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MEMORANDUM

TO : Clients and Friends

FROM : Labor and Employment Law Department of McConnell Valdés

RE : Puerto Rico Department of Labor Publishes Regulations for its
New Mediation and Adjudication Office

DATE : March 21, 2005

The Puerto Rico Department of Labor and Human Resources ("PRDOL") recently published proposed regulations on its new Mediation and Adjudication Office ("OMA"). The PRDOL initiated a formal comments process, which includes a public hearing held on March 9, 2005, that encourages feedback regarding the regulations.

The publication marks the first step in OMA's startup as an adjudicatory body. OMA, created by Act No. 384 of 2004, will hold mediation sessions or administrative trials on employment-related claims brought before it. Employees have the choice between filing their claims in Court, before OMA or before the PRDOL which in turn may also refer them to OMA. The regulations authorize the PRDOL's Labor Standards Bureau ("Normas") and the Anti-Discrimination Unit ("UAD") to refer cases to OMA.

Mediation is voluntary, however, under the proposed regulations it would be mandatory for the parties to attend an initial orientation session on OMA's unique mediation process. Parties are generally allowed to be represented by legal counsel, but an attorney's participation would be limited during joint mediation sessions.

The proposed Adjudication regulations, in general, adopt strict procedural limitations, at times even more stringent and dangerous for the employer than those imposed under the current statutory summary procedure established for labor and employment claims filed before the local courts. The process begins with a grievance filed by an employee which OMA notifies to the employer. The employer then has 10 days to file a response. Subsequently, it will not be possible to amend any of the legal defenses raised and discovery mechanisms would be restricted. Failure to respond within 10 days would prompt OMA to issue a resolution granting all remedies requested in the grievance.

Also, OMA's proposed regulations would create restrictions not present in summary proceedings before the courts. For example, the parties are banned from using documentary evidence not previously produced to Normas or the UAD, and the employee may amend or voluntarily withdraw his or her grievance without the prior consent of OMA or the defendant employer.

McConnell Valdés will submit written comments on the proposed regulations to the Secretary of the PRDOL, in an attempt to have the proposed regulations amended. We believe that some sections of the proposed regulations are extremely unfair and burdensome upon employers, and contrary to the public policy of fostering a stable regulatory environment and economic development. In the meantime, we are taking steps to be ready to present several defense strategies before OMA considering the apparent and non apparent flaws in its proposed regulations.

We encourage our clients to let us know their comments and we encourage all employers to submit comments as well to the appropriate government officials on the objectionable sections of the proposed regulation. Any of the attorneys of McConnell Valdés' Labor and Employment Law Department may give you further information and assist you in drafting comments.

McV LABOR AND EMPLOYMENT LAW DEPARTMENT

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