



To: Connecticut Labor and Public Employees Committee
From: Elly Kugler, Staff Attorney, National Domestic Workers Alliance
Re: Testimony in Support of a Connecticut Domestic Worker Bill of Rights
Date: Feb. 17th, 2015

The National Domestic Workers Alliance (NDWA) is a leading voice for dignity and fairness for the millions of domestic workers in the United States, most of whom are women. Founded in 2007, NDWA works for the respect, recognition, and inclusion in labor protections for domestic workers while building a powerful movement rooted in the human rights and dignity of domestic workers, immigrants, women, and their families. The national alliance is powered by 42 affiliate organizations of over 10,000 nannies, housekeepers, and caregivers in 26 cities and 18 states. In partnership with locally-based worker centers, women's groups and immigrant rights organizations, we have supported successful Domestic Worker Bills of Rights in California, Hawaii, Massachusetts and New York.

NDWA applauds Connecticut's efforts to study the problems of this industry through the creation of a domestic work task force, and strongly encourages Connecticut to pass a robust Domestic Worker Bill of Rights bill. This bill should ensure that Connecticut domestic workers are carved in to basic labor protections that other workers enjoy and are given protections specific to problems and conditions in the domestic work industry; and the bill should provide means by which all industry participants can understand their rights and responsibilities and transform the industry.

I. Connecticut Domestic Workers Need to be Included in Basic Labor Protections

Currently, some sectors of domestic workers are excluded from certain Connecticut worker protections, and in other cases the language of the protections is unclear. The Connecticut Bill should ensure that all domestic workers are entitled to protection from harassment and discrimination¹; give homecare workers employed in private homes basic rights under the Connecticut Minimum Wage Act²; make domestic workers eligible for worker's compensation if the worker earns \$1,000 or more per calendar quarter³; amend the Connecticut Fair Employment Practices Act to eliminate the exemption for domestic workers at Conn. Gen. Stat. § 46a-51(9); and clarify that time a domestic worker spends traveling between jobs for one single employer or agency is compensated travel time – a right most other Connecticut workers already enjoy.

a. Many of these worker carve-outs are modeled on biased federal law exclusions

¹ Makes all domestic workers eligible for protections under the Act regardless of the number of employers. Right now the Connecticut's Human Rights Statute only applies to workplaces of three or more workers.

² Right now, some homecare workers are excluded and the law's language is confusing about whether nannies are included – this modification clarifies that only casual babysitters are excluded from these protections, and all other domestic workers are included

³ This modifies the CT Worker's Compensation Law, which currently only applies to domestic workers who work 26 hours a week or more for a single employer – this also brings the Worker's Compensation Law in line with the Connecticut Unemployment Insurance law.

In many cases where domestic workers are explicitly carved out of protections, those exclusions are modeled after the exclusions in the Fair Labor Standards Act (“FLSA”) – the federal law that set the original floor for worker wage and overtime protections. Domestic workers were originally excluded from FLSA not for a valid policy reason but because Southern senators were unwilling to pass a law that equalized the wages of an overwhelmingly African American and female workforce.⁴ Since its passage, FLSA has been amended to provide protections for most domestic workers, and most recently, the Department of Labor has taken steps to include homecare workers who provide companionship services as well.⁵ Connecticut can follow this lead, ending irrational exclusions that are rooted in bias.

b. Analogous inclusions have been successful in CA, HI, MA and NY

For each of the four states that have passed domestic worker rights legislation, carving workers into basic protections was a key component of the bill. The Hawaii bill⁶, which passed in 2013, included most domestic workers in wage and hour and anti-discrimination protections. The New York bill, passed in 2010, likewise gave domestic workers increased entitlement to existing anti-harassment protections as well as improved access to disability benefits, worker’s compensation and unemployment insurance. The 2013 California bill entitled a broader set of domestic workers to overtime pay. The 2014 Massachusetts bill included domestic workers in an already existing right to maternity leave and carved workers into anti-harassment and anti-retaliation protections.

II. Domestic Workers Need Industry-Specific Protections

Domestic workers engage in specialized labor and like any other industry, their work has risks and problems unique to the industry. Connecticut already has specialized protections specific to the needs of workers in particular industries.⁷ Connecticut domestic workers need clear expectations about job conditions, laid out in writing; increased worker health and safety protections; enhanced protections for live-in workers who are especially vulnerable to abuse and severe labor exploitation; and simple measures that increase workplace fairness and reduce worker poverty.

a. Workers need clear expectations, laid out in writing

Domestic workers have little control over their working conditions. Employment is usually arranged without the benefit of a formal contract.⁸ As a result, both workers and employers often face confusion about job hours, payment, and duties – which can lead to both wage theft and exploitation of the worker, and unnecessary strife between workers and employers. Connecticut should require that employers provide a written disclosure at the time of hire that includes pay rate, work hours, wage payment schedule, job duties, availability of leave time, deductions, and worker rights provided under the Bill of Rights – and should

⁴ “There has always been a difference in the wage scale of white and colored labor.... You cannot put the Negro and the white man on the same basis and get away with it.” Statement of Representative J. Mark Wilcox in 1937, opposing the proposed Fair Labor Standards Act if FLSA equalized wages of white and black workers, as reported in *The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act*, Juan F. Perea, 72 OH ST. L.J. 95, 115 (2010); “The president was quick to reassure, when asked if Fair Labor Standards Act (FLSA) would “force” Southern housewives to “pay your negro [sic] girl eleven dollars a week.” He replied that no wage and hour bill would “apply to domestic help.”” Eileen Boris & Premilla Nadasen, *Domestic Workers Organize!*, 1089-7011 WorkingUSA: The Journal of Labor and Society 413, 420 (Dec. 2008)

⁵ Note that these federal FLSA inclusions for homecare workers are currently in flux – making the need for clear protection at a state level even more important. See the Department of Labor’s homecare website at <http://www.dol.gov/whd/homecare/> for more information.

⁶ SB535 HD2. More information at <http://labor.hawaii.gov/domestic-workers-rights/>

⁷ See, eg, Connecticut regulations for high-risk work (<http://www.ctdol.state.ct.us/wgwkstnd/laws-regs/highrisk-regs.htm#definitions>); protections for cosmetic workers (DOL Sec. 31-62-A2 (http://www.sots.ct.gov/sots/lib/sots/regulations/title_31/060_062.pdf))

⁸ Home Economics – The Invisible and Unregulated World of Domestic Work, by the Center for Urban Economic Development at University of Illinois, DataCenter, and NDWA (<http://www.domesticworkers.org/homeeconomics/key-findings>)

commission the Connecticut Department of Labor to create templates employers may use. The Domestic Worker Bills of Rights in Massachusetts included this requirement. In Hawaii, New York and Massachusetts, agencies in charge of worker protections created educational materials for the use of workers and employers.⁹

b. Workers who engage in housecleaning are vulnerable to special health risks and need protection

The cleaning products used by housecleaners cause many housecleaners to suffer from health problems, especially since these housecleaners may be spending hours on end using these products. 29 percent of housecleaners suffered from skin irritation, and 20 percent had trouble breathing in the prior 12 months.¹⁰ Epidemiological studies have shown an association between cleaning work, exposure to chemical irritants and asthma, including both new onset asthma, work-exacerbated asthma, and asthma-like symptoms.¹¹

Connecticut should provide for worker health and safety by giving workers engaged in housecleaning the right to raise health and allergy concerns over cleaning products with employers; the right to request substitutions of cleaning products; and the right to substitute products that are less harmful unless the employer can demonstrate medical necessity

c. Live-in domestic workers are vulnerable to abuse and need specific protections

Live-in workers are in the complex situation of being both employee and tenant, and are often on call for 24 hours a day with no access to uninterrupted sleep. 67 percent of live-in workers are paid below the state minimum wage, and the median hourly wage of these workers is \$6.15.¹² Live-in workers are also often most likely to experience harassment, severe labor exploitation and trafficking – and their current unprotected status leaves them highly vulnerable.¹³

Because of their vulnerable situations as both tenants and workers, live-in workers need basic housing protections that are approach the basic standards for other tenants. Specifically, live-in workers need a right to privacy in private living spaces and in a worker's private communications and protection from seizure of a worker's documents; 31 days advance notice of termination except in case of worker wrongdoing; inclusion in existing tenant entitlements to living conditions that are maintained in a habitable condition; increased protection from impermissible deductions for food and lodging; protection for sleep time for workers required to spend the night at their employer's home, and compensation for all hours worked when sleep is interrupted.

The Massachusetts bill contains extensive privacy protections for live-in workers, and also entitled live-in workers to live in habitable conditions. It also grants workers termination rights if terminated without cause of either written notice and 30 days lodging or severance pay of two weeks average earnings, with the exception of if there were good-faith allegations of abuse.

d. Domestic workers often labor in conditions of poverty, and need protections that allow them to earn a fair wage and to support their families

⁹ See <http://www.mass.gov/lwd/press-releases/governor-signs-domestic-workers-bill-of-rights.html> (MA);

<http://labor.hawaii.gov/domestic-workers-rights/> (HI); <http://www.labor.ny.gov/legal/domestic-workers-bill-of-rights.shtm> (NY)

¹⁰ Home Economics – The Invisible and Unregulated World of Domestic Work, by the Center for Urban Economic Development at University of Illinois, DataCenter, and the National Domestic Workers Alliance, available at <http://www.domesticworkers.org/homeeconomics/key-findings>

¹¹ Quirce S et al. Cleaning agents and asthma (review article) 2010; J Investig Allergol Clin Immunol 2010; Vol. 20(7): 542-550; Found at: <http://www.jiaci.org/issues/vol20issue7/1.pdf>

¹² Home Economics – The Invisible and Unregulated World of Domestic Work, by the Center for Urban Economic Development at University of Illinois, DataCenter, and NDWA (<http://www.domesticworkers.org/homeeconomics/key-findings>)

¹³ Beyond Survival: Organizing to End the Trafficking of Domestic Workers, available at <http://www.domesticworkers.org/beyondsurvival>

Connecticut domestic workers are 94% female, and racially diverse: 58% white, 20% Latino, 17% African American, and 2% Asian.¹⁴ This is a growing industry - Connecticut is projected to have a 39% increase in the need for home health aides alone by 2022.¹⁵ However, although this industry is growing, it is growing with poverty wages. Domestic workers struggle to make ends meet. In the New England area, 42% of homecare workers must rely on some form of public assistance to survive.¹⁶ Nationally, at least 48% of domestic workers were paid an hourly wage below what is needed to adequately support a family.¹⁷ Domestic workers experience acute financial hardships. Many indicate that their most basic needs go unmet. 60 percent spend more than half of their income on rent or mortgage payments. 37 percent of workers paid their rent or mortgage late during the year prior to being interviewed. 40 percent paid some of their other essential bills late during the same time period. 20 percent report that there were times in the previous month when there was no food to eat in their homes because there was no money to buy any.¹⁸

At the same time, domestic workers face injury and illness on the job, but cannot afford to take time off to recover. 38 percent of workers suffered from work-related wrist, shoulder, elbow, or hip pain in the past 12 months. 31 percent suffered from other soreness and pain in the same period. 29 percent of caregivers suffered a back injury in the prior 12 months.¹⁹ 36 percent of nannies contracted an illness while at work in the prior 12 months.²⁰

Domestic workers need baseline protections that allow them to earn fair compensation. Workers should be reimbursed for costs that the employer asked them to incur for the employer's benefit; should get reporting time pay if they show up to work and then are sent home without notice; and should get advance notice of termination. In addition, domestic workers should be able to earn annual paid leave²¹, should be entitled to one day off per calendar week, and should get advance notice of termination.

The Massachusetts law contained protections against unfair pay deductions, including a prohibition on deductions for meals, rest periods, lodging, sleeping periods without the written consent of the worker. The New York bill banned deductions from paycheck for broken items and required written notice of all deductions. The New York law required that workers get a day of rest every seven days or else overtime pay for working the seventh day, and three paid days of rest per year. The Massachusetts bill requires a 24 hour weekly rest period and a monthly 48 hour rest period.

III. Fixing the Domestic Work Industry is a Team Effort

Workers, employers and employment agencies and the Connecticut government will all have to collaborate to raise industry standards. This collaboration is necessary given the fast pace of growth in this industry and the poor conditions in which many domestic workers currently labor. In order to allow all members of the industry to raise standards, Connecticut's law should allow employers to sue other employers for repeated failures to comply with the domestic worker rights laws, and the state should create clear materials developed in collaboration with workers and consumers to ensure all parties understand their rights and responsibilities.

¹⁴ Economic Policy Institute analysis of Current Population Survey Outgoing Rotation Group microdata, *available at* <http://www.epi.org/files/2013/in-home-workers-state-tables.pdf>

¹⁵ PHI State Data Center, *available at* <http://phinational.org/policy/states/connecticut/>

¹⁶ *Id.*

¹⁷ Home Economics – The Invisible and Unregulated World of Domestic Work, by the Center for Urban Economic Development at University of Illinois, DataCenter, and NDWA (<http://www.domesticworkers.org/homeeconomics/key-findings>)

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Paid leave accrues at the rate of one hour of leave for every 40 hours worked, up to 56 hours per year

Summary: What Needs to Be in the Connecticut Domestic Worker Bill of Rights (SB 446/01361):²²

Include domestic workers in the protections that other workers enjoy:

- Give homecare workers employed in private homes basic rights under the Connecticut Minimum Wage Act²³
- Make domestic workers eligible for worker's compensation if the worker earns \$1,000 or more per calendar quarter²⁴
- Ensure all domestic workers are entitled to protection from harassment and discrimination²⁵
- Amend the Connecticut Fair Employment Practices Act to eliminate the exemption for domestic workers at Conn. Gen. Stat. § 46a-51(9).
- Clarify that time a domestic worker spends traveling between jobs for one single employer or agency is compensated travel time – a right most other Connecticut workers already enjoy

Ensure workplace fairness and prevent poverty:

- Require that workers be reimbursed for costs that the employer asked them to incur for the employer's benefit
- Annual paid leave time²⁶
- One day off per seven-day calendar week - with one-and-a-half times the worker's regular rate of pay if she voluntarily agrees to work on this seventh day
- Reporting time pay: If a worker shows up to work and then is sent home without working, she must be paid for at least four hours of work at a wage of at least the minimum that the worker earns.²⁷
- Seven days advance notice of termination or severance pay for live-out workers and 31 days of advance notice of termination for live-in workers, except in cases of worker wrongdoing

Address problems specific to the domestic work²⁸ industry:

- Clear expectations, laid out in writing: Written disclosure at the time of hire of pay rate, work hours, wage payment schedule, job duties, availability of leave time, deductions, and of the rights provided under the Bill of Rights

²² This bill is the product of collaborative drafting by the Brazilian Immigrant Center, the National Domestic Workers Alliance, the National Employment Law Project, and the NuLawLab at Northeastern University. The general contents of this bill were originally drafted by these groups in collaboration with the Connecticut Legislative Commissioner's Office, and was reviewed by the Connecticut Department of Labor, and subsequently proposed to the Connecticut legislature as Raised Bill 5527. The amended version of "Raised Bill 446" includes additional changes made by the drafting organizations. This document is a broad summary; for the full bill as proposed, request a copy from one of the organizations that collaborated in drafting.

²³ Right now, some homecare workers are excluded and the law's language is confusing about whether nannies are included – this modification clarifies that only casual babysitters are excluded from these protections, and all other domestic workers are included

²⁴ This modifies the CT Worker's Compensation Law, which currently only applies to domestic workers who work 26 hours a week or more for a single employer – this also brings the Worker's Compensation Law in line with the Connecticut Unemployment Insurance law.

²⁵ Makes all domestic workers eligible for protections under the Act regardless of the number of employers. Right now the Connecticut's Human Rights Statute only applies to workplaces of three or more workers.

²⁶ Paid leave accrues at the rate of one hour of leave for every 40 hours worked, up to 56 hours per year

²⁷ This is modeled off Connecticut protections for cosmetic shop workers, DOL Sec. 31-62-A2

(http://www.sots.ct.gov/sots/lib/sots/regulations/title_31/060_062.pdf)

²⁸ "Domestic workers" defined here as individuals employed to perform work of a domestic nature in or about a private home, including, but not limited to, housekeeping, house cleaning, home management, nanny services including childcare and child monitoring, caretaking of individuals in the home including sick, convalescing and elderly individuals, laundering, cooking, home companion services and other household services for members of households or their guests in private homes. Not included are babysitters employed on a casual basis and personal care attendants employed through state-funded programs.

- Protections for worker safety: Workers have the right to raise health and allergy concerns over cleaning products with employers; have the right to request substitutions of cleaning products, and may substitute products that are less harmful unless employer can demonstrate medical necessity
- Basic decent housing and fair pay for live-in workers:
 - A right to privacy in private living spaces and in a worker's private communications and protection from seizure of a worker's documents
 - 31 days advance notice of termination except in case of worker wrongdoing
 - Live-in workers are entitled to living conditions that are maintained in a habitable condition, just as required for other tenants
 - Increased protection from impermissible deductions for food and lodging
 - Protection for sleep time for workers required to spend the night at their employer's home, and compensation for all hours worked when sleep is interrupted
- Improving the industry and worker access to protections:
 - A private right of action with attorney's fees and an administrative mechanism for enforcing the Bill of Rights provisions
 - Workers are protected from retaliation for enforcing these new rights.
 - Industry employers can target companies that break the law to cut corners. Agency employers have standing to sue other employers who repeatedly violate this law. Third-party employers – including registries – are jointly and severally liable for violations under this law.
 - The Connecticut Department of Labor ensures that workers and consumers know their rights and responsibilities under the Bill of Rights