

**GOVERNMENT OF PUERTO RICO
DEPARTMENT OF LABOR AND HUMAN RESOURCES
ANTI-DISCRIMINATION UNIT
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Discrimination on the basis of age, race, color, gender, sexual orientation, gender identification, social or national origin, social status, marital status, political affiliation, political or religious ideas, or for being a victim or being perceived as a victim of domestic violence, sexual aggression or stalking, for being a soldier or ex-soldier serving or having served in the United States Armed Forces or for holding the status of veteran.

Law No. 100 of June 30, 1959, as amended, 29 L.P.R.A. Sec. 146 et seq. provides for the protection of employees and employment candidates against discriminatory acts by employers, labor organizations or joint worker-employer committees that control learning and training programs. It prohibits discrimination on the basis of age, race, color, gender, social or national origin, social status, marital status, political or religious ideas, sexual orientation and gender identification or due to being a victim or being perceived as a victim of domestic violence, sexual aggression or stalking; for being a soldier or ex-soldier, serving or having served in the United States Armed Forces or for the employee or employment applicant holding the status of veteran; dismissal, suspension or discrimination against one of its employees in relation to salary, wages, pay or compensation, terms, category, conditions or privileges such that tend to deprive a person of employment opportunities or that affect his/her status as an employee, publishing, circulating or allowing to be published or circulated announcements, notifications or any other form of distribution denying employment opportunities, directly or indirectly, to all persons equally; limiting or excluding a person to be admitted or employed in any learning or other training program.

SEXUAL DISCRIMINATION

The intent of Law No. 69 of July 6, 1985, 29 L.P.R.A. Sec. 1321 et seq. is to ensure the equality of the right to employment for men and women alike, prohibiting discriminatory actions, setting responsibilities and imposing penalties upon private and public employees, labor unions, joint worker-employer committees or employment agencies.

The definition of: "on the basis of gender" includes, but is not limited to, pregnancy, childbirth or related medical conditions, and women affected by these circumstances shall receive equal treatment for all purposes related to their employment.

PREGNANCY

The Anti-Discrimination Unit also administers, among others, Law No. 3 of March 13, 1942, as amended, 29 L.P.R.A. Sec. 467 et seq. In general terms, this Law stipulates the following:

- Female workers who are pregnant will be entitled to time off that will include four (4) weeks before the delivery and four (4) weeks after; at full pay.
- The employee may opt to take the leave up to only (1) week before the delivery and seven (7) weeks after, or may opt to return to work after two (2) weeks of postnatal time off. In choosing one of these options, she must submit medical proof that she is capable of working.
- Abortions and premature births are covered by the Law.
- The employer may not terminate, without just cause, a pregnant woman. Lower performance in work shall not be considered to be just cause.
- Any employer that terminates, suspends, reduces the wages of, or discriminates in any way against, a worker on the basis of a decline in her production or refuses to restore her after the delivery, shall incur civil liability for double the damages caused or between \$1,000 and \$5,000. The employee shall also be entitled to reinstatement.
- The employer shall also be guilty of a misdemeanor for violation of the provisions of this Law.
- Leave benefits are granted when a child under the age of five (5) years, not matriculated in an academic institution, is adopted.

BREASTFEEDING

Law No. 427 of December 16, 2000, the "Breastfeeding or Breast Milk Extraction Time Regulation Act", as amended, grants a period for breastfeeding or extraction of breast milk to female employees both in private companies and in the government. For those employees with full-time working hours, the breastfeeding, or breast milk extraction, period shall be one hour and may be distributed into two thirty (30) minute periods or three twenty (20) minute periods. In the case of those employees with part-time working hours, and whose daily work schedule exceeds four (4) hours, the breastfeeding or breast milk extraction period will be thirty (30) minutes for each four (4) hours of work. The place provided for these purposes must be private, secure and hygienic. Furthermore, the place must have sufficient ventilation and electrical outlets. Employers that deny the benefits granted by the Law mentioned may be fined for damages that the employee may suffer, for a sum equal to: (1) three times the wages that the employee earns for each day that she is denied the period for breastfeeding or extraction of milk, or (2) a quantity no less than three thousand (3,000) dollars, whichever is greater.

SEXUAL HARASSMENT

Law No. 17 of April 22, 1988, 29 L.P.R.A. Sec. 155 et seq., was created with the specific purpose of protecting employees and employment candidates against sexual harassment at work, and its provisions apply to both private employers and the government.

Workplace sexual harassment consists of any type of approach, request for sexual favors, or any other type of verbal or physical conduct of a sexual nature, when one or more of the following circumstances occur:

- When submitting to said conduct is implicitly or explicitly converted into a term or condition of employment of a person.
- When submitting or rejecting said conduct by the person is converted into a basis for making decisions on the employment or with regard to employment, that affects that person.
- When that conduct has the effect or purpose of wrongfully interfering with the performance of the work of that person or when it creates an intimidating, hostile or offensive work environment.

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The employer has the duty to keep the workplace free from sexual harassment and intimidation. The employer must:

- Clearly tell their supervisors and employees that the employer has a firm policy against sexual harassment in the workplace.
- Implement all necessary means aimed at creating awareness and make the ban on sexual harassment in the workplace widely known.
- Sufficiently publicize the rights and protection conferred by law banning sexual harassment for the benefit of employment candidates.
- Establish adequate and effective internal procedures to deal with sexual harassment complaints. When made aware of any sexual harassment situation, the employer must immediately conduct an investigation.

If you think that you are being discriminated against, you should not overlook the sexual harassment you may be subjected to. You should make notes of the sexual harassment incidents for your personal use. These notes should include: names of witnesses, date and place where the harassment act(s) took place.

Bring the harassment situation to your supervisor's attention. If the supervisor is the harasser, alert someone else who has authority in the company about this situation. The employer may not retaliate for participation in an investigation process or for opposing discriminatory practices. When bringing the harassment problem to the employer's attention, the latter is responsible for taking necessary measures for correcting the problem.

IMPAIRED PERSONS

LAW NO. 44 OF JULY 2, 1985

Law No. 44 of July 2, 1985, as amended by Law 53 of August 30, 1992, L.P.R.A. Sec. 501 et seq., empowers the Secretary of Labor to assess compliance with this Law with regard to employment.

It prohibits discrimination against persons with physical, mental or sensory impairments at institutions whether or not they receive funds from the Commonwealth of Puerto Rico, in activities such as recruitment, promotion, suspension or termination; in wages, training, benefits and other aspects of employment.

PREVENTATIVE ACTION:

By virtue of the powers conferred upon them by the laws that they administer, the Secretary of Labor and Human Resources or the Director of the Anti-Discrimination Unit, in their representation, will discourage workplace discrimination through preventive action programs and may, on their own initiative, even without the involvement of a complaint, order investigations pursuant to the provisions of Law No. 100, above.

RECORDS:

All employers, labor organizations or joint worker-employer committees are required to keep adequate records on their recruitment practices, training programs, promotion plans or any other employment practices. These records and reports must be available for examination by Department officials. For this reason, they must be kept for a period of no less than two (2) years.

ANTI-DISCRIMINATION UNIT GENERAL REGULATION

The Anti-Discrimination Unit General Regulation No. 6236 of November 21, 2000, provides for:

COMPLAINTS:

- Any person who is aware, or has personal knowledge, of discrimination having occurred against one or more workers, or one or several employment candidates, pursuant to Law No. 100, Law No. 69, Law No. 17, Law No. 3 and Law No. 44, may file a complaint with the Anti-Discrimination Unit within one year following the point at which he/she learned or should have learned of the alleged discriminatory action.
- As a delegate agency of the federal "Equal Employment Opportunity Commission" the Anti-Discrimination Unit receives claims under other provisions of federal laws that prohibit discrimination in employment and that establish shorter jurisdictional terms for filing a complaint.
- You may file your complaint in person or by mail.
- In view of the public interest covered by the laws we administer, the complaint may not be withdrawn or abandoned by the complainant without prior written authorization from the Secretary of Labor and Human Resources or his/her appointed deputy.
- Once the complaint is filed, the accused will be notified. He/she is invited to the alternate conflict resolution, mediation, process.
- If a satisfactory agreement is not reached between the parties during this process, the investigation will be continued. The parties are usually scheduled for an evidence discovery meeting.
- The official in charge of the investigation will act on behalf and representation of the Secretary of Labor and Human Resources, with all of the powers conferred upon the Secretary in Law No. 100. The appearance of witnesses shall be obligatory under penalty of contempt proceedings, as well as the presentation of any information required by the investigator within a reasonable period, not to exceed 15 days once it has been requested.
- If the complaint is determined to lack merit, a Notice of Determination of No Probable Cause of Discrimination will be issued and the parties will be notified. The complainant will be notified of his/her right to request a review of this determination by the Secretary of Labor and Human Resources.
- If it is determined that the accused has committed or is committing one or several discriminatory practices, a Notice of Determination of Probable Cause will be issued and the Unit will begin its mediation efforts. If no agreement is reached, the case will be considered for litigation in the courts of Puerto Rico with jurisdiction for the complainant.

Hon. Carlos J. Saavedra Gutiérrez
Secretary

Mayagüez

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