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Publication Date

2010-12-01

Research & Policy Brief

Number 6 – December 2010

Why a Domestic Workers Bill of Rights?

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In August 2010, the California State Legislature passed a Resolution for a Domestic Workers Bill of Rights. This resolution highlights the work done by domestic workers in the state and the labor violations faced by these workers. The resolution calls for the fair treatment of these workers, noting that domestic workers have a right to be treated with respect and dignity. On November 29, 2010, New York State enacted a new Domestic Workers Bill of Rights, which guarantees basic work standards and protections for domestic workers. The next step for California is to follow New York's lead and pass a law that would prohibit the mistreatment and underpayment of domestic workers. Such a law will be introduced to the California State legislature in January 2011. If passed, the California law would go beyond its New York counterpart by providing paid days off and severance upon termination, in addition to an eight hour day and minimum wage assurances. This Brief details why these laws are needed now and what worker protections they will provide.

What is Domestic Work?

Domestic work consists of duties performed for a family other than one's own, within that family's home. Domestic work is varied as are the employment relationships between domestic workers and their employers. This makes domestic work difficult to categorize and makes domestic workers hard to organize. Domestic work includes cleaning, clothing care, shopping, cooking, caring for the sick or elderly, caring for children, and looking after pets among other tasks. Many domestic workers live in the home of the family for which they work. Those who do not live in the employer's home often work for several employers, generally for only a few hours per week for each employer.

Most domestic workers are hired without a work contract, through a private agreement between the individual employer and the worker. Individuals hiring domestic workers often do not think of themselves as employers. Thus, they may not think about their own responsibility to provide the people working in their home with a living wage and benefits. A domestic workers bill of rights can help set standards for employers to follow.

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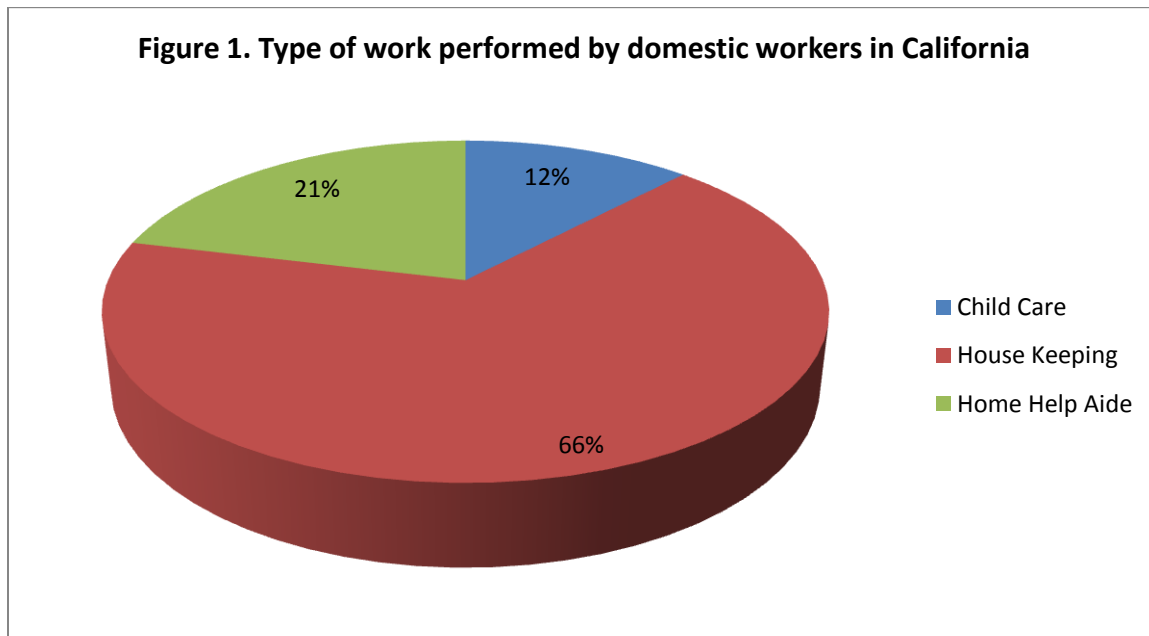
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Employers' organizations, such as Hand in Hand: The Domestic Employers Association, can also be a resource for helping individuals understand their responsibilities as employers of domestic workers. Founded in New York, Hand in Hand is now a national employers' organization that serves to help employers to understand the new law in New York and fight for a domestic bill of rights in other states. Employers often want to act justly in their employment arrangements, but are not sure how to do this. Hand in Hand allows helps employers of domestic workers to understand their responsibilities. It also gives employers a way to support the just and respectful treatment of domestic workers. The voice of employers was important in New York during the campaign for a domestic workers bill of rights.

Who are Domestic Workers?

Domestic workers include housekeepers, chauffeurs, cooks, full-time babysitters, and home help aides. Casual babysitters and companions to the elderly or infirm can also be considered domestic workers. Domestic workers can work full-time or part-time hours and live in the employer's house or outside of it. Domestic workers often take care of the people, children or elderly parents and relatives, who are most important to the employer and yet they are often underpaid, overworked and experience workplace violations on a regular basis.



Source: American Community Survey 2006-2008 as analyzed by the Data Center.^a

Racial and gender power dynamics that are found in U.S. society in general play out in the relationship between employer and employee within domestic work as domestic workers tend to be women, minorities, and immigrants, both documented and undocumented. Class distinctions and related power differentials are embedded into the employment relationship, because most domestic workers are less educated and have less income than the wealthier households in which they are

^a Data include both employed and unemployed workers age 18 and older. Data do not include child care workers who report being self-employed. This helps to exclude child care workers who work out of their own homes.

employed.¹ Furthermore, the fear of deportation among undocumented domestic workers may serve to increase the power differential between employee and employer and increase the likelihood of abuse and labor violations.

Data collected by the American Community Survey over the three years from 2006 to 2008 indicate that only 20% of domestic workers in California are white and 73% are foreign-born. Domestic workers are also overwhelmingly women (93%).² One study of 240 domestic workers in the San Francisco Bay area found that more than half of the women surveyed were the primary breadwinners for their family and many (72%) also sent money back to family members in their country of origin. These women tended to be employed as domestic workers for many years. Nearly one-third of the women who took part in the study had worked in the industry for six years or more, while over 40% had spent between two and five years employed as domestic workers.³

Table 1. Gender and Racial Composition of Northern California Domestic Workers

Role in family income support	%
Primary income earner	54%
Joint income earner	21%
Support additional family abroad	
Send money or packages to family in home country	72%
Gender, race and country of origin	
Female	93%
Latina	67%
Born outside of the United States	73%
Years worked in industry	
1 year or less	28%
2-5 years	41%
6 years or longer	31%

Source: American Community Survey 2006-2008 as analyzed by the Data Center.

HWRC Survey 2007 as cited in *Mujeres Unidas y Activas*, Day Labor Program Women's Collective of La Raza Centro Legal, DataCenter (2007, March). *Behind Closed Doors: Working Conditions of California Household Workers.*

Workplace Violations Faced by Domestic Workers

The 1938 Fair Labor Standards Act provides workers with a number of protections including a 40 hour work week, overtime, and a minimum wage.⁴ Though domestic workers are generally excluded from the protections provided by this act, it is still widely viewed as a standard of decency. Violations of this standard, including minimum wage rules, overtime pay, and work hours, have been cited frequently by domestic workers in both Northern and Southern California. Among 240 domestic workers interviewed in Northern California, 11% received a wage that was below the minimum wage and 3% received no wage whatsoever. Within a recent two-month period, 16% of workers who were promised a wage, were either not paid or paid with a bad check. Similarly, many of the domestic workers surveyed indicated that during this period they had worked more hours (31%) or were paid less (22%) than what

had been agreed upon (see Table 2). Among workers in the study who worked overtime, almost all (90%) failed to receive overtime pay.⁵

Table 2. Wage and Workplace Violations and Abuse Faced by Domestic Workers in Northern California

Worker Hourly Wage	%
No wage earned	3%
Less than minimum wage earned (more than \$0)	11%
Violations with Pay and Overtime	
Did not receive overtime pay after working overtime	90%
Not paid or paid with a bad check	16%
Abused by Employer in Last Two Months	
Insulted or threatened	20%
Sexual harassment	9%
Violence	9%

Source: HWRC Survey 2007 as cited in Mujeres Unidas y Activas, Day Labor Program Women’s Collective of La Raza Centro Legal, DataCenter (2007, March). [Behind Closed Doors: Working Conditions of California Household Workers.](#)

Domestic workers participating in a study of low-wage workers in Los Angeles County reported similar problems. Nearly 75% of child care workers and 35% of maids and housekeepers in Los Angeles County were paid at an hourly rate lower than the minimum wage. Almost all (96%) of the home health care workers, child care workers, and maids and housekeepers surveyed in Los Angeles experienced overtime violations. Many home health care workers (97%) and child care workers, maids, and housekeepers (87%) reported being required to work when they were not on the clock – that is, they did not get paid for all of the work they did. Finally, among those employees who worked enough hours to qualify for a meal break, nearly 96% of child care workers and nearly 93% of maids and housekeepers reported that their meals breaks were cut short, interrupted, or simply not provided.⁶ Domestic workers may experience extended working hours, a lack of paid vacation and sick or maternity leave, and a lack of work contracts or benefits.⁷

Domestic workers face numerous workplace hazards. Long work hours and lack of sleep create vulnerability to illnesses and other physical problems. In addition, domestic workers may not get enough food or be exposed to water that is either too hot or too cold as well as to toxic substances found in household cleaning products. Often injuries result from lifting heavy objects such as furniture or even children as well as from kneeling for long periods while cleaning floors.⁸

Domestic workers are frequently exposed to verbal and physical abuse. One-fifth of Northern Californian domestic workers surveyed reported having been insulted or threatened by their employers and almost one-tenth of these workers reported being sexually harassed or having experienced violence (see Table 2). These results probably underestimate the problems faced by domestic workers, as more than a third of respondents refused to answer the question.⁹ While live-in domestic workers are more vulnerable to abuse and hazards than are domestic workers who reside in their own homes, all domestic workers are susceptible to workplace violations that may cause physical and psychological problems.

Live-in domestic workers may also be isolated from their family and community and they face a greater threat of violence, harassment, rape, and physical and mental abuse.¹⁰

Thus, in large part, domestic workers are not guaranteed the basic protections offered to other workers. Because they are often immigrants – documented and undocumented, less educated, and women, their situation makes it easy for them to be taken advantage of and there is little recourse.

Domestic workers can be invisible – they are in people’s homes and not in offices, removed from public scrutiny. Furthermore, because domestic workers often work alone, they are difficult to organize and find it difficult to take collective action.

These workers are often denied the right to collective bargaining and thus cannot fight together for contracts that provide basic workplace standards and rights. Yet, domestic workers face numerous workplace violations such as extra hours,

unpredictable hours, and wage violations. In some cases, room and board is offered in lieu of pay for work done. In addition, health and other benefits are rarely provided. Domestic workers usually receive no paid time off, no sick days, and sometimes not even a guarantee of enough sleep at night.¹¹

“If the Spanish speaking nannies receive any medical care at all, it’s usually poor quality. There should be benefits, unions, paid vacations. Taking care of children is one of the most important jobs in the world, but we don’t treat it that way, which is hypocritical.”

*Playwright Lisa Loomer**

California Resolution for a Domestic Workers Bill of Rights

Domestic workers often face labor and pay violations, abuse, and even a loss of dignity. Yet they have few rights and face many barriers to organizing. Thus, protections for these workers need to be established through legislation. In order to ensure decent working conditions, domestic workers must be guaranteed equality of labor rights, health care, safety on the job and compensation for injuries occurring at work, and protection from discrimination.¹² Employers must be held accountable for making sure these conditions are met. As a first step in making these workplace rights a reality, a domestic workers bill of rights resolution was passed by the California State Legislature in August 2010.¹³

The California domestic workers bill of rights resolution paves the way for future legislation by stating that domestic workers deserve to be treated fairly in the workplace. This bill acknowledges that domestic workers serve a critical role in the functioning of California’s economy, yet are not treated fairly under federal and state labor laws. The California Bill recognizes that while domestic workers often provide the primary income for their families, working conditions are difficult, wages are low, and benefits and job security are scarce. In addition, while many individual employers would like to treat domestic workers fairly, there is little information available to them to help establish fair practices. Employers and employees rarely have a contract, which could help clarify each party’s rights and obligations.¹⁴

While these workers care for children, the elderly, and people with disabilities – work that can be physically demanding – as noted above, they are typically not eligible for overtime protections or minimum wage, and they may not receive meal or rest breaks. Where other workers in California are entitled to work in a healthy and safe environment, domestic workers are not granted this protection.

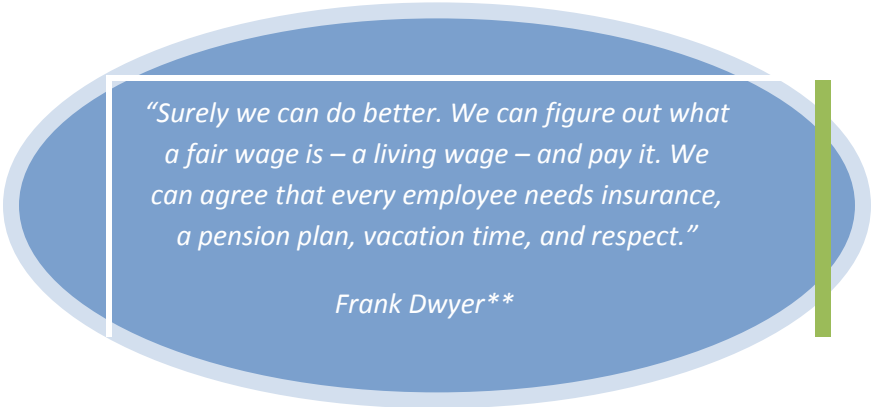
Domestic workers have no recourse, if hurt on the job. Furthermore, these workers do not have sick days, and very few have health insurance, prohibiting many workers from dealing with an illness or medical emergency. Yet, domestic workers are often exposed to illness and live-in workers, in particular, are often denied a minimum number of hours of uninterrupted sleep at night.¹⁵

Given these violations of basic human dignities and workplace rights, the California State Legislature has resolved,

“that coverage of domestic workers under state and federal labor law should be an expression of respect for their dignity and equality and the importance of the work they perform, and a rejection of antiquated and long-discredited stereotypes about domestic work.”¹⁶

Furthermore, the resolution states,

“that domestic workers are entitled to industry-specific protections and labor standards that eliminate discriminatory provisions in the labor laws and guarantee domestic workers basic workplace rights to ensure that domestic workers are treated with the respect and dignity they so richly deserve.”¹⁷

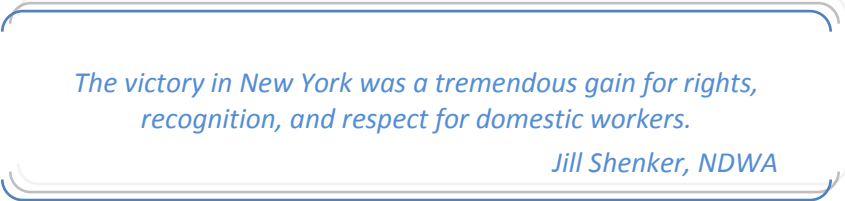


“Surely we can do better. We can figure out what a fair wage is – a living wage – and pay it. We can agree that every employee needs insurance, a pension plan, vacation time, and respect.”

*Frank Dwyer***

Domestic Workers Bill of Rights as Law

The California resolution is an indication that the California legislature recognizes the challenges faced by domestic workers in the state. However, a resolution does not have the force of law and lacks the power of enforcement. There is no penalty for employers who do not follow the resolution. The next step is to turn the resolution into a law. New York State has recently become the first state in the country to do just this. On November 29, 2010, the Domestic Workers Bill of Rights took effect in New York State.



The victory in New York was a tremendous gain for rights, recognition, and respect for domestic workers.

Jill Shenker, NDWA

The New York law counters the historical exclusion of domestic workers from federal labor protections. It provides domestic workers many of the basic rights provided to other workers. This law establishes an eight hour day and rules for overtime – after 40 hours of work in one week for live-out domestic workers and after 44 hours for live-in workers. Domestic workers are required to have one day a week off from work and must receive overtime pay if they need to work on their day off. Three paid days off a year are required after an employee has worked for an employer for a year. Domestic workers in New York are now protected against discrimination, violence, sexual harassment, and harassment based on gender, race, national origin, and religion. Employers must provide temporary disability benefits to all domestic workers, regardless of their full or part-time status.¹⁸

A California Domestic Workers Bill of Rights proposed by the California Domestic Workers Coalition,^b which will be introduced in January 2011, would build on and go beyond the New York Bill. As in New York, the California bill would establish a standard eight hour day and provide overtime rights to domestic workers that match the protections given to other workers in California. Employees would also get annual living wage increases and paid vacation and sick days. If the bill goes forward in California, all domestic workers would be protected from working in an unsafe or unhealthy environment and would receive worker's compensation if injured on the job. Currently, only those domestic workers who have worked more than 52 hours or earned more than \$100 in the 90 days prior to the injury, are eligible for worker's compensation. If passed, the California law would provide domestic workers with pay if they arrive at work and the employer cancels and requires advanced notice or severance when an employee is to be terminated. Basic respect and dignity would be ensured by the right of workers to cook their own food and to sleep a minimum of five hours at night without interruption.¹⁹

Conclusion

The success of the New York State law and the California resolution has built up momentum for a movement fighting for the rights of domestic workers, not just locally, but nationally and internationally as well. Three years ago there were 13 organizations fighting for the rights of domestic workers in six cities around the U.S. Today, there are 33 such organizations in 17 cities and there is a growing relationship between these organizations and the labor movement, specifically with the AFL-CIO and SEIU. California is a leader in the domestic worker movement and the California Domestic Workers Bill of Rights will be the next legislative initiative to be taken on in the country. Massachusetts is also considering domestic workers' rights legislation. These state initiatives are laying the groundwork for federal policy. At the same time, international pressure is growing for the International Labour Organization to pass a convention on domestic work in June 2011.²⁰

Domestic workers currently lack workplace rights, basic health coverage, the ability to take sick days, are exposed to numerous hazards on the job, and often face discrimination. Employers are not

^b The California Domestic Workers Coalition includes the following organizations of domestic workers: Centro Laboral de Graton, Mujeres Unidas y Activas, POWER, La Colectiva of La Raza Centro Legal, Filipino Advocates for Justice, Pilipino Worker's Center, CHIRLA, IDEPSCA.

held accountable and these vulnerable workers have very little recourse for unjust treatment. The New York Domestic Workers Bill of Rights law is a start to the fair treatment of a group of workers who take care of our children, our parents, and our homes. The California resolution passed by the State Legislature last summer is a first step toward the passage of a California law, which would go beyond the scope of the New York legislation. If a Domestic Workers Bill of Rights is passed in California, domestic workers who are largely isolated, women of color, and immigrants, would finally have basic labor protections and workplace rights. These protections would help these women to provide for their families, take care of their own and their family's health, and to be free from discrimination and abuse by their employer.

For more information on the fight for domestic workers' rights, go to the following websites:

Coalition for Human Immigrant Rights of Los Angeles – www.chirla.org

Day Labor Program Women's Collective of La Raza Centro Legal –
http://techforpeople.net/~lrcl/article.php/about_womens_collective

Domestic Workers United – www.domesticworkersunited.org

La Colectiva SF – www.lacolectivasf.org/gallery/

Mujeres Unidas y Activas – www.mujeresunidas.net

National Domestic Worker Alliance – www.nationaldomesticworkeralliance.org

People Organized to Win Employment Rights (POWER) – www.peopleorganized.org/section.php?id=10

¹ International Domestic Workers Network. What is Domestic Work?

<http://www.domesticworkerrights.org/?q=node/13>. Accessed December 7, 2010.

² Fletes, C. (2010, December 3). Personal correspondence. Data Center Analysis of American Community Survey 2006-2008 data.

³ Mujeres Unidas y Activas, Day Labor Program Women's Collective of La Raza Centro Legal, DataCenter (2007, March). Behind Closed Doors: Working Conditions of California Household Workers.

⁴ United States Department of Labor. elaws Advisor - Fair Labor Standards Act Advisor.

<http://www.dol.gov/elaws/flsa.htm>. Accessed November 12, 2010.

⁵ Mujeres Unidas y Activas, Day Labor Program Women's Collective of La Raza Centro Legal, DataCenter (2007, March). Behind Closed Doors: Working Conditions of California Household Workers.

⁶ Milkman, R., Gonzalez, A. L., Narro, V. et al. (2010). Wage Theft and Workplace Violations in Los Angeles: The Failure of Employment and Labor Law for Low-Wage Workers. Los Angeles: Institute for Research on Labor and Employment, University of California, Los Angeles.

⁷ Babin, A. (2007). Domestic Workers. International Labour Organization.

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⁸ Babin, A. (2007). Domestic Workers. International Labour Organization.

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⁹ Mujeres Unidas y Activas, Day Labor Program Women's Collective of La Raza Centro Legal, DataCenter (2007, March). Behind Closed Doors: Working Conditions of California Household Workers.

¹⁰ Babin, A. (2007). Domestic Workers. International Labour Organization.

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