

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

IN THE MATTER OF:
PETIT AND GRAND JURY SERVICE

Misc No. 12-012 (AD)

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U.S. DISTRICT COURT
SAN JUAN, PR

ORDER

The right to a jury trial is a fundamental right provided in the U.S. Constitution. Sir William Blackstone, the 18th century English legal scholar, noted that trial by jury is "...the principal bulwark of our liberties . . . a privilege of the highest and most beneficial nature."¹ As such, the jury system provides the cornerstone of the federal court system. However, this system depends on, and cannot function without, those citizens who participate in the jury process. Each juror plays a foundational role in the administration of justice and deserves the respect and accommodation necessary to discharge his/her civic duty.

Federal law specifically bars employers from any attempt to discharge, threaten to discharge, intimidate, or coerce "any permanent employee by reason of such employee's jury service, or the attendance or scheduled attendance in connection with such service, in any court of the United States." 28 U.S.C. § 1875 (a) (2011). The statute also provides for damages and injunctive relief. *Id.* "This statute was designed to protect the juror from any employer who is 'hostile to the idea of jury duty, or who believes that the interests of his business

¹ The Founders' Constitution, Volume 5, Amendment VII, Document 2, The University of Chicago Press, <http://press-pubs.uchicago.edu/founders/documents/amendVII2.html>; Blackstone, William, *Commentaries on the Laws of England: A Facsimile of the First Edition of 1765--1769*. Chicago: University of Chicago Press, 1979.

outweigh the obligation for jury service imposed by law.” *Rogers v. Comprehensive Rehabilitation Associates, Inc.*, 808 F. Supp. 493, 498 (D.S.C. 1992), citing *Jeffreys v. My Friend’s Place, Inc.*, 719 F. Supp. 639, 644-45 (M.D. Tenn. 1989). It has been interpreted to impose a duty on the employer to ensure that an employee is aware that he/she may report for jury duty, without fear of any reprisal and with full pay. *Id.*; *Jeffreys*, 719 F. Supp. at 645, (citing *Jones v. Marriott Corp.*, 609 F. Supp. 577, 579 (D.D.C. 1985)).

Further, an employer’s refusal to pay an employee’s wages has been found to constitute intimidation within the purview of this statute and the court has levied penalties upon the employer for such violations. *United States v. Cooper*, Cr. No. 89-580, 1991 WL 38763, at *1 (N.D. Ill. Feb. 28, 1991)(ordering the employer to pay of the employee’s wages during jury service). Notwithstanding, the Code of Federal Regulations provides the following exemption: “While an employer cannot make deductions from pay for absences of an exempt employee occasioned by jury duty. . . , the employer can offset any amounts received by an employee as jury fees. . . for a particular week against the salary due for that particular week without loss of the exemption.” 29 C.F.R. § 541.602 (b)(3). Employers should not use a juror’s vacation time to pay their wages during jury service.

In safeguarding a juror’s employment, the statute also has been interpreted to apply to an employer’s failure to accommodate the schedule of an employee who is performing grand jury service. *In re Bregar*, 2007 U.S. Dist. LEXIS 100132, 13-14 (N.D. Ill. March 14, 2007)(discussing *ex rel. Perkins v. Sara Lee Corp.*, 852 F. Supp. 1321 (W.D. Va. 1994)). Thus, since the statute protects the juror “from any deprivation by the employer during or because of her jury service,” the court may impose a fine or attorneys’ fees upon the employer for failing to comply with its mandate. *U.S. ex rel Madonia v. Coral Springs Partnership, Ltd.*, 731 F. Supp. 1054, 1056 (S.D. Fla. 1990).

By like token, the Commonwealth of Puerto Rico's Criminal Code provides: "Any employer who authorizes, consents or terminates, and any person who threatens to terminate, suspend, reduce the salary, or demote an employee, or who imposes or attempts to impose onerous working conditions upon such person due to the fact that said employee has been summoned to serve, is serving or has served jury duty. . . or any employer who refuses to reinstate said employee when he/she has requested it within forty-eight (48) hours after having ceased to serve as juror... shall incur in a misdemeanor." PR Stat. Ann. tit. 33, § 4927.

The above highlights the imperative that a juror should not be distracted by concerns over loss of wages, employment status, seniority, or suffer employment repercussions during or on account of jury service. However, in certain circumstances, an employer may face genuine hardship if compelled to pay an employee during jury service. In such cases, a juror must claim financial hardship and present all the relevant facts to the judge. Upon review of the particular circumstances and a finding of legitimate financial hardship, the judge may excuse the employee from jury duty altogether. Yet, the number of jurors excused under these circumstances should remain as limited as possible in order to ensure that juries continue to represent a fair cross-section of society. *See* U.S. CONST. Amend. XI; *Taylor v. Louisiana*, 419 U.S. 522, 529-530 (1975).

It is the employer's responsibility to ensure that its employees, who are called upon for jury service, do not encounter impediments at their place of employment when making their invaluable contributions to the administration of justice before this court. A juror who fears the threat of an adverse employment action or potential loss of wages may struggle to find the focus or disposition necessary to carry out his/her civic duty. Therefore, an employer's actions may affect the quality of justice afforded to defendants and may undermine the purpose and function of the jury system. As such, employers are urged to abide by the parameters summarized above and are forewarned that the court shall enforce this mandate adamantly.

SO ORDERED.

At San Juan, Puerto Rico, this 10 day of January, 2012.


S/AIDA M. DELGADO-COLÓN
Chief United States District Judge