

APPENDIX V
(Law 169 of September 29, 2014)

(H. B. 1467)

(No. 169-2014)

(Approved September 29, 2014)

AN ACT

To amend Sections 1(b) and 2(a) of Act No. 115-1991, known as the “Retaliation Against Employees for Offering Testimony Act,” in order to amend the definition of “employer” in order to clearly establish the scope thereof; provide that the internal procedures of a company shall be among the forums where workers shall be protected from retaliation for offering any testimony, statement, or information; and renumber Sections 4 and 5 as Sections 3 and 4, respectively, in order to compensate for the omission of a Section 3.

STATEMENT OF MOTIVES

Act No. 115-1991, known as the “Retaliation Against Employees for Offering Testimony Act,” was approved in order to protect employees against any employer retaliation for offering, whether verbally or in writing, any testimony, statement, or information before a legislative, administrative, or judicial forum in Puerto Rico (29 L.P.R.A. §194a). According to the Statement of Motives, the purpose of the Act was to establish as public policy of the Commonwealth of Puerto Rico the protection of the employees of the public and private sectors when they appear before any of the aforementioned forums in order to collaborate with them.

Since its approval over twenty years ago, this legislation has been the object of interpretation by the courts on several occasions. One particularly important interpretation is the exclusion of the internal company forums from the protection of Act No. 115, *supra*, even though workplace retaliation can occur in two (2) ways: (1) when an employee appears before a legislative, administrative, or judicial forum to report any practice by the employer, or (2) when an employee resorts to an

employee or official in his workplace to file a complaint. In both cases, the employee is at risk of workplace retaliation. According to the current rule of law, the law only protects employees in some cases but not in others.

Title VII of the Civil Rights Act of 1964, as amended, prohibits an employer from discriminating against an employee or applicant for employment who has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing or “has opposed any practice,” made an unlawful practice by this Act. The American with Disabilities Act (ADA), the Age Discrimination Act (ADEA), the Equal Pay Act (hereinafter, EPA), and the Federal Labor Standards Act (FLSA) have similar provisions which are used in retaliation lawsuits filed against employers.

At the state level, there are several laws that contain provisions prohibiting retaliation by employers in specific cases; however, Act No. 155, *supra*, is the statute that provides general protections against retaliation. Said Act is somewhat more encompassing than the federal laws, since it provides that any attempt to offer information is a protected activity even when such an activity fails to materialize. However, Act No. 115, *supra*, has a major deficiency: it only protects an employee when said employee offers information or testifies before administrative, legislative, or judicial forums as provided in the statute.

In *Irizarry v. Johnson & Johnson*, 150 D.P.R. 155 (2000), the Supreme Court of Puerto Rico extensively analyzed the legislative intent behind the approval of Act No. 115, *supra*, to determine whether the Act afforded protection to an employee that filed a claim with the State Insurance Fund Corporation. Our Supreme Court held that, for the purposes of the “Retaliation Act,” a testimony offered before the State Insurance Fund is offered before an administrative forum. Based on such an interpretation, the phrase “administrative forum” excludes the internal private employer forums.

This creates an inequality when applying the Retaliation Against Employees for Offering Testimony Act to the employees of public instrumentalities that operate as if they were private and to those of private entities. For example, an employee of the Highways and Transportation Authority who files an internal complaint with the Office of Labor Affairs shall be protected; however, that is not the case for an employee of ABC, Inc. who files a complaint with the Office of Human Resources and is subsequently discharged.

In *Cintrón v. Ritz Carlton*, 162 D.P.R. 32 (2004), the Supreme Court compares the scope of the protection provided by the primary federal legislation to our primary state legislation concerning retaliation. In the above case it was determined that federal courts have recognized that the purpose of this provision is to protect employees from retaliation when they use any means provided by Congress to vindicate their rights. *Robinson v. Shell Oil Co.*, 519 U.S. 337 (1997); and others. It has been specifically acknowledged in the abundance of federal case law on retaliation in the workplace that an informal oral complaint made to a superior or the use of the internal procedures of a company constitute activities protected by the federal statute.

This Legislative Assembly reaffirms the highly esteemed public policy of protecting workers' rights; therefore, it deems that the objectives of the Retaliation Against Employees for Offering Testimony Act are furthered by extending its protection to testimonies, statements, or information offered by an employee during internal procedures of the company where he works. Likewise, state legislation is hereby conformed to the federal legislation contained in Title VII of the Civil Rights Act of 1964, as amended.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Subsection (b) of Section 1 of Act No. 115-1991, as amended, known as the “Retaliation Against Employees for Offering Testimony Act,” is hereby amended to read as follows:

“Section 1.- Definitions.-

(a) ...

(b) Employer.- Means all employers equally, whether they are public or private employers, public corporations, or any other employer denomination existing at present or to be created in the future, any natural or juridical person of any kind, including the Government of the Commonwealth of Puerto Rico, its three Branches and the instrumentalities or public corporations thereof; the municipal governments and the instrumentalities or corporations thereof, which, whether for profit or not, employ persons for any type of compensation, as well as their agents and supervisors. It also includes labor organizations and other organizations, private groups or associations in which employees participate to negotiate employment terms and conditions with employers, as well as employment agencies.

(c) ...”

Section 2.- Subsection (a) of Section 2 of Act No. 115-1991, as amended, known as the “Retaliation Against Employees for Offering Testimony Act,” is hereby amended to read as follows:

“Section 2.- Prohibition; Violation; Civil Liability.-

(a) No employer may terminate, threaten, or discriminate against an employee with regards to the terms, conditions, compensation, location, benefits, or privileges of the employment should the employee offer or attempt to offer, verbally or in writing, any testimony, statement, or information before a legislative, administrative, or judicial forum in Puerto Rico, as well as any testimony, statement, or information the employee offers or attempts to offer, through the internal

procedures of the company, or before any employee or representative in a position of authority, when such statements are not defamatory nor constitute a disclosure of privileged information as provided by law.

(b) ...

(c) ...”

Section 3.- Sections 4 and 5 of Act No. 115-1991, as amended, are hereby renumbered as Sections 3 and 4, respectively,

Section 4.- Effectiveness.-

This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 169-2014 (H. B. 1467)** of the **4th Regular Session** of the **17th Legislative Assembly of Puerto Rico**:

AN ACT to amend Sections 1(b) and 2(a) of Act No. 115-1991, known as the "Retaliation Against Employees for Offering Testimony Act," in order to amend the definition of "employer" in order to clearly establish the scope thereof; provide that the internal control procedures of a business shall be one of the forums where workers shall be protected from retaliation for offering any testimony, statement, or information; and renumber Sections 4 and 5 as Sections 3 and 4, respectively, in order to compensate for the omission of a Section 3.

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

In San Juan, Puerto Rico, on this day of March, 2021.

Mónica Freire-Florit, Esq.
Director