

## Puerto Rico Adopts Landmark Legislation Prohibiting Workplace Bullying

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### An McV Labor & Employment Law Alert

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On August 7, 2020, the Governor of Puerto Rico signed into law a bill that prohibits and seeks to prevent workplace harassment or bullying (also known as “mobbing”). Puerto Rico Act No. 90-2020 (“Act 90”) creates a specific cause of action against employers who perpetrate, encourage or fail to prevent workplace harassment, as defined by the law. It also imposes on employers the obligation to implement measures to eliminate or reduce the occurrence of workplace harassment. Act 90 applies to both public and private employers and goes into effect immediately.

Under Act 90, workplace harassment generally consists of repeated abusive and unwanted verbal, written or physical conduct by the employer, its supervisors or employees, unrelated to the legitimate interests of the employer’s business, and which violates the employee’s constitutional rights. Act 90 outlines examples of conduct that constitute prohibited harassment, such as unfounded threats of discharge in the presence of coworkers, rejection of work proposals or opinions in a humiliating manner, and arbitrary changes in the job functions. On the other hand, it also provides examples of legitimate employer actions that do not give rise to a claim of workplace harassment.

Act 90 requires employers to implement a protocol for handling internal complaints of workplace harassment and bullying. Employers must also establish mechanisms to address and investigate all internal complaints and issue disciplinary sanctions when warranted. It bears to note that, in cases of workplace bullying between employees of different employers, Act 90 imposes on all employers involved the obligation to investigate the internal complaint.

Employers will have 180 days after the publication of regulations and guidelines by the P.R. Department of Labor to implement and distribute the workplace anti-bullying protocol. Act 90 also requires employers to post its content in a visible place and to advise its employees of the measures, policies and protocols implemented to prevent workplace bullying.

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Unlike other Puerto Rico employment laws, Act 90 requires employees to exhaust internal and administrative remedies prior to filing a judicial claim. Specifically, the employee must first complain internally about workplace bullying following the employer's workplace anti-bullying protocol. If those efforts are fruitless, the employee must then request mediation with the Alternate Dispute Resolution Bureau of the Judiciary, prior to filing a claim with the Court of First Instance.

Under Act 90, employers will be liable for double damages and there is no statutory cap. The Act goes as far as imposing liability on employers for workplace harassment perpetrated against its employees by individuals who are not their employees. Moreover, an individual may also be personally liable for workplace bullying.

Needless to say, Act 90 promises to change the employment landscape in Puerto Rico and will probably result in an increased number of internal complaints by employees and lawsuits against employers.

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