

(H. B. 2982)

(No. 95)

(Approved July 30, 2007)

AN ACT

To amend subsection (d) of Section 2 of Act No. 80 of May 30, 1976, as amended, and better known as the “Wrongful Discharge Act,” in order to clarify that the term “establishment,” as used in said subsection, includes every individual office, factory, branch or plant in companies having several of these and in which full, temporary or partial operations shall be closed.

STATEMENT OF MOTIVES

In 1976, the Legislature promulgated Act No. 80 of May 30, to establish a new public policy on wrongful discharge. Said legislation had the purpose of granting workers greater protection in their employment by establishing a refutable presumption of wrongful discharge and the right to compensation, commonly known as “severance,” in those cases in which the employer is unable to provide, to the satisfaction of the Court, just cause for the discharge.

Likewise, the Act incorporated, in an illustrative manner, a series of grounds or situations in which discharge is considered justified. Some of these causes are attributable to the conduct of the employees and others to the employer. Among the grounds for discharge that are under this second category are: technological or reorganization changes, reduction in the volume of production, sales, and profit and the full, provisional or partial closing of operations of the establishment. These causes are related to the operations of the company and to decisions that are commonly made in the regular course of its administration. The purpose of establishing and

conditioning these causes in the Law is to protect the employee from discharges that are arbitrary or made by whim, and to establish that the same shall be related to the regular and sound operation of the company.

To these effects, Section 2, subsection (d) of Act No. 80 sets forth:

“Good cause for the discharge of an employee from an establishment shall be understood to be:

...

(d) Full, temporary or partial closing of the operations of the establishment.

...”

The full, temporary or partial closing of the operations of the establishment, as grounds for discharge had not been the object of judicial interpretation by the Supreme Court of Puerto Rico. In fact, under the previous law, a similar cause was interpreted in *PR Cap & Tires v. Tribunal*, 68 D. P. R. 971 (1948), in which there was concluded that the discharge of employees by said employer, as the immediate consequence of a fire that destroyed the facilities of the company, was justified.

On June 30, 2005, the Supreme Court of Puerto Rico passed sentence in the case *Mildred Vélez Cortés et al. v. Baxter Healthcare Corporation of Puerto Rico*, civil no. CC-2003-0964. Although it is a sentence, and therefore, it did not set precedent for future cases, in this case, the majority of the justices of the Supreme Court determined that the discharge of the plaintiffs in 1988, after the full and definite closing of the operations of a plant located in Carolina owned by a company with several facilities on the Island, was unjustified. The Court decided that, in order for a closing of operations to constitute grounds for discharging employees pursuant to the provisions of Act No. 80, it is necessary that “the employer **ceases in an**

absolute manner the operations of the business.” (*Sentencia*, page 21) (Stressed in the original).

Said sentence, as it may be seen, did not consider the fact that it was an operation separate from other establishments of the same company in other towns of the Island.

Consequently, the application of the Supreme Court of Puerto Rico to the clear text of Section 2, subsection (d), which recognizes as grounds for discharge “the full, temporary or partial closing of the operations of the establishment,” attributes all the operations of a company in Puerto Rico (regardless of the place in which they are established, their functions, or of whether they operate separately) to a sole entity. Such conclusion endangers our industrial growth and our economy, since it does not give any incentive for the establishment of additional plants of the same company in various places in Puerto Rico, it is an attempt against the managerial responsibility of administering a company, it has the consequence of nullifying subsection (d) of Section 2 of Act No. 80, *supra*, and puts job creation opportunities at risk.

It is known that the term “establishment” in its common meaning specifically refers to the site or place of business, which may be any office, factory, branch or plant of the company ceasing operations fully, temporarily or partially.

This Legislature is committed to promote the creation of jobs, the economic development, and the competitiveness of Puerto Rico with respect to other jurisdictions. If the scope and purpose of Section 2, subsection (d) of Act No. 80, are not clarified by this law, there would be generated an unstable and uncertain environment in the entrepreneurial sector regarding the measures that a company may validly adopt to face a more global and

competitive market. By clarifying the scope of the law, the industries established in Puerto Rico and even those interested in settling on the Island shall be certain that they can operate through different offices, factories, branches or plants and that, if at any time they are in the need of reducing their personnel within the legal parameters of absence of whim and arbitrariness as part of the consolidation of its operations to remain competitive, they shall be capable of doing so.

In view of this situation, it is necessary that this Legislature immediately clarifies the scope of the term “establishment,” as used in Section 2, subsection (d) of Act No. 80 of May 30, 1976, as amended, in order to establish that said term indistinctly refers to the office, factory, branch or plant of the company which shall fully, temporarily or partially cease operations and not the entirety of the business or of the other operations that said company may have in Puerto Rico.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- Subsection (d) of Section 2 of Act No. 80 of May 30, 1976, as amended, is hereby amended to read as follows:

“Good cause for the discharge of an employee from an establishment shall be understood to be:

...

(d) Full, temporarily or partial closing of the operations of the establishment.

Provided, that in those cases in which the company has more than one office, factory, branch or plant, the full, temporary or partial closing of operations of any of these establishments shall constitute just cause for discharge pursuant to this Section.”

Section 2.- This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 95 (H.B. 2982) of the 5th Session of the 15th Legislature of Puerto Rico:

AN ACT to amend subsection (d) of Section 2 of Act No. 80 of May 30, 1976, as amended, and better known as the “Wrongful Discharge Act,” in order to clarify that the term “establishment,” as used in said subsection, includes every individual office, factory, branch or plant in companies having several of these and in which full, temporary or partial operations shall be closed,

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

In San Juan, Puerto Rico, today 30th of November of 2007.

Francisco J. Domenech
Director