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**GUIDE**

# Puerto Rico TERMINATION OF EMPLOYMENT



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# TERMINATION OF EMPLOYMENT

P.R. Laws requires that employers have "just cause" to terminate the employment of an employee hired for an indefinite period of time. If it is determined that there is no just cause, the discharged employee is entitled to an indemnification known as the *mesada*. This payment provides an exclusive remedy for an employee claiming unjust dismissal, and an employee can present such a claim within three years of the effective discharge date. This statute, however, does not bar an employee from presenting other claims against his or her employer related to a termination, such as claims of discrimination or retaliation.

The law provides a formula for computing the amount an employer must pay when an employee is discharged without just cause, based on the highest salary earned by the employee in the last three years and the amount of years he or she worked for the employer. An employee discharged without just cause is entitled to receive the equivalent of two months' salary plus one week of pay for each full year of service, if he or she has worked for the employer for up to five years. If the employee has worked for the employer for more than five and up to 15 years, he or she is entitled to receive three months of salary plus two weeks of pay for each year of service. Employees who have worked for an employer for more than 15 years are entitled to receive six months of salary plus three weeks of pay for every year of service.

Although the law does not provide a definition nor a conclusive list of what constitutes just cause for dismissal, it does specify that just cause exists when the following occurs:

- The employee engages in a pattern of improper or disorderly conduct.
- The employee works inefficiently, is tardy and/or negligent in completing his or her work, or violates the quality control standards in place for the product produced or handled by the employer;
- The employee repeatedly violates reasonable rules and regulations set forth by the employer, provided the employee has timely received a written copy of these rules and regulations;
- Full, temporary or partial closing of operations;
- Technological or reorganizational changes occur, as well as substantial changes to the product made or handled by the employer and/or the services it renders to the public; and/or
- Reductions in employment that are necessary due to reduction in the volume of production, sales or profits, anticipated or present, at the time of the discharge.

Law also clearly states that any capricious discharge unrelated to maintaining proper and normal business operations is not considered to have occurred with just cause. By the same token, this law establishes that firing an employee for making statements related to his or her employer's business before any administrative, judicial or legislative forum in Puerto Rico does not constitute a discharge with just cause, provided that such statements are not defamatory in nature and do not result in the disclosure of any privileged information. In the latter case, the employee would be entitled to reinstatement with back pay.

The law contains other important requirements for how employers can undertake terminations in the specific context of closings, reorganizations or technological changes. In these cases, a termination is considered to have occurred with just cause when it is carried out on the basis of retaining in the impacted classifications the employees with the highest seniority in employment. By way of an exception, an employer may retain a less senior employee if it can show that the employee was clearly more efficient and capable. If within six months of such a termination the employer has an opening for a position requiring the same job functions previously performed by employees who were terminated, the law requires that the employer grant preference to such former employees. Generally, the employer must also rehire such former employees based on seniority. When a clear difference of worker efficiency or capacity exists between former employees, the employer will be allowed to rehire a less senior employee.

#### Severance payment for wrongful discharge

According to the new law, employee hire after January 25, 2017, the concept for wrongful discharge will be as follows:

- Severance payment now applicable is limited to three month's salary plus two week's pay for each full year of service, conditioned to the employee's approval of the applicable automatic probationary period.
- The amount of the severance payment cannot exceed nine months of salary.

Amounts paid are exempt of income tax, except in those cases where the amount exceeds the one provided by this law.

#### Statute of limitations

For employee hire after January 25, 2017, all legal labor related actions on claims regarding salaries and/or dismissals will prescribe after a year, reducing the prior three year statute of limitations for these cases. However, the Law states that if there is any special law or if the employment contract specifically states any specific action regarding this prescription, it will continue to be in effect.

## **COBRA**

The federal statute known as the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) affords to employees, their spouses and their dependent children ("qualified beneficiaries") participating in an employer's health plan the right to continue coverage thereunder when certain events occur which cause the loss of their coverage.

Generally, COBRA applies to all private-sector group health plans if the employer employs at least 20 employees during the previous calendar year.

The continuation of coverage can last up to 18 months when the employee's termination of employment or reduction of hours occurs, or up to 36 months when the employee's divorce or death occurs or when a child loses his or her dependent status under the plan. The 18 months' continuation of coverage may be extended for up to 11 months if one of the qualified beneficiaries becomes disabled.

Health plans can require qualified beneficiaries to pay 100% of the cost of COBRA coverage, plus up to a 2% of said cost for administrative fees or up to 50% during the 11 months of disability extension.

COBRA requires that employers provide certain notifications to employees and their families enrolled in the health plan. Among these is the Initial COBRA Notice, which must be provided to the employee and his or her spouse within the first 90 days of coverage. When the employee, his or her spouse, and/or dependent children lose coverage, the employer also has to provide to them a Qualifying Event Notice, along with an Election Form.