

Pole Position

Amendments to Law 100

December 2006

DECEMBER 2006 -- AMENDMENTS TO LAW 100 FOR VICTIMS OF DOMESTIC VIOLENCE

Effective December 17, 2006, Act 100 of June 30, 1959, P.R. Laws Ann. Tit. 29 §§ 146 et seq., commonly known as the Anti-Discrimination statute, was amended by Act 271 of December 17, 2006 to include a prohibition against discrimination on the basis of being a **victim or being perceived as a victim of domestic violence, sexual aggression or stalking.**

In essence, the Amendment includes the above modality within the employer's prohibited acts and defines domestic violence, sexual aggression, and stalking by making reference to the particular specific statutes and Articles of the Puerto Rico Penal Code which typify the same.

Another significant modification to Act 100 is the amendment it makes to its Article 3. This Article establishes a rebuttable presumption of discrimination against the employer when any of the adverse employment actions are alleged to be done without just cause. The amendment adds two paragraphs to Article 3, indicating that it will not be presumed that the employer knew of the employee's personal situation regarding domestic violence, sexual aggression, or stalking, unless the employer was actually in a position to know it. Moreover, the amendment to this Article establishes that the employer must provide reasonable accommodations at the workplace to protect its employees from a possible aggressor once the same has given notice of a potentially dangerous situation. Failure to do so will be presumed as a discriminatory conduct.

Even though the modality protected by the Act is somewhat obscure – few definitions are provided – and the Act's Intent does not provide for a clear example of what this type of discrimination actually involves, employers should be aware that there are other recently enacted statutes which provide some tools to manage the above situations as well as avoid liability in light of the same. On one hand, Act 217 of September 29, 2006 provides that each employer must establish a Protocol to Manage Domestic Violence Situations in the workplace. This Protocol can be used to establish the procedures to follow in case an employee notifies that he/she is a victim of domestic violence. If the employee does not use the available mechanisms, the Company can defend against a claim that it was aware of the domestic violence, unless the same was "actually in a position to know it". Furthermore, the employee's failure to notify and use the mechanism established in the Protocol can be used as a defense against an alleged failure to accommodate. On the other hand, under Act 538 of September 30, 2004, which amended Act 54 of August 15, 1989, commonly known as the Law Against Domestic Violence, employers are allowed to request a restraining order to protect an employee once the same has notified the employer of a potential situation. This mechanism could be included in the Protocol as part of the measures the employer might take to protect its employees and avoid liability under the Act.

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