

# EMPLOYERS BEWARE: THE PURCHASE OF ASSETS "FREE OF LIENS" FROM A BANKRUPTCY PROCEEDING DOES NOT EXEMPT THE APPLICATION OF SUCCESSOR LIABILITY

by: Miguel A. Rivera-Arce

In the recent case of Rodriguez Oquendo v. Petrie Retail, 2006 T.S.P.R. 56, the Puerto Rico Supreme Court considered the question whether the sale of assets "free of liens" under a federal bankruptcy proceeding is an exception to the application of the successor employer liability doctrine in a claim regarding the discriminatory termination of an employee.

In this case, the plaintiff was employed by "Tiendas Marianne" ("Marianne Stores") until she was discharged. The plaintiff filed a legal claim against Petrie Retail Inc. ("Petrie"), the holding corporation for Marianne Stores, alleging that her employment was terminated without just cause and that she was discriminated against because of her age. Petrie did not appear in court and the clerk entered a default notice. The civil proceedings took place without Petrie and the court granted a default judgment. The plaintiff requested that the Court of First Instance order the execution of

the judgment and the attachment of various bank accounts.

As a result of the attachment of one of its bank accounts, Urban Brands, Inc. ("Urban"), appeared before the Court of First Instance alleging that it had purchased the assets of Marianne Stores from Petrie as part of a federal bankruptcy proceeding, and that the purchase was made "free of liens." Therefore, Urban alleged that it was exempt from assuming any prior Petrie debts and/or obligations and that the attachment of its bank account was thus invalid.

The plaintiff simply responded she was unaware that there was a federal bankruptcy proceeding involving her previous employer. She also alleged that she had no knowledge that Urban had acquired all of Petrie's assets prior to Petrie being summoned.

Based on these facts, the Puerto Rico Supreme Court held that the sale of

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assets under a federal bankruptcy proceeding, although “free of liens,” is not an impediment to the application of the successor employer liability doctrine as developed within our jurisdiction. Thus, an employer who acquires the assets from a bankrupt predecessor might be liable for employment-related claims if the criteria for the application of the successor liability doctrine are met, even if the acquisition was part of a federal bankruptcy proceeding which purportedly exempts the assets from any liens and/or liabilities.

The successor employer liability doctrine applies when one employer substitutes another through the transfer of assets from the previous employer to the new employer, or through a corporate merger. It not only extends to responsibility for wage and hour claims, but also to claims for unjust dismissal and discrimination. In essence, the issue to be determined is whether there is substantial continuity between the operations of the previous employer and the new employer. If the doctrine applies, the successor employer will be responsible for all employment-related debts and obligations incurred by its predecessor.

The substantial continuity of business operations is established by analyzing the following factors, none of which is determinative:

- (1) existence of a substantial continuation in the same business activity;
- (2) utilization of the same operating plant;
- (3) employment of the same or substantially the same labor force;
- (4) use of the same supervisory personnel;
- (5) use of the same equipment and machinery and employment of the same methods of production;
- (6) production of the same products and the rendering of the same services;

- (7) continuity of identity; and
- (8) operation of the business during the transfer period.

In reaching its conclusion in the Rodríguez v. Petrie case, the Puerto Rico Supreme Court balanced the rightful prerogative of owners to independently rearrange their businesses, and/or to acquire assets free of liabilities under a federal bankruptcy proceeding, with the long standing tradition within this jurisdiction of protecting employee’s rights. The Court also emphasized that successor liability is a non-bankruptcy

state law issue, and bankruptcy should not change the result that would otherwise prevail under non-bankruptcy law.

Consequently, employers should be aware that the purchase of assets under a federal bankruptcy procedure, although purportedly free of liens, is not an impediment to the application of the successor liability doctrine. Accordingly, the successor employer could still be liable for any employment-related claims and/or obligations arising from the operations of the predecessor. ■

## DEPARTMENT NEWS

by: Maria Antongiorgi

• Elaine Maldonado-Matías was promoted to Capital Partner effective June 1, 2006. Ms. Maldonado-Matías became an Associate in the Labor Department in 1996 after two years as law clerk. She concentrates her practice mainly in matters arising under ERISA, COBRA, HIPAA and WARN. She is also a member of the firm’s Employees Benefit Group. She regularly lectures clients, the general public and attorneys on compliance requirements under these statutes.

• Luis R. Amadeo worked in our department as an associate from 1997 to 2001. He rejoined the Firm as Counsel effective June 12, 2006. During his five-year absence, Mr. Amadeo did commercial and employment law litigation in Tampa and Boca Raton, Florida. Mr. Amadeo concentrates his practice in labor litigation, appeals, and consulting.

• Alfredo Hopgood and Francisco Chévere will be among the speakers at a Wage and Hour Seminar sponsored by the National Business Institute on August 16, 2006 at the San Juan Marriott. Mr. Hopgood and Mr. Chévere will give a joint presentation on the topics “Solving Unique Pay Questions” and “Keeping your Payroll Practices in Compliance.” In covering these topics, they will analyze and discuss the different compensation structures, timekeeping and record keeping practices, wage offsets, bonuses and incentives, reimbursement of

expenses, payment of severance packages, and extra pay for time worked during weekends, nights and holidays, among others.

• Maggie Correa finished her tenure as President of the Labor and Human Resources Committee of the Chamber of Commerce of Puerto Rico in May, 2006. Under her tenure various labor seminars were given to the members of the Chamber of Commerce and the general public on topics such as OSHA, OMA, and New Labor Legislation, among others. Ms. Correa also worked closely with the Lobbying Committee of the Chamber of Commerce in order to promote effective labor legislation. The Chamber of Commerce of Puerto Rico is one of the most prestigious local organizations representing all types of businesses in Puerto Rico.

• Radamés (Rudy) A. Torruella will be a speaker at an activity sponsored by the Association of Labor Law Practitioners (Puerto Rico and U. S. Virgin Islands) to be held in San Juan on August 24, 2006 at the Bankers’ Club. Mr. Torruella will cover important recently approved and pending legislation. Also, on October 16, 2006 in Savannah, Georgia, Mr. Torruella will be a lecturer on Labor Law during the bi-annual convention of the National Employer Association known as CUE. Mr. Torruella is also a member of CUE’s Labor Lawyer Advisory Council. ■

# INTENSE PERIOD OF LEGISLATIVE ACTIVITY ON LABOR AND EMPLOYMENT ISSUES

by: Iraida Diez

There is no denying the fact that Puerto Rico is in the midst of an economic crisis affecting many, including companies that are doing business locally. As a result of this crisis, we are witnessing intense legislative activity on labor and employment issues.

As discussed in the Winter 2005-2006 edition of Labor Perspectives, Puerto Rico's Unjust Dismissal Act, Act No. 80 of May 30, 1976 ("Act 80"), was recently amended by Act No. 128 of October 7, 2005 ("Act 128") to increase the amount of statutory unjust dismissal indemnity, commonly known as "severance pay" ("mesada").

Less than a year later, Act 80 came close to suffering another amendment. House Bill 2546, approved by the House of Representatives and the Senate was vetoed by the Governor on June 21, 2006. If the bill had been signed into law, one of the current definitions of the term "just cause" for dismissal, as defined by Act 80, would have suffered a significant change. Among other definitions, the term "just cause" is currently defined in its Article 2(d) as "the full, temporary, or partial closing of the operations of the establishment." The amendment would have added two new sentences to this section that would have significantly affected employers when dealing with the closing of an establishment and the dismissal of employees for this reason. Had the amendment been approved, employers with fifty (50) or more employees would have had to prove that the full, temporary, or partial closing of their operations was due to economic losses. Thus, if at the moment of the closing the company had profits,

the dismissal of employees would have been considered without just cause. Furthermore, if the reason for not having profits at the moment of closing was intentionally caused by acts of the company, the dismissal would also have been unjustified.

The Puerto Rico Legislature proposed the amendment in an effort to provide further protection to employees terminated as a result of the full, partial or temporary closing of a company's operations.

Employers dealing with the possibility of a full or partial closing of their operations will not be faced with having to prove that the company is suffering economic losses and whether or not the losses were intentionally caused by acts of the company.

Another possible amendment to Act 80 was approved by the House of Representatives on June 21, 2006, through House Bill Number 2200, which would affect employers whose employees are members of a labor organization. Under many collective bargaining agreements, reinstatement is

one of the remedies that a terminated employee is entitled to, if an arbitrator finds that the termination was without just cause. The proposed amendment would strengthen an arbitrator's exercise of discretion to award reinstatement to an employee terminated without just cause. At presstime of this edition of Labor Perspectives, House Bill Number 2200 had been approved by the House and the Senate.

Further evidencing the wave of legislative activity regarding employment issues was the filing of House Bill No. 1008 of September 13, 2005, which would have created a new cause of action for employees known as "mobbing." "Mobbing" or psychological or moral harassment, was broadly defined in Bill No. 1008 as a discriminatory practice that infringes upon the constitutional rights of freedom of job opportunity, dignity and human life itself. Employers would have been responsible for their actions and that of their employees if psychological or moral harassment was committed against an employee. In addition, employers would have also been responsible for the acts of non-employees, if the actions of psychological or moral harassment were taken by a non-employee against an employee, if the employer knew or should have known of the conduct and failed to take immediate and appropriate corrective action. The bill was defeated by the Senate on June 21, 2006.

As usual, McConnell Valdes' Labor and Employment Department will keep its clients up-dated on the latest legislative developments affecting employer-employee relationships and their possible impact on the clients' businesses. ■

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*In the midst of an economic crisis affecting many, we are witnessing intense legislative activity on labor and employment issues*

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# AN INTRODUCTION TO OCCUPATIONAL SAFETY AND HEALTH IN THE WORKPLACE *by: Agustín Fortuño Fas<sup>1</sup>*

## I. The General Duty Clause

Employers are required to maintain a safe workplace and to watch after their employees' occupational health. The Occupational Safety and Health Administration ("OSHA") is the federal agency responsible for implementing The Occupational Safety and Health Act of 1970 ("OSH Act").<sup>2</sup> The OSH Act requires employers to comply with certain standards to protect against health and safety hazards which are incidental to specific industry practices. These specific standards issued by OSHA and codified in the Code of Federal Regulations ("C.F.R.") are intended to cover many conceivable areas of occupational risk. However, given the impossibility of promulgating standards to cover every potential working condition, the Act includes a "general duty clause;" this clause is applicable to occupational risks, which are not specifically addressed by one of the regulations.

The general duty clause requires an employer to furnish to each of its employees employment and a place of employment which are free from recognized hazards that are causing, or are likely to cause, death or serious physical harm to its employees. The Occupational Safety and Health Review Commission ("OSHRC"), a separate agency from OSHA or the Department of Labor, and the federal courts have devised several tests to determine whether a citation should be issued for violation of the general duty clause. "A hazard constituting a recognized hazard within the purview of 29 U.S.C. § 654(a)(1) has been held a condition of whose existence and potential harm the employer had actual knowledge... Applying this standard, the courts

generally look to an employer's safety program and the implementation of protective measures and devices to guard against exposure to the hazard. Thus, a citation for violation of the general duty clause has been held enforceable if the employer, although actually aware of the recognized hazard, allows the dangerous condition to exist."<sup>3</sup>

OSHA utilizes the term "general industry" as inclusive of all industries with the exception of the maritime, construction, and agriculture. General industries are governed by OSHA's General Industry Standards, compliance directives, and standard interpretations.

In addition to promulgating these standards, OSHA has the authority to conduct investigations under the purview of its dual regulatory functions. The General Industry Occupational Safety and Health Standards serve as the legal requirements designating the minimum protections an employer must provide its employees, as well as the methods by which these minimum requirements are enforced. These standards define protocols for walking-working surfaces, exit routes/emergency action plans/fire prevention plans, powered platforms/manlifts/vehicle-mounted work platforms, environmental control, hazardous materials, personal protective equipment, medical and first aid, and fire protection, among others.

## II. Defining the Scope of the OSH Act: Who is Covered?

The OSH Act provides protection to employees and mandates the implementation of safety precautions by employers within the continental United States, Puerto Rico, and the other United States territories. The OSH Act

defines employer as "a person engaged in a business affecting commerce who has employees, but does not include the United States... or any State or political subdivision of a State." As a result, the Act applies to employers and employees in such varied fields as manufacturing, construction, long shoring, agriculture, law and medicine, charity and disaster relief, organized labor and private education. The Act does not provide coverage to the following categories: 1) self-employed individuals; 2) farms employing only immediate family members of the principal farmer; 3) industries whose working conditions are regulated by other federal agencies (i.e., mining, nuclear energy and nuclear weapons manufacture, and many areas within transportation); and 4) employees of state and local governments, with the exception of states with health plans/benefits approved by OSHA.

## III. OSHA Standards and Regulations: Employer Compliance

While the vast majority of the standards regulating industry practice are context-specific, there are certain provisions that are applicable across industries: standards regulating medical records, personal protective equipment, and hazard communication.

- A) Access to Employee Exposure and Medical Records: This standard ensures employees and their designated representatives a right of access to relevant exposure and medical records. This right of access encourages the development of safety techniques that will minimize exposure to contaminants and other toxic agents, as well as protocols for the prevention of occupational disease in general.

**B) Personal Protective Equipment:** The general requirements for personal protective equipment mandate that personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers, shall be provided, used, and maintained in a sanitary and reliable condition. This requirement exists wherever it is necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards, or mechanical irritants.

**C) Hazardous Communication:** There are individualized regulations that take into account the particular hazards produced by specific chemicals; there are also general standards regulating transportation of hazardous materials. The section dealing with hazardous communication requires chemical manufacturers or importers to assess the hazards of chemicals which they produce or import. It also requires all employers to provide information to their employees about the hazardous chemicals to which they are exposed. The information may be provided by means of a hazard communication program, labels and other forms of warning, material safety data sheets ("MSDS"), and training.

**D) Record keeping/Reporting:** OSHA standards and regulations also address record keeping and reporting. In terms of reporting accidents or catastrophes, employers must report to OSHA within eight hours any workplace incident resulting in fatality or the in-patient hospitalization of three or more employees. In terms of keeping records of occupational disease and work-related injuries, employers that have had ten or fewer employees during the last calendar year or if the business is classified in a specific low-hazard retail, service, finance, insurance, or real estate industry, do not have to keep

injury and illness records unless the Bureau of Labor Statistics or OSHA informs them in writing that they must do so. The new OSHA rule for record keeping provides employers with the ability to computerize injury and illness records. The new rule has also improved three record keeping forms that must be completed in order to comply with the record keeping requirements: 1) OSHA Form 300 (Log of Work-Related Injuries and Illnesses); 2) OSHA Form 301 (Injury and Illness Incident Reports); and 3) OSHA Form 300A (Summary of Work-Related Injuries and Illnesses).

**IV. Puerto Rico's Occupational Safety And Health Act**

The federal OSH Act authorizes states and U.S. territories to formulate their own safety and health programs to put into effect both federal and state promulgated standards. OSHA provides oversight for these programs. These typically model their regulations and enforcement provisions on the federal ones. Nevertheless, some states and territories, including Puerto Rico, have chosen to adopt varying standards and policies where applicable.

The Puerto Rico Occupational Safety and Health Administration ("PR OSHA") was created in 1978 pursuant to Act No. 16 of August 5, 1975, as amended (29 L.P.R.A. § 361, et seq.) It is known as the Occupational Safety and Health Act of Puerto Rico ("Act No. 16"). The main objective of Act No. 16 is to "provide for the general welfare, to guarantee as far as possible to each employee in the Commonwealth of Puerto Rico safe and healthful working conditions and to preserve [its] human resources and thereby minimize family and personal accidents and the financial losses resulting from labor injuries and diseases."<sup>4</sup> This is achieved by authorizing the Secretary of Labor and Human Resources to use his/her discretionary authority to adopt relevant federal standards relating to occupational safety and health. The

duties of employers under the Act are generally identical to those under the federal provisions; there are specific sections addressing warning labels and medical examinations, public notices and publications of standards, inspections, investigations, and keeping of records, employee training and education, and night work. The citation process is equivalent to that of the federal version, as well as the penalty scheme, where fines (Notification of Penalty) are determined by degrees of severity.

The P.R. OSHA's Bureau of Inspections is responsible for ensuring compliance with state and federal standards. There are separate state compliance officers, as well as state review boards for processing citations other than the federal ones. To satisfy the objectives of Act No. 16, each of the six Area Offices conducts inspections without any prior notification to employers at local work sites. They have the following order of priority: 1)imminent danger; 2)fatalities/catastrophes investigations; 3)complaint/referral investigations; 4)programmed inspections; and 5) follow-up inspections.

Finally, under both federal and Puerto Rico occupational health and safety laws and regulations, there are numerous provisions regarding administrative enforcement and sanctions against violations, including citations, penalties, and appeals. Before acting in any notification which you may receive from OSHA or PR OSHA, we strongly recommend that you consult counsel. ■

1. Ms. Ariana Ornelas also contributed in the preparation of this article.

2. 29 U.S.C. § 651, et seq.

3. Ethel R. Alston, Annotation, What is "Recognized Hazard" Within Meaning of General Duty Clause of Occupational Safety and Health Act (29 U.S.C.A. § 654(A)(1)), 50 A.L.R. Fed. 741 § 2 (2005).

4. 29 L.P.R.A. § 361(b).

# HEALTH PLANS CAN SEEK REIMBURSEMENT FROM PARTICIPANTS WHO RECOVER DAMAGES FROM THIRD PARTIES WHO INJURE THEM

by: Sandra L. Negrón Monge

On May 15, 2006, the U.S. Supreme Court, in a unanimous decision in Sereboff v. Mid Atlantic Medical Services (“Mid Atlantic”), settled a question that has divided federal courts: whether Employee Retirement Income Security Act of 1974 (“ERISA”) allows health plans to seek reimbursement for medical expenses from plan participants who recover damages from third parties who injure them.

In this case, Marlene Sereboff and her husband were participants of the ERISA-covered health insurance plan sponsored by her employer and administered by Mid Atlantic. The plan provides for payment of certain covered medical expenses and contains an “Acts of Third Parties” provision. This provision “applies when [a participant is] sick or injured as a result of the act or omission of another person or party,” and requires participants and beneficiaries who “receive benefits” under the plan for such injuries to “reimburse [Mid Atlantic]” for those benefits from “[a]ll recoveries from a third party (whether lawsuit, settlement, or otherwise).”

The Sereboffs were hurt in a car accident and suffered injuries that required medical attention, which was covered by Mid Atlantic. The Sereboffs sued various third parties involved in the accident. As soon as the Sereboffs filed the complaint, Mid Atlantic sent a letter to their attorneys asserting a lien on the anticipated proceeds from the suit for

medical expenses incurred consisting of \$74,869.37.

The Sereboffs eventually settled the case for \$750,000, and refused to reimburse the plan for the medical expenses it paid. Mid Atlantic filed a lawsuit in federal court under ERISA seeking to collect from the Sereboffs the medical expenses it had paid on their behalf. Since the Sereboffs had already received the settlement payment, Mid Atlantic sought and was granted an order and preliminary injunction requiring the couple to retain and set aside at least \$74,869.37 from the settlement proceeds.

The issue in this case was whether ERISA’s enforcement provisions allow Mid Atlantic to recover from the Sereboffs the money it paid to them for medical expenses. In these types of situations, ERISA allows plans to seek “equitable” relief, but not “legal” relief.<sup>1</sup> The discussions centered on whether Mid Atlantic’s claim for reimbursement could be considered equitable relief. Concluding that the reimbursement action in the Sereboff case was equitable relief appropriate under ERISA, the Court directed its attention in determining whether the funds that were being sought by Mid Atlantic were “specifically identifiable” funds that were in the possession and control of the Sereboffs. The Court ruled that if these characteristics were met, then an action to obtain such funds is one feature of

“equitable restitution” or equitable relief. As a result of the lien and set-aside of the \$74,869.37, the funds were, in fact, identifiable and in the possession of the Sereboffs. Accordingly, the Court held that an action to obtain these funds was considered equitable relief, and ordered the Sereboffs to reimburse the health plan for their medical expenses. ■

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1. Courts of equity apply equitable principles to grant equitable remedies, such as injunctions or decrees directing someone either to act or to forebear from acting, while courts of law apply the law to award money damages. Thus, “equitable relief” refers to an award characterized by fairness, impartiality, or lack of bias, whereas “legal relief” refers to a relief awarded pursuant to a law that provides for a specific money award.

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*The issue in this case was whether ERISA’s enforcement provisions allow a health plan to recover from participants the money it paid for medical expenses*

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# RECENT OPINION CREATES A CONFLICT WITH PRIOR DECISION REGARDING ERISA PREEMPTION OF ACT 80 UNJUST DISMISSAL CLAIMS

by: Sandra L. Negrón Monge

On March 21, 2006, the United States District Court for the District of Puerto Rico issued an Opinion in the case of Benítez v. Pfizer Corporation, 2006 WL 752994 (D. Puerto Rico), wherein the Court distanced itself from the analysis and interpretations made in prior decisions as to when a state law claim for unjust dismissal can be preempted<sup>1</sup> by the Employee Retirement Income Security Act of 1974 (“ERISA”).

A state statute can be preempted by ERISA when it interferes with an established ERISA plan. As such, the statute is not invalid in its general application to other persons or employees, but is inapplicable to the employers sponsoring the ERISA covered plan. Section 514(a) of ERISA provides that: “...the provisions of [ERISA] shall supersede any and all state laws insofar as they may now or hereafter relate to any employee benefit plan...” The U.S. Supreme Court has construed this section as covering a law that “relates to” an employee benefit plan, if it has a connection with or reference to such a plan Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 96-97 (1983).

Regarding unjust dismissal claims under Puerto Rico’s Unjust Dismissal Act, Act 80 of May 30, 1976, P.R. Laws Ann. Tit. 29, § 185a *et seq.* (“Act 80”), ERISA preemption may be applied when Act 80, in its application, significantly interferes with the administration of an ERISA covered severance plan and restricts its terms. Act 80 does this when it: (a) imposes upon the Plan Administrator the duty to pay severance benefits different from those it would otherwise pay pursuant to the plan (interference with benefits); and, (b) imposes upon the Plan Administrator different standards to determine when a participant would qualify for severance

benefits under the plan (interference with the administration of the plan).

In a 2004 decision from the U.S. District Court for the District of Puerto Rico, Rivera v. The Chase Manhattan Bank, 349 F.Supp.2d 240 (D.P.R. 2004) it was held that, if an ERISA covered severance plan offers the same type of benefits as Act 80 (severance pay upon termination of employment) and establishes the requirements to qualify for the benefit, the amount of the benefit, the way in which the benefit will be paid, among other things, compelling a Plan Sponsor to pay severance benefits under Act 80 would force it to pay benefits under different circumstances, or in a different amount or form, than what is provided by the ERISA covered severance plan. This would cause the Plan Sponsor to offer inconsistent severance benefits to employees in different states in which the corporation conducts operations, which is precisely what ERISA’s preemption provisions intend to avoid. The Rivera Court also reasoned that, by claiming severance benefits under Act 80, the plaintiff was attempting to use an alternate enforcement mechanism under state law to remedy a claim that falls within the scope of federal law (ERISA). Consequently, a claim for severance pay under Act 80, which is a demand by an employee to his employer who has in place an ERISA covered severance plan relates to an ERISA plan, and is thus preempted. As such, the Plan Sponsor in the Rivera case did not have to offer in its ERISA covered severance plan the severance benefit established in Act 80.

In the 2006 Pfizer case, the Company sponsored an “Enhanced Severance Plan,” which was an ERISA covered plan. The plaintiff sued the Company alleging, among other things, that his employment was

terminated without just cause and in violation of Act 80. The employer argued that the Act 80 claim was preempted by ERISA since it “relate[s] to” an ERISA covered plan.

It should be noted that the facts of this case and the causes of actions included in the complaint filed by the plaintiff were extremely similar to the ones in the 2004 Rivera case. However, in the 2006 Pfizer decision the same Court (but another judge) reached a different conclusion. The Court concluded that because the Complaint asserted “... two separate alternate claims for severance damages: a claim for benefits under the Enhanced Severance Plan and an alternative claim for statutorily-provided damages under [Act 80, plaintiff’s Act 80 claim is] therefore circumscribed to the recovery of statutory damages and do not relate to the Enhanced Severance Plan. Hence, Plaintiff’s [Act 80] claim is not completely preempted.”

Therefore, at present there is a conflict between the Rivera and the Pfizer decisions issued by the U.S. District Court in Puerto Rico and the interaction between Act 80 and ERISA preemption is unclear. Unfortunately, there is not an on-point decision from the United States Court of Appeals for the First Circuit or the United States Supreme Court to provide more guidance due to the uniqueness of Puerto Rico Act 80.

If you are a plan sponsor of an ERISA-covered Severance Plan, you should verify whether the terms of the plan are in compliance with this recently issued opinion. ■

*1. Preemption is the rule of law that establishes that if the federal government through Congress has enacted legislation on a subject matter it shall be controlling over state laws and/or preclude the state from enacting laws on the same subject if Congress has specifically stated it has “occupied the field.”*

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