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Top Eight Guidelines to Litigate Employment Claims under Puerto Rico's Unique Summary Proceeding

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A litigation trap that can ensnare unwary employers who may be sued in the Commonwealth of Puerto Rico is a piece of employment legislation that allows expedited proceedings: Law No. 2 of October 17, 1961 ("Law No. 2"), as amended, known as the "Law for the Summary Proceeding of Employment Claims."

Law No. 2 was enacted to create a procedural mechanism to ensure the speedy handling and adjudication of employment claims filed by employees against their employers. The legislative intent is straightforward: to protect employees from lengthy litigations and the difference in the economic status and power between the parties. Further, Law No. 2 has withstood a constitutional challenge under due process grounds before the Puerto Rico Supreme Court. As Puerto Rico is not an at-will employment jurisdiction, "just cause" (as defined by Puerto Rico Act No. 80 of May 30, 1976, as amended, and its interpretative case law) is required to terminate an employee.

Consistent with Law No. 2's purpose and Puerto Rico's employment legislative scheme, the Commonwealth's longstanding public policy mandates that any doubt in the interpretation of any employment-related legislation be resolved in favor of the employee. Therefore, employers that do business, or have operations, in Puerto Rico need to understand the substantive, procedural, and practical aspects of Law No. 2.

When faced with employment claims filed under Law No. 2, employers should understand the following:

1. Employees have the option of filing employment law claims under Law No. 2

Law No. 2 is available for *any* employment law dispute and applies to a wide range of employment claims, including claims of wage and hour violations, discrimination, retaliation, unlawful termination, or any other claim pursuant to local workplace laws. It is up to the employee to file his or her lawsuit under Law No. 2 and reap the benefits of the summary proceeding mechanism. A complaint also may be filed under Law No. 2 by the Secretary of the Department of Labor and Human Resources of Puerto Rico, on the Secretary's own initiative or on behalf of one or more employees. The complaint

must be filed before the Court of First Instance located where the employee performed the work complained of or where the employee resides at the time of filing. Complaints filed under Law No. 2 are exempt from filing fees.

2. Employers can request conversion to an ordinary proceeding

A complaint filed under the summary proceeding of Law No. 2 can be converted to an ordinary proceeding at the employer's request if the court concludes the summary proceeding is not adequate to resolve the controversies presented in the complaint (such as when the evidence is not under the employer's custody or control). Conversion to an ordinary proceeding also may be appropriate when the employee, by his or her conduct, shows such indifference toward the summary nature of the case that it would be a voluntary rejection of the summary proceeding. The Puerto Rico Supreme Court has recognized certain criteria to determine whether conversion to an ordinary proceeding is appropriate. A sufficiently explicit factual scenario, the need to present expert testimony, the number of witnesses required to testify, and whether the pre-trial discovery limitations create a substantial risk that the court may make an erroneous determination as to damages are examples of criteria for consideration. A hearing may be requested to resolve the conversion issue and courts have tended to interpret these requests broadly and in favor of employees.

3. Shorter and inflexible terms to answer the complaint and raise affirmative defenses

Law No. 2 affords employers *shorter* response periods to answer the complaint than those provided by the Puerto Rico Rules of Civil Procedure. If the notification of the complaint is made in the same district in which the complaint was filed, the employer must file an answer within the jurisdictional timeframe of **10 days**. If the notification is made in a judicial district *other* than where the complaint was filed, the employer must file an answer within the jurisdictional timeframe of **15 days**. The employer's one permitted responsive pleading must include *all* affirmative defenses and objections. Defenses and objections not included are considered waived. In addition, Law No. 2 bars the filing of counterclaims against the employees. Extensions of time to answer are allowed only in exceptional circumstances and where "just cause" exists. In addition, requests for extensions must be presented within the timeframe imposed to answer the complaint and be accompanied by a sworn declaration. If defendant-employer fails to answer the complaint in time, the court will enter an *automatic* default judgment against the employer. The judgment entered would be final and cannot be appealed; however, the employer may file a discretionary writ of certiorari within **10 days** from the notice of judgment. The chance of the writ being granted is very low.

4. Service of process is more flexible

Service of process is perhaps the most troublesome mechanism available under Law No. 2. Once a lawsuit is filed under this statute, a court can obtain jurisdiction over an employer simply through the service of a notification of the complaint to a person that represents the employer in the workplace. Therefore, a delay in bringing the complaint to the attention of management or the legal department often means the term to answer the complaint has elapsed and automatic default judgment will be entered against the employer without the right to appeal the same.

5. Limited pre-trial discovery mechanisms

Law No. 2 limits the use of the pre-trial discovery mechanisms ordinarily available to the parties

under the Puerto Rico Rules of Civil Procedure. Each party is entitled to one instance of discovery, unless otherwise authorized by the court, which is granted only under exceptional circumstances. Therefore, despite the limited discovery scheme under Law No. 2, courts have discretion to relax the discovery restrictions, if warranted. Law No. 2 also limits the use and applicability of the Puerto Rico Rules of Civil Procedure. To the extent that the Rules are not compatible with Law No. 2 or the summary nature of the proceedings thereunder, the Rules will not apply.

6. Motions for reconsideration are not available

Under Law No. 2, motions for reconsideration of judgments are *not* available to the parties. In *Patiño Chirino v. Villa Antonio Beach Resort*, 2016 T.S.P.R. 200, 196 D.P.R. __ (2016), the Puerto Rico Supreme Court held in broad terms that judgments entered in cases filed pursuant to the employment law claims' summary proceeding of Law No. 2 *cannot* be subject to reconsideration. The Court unequivocally held that reconsiderations of final judgments are incompatible with the summary proceeding. By the same token, due to the summary nature of the proceeding under Law No. 2, in *Medina Nazario v. McNeil Healthcare LLC*, 2016 T.S.P.R. 36, 194 D.P.R. __ (2016), the Puerto Rico Supreme Court also held that interlocutory orders or determinations are *not* subject to reconsideration. Under the Rules of Civil Procedure, the parties have **15 days** to file motions for reconsideration. However, the Court's rulings have made clear that in cases filed under Law No. 2, the parties are *not* entitled to file motions for reconsideration of judgments or interlocutory determinations or orders.

7. Shorter terms to review judgments

Law No. 2 establishes a *sui generis* procedure to review judgments, limiting the writ of appeals exclusively to the adjudication of the merits of the case. The party affected by a final judgment entered by the lower court may file an appeal with the Puerto Rico Court of Appeals within the jurisdictional timeframe of **10 days** following the notice of judgment. The party affected by the determination of the Court of Appeals may file a writ of certiorari with the Puerto Rico Supreme Court within the jurisdictional timeframe of **20 days**, counted from the notice of judgment. (Under the Rules of Civil Procedure, both timeframes are 30 days.)

Under Law No. 2, appeals of interlocutory orders are limited. Not all interlocutory determinations are subject to review — only those decided by a court without jurisdiction, where the decision resolves the entire case, or where the interests of justice requires. In *Medina Nazario v. McNeil Healthcare LLC*, 2016 T.S.P.R. 36, 194 D.P.R. __, the Puerto Rico Supreme Court established the applicable timeframe to file an interlocutory appeal in cases filed under Law No. 2: **10 days** if the order comes from the Court of First Instance and **20 days** if the order comes from the Court of Appeals. (Under the Rules of Civil Procedure, such timeframe is 30 days; nevertheless, the Supreme Court held that imposing the 30-day timeframe to proceedings under Law No. 2 would be a "procedural absurd" given its expedited nature.)

8. Sanctions

Law No. 2 allows imposition of sanctions against a defendant-employer when it acts with malice or abuses the use of the appeals process to delay the execution of judgment. If malice is proven, a court can require the defendant pay, as compensation or liquidated damages, a minimum sum of $500, depending on the circumstances of the case. Where an appeal is filed by the defendant and the Court of Appeals is convinced that the appeal was filed for the sole purpose of unduly delaying the

execution of judgment, the Court of Appeals may require the defendant to pay the claimant, as compensation or punishment, a minimum of $1,000, depending on the circumstances of the case.

Employers doing business in Puerto Rico need to be *aware* of Law No. 2's provisions and its potential consequences. Suits filed pursuant to Law No. 2 are common in Puerto Rico. Employers should train employees in Puerto Rico to report immediately to upper management or Human Resources the receipt of any legal documents, especially those filed under Law No. 2. Prompt notice gives the employer the best chance to present a timely response to the complaint, avoid an automatic default judgment, and enable it to frame its defense strategy early and within the mandates of Law No. 2.

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