



# Stop

## raising our labor costs

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Puerto Rico's Legislature is at it again, enacting bills that are harmful to the economic development of Puerto Rico.

The Senate is currently evaluating an amendment to Law 80 of 1976, the Unjust Dismissals Law, that business groups said would further complicate the ability of businesses to operate in Puerto Rico and would continue to discourage expansions and new business start-ups.

House Bill 1491, penned by Popular Democratic Party Rep. Luis Raúl Torres, would require employers to notify employees in writing about the reasons they were dismissed and if they are entitled or not to get severance pay. An employer who doesn't notify the employee in writing would have to pay a penalty as high as \$2,000.

Senate Labor, Veterans Affairs & Human Resources Committee Chairwoman Lucy Arce said the "bill appears to be good, but will hurt businesses, especially those without human resources."

She said she is seeking input from different agencies on the bill. The House passed the legislation without input from the business sector or public hearings.

"I have my doubts," Arce said.

The amendment, according to business groups, further penalizes employers under the Unjust Dismissal Law.

The 1976 law was initially enacted to protect an employee from being laid off from a company without just cause by requiring employers to pay employees additional compensation when layoffs are, in fact, not justified. It was meant to give an employee an additional payment while the employee searched for another job.

Under Law 80, employers are required to pay severance pay, known

as a *mesada*, after an employee is terminated. Employees aren't permitted to waive this payment, but employers aren't required to pay the so-called *mesada* if the employee was terminated with "just cause."

Just cause is satisfied in any of the following situations: The employee had a pattern of improper or disorderly conduct; the employee worked inefficiently, belatedly, negligently or at a level of poor quality; the employee repeatedly violated the employer's reasonable and written rules; the employer had a full, temporary or partial closing of operations; the employer had technological or reorganization changes, changes in the nature of the product made and changes in services rendered; or the employer reduced the number of employees due to an actual or expected decrease in production, sales or profits.

While severance pay was originally considered a reasonable amount, in 2005 the government enacted a

law that virtually tripled the amount paid to employees dismissed without just cause.

An employee with less than five years of employment with the employer must receive a severance payment equal to two months of salary and an additional one week of salary for each year of employment. An employee with more than five years but less than 15 years of employment must receive a severance payment equal to three months of salary and an additional two weeks of salary for each year of employment. An employee with more than 15 years of service must receive a severance payment equal to six months of salary and an additional three weeks of salary for each year of employment.

If employees don't agree with the employer's decision not to pay them a *mesada*, they can go to court to claim it.

To make matters worse, several

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years ago, the Puerto Rico Supreme Court ruled in a lawsuit filed against a pharmaceutical company that the *mesada* was separate and distinct from a severance payment the company had paid to employees that were laid off after it had shut down, said Manuel Reyes Alfonso, executive vice president of the Chamber of Food Marketing, Industry & Distribution (MIDA by its Spanish acronym).

He said that until 2005, employers were more willing to pay the severance pay to avoid going to court because the amounts were reasonable. Once the amounts went up, along with hikes in Christmas bonuses and the federal minimum wage, employers became hesitant about creating new jobs or replacing unproductive workers. They also became more unwilling to pay the *mesada*. No other state in the U.S. has a severance law that sets payments so high. In fact, probably no other industrialized country has a severance law like this.

The law also requires that when restructuring, a business must, in most cases, retain employees according to seniority.

"The astronomical sums mandated and some of the vague terms regarding restructuring scare investors and labor lawyers alike," said attorney José Benítez-Mier, head of the labor law division at O'Neill & Borges. The sums are so high that in many cases unproductive employees with seniority are kept on to avoid paying the dismissal pay. Before the 2005 increase, most employers would opt to pay the more reasonable severance rates as "a normal business cost" and as a kind of "insurance" against future lawsuits. However, now that employers can face severance payments that can exceed a full year's pay, more employers are fighting cases in court. Because the severance benefits are tied to years of service, with benefits increasing after five years, 10 years and 15 years, employers are now being more vigorous at the thresholds of the different date. Experts point out Law 80 is one of the few laws that applies to "exempt" or management employees as well, which makes it particularly onerous.



Carlos Colón de Armas, economist

Javier Vázquez, a lawyer with Goldman, Antonetti & Córdova, said he advises clients about keeping written documentation to back up their claim for just cause when dismissing an employee.

"Unless the employee has committed a grave thing, like stealing,

**"People used to believe government work was sacred, that there was no way you could lose a job in the government. Now, in this economy, no job is assured unless the economic activity making the job possible is assured."**

—Carlos Colón de Armas

usually the employer is well documented," he said.

Reyes Alfonso said House Bill 1491 would further complicate the business climate in Puerto Rico and lead to more litigation.

"We believe this measure further complicates the handling of human resources," he said. "This letter places the employer at risk. Some businesses don't have the means to hire lawyers to check these letters, and it is a risk for the employer to put this

kind of information in writing."

Reyes Alfonso noted that the letter also hurts employees because there will be a fully detailed written record of the reasons they were fired, potentially hurting their chances of finding future employment.

Jorge Capó, a lawyer with O'Neill & Borges and chairman of the Human Resources & Labor Committee of the Puerto Rico Chamber of Commerce, agreed. He said a worker who may not have performed well in one company but could perform well in another will have problems finding another job.

"Right now, employers do not give much information as to why they dismiss an employee. An employer, especially if the dismissal was not for just cause, will end up putting together a long list of more than a page and half and all the complaints as to why he fired an employee. If the worker had a poor attitude or missed work too much, it will be there," Capó said.

Furthermore, the proposed bill puts the employer in the position of having to explain why he dismissed an employee even if the reason was a reduction in profits or production, which is considered just cause under Law 80. This requirement could

businesses that don't have economic means or human resources departments to incur costs to deal with these letters. "Law 80 should be to make amends, not to punish."

Reyes Alfonso said the government should overhaul Law 80 entirely or repeal it because laid off workers already get unemployment benefits, even though they are no more than \$300 a month.

"I believe that instead of having Law 80, we should increase unemployment benefits given to displaced workers," he said.

The bill, nonetheless, has the support of the Justice and Labor departments.

"We have to remember that the purpose of Law 80 is to ensure workers aren't fired in a capricious manner," the Labor Department said.

The Justice Department, for its part, noted that the only recourse or remedy a worker who was unjustly fired has is Law 80.

#### FEDERAL RULE ALSO HURTS LOCAL BUSINESS

The local Legislature is not the only one enacting regulations that have the potential to hurt businesses.

A controversial federal National Labor Relations Board (NLRB) rule that would require most private-sector employers to post notices describing employees' rights, including the right to join unions, was postponed for a second time this year until April 30.

The new final rule, issued by the NLRB, covers private-sector employees and unions under the National Labor Relations Act (NLRA), regardless of whether a representation petition was filed with the NLRB, Luis Antonetti, a labor lawyer with Goldman, Antonetti & Córdova, told CARIBBEAN BUSINESS recently.

The new rule is for businesses with a gross volume in revenue of more than \$1 million, he said.

Except for the U.S. Postal Service, which is specifically exempt, the new rule requires employers to post notices listing employees' rights under the NLRA. Besides including the right to unionize, bargain collectively with the employer or engage in other planned activities, the final rule also provides for the notice to include the right to refrain from participating in

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