

(S. B. 1522)

(No. 271)

(Approved December 17, 2006)

AN ACT

To amend Sections 1, 1-A, 2, 2-A, and 6 of Act No. 100 of June 30, 1959, as amended, to prohibit discrimination in the workplace for being a victim or perceived as a victim of domestic violence, sexual aggression or stalking.

STATEMENT OF MOTIVES

The Constitution of Puerto Rico provides that the dignity of the human being is inviolable. Domestic violence is undoubtedly a clear violation of this constitutional precept. It constitutes a criminal act that attempts against the physical security and emotional stability of not only the victim, but also of the other family members.

Domestic violence also has direct repercussions in the work environment, because many victims of domestic violence face problems at work due to the violent acts inflicted upon them by their partners, which have a direct effect on their performance as an employee. Very often, employment is the single source of support of the domestic violence victim, and the only means of escape from an abusive relationship. Nevertheless, victims sometimes refrain from filing for protection orders or criminal charges for fear of losing their jobs or being discriminated against.

Two decades ago, the issue of domestic violence in the workplace was inexistent. Today, awareness has been obtained, and this situation represents a major employment security problem for supervision personnel and

employers with which they are beginning to deal. (Domestic Violence in the Workplace Programs, Family Violence Prevention Fund, 2004, <http://www.endabuse.org>).

Statistical data contained in the Statistics Division Report of the Puerto Rico Police show that on our island 21,164 domestic violence incidents were reported in 2004, of which 170 occurred at the workplace, 22,635 domestic violence incidents were reported in 2005, of which 197 incidents occurred at the workplace. This evidences that there was an increase in domestic violence incidents that occurred at the workplace.

According to Heidi Sachs, in *Domestic Violence as a Barrier to Women's Economic Self-Sufficiency*, published in *Issue Notes*, Vol. 3, No. 3 in December 1999, studies show that domestic violence victims often suffer from depression, anxiety, low self-esteem, and other behaviors associated with post-traumatic stress disorder, which make it difficult for women to perform the tasks of their jobs to the best of their abilities. This, added to the fact that the aggressor intervenes directly with the victim in the latter's workplace through incessant telephone calls, constant stalking at the workplace, and visits to inflict physical, verbal and emotional abuse against the victim in the presence of their co-workers is the cause for which employers opt for termination of the victim's employment, or leave the victim no other choice than to resign.

In this sense, Puerto Rico approved Act No. 88 of August 26, 2005, to create an Interagency Protocol of Intervention with Victims/Survivors of Domestic Violence. In Puerto Rico, as well as in other states of the United States, such as Arizona (ARIZ.REV.STAT.§12-1810(2003)), Colorado (COLO.REV.STAT.§13-14-102(2003)), Indiana (IND.CODE.ANN.§34-26-6-1(2003)), Arkansas (ARK.CODEANN.§11-5-115(2003)), Maine

(ME.REV.STAT.ANN.§5-4653(2003)), legislation was approved to authorize employers to obtain protection orders when an employee is a victim of domestic violence in order to protect the working environment. Specifically, Act No. 538 of September 30, 2004, which amended Act No. 54 of August 15, 1989, as amended, known as the “Domestic Abuse Prevention and Intervention Act,” established a procedure to allow employers to request protection orders in favor of the personnel of his/her workplace, after notifying them thereof.

Act No. 54, *supra*, clearly establishes as public policy that the Government of the Commonwealth of Puerto Rico “repudiates domestic abuse as contravening the values of peace, dignity and respect,” thus reaffirming its constitutional commitment to protect the life, safety and dignity of our men and women. However, victims have been, at times, twice victimized when in the need to put a stop to the violence in their lives by resorting to a shelter, the court, or prosecutor to save their lives and the lives of their children, they are fired from their jobs as a result of their absences.

In view of this reality, several jurisdictions in the United States of America already have legislation to protect against discrimination in the workplace for being a victim or perceived as a victim of domestic violence, sexual aggression or stalking. These are: California, Cal.Lab. Code sec. 230 & 230.1; Colorado, Colo.Rev. Stat. Secs. 24-34-402.7; Connecticut, Conn/Gen. Stat.sec. 54-85b; Florida, Miami-Dade County: Miami-Dade Cty., Fla. Code secs. 11A-61; Hawaii, Haw. Rev. Stat. Secs. 378-72; Illinois, 820Ill. Rev. Stat. 180/1-45; Maine, 26 Me. Rev. Stat. Sec. 850; New York State, N.Y. Penal Law sec. 215.14; North Carolina, N.C. Gen. Stat. secs. 95-241; Rhode Island, R.I. Gen. Laws, secs. 12-28-10. Moreover, several states

have introduced bills related to prohibiting discrimination in the workplace when the person is a victim or perceived as a victim of domestic violence, sexual aggression or stalking; these are: Hawaii, Indiana, Kentucky, Louisiana, Massachusetts, New Jersey, New York, Oklahoma, Pennsylvania and Tennessee.

Public employees in Puerto Rico have the Employee Assistance Programs (PAE, Spanish acronym), created by Act No. 167 of August 11, 2002, through which the necessary assistance is provided to public employees whose work performance and productivity has been affected by any type of problem, in order to improve their situation as part of a work team, while at the same time improving their condition as members of society, for the benefit of all the roles they perform within the community.

In order to honor this constitutional commitment to protect, this bill has the objective to address the need to guarantee to all employees who are victims of domestic violence that they shall not be discriminated against for such reason, thereby protecting their financial stability and their access to request the remedies established to allow them to end the abusive relationship.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.— The title of Act No. 100 of June 30, 1959, as amended, is hereby amended to read as follows:

“Discrimination because of age, race, color, sex, social or national origin, social condition, political affiliation, political or religious ideology, or for being a victim or perceived as a victim of domestic violence, sexual aggression or stalking.”

Section 2.— Section 1 of Act No. 100 of June 30, 1959, as amended, is hereby amended to read as follows:

“Section 1.– Any employer who discharges, lays off or discriminates against an employee regarding his/her salary, wage, pay or remuneration, terms, rank, conditions or privileges of his/her job, or who fails or refuses to hire or rehire a person, or who limits or classifies his/her employees in any way which tends to deprive a person of employment opportunities, or that affects his/her status as employee because of his/her age, as defined below, race, color, sex, social or national origin, social condition, political affiliation or political or religious ideology of the employee or applicant for employment, or for being a victim or perceived as a victim of domestic violence, sexual aggression or stalking:

(a) ...”

Section 3.– Section 1-A of Act No. 100 of June 30, 1959, as amended, is hereby amended to read as follows:

“Publishing; advertising – It shall be unlawful for any employer or organization to publish or circulate, or allow the publication or circulation of announcements, notices or any other form of diffusion, denying employment opportunities, directly or indirectly, to any person indiscriminately, because of his/her race, color, sex, marital status, social or national origin, social condition, political affiliation or political or religious ideology, or for being a victim or perceived as a victim of domestic violence, sexual aggression or stalking, or without just cause, because of age, or by establishing limitations which may exclude any person because of his/her race, color, sex, marital status, social or national origin, social condition, political affiliation or political or religious ideology, or for being a victim or perceived as a victim of domestic violence, sexual aggression or stalking, or because of his/her age, without just cause.

...”

Section 4.— Section 2 of Act No. 100 of June 30, 1959, as amended, is hereby amended to read as follows:

“Discrimination by labor union.— Any labor organization which limits, divides or classifies its members so as to deprive or tends to deprive anyone who aspires or is entitled to become a member of said organization, of an employment opportunity because of age, race, color, creed, sex, marital status, social or national origin, political affiliation, political belief or social position, or for being a victim or perceived as a victim of domestic violence, sexual aggression or stalking:

(a) ...”

Section 5.— Section 2-A of Act No. 100 of June 30, 1959, as amended, is hereby amended to read as follows:

“Apprenticeship, training or retraining.— Any employer, labor organization or joint labor-management committee that controls apprenticeship, training or retraining programs, including on-the-job training programs, which discriminates against a person because of his/her race, color, sex, marital status, social origin or condition, political affiliation, political or religious ideology, or for being a victim or perceived as a victim of domestic violence, sexual aggression or stalking, or because of his/her advanced age, without just cause to be admitted to, or employed in any apprenticeship or other training program:

(a) ...”

Section 6.— A second and third paragraphs are hereby added to Section 3 of Act No. 100 of June 30, 1959, as amended, to read as follows:

“...

It shall not be presumed that the employer had knowledge of the personal situation of any employee in cases of discrimination against victims

or presumed victims of domestic violence, sexual aggression or stalking, unless the employer was in effect in a position to have such knowledge.

The employer shall make the reasonable and necessary adjustments or accommodations in the workplace in order to protect its employees from a possible aggressor, once he/she receives notice of the potential occurrence of a dangerous situation. Failure to do so shall be presumed to be discriminatory conduct.”

Section 7.— Subsections 4, 5, and 6 are hereby added to Section 6 of Act No. 100 of June 30, 1959, as amended, to read as follows:

“The following terms, as used in this Act, shall have the following meanings:

- (1) ...
- (2) ...
- (3) ...
- (4) “Stalking” – Shall mean the conduct typified in Act No. 284 of August 21, 1999, as amended by Act No. 376 of September 16, 2004.
- (5) “Sexual aggression” – Shall mean the conduct typified in Section 142 of the Commonwealth of Puerto Rico Penal Code of 2004.
- (6) “Domestic violence” – Shall mean the conduct typified in Act No. 54 of August 15, 1989, as amended.”

Section 8.— Effectiveness.— This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 271 (S.B. 1522) of the 4th Session of the 15th Legislature of Puerto Rico:

AN ACT to amend Sections 1, 1-A, 2, 2-A, and 6 of Act No. 100 of June 30, 1959, as amended, to prohibit discrimination in the workplace for being a victim or perceived as a victim of domestic violence, sexual aggression or stalking,

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

In San Juan, Puerto Rico, today 31st of October of 2007.

Francisco J. Domenech
Director