

Anticorruption Code for a New Puerto Rico Signed into Law

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On January 4, 2018, Governor Ricardo Rosselló Nevares signed into law House Bill 1350, known as the “*Anticorruption Code for a New Puerto Rico*” (the “Code”), as part of his Administration’s commitment to tackle government corruption.

The purpose of the Code is to consolidate separately enacted anti-corruption legislation (including provisions of the *Puerto Rico Government Ethics Act*, the *Suspended Sentence and Probation Act*, the *2011 General Services Administration Reorganization Plan*, and the *Training for the Public Service’s Supervision Personnel Act*, Act 426-2000, Act 36-2001, Act 14-2001, Act 119-1997, Act 458-2000, Act 84-2002, and Act 50-1993) into a single legislative code.

In addition, the Code establishes the rights, duties and ethical responsibilities for current and former government officials and for private entities and individuals who provide goods and/or services to the Government of Puerto Rico, as well as for government whistleblowers.

Ethical Duties and Responsibilities for Private Entities

In general, the Code requires private entities to comply with the anticorruption measures mostly found in Act 84-2002, known as the *Code of Ethics For Contractors, Suppliers of Goods and Services and Applicants for Economic Incentives of the Executive Agencies of the Commonwealth of Puerto Rico*, and Act 458-2000, known as the *Prohibition Against Settling Auctions or Contracting Persons Convicted of Crimes that Constitute Fraud, Misappropriation or Illegal Appropriation of Public Funds Act*, whenever they bid for, negotiate, and enter into goods and/or services contracts (“procurement contracts”) with a government entity (i.e., public corporations, departments, agencies, government offices, municipalities, etc.). As such, the Code adopts those provisions of Act 84-2002 and Act 458-2000 prohibiting private entities from engaging in behavior traditionally associated with government corruption such as: bribing government officials, using confidential government information for personal gain, and pressuring government officials to act or decide in a particular manner, among others. However, the Code also introduces new requirements for private entities, namely:

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- Providing in each procurement contract a clause whereby the private entity agrees to comply with the provisions of the Code
- Submitting a sworn statement during the bidding process of a Procurement Contract whereby the private entity states that it has not been found guilty of committing the crimes listed in Article 6.8 of Act 8-2017 (e.g., fraud, bribing, money laundering, among others) and/or violating Act 1-2012 (the *Puerto Rico Government Ethics Act*).

If a private entity fails to comply with the abovementioned provisions of the Code, it could face criminal and civil penalties as well as having their name entered into a government registry for corruption offenders and risking the early termination of procurement contracts they form a part of.

Whistleblower Protections

The Code also adopts Act 426-2000 and Act 14-2001's provisions prohibiting private entities and government officials from threatening, discriminating, harassing, firing or in any other way reprimanding another person who has provided information or has acted as a witness in an administrative, civil or criminal investigation related to the illegal use or misappropriation of public funds or any other act of corruption. However, the Code changes the penalty provision in those laws, exposing violators to a uniform penalty in the form of a fixed \$5,000 criminal fine and/or a fixed prison sentence of 3 years.

Furthermore, the Code incorporates Act 426-2000's and Act 14-2001's private cause of action provisions allowing whistleblowers to claim civil damages from private entities and government officials who have reprimanded them for cooperating in a corruption investigation. As part of this civil cause of action, the reprimanded whistleblower may claim up to 3 times the amount in lost salaries.

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