

(H. B. 631)

**(No. 128)**

(Approved October 7, 2005)

**AN ACT**

To amend Sections 1 and 4; subsection (b) of Section 11, and Section 12 of Act No. 80 of May 30, 1976, as amended, in order to increase the pecuniary indemnity to which an employee dismissed without just cause is entitled to; to establish a new indemnification computation and increase the assurance in securing the effectiveness of a judgment.

**STATEMENT OF MOTIVES**

Act No. 80 of May 30, 1976, as amended, has a redressing purpose in cases of dismissals without just cause. It provides special protection in labor-employer relations, for both, the employer and the worker. The law also establishes a means so that an employer may dismiss a worker without just cause through the appropriate compensation, and provides the sole remedy available to a worker for unjustified dismissal, that is, a fair compensation. The indemnity provided by this Act is what a dismissed worker may claim from his/her employer, unless there is another cause for action independent from the dismissal, which could be a tortious cause of action or dismissal for discrimination.

Being it of great interest for the government to maintain a healthy work environment in private enterprises, a reasonable balance of interests has been established between the rights of the employer and those of the worker.

However, the protection provided by the present legislation to workers dismissed from their jobs is somewhat inappropriate and ineffective, mainly

due to the limitations of the remedy offered to a worker who is victim of an unjustified dismissal. The benefit provided by Act No. 80, *supra*, for the parties involved, is an impractical remedy for the workers who, with their knowledge and their devotion to their jobs, yield capital gains to the enterprise. The protection provided by Act No. 80, *supra*, has proven to be ineffective for the worker dismissed without just cause when compared to the benefits received by the enterprise for dismissing an employee.

In recent years, the practice of dismissing workers without just cause, when these have worked in the company for fifteen (15) years or more has boomed in private enterprises. Since these enterprises must compensate workers with the indemnification provided by Act No. 80, *supra*, it cost less to dismiss and indemnify them, than to keep a worker whose salary and close retirement results in greater expenses. In spite of complying with the law, when dismissing the worker, the enterprise leaves him/her unemployed and with more than a sixty percent probability of not finding a new job. In this manner, this person, who still is in a productive age, joins the thousand of unemployed workers who stand in line to receive government assistance.

***BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:***

Section 1.- Section 1 of Act No. 80 of may 30, 1976, as amended, is hereby amended to read as follows:

“Section 1.-

Every employee in commerce, industry, or any other business or work place, designated hereinafter as the establishment, in which he/she works for compensation of any kind, contracted without a fixed term, who is discharged from his/her employment without just cause, shall be entitled to receive from his/her employer, in addition to the salary he/she may have earned:

- (a) the salary corresponding to two months, as indemnity, if discharged within the first five (5) years of service; the salary corresponding to three (3) months if discharged after five years (5) and up to fifteen (15) years of service; the salary corresponding to six (6) months if discharged after fifteen (15) years of service;
- (b) an additional progressive compensation equal to one (1) week for each year of service, if discharged within the first five (5) years of service; to two (2) weeks for each year of service, if discharged after five years (5) and up to fifteen (15) years of service; to three (3) weeks for each year of service if discharged after fifteen (15) years of service.

The years of service shall be determined on the basis of all the preceding accrued periods of work during which the employee worked for the employer prior to his/her discharge, but excluding those which, because of a previous discharge or severance, have been compensated or have been subject to judicial adjudication.

Notwithstanding what is provided in the first paragraph of this section, the mere fact that an employee renders services under a fixed term contract, in itself, shall not have the automatic effect of depriving him/her of the protection of this Act, if the practice and circumstances involved or other evidence in the contracting were of such a nature that they tend to indicate the creation of an expectation of continuity in employment, or appears to be a bona fide employment contract for an indefinite period of time. In these cases, the employees thus affected shall be deemed to have been contracted for an unspecific period of time. Except when it concerns employees contracted for a certain bona fide term, or for a certain bona fide project, every separation, termination or dismissal of employees contracted for a

certain term, or a certain project or job, or the non-renewal of his/her contract, shall be presumed to constitute an unjust dismissal governed by this Act.”

Section 2.- Section 4 of Act No. 80 of May 30, 1976, as amended, is hereby amended to read as follows:

“Section 4.- The indemnity established in Section 1 of this Act shall be paid on the basis of the highest rate of salary earned by the employee during the three (3) years immediately preceding his/her discharge.”

Section 3.- Subsection (b) of Section 11 of Act No. 80 of May 30, 1976, as amended, is hereby amended to read as follows

“Section 11.-

(a) ...

(b) In every suit based on this Act, the court shall hold a pre-trial conference not later than thirty (30) days after the complaint is answered. At the end of this conference, if in its opinion there are sufficient reasons, beyond the circumstances of conflicting allegations, to believe that the discharge was without a just cause, the court shall order the employer who has been sued to deposit, in the office of the court clerk, within a not extendable term of ten (10) days, a sum equal to the total compensation to which the worker would be entitled to, and an additional amount for covering attorney fees, which shall never be less than a percentage of the total compensation or one hundred dollars, whichever is higher. The employer who has been sued may post an adequate bond to cover these amounts. Said amounts or bond shall be returned to the employer if final and binding

judgment is rendered in his/her favor. At any stage of the proceedings in which, at the request of a party, the court determines that there is a serious risk that the employer lacks of sufficient property to satisfy the judgment that may be rendered in due time in the case, the court may demand the aforesaid deposit or the corresponding bond.”

Section 5.- This Act shall take effect immediately after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 128 (H.B. 631) of the 2<sup>nd</sup> Session of the 15<sup>th</sup> Legislature of Puerto Rico:

**AN ACT** to amend Sections 1 and 4; subsection (b) of Section 11, and Section 12 of Act No. 80 of May 30, 1976, as amended, in order to increase the pecuniary indemnity to which an employee dismissed without just cause is entitled to; to establish a new indemnification computation and increase the assurance in securing the effectiveness of a judgment,

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, today 3<sup>rd</sup> of March of 2006.

Francisco J. Domenech  
Director