



Puerto Rico: being charged with a felony can be just cause for dismissal

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The Supreme Court of Puerto Rico recently determined that an employee accused of committing several felonies can be suspended indefinitely pending criminal trial without it being considered an unjust dismissal. It also held that an employee can be dismissed with just cause if found guilty of the felonies.

Under Puerto Rico Act No. 80 of May 30, 1976, known as the Unjust Dismissal Act, an employer must pay severance if it terminates an employee without just cause – as the term is defined therein – and an indefinite suspension exceeding three months is considered a dismissal.

In the recent opinion *González Santiago v. Baxter Healthcare of Puerto Rico*, 2019 T.S.P.R. 79, an employee who had worked for a pharmaceutical company since 1998, was charged, in 2014, with six felonies and one misdemeanor in relation to child abuse and lascivious acts against a child. The company learned about the charges through the news and rumors in the plant; held a meeting with the employee; and suspended him from work and pay, in accordance with its employee manual. The manual provided that actions that adversely affect the “adequacy of the person as a company employee,” including committing felonies of any nature, not informing the employer that one has been charged with a felony, and incurring in conduct against public morals are serious

offenses that can lead to immediate dismissal. About a year later, when he was found guilty of the felonies, the company dismissed him. The employee filed a claim for unjust dismissal and age discrimination.

The 7-1 Supreme Court decision vacated the Court of Appeals' decision and dismissed the employee's complaint via summary judgment. The Court determined that an employer may establish the rules it considers reasonable; that a first offense may be enough for termination if it is sufficiently severe; and that an employer may evaluate its employees using the moral standards of society when a violation of such standards may affect the functioning of the business. The opinion also explains that while a person is presumed innocent for purposes of criminal proceedings, that presumption does not extend to the employment context. The opinion comments that a sexual felony against a minor is conduct that any person should know should never be committed, and knowledge that a colleague has committed such a crime would be disruptive to any workplace, so the employer was entitled to dismiss the employee when the charges were lodged and did not have to wait for a conviction. In a dissenting opinion, Associate Justice Estrella Martínez explained that an employee should not be automatically suspended or dismissed for having committed a felony; instead, the employer should have to prove that the particular wrongdoing is reasonably related to the business and affects the company's operations.

In a previous case, *Rosario v. Toyota*, 166 D.P.R. 1 (2005) (non-binding judgment), the Supreme Court of Puerto Rico determined that taking into account previous convictions in the recruitment process could be considered discrimination based on social condition, which is prohibited by the Constitution of Puerto Rico. In that case, the employment candidate met all the requirements for the position of warehouse driver but was disqualified after a background check revealed that he had been convicted of involuntary homicide 20 years earlier. The Court proposed analyzing several factors when considering applicants with previous convictions: (1) the nature and severity of the criminal conduct; (2) the relation between the felony and the position requested, and the responsibilities it entails; (3) the applicant's rehabilitation and any information that the applicant or a third party could provide about it; (4) the circumstances under which the felony was committed; (5) the age of the applicant when committing the felony; (6) the time elapsed between the conviction and the employment application; and (7) the employer's legitimate interest in protecting the property, security, and well-being of the business, of third parties or of the general public.

The *González Santiago* opinion drifts away from the previous, more protective approach towards employees. Nevertheless, given that *González Santiago* deals with accusations against a current employee, while *Rosario* dealt with recruitment for employment after a conviction, the recent case does not supersede *Rosario*. Thus, employers should still consider the non-binding guidelines set in *Rosario* in their recruitment processes in Puerto Rico.

Learn more about employment issues in Puerto Rico by contacting either of the authors.

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