

Massachusetts Passes Comprehensive Domestic Workers Law

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By Barry A. Guryan

On June 26, 2014, Massachusetts became the fourth state to pass a law designed to provide protections to domestic workers, which include nannies, housekeepers, caretakers of individuals in the home, and home companions. The other states that have passed similar bills are New York, California, and Hawaii.

Coverage

The Massachusetts law, entitled “An Act Establishing the Domestic Workers Bill of Rights” (M.G.L. 148, Sections 190, 191), goes into effect on April 1, 2015. It complements an existing law in Massachusetts covering a sub-group of domestic workers—homecare aides—who provide care to senior and disabled individuals through the state’s health insurance system. All in all, it has been estimated by Governor Patrick’s office that approximately 67,000 domestic workers will be covered by the new law, which will be enforced by the Attorney General of Massachusetts.

Importantly, the language of the statute appears to exclude individuals “whose vocation is not childcare” and individuals “who take[] care of children on an intermittent, casual or irregular basis.” The Attorney General’s Office has not confirmed the breadth of these exceptions but will be issuing regulations on coverage and other subjects dealing with the law’s implementation before the April 1 effective date.

The Law Is Comprehensive

The new law is very comprehensive, comprising virtually all aspects of a covered domestic worker’s terms and conditions of employment. For example, the new law provides for:

- a rest period of “at least 24 consecutive hours in each calendar week” to those individuals who work 40 calendar weeks and “at least 48 consecutive hours during each calendar month” (note that domestic workers may waive this right, in writing, as long as he or she is compensated at an overtime rate for this working time);

- the “right of privacy,” which means that the employer cannot interfere or monitor the domestic worker’s calls, or take any of the individual’s documents;
- a written evaluation, if requested, after three months of work and at least annually;
- the following, which will be provided by the employer if a live-in domestic worker’s employment is terminated without cause:
 - two weeks’ severance, or
 - written notice of termination and 30 days’ lodging; and
- protection from sexual harassment, or other forms of discrimination, and the same maternity leave benefits available to other employees in Massachusetts in case of birth or adoption.

The law also clarifies under what circumstances an employer can make deductions for food and lodging.

Record Keeping

The new law requires the employer of a domestic worker to keep a record of wages and hours worked.

If a domestic worker works 16 or more hours a week, the employer is also required to provide the individual with certain information, including:

- rate of pay (including overtime and compensation for added duties or multilingual skills);
- working hours, including breaks, vacation days, and holidays;
- information regarding any applicable benefits—such as vacation days, holidays, severance, yearly raises, and transportation costs—and whether health insurance is paid or reimbursed;
- the right to collect workers’ compensation if the domestic worker is injured on the job;
- the process for raising grievances and additional compensation if new duties are added;
- the circumstances under which the employer will enter the domestic worker’s living quarters if the domestic worker is a live-in;
- required notice of employment termination by either party; and

- any other rights or benefits.

Finally, the employer must provide to domestic workers notice of applicable state and federal laws that apply to those workers.

Attorney General to Issue Regulations

Prior to April 1, 2015, the Attorney General will develop regulations to implement the law and develop a multilingual outreach program to inform domestic workers and their employers of the rights of domestic workers under the new law. The package will include model employment agreements and education materials for employers.

Significance

This very comprehensive law will transform the home into a workplace. Those who employ domestic workers in the home must educate themselves regarding their obligations or they may be subject to penalties by the Attorney General's Office. According to recent press releases, this is not the end of the story. Unions are already planning to organize these individuals, establishing groups that intend to collectively bargain and setting up mediation procedures to resolve disputes. That may be a long way off, but employers of domestic workers should be aware of these developments.

What Employers of Domestic Workers Should Do Now

- Watch for the Attorney General's advisories and regulations dealing with the new law's implementation.
- If desired, participate in the comment period when the regulations are published. (Epstein Becker Green is available to assist in drafting and submitting comments on the regulations.)
- Watch out for additional information from Epstein Becker Green on this new law—we will keep you posted!

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