

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF PUERTO RICO

3 IN THE MATTER OF:

4 PETIT AND GRAND JURY SERVICE.

Misc. No. 07-129 (JAF)

5 A M E N D E D O R D E R

6 The jury system is fundamental to the functioning and integrity
7 of the federal court system. The jury "stands almost alone today in
8 entrusting the people at large with the power of government."¹ Each
9 individual juror is essential to the dispensation of justice, and
10 deserves the utmost respect and accommodation as he or she fulfills
11 his or her civic duty. An employer's participation in this process
12 is not merely an altruistic one. Many cases that go to trial in the
13 District of Puerto Rico concern issues of employment law where
14 employers reap the benefits of the jury system. Employers should,
15 therefore, not seek to shirk or minimize their important civic and
16 legal responsibilities, and must pay jurors their stipulated salary
17 while on jury duty, only crediting against salary the per diem paid
18 by the government known as "juror attendance fee". At trial, the
19 juror attendance fee is \$40.00 daily.

20 The Criminal Code of Puerto Rico punishes every employer who
21 authorizes, consents, or carries out the discharge of a juror. It

¹ Joanna Sobol, "Hardship Excuses and Occupational Exemptions: The Impairment of the 'Fair Cross-Section of the Community,'" 69 S. Cal. L. Rev. 155 (1995) (citing Jeffrey Abramson, *We, The Jury: The Jury System and the Ideal of Democracy*, 1st Harvard University Press, 1994, at p. 11).

1 also criminalizes threats to discharge, actual discharge, removal,
2 reductions in salary, demotions, and attempts to impose demotions or
3 onerous working conditions on an employee due to the employee's
4 service as a juror for any court of justice in the Commonwealth of
5 Puerto Rico or the federal court sitting in the District of Puerto
6 Rico. A person or entity found guilty of violating Puerto Rico's
7 Criminal Code shall be imprisoned for a period not exceeding six
8 months or fined not more than \$500 dollars, or both, at the
9 discretion of the court. See 33 L.P.R.A. § 4445 (2001).

10 Federal law also states that no employer shall intimidate or
11 coerce "any permanent employee by reason of such employee's jury
12 service." 28 U.S.C. § 1875(a) (2007). Aside from their liability
13 for damages, employers who retaliate against employees who serve on
14 jury duty, or who are scheduled to attend in connection with such
15 service, may be subject to a civil penalty of not more than \$5,000
16 for each violation as to each employee, and may also be ordered to
17 provide community service as part of their penalty. 28 U.S.C. §
18 1875(b) (3) (2008). Additionally, the Court may order the employer to
19 pay the fees and expenses incurred by the juror's attorney.

20 Courts have found that an employer's refusal to pay an
21 employee's wages is intimidation within the meaning of this statute
22 and have imposed penalties on employers for violations. See United
23 States v. Cooper, Cr. No. 89-580, 1991 WL 38763, at *1 (N.D. Ill.
24 Feb. 28, 1991) (ordering the employer to pay all of the employee's

1 wages during jury service and noting that every case dealing with the
2 issue reached the same conclusion). Employers may be ordered to pay
3 fees of the juror's attorney when an employee lodges a complaint with
4 the federal court alleging coercion or intimidation. U.S. ex. rel.
5 Madonia, 731 F. Supp. 1054, 1056 (S.D.Fla. 1990) (finding that the
6 statute protects the juror "from any deprivation by the employer
7 during or because of her jury service" and imposing a fine and
8 attorneys' fees on the employer).

9 An individual who is compelled to perform jury service and
10 consequentially loses the means to support her family or fulfill his
11 or her obligations suffers an irreparable harm. For many people, the
12 loss of a few weeks' pay and the resulting inability to pay his or
13 her mortgage, rent or bill can lead to the loss of a home, a car, or
14 the means to provide adequately for a family. Employers should not
15 place their employees in this untenable position.

16 Employers also should not use jurors' vacation time to pay their
17 wages during jury service. Employees on vacation who are called for
18 jury service will be entitled to reschedule vacation time and the
19 employer will abide by such request in favor of jury service.
20 Vacation time serves an important function in society. It allows
21 individuals to balance their work life with family responsibilities,
22 such as attending their children's graduations and other
23 celebrations, and affords employees much-needed rest, leading to more
24 balanced and productive professional and personal lives. Moreover,
25 a juror who finds herself threatened by the loss of wages or vacation
26 time will struggle to maintain the focus and disposition necessary to

1 mete out justice properly. An employer's actions can thus affect the
2 quality of justice for particular defendants and undermine the jury
3 system as a whole.

4 In certain cases, an employer may face true hardship if
5 compelled to pay an employee during jury service. For example, if a
6 juror is an employer's only employee, a business' profits or survival
7 may depend on that employee's unique abilities or on the employer
8 paying only one salary. In such cases, a juror must claim financial
9 hardship and present all relevant facts to the judge. The judge may
10 then excuse the employee from jury duty altogether. It is important
11 to keep the number of people excused from duty due to such
12 circumstances as small as possible, however, to ensure that juries
13 continue to represent a fair cross-section of society, as guaranteed
14 by the United States Constitution. See U.S. CONST. amend. XI; Taylor
15 v. Louisiana, 419 U.S. 522, 529-30 (1975).

16 To avoid situations where a juror might experience a windfall,
17 employers may discount the amount that a juror receives from the
18 court for service from their wages, as is provided in the Code of
19 Federal Regulations. 29 C.F.R. § 541.602(b)(3) ("[w]hile an employer
20 cannot make deductions from pay for absences of an exempt employee
21 occasioned by jury duty . . . the employer can offset any amounts
22 received by an employee for jury duty").²

23 The imperative of providing defendants with a jury made up of a
24 cross-section of the community presents a particular challenge in the

² Exempt employees include executives, administrative employees, and professionals.

1 district of Puerto Rico, where English-language requirements limit
2 the number of people qualified to serve on a federal jury.
3 Individuals are often asked to perform jury service more than once,
4 and it falls on employers to insure that these individuals encounter
5 no obstacles to make their important contributions to justice in this
6 district.

7 In accordance with the foregoing, we urge employers to pay
8 employees who perform jury service at their regular rate of pay.
9 This salary should not be derived from the employees' vacation pay.
10 We also inform employers that this court will do everything in its
11 power to enforce these directives.

12 **IT IS SO ORDERED.**

13 San Juan, Puerto Rico, this 23rd day of February, 2009.

14 S/José Antonio Fusté
15 JOSE ANTONIO FUSTE
16 Chief U.S. District Judge