, former Chief of the Criminal Division of the USAO, and Héctor Laffitte, former Chief Judge of the Federal District Court

1. FUIPO is a labor organization, not a union. Puerto Rico law prohibits law enforcement officers from organizing as a union. As a labor organization, FUIPO received membership dues but was not able to negotiate collective bargaining agreements.

The most important benefits offered by FUIPO were legal representation for its members and some monetary contributions in case of injury or death.

2. All non-professional employees of the AAA (over 4,000) are members of the U.I.A. The professional employees are represented by a different union.

3. Ten of the defendants were working at the U.I.A. under paid labor leaves. This benefit was part of the collective bargaining agreement. Instead of their regular AAA job, the Board Members were paid to attend to union matters.

4. Andrés Carrasquillo, the Vice-President, became ill during trial. He was convicted in a subsequent trial. Lugo was sentenced to 17 years imprisonment. The case is currently under appeal.

5. The United States Department of Labor does not have jurisdiction over all labor organizations or unions in Puerto Rico.



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PLAN ADMINISTRATOR'S DECISION TO TERMINATE LTD BENEFITS RECENTLY UPHELD BY THE COURT OF APPEALS

On May 16, 2007, the United States Court of Appeals for the First Circuit, issued its opinion in José Morales Alejandro v. Medical Card System, Inc., No. 06-0287, U.S. Court of Appeals for the 1st Cir. (May 16, 2007). It upholds a Plan

ERISA requires that the information included in SPDs is "written in a manner calculated to be understood by the average plan participant, and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan"

Administrator's decision to terminate a plaintiff's long-term disability benefits.

José Morales Alejandro ("Morales") filed a complaint seeking reinstatement of long-term disability benefits, reimbursement of his medical expenses and payment of past long-term disability benefits under the Employee-Retirement Income Security Act of 1974, ("ERISA").

In 1994, Morales had requested benefits under the long-term disability plan ("Plan") sponsored by his employer. Morales suffered from bronchial asthma; he claimed being eligible for disability benefits for this condition, among other health problems. The Plan Administrator approved Morales' disability benefits claim. However, pursuant to the terms of the Plan, Morales had to file for social security benefits and reimburse the Plan for the social security benefits received.

After receiving social security benefits for five years, the Social Security Administration notified Morales that the continuation of his benefits was subject to periodic reviews. Morales continued enjoying his long-term disability benefits under the Plan. In April 2001, Medical Card System, Inc., ("MCS"), the Plan Administrator at the time, examined Morales' continued eligibility for benefits under the Plan. MCS requested that Morales submit updated medical information for the period from January 2000 to April of 2001. This information was needed in order to determine whether he continued to qualify for benefits.

This decision was based on the information which Morales provided, the results of an independent medical examination which a physician conducted,

and an independent medical consultant's review of Morales' medical file.

MCS terminated Morales' benefits on June 30, 2001. Morales appealed, but MCS denied his appeal.

Morales then sued MCS in the Puerto Rico local Court; and MCS removed the case to the Federal District Court for the District of Puerto Rico. Based on the administrative record, the Federal Court held that the Plan Administrator's decision to terminate Morales' benefits was not arbitrary and capricious; the Court upheld the termination of plaintiff's long-term disability benefits under the Plan.

Morales filed an appeal. He contended, among other things, that the Federal District Court erred in concluding that MCS' decision denying him benefits was not arbitrary and capricious.

The United States Court of Appeals affirmed the Federal District Court's decision. It reiterated a Plan Administrator's discretionary authority to interpret the terms of a plan and to determine a claimant's eligibility for benefits. The Administrators' authority exists whenever the corresponding ERISA plan grants the Plan Administrator such authority and the Administrator's decision is not arbitrary, capricious, or an abuse of discretion.

In Morales' case, his health condition had become mild and stabilized; he no longer qualified for disability benefits and MCS terminated his benefits because he no longer qualified. Morales' medical record and a health care provider's opinion supported MCS' decision. The United

States Court of Appeals concluded that substantial evidence supported the Plan Administrator's reasoned decision to terminate the benefits. Thus, it passed the arbitrary, capricious, and abuse of discretion test.

Morales further alleged in the appeal that MCS had used the less favorable definition of disability. Morales specifically contended that the Plan's Summary Plan Description ("SPD") was narrower than the definition included in the Plan document. MCS's action allegedly imposed a more burdensome disability test than the Plan required.

ERISA requires that the information included in SPDs is "written in a manner calculated to be understood by the average plan participant, and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan." Notwithstanding, Morales failed to prove to the court that he relied on the more favorable definition in making his claim for benefits; and that the definition used by MCS resulted in the denial of his claim. In other words, Morales bore the burden of proving that he continued to be disabled pursuant to the terms of the Plan and failed to do so.

Morales also alleged that since he had to apply for social security benefits and reimburse the Plan for the amount received, MCS should have considered the Social Security Administration's decision to continue his social security benefits and allow him to continue his long-term disability benefit, as well. However, a 2000 decision of the United States Court of Appeals for the First Circuit had previously held that "benefits eligibility determinations by the Social Security Administration are not binding on disability insurers." Contrary to Morales' argument, the only information that is controlling upon a plan administrator, when determining eligibility for benefits, is the text included in the plan itself.

In summary, if a plan, as in the case at hand, provides a Plan Administrator discretionary authority to determine eligibility for benefits and the Administrator bases the termination of benefits on reasonable and probative evidence, the court will generally uphold the termination of benefits, even if the court would have come to a different conclusion independently. Courts are not free to replace the Plan Administrator's judgment with their judgment as if they were considering the eligibility issue anew.

Furthermore, the claimant bears the burden of proof when there is a conflict between the provisions in the SPD and in the Plan document. He/she must demonstrate that he/she relied on the language most favorable to him/her. The Plan Administrator is only required to give weight to the terms and conditions included in the corresponding plan; no other definition shall be considered or given any other weight.

In view of this decision, it is advisable that employers that are plan sponsors and/or administrators of welfare benefit plans (such as long-term or short-term disability benefits, group health plans and life insurance, among others) examine their plans to verify that their Plan Administrators have discretionary authority to interpret the terms of a plan and to determine a claimant's eligibility for benefits. Moreover, plan sponsors/administrators should confirm that their SPDs are consistent with the language included in the plan documents. These assurances generally provide plan sponsors/administrators with more control over the benefits provided to their own employees and minimize liability exposure in ERISA litigation cases.

Should you need any assistance regarding welfare benefit issues please contact any of the members of the McConnell Valdés Labor and Employment Law Practice Group's Welfare and ERISA Litigation Practice Area. [M&V](#)

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RECENT NLRB DECISION ADDRESSES RESTRICTIONS ON PROTECTED ACTIVITY IN RETAIL CENTERS

The National Labor Relations Board (“NLRB”) recently issued an important decision regarding Union access to parking lots and sidewalks in the context of a leased property in a retail shopping center. In Wal-Mart Stores, Inc., 362 NLRB No. 102, the United Food and Commercial Workers International Union (the “Union”) filed an unfair labor practice charge alleging that Wal-Mart had committed an unfair labor practice by enforcing an overly broad and discriminatory no-solicitation and no-distribution rule and prohibiting union organizers from soliciting employees and distributing union literature to its employees on its property. Wal-Mart’s policies regarding solicitation and distribution provided that non-employees may request and receive, with advance notice and with certain restrictions, permission to distribute outside its facilities.

Specifically, Wal-Mart had a written solicitation and distribution policy that established a procedure for any organization to apply for permission to solicit in the store’s common areas which required that applications be made “at least 3 days in advance of the requested solicitation date.” As to this policy, the Board found that the Union was aware of its existence, yet “knowingly failed to provide advance notice of its intention to solicit.”

After attempting to distribute handbills and organize in the parking lot and sidewalks immediately outside a Wal-Mart store in a shopping center, Union members were forced to leave by store managers.

The NLRB held that, because the terms of the lease agreement between the shopping center and Wal-Mart established that Wal-Mart could use the parking lot and sidewalks “for commercial purposes of the type normally found in retail shopping centers,” Wal-Mart could “exclude disruptive activity” that would interfere with the use of the property for its business purposes. As such, the **NLRB held that Wal-Mart could implement uniform and system wide reasonable time, place and manner restrictions on disruptive activity**, which included requiring solicitors to provide advance notice before engaging in solicitation activity. Because Wal-Mart had applied this advance notice requirement consistently and in a non-discriminatory manner, and the Union admittedly failed to comply with the advance notice requirement, the NLRB held that Wal-Mart could lawfully exclude the Union solicitors.

Nevertheless, employers, whether property owners or lessees, should be mindful that Puerto Rico’s constitution offers substantive protections for similar activities under the freedom of speech provision of Section 4 of Article II of the Commonwealth of Puerto Rico’s Constitution. Moreover, the Supreme Court of Puerto Rico has specifically held that the freedom of speech protections offered by our Constitution extend to expression activity in privately owned retail centers.

In Empresas Puertorriqueñas de Desarrollo v. Hermandad Independiente de Empleados Telefónicos, 150 D.P.R. 924 (2000), the owners of a shopping center located in Mayagüez sought an

injunction to prohibit picketing by Union members protesting the sale of the Puerto Rico Telephone Company (“PRTC”) in front of the PRTC offices located in the retail shopping center. Injunctive relief was initially denied by the Court of First Instance, but later granted when the decision was reversed by the Puerto Rico Court of Appeals. Upon review, the Supreme Court affirmed the Court of First Instance’s decision and denied the request for injunctive relief.

In its lengthy opinion in Empresas Puertorriqueñas, the Supreme Court found that Puerto Rico’s Constitution granted broader protection to its citizens than the Constitution of the United States. Furthermore, the Court concluded that retail shopping centers were the modern day equivalent of public town centers and, as such, conferred upon them the characteristics of a public forum. The Court concluded that the protected speech, in that case picketing, could not be prohibited in the retail shopping center, notwithstanding the fact that it was privately owned. Nevertheless, **the Court held that owners could place reasonable, time, place and manner restrictions on the protected activity so as to not substantially affect the business purposes of the commercial establishment.**

In light of both of these decisions, employers should carefully analyze their policies regarding distribution, solicitation or similar expressive activities in order to ensure that they comply with the applicable legal standards. Just as important, any restrictions on protected activities must be implemented in a uniform and consistent manner. **M&V**



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HEALTH CARE EMPLOYERS ARE NOW REQUIRED TO EDUCATE EMPLOYEES ABOUT THE FALSE CLAIMS ACT AND ITS WHISTLEBLOWER PROTECTIONS

The Deficit Reduction Act of 2005 ("DRA"), amends the Social Security Act. It establishes that certain entities, including hospitals, are now required to train their employees, contractors and agents on the provisions of the federal False Claims Act ("the federal Act") and the state False Claims Acts (the "state Act"). The training should include the whistleblower provisions of these statutes. The DRA became effective on January 1, 2007.

In general terms, the federal Act imposes civil as well as criminal penalties on parties who knowingly submit false claims for payment to the United States Government ("Government"). Any person who incurs such a fraudulent act is subject to a civil penalty of not less than \$5,000 and not more than \$10,000; in addition, the person is liable to the Government for three times the amount of damages which the Government sustains because of the fraudulent act. However, if certain requirements are met, the court may reduce the amount of damages payable to the Government to not less than two times the amount of damages which the Government sustained. These requirements are: (a) the person committing the violation provided to the Government investigating officials all the information related to the violation within 30 days after the date on which he or she first obtained this information, (b) the person has fully cooperated with the investigation, and (c) at the time the person provided the information no criminal prosecution, civil action, or administrative action had yet been commenced, or the person did not have actual knowledge of the existence of the investigation. A person violating the federal Act is also liable to the Government for the costs of any civil action brought to recover any federal penalty or damages.

The federal Act defines a "claim" as any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the Government provides any portion of the money or property which is requested or demanded or has agreed to reimburse the contractor, grantee, or recipient for any portion of the money or property which is requested or demanded.

The federal Act also has a whistleblower provision. It establishes that any employee who is discharged, demoted, suspended, threatened, harassed, or discriminated against with respect to terms and conditions of employment by his or her employer because of lawful acts performed by the employee on behalf of the employer or others in furtherance of a potential action under the federal Act, including investigation, initiation of investigation, testimony for or assistance in an action under the Act, shall be entitled to all relief necessary to make the employee whole. This relief shall include reinstatement with the same seniority status the employee would have had but for the discrimination, two times the amount of back pay, interest on back pay, and compensation for any special damages, including the costs and attorney's fees incurred. The federal Act and its whistleblower provisions apply to entities that have federally funded healthcare programs.

Under Section 6032 of the DRA, any entity that receives and/or makes annual Medicaid payments of \$5 million or more, is required to establish written policies and/or revise their employee handbooks to include detailed information about federal and state false claims acts, including their whistleblower protections, and about the entity's own policies and

procedures for detecting and preventing waste, fraud and abuse. The federal Act is specific about the information to be included in the policies and provided to all employees (including management), contractors, and agents. The required information is much too extensive to be included in an article of this type.

Finally, the DRA makes compliance with Section 6032 a condition of receiving Medicaid payments. In the event that an entity fails to meet these requirements, this could result in the forfeiture of all Medicaid payments during the period of non-compliance.

In view of the provisions of DRA, health care employers should adopt written policies and/or revise their employee handbooks to include the required information. Employers should also notify all their employees, contractors, and agents of these policies. The written policies and/or employee handbooks should include, when applicable, provisions prohibiting employment related retaliation. Further, it is advisable that health care employers provide training to their new hires and current employees about the federal Act, Section 6032 of the DRA, and also local Act 115.¹ By taking these steps, health care employers will be complying with the DRA and protecting themselves against possible forfeiture of Medicaid payments. **M&V**

1. In Puerto Rico, there is no comparable false claims act. Puerto Rico does have a general retaliation statute: Act No. 115 of December 20, 1991 ("Act 115"). Act 115 prohibits an employer from discharging, threatening, or discriminating against an employee regarding his/her terms, conditions, compensation, location, benefits or privileges should the employee offer or attempt to offer, verbally or in writing, any testimony, communication or information before a legislative, administrative or judicial forum in Puerto Rico, when such communications are not of a defamatory character and do not constitute disclosure of privileged information as established by law.

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