

Testimony Supporting

Proposed S.B. No. 446 – An Act Concerning the Definition of the Term “Domestic Worker”

Joanna Vincent¹

Committee on Labor and Public Employees

February 17th, 2014

Senator Winfield, Representative Tercyak and Distinguished Members of the Labor and Public Employees Committee:

My name is Joanna Vincent and I am a student at Yale Law School.

I thank the co-chairs of the Committee and Committee members for considering this Bill. I had the pleasure of meeting Senator Winfield in November last year at a Wage Theft Conference organized by the New Haven Legal Assistance Association. I wish to thank him for devoting his time to chairing the Domestic Workers Taskforce and building the momentum that is needed to eventually make this Bill law.

The Bill in its current form aims to “provide protections not currently afforded under law to domestic workers.”

To understand what this Bill would achieve, it is necessary to map out the complex array of exclusions that pervade Connecticut’s labor laws.

Currently domestic workers are specifically excluded from the many protections so important to so many other workers in Connecticut.² For example, domestic workers are often not protected by:

- Connecticut’s workers compensation law, which presently covers workers who provide services in or about a private dwelling *only* if they regularly work over 26 hours a week – a time limitation that does not apply to other workers in Connecticut.³
- Connecticut’s discrimination and sexual harassment laws, as they specifically exclude individuals employed in the domestic service of any person.⁴
- Connecticut’s provision of sick days, which apply only to businesses with 50 or more employees.⁵

This is compounded by the fact that domestic workers are excluded from some federal labor law protections such as:

¹ Ms. Vincent is a student at Yale Law School. This testimony was prepared through the Yale Law School Legislative Advocacy Clinic under the supervision of J.L. Pottenger, Jr., Nathan Baker Clinical Professor of Law and Ellen Scalettar, Visiting Clinical Lecturer in Law, at Yale Law School.

² NB: There is no statutory definition of “domestic worker” that applies to these exclusions.

³ Conn. Gen. Stat., § 31-275(9)(B)(iv).

⁴ Conn. Gen. Stat., § 46a-51(9).

⁵ Conn. Gen. Stat., § 31-57r(4).

- Protections from retaliation by virtue of a specific exclusion under the National Labor Relations Act of 1935.⁶
- Protections under Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967 by virtue of their definitions of employer, which requires that a minimum number of employees be engaged.⁷
- As regards live-in domestic workers, overtime pay under the Code of Federal Regulations.⁸

I believe that one concrete step the Connecticut legislature could take during this session is to remove these exclusions from Connecticut's laws. The occasion will hopefully arise for a discussion like this also to take place at the federal level in relation to the retaliation and anti-discrimination provisions outlined above, but for now, our focus must be on the laws that affect domestic workers in their home state of Connecticut.

In some instances, the removal of exclusions would require a definition of what is meant by a 'domestic worker'.⁹ We recognize that there are complexities involved with this next step. Attuned to these complexities, the Domestic Workers Taskforce has established a sub-committee that is specifically dedicated to working through the nuances of the definition. I have conducted legal research into the definition for the Taskforce and the Brazilian Immigrant Centre, which has involved analyzing the definitions that have been adopted under the Domestic Workers Bill of Rights of other states including California, Hawaii, Massachusetts and New York, as well as the International Labor Organization's Domestic Workers Convention 2011 (No. 189).¹⁰

If the General Assembly did no more than to remove the exclusion of domestic workers from Connecticut's labor laws, it would provide more protections to domestic workers than they currently receive.

However, the Brazilian Immigrant Center and the National Domestic Workers Alliance also are urging the Connecticut legislature to take the next big step and - in addition to removing the exclusions - enact a Bill of Rights that provides fair, minimum and tailored protections for domestic workers in recognition of their vulnerability in the workforce. The type of protections sought include protections that would flow naturally from the particular nature of their

⁶ National Labor Relations Act, 29 U.S.C. § 152(3) which defines the term "employee" to exclude any individual employed "in the domestic service of any family or person at his home".

⁷ Civil Rights Act of 1964, 42 U.S.C. § 2000e(b) which defines 'employer' as a person who, inter alia, has "fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year"; Age Discrimination in Employment Act of 1967, 29 U.S.C. § 630(b) which defines "employer" as a person who, inter alia, has "twenty or more employees for each working day in each twenty or more calendar weeks in the current or preceding calendar year."

⁸ 29 C.F.R. § 552.102.

⁹ For example, to extend protections under Connecticut's discrimination and sexual harassment laws to domestic workers, it would not suffice to remove the exclusion of individuals "in the domestic service of any person", because only employers with three or more employees are covered by the law. Instead, domestic workers could be covered by the laws without regard to the total number of domestic workers the employer engages. Clarity could be achieved in this respect by including a definition of a "domestic worker".

¹⁰ NB: The United States has not ratified the Convention. Article 1 defines a 'domestic worker' as "any person engaged in domestic work within an employment relationship".

employment relationship, including reimbursement for cleaning products purchased, payment for time taken to drop children to school and families to airports, rest periods for live-in domestic workers and sufficient advance notice if a shift is cancelled.

It is time for this issue to rise to the top of Connecticut's legislative agenda. During Connecticut's last legislative session, the issue was referred to the Domestic Workers Taskforce for further in-depth consideration. Domestic worker protections are urgently needed for the sake of immigrants, a workforce that is largely made up of women, and employers who are looking for guidance regarding their legal obligations when engaging domestic workers. Importantly, also, Connecticut's most vulnerable populations - children and the elderly who are frequently cared for by domestic workers - will benefit from their caregivers receiving the protections that the rest of the community enjoys.

Other states have recently passed Domestic Workers' Bills of Rights. It is time for Connecticut to become a national leader, remove the existing exclusions and enact a strong Bill of Rights that can be a model for other states to follow.

There are many domestic workers and organizations that are on board with these changes and momentum is building every day. We urge this legislature to make the Bill a priority for this session and give domestic workers the protections that most Connecticut workers – including you and I – take for granted.

Kind regards

Joanna Vincent

Yale Legislative Advocacy Clinic