



RECENT DEVELOPMENTS IN LABOR LEGISLATION

On January 31, 2018, the Governor of Puerto Rico signed into law the Special Leave for Employees with Serious Catastrophic Illnesses Act. Law Number 28 of January 31, 2018 (“Law No. 28”) provides a special paid leave of six (6) additional days per year for public and private sector employees, who suffer any of the following catastrophic illnesses:

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| 1- AIDS | 9- rheumatoid arthritis |
| 2- tuberculosis | 10- autism |
| 3- leprosy | 11- post organ transplant |
| 4- lupus | 12- scleroderma |
| 5- cystic fibrosis | 13- multiple sclerosis |
| 6- cancer | 14- amyotrophic lateral sclerosis (ALS) |
| 7- hemophilia | 15- chronic renal disease, stages 3, 4
and 5. |
| 8- aplastic anemia | |

The term employee is defined as any person that receives compensation as a result of a regular or temporary employment contract, and government employees, who have worked for the employer for more than twelve (12) months and must have worked an average of at least one hundred and thirty hours (130) hours per month during said period.

The use of this special leave is subject to the following requirements:

- 1- You must be an employee as defined by Law No. 28.
- 2- To be able to use this special leave, the employee must have exhausted his/her sick leave.
- 3- At the request of the employee, the employer must allow the use of the special paid leave through split, flexible or intermittent schedules.
- 4- The use of this special paid leave will be considered “time worked” for purposes of accrual of benefits.
- 5- The six-day special paid leave may be used in each calendar year and may not be accrued or rolled over to the next calendar year.
- 6- The special paid leave, or any remaining days, will not be paid out in the event of the employee’s resignation or termination.

The employer may not consider the use of this special paid leave as unfavorable factor in an employee’s performance evaluation, or take adverse actions against employees for taking this leave, such as reducing their work hours, reclassifying their position, or changing their shifts or schedule.



The employer may require its employees to obtain a medical certificate from a health professional who offers medical treatment for the catastrophic illnesses, to certify that the employee is in fact diagnosed with a catastrophic illness and continues to receive medical treatment. The employer must comply with the Health Insurance Portability and Accountability Act’s (HIPAA) privacy and confidentiality protections. Failure to comply with Law No. 28 may result in an administrative fine of up to \$2,000.00.

Law No. 28 will become effective thirty (30) days after its approval.

Law Number 60 of January 27, 2018: Amendment to Law Number 180 of July 27, 1998

Separately, legislation has also been enacted to amend Article 6 of Law Number 180 of July 27, 1998, in order to forbid employers from using justified medical absences as efficiency criteria in an employee’s yearly performance evaluation. Law No. 60 of January 27, 2018, (“Law No. 60”) sets forth that employees are entitled to use their sick leave in such cases as is necessary and warranted. Therefore, it is a violation of such right, guaranteed by law, that employers establish an internal policy which allows them to treat justified medical absences in the same manner as unjustified or irresponsible absences, thereby creating a negative impression of the employee when he or she is considered for a pay increase, a promotion, or other job-related benefits.

Law No. 60 became effective immediately.

It remains to be seen whether these statutes will survive the scrutiny of the Financial Oversight and Control Board for Puerto Rico created under the Puerto Rico Oversight, Management and Economic Stability Act of 2016 (“PROMESA”), which has expressly advocated for rolling back legal employment rights and protections in order to increase competitiveness.



If you should have any questions or comments relative to the **RECENT DEVELOPMENTS IN LABOR LEGISLATION**, or any other labor and employment matter, please contact:

LABOR DEPARTMENT

Edwin J. Seda - Fernández, Esq.	seda@amgprlaw.com	787.756.9000 ext. 2080 or 787.281.1822
Mariel Y. Haack, Esq.	mhaack@amgprlaw.com	787.756.9000 ext. 2025 or 787.281.1951
Luis Pérez-Giusti, Esq.	lpg@amgprlaw.com	787.756.9000 ext. 2079 or 787.281.1809
Liana M. Gutiérrez, Esq.	lgutierrez@amgprlaw.com	787.756.9000 ext. 2019 or 787.281.1950
Verónica Torres - Torres, Esq.	vtorres@amgprlaw.com	787.756.9000 ext. 2015 or 787.281.1965

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