

(Substitute for
H. B. 3844)

(No. 184)

(Approved August 3, 2004)

AN ACT

To reform the Human Resources Administration System of the Commonwealth of Puerto Rico, reaffirm the merit principle and set forth the public policy and the standards that shall govern it; rename and redefine the functions and powers of the Central Labor Advisory and Human Resources Administration Office, and incorporate new powers; grant greater autonomy to Individual Administrators; conform the Human Resources Administration System to the collective bargaining and the unionization of public employees; incorporate dispersed jurisprudence and laws, establish the public policy and the general norms that shall govern the compensation of public employees; create the public career as a development and competence-building mechanism for the public service; create the Appeals Commission of the Human Resources Administration System; repeal Act No. 5 of October 14, 1975, as amended, Act No. 182 of July 23, 1974, as amended, and Act No. 89 of July 12, 1979, as amended. To also amend Section 2.1 of Act No. 12 of July 24, 1985; Article 13, Section 3.3, subsection 5 of Act No. 45 of February 25, 1998, as amended; and repeal Section 9 of Act No. 78 of August 28, 1991, Section 1.07 of Act No. 68 of August 28, 1990, Section 1 of Act No. 3 of March 13, 2001, Section 3 of Act No. 1 of March 1, 2001, and Section 2.1 of Act No. 12 of July 24, 1985, as amended.

STATEMENT OF MOTIVES

In the year 1975, the Legislature of Puerto Rico approved Act No. 5 of October 14, known as the “Public Service Personnel Act.” Its approval constituted a major advancement in the definition of a public policy that was to consolidate the merit principle and extend it to other sectors of public

employment which, until that time, were not governed by said principle. By virtue of said Act, a personnel administration system was created, specially designed to ensure the application of the merit principle, and the areas considered to be essential for its protection were established.

The system thus created was governed by a Central Administration which comprised all traditional government agencies, except for those constituted as Individual Administrators and those excluded by the provisions of the Act itself. This system also provided for the encouragement of a dynamic personnel administration based on the progressive delegation of operational functions to the agencies comprised under the Central Administration.

In accordance with the activity generated by the structure so created, the components of the system began to evolve until they transformed within the legal framework itself. Thus, by the year 1991, ten (10) of the agencies of the Central Administration had become Individual Administrators, and as of 1995, the system was composed only of agencies constituted as Individual Administrators.

This transformation meant that all those agencies whose main personnel transactions and actions had been regulated, coordinated and administered in a centralized manner by the Central Labor Advisory and Human Resources Administration Office (OCALARH, Spanish acronym, formerly known as OCAP, Spanish acronym), were called to assume said responsibilities directly. However, the lack of actual autonomy existing within the Personnel System brought about even the total exclusion of some agencies from the application of the Personnel Act in effect by virtue of subsequent legislation, as was the case with the Department of Education, as

well as other new agencies created outside the Personnel System from the start.

The diminution of the operational role of the OCLARH turned this agency namely into an evaluating, policy-making, advisory, and technical assistance entity concerning the administration of human resources, thus retaining exclusively the operational task of approving personnel regulations, classification and compensation plans, confidential position plans, and employee evaluation systems. At present, the component of the system denominated as Central Administration is inoperative, even though it remains inserted into the text of said Act. Therefore, it is necessary to conform the system created by the Public Service Personnel Act to the present reality and to redefine the functions of the Office concerning the system's components. It is also necessary to integrate or reintegrate, as the case may be, those agencies that were subsequently excluded, while granting greater autonomy to all components of the System.

In addition to the foregoing, it is indispensable to consider the effects on the Personnel Administration System of the approval of Act No. 45 of February 25, 1998, as amended, known as the "*Puerto Rico Public Service Labor Relations Act*." By virtue of Act No. 45, public employees from the traditional government agencies were conferred the right to engage in collective bargaining. This right thus granted to the employees of government agencies which do not operate as private businesses, whose reason for being is the rendering of services that are basically free to the public, is broad but not absolute. The parameters established were the need for the financial and working conditions improvement of employees to adjust to the fiscal reality of the government, for government services to be rendered uninterruptedly, and for promoting productivity within an

employer-employee relations system that responds to the merit principle as the main determining factor.

The effectiveness of that new legal paradigm reinforced the view of the need to review the general norms, procedures and mechanisms which for over two decades had mainly determined the courses of action to be taken in the administration of government human resources. There was the pressing need to identify those aspects of the Personnel System, which was forged on the basis of the merit principle, whose retention was necessary and essential, as well as those that could be discarded in order to provide for the space required for a real development of the right to collective bargaining by public employees.

It is also necessary to redefine the functions assigned to the OICALARH by the Public Service Personnel Act and by Act No. 45, in order to include the powers to conduct audits on the human resources programs of the agencies. We thus strengthen the oversight function of the OICALARH, which is indispensable to ensure the faithful compliance with this new Act by Individual Administrators.

We also considered the impact of Act No. 45 on the matter of compensation, since, even if said area was no essential to the merit principle, it is indeed necessary to achieve a human resources administration that is fair, flexible and well balanced, which facilitates the application of said principle.

Act No. 89 of July 12, 1979, in effect, known as the “*Uniform Compensation Act*,” was approved with the purpose of applying to the Personnel System certain uniform compensation criteria that were in complete harmony with the provisions of Act No. 5, *supra*, which had been approved previously. Act No. 89 also defined the relations that, in terms of

compensation, were to exist among the Central Administration agencies, Individual Administrators, and the OCALARH (formerly known as the OCAP), since said Act was approved within a context in which total centralization was the axis of the personnel system.

Without a doubt, many of the provisions established in both Acts ceased to be practical in the extent that personnel actions became decentralized and when the agencies, as Individual Administrators, became responsible for carrying out its personnel actions. However, it is not possible to ignore the fact that the diversity existent in the fiscal and operational realities of the various agencies has an effect on the fixing of salaries. This consideration makes it impossible to have an equal salary for employees at similar jobs throughout all of the agencies.

We are keeping in mind the fact that collective bargaining will affect the compensation of approximately 75% of public employees. This number is substantial and shall have consequences on the compensation of the 25% of the public employees that are excluded from the provisions of Act No. 45. From that perspective, it becomes indispensable to design a compensation system that conforms to Act No. 45 and to the budget of the Commonwealth of Puerto Rico, in order for the Appointing Authority of each agency in which the employees have chosen to engage in collective bargaining and have unionized, to be able to maintain uniformity and fairness at the time of implementing the compensation procedures, for both the unionized employees and the non-unionized employees, including management.

Modern public administration envisions employees as the most valuable asset. This vision has allowed for the understanding that employees, rather than being resources to be used and consumed, are the

human capital that must be developed in order to improve public service for the benefit of the citizenry, of which they constitute a part.

Compensation should be visualized as an essential management tool for the achievement of the goals and aspirations of the government which, in turn, must respond to the claims of the people.

Another essential aspect that has required thorough examination has been the diversity of appeals forums for non-unionized employees to exercise their right to appeal administrative decisions relative to their job; we refer to the “Personnel Administration System Board of Appeals” and the “Education System Board of Appeals.” This proliferation of forums promotes in turn, inconsistency in terms of the remedies provided for similar controversies. It is a principle of sound and effective public management—matters that are related should be addressed by the same bodies. It becomes necessary to integrate the revision procedures for administrative decisions in all matters related to work conditions of non-unionized public employees, in order for decision procedures and adjudication standards to become uniform. This Act shall also tend to this need.

In addition to the essential purposes stated above, this Act shall compile dispersed laws and jurisprudence regarding the empowering function and the area of fringe benefits, by providing greater structure in terms of provisions on those matters, and it will also change the administrative organization in effect at the Personnel Development Institute, so that the essential function of training may become an integrated part of the Office’s tasks.

The reform of the Public Service’s Human Resources Administration embodied in this Act seeks to strike a balance between two equally prevailing interests—the constitutional and statutory rights of our public

employees and the efficient rendering of the public services that are their reason for being. This Act opens the door to a new era in the public service, based on efficiency and efficacy concepts and set upon principles of equity and justice for public employees.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Article 1.—Title.—

This Act shall be known and may be cited as the “Public Service Human Resources Administration Act of the Commonwealth of Puerto Rico.”

Article 2.—Statement of Public Policy.—

Section 2.1.—Contents.—

The public policy of the Commonwealth of Puerto Rico concerning the Human Resources Administration of the agencies covered under this Act, is the one stated below:

1. To reaffirm merit as the principle that shall govern the Public Service, in order for the fittest to be the ones serving in the Government and for all employees to be selected, trained, promoted, treated and retained in their jobs in consideration of their merit and capability, without discrimination pursuant to the applicable laws, including discrimination on the basis of race, color, gender, origins, or social condition, political or religious beliefs, being a veteran, or for physical or mental disability.
2. To strengthen the essential areas of the Merit Principle in the Public Service, in order for public employees to be covered under the new system, which shall be known as the Public

Service Human Resources Administration System of the Commonwealth of Puerto Rico.

3. To reiterate that the public service demands technical and professional capabilities, as well as an ethical attitude proven by honesty, self-discipline, respect for human dignity, sensibility, and dedication to the general welfare.
4. To reform the Public Service Human Resources Administration System in order for it to be compatible with the unionization of employees and collective bargaining, and to complete the decentralization process by making Individual Administrators entirely responsible for the full administration of their human resources.
5. To promote a human resources management that facilitates the provision of expeditious, efficient and high-quality services to the people.
6. To promote research on labor relations and human resources management in order to innovate and continuously renew the function of human resources.

Section 2.2.—Objectives.—

The application of the public policy thus stated, seeks to achieve as a goal the highest levels of excellence, efficiency and productivity in the public service, by means of the following objectives:

1. Achieving a human resources management guided by criteria such as autonomy, uniformity and equity.
2. Maintaining an environment of harmony and satisfaction within the workplace, which shall result in a high degree of

motivation, productivity and commitment to service in the employees.

3. Achieving that the rendering of public services lead to and ensure the continuous economic and social development of Puerto Rico, as well as greater social justice and the full enjoyment of the rights conferred under the Bill of Rights of our Constitution.
4. Offering equality of employment in the public service.
5. Recognizing and compensating fairly the contributions of employees to the achievement of organizational goals and allowing management to have greater flexibility in the administration of the compensation system, in order to attain a more dynamic and effective human resources administration system.

Section 3.—Definitions.—

For all purposes, the words and phrases listed herein shall have the meaning stated below:

- (1) Disciplinary Action.—That sanction which is recommended by the supervisor of the employee and imposed by the appointing authority, and which shall become a part of the employee's record. These may consist of written reprimands, job and salary suspension, or removal.
- (2) Individual Administrator.—Means the agency or entity comprised within the Human Resources Administration System, the personnel of which is governed by the merit principle and is administered in an autonomous manner, with the advice, follow-up and technical assistance of the Office.

- (3) Agency.—Shall mean the conglomerate of functions, offices and positions which constitute the entire jurisdiction of an appointing authority, regardless of the fact that it may be called a department, municipality, public corporation, office, administration, commission, board, or otherwise.
- (4) Salary Adjustments.—Positive adjustments conducted on the base salary of the employee.
- (5) Promotion.—Means the change of an employee from a position of one class to a position of another class with functions or a base salary of a higher level.
- (6) Salary Raise within the Schedule.—Shall mean a change in the compensation of an employee to a higher rate within the schedule to which the class to which his/her job belongs is assigned.
- (7) Salary Raise due to Merit.—A raise in the direct compensation that shall be granted to an employee by virtue of an evaluation of his/her performance during the twelve months preceding the date of the evaluation.
- (8) Raise due to Competencies.—Additional compensation that shall be granted to all employees that exhibit the progressive behaviors that the organization deems to be important (i.e.: causing agent of continuous changes and innovations). For the development of these behaviors, the organization shall promote the taking of trainings directed to satisfy these. This raise shall become a part of the base salary of the employee.
- (9) Raise due to Abilities.—Additional compensation that shall be granted to all employees who acquire and develop, by

their own initiative, abilities and knowledge that they will later on use for the benefit of the organization. This raise shall become a part of the base salary of the employee.

- (10) Appointing Authority.—Shall mean all heads of agency with the legal power to make appointments for jobs in the Government.
- (11) Scholarship.—Means the monetary assistance granted to a person so that he/she pursues higher studies at a university or a renowned institution with the purpose of broadening his or her professional or technical education.
- (12) Bonus.—A nonrecurring compensation.
- (13) Certification of Eligible Candidates.—Shall mean the process whereby the agency certifies, in order to cover vacancies and to refer to interview, the names of the candidates in turn for a certification within the register, in descending order according to grades and contingent upon their acceptance of the conditions for employment.
- (14) Selective Certification.—Shall mean the process whereby the Appointing Authority specifies the special qualifications that the particular job to be taken will require from the candidate. For this purpose, it shall remit a clear description of the official duties of the job to the Human Resources Office, containing such special qualifications.
- (15) Class or Job Class.—Shall mean a group of jobs of which the duties, nature of the work, authority and responsibility are so similar that they can be reasonably denominated with the same title; which demands the same minimum requirements

from the employees holding the job; for which the same aptitude tests are used for the selection of employees; and for which the same compensation schedule is applied equitably under substantially equal working conditions.

- (16) Job Classification.—Shall mean the systematic grouping of jobs into similar classes by virtue of the duties and responsibilities involved in order to give them equal treatment in the administration of personnel.
- (17) Appeals Commission.—Shall mean the Appeals Commission of the Human Resources Administration System.
- (18) Competence.—Any acquired knowledge or skill which allows the employee to perform his/her functions with greater efficiency, so that he/she may contribute consistently to the achievement of the goals and objectives of his/her work unit.
- (19) Edict.—Shall mean the document which shall officially state the determinations concerning the minimum requirements and the kind of examination, and all those other aspects that need to be or is convenient to disclose in order to announce the opportunity to be admitted into a job class, effective and applicable during a certain period of time.
- (20) Demotion.—Means a change of an employee from a job class to a job in another class with functions and basic salary of a lower level
- (21) Differential.—Means a special and additional compensation, apart from the salary, that may be granted when there are

extraordinary nonpermanent conditions or when an employee holds a position as an acting official.

- (22) Director.—Shall mean the Director of the Office.
- (23) Work Team.—A group of individuals with objectives in common and committed to contribute to the achievement of the organization's goals.
- (24) Eligible.—Shall mean a person whose name appears validly in the eligible candidate register.
- (25) Compensation Schedule.—Compensation margin that provides for a minimum rate, a maximum rate, and various intermediate levels in order to compensate the level of work involved in a particular job class and the adequate and progressive amount and quality of work performed by the employees at a particular job class.
- (26) Class Specification.—Shall mean a written and descriptive statement in generic form which indicates the prevailing characteristics of the work involved in one or more positions in terms of the nature, complexity, responsibility and authority, as well as the minimum qualifications that the candidates must have to occupy the positions.
- (27) Salary Structure.—Shall mean the compensation structure composed by the various schedules, which shall be used in the assignment of job classes within a Classification Plan.
- (28) Test.—Shall mean a written, oral, physical, or performance test, as well as evaluations based on experience and education, or other objective criteria used to determine

whether a person has the capability to perform the functions of a job.

- (29) Schedule Extension.—Shall mean the extension of a salary schedule departing proportionally from the maximum rate thereof.
- (30) Public Function.—An inherent activity carried out in the exercise or performance of any office, job or position within the public service, whether it be compensative form or for free, or permanent or temporary form, by virtue of any kind of appointment, contract or designation for the Legislative, the Executive, or the Judicial Branch of the Government of Puerto Rico, as well as for any of its agencies, departments, subdivisions, instrumentalities, public corporations, or municipalities.
- (31) Acting Capacity Service.—The temporary services rendered by a career employee in a position of which the classification is higher to that of the position to which he or she was officially appointed, by virtue of a written designation from the appointing authority or its authorized representative and in compliance with all other applicable legal requirements.
- (32) Corrective Measure.—Oral or written warning made by the supervisor to the employee when the latter incurs or relapses into an infraction to the norms of conduct established, and which does not become a part of the employee's record.
- (33) Acknowledgment Memorandum.—Documents, letters or certificates whereby an employee's positive performance is recognized.

- (34) Urgent and Unpostponable Need.—Those essential or indispensable actions that need to be carried out urgently in order to fulfill the functions of the agency. It does not include those actions that are merely convenient or advantageous, the carrying out of which may be postponed until the regular processing is performed.
- (35) Office.—Shall mean the Human Resources Office of the Commonwealth.
- (36) Probation Period.—Is a term during which an employee, upon being appointed to a position, is in a period of training and testing and is subject to evaluations of his/her performance of his/her duties and functions. During said period, the employee has not acquired any proprietary rights over the position.
- (37) Job Classification or Appraisal Plan.—Shall mean the system through which the different positions that integrate an organization are systematically analyzed, ordered, and appraised, without being limited to those positions established on the basis of factors, points, etc.
- (38) Compensation Plans.—Shall mean the systems adopted by Individual Administrators, whereby the compensation for career and confidential services are fixed and administered pursuant to the provisions of this Act, the regulations and the agreements reached.
- (39) President of the Commission.—The Chief Executive Officer of the Appeals Commission.

- (40) Prevarication.—To propose, whether knowingly or due to inexcusable ignorance, determinations which are evidently unfair.
- (41) Merit Principle.—Refers to the concept on which basis all public employees shall be selected, promoted, retained and treated in all matters concerning their employment based upon their capability and without discrimination for reason of race, color, gender, birth, age, social condition or origin, political or religious beliefs, veteran status, or physical or mental disability.
- (42) Bona Fide Projects or Programs.—Programs created through an administrative order or a formal proposal by the head of the agency to fulfill needs or to provide a nonrecurring service, indicating the objectives, the date of commencement and completion, the human and fiscal resources originated, and the indicators or measuring standards which shall allow for the corroboration of the achievement of such objectives.
- (43) Position.—Shall mean a set of duties and responsibilities assigned or delegated by the appointing authority, which require the hiring of a person.
- (44) Reclassification.—Shall mean the action of classifying or appraise a position which had been previously classified or appraised. Reclassification may be made to a higher, an equal or a lower level.
- (45) Eligible Candidate Register.—Shall mean a list of the names of persons who have qualified to be considered for

appointment to a specific class, listed in descending grade order.

(46) Readmission.—Shall mean the reintegration or the return to service, through a certification, of any regular career employee, after having separated from the service for any of the following causes:

- a) a disability which no longer exists
- b) layoff due to the elimination of positions
- c) resignation from a career position being occupied with a regular status
- d) severance from a confidential position without having exercised the right to reinstatement.

(47) Secretary.—The Secretary of the Commission.

(48) Active Service.—Any term of service in which the employee is present and performing the functions of a position or connected to the service through the granting of any kind of leave with pay.

(49) Human Resources System.—Shall mean the agencies constituted as Individual Administrators.

(50) Transfer.—Means the change of an employee from one position to another within the same class or to a position in another class with functions or a basic salary of a similar level.

Article 4.—Public Service Human Resources Administration.—

The Public Service Human Resources System shall be governed pursuant to the following provisions.

Section 4.1.—Office.—

The Office shall be known as the Human Resources Office of the Commonwealth of Puerto Rico.

Section 4.2.—Appointment of the Director.—

The Office shall be headed by a Director, who shall be appointed by the Governor with the advice and consent of the Senate of Puerto Rico. The Director shall be a person with extensive knowledge and experience in the fields of human resources administration and labor relations.

Section 4.3.—Functions and Powers of the Office and the Director.—

In addition to the functions and powers conferred by other provisions of this Act, the Office and the Director shall have the following:

1. Functions and powers of the Director:
 - a. Appoint the Office staff pursuant to the provisions of this Act and contract all those services required for the functioning thereof.
 - b. Supervise the administration of the Human Resources System guided under the public policy set forth in this Act.
 - c. Approve and promulgate norms and directives, pursuant to Act No. 170 of August 12, 1988, as amended, which shall govern the relations between the Office and the agencies and municipalities.
 - d. Approve, promulgate, amend, or repeal regulations as necessary for the administration of this Act.
 - e. Delegate any function or power conferred except for that of adopting and approving regulations.
 - f. Advise the Governor and the Legislature in all matters concerning labor relations and the administration of human resources in the public service.

administration of collective bargaining agreements, and all those areas related to with labor matters of the agencies. In the discharge of the functions of advising in regard to collective bargaining, the Office shall coordinate and supervise the creation and functioning of a Negotiation Committee, composed of its staff as well as that designated by the Office of Management and Budget. The Office shall conduct comparative studies on collective bargaining agreements and shall provide trainings in the area of labor to those agencies that so request.

- f. Conduct studies and research directed to providing advice to agencies, so that the supervisors and the directive personnel thereof may be prepared and trained to work in an environment where the workers are organized into unions.
- g. Implement an integrated competency program in the administration of human resources and labor relations in the public service. Provide advise, technical assistance or any other service, seminars or conferences for the development and maintenance of the Human Resources System or other matters related to those public, private or quasi-public entities, including municipalities.
- h. Bill for technical, human resources and labor advisory, mediation, and training services as well as for the use of facilities, materials and equipment loaned to instrumentalities, public corporations or components of the government that are not a part of the Human Resources

System created in this Act, and to private sector entities when these so request.

- i. Implement a plan to follow up on the human resources administration program through audits on the functioning of the Human Resources System, and the application of the Merit Principle and compensation methods in Individual Administrators and municipalities, as provided by the Autonomous Municipalities Act. These shall put at the disposition of the Office all the information and documents, as well as those resources deemed to be necessary to carry out said function. The Office shall render reports periodically on the final results of said audits to the corresponding appointing authorities, to the Office of the Governor, and to the Office of the Comptroller of Puerto Rico. In the case of municipalities, said reports shall also be sent to the Office of the Municipal Affairs Commissioner (OCAM, Spanish acronym) and to the Legislature.
- j. Contract, purchase or acquire any materials, supplies, equipments, parts or services deemed to be necessary, subject to the regulations adopted for these purposes, and in observance of the general provisions of the General Services Administration Act. The regulations shall contain appropriate norms to protect the better use and yield of funds in the manner most compatible with the public interest.
- k. Accept donations or funds on account of appropriations, as well as materials, properties or other analogous benefits when proceeding from any private person or institution or

from the Federal Government, or from the municipal governments, or from any instrumentality or agency of said governments.

- l. Enter into agreements or contracts as necessary or convenient for the fulfillment of the purposes of this Act, with, among others, Federal Government entities and with the commonwealth and municipal governments, as well as the agencies of the Commonwealth, and with private nonprofit and for-profit individuals and institutions.
- m. Provide advice to agencies and municipalities on the applicable norms concerning specialized matters in connection with human resources, including matters of compensation and labor relations.
- n. Create a research and development unit geared toward identifying innovations and generating new knowledge and new programs on human resources administration, including the incorporation of computer technology.
- o. Require all government components from the three branches of government to provide the information needed to develop and keep up to date an information system on the state of the human resources administration system and the composition of the work force of the public sector.
- p. Administer the occupation and class directory of the Public Service.
- q. Regulate and implement provisions related to the prohibition of actions by human resources during the electoral prohibition period.

r. Promote mediation as a mechanism to settle disputes.

Both the Director and the Office shall carry out all those functions they are assigned by special laws which have not been repealed by this Act. Likewise, they shall perform the specific functions assigned, as well as all those functions inherent, needed, or convenient to the achievement of the purposes of this Act.

Article 5.—Public Service Human Resources Administration System.—

Section 5.1.—Creation.—

A Human Resources Administration System is hereby created, to be completely amenable to collective bargaining, whose primal objective shall be to apply, evaluate and protect the merit principle within the public service.

This System shall be administered by the appointing authorities, with the advice, assistance and supervision of the Office, and shall comprise all agencies constituted into Individual Administrators, as well as those employees or entities not expressly excluded by this Act.

Section 5.2.—Individual Administrators.—

The following agencies shall be Individual Administrators:

1. All those agencies originally constituted as such by their organic acts, or subsequently turned into such by virtue of executive directives approved by the Governor.
2. All permanent commissions or commissions of indeterminate duration created to address specific situations or to conduct special studies.

3. All agencies denominated as such by Section 5.3 of Act No. 5 of October 14, 1975, as amended, known as the Public Service Personnel Act, at the time of approval of this Act.
4. The Department of Education (to this end, Section 1.07 of Act No. 68 of August 28, 1990, is hereby amended).
5. The Government Ethics Office (to this end, Section 2.1 of Act No. 12 of July 24, 1985, as amended, is hereby amended).
6. The Drug Control Office (to this end, Section 1 of Act No. 3 of March 13, 2001, is hereby amended).
7. The Office of the General Social and Economic Financing Coordinator (to this end, Section 3 of Act No. 1 of March 1, 2001, is hereby amended).
8. Any other agency of the Executive Branch that receives its budget appropriations from the general fund, except for those expressly excluded by Section 5.3 of this Act.

Section 5.3.—Exclusions.—

The provisions of this Act shall not apply to the following government agencies and instrumentalities:

1. the Legislative Branch
2. the Judicial Branch

In the event Act No. 45 applies to Judicial Branch employees, the categories of auxiliary bailiff and court stenographer shall be excluded.

3. Public or public-private corporations or instrumentalities that operate as private businesses.
4. the University of Puerto Rico
5. the Office of the Governor proper

6. the Commonwealth Elections Commission of Puerto Rico

In the case of public or public-private corporations, these shall adopt personnel regulations that incorporate the merit principle within the administration of their human resources, pursuant to the provisions of this Act.

Section 5.4.—Relationship Between the Office and Individual Administrators.—

The provisions concerning the relationship between the Office and Individual Administrators are contained within the text of this Act. The following guidelines shall also govern such a relationship:

1. All Individual Administrators, whether covered or not under Act No. 45 of February 25, 1998, shall adopt for themselves a set of regulations in connection with those areas that are essential to the merit principle, and which regulations shall conform to the provisions of this Act. Furthermore, in what concerns personnel excluded from unionization, the regulations shall include all those areas regarding personnel which, even if not essential to the merit principle, are necessary to ensure that the Human Resources Administration System created by virtue of this Act is a modern and fair system that facilitates the application of the principle merit.
2. The Office shall render the pertinent decision when there are differences of interpretation or application with an Individual Administrator, whether or not covered under Act No. 45, *supra*, in connection with the provisions of this Act or the regulations adopted by the Office concerning areas that are

essential and not essential to the merit principle, compensation, or normative provisions adopted by an Individual Administrator. Should it not be satisfied, the Individual Administrator may appeal at the Commission within the term of thirty (30) days counted from the date of notice of the decision or finding made by the Office.

3. With the periodicity it may deem pertinent, the Office shall audit the human resources administration programs of each Individual Administrator; to such effect, agencies shall be notified in writing by the Director of the Office and the agencies shall be under the obligation to put at the disposition of the Office, all documents and information required for examination by the assessing specialists.
4. Appointing authorities shall be under the obligation of imposing the pertinent disciplinary action on any official or employee who intentionally or due to carelessness or negligence fails to comply with any of the provisions of this Act.
5. The appointing authority or the official who is acting on its behalf, who violates any provision of this Act intentionally or due to carelessness or negligence, shall be punished not only by the applicable provisions that may be included in the Regulations adopted by the Individual Administrators or the directors of public corporations or of any other government dependency covered under this Act, but it shall also respond in their personal capacity in civil action and without being

able to seek cover under the provisions of Sections 12 and 13 of Act No. 104 of June 29, 1955, as amended.

Article 6.—Public Service Human Resources Administration.—

Section 6.1.—Areas Essential to the Merit Principle.—

The following are the Areas Essential to the Merit Principle, which shall be applicable to the Public Service Human Resources Administration System established by virtue of this Act, except for confidential service:

1. Classification of Positions;
2. Recruitment and Selection;
3. Promotions, Transfers, and Demotions;
4. Training; and
5. Retention.

Section 6.2 .—Provisions on Job Classification.—

As an effective instrument to seek the implementation of Government programs, each Appointing Authority shall be responsible for establishing and maintaining a rational structure of functions that leads to the greatest uniformity possible and which serves as a basis for actions concerning personnel. To achieve this purpose, the agencies may use the work analysis and position evaluation methods most suitable to their operational functions and organizational reality. When classifying or appraising their jobs, the agencies shall comply with the following provisions:

1. The functions to implement government programs shall be organized in a manner such that logical work units can be identified. These, in turn, shall be integrated under groups of duties and responsibilities which shall constitute the basic work unit, i. e., the job.

2. A written description of each job shall be prepared, a copy of which shall be given to each employee. The job description shall be made in a manner such that it serves to illustrate the employee concerning the general, essential and marginal functions he or she must perform, as well as the purpose of each function, in order to enable the Nominating Authority to properly fulfill its public endeavor.
3. Jobs shall, in turn, be grouped into job classes or their equivalent in other appraisal plans. Jobs shall be grouped on the basis of elements that are similar, in order to be able to demand from their occupants to meet equal requirements, as well as the same criteria for their selection and so that the same compensation may be applied.
4. A description of each class or its equivalent in other appraisal plans shall be prepared in writing, which shall contain the basic elements common to the jobs included therein. The description of the basic common elements shall include among others, the levels of responsibility, authority and complexity of the job group; examples of the work, education, experience, knowledge, abilities and minimum skills required, and the duration of the probation period. Each class, or its equivalent in other appraisal plans, shall be designated with an official title which shall be descriptive of the nature and level of the work involved, which shall be used for personnel and budget actions.
5. Each Individual Administrator shall establish or have in effect, separate job classification or appraisal plans for the

career service and the confidential service. Classes or their equivalent in other appraisal plans shall be placed into groups on the basis of an occupational or professional scheme, and said scheme shall be an integrated part of the job classification or appraisal plans.

6. All jobs shall be classified within the classification or appraisal plan corresponding to career or confidential service. No person may be appointed to a job that is not classified within one of the classification plans. Otherwise, the personnel appointment or action shall be null and void.
7. Job classification or appraisal plans shall provide for the mechanisms to create, eliminate, consolidate or modify classes or their equivalent, as well as contain the mechanisms necessary for there to be levels of improvement compatible with the needs of the services, without having jobholders perform functions which are essentially different.
8. It shall be the responsibility of each Individual Administrator to modify job classification or appraisal plans for the purposes of keeping them up to date in accordance with the changes experienced functional or organizational structure of the agency. The Office may issue norms concerning the maintenance of job classification or appraisal plans.
9. When circumstances so warrant, the Appointing Authority may change the duties, authority and responsibility of a job, pursuant to the criteria and mechanisms established therefor through regulations.

10. It shall be the responsibility of each Appointing Authority to determine the relative hierarchy among the different classes, or their equivalent in other appraisal plans. These actions shall respond to an internal logic pattern, based on the organization of the agency and the nature and complexity of the functions.
11. The permanent functions of the agencies shall be addressed through the creation of jobs, regardless of the origin of the funds. When temporary needs arise, as well as emergency or unforeseen situations, or *bona fide* programs or projects of a determinate duration, that are to be financed with federal, commonwealth or combined funds, transitory jobs of a fixed duration shall be created for a period not greater than twelve (12) months, which term may be extended while the circumstances that gave rise to the appointment persist. Agencies may create such fixed duration jobs, contingent upon their budget condition. In the case of *bona fide* programs or projects, the job term may be extended for the duration of the *bona fide* program or project, upon the approval of the Office.
12. Fixed duration jobs shall be classified in conformance with the job classification or appraisal plans of the career service or the confidential service, as the case may be. In the case of fixed duration jobs to tend to needs of the confidential service, the provisions of Section 9.1, subsection 3, of this Act shall be observed.

13. Appointing authorities shall abstain from executing service contracts with persons in their personal character when the conditions and characteristics of the relationship established between the employer and the employee are inherent to a job.
14. Agencies shall abstain from creating fixed duration jobs to tend to permanent needs or to perform functions of vacant permanent jobs. However, upon beginning new programs or as new permanent needs arise within a program, fixed duration jobs may be created for a term not greater than six (6) months while the regular career job positions are being created.
15. The provisions of this Section shall not apply to ranking systems.
16. Agencies shall send for their registration at the Office, a copy of all job classification or appraisal plan, as well as the amendments and modifications or actions for maintaining the plan.

Section 6.3.—Provisions on Recruitment and Selection.—

Agencies shall offer the opportunity of competing in their recruitment and selection procedures, to any qualified person, in attention to aspects such as: academic, professional and work achievements, knowledge, capability, abilities, skills, work ethic; without discrimination for reason of race, color, sex, birth, age, social origin or condition, political or religious beliefs, veteran status, or physical or mental disability.

1. Any candidate interested in entering into the public service shall meet the following general conditions:

- a. be a United States citizen or a foreigner legally authorized to work pursuant to applicable legislation;
- b. be physically and mentally capable of performing the essential functions of the job;
- c. comply with the applicable provisions of the Internal Revenue Code, as amended, concerning the filing of income tax returns for four (4) years preceding the job application;
- d. not be guilty of dishonorable conduct;
- e. not to have been convicted of a felony or of any crime that implies moral turpitude;
- f. not to make illegal use of controlled substances;
- g. not to be an addict to the habitual and excessive use of alcoholic beverages;
- h. not to have been removed from public service or convicted of the felonies or misdemeanors listed in Section 6.8 (3) of this Act within the jurisdiction of the Commonwealth of Puerto Rico, the federal jurisdiction or the jurisdiction of any of the states of the United States of America.

Conditions (d) to (h) shall not apply when the candidate has been habilitated to hold a job in the public service.

2. Any person that is to hold a job in the public service, whether by original appointment or by any other personnel action, shall meet the minimum education and experience requirements established for the corresponding job class.
3. The following shall be general provisions that shall govern the employee recruitment and selection for regular job positions within the career service:

- a. Recruitment shall be carried out through a procedure whereby aspirants compete under equal conditions.
- b. Summons shall include the recruitment norms for each job class, which shall be geared toward attracting the best available resources to the Public Service. Summons shall include without being limited to the title of the job class, nature of the job, salary, the requirements to have approved a test or tests, when such is the case, and education and/or experience requirements that the aspirants to the job must have at the very least. Minimum education and/or experience requirements shall, in turn, conform to that which is established in the classification plans or the method used to appraise jobs. The summons shall establish the kind of competition authorized for each class by indicating whether the competition shall be limited to employees of the agency itself or to employees of the agencies covered under this Act or open to the general public. They shall also include the criterion or criteria to be used to sort the names of the eligible candidates within the corresponding registers, such as: grade point average; grades in revalidations, exams or group interviews; and points in evaluations as to their education and/or experience in addition to the established in the minimum requirements, or a combination thereof. Summons shall also include, in the appropriate cases, aspects such as: passing grades for exams; evaluating factors for interviews and evaluations as to education and experience; and relative values adjudicated to each criterion used to sort

the names in the registers when using more than one criterion. Said summons shall be reviewed periodically so that they may reflect the changes in the job market and other conditions.

- c. Job summons shall be published in the web page of the government and through the media most appropriate for each case, in order to be able to reach resources. When the announcement of job opportunities establishes a term for filing applications, it shall be published with at least ten (10) work days before the closing date. The diversity of media or the medium to be used in the diffusion and the term to receive applications shall be subject to criteria such as the following: degree of specialization of the job class, job market, amount of jobs to be covered, geographical area of the job opportunity, and the kind of competition. Any job opportunity announcement shall indicate the title of the job class, the nature of the work, the minimum requirements, the salary schedule, the term for filing applications, and any other necessary information such as the kind of competition, the kind of test and/or the criteria for the evaluation or sorting of the names in the eligible candidate register. The Office, together with the Office of Management and Budget, shall regulate the publication of summons in the web page.
- d. In those cases where it is determined that recruitment is to be carried out through a test approval process, any person who has taken the test may request the review of his/her test results if he or she does so within a term of fifteen (15) days

as of the date the notification of said results were sent through the mail.

- e. Eligible candidate registers shall be sorted in a strictly descending order by using the grades or points obtained for the corresponding job class. In cases where there are equal grades, the order may be determined by taking into account one or more of the following factors:
 - 1. general or specialized education;
 - 2. experience;
 - 3. grade point average in academic or specialized education;
 - 4. date the application was filed.
- f. Vacant regular career jobs shall be covered by means of a selection process that shall include the following stages:
 - 1. The certification of the number of eligible candidates that the appointing authority determines through regulations, which shall not be greater than ten (10) per vacant job to be covered, within their corresponding order in the eligible candidate register.
 - 2. Selection by the Appointing Authority of one of the certified candidates within a reasonable time limit which shall be determined by the agency in the regulations it adopts by virtue of this Act, being it established that after fifteen (15) work days as of the date of issue of the certification of eligible candidates, such eligible candidates may be included in other

certifications even if the corresponding selection has not yet been carried out.

3. The certified candidates who are not selected shall be given written notice thereof. In said notice, they shall be informed that they were not selected, as well as of their ensuing inclusion in the eligible candidate register.
4. Satisfactory compliance of the probation period established. The probation period shall comprise an entire cycle of the functions of the job. This period shall be of not less than three (3) months and not greater than one (1) year, except for those agencies whose organic acts or special laws provide for a probation period of a different duration, with a more extensive work cycle. Official forms designed for these purposes shall be used and the evaluations made shall be discussed with employees. The final action shall be notified in writing to the employee at least ten (10) days in advance of its effectiveness. Agencies and municipalities shall regulate the provisions on the probation period.
 - g. Upon satisfactorily completing the probation period, the employee shall become a regular career employee.
 - h. Each agency may establish through regulations, special recruitment and selection procedures:
 1. For jobs requiring non-skilled or semi-skilled workers.

2. To guarantee equal opportunity employment for participants in training and employment programs, in order to achieve the goals of such programs.
- i. Persons appointed to fixed duration jobs shall have a transitory status. Also of a transitory status shall be those appointments to permanent career jobs made under the following circumstances:
 1. When the person holding the job is out on leave without pay,
 2. When there is not an adequate eligible candidate register for a job that requires a certain kind of license and the candidate to be appointed holds a provisional license.
 3. When the person holding the job has been removed and has appealed this action at the appeals forum.
 4. When the person holding the job has been suspended from job and pay for a determinate period.
 5. When the person holding the job is moved to another position through a transitory appointment and is entitled to return to his or her former job.
 6. When in addressing the needs of the service, it is indispensable to cover a position reserved for a person on scholarship, in which case, the transitory appointment shall be extended for the duration of the scholarship.
 7. When an emergency arises in the rendering of services which makes it impossible or difficult to certify

candidates within an eligible candidate register, in which case, the appointment shall have a duration of not more than six (6) months. Upon termination of this period, if the appointing authority believes that the conditions which motivated the original appointment persist, it may extend said appointment for an additional term of six (6) months.

8. When the person holding the regular career job moves to a position within the confidential service.
 - j. Transitory appointments may be made within the confidential service.
 - k. The persons to be recruited into transitory non-skilled or semi-skilled jobs shall be subject to an evaluation for the purpose of determining whether they meet the minimum requirements for the job and the general conditions for being admitted into the public service. Transitory appointments in the confidential service shall be governed by Section 9.1(3) of this Act. Such appointments may not exceed a term of twelve (12) months, except for positions authorized for programs or projects of definite duration. Transitory appointments in permanent jobs may when the circumstances which originated said appointments persist, except when as provided for in subsection (i)(7) above.
 - l. Each appointing authority may authorize selective certifications when the special qualifications for the job so require officially.

- m. The personnel comprised within the confidential service as defined in this Act shall be selected at will and removed at will, and they shall meet those requirements in terms of education, experience and other nature, as the Appointing Authority may consider indispensable for the proper performance of the functions assigned to the job.
- n. Persons may have their application declined, their tests cancelled or their eligibility in the registry annulled, or be declared ineligible for the public service if they fail to meet the requirements established or if they have attempted to deceive or commit fraud in terms of the information submitted, or if they have attempted to commit or have committed a crime against public property, such as misappropriation, theft or mutilation of the tests to be administered or already administered. The above, in the case of public employees, may constitute grounds for removal or the imposition of any other disciplinary measure.
- o. The regulations of each of the agencies shall provide for the cancellation of registers when these do not respond to the needs of the public service, and it shall be required for the candidates listed on said register to be given notice of such cancellation through public announcement and the government web page.

Section 6.4.—Provisions on Promotions, Transfers, and Demotions.—

Individual Administrators shall provide the proper mechanisms for the promotion, transfer and demotion of employees, for the placement of these in jobs where they may derive greater satisfaction from their work and

contribute with their efforts to the achievement of the objectives of the organization with greater efficiency, pursuant to the following provisions:

1. Promotions.—

- a. The Appointing Authority shall determine the job classes, or their equivalent in other job appraisal plans, that due to the particular needs of the agency or the nature of the functions of such job classes, require for them to be covered by promoting employees.
- b. Employees in career jobs may be promoted through tests that may consist of written, oral, physical or performance tests, or an evaluation of education and experience. In addition to these, evaluations from the supervisor may be taken into account, as well as the analysis of employees' records and the trainings they have taken in connection with the functions of the job to which they intend to be promoted.
- c. Announcement shall be made of promotion opportunities, in order for all duly qualified candidates to be able to compete. If after having announced such opportunities there fails to be as reasonable amount of persons who meet the minimum education and experience requirements established, the manner in which to cover those jobs or to render the services shall be the manner provided for in Section 6.3 (3) of this Act for regular recruitment and selection procedures.
- d. Promotions without opposition may be authorized when the special and exceptional demands of the service and the special qualifications of employees so warrant, after having approved the test. Special and exceptional demands of the

service shall be understood to be the assignment or commission of new functions or programs; the extension of the array of services rendered by the agency; the need to recruit personnel capable of preserving continuity in the rendering of services without the need for further orientation; unavailability of an adequate eligible candidate register; urgency to cover a vacant position which renders the regular procedure unfeasible. Furthermore, special qualifications of the employees shall be understood to be additional experience; academic education beyond minimum requirements; and the results obtained in the Evaluation System adopted by the Agencies.

- e. All promoted employees shall comply with the probation period assigned to the job class to which they have been promoted.

2. Transfers.—

- a. Transfers from one job to another may be made within the same class, or its equivalent in other job appraisal plans, or from one job in one class to another job in another class, provided the employee meets the minimum education and experience requirements of the job class to which he or she is to be transferred.
- b. When the transfer is to a job in another class, or its equivalent in other appraisal plans, employees shall be subject to the probation period required for the new job. This requirement may be foregone when the transfer responds to duly justified needs of the service.

- c. Transfer of employees within the same agency shall be allowed, as well as transfers between Individual Administrators, and between Individual Administrators and municipalities, pursuant to the norms to be issued by the Office for these purposes.
 - d. Transfers may not be used as a disciplinary measure or be made arbitrarily.
 - e. In the appropriate cases where it is justified, Appointing Authorities shall be empowered to take all preemptive, provisional and appropriate measures in order to preserve a healthy and safe work environment and the rendering of the best services, such as the movement of personnel, without it constituting a final adjudication of any action or claim. In no case shall the transfer or the preemptive movement of personnel be burdensome for the employees being subject thereto.
3. Demotions.—
- a. Demotions may be made when employees so request or when jobs are eliminated and they cannot be placed in a job similar to that which they held.
 - b. In the cases of demotion, employees must state in writing their agreement therewith; excepting from this provision those cases in which such an action responds to the elimination of jobs and the absence of similar jobs that would allow for the lateral placement of the employee.

- c. Demoted employees must meet the minimum education and experience requirements established for the job class to which they are being demoted.
4. Other Actions.—
- a. Agencies may make designations, changes or assignments in an administrative manner for a reasonable term, not to be greater than twelve (12) months, provided said action is not burdensome for the employee.
 - b. In those agencies in which the concept of ranking is used, transfers, demotions and degradations may be used as disciplinary as long as their organic acts so authorize. In these cases, the consent of the employee shall not be required.

Section 6.5.—Provisions on Training.—

1. Given the fact that training constitutes an area which is essential to the merit principle, it is a compelling interest to integrate the same into the Office to conduct studies and research on human behavior in the workplace, in order to conform Puerto Rican reality to the experience and results obtained in other research centers, and to use the training and the competency training of personnel as manners in which to propitiate an appropriate working environment in the public service.
2. It is hereby instituted as a basic concept in administration, that in order for an agency to fulfill its mission, it shall seek the utmost development of its human resources and provide the administrative tools for their best use.

3. The Human Capital Development Division is hereby created in the public service as a part of the Office, to perform the functions indicated below:
 - a. identify the needs for the development of human resources in the public service;
 - b. plan, administer and evaluate competency and other training activities to satisfy the needs of the personnel in the public service;
 - c. develop human resources administration research programs;
 - d. provide advice to Government agencies on the implementation of positive results yielded by research, for the improvement of human resources administration;
 - e. coordinate the scholarship program granted to the agencies by the Government.
 - f. develop, in coordination with the agencies, the granting of study leaves with pay.
4. Officials and employees of the municipalities, the Government of the United States of America and the State Governments, the public corporations and the other branches of the Commonwealth of Puerto Rico may participate in the training programs developed by the Office, as well as officials and employees from foreign countries on scholarship from international entities, which participation shall be contingent upon payment by the corresponding entity to the Office for the services to be offered.
5. The Director is hereby authorized to contract the services of any officials or employees of any department, agency, board, public corporation, dependency or political subdivision of the

Commonwealth of Puerto Rico, including its municipalities, and to compensate them for the additional services they render as trainers or speakers in personnel competency and other training activities, outside their regular working hours and with the prior consent of the Appointing Authority of the government entity for which they render services, without being subject to the provisions of Article 177 of the Political Code.

The specific provisions to govern personnel competency and other training shall be the following:

1. Each agency shall be responsible for preparing a biannual or an annual plan for competency and other training and the development of its human resources based on a study of the programmatic priorities and needs.
2. The plan shall include the adequate use of training means such as scholarships, leaves with or without pay for pursuing studies, seminars, intensive education workshops or courses, payment of tuition, apprenticeships, or personnel exchange in Puerto Rico with foreign countries.
3. The Office may offer advice and technical assistance to the agencies as needed for preparing the training needs plan, as well as the study on which said plan is based.
4. The general and common competency and other human resources training needs shall be canalized through the Office in order to respond to priorities in public service.
5. The particular and specific human resources development needs may be handled by the agencies when the Office notifies that it is unable to satisfy the needs included within the training plan.

6. In the case of specific needs, Individual Administrators shall establish the criteria for the selection of persons to be trained, as well as the instructors, the content of the training courses and the evaluation thereof, and they shall maintain evidence of these. In the case of general and common needs, the criteria may be established by the Office.
7. Each agency shall keep a history per employee of the training received to be used in the making of decisions regarding promotions, transfer, work assignments, evaluations, and other personnel actions compatible with the merit principle.
8. Agencies shall manage their scholarship and their study leave with or without pay programs, and they may receive from the Office the advice and the technical assistance necessary to manage such programs.
9. Beneficiaries of scholarship or study leave with pay programs of any agency or municipality shall be under the obligation to render services to the Government for a term equal to double their term used for studies, once they have concluded the same, unless the Office releases them from said obligation. Likewise, the Government shall be under the obligation to hire persons on scholarship conforming to the financial possibilities and the needs of the service as stated in the contract executed.
10. When granting scholarships, the following requirements shall be met:
 - a. Opportunities for the granting of scholarships shall be announced.
 - b. Candidates shall compete on an equal footing.

- c. Candidates shall be selected from among those who qualify. If after having announced the opportunities and concluded the procedures there is only one qualified candidate, he or she may be granted the scholarship. All persons on scholarship appointed after having completed their studies, shall be exempted from taking the test that corresponds to the job class, or its equivalent in other job appraisal plans, for which he or she was granted the scholarship.
 - d. Scholarships may be granted without opposition when the special and exceptional demands of the service and the qualifications of employees so warrant.
 - e. Persons selected to receive scholarships or study leaves with pay who do fail to meet the obligation assumed shall reimburse the amount invested plus interest at the legal rate from the time the funds were reimbursed, and shall not be eligible for admission into the public service for a term equal to triple the time they were studying.
11. The appointing authority shall freeze the position reserved for the person on scholarship, except due to needs of the service, when it may be covered through a transitory appointment for the term of duration of the scholarship.
12. Should there be no vacant position into which to appoint the person on scholarship upon completion of his/her studies, the job shall be created from any fund available in the agency. If due to an unforeseeable or emergency situation this were rendered impossible, the name of the person on scholarship may be

included in the eligible candidate registers for job classes equal or similar to the position for which the scholarship was granted

Section 6.6.—Provisions on Retention.—

1. Career employees with regular status shall have a secure job as long as they satisfy productivity, efficiency, habit, attitude, order and discipline standards that should prevail in the public service. Such standards shall be established on the basis of the functions of the jobs, the duties and the obligations, among other factors, as provided for further in this Act, as well as such others that in agreement with the operational function of each agency, are necessary for the rendering of services.
2. Agencies may determine, and shall be under the obligation to establish, the system to evaluate performance, productivity, achievements and efficient compliance with the standards established for employees which better suit their operational needs. These evaluation systems shall be revised and approved by the appointing authority of each agency.
3. When the behavior of an employee does not conform to the norms and requirements established, each agency must take the necessary and appropriate corrective measures or disciplinary actions. Among others, they may consider oral warnings, written reprimands, job and salary suspension, and removal.
4. The Appointing Authority may only suspend from job and salary or remove any career employee for just cause, after having given written notice of the bringing of charges and an admonishment of his/her right to request a hearing before action is taken.

5. When the behavior attributed to an employee constitutes a real or potential hazard to the health, life, property or morals of the agency employees or the general citizenry, Appointing Authorities may make summary suspensions. In such cases, they shall be under the obligation to hold an informal hearing within ten (10) days after the suspension has taken place.
6. Agencies may negotiate with their union representatives in terms of the procedures to be used when imposing disciplinary measures. Such procedures shall contain the mechanisms needed to guarantee a due process of law and to protect employees from arbitrary dismissals and severances.
7. The duties listed below shall constitute the essential minimum obligations required from all employees, for which disciplinary measures shall be taken when there is failure to comply:
 - a. Attend the workplace regularly and punctually and comply with the working hours established.
 - b. Observe the norms of correct, courteous and respectful behavior in their relations with their supervisors, co-workers and citizens.
 - c. Perform efficiently and diligently the tasks and functions assigned to their job as well as others compatible therewith as they are assigned.
 - d. Obey such orders and instructions from their supervisors that are compatible with the authority delegated to the latter and with the functions, activities and objectives of the agency where they work.

- e. Maintain the confidentiality of matters related to their work, unless they are formally required or allowed by a competent authority to disclose the same.
 - f. Perform tasks outside their working hours when the needs of service so demands, provided they have been notified reasonably in advance.
 - g. Ward, preserve and safeguard, including but not limited to, all public documents, property and interests.
 - h. Comply with the provisions of this Act and the rules and orders issued hereunder.
 - i. Comply with the ethical and moral conduct norms established in the Government Ethics Act, Act No. 12 of July 24, 1985, as amended, and its regulations.
8. In agreement with the stated above, it is hereby provided that employees may not carry out, among other and similar actions, the following:
- a. Accept gifts, donations or any other reward for the work performed as public employees, except for those authorized by law.
 - b. Use their official position for political partisan purposes or for other ends which are not compatible with public service.
 - c. Perform functions or tasks that create a conflict of interest with their obligations as public employees.
 - d. Carry out or omit any action as prohibited under the Government Ethics Act of the Commonwealth of Puerto Rico, Act No. 12 of July 24, 1985, as amended.

- e. Show a conduct which is inappropriate or harmful to the god name of the agency or the Government of the Commonwealth of Puerto Rico.
 - f. Be guilty of prevarication, bribery, or immoral conduct.
 - g. Carry out any act which impedes the application of this Act and the rules adopted hereunder; do or accept willingly any false declaration, certification or report in connection with any matter covered under the law.
 - h. Give, pay, offer, solicit or accept, directly or indirectly, money, services, or any other valuable in exchange for an eligible status, appointment, promotion or other personnel action.
 - i. Be guilty of conduct related to crimes against the public treasury or the public faith and function, or which involve public funds or property.
9. Layoffs may be decreed in the service, without it constituting a disciplinary action or a removal, under the following circumstances:
- a. Due to the elimination of jobs for a lack of work or funds. In these cases, layoffs shall be decreed within the groups of employees whose jobs have the same classification title and considering the status of each employee within the group, as well as their productivity, habits and attitudes as reflected in their evaluations, and their seniority in terms of service. In order to determine seniority, all services rendered in jobs in the agencies comprised within the System shall be considered. The Appointing Authority of each agency shall

give all employees to be laid off, written notice not less than thirty (30) days in advance of the date on which the layoff is to take place. No employee layoff shall be effective unless the notice requirement is met. Each agency shall establish a written procedure to the effect of decreeing layoffs in case these are necessary, and the same shall be disclosed or available for the knowledge of any employees interested.

Before decreeing layoffs due to the elimination of jobs for a lack of work or funds, all other resources available shall be exhausted in order to prevent such layoffs by taking actions such as:

1. Placement of personnel in jobs of an equal or similar classification, in departments, offices or programs in which there is a need for personnel.
2. Retraining of employees in order to place them in other job, when this can be done in reasonable advance of the deadline for decreeing such layoffs.
3. Use of the vacation leave accrued.
4. Leave without pay until the budgetary crisis lapses, when the agency has made the decision based on a temporary budgetary insufficiency that does not require the permanent elimination of the job. In such cases, the preferential order previously established shall be observed within the method to decree layoffs.
5. Reduction of working hours.
6. Demotion of employees as the last recourse to prevent layoffs.

- b. when it is determined that employees are physically and/or mentally disabled to perform the essential functions of their job, with or without reasonable accommodations. The Appointing Authority may require employees to submit to medical tests when there is evidence of problems in the performance of tasks or security problems, or when so required under other federal laws, to determine the aptitude to perform the functions of a job and when voluntary medical tests are required as a part of health programs. Refusal by employees to submit to the medical test thus required may serve as grounds to presume that they are disabled for the performance of the essential functions of their job. Employees shall be notified of this action, being admonished of their right to request an administrative hearing.
 - c. when employees are disabled due to a work-related accident and under medical treatment with the State Insurance Fund for a term not greater than twelve (12) months as of the date of the accident, pursuant to Section 5-A of Act No. 45 of April 18, 1935, as amended, "Work-Related Accident Compensation Act." Employees shall be notified of this action, being admonished as to their right to request an administrative hearing.
10. A career employee may be severed from his or her job during or at the end of his/her probation period, when it is determined that his/her progress and adaptability to the norms in effect have not been satisfactory, after having been duly oriented and trained. If due to his/her performance and not because of habits or attitudes

an employee were to be severed during the probation period and immediately before his or her appointment, he or she has served satisfactorily as a regular employee in another job, he/she shall be entitled to be reinstated into a job equal or similar to that which he or she held with a regular status. If severance from service was due to habits or attitudes of the employee, severance may proceed through the removal procedure established in the agency.

11. Any transitory employee may be severed from service before the term of duration of his/her appointment lapses, due to just cause and pursuant to the due procedure of law.
12. Severance from service shall be made, pursuant to Section 208 of the Political Code, of any employee convicted of any felony or crime which implies moral turpitude, or infraction of his/her official duties. Provided, that in the cases where the convicted employee is given the benefit of serving part or all of his/her sentence free in the community, the provisions of Act No. 70 of June 20, 1963, shall operate, as well as the procedure established in Section 6.8 of this Act.
13. Any career employee may resign from his/her job at will through written notice given to the Appointing Authority of the agency. This notice shall be given with not less than ten (10) consecutive days before his/her last working day; however, the Authority may, at its discretion, accept the resignation of an employee when presented within a shorter term. The Appointing Authority shall, within the term in which such resignation has been submitted, give written notice to the employee of whether it accepts or refuses the same for there being grounds which warrant an

investigation of the conduct of the employee. In the case of refusal, the Appointing Authority shall conduct an investigation within the shortest term possible to determine whether it should accept the resignation or bring charges.

Section 6.7.—Readmissions.—

The following provisions shall govern the readmission of employees into the public service:

1. Regular employees who resign from their jobs or are laid off due to the elimination of jobs, or due to disability, after having recovered therefrom, shall be entitled to have their names included in the eligible candidate registry corresponding to the job class they held with a regular status or a similar class, or its equivalent in other appraisal plans. This right may be exercised in agencies covered under this Act, in which the employee had held jobs with a regular career status.
2. Persons who recover from their disability, after having enjoyed an annuity for work-related or other disability from any of the retirement systems sponsored by the Government, shall be entitled to have their names included in the eligible candidate register corresponding to the same or similar job classes, or their equivalent in other appraisal plans, as they held at the time they left the job because of the disability, until they are selected. In these cases, they shall be certified as the sole candidates. The Agency shall be under the obligation to appoint these candidates if they are available, but it may require such test or evidence of capability as it deems pertinent.

3. Any person for whom readmission has been approved shall be entitled to appear in the register for a maximum period of three (3) years as of the date of being severed from service or as of the official date the disability no longer exists. Exception from this provision is made of persons who recover from their disability after having been enjoying an annuity for work-related or other disability from one of the retirement systems; in this case, they shall remain in the register until they are selected.
4. Persons entitled to readmission who wish to exercise such a right, with the exception of persons laid off due to the elimination of jobs or those enjoying an annuity for work-related or other disability, shall file a written application with the agency within a period of three (3) years as of the date of effectiveness of being severed from the job they held.
5. The Agency shall give the employee written notice of the action taken in the case of his/her application for readmission. In the case of layoffs, the employee shall be likewise given written notice of the readmission.
6. When rejecting an application for readmission, the Appointing Authority shall inform the employee, in its notice, the cause or causes which gave grounds for its action, and the employee may request a reconsideration of the decision within a term of ten (10) days as of the date of the notice. If the decision is confirmed, the employee may appeal before the Commission within a term of thirty (30) days as of the date of notice of the decision.

Section 6.8.—Habilitation in the Public Service.—

It is necessary for persons who are part of the Public Service not to be guilty of improper conduct sanctioned by our body of laws. However, the State has a great governmental interest in enabling all those persons who were at a determinate time disabled to hold a job in the public service, to overcome the situation that disabled them and be admitted or readmitted, as the case may be, into the public service by their own merits. The following are the norms provided for to make this purpose viable.

1. Any person who has incurred dishonorable conduct, has been an addict to the habitual and excessive use of controlled substances and/or alcoholic beverages, has been convicted of a felony or any crime which implies moral turpitude, or has been removed from public service.
2. Any person who is ineligible for public service pursuant to the provisions of subsection 1 of this Section, shall be entitled to request his/her habilitation by the Director of the Office after one (1) year has elapsed as of the date the fact occurred or as of the date the circumstances that caused the inability were determined, except for the following cases:
 - a. In the cases of addicts to the habitual and excessive use of controlled substances or alcohol, the requirement of one year from the date in which the inability emerged, does not apply. The factor to be considered, before the Office assumes jurisdiction, shall be the certification issued by the Mental Health and Addiction Services Administration indicating that the person is favorably recommended for habilitation.

- b. Any convicted public employee who is granted a suspended sentence or the benefit of parole and is serving his/her sentence in the free community under those limitations imposed by the entities of the Government Corrections System, may file his/her application for habilitation at any time or in default thereof, the Agency for which he/she renders services shall be under the obligation to submit it. The employee shall continue to hold his/her job until the Director determines otherwise, pursuant to the provisions of Act No. 70 of June 20, 1963, as amended.
 - c. Any person who has been acquitted may submit his/her application for habilitation at any time.
 - d. Any convicted person who has been granted a suspended sentence or the benefit of parole and is serving his/her sentence within the free community under those limitations imposed by the entities of the Government Corrections System, may submit his/her application at any time.
3. Any person who has been convicted in the jurisdiction of the Commonwealth of Puerto Rico, in the federal jurisdiction or in any of the states of the United States of any of the crimes listed below shall also be permanently ineligible for employment in or professional service contract with the public service or for aspiring or holding an elective office, when said crimes constitute a felony and has been committed in the exercise of a public function, as defined in Section 1 of Act No. 50 of August 5, 1993:
- a. aggravated misappropriation;
 - b. extortion;

- c. sabotage of essential public services;
- d. construction fraud;
- e. illegal enrichment of a public official;
- f. exploitation by official;
- g. undue intervention in bidding contract processes or in government operations;
- h. bribery;
- i. bribery (aggravated);
- j. bribery of witness;
- k. offering to bribe;
- l. undue influence;
- m. crimes against public funds;
- n. forgery of documents.

The crimes listed above mentioned above are provided for in Sections 166, 175, 182, 188, 200, 201, 202, 209, 210, 211, 212, 213, 216, and 271, respectively, of the Puerto Rico Penal Code, as amended.

When the conviction results from the commission of any of the crimes listed below, the prohibition provided for in this Act shall be for a term of twenty (20) years, counting from the date of conviction, provided the crimes had been committed in the exercise of a public function:

- a. Aggravated damages;
- b. negotiation incompatible with the exercise of public office;
- c. withholding documents that should be provided to the successor;
- d. destruction or mutilation of documents by public officials;
- e. filing of classified documents;

- f. illegal possession of tax receipts;
- g. drafting false documents;
- h. presenting false documents;
- i. illegal possession of tax receipts;
- j. forgery of entries in registers;
- k. forgery of stamps;
- l. forgery of license, certificate and other documentation; or
- m. possession of forgery tools.

The crimes listed above are provided for in Sections 180, 202, 204, 205, 208, 221, 242, 272, 273, 274, 275, and 276, respectively, of the Puerto Rico Penal Code, as amended.

When the conviction is the result of having committed any of the crimes listed below, the prohibition provided for in this Act shall be for the term of eight (8) years, counted as of the date of the conviction.

- a. Fraud in delivery;
- b. purchase by collector of property sold to pay taxes;
- c. omission in the compliance of duty;
- d. illegal sale of goods

The crimes listed above are provided for in Sections 189, 207, 214, 215, and 223, respectively, of the Puerto Rico Penal Code, as amended.

Public function shall be understood to be any office, job, post, position or function in the public service, whether or not for compensation, permanently or temporarily, by virtue of any kind of appointment, contract or designation for the Legislative, the Executive or the Judicial Branch of the Government of the Commonwealth of Puerto Rico, as well as any of its agencies, departments, subdivisions,

instrumentalities, public corporations or municipalities. Provided, that the prohibition or inability for aspiring to an elective office or to perform a function within the public employment or service also applies in a like manner to those persons who, even when they are not public officials at the time of committing such crimes are convicted as coauthors of public officials in the commission thereof.

4. When the person is convicted within the aforementioned jurisdictions for any of the misdemeanors listed above, shall be ineligible for public service for a term of eight (8) years as of the date of conviction.
5. Conviction for a felony, removal and revocation of probation or parole or noncompliance with the conditions imposed by the program by which the habilitated convict is serving his/her sentence released within the community, shall entail the automatic cancellation of the habilitation. Should he/she be holding a government job or otherwise rendering services for a government entity, he/she shall also be immediately terminated from the job or from rendering the services, as the case may be, when a conviction for a felony is delivered, when the privilege of probation or parole is revoked, or when he/she fails to comply with the conditions of the program by virtue of which the habilitated convict is serving his/her sentence released within the community.
6. After one (1) year has elapsed as of the date the decision of the Director not to habilitate is final and binding, the person who wishes to be habilitated may file a new application for habilitation, as long as he/she submits new evidence that has not been previously considered and said person is able to prove that he/she

should be habilitated. This provision shall likewise apply to conditioned habilitation cases.

7. The Office shall provide through regulations the norms and procedures it believes necessary and appropriate to provide for the power to habilitate conferred by this Act to the Director.
8. Any official or employee who knowingly authorizes an appointment in contravention of the provisions of this Article shall be liable for any amount of money unduly paid to the person thus appointed.

Section 6.9.—Prohibition.—

In order to ensure the faithful application of the Merit Principle in the Public Service during pre and post-elections periods, the Appointing Authorities shall abstain from making any personnel transaction which includes the essential areas of the Merit Principle, such as appointments, promotions, demotions, or transfers; nor shall they be able to make changes or carry out compensation actions or changes of job category. Excepted from this prohibition are the changes resulting from the termination of a probation period and the imposition of disciplinary measures. Failure to comply with this measure shall entail the voiding of the transaction thus carried out.

This prohibition shall comprise the period of two (2) months before and two (2) months after the holding of the General Elections of Puerto Rico. Provided, that during said period, no personnel actions or changes whatsoever with a retroactive effect may be processed or registered in the personnel records.

Upon approval of the Director, exception from this prohibition may be made in the event of urgent and unpostponable needs of the service duly

evinced and certified pursuant to the norms issued by the Office concerning this matter.

Article 7.—Public Career Development Advisory Council.—

The Public Career Development Advisory Council is hereby created with the purpose of professionalizing the career of public employees, in order for these to be prepared to face organizational challenges and provide better services to citizens. This Council shall be responsible of guaranteeing that the competency training of employees shall be geared toward the fulfillment of the goals and commitments of each Agency.

Section 7.1.—Composition of the Advisory Council.—

A Public Career Development Advisory Council is hereby created, to be composed by nine (9) members. These are: the Director of the Office of Management and Budget, or his/her authorized representative; the Secretary of Education or his/her authorized representative; the Director of the Office; and six (6) Heads of Agencies designated by the Governor, on the basis of the government's priorities concerning professional development. In the case of authorized representatives, these shall be officials that know and collaborate in the formulation of the public policy of the Agency. The Council shall be presided by the Director of the Office. The functions of the Office shall be:

1. To identify the needs of competency training and development of the governmental personnel.
2. To advise the Director of the Office as to resources, mechanisms programs and other means available to increase the effectiveness of the Human Capital Development Division.

3. To recommend to the Director of the Office on the incorporation of competency development and activities that address the needs of the Agencies.
4. To hold periodical meetings, which shall not be less than three a year.
5. To present to the Governor an annual report on July of each year, which shall include the results obtained in the fiscal year to be concluded.

The Advisory Council shall submit to the Governor a report on the implementation of the public career not later than 6 months as of the date of approval of this Act.

Article 8.—Provisions on Compensation.—

Section 8.1.—

The public policy on compensation of the Commonwealth of Puerto Rico recognizes as main values the capability shown by the employee in the performance of his/her tasks; the commitment shown to the goals and objectives of his/her organization; the adhesion to order and discipline norms; and the sensitive, respectful and diligent treatment of our citizens.

To attain these values, government compensation systems shall be geared toward attracting and retaining the most suitable personnel; recognizing group and individual achievements of workers; promoting team work; and propitiating dignity in the living standards of workers. All of the above, based on equity and justice, and in consideration of the economic reality of government entities.

This new compensation system, in addition to recognizing and fairly compensating the contributions of employees to the achievement of organizational goals, shall allow management to have greater flexibility in

the administration of the compensation system. This will render the human resources management system more dynamic and effective.

Section 8.2.—General Norms of Compensation.—

The following guidelines shall apply to all government agencies under this Act:

1. Agencies shall establish separate compensation plans for their unionized career employees, employees excluded from unionization, and confidential employees, in accordance with their fiscal capability, economic reality and the job evaluation and analysis method selected. The compensation system selected shall promote uniformity and justice in fixing the salaries for employees.
2. Agencies shall determine, pursuant to their needs and budget, which salary structures for career jobs conforms to the job appraisal system selected. In addition, they shall maintain the structures up to date, in order for these to represent the economic reality, the fiscal capability and the cost of living in the country. Agencies shall select and regulate the manner in which to pay employees that renders the administrative process easier.
3. Agencies shall administer their compensation plan in connection with the essential areas of the merit principle. They may not carry out any action which attempts against or is contrary to the merit principle in personnel transactions in the public career service.
4. Agencies may use other compensation methods to retain, motivate and acknowledge personnel. Some of these mechanisms are:
 - a. Differentials – a special temporary compensation, additional to and separate from the employee’s regular salary, granted

to mitigate extraordinary circumstances that could otherwise be considered to be burdensome on the employee. Differentials may be granted due to:

1. Extraordinary circumstances – a temporary work situation which requires greater effort from or risk for the employee while he/she carries out the functions of his/her job.
2. Acting capacity – a temporary work situation in which the employee performs all the essential functions of a job higher than the one he/she officially holds. In this case, the following conditions shall be required: to have performed the functions uninterrupted for thirty (30) or more days; to have been designated officially to exercise functions in an acting capacity by the director of the department or office; and to meet the requirements of education and experience of the job whose functions he/she is performing on an acting capacity. The employee working in an acting capacity may be relieved from his/her acting capacity at any time as determined by the director of the department or office. In such circumstances, the employee shall return to his/her previous job and receive the salary he/she earned before working in acting capacity, except when the employee has performed supervisory functions in acting capacity for twelve (12) or more months. In this case, the employee shall be granted a salary raise equal to a compensation rate in his/her job.

No differential granted may be considered as an integral part of the regular salary of the employee for purposes of computing the liquidation of leaves or computing the retirement pension.

- b. Bonuses – a special, nonrecurring compensation separate from salary that may be granted as a mechanism to recruit, retain or reward employees or groups of employees who meet the requirements established before the bonus is granted. The norms for granting this incentive to employees shall be evaluated and approved by the Appointing Authority.
5. No amendment or modification to the job evaluation or appraisal system selected by the agency may negatively affect the basic salary of the employee.
6. As a general rule, all persons appointed in the career service shall receive as salary the minimum rate within the salary schedule corresponding to the job class they are to hold.
7. Raises due to promotions to be granted by the agencies may be appraised in percentage terms or their equivalent in intermediate rates. This determination shall depend on the salary structure selected by the agency. However, the raise shall not be less than the difference between minimum schedule rates.
8. In cases of demotions due to needs of service determined by the Appointing Authority to be an urgent need of service, such an action shall not affect negatively the employee's salary, except in those cases when such action is taken to avoid layoffs due to lack of funds. When the demotion is made at the request of the

employee, his/her salary shall be adjusted to the basic salary for the job class to which he/she is being demoted, plus the legislative raises he/she had received in his/her previous job.

9. When reinstatement results from not having approved a probation period, the employee shall receive the last salary earned in the job into which he/she is being reinstated, plus any raise the class had received. In addition, he/she shall receive those legislative raises granted during the time he/she was on probation.
10. When reinstatement results from having concluded a term of leave without pay, the employee shall receive the last salary he/she earned before the beginning of the leave, plus any raise received by the class or legislative raises granted during the time he/she was on leave.
11. When reinstatement results from readmission after disability, the employee shall receive the last salary earned before his/her severance, plus any raise received by the class or legislative raises granted during the period he/she was not holding the job.
12. Confidential employees entitled to reinstatement into career jobs pursuant to Section 9.2 of this Act shall be entitled, upon being reinstated, to all benefits in terms of classification and salary that have been extended to the career position they held during the term they served in the confidential service. They shall also be entitled to salary raises granted by the Legislature and to a ten (10)-percent increase on the salary they earned in their position in the confidential service. To grant this recognition, it shall be necessary to show evidence of the excellent performance of the employee. However, if the employee to be reinstated was in the

confidential service for a period of not less than three (3) years, the Appointing Authority may authorize any raise arising from the difference between the salary earned in the career service and the salary he/she would be earning at the time of reinstatement.

13. In cases of reclassification, the norms on promotions, transfers and demotions shall apply as determined by each Appointing Authority in its regulations.
14. As a general rule, transfers shall not entail a salary raise.
15. In cases of readmission, the new appointment norm shall apply, except when it occurs as a result of a reinstatement after having recovered from disability.

Section 8.3.—Specific Norms on Compensation.—

The following norms shall only apply to non-unionized and management employees and to employees excluded from Act No. 45 of February 25, 1998, as amended, who work in the public service.

1. Each Appointing Authority may develop and incorporate into its regulations compensation methods that conform to its budget capacity, that recognize the productivity, efficiency and quality of the work carried out by the employees. These alternate compensation methods may be used to: retain the most suitable personnel, obtain qualified personnel for jobs for which it is difficult to recruit, and motivate employees. Some of these methods are, among others:
 - a. Acknowledgment certificates for the work performed.
 - b. Bonuses for productivity, to be twenty (20) percent of the salary earned biweekly.
 - c. Bonuses for the performance of a work team.

- d. Activities in which the employee is informed of the success obtained by the agency and employee acknowledgement activities.
 - e. Training in and outside of Puerto Rico.
 - f. Scholarships for graduate and undergraduate studies.
 - g. Gym, health unit, cafeteria and child day care facilities.
 - h. Lodging, meal and uniform benefits for all employees who so require due to the nature of the service they render.
 - i. Granting bonuses for punctuality and attendance. Said bonus shall be independent and separate from any payment corresponding to excesses in leaves accrued.
 - j. Bonuses for employees who retire from the system.
 - k. Days or hours granted without charge to any leave.
2. All employees have the possibility of developing professionally, whether by their own initiative or by efforts of the organization. Some compensation methods that promote this activity are:
- a. Additional compensation for abilities – To the extent in which employees develop and apply abilities alternate to their main function, an additional compensation may be granted, to be part of the salary.
 - b. Development of competencies – To the extent in which the agency knows which are the competencies required to obtain an excellent performance from employees, it may select and form individuals who attain said level of performance. As a result, when employees perform at an optimum level, the global performance of the agency is maximized. This premise implies that all employees that succeed in

implementing the new working processes desired by the agency and who succeed in being an agent of continuous innovations and change, shall obtain a compensation for competency.

- c. When recruiting personnel, a financial incentive may be incorporated as part of the basic salary. The same shall be adjudicated in classes where high levels of education and experience are required.
 - d. Granting adjustments in salaries subject to performance and productivity evaluations.
3. Non-unionized and management employees who have held a regular job during an uninterrupted period of three years in the service, without having received any other raise, shall receive a raise of up to five (5) percent of their salary or its equivalent in intermediate rates. For this, the employee must have provided satisfactory services during the term of three years as evinced by their evaluation sheets. The Appointing Authority shall send written notice to all employees who do not meet this consideration. The notice shall include the reasons for which the employee is not being granted the aforementioned raise and shall admonish him/her of his/her right to appeal before the Appeals Commission.

Raises for meritorious services – a compensation which is part of the salary and is granted to acknowledge the outstanding performance of employees. This raise shall be of one, two or three compensation rates in the schedule to which the job of the employee is assigned. In order to be entitled to this raise, the employee must have carried out the functions of

his/her job for twelve (12) consecutive months in the service before the date of the granting thereof and his/her evaluations must conform to the amount of raise to be granted. Any period of time worked by the employee while under a transitory appointment in a job of equal classification may be credited toward completing the period established for eligibility.

As a general rule, these shall not exceed seven (7) percent of the employee's salary. In exceptional cases in which evinced that the employee has contributed directly toward achieving the goals and objectives of the agency, a raise for up to twelve (12) percent may be granted.

When due to the budget the raise granted cannot be given in its full amount, a partial raise may be granted and at any time, within the twelve following months, the remainder may be granted. In these cases, the twelve (12)-month period established for eligibility for a new salary raise for merit, shall begin to count from the date on which the first partial raise took effect.

Article 9.—Employee Categories.—

Section 9.1.—There are two (2) employee categories within the personnel system:

1. Career Employees – those employees who have been admitted into the public service in faithful compliance with the established by the body of laws in effect and which applies to the recruitment and selection processes of the career service at the time of their appointment. Such employees are entitled to remain in the service pursuant to the provisions of Section 6.6 of this Act. This category includes confidential employees.

Confidential employees are those who, even though they hold positions within the career service, perform functions that by their very nature affect or participate significantly in the

formulation or implementation of public policy or who perform functions directly or indirectly connected with employer-employee relations which actually or potentially involve a conflict of interest are excluded from all the appropriate units, as provided in Section 4.2, subsection b-1 of the Public Service Work Relations Act.

2. Confidential Employees – the employees that substantially intervene or collaborate in the formulation of public policy, or those who directly advise or render direct services to the head of the agency, such as:
 - a. officials or employees appointed by the Governor, their personal secretaries and chauffeurs, as well as executive and administrative assistants who answer to them directly;
 - b. heads of agencies, their personal secretaries and chauffeurs, as well as executive and administrative assistants who answer to them directly;
 - c. deputy heads of agencies, their personal secretaries and chauffeurs;
 - d. regional directors of agencies;
 - e. board or permanent commission members appointed by the Governor, and their respective personal secretaries;
 - f. members and staff of boards and commissions appointed by the Governor with a determinate period of effectiveness;
 - g. the staff of the Office of Former Governor Services.

Confidential employees can be selected and removed at will. Likewise, those employees who, even though they are selected at will, are to be removed only for just cause by provision of law or those

whose appointment is for a term predetermined by law, shall also be confidential employees.

Section 9.2.—Reinstatement of Confidential Employees.—

1. All employees with regular status in the career service who move to the confidential service, shall have the absolute right to be reinstated in a position equal or similar to the last job they held within the career service, unless removed from the confidential service by charges brought. Provided, that they shall be entitled to all benefits in terms of classification and salary that have been extended to the career job they held during the term in which they served in the confidential service.
2. All employees with regular status in the career service who is elected or designated as substitute to hold an elective public office within the Executive or Legislative Branch, shall have absolute right to be reinstated to a position equal or similar to the last job they held within the career service, unless removed from elective office due to inappropriate conduct or impeachment or unless they have resigned their post due to illegal or inappropriate conduct which would have led to removal or impeachment. Provided, that they shall be entitled to all benefits in terms of classification and salary that have been extended to the career job they held, during the term in which they served in elective public office.
3. Regular employees in the career service who are recruited to occupy a position in the confidential service or who are elected by the people or designated substitutes to occupy an elective public office, as established above, shall retain the fringe benefits and leave rights established in this Act.

Once their assignment in the confidential service or elective office ceases, the employee shall be credited for years of service and seniority at the last job he/she held.

Section 9.3.—Approval of Confidential Positions.—

Each Individual Administrator shall approve a plan which contains a number of confidential positions not to exceed thirty (30). When the organizational structure, functional complexity or size of the Agency requires a greater number, it shall be necessary to obtain the approval of the Office of Management and Budget.

Section 9.4.—Change of Service and Category.—

1. Each Individual Administrator may make change a career service job to a confidential service job and vice versa, when an official change in the functions or in the organizational structure of the agency occurs which so justifies, subject to the following:
 - a. if the position is vacant;
 - b. if the position is occupied and the change is from career service to confidential service, its occupant shall give his/her express written consent. In the event the employee does not give his/her consent, he/she shall be placed immediately in a position in the career service with equal salary and for which he/she meets the minimum requirements.
 - c. if the position is occupied and the change is from confidential service to career service, its occupant shall remain therein, subject to the following conditions:
 1. that he/she meets the education and experience requirements established for the job class or its equivalent in other job appraisal plans;

2. that he/she has held the position for a period of time of not less than that which corresponds to the probation period for the job class or its equivalent in other job appraisal plans; and that his/her services are excellent as validated by an evaluation;
3. that he/she approves or has approved the test or the selection criteria established for the job class or its equivalent in other job appraisal plans;
4. that the Appointing Authority certifies that his/her services have been satisfactory.

In the event the occupant does not meet all of the conditions mentioned above, he/she may not remain in the job, unless covered under the right to reinstatement provided for in Section 9.2 of this Act.

Changes in category may not be used as a subterfuge to grant permanence benefits to employees who did not compete for a career job. These shall only be pertinent after thorough analysis of the functions of the job or of the organizational structure of the Agency so justify.

Article 10.—Fringe Benefits.—

Section 10.1.—

Given that fringe benefits constitute an area so needed by and with such transcendental effect on public employees, in order to maintain a uniform and fair human resources administration, the following norms are hereby established:

Fringe benefits shall be:

1. Vacation leave –
 - a. All employees shall be entitled to accrue vacation leave, at a ratio of two days and a half (2½) for each month of service,

up to a maximum of sixty (60) work days at the closing of each calendar year. Reduced full-time and part-time employees shall accrue vacation leave in proportion to the number of hours during which they render services regularly.

- b. Vacation leave is granted to employees to provide them with a reasonable period of annual rest. As a general rule, the leave shall be enjoyed during the year it was accrued. Each Agency shall formulate a vacation plan for each calendar year, in coordination with supervisors and employees, in which the period within which each employee shall enjoy his/her vacation shall be established, in the manner most compatible with the needs of the service. Said plan shall be established in advance as necessary so that it takes effect on the first of January of each year. It shall be the responsibility of the agencies and the employees to comply with the aforementioned plan. Exception may only be made in cases of clear and unpostponable needs of the service.
- c. The agency shall formulate and administer the vacation plan so that employees do not lose days of vacation leave at the closing of the calendar year and they enjoy their regular vacation leave.
- d. All employees shall be entitled to enjoy their vacation leave for a period of thirty (30) working days during each calendar year, of which not less than fifteen (15) shall be consecutive.
- e. Employees who are unable to enjoy their vacation leave during a specific calendar year due to the needs of the service and at the requirement of the Agency, are excepted from the

provisions of the above clause (d). In this case, provision shall be made for the employee to enjoy at least the excess of leave accrued over the sixty (60)-day limit, on the closest day possible, within the first six (6) months of the following calendar year.

- f. When due to extraordinary circumstances of the service beyond the employee's control he/she has not been able to enjoy the excess accrued within the regulated term provided for in clause (g), the agency shall pay the same on or before July 31 of each year.
- g. Employees may opt to authorize the agency to transfer to the Department of the Treasury any amount on account of vacation leave accrued in excess, in order for the same to be credited toward full or partial payment of any income tax debt pending at the time of authorizing the transfer.
- h. The agency shall provide for the enjoyment of all days of leave accrued in excess, before processing any severance which constitutes a total and absolute disassociation from the system and before processing a change to move to another agency to render services.
- i. Normally, vacation leaves shall not be granted for a period greater than thirty (30) work days per calendar year. However, the Agency may grant a vacation leave in excess of thirty (30) work days, up to a maximum of sixty (60) days, in any calendar year, to those employees who have days of leave accrued. In granting said leave, the needs of the

service shall be taken into account, as well as other factors such as the following:

1. the use of said leave by the employee for self-improvement activities, such as travel, studies, etc.;
 2. prolonged illness of the employee after having depleted the days of sick leave;
 3. personal problems of the employee which require his/her personal attention;
 4. the total amount of days of leave accrued by the employee.
- j. Under special circumstances, vacation leave may be advanced to regular employees who have rendered services to the government for over one year, when it is ascertained that the employee shall return to the service. The vacation leave thus advanced shall not exceed thirty (30) work days. The granting of vacation leave in advance shall require in all cases the previous written approval of the Appointing Authority or of to whom it delegates. All employees to who having been granted vacation leave in advance separates from the service, voluntarily or involuntarily, before rendering services for the necessary period required to accrue the total amount of leave that has been advanced, shall be under the obligation to reimburse the Commonwealth of Puerto Rico any sum of money that has been paid to them on account of such leave granted in advance.
- k. In the case an employee is granted leave without pay, it shall not be necessary for the employee to deplete the vacation

leave he/she has accrued before beginning to use the leave without pay.

1. When an employee is authorized to enjoy his/her vacation leave accrued or in advance, the payment in advance of the salaries corresponding to the period of leave may be authorized, provided the employee requests it with enough time in advance. Such an authorization shall be made immediately after the approval for the leave.
- m. One or more public employees may transfer, in exceptional cases, to another public employee who works in the same government agency, days accrued in vacation leave, up to a maximum of five days, pursuant to the provisions of Act No. 44 of May 22, 1996, when:
 1. The transferee employee has worked uninterruptedly for a minimum of one year with any government entity;
 2. The transferee employee has not fallen into a pattern of absenteeism, thus failing to comply with the norms of the government entity;
 3. The transferee employee has depleted the leaves to which he/she is entitled in their entirety, as a consequence of an emergency;
 4. The transferee employee or his/her representative factually proves the emergency and the need to be absent for a number of days which exceed the already depleted leaves;

5. The transferor employee has accrued a minimum of fifteen (15) days of vacation leave in excess of the amount of days of leave to be transferred;
 6. The transferor employee has submitted a written authorization to the government in which he/she works, consenting to the transfer and specifying the name of the transferee;
 7. The transferee employee or his/her representative accepts in writing the transfer proposed.
2. Sick leave –
- a. All employees shall be entitled to accrue sick leave at a ratio of one day and a half (1½) per month of service. Reduced full-time and part-time employees shall accrue sick leave in proportion to the number of hours they regularly render services. Said leave shall be used when the employee is sick or unable, or has been exposed to a contagious disease which requires that he/she be absent from work in order to protect his/her health or the health of others. Furthermore, all employees may avail themselves of up to a maximum of five (5) days a year from the days accrued in sick leave, provided they maintain a minimum balance of fifteen (15) days, to request a special leave with the purpose of using the same:
 1. To care for and tend to their children due to sickness.
 2. To tend to the illness or run errands of elderly or disabled persons of the family unit, to be understood as the fourth degree of consanguinity or the second in affinity, or persons who live under the same roof, or

persons of which they are the legal custodian or tutor. Provided, that the errands to be carried out must conform to the purpose of the sick leave; that is, to caring for and tending to the health of the persons comprised herein.

- a. "Elderly person" shall mean any person of or over the age of sixty (60);
 - b. "Person with disabilities" shall mean any person with a physical, mental or sensory disability which substantially limits one or more essential activities in his/her life.
3. First appearance of any petitioning party, victim or complainant in administrative and/or judicial proceedings before any Public Department, Agency, Corporation or Instrumentality of the Commonwealth of Puerto Rico, in cases of petitions for child support, domestic abuse, sexual harassment in the workplace or gender discrimination. The employee shall present evidence issued by the competent authority vouching for said appearance.
- b. Sick leave may be accrued up to a maximum of ninety (90) work days at the closing of any calendar year. The employee may use up all of his/her sick leave he/she has accrued during any calendar year. Furthermore, the employee shall be entitled to receive pay each year for said excess at least on March 31 of each year, or he/she may opt to authorize the agency to make a money transfer of said excess or part

thereof to the Department of the Treasury with the purpose of apportioning as full or partial payment of any outstanding income tax debt.

- c. When an employee is absent from work due to sickness, he/she may be required a medical certificate, vouching for:
 - i. the fact that he/she was truly sick, or had been exposed to a contagious disease, or was unable to work during the period of his/her absence.
 - ii. the sickness of his/her child(ren).
 - iii. the sickness of elderly or disabled persons of the family unit, to be understood as the fourth degree of consanguinity and second in affinity, or persons who live under the same roof, or persons of whom the employee is their legal guardian or tutor.

In addition to the medical certificate, the inability of the employee to show up to work due to sickness may be ascertained by any other appropriate means. The above shall not apply or be construed in a manner so as to undermine the ADA or the Family and Medical Leave Act of 1993 (FMLA).

- d. In cases of sickness in which the employee does not have sick leave accrued, an advance of up to a maximum of eighteen (18) work days may be given to any regular employee who has rendered services to the Commonwealth of Puerto Rico for a period of not less than one (1) year, when there is reasonable certainty that the employee shall return to the service. Any employee who has been given sick

leave days in advance and becomes separated from the service, whether voluntarily or involuntarily, before having rendered services for the necessary period required to accrue the total amount of leave days he/she was given in advance, shall be under the obligation to reimburse to the Commonwealth of Puerto Rico any sum of money outstanding that he/she had been paid on account of said leave.

- e. In cases of prolonged sickness, once the sick leave has been depleted, employees may use all vacation leave days they have accrued, after having been authorized by their immediate supervisor. If the employee should deplete both leaves and continues to be sick, he/she may be granted leave without pay.

3. Maternity leave –

- a. Maternity leave shall comprise the period between prenatal rest and postpartum rest to which all pregnant employees are entitled. Likewise, it shall comprise the period to which an employee adopting a minor is entitled pursuant to the applicable legislation.
- b. All pregnant employees shall be entitled to a resting period of four (4) weeks before they give birth and four weeks after. Provided, that the employee may enjoy consecutively four (4) additional weeks for the caring of and tending to the minor.

Birthing shall mean the act whereby the conceived being is expelled from the mother's body naturally, or legally

extracted through surgical-obstetrical procedures. Likewise, it shall comprise any premature birthing or miscarriage, including, in this last case, those legally induced by medical staff, sustained by the mother at any time during the pregnancy.

- c. The employee may opt to take only one (1) week of prenatal rest and extend up to seven (7) weeks the postpartum resting period to which she is entitled, or up to eleven (11) weeks, should the four (4) additional weeks for the caring of and tending to the minor be included. In these cases, the employee shall submit to the agency a medical certificate vouching for the fact that she is fit to render services up to one week before the birthing.
- d. During the maternity leave period, the employee shall earn her full salary.
- e. In the case of an employee with transitory status, the maternity leave shall not exceed the period of appointment.
- f. Should the birthing occur before the employee has enjoyed her four (4)-week prenatal resting period in full, or before she has begun to enjoy said period, the employee may opt to extend the postpartum resting period for a period of time equal to the time she could not enjoy her prenatal rest.
- g. The employee may request to return to work before the expiration of her postpartum resting period, provided she presents to the agency a medical certificate vouching for the fact that she is fit to perform her functions. In this case, it shall be understood that the employee waives the unused

balance corresponding to the maternity leave to which she was entitled.

- h. When the probable due date is estimated wrongly and the employee has enjoyed her four (4) weeks of prenatal rest and the birthing does not occur, she shall be entitled to have her prenatal resting period extended, with full pay, until she goes into labor. In this case, the employee shall retain the right to enjoy four (4) weeks of postpartum rest as of the date of the birthing, and four (4) additional weeks for the caring of and tending to the minor.
- i. In cases of premature birthing, the employee shall be entitled to enjoy eight (8) weeks of maternity leave and four (4) additional weeks for the caring of and tending to the minor.
- j. An employee who suffers a miscarriage may claim up to a maximum of four (4) weeks of maternity leave. However, to be entitled to such benefits, the miscarriage must be of such a nature so as to produce the same physiological effects as they are regularly produced as a consequence of labor, pursuant to the determination and certification of the physician tending to her during the miscarriage.
- k. In case the employee suffers from any postpartum complication which prevents her from returning to work after having enjoyed in full the post-partum resting period and the four additional (4) weeks for the caring of and tending to the minor, the agency shall grant her a sick leave.

In these cases, a medical certificate shall be required, which shall state the condition of the employee and the time

it is estimated said condition shall persist. Should the employee have no sick leave accrued, she shall be granted a vacation leave. In the case she does not have sick or vacation leave accrued, she may be granted leave without pay for the term recommended by her physician.

1. An employee who adopts a minor of pre-school age, to be understood as a minor of or under the age of five (5) who is not enrolled in a school institution, pursuant to the legislation and legal procedures in effect in Puerto Rico or in any jurisdiction of the United States, shall be entitled to the same maternity leave benefits, with full pay, enjoyed by employees who give birth normally. This leave shall begin to count as of the date the judicial decree of adoption is notified and the minor is simultaneously received into the family unit, which shall be vouched for in writing.
- m. Maternity leave shall not be granted to employees who are enjoying any other kind of leave, whether with or without pay. Exception from this provision is made of employees who have been authorized to go on vacation leave or sick leave and employees who are on leave without pay due to pre-labor complications.
- n. A pregnant employee or an employee who adopts a minor is under the obligation to notify the agency in advance of her plans to enjoy her maternity leave and her plans to return to work.
- o. The agency may authorize an advance payment of the salaries corresponding to the maternity leave period,

provided the employee so requests sufficiently in advance. Should the employee return to work before her postpartum resting period has expired, she shall be under the obligation to reimburse the balance corresponding to the unused maternity leave.

- p. In case the newborn dies before the maternity leave period has transpired, the employee shall be entitled to claim solely that part of the postpartum resting period which completes the first eight (8) weeks of unused maternity leave. Provided, that the benefit of four (4) additional weeks for the caring of the minor shall cease on the date of death of the infant, insofar as there is no longer the need to take care of and tend to the newborn, reason which justified its being granted. In these cases, the employee may avail herself of any other leave to which she is entitled.

4. Paternity leave –

- a. Paternity leave shall comprise a period of five (5) work days as of the date of birth of the child.
- b. When claiming this right, the employee shall certify that he is legally married to or lives with the mother of the minor, and that he has not incurred domestic abuse. Said certification shall be made by presenting the form required by the agency for such purposes, which shall also bear the signature of the mother of the minor.
- c. The employee shall request paternity leave and as soon as possible, he shall submit the birth certificate.

- d. During the paternity leave period, the employee shall earn his full salary.
 - e. In the case of an employee with transitory status, the paternity leave shall not exceed the term of appointment.
 - f. Paternity leave shall not be granted to employees who are enjoying any other kind of leave, whether with or without pay. Exception from this provision is made of employees who have been authorized to go on vacation leave or sick leave.
5. Special breastfeeding leave with pay –
- a. Breastfeeding mothers shall be granted the time so that, after having enjoyed their maternity leave, they have the opportunity to breastfeed their babies, for half ($\frac{1}{2}$) an hour within the full-time work day, which may be distributed into two (2) fifteen (15)-minute periods each. This benefit shall be granted for those cases in which the agency has a Child Day Care Center within its facilities and the mother is able to go to said Center in which the baby is, to breastfeed him/her, or to express milk in a place habilitated for such purposes within the workplace.
 - b. Within the workplace, the breastfeeding period shall have a maximum duration of twelve (12) months, to be counted as of the date the employee returns to her functions.
 - c. Employees who wish to use this benefit shall present to the agency a medical certificate, during the period corresponding to the fourth (4th) and the eighth (8th) months of age of the infant, vouching for the fact and certifying that she is

breastfeeding her baby. Said certificate shall be presented not later than five (5) days into each period. Provided, that the agency shall designate an area or physical space that guarantees the privacy of the breastfeeding mother, as well as her safety and hygiene, without this entailing the creation or construction of physical or organizational structures, contingent upon the availability of resources of the government entities. Agencies shall establish regulations on the operation of said breastfeeding areas.

6. Leave without pay –
 - a. Leave without pay shall not be granted in the case the employee intends to use the same to venture into other job opportunities.
 - b. In case the cause for which the leave was granted ceases, the employee shall return immediately to his/her job or notify the Agency of the reasons why he/she is unavailable, or of his/her decision not to return to the job he/she held.
 - e. In addition to the leaves without pay that may be granted by each Agency through regulations, the following shall be granted:
 1. To career employees with regular status, to render services in other agencies of the Commonwealth of Puerto Rico or in a private entity, should it be determined that the experienced to be gained by the employee will solve a proven training need for the Agency or the Public Service.

2. To career employees with a regular or probationary status, to render services on a transitory basis pursuant to the provisions of Section 5.2 of this Act.
3. To career employees with a regular status, to protect their status or the rights to which they may be entitled in cases of:
 - a. A disability claim before the Retirement System of the Commonwealth of Puerto Rico or other entity, and the employee has depleted his/her sick and vacation leaves.
 - b. Having suffered a work-related accident and being under medical treatment with the State Insurance Fund Corporation or pending a final determination concerning the employee's accident, and he/she has depleted his/her sick and vacation leaves.
4. To employees who so request after the birth of their child. Provided, that this kind of leave without pay may be granted for a period of time which shall not exceed six (6) months as of the date on which it is authorized.
5. To employees with a regular status who move on to render services as confidential employees at the Office of the Governor or at the Legislature, for the term they are rendering such services.
6. To employees with a regular status who have been elected in the general elections or have been selected to fill vacancies of an elective public office within the Executive or Legislative Branch, including the offices

of Resident Commissioner in the United States and Mayor, for the term they are rendering such services.

7. Furthermore, special leaves for a justified cause shall be granted, with or without pay, as the case may be, such as but not limited to: leave for judicial purposes; leave with pay in activities in which the employee is representing the country; military leave; two (2) working-hour leave at the beginning and the end of each school semester to go to their children's school to be informed of their academic performance; leave to vaccinate their children; leave for volunteer services to the Civil Defense Corps in cases of disaster; leave to render volunteer services to the American Red Cross; sports leave; and leave to donate blood. Provided, that the aforementioned leaves shall be governed by the special laws that grant them through regulations.

Article 11.—Work Schedule.—

Section 11.1.—

The norms on the work day for public employees are the following:

1. The regular work week for regular career employees shall not exceed forty (40) hours nor shall it be of less than thirty seven and a half (37½) hours, on the basis of five (5) work days, except when provided otherwise by special laws. The work day shall not exceed eight (8) hours. Employees shall be granted two (2) resting days for each regular work week.
2. The regular work week of the employee shall consist of the number of hours that, within a period of seven (7) consecutive days, the employee is under the obligation to render services, pursuant to his/her regular work schedule. Normally, the regular

work week shall comprise the days from Monday through Friday, being Saturday and Sunday the days of rest. However, in addressing the needs of service, agencies may establish a regular work week, for all or part of its personnel, beginning and ending on any day of the week, as long as said week includes two (2) days of rest.

3. The regular work day or work week of employees may be reduced as an action to prevent layoffs. When a reduced regular work schedule has been established as a measure to prevent layoffs, said work schedule may be established on a basis of less than five work days.
4. Each agency, within the limits indicated above, shall establish the work week and work day that shall apply to its employees, taking into account the needs of the service.
5. As a general rule, the work day schedule shall be fixed on the basis of a fixed starting time and a fixed finishing time. However, agencies may adopt through their by-laws a flexible, tiered, extended or rotating-shift work schedule.
6. Each agency shall grant all employees a one (1)-hour meal break during their regular daily work schedule. The employee shall begin to enjoy said period neither before having completed the first three and a half hours nor after having completed the fifth hour of working consecutively. Through a written agreement between the employee and an agency authorized representative, the meal-break hour may be reduced to half ($\frac{1}{2}$) an hour due to needs of the service or for the convenience of the employee. In

the case of unionized employees, the agreement shall be approved by the union representative.

7. Agencies shall program their work schedule so that the employee is able to take his/her meal break. However, in emergency situations, the employee may be required to render services during his/her meal break or part thereof.
8. Hours worked shall comprise all the time during which an employee is required to render services or to remain in the premises or in a determinate workplace and all the time during which he/she is ordered and expressly authorized to carry out the same.

Section 11.2.—Work in Excess of the Regular Work Schedule.—

1. The work schedule program of each agency shall be formulated so that the need to work beyond the regular work schedule established for employees by the Agency is reduced to a minimum. However, Appointing Authorities, due to the special nature of the services to be rendered or due to any emergency situation, may require their employees to render services beyond their daily or weekly work schedule, or on any other day in which services are suspended by the Governor without being charged to any leave. In these cases, there shall be the previous authorization by the supervisor to the employee, which shall be approved by the appointing authority or by the official unto whom it delegates. Supervisor shall take measures so that when an employee continues working it is always by virtue of an express authorization.

2. Employees shall be entitled to receive a compensation leave, at a ratio of one and a half time, for services rendered beyond their regular daily or weekly work schedule, or during their meal break, and for services rendered during holidays, days of rest, or days on which the Governor suspends services without charge to any leave. This leave shall be enjoyed by the employee within a period of thirty days as of the date on which he/she had worked overtime. If due to the need of the service, this were not possible, said leave may be accrued for up to a maximum of two hundred and forty (240) hours. In the cases of employees in security or health jobs, they may accrue up to four hundred and eighty (480) hours. The compensation of overtime via the compensatory leave shall not be allowed for hours accrued by the employee in excess of the limits mentioned above.
3. Exception from the provisions of the above subsection (2) is made of any employee who carries out functions of an administrative, executive or professional nature, as these terms are defined in the Federal Fair Labor Standards Act.

Article 12.—Employee Records.—

1. All agencies shall maintain the following records for each of their employees:
 - a. A record that reflects the complete history of the employee from the date he/she was originally admitted into the public service until the date of his/her definitive separation from the service.
 - b. A record that is confidential and separate and which contains the instructions, determinations and certificates of a medical

nature, pursuant to the Federal American with Disabilities Act (ADA).

- c. A record that contains a copy of all Change Reports and all other documents and information required for retirement purposes.
2. Said records shall be of a confidential nature; however, these may be examined for official purposes by authorized employees or officials. All employees shall have the right to examine their personnel records, after submitting a written request and in the presence of a Human Resources official or employee authorized therefor. The aforementioned request shall be submitted to said office in reasonable advance to the date on which the employee intends to perform the examination. The employee may authorize another person in writing to examine the record.

All employees shall be entitled to obtain a copy of any or all documents contained in their record by paying copying costs.

3. All matters relative to the conservation and disposal of the records of employees who separate from the service shall be governed by the provisions of Act No. 5 of December 8, 1955, as amended, known as the Puerto Rico Public Document Administration Act and its regulations, administered by the General Services Administration or any statutory provision that may substitute it.
4. When an employee is transferred from one agency to another, the originating agency shall transfer the records to the agency to which the employee is transferring not later than thirty (30) days, counted from the date of effectiveness of the transfer.

Article 13.—Appeals Commission of the Public Service Human Resources Administration.—

Section 13.1.—Creation.—

The Appeals Commission of the Public Service Human Resources Administration is hereby created as an entity entirely independent from the Office.

Section 13.2.—Composition.—

The Commission shall be composed of one Chairperson and two Associate Commissioners, who shall be appointed by the Governor with the advice and consent of the Senate. Both the Chairperson and the associate members shall be attorneys at law, admitted into the bar, with ample knowledge and experience in the field of Human Resources Administration and in the application and protection of the merit principle. Any person who has been active in politics during the four years preceding the term of appointment, may not become a member of the Commission.

Section 13.3.—Appointment, Terms, Continuity.—

The Chairperson shall be appointed for an initial term of seven (7) years. One Associate Commissioner shall be appointed for the term of five (5) years and the other for a term of four (4) years. All other appointments shall be for terms of seven (7) years. The members of the Commission shall hold office for their term of appointment and until their successors take office. In case a vacancy arises before the expiration of the term of appointment of a Commissioner, the Governor shall designate a new Commissioner with the advice and consent of the Senate, for the remainder of the term of the Commissioner thus being replaced.

Section 13.4.—Work Schedule and Salary.—

The members of the Commission shall be full-time officials. During their terms of office, they may not hold any other public office or job, nor may they practice any profession or trade or earn additional compensation from any other entity, whether it be public or private. Commissioners shall earn a salary equal to the basic salary of a judge of the Court of First Instance, Superior Section. The Chairperson shall earn the amount of five hundred (500) additional dollars a month.

Section 13.5.—Removal.—

The Governor may initiate, by bringing charges, the procedures to remove a Commissioner for negligence or illegal or inappropriate conduct in the performance of his/her duties. Such removal procedure shall be initiated by bringing charges before an Administrative Judge designated by the Governor. The Administrative Judge thus designated shall conduct the corresponding investigation. If after having conducted the investigation, he/she should find that there is no cause, he/she shall recommend the case to be vacated. If he/she should find that there is cause, the Administrative Judge shall grant a hearing at the earliest time possible to give the parties the opportunity to be heard and to present evidence. If the Administrative Judge should conclude that the charges have been proven, he/she shall issue a Resolution and shall order the removal of the Commissioner. The member of the Commission thus removed may appeal the decision before the Circuit Court of Appeals within the term of thirty (30) days, after having received notice of such resolution.

Section 13.6.—Contribution to the Retirement System and the Commonwealth Employees Association.—

The Chairperson and the Commissioners may avail themselves, at their option, of the benefits of the Employee Retirement System of the

Commonwealth, in which case, the Commission shall be under the obligation to pay the corresponding employer contribution and to process all documents necessary. Furthermore, the Chairperson and the Commissioners may avail themselves, at their option, of the benefits of savings and loans and other services offered by the Puerto Rico Commonwealth Employee Association.

Section 13.7.—Quorum.—

For all determinations that require the action of the Commission in full, two of its members shall constitute a quorum. Adjudicative decisions shall require the approval of two Commissioners.

Section 13.8.—Central Offices.—

The Central Offices of the Commission shall be located within the municipal demarcation of San Juan, but when the circumstances of the matter in question render it necessary or convenient, the Commission may be constituted and act in any municipality within the jurisdiction of the Commonwealth of Puerto Rico.

Section 13.9.—Powers of the Commission.—

The Commission shall have, among others, the following powers:

1. To hold all the hearings and conduct all the investigations that in the opinion of the Commission are necessary and appropriate for the exercise of the powers conferred by this Act; for such purposes, the Commission or its agent shall have access to any evidence from any person under investigation or against whom there has been a proceeding, and which refers to any matter under investigation by the Commission or in controversy.

2. The Commission shall have the power to initiate investigations in any case as it deems necessary even if there has been no formal petition in that respect from any of the interested parties.
3. In case of contempt or refusal to comply with a summons issued against a person, any part of the Court of First Instance within whose jurisdiction the person is, resides or conducts business, shall have jurisdiction to issue against said person an order to compel his/her appearance before the Commission or any of its agents, to present evidence or make a statement. Noncompliance of said order may be penalized as contempt of Court.
4. The Commission is hereby empowered to adopt an official seal and all its orders, communiqués, summons and decisions shall bear the presumption of regularity and when they are issued with the seal, shall be recognized to be official documents. The orders, summons and other documents of the Commission or its agent may be served personally, by certified mail, fax or leaving copies thereof at the main office or place of business of the person to be notified.
5. No person may refuse to appear to testify or to produce any documental evidence that he/she is required, by claiming that the testimony or evidence required by the Commission could incriminate him/her or expose him/her to criminal prosecution. However, no person shall be prosecuted or be subject to any punishment or seizure whatsoever for reason of a transaction or matter in relation to which he/she is placed under the obligation to offer testimony or submit evidence after having claimed the privilege of not testifying against him/herself, except that said

person may be prosecuted for perjury committed during his/her testimony before a Commission.

6. Witnesses summoned to appear before the Commission or before any of its authorized agents who are public employees, shall be granted a judicial leave with pay for the duration of the summons. Those witnesses who are not public employees shall receive the same per diem and compensation for mileage that witnesses of the Courts of Justice receive.
7. Departments, agencies, municipalities, public corporations and other subdivisions of the Government of Puerto Rico shall furnish to the Commission, upon its request, all records, documents and reports not privileged under the law that they have in their possession in relation to any matter in which the Commission is intervening.
8. It is expressly provided that the Commissioners may not act as Examining Officers.
9. The Commission may grant the remedies it deems appropriate and issue the orders that are necessary and convenient to comply with the purposes of this Act. This includes, among others, provisional or permanent cease and desist orders; orders for the reinstatement of suspended or removed employees, with or without receiving the payment in arrears which was not earned and the concession of all the fringe benefits to which the employees would have been entitled during the period of suspension or removal; and orders imposing financial or procedural sanctions on agencies, officials or legal representatives for noncompliance or delay of procedures.

10. The Commission shall interpret and adjudicate all cases or controversies which has been brought appropriately and which concerns its jurisdiction and the merit principle.
11. The Commission may sanction any person who disturbs the order or engages in disorderly, disrespectful, or disgraceful conduct before the Commission in full or before any of its members or investigative or examining officers, when such a conduct tends to interrupt, delay or undermine procedures in any way, with a fine of not less than thirty (30) dollars nor greater than three hundred (300) dollars.

Section 13.10.—Functions of the Chairperson.—

The Chairperson shall be the chief executive officer of the Commission and shall have the following responsibilities:

1. Appoint or contract the persons and officials necessary to carry out the operational functions of the Commission.
2. Appoint a Secretary of the Commission, who shall hold office while he/she enjoys the trust of the Commission.
3. Designate Examining Officers or investigators to carry out the tasks related to specific appeals.
4. Approve the necessary regulations to enable the efficient and appropriate operation of the Commission in complying with this Act.
5. Submit to the Governor and the Legislature a report on the activities of the Commission at the closing of each year.

Section 13.11.—Functions of the Secretary.—

The Secretary shall have the duties and powers that the Chairperson or the Commission assign to him/her through regulations.

Section 13.12.—Examining Officers.—

The Chairperson shall select and appoint Examining Officers, who shall occupy their positions as long as they enjoy the trust of the Chairperson. They shall not have to be necessarily attorneys at law, unless provided otherwise in the regulations to be promulgated by the Commission. When designated as such, Examining Officers shall issue orders, preside hearings, receive the corresponding evidence in each case, and submit to the Commission a report with the pertinent findings of fact, conclusions of law, and recommendations. The Commission shall resolve, by majority, the action it deems appropriate and conforming to the law.

Section 13.13.—Appellate Jurisdiction.—

This Commission shall have jurisdiction over appeals arising as a consequence of actions or decisions of Individual Administrators and municipalities in the cases and by the persons specified below:

1. When an employee within the Human Resources Administration System not covered under the Public Service Labor Relations Act claims that an action or decision affecting him/her violates any right conferred to him/her by virtue of the provisions of this Act, the Autonomous Municipalities Act, the regulations approved to enforce said Acts, or the regulations adopted by Individual Administrators to comply with this Act.
2. When an employee covered under Act No. 45 who does not exercise his/her right to enter into a union, claims that an action or decision of the Appointing Authority related with the application of this Act violates any right conferred to him/her under the essential areas of the merit principle established herein.

3. When a citizen claims that an action or decision affects his/her right to compete or to be admitted into the Human Services Administration System pursuant to the Merit Principle.
4. When an irregular employee claims that the appointing authority has refused without justification to make him/her into a regular career employee as provided in the Irregular Personnel Act, Act No. 110 of June 26, 1958, as amended.
5. When an Individual Administrator claims that an action, omission or decision of the Office contravenes the general provisions of this Act in the essential areas of the Merit Principle.
6. It is hereby expressly provided that the Commission shall have jurisdiction over the teaching and classified personnel of the Department of Education, as well as over the civilian personnel of the Puerto Rico Police, not unionized under Act No. 45, the Puerto Rico Public Service Labor Relations Act. For the purposes of the provisions of the first paragraph of this subsection, it shall be understood that the authority empowered to sanction a public official has not done so if said authority positively determines to exonerate the official in question, or if, after a claim or complaint against a public official has been brought, or after the facts which could have given grounds for such claim or complaint have occurred, one hundred and twenty (120) days elapse and the authority empowered to sanction does not impose disciplinary measures or it exonerates the public official in question. After the aforementioned one hundred and twenty (120) days have elapsed, the power to sanction the official shall reside exclusively in the Commission. However, at the request of the authority empowered

to sanction, the Commission shall grant additional extensions for a term of thirty (30) days each, provided said extensions are requested before the original one hundred and twenty (120)-day term, or the term of the extension granted, expires, and after it is established that there is a justified reason for doing so. Provided, that the aforementioned one hundred and twenty (120)-day term applies exclusively to cases in which there has been a misuse or abuse of authority.

7. The Commission may have voluntary appellate jurisdiction over non-unionized employees of the agencies excluded from the application of this Act and from public corporations that operate as private businesses which submit themselves voluntarily to the appellate and adjudicative process of this body. The procedure and cost for these to be able to be covered under this jurisdiction shall be established through regulations.
8. The Commission shall promote the use of alternate methods for the settlement of disputes as a mechanism to resolve controversies that arise under the scope of this Act.

Section 13.14.—Appellate Procedure, Term.—

The procedure to bring a complaint or appeal shall be the following:

1. The party affected under Section 9.13, shall present a written appellate brief to the Commission within the term of thirty (30) days, to be counted as of the date in which the party is notified of the action or decision subject to appeal in case he/she had been given a written notice, or from the date he/she became aware of the action or decision by other means.

2. The Commission may, after an appeal has been investigated and analyzed, dismiss the appeal or order the holding of a public hearing, delegating the same unto an Examining Officer, who shall summon the parties and receive the pertinent evidence.
3. The Commission shall provide through regulations the procedure that shall govern the public hearing before an Examining Officer.

Section 13.15.—Judicial Review.—

The decisions of the Commission shall be final unless the Appointing Authority, the citizen or the employee requests a judicial review by filing a petition to that effect.

The party adversely affected by a partial or final resolution or order may, within the term of twenty (20) days from the date the notice of the resolution or order has been entered into the record, present a motion for reconsideration of the resolution or order. The agency shall consider the motion within fifteen (15) days of its presentation. If it flatly rejects it or if it fails to act within fifteen (15) days, the term to request the review shall begin to run anew from the moment of notification of the denial or from the expiration of those fifteen (15) days, as the case may be. If a determination is made in the consideration thereof, the term to request a review shall begin to count from the date of entering into the record a copy of the notice of the resolution of the agency resolving definitely the motion of reconsideration. Such a resolution shall be issued and entered into the record within ninety (90) days following the date the motion for reconsideration has been filed. If the agency accepts the motion for reconsideration but fails to act on the motion within ninety (90) days of the filing thereof, it shall lose its jurisdiction over the same, and the term to request the judicial review shall begin to count from the date of expiration of said ninety (90)-day term,

except if the agency, for just cause and within those ninety (90) days, extends said term to resolve for a period which shall not exceed thirty (30) additional days.

Section 13.16.—Human Resources of the Commission.—

The Commission shall constitute an Individual Administrator subject to the provisions of this Act, and shall develop and implement personnel regulations that incorporate and protect the merit principle. The personnel of the Commission shall be excluded from the provisions of the Public Service Labor Relations Act.

Section 13.17.—Transition Process.—

1. The offices of chairperson and associate members of the Board of Appeals of the Personnel Administration System, created by Act No. 5 of October 14, 1975, as amended, and of the Board of Appeals of the Education System, created by Act No. 78 of August 28, 1991, shall be abolished as of the date of approval of this Act.
2. The personnel, equipment, records, documents and budget appropriations belonging to the quasi-judicial entities mentioned in the above subsection 1 shall be transferred to the Commission created by virtue of this Act.
3. The Appeals Commission shall begin its operations on or before the day in which three (3) months have transpired from the date of approval of this Act. During the transition process, each of the entities shall continue to function as they regularly do, until the new Commission begins to operate. Within said period, the Commission shall have established its main offices within the municipal demarcation of San Juan; have developed the

regulations, norms and procedures that shall govern its internal operations and the exercise of its quasi-judicial functions; have organized the transferred personnel and recruited the minimum additional personnel, if necessary, to begin to operate normally.

4. The Office of Management and Budget is hereby empowered, upon the authorization of the Governor of Puerto Rico, to prorate the amount of two hundred thousand (200,000) dollars, chargeable to the operational expenses budget in effect at each of the quasi-judicial entities mentioned in the above subsection 1, to defray the expenses for disclosure and orientation among public employees and the general citizenry.

In subsequent years, the annual appropriations for the operations of the Appeals Commission shall be included in the General Expenses Budget of the Commonwealth of Puerto Rico.

Article 14.—Status of the Employees as of the Date of Effectiveness of this Act.—

1. Employees who as of the date of effectiveness of this Act were occupying positions in the career service pursuant to the provisions of Act No. 5 of October 14, 1975, as amended, or of special laws, who pursuant to the provisions of this Act are comprised within the career employee category, shall have the status indicated below:
 - a. employees with a regular status shall be career employees with a regular status;
 - b. employees with a probationary status shall be career employees with a probationary status;

- c. employees who as of the date of effectiveness of this Act are occupying positions through a transitory appointment shall remain in their positions until the expiration of their appointment.
2. Employees who as of the date of effectiveness of this Act are rendering services in agencies that constitute Individual Administrators in positions comprised within the career service or the confidential service pursuant to the provisions of Act No. 5 of October 14, 1975, as amended, or of special laws, shall conserve all their vested rights pursuant to the laws, norms and regulations applicable to them, provided the same are not incompatible with the provisions of this Act, and shall be subject to the same duties and prohibitions.

Article 15.—Severability Clause.—

If any word, sentence, subsection, article, section or portion of this Act were to be found unconstitutional or null by a court with competent jurisdiction, such ruling shall not affect, impair or invalidate the remaining provisions and portions of this Act and the effect of nullity shall be limited to the specific word, sentence, subsection, article, section or portion involved in the controversy.

Article 16.—Repeal and Amendment.—

The following Acts are hereby repealed:

- a. Act No. 5 of October 14, 1975, as amended, and any other law or part thereof in conflict with the provisions of this Act.
- b. Act No. 89 of July 12, 1978, as amended, and any other law or part thereof in conflict with the provisions of this Act.

- c. Act No. 182 of July 23, 1974, as amended, and any other law or part thereof in conflict with the provisions of this Act.
- d. Section 2.1 of Act No. 12 of July 24, 1985, is hereby amended to constitute the Office of Government Ethics into an Individual Administrator.
- e. Article 13, Section 3.3 of Act No. 45 of February 25, 1998, as amended, is hereby amended to eliminate the power to represent agencies of the executive branch in the negotiation of bargaining agreements.
- f. Section 1.07 of Act No. 68 of August 28, 1990, as amended, is hereby amended to constitute the Department of Education into an Individual Administrator.
- g. Section 1 of Act No. 3 of March 13, 2001, is hereby amended to constitute the Puerto Rico Drug Control Office into an Individual Administrator.
- h. Section 3 of Act No. 1 of March 13, 2001, is hereby amended to constitute the Office of the General Coordinator for Socio-Economic Financing and Self-Management into an Individual Administrator.
- i. Act No. 78 of August 28, 1991, is hereby amended to repeal Section 9, which created the Board of Appeals of the Public Education System.

Article 17.—Relation with Other Laws.—

- a. Concerning irregular personnel, Act No. 110 of June 26, 1958, as amended, and the regulations which implement it, shall remain in effect.

- b. Concerning the administration of human resources in municipalities, Act No. 81 of August 30, 1991, as amended, remains in full force and effect and without any impairment whatsoever.
- c. Concerning the administration, conservation and disposal of official documents and records of employees who separate from the service, the provisions of Act No. 5 of December 8, 1955, as amended, and the regulations which implement it, remain in full force and effect.
- d. Concerning the status of agencies as Individual Administrators and members of the System created by this Act, should there be any discrepancies or incompatibility between the provisions of any law preceding this one, whether it is an organic, general or special act, the provisions of this Act shall prevail.
- e. No provision of this Act shall be construed to be a limitation to the collective negotiation of any matter liable to be negotiated pursuant to Act No. 45 of February 25, 1998, as amended.

Article 18.—Transitory Provisions.—

- 1. The contracts executed between the office and Individual Administrators or other government entities for the preparation of classification and compensation plans, that are in effect as of the date of approval of this Act, shall remain in effect until their expiration and presentation of the bill.
- 2. The Office shall retain any responsibility and power assigned to OCALLARH (Spanish acronym) by virtue of Act No. 5 of October 14, 1975, as amended.

Article 19.—Appropriation and Transfer of Funds.—

1. The Office hereby retains all unencumbered balances from appropriations provided for by law to the OCALARH.
2. The documents, supplies, equipment and contractual rights or obligations are also maintained in said Office.
3. The Nursing Scholarship Program created by Act No. 222 of May 5, 1950, as amended, which is administered by the IDP (Spanish acronym), as well as any other scholarship and training program managed by any agency with the purpose of satisfying general and common needs of the public services in specialized fields in which human resources are scarce, or competency programs for the personnel in the public service, are hereby transferred to the Office. Said transfer shall include, in addition to the functions, the personnel, property, appropriations and resources available that are being used in connection with the programs to be transferred.
4. The property; records, archives and documents; appropriations available and their surpluses; obligations and contracts; and the personnel rendering services in connection with the programs being transferred, are hereby transferred to the Office.

Article 20.—Effectiveness.—

This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 184 (Substitute for H.B. 3844) of the 7th Session of the 14th Legislature of Puerto Rico:

AN ACT to reform the Human Resources Administration System of the Commonwealth of Puerto Rico, reaffirm the merit principle and set forth the public policy and the standards that shall govern it; rename and redefine the functions and powers of the Central Labor Advisory and Human Resources Administration Office, and incorporate new powers; grant greater autonomy to Individual Administrators; conform the Human Resources Administration System to the collective bargaining and the unionization of public employees; etc.,

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

In San Juan, Puerto Rico, today 16th of May of 2006.

Francisco J. Domenech
Director

