

## Puerto Rico Supreme Court Finds Just Cause for Termination Due to Off-Duty Criminal Conduct

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### An McV Labor & Employment Law Alert

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In an opinion issued on April 25, 2019, the Puerto Rico Supreme Court ("PRSC") held that an employee who engages in off-duty indecent criminal conduct may be terminated with just cause, even if the particular conduct is not explicitly listed as cause for dismissal in the employee manual. The PRSC also held that the constitutional presumption of innocence does not apply in the private employment context so as to interfere with an employer's application of discipline.

In González v. Baxter Healthcare of P. R., the employee was indicted with criminal charges (six felonies and one misdemeanor) for allegedly committing lewd acts against a minor. Upon learning through the news media of the criminal charges against its employee, the company suspended the employee for the duration of the criminal process, which lasted for approximately one year. He was eventually found guilty of the six felonies and was subsequently formally terminated from employment.

The employee sued for unjust discharge under P.R. Act 80 of 1976, alleging: that his suspension in excess of 90 days constituted a dismissal without just cause; that he did not receive the newest employee manual version that listed felony indictments as reasons for termination (prior versions did not); and, that the employer did not consider his constitutional right to a presumption of innocence by suspending him for over a year while his trial was still pending. Both the trial court and the appellate court agreed with the employee's main contentions, finding that the discharge was without just cause and ordering the company to pay the severance.

The PRSC reversed the judgment and restated the doctrine that employers have a right to evaluate their personnel both at work and off premises based upon moral and public order values. A discharge is justified when the employee's breach of those values affects the good and normal business operations, even if the specific conduct is not listed in the employer's rules and regulations. According to the PRSC, the commission of lewd acts against a minor, due to its outrageous and potential effect, placed at risk the security, order, and efficiency of the company.

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With this ruling, and recent changes in employment laws, it becomes critical for employers to revise and update their employee manuals.

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