

**MORE REGULATORY REQUIREMENTS FOR ACCOMMODATION OF RELIGIOUS PRACTICES
IN THE WORKPLACE IMPOSED BY THE PUERTO RICO DEPARTMENT OF LABOR**

On April 24, 2017, the Secretary of the Department of Labor and Human Resources of Puerto Rico (PR-DOL) responded to a legislative mandate by approving new regulation for accommodation of religious practices. The *Regulation for the Application of the Reasonable Accommodation Scheme for Religious Practices in the Workplace Pursuant to Article 2.19 of Act No. 4 of January 26, 2017, the "Labor Transformation and Flexibility Act"* (hereinafter, the "LTFA" and the "Regulation") is now effective as of May 25, 2017. The LTFA, in addition to amending core, employment law provisions to increase business competitiveness, also strengthened public policy against discrimination based on religion. As such, Article 2.19 of LTFA requires every employer to reasonably accommodate the religious practices of its employees or employment candidates who make a written request, unless the employer can demonstrate that the accommodation would result in an undue hardship. These provisions complement federal law already applicable in our jurisdiction.

The Regulation defines relevant terms and outlines procedures to be followed by an employee or employment candidate when making the request for accommodation and by the employer to respond to the request. The Regulation does not cover independent contractors and government employees. Whether or not a worker is remunerated is also a factor to determine coverage or exclusion from the Regulation's protection. The US and the Puerto Rico Governments, as well as its municipalities and public corporations, are excluded from the definition of employer. Like federal counterparts, the definitions of "religion" and other related terms (e.g., creed, religious service, etc.) are broad and require careful analysis; a type of analysis equally applicable to the Regulation's definitions of *reasonable accommodation* and *undue hardship*.

From a procedural perspective, any employee or candidate for employment interested in an accommodation because of their religious practices must submit a written request to the employer that must contain, at least, a description of the religious activity, the frequency and the accommodation requested. They must notify the petition to the employer or its designee with reasonable anticipation. The employer must consider the request and provide a definitive answer within 7 business days, unless the religious activity must be performed within a shorter term. The employer's failure to respond in writing in the term provided creates the presumption that the employer accepted and granted the request. The Regulation recognizes the employer's discretion to meet with the applicant to discuss accommodation alternatives.

The employer shall notify in writing any denial of a request for accommodation detailing the reasons and why it would result in an undue hardship. Unfounded denials or those based on the potential that other employees would make the same request are not valid. In addition, the employer may not deny requests for accommodation as retaliation or disciplinary sanctions. If an employee insists on the most onerous alternative, however, the employer may deny it.

An employee or applicant dissatisfied with the outcome of a request for accommodation may file a complaint with the Bureau of Employment Standards of the PR-DOL. An employer must respond in 10 calendar days. After 10 days, the Bureau, with or without the benefit of the employer's response, will refer the matter to the Mediation and Adjudication Office for resolution of the complaint on its merits. A finding adverse to the employer exposes the company to a fine of not less than \$1,000 and up to \$5,000, and an order to grant the accommodation in a manner that does not affect the good and normal functioning of the business. The affected worker may also seek judicial action.

Additional regulatory requirements call for increased attention to mandatory antidiscrimination training, education to managers and supervisors, revamping of workplace policies and determining the best procedures to have in place to address and document requests for accommodation of religious practices, comply with the law and avoid legal risks.

This document has been prepared for information purposes only and is not intended, and should not be relied upon, as legal advice. If you have any questions or wish to obtain more information about its possible effect(s) on policy or operational matters, please contact us at your convenience.

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