

Employment Law in Puerto Rico: Employees' Rights and Employers' Obligations

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by [Celia Joseph](#)

Overview of Article. Puerto Rico is a Commonwealth of the United States easily accessed by travelers from the U. S. mainland, and its citizens are U. S. citizens. However, U. S. or multi-national employers who conduct business in Puerto Rico, or who plan to do so, should be aware that Puerto Rico's local statutes provide far greater rights to its employees than do any of the laws of the 50 U. S. states. Employment matters are regulated in Puerto Rico both under federal U. S. law and local statutes, regulations, case law and provisions of Puerto Rico's Constitution.

Local Puerto Rico employment statutes include provisions on a wide range of employment-related matters. This article will focus on some key principles of which employers should be aware regarding the hiring and separation of employees in Puerto Rico.

1. Employees in Puerto Rico are not at-will employees. All employees in the 50 U. S. states, with the exception of Montana, are considered employees at will, meaning that they can be discharged at any time and for any reason, unless the discharge is in violation of a contract, applicable law, or public policy. However, employees in Puerto Rico are not employees at will. Instead, the laws in Puerto Rico provide numerous safeguards for employees in terms of the legal and monetary ramifications of employment termination.

2. Indefinite Term Contracts. Where a termination date is not provided in the employment contract or other documents regarding the employment relationship, the employment will be considered a contract for an "indefinite term", causing the employee to be protected by the terms and conditions of Puerto Rico laws, including those pertaining to termination without just cause.

3. Fixed-Term Contracts. In general, the dismissal of an employee contracted for a certain term or project will be presumed to be an unjust dismissal except when a discharged employee has a contract for a term of employment or project. However, employers should understand that the fact that a discharged employee provided services under a fixed-term contract does not, in itself, automatically deprive that employee of the protections of Puerto Rico's laws regarding the separation of law of those working without a fixed term if the circumstances indicate an employee's expectation of employment continuity or of a bona fide employment contract for an indefinite period of time.

4. What is a discharge under Puerto Rican law? In addition to an employee being separated or laid off, a discharge occurs when an employee experiences an indefinite suspension; a suspension for a term over three months (except for employees of seasonal industries or businesses); or the resignation of the employee caused by the actions of the employer directed to induce the employee to resign, such as imposing more onerous working conditions, reducing his salary, lowering his job category, or submitting the employee to "derogatory criticisms or humiliations by word or deed". The last part of the definition is tantamount to a legal codification of the concept of constructive dismissal.

5. Severance entitlement. U. S. employers are not obligated to pay their employees severance upon a site closure or restructure unless: a) the separation is governed by a federal, state or local plant closing or mass layoff law, such as the Workers Adjustment and Retraining Notification ("WARN") Act; b) the employer has instituted a severance policy; or c) employees are covered by a collective bargaining agreement entitling them to severance. However, organizations that have employees in Puerto Rico, or that are considering entering into such arrangements, should be aware that their obligations to employees upon separation are, under many circumstances, much greater than those required in the 50 U. S. states.

6. Termination of Employment: Requirement of Just Cause. Employers in Puerto Rico are required to have "just" or "good" cause" to discharge employees hired for an indefinite period of time, except in the case of probationary employees. If a court or administrative agency determines an employer lacks just cause for an employment termination, the discharged employee is entitled to an "indemnity" or "mesada" for the

discharge, in addition to salary already earned by the employee. The indemnity ranges from two months' salary for employees discharged within the first five years of service to six months' salary for employees discharged after fifteen years of service. Employees are also entitled to "progressive compensation" equal to one week for each year of service up to three weeks for each year of service if discharged after fifteen years of service. Employers must provide the total amount of the indemnity due the employee without any payroll deduction. The right of an employee discharged from his employment without just cause to receive compensation is unwaivable. An employee's rights under the law end after three years from the effective date of the discharge.

7. Probationary work contracts exempt employers from complying with just cause and other requirements. For a probationary work contract in Puerto Rico to exempt an employer from complying with the provisions of the just cause, indemnity and other laws, the contract must: a) be executed in writing; b) state the date the probationary period begins and ends; and c) not exceed three months, unless a written permit is issued by the Puerto Rico Secretary of Labor and Human Resources for an extension of no more than another three months. If the employee continues to work for the employer after the term established in the probationary work contract, or the authorized extension, the employee acquires the rights of an employee just as if he or she had been contracted without a definite term.

8. What is considered just cause for employee discharge in Puerto Rico? Just cause exists for discharge when an employee:

- exhibits a pattern of improper or disorderly conduct;
- performs work inefficiently, belatedly, negligently, or in violation of the standards of product quality; or
- repeatedly violates reasonable written rules provided to the employee.

Just cause also exists when there is:

- full, temporary or partial closing of the establishment's operations;
- technological or reorganization changes, as well as changes of style, design, or the nature of the product made or handled by the establishment, and changes in the services rendered to the public; or

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- reductions in employment made necessary by a reduction in the anticipated or prevailing volume of production, sales, or profits at the time of the discharge.

The following reasons are not considered to constitute just cause for discharging employees in Puerto Rico:

- a discharge made by “the mere whim of the employer or without cause relative to the proper and normal operation of the establishment”; or
- a discharge of an employee because of his or her collaboration, or expressions made about the employer’s business before a Puerto Rican administrative, judicial, or legislative forum when the expressions are neither defamatory nor disclose privileged information (in such a discharge, in addition to other adjudication, the discharged employee will be entitled to immediate reinstatement and backpay).

General Advice. Companies that have, or plan to have, employees in Puerto Rico should ensure their business and Human Resources managers become knowledgeable about the local employment laws regulating the many aspects of employees’ rights and employers’ obligations.