

New York Law Hits Home with Nation's First Domestic Workers' Bill of Rights

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By Susan Gross Sholinsky and Brian M. Molinari

On August 31, 2010, New York Governor David A. Paterson [signed into law](#) a reconciled Senate and Assembly bill ([A.1470B](#)) that provides domestic workers in New York with a "Bill of Rights" – the only one of its kind in the nation. For the first time, domestic households will have "employer" status, subjecting them to typical workplace rules – such as paying the minimum wage and overtime, providing short-term disability benefits, and prohibiting harassment. These households may even be required to contend with the possibility of union organizing.

The "Domestic Workers' Bill of Rights" significantly overhauls the following terms and conditions of employment for domestic workers:

- **Minimum Wage.** Domestic workers, except those employed on a "casual basis," such as a part-time baby sitters, are entitled to New York's minimum wage, with eight hours being considered a "legal day's work."
- **Overtime.** After working more than 40 hours in a week (or 44 hours in a week if the domestic worker resides in the employer's home), domestic workers are entitled to overtime compensation at a rate not less than 1½ times the normal wage rate.
- **Day of Rest.** Domestic workers are entitled to a day off (24 consecutive hours) each calendar week. If the worker agrees to work on his or her day of rest, he or she must be paid at the overtime rate for all hours worked. After one year of employment with the same employer, a domestic worker must receive at least three paid days of rest each calendar year at the regular rate of pay.
- **Discrimination/Harassment.** A new provision (§ 296-b), which specifically protects domestic workers, was added to the [New York State Human Rights Law](#). Such protections apply whether or not the employer employs the statutory minimum of four employees. Domestic workers are protected from "unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature" and other harassment based on gender, race, religion, or national origin. Compliance with this provision may prove thorny, as the behaviors exhibited in the privacy of one's home may not be as modest as those displayed in an office setting, for example.
- **Workers' Compensation/Disability.** New York households are generally not required to provide workers' compensation insurance to their domestic workers unless they work at least 40 hours a week. That rule has not changed. However, the new law amended the [New York State Workers' Compensation Law](#) to require short-term disability benefits

for domestic workers regardless of the number of hours they work. Similar to the law regarding workers' compensation insurance, prior to this amendment, disability benefits were required only when the domestic worker worked 40 or more hours in a week.

- **Union Organizing.** By November 1, 2010, the State Commissioner of Labor will report on the "feasibility and practicality" of allowing domestic workers to organize for purposes of collective bargaining under the [New York State Employment Relations Act](#).

Who Is – and Who Is Not – a Domestic Worker?

Under the new law, a "domestic worker" is defined as a person employed in a home or residence for the purpose of: (a) caring for a child; (b) serving as a companion to a sick, convalescing, or elderly person; (c) housekeeping; or (d) for any other domestic service purpose.

A domestic worker is *not* someone who: (a) works on a "casual basis" (which term is not defined in the statute); (b) is a relative through blood, marriage, or adoption of the employer or of the person for whom the worker is delivering services under a program funded or administered by federal, state, or local government; or (c) provides "companionship services," as that term is defined in the federal Fair Labor Standards Act ("FLSA"), *and* is employed by any entity other than the family or household (*e.g.*, a third-party employer or agency). FLSA regulations define "companionship services" as "those services which provide fellowship, care, and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs. Such services may include household work related to the care of the aged or infirm person such as meal preparation, bed making, washing of clothes, and other similar services [and] may also include the performance of general household work [p]rovided, however, [t]hat such work is incidental, *i.e.*, does not exceed 20 percent of the total weekly hours worked." Moreover, the term "companionship services" does not include services that require and are performed by trained personnel, such as a registered or practical nurse. It should be noted that the U.S. Department of Labor is currently re-examining its definition of "companionship services." Indeed, there appears to be movement towards increasing wage/hour protections for domestic workers at the federal level.

Action Items to Consider

The law, which goes into effect on November 29, 2010, will necessitate the development of a comprehensive compliance plan. Consider taking the following actions as part of your plan:

- Assess the scope of the law's coverage to determine whether the domestic worker falls within any of the statutory exclusions noted above – *e.g.*, works on a casual basis, or is engaged in providing companionship services while employed by a third-party employer, etc.
- Obtain written acknowledgments from the domestic worker confirming that he or she has been advised of, and is receiving, the applicable entitlements set forth in the Domestic Workers' Bill of Rights.
- Create and maintain daily and weekly records of hours worked, payroll records including pay rate, wages and overtime pay, and paid time off. Such records should be maintained for a minimum of six years, since claims for unpaid overtime and wages under New York law may be brought up to six years after the wage is earned.

- Develop and distribute an effective anti-harassment policy consistent with § 296-b, including appropriate avenues for receiving and investigating complaints of harassment by a domestic worker. Any such policy should inform the domestic worker that his or her complaint will be investigated promptly, and that remedial action will be taken, where appropriate. If an investigation is undertaken, details of the investigation, as well as any remedial action taken, should be documented. In this regard, and especially in light of differences between a household and a typical place of employment, thought should be given to issues such as (a) how the requisite independent investigation would be conducted, (b) who the appropriate person to conduct the investigation and determine its outcome might be (perhaps consideration should be given to utilizing someone from outside the household), and (c) the form or substance of any appropriate remedial action. There is currently no guidance available from the State regarding any of these points.
- Contact applicable insurance carriers regarding disability benefits.

For more information about this Advisory, please contact:

Susan Gross Sholinsky
New York
212/351-4789
sgross@ebqlaw.com

Brian M. Molinari
New York
212/351-4722
bmolinari@ebqlaw.com

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