



# Senate

General Assembly

**File No. 331**

February Session, 2016

Substitute Senate Bill No. 393

*Senate, March 30, 2016*

The Committee on Labor and Public Employees reported through SEN. GOMES of the 23rd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

## **AN ACT CONCERNING DOMESTIC WORKERS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (e) of section 31-58 of the 2016 supplement to  
2 the general statutes is repealed and the following is substituted in lieu  
3 thereof (*Effective January 1, 2017*):

4 (e) "Employee" means any individual employed or permitted to  
5 work by an employer but shall not include any individual employed in  
6 camps or resorts which are open no more than six months of the year,  
7 [or in domestic service in or about a private home, except any  
8 individual in domestic service employment as defined in the  
9 regulations of the federal Fair Labor Standards Act,] or an individual  
10 employed in a bona fide executive, administrative or professional  
11 capacity as defined in the regulations of the Labor Commissioner or an  
12 individual employed by the federal government, or any individual  
13 engaged in the activities of an educational, charitable, religious,  
14 scientific, historical, literary or nonprofit organization where the

15 employer-employee relationship does not, in fact, exist or where the  
16 services rendered to such organizations are on a voluntary basis, or  
17 any individual employed as a head resident or resident assistant by a  
18 college or university, or any individual engaged in [baby sitting]  
19 babysitting of an irregular and intermittent or a casual nature, or an  
20 outside salesman as defined in the regulations of the federal Fair Labor  
21 Standards Act, or any individual employed by a nonprofit theater,  
22 provided such theater does not operate for more than seven months in  
23 any calendar year, or a member of the armed forces of the state  
24 performing military duty, as such terms are defined in section 27-61;

25 Sec. 2. Section 31-71f of the general statutes is repealed and the  
26 following is substituted in lieu thereof (*Effective January 1, 2017*):

27 (a) Each employer shall: (1) Advise his employees in writing, at the  
28 time of hiring, of the rate of remuneration, hours of employment and  
29 wage payment schedules, and (2) make available to his employees,  
30 either in writing or through a posted notice maintained in a place  
31 accessible to his employees, any employment practices and policies or  
32 change therein with regard to wages, vacation pay, sick leave, health  
33 and welfare benefits and comparable matters.

34 (b) Each employer employing a domestic worker, as defined in  
35 section 6 of this act, shall advise the domestic worker in writing, at the  
36 time of hiring, of: (1) The rate of remuneration, hours of employment  
37 and wage payment schedules; (2) the job duties and responsibilities; (3)  
38 the availability of sick leave, days of rest, vacation, personal days and  
39 holidays, and whether such days are paid or unpaid, and the rate at  
40 which such days accrue; (4) necessary or required modes of  
41 transportation, and whether such transportation is provided, paid or  
42 reimbursed; (5) the availability of health insurance, and whether it is  
43 paid or reimbursed; (6) any applicable severance, yearly raises or other  
44 forms of compensation; (7) whether the employer may charge any fees  
45 or costs for board and lodging; and (8) any other rights afforded to  
46 such domestic worker under the provisions of this section, section 53-  
47 303e, as amended by this act, and sections 7 to 11, inclusive, of this act.

48 Sec. 3. Subdivision (9) of section 31-275 of the general statutes is  
49 repealed and the following is substituted in lieu thereof (*Effective*  
50 *January 1, 2017*):

51 (9) (A) "Employee" means any person who:

52 (i) Has entered into or works under any contract of service or  
53 apprenticeship with an employer, whether the contract contemplated  
54 the performance of duties within or without the state;

55 (ii) Is a sole proprietor or business partner who accepts the  
56 provisions of this chapter in accordance with subdivision (10) of this  
57 section;

58 (iii) Is elected to serve as a member of the General Assembly of this  
59 state;

60 (iv) Is a salaried officer or paid member of any police department or  
61 fire department;

62 (v) Is a volunteer police officer, whether the officer is designated as  
63 special or auxiliary, upon vote of the legislative body of the town, city  
64 or borough in which the officer serves;

65 (vi) Is an elected or appointed official or agent of any town, city or  
66 borough in the state, upon vote of the proper authority of the town,  
67 city or borough, including the elected or appointed official or agent,  
68 irrespective of the manner in which he or she is appointed or  
69 employed. Nothing in this subdivision shall be construed as affecting  
70 any existing rights as to pensions which such persons or their  
71 dependents had on July 1, 1927, or as preventing any existing custom  
72 of paying the full salary of any such person during disability due to  
73 injury arising out of and in the course of his or her employment;

74 (vii) Is a member of the armed forces of the state while in the  
75 performance of military duty, whether paid or unpaid for such  
76 military duty, in accordance with the provisions of section 27-17, 27-18  
77 or 27-61; or

78 (viii) Is elected to serve as a probate judge for a probate district  
79 established in section 45a-2.

80 (B) "Employee" shall not be construed to include:

81 (i) Any person to whom articles or material are given to be treated  
82 in any way on premises not under the control or management of the  
83 person who gave them out;

84 (ii) One whose employment is of a casual nature and who is  
85 employed otherwise than for the purposes of the employer's trade or  
86 business;

87 (iii) A member of the employer's family dwelling in his house; but,  
88 if, in any contract of insurance, the wages or salary of a member of the  
89 employer's family dwelling in his house is included in the payroll on  
90 which the premium is based, then that person shall, if he sustains an  
91 injury arising out of and in the course of his employment, be deemed  
92 an employee and compensated in accordance with the provisions of  
93 this chapter;

94 (iv) Any person engaged in [any type of service in or about a private  
95 dwelling provided he is not regularly employed by the owner or  
96 occupier over twenty-six hours per week] domestic service in or about  
97 a private dwelling, except if the owner or occupier of such dwelling  
98 has paid such person engaged in such domestic service one thousand  
99 dollars or more in any calendar quarter in the current or preceding  
100 calendar year such person shall be considered an employee. For  
101 purposes of this clause, "domestic service" means any service provided  
102 to the owner or occupier of a private dwelling for the operation or  
103 maintenance of such dwelling and does not include service as an  
104 employee in the pursuit of an employer's trade, occupation, profession,  
105 enterprise or vocation;

106 (v) An employee of a corporation who is a corporate officer and  
107 who elects to be excluded from coverage under this chapter by notice  
108 in writing to his employer and to the commissioner; or

109 (vi) Any person who is not a resident of this state but is injured in  
110 this state during the course of his employment, unless such person (I)  
111 works for an employer who has a place of employment or a business  
112 facility located in this state at which such person spends at least fifty  
113 per cent of his employment time, or (II) works for an employer  
114 pursuant to an employment contract to be performed primarily in this  
115 state.

116 Sec. 4. Subdivision (10) of section 46a-51 of the 2016 supplement to  
117 the general statutes is repealed and the following is substituted in lieu  
118 thereof (*Effective January 1, 2017*):

119 (10) "Employer" includes the state and all political subdivisions  
120 thereof and means any person or employer (A) with three or more  
121 persons in such person's or employer's employ, or (B) employing a  
122 domestic worker, as defined in section 6 of this act, without regard to  
123 the total number of domestic workers in such person's or employer's  
124 employ;

125 Sec. 5. Section 53-303e of the general statutes is repealed and the  
126 following is substituted in lieu thereof (*Effective January 1, 2017*):

127 (a) No employer shall compel any employee (1) engaged in any  
128 commercial occupation, [or] (2) engaged in the work of any industrial  
129 process, or (3) employed as a domestic worker, as defined in section 6  
130 of this act, to work more than six days in any calendar week. An  
131 employee's refusal to work more than six days in any calendar week  
132 shall not constitute grounds for his or her dismissal.

133 (b) Any employee, who believes that his or her discharge was in  
134 violation of subsection (a) of this section may appeal such discharge to  
135 the State Board of Mediation and Arbitration. If said board finds that  
136 the employee was discharged in violation of said subsection (a), it may  
137 order whatever remedy will make the employee whole, including but  
138 not limited to reinstatement to his or her former or a comparable  
139 position.

140 (c) Notwithstanding the provisions of subsection (a) of this section,  
141 a domestic worker may work seven days in any calendar week  
142 provided (1) the domestic worker and his or her employer agree, in  
143 writing, to such schedule, and (2) the domestic worker is compensated  
144 at a rate of not less than one and one-half times his or her average  
145 hourly salary for all hours worked on the seventh day.

146 [(c)] (d) Any person who violates any provision of this section shall  
147 be fined not more than two hundred dollars.

148 Sec. 6. (NEW) (*Effective January 1, 2017*) For the purposes of this  
149 section and sections 7 to 11, inclusive, of this act:

150 (1) "Domestic worker" means any individual or employee who is  
151 paid or who is told he or she will be paid to perform work of a  
152 domestic nature in or about a private dwelling, including, but not  
153 limited to, housekeeping, home management, child care, caretaking of  
154 individuals, including sick, convalescing and elderly individuals,  
155 laundering, meal preparation, home companion services and other  
156 household services for occupants of the private dwelling or the guests  
157 of such occupants. Domestic worker does not include (A) a babysitter  
158 whose employment is irregular and intermittent or of a casual nature,  
159 or (B) a personal care attendant providing services pursuant to a state-  
160 funded program, including, but not limited to, (i) the program for  
161 individuals with acquired brain injuries, established pursuant to  
162 section 17b-260a of the general statutes, (ii) the personal care assistance  
163 program, established pursuant to section 17b-605a of the general  
164 statutes, (iii) the Connecticut home care program for the elderly,  
165 established pursuant to section 17b-342 of the general statutes, (iv) the  
166 pilot program to provide home care services to disabled persons,  
167 established pursuant to section 17b-617 of the general statutes, (v) the  
168 individual and family support waiver program administered by the  
169 Department of Developmental Services, and (vi) the comprehensive  
170 waiver program administered by the Department of Developmental  
171 Services;

172 (2) "Employer" means any owner or any person, partnership,

173 corporation, limited liability company or association of persons acting  
174 directly as, or on behalf of, or in the interest of an employer in relation  
175 to a domestic worker and shall include for the purposes of chapter 567  
176 of the general statutes a (A) homemaker-companion agency, as defined  
177 in section 20-670 of the general statutes, (B) registry, as defined in  
178 section 20-670 of the general statutes, or (C) homemaker-home health  
179 aide agency, as defined in section 19a-490 of the general statutes, that  
180 refers a domestic worker to a consumer to provide (i) homemaker  
181 services, (ii) companion services, or (iii) homemaker-home health aide  
182 services;

183 (3) "Consumer" means an individual receiving homemaker services,  
184 companion services or homemaker-home health aide services from a  
185 homemaker-companion agency, registry or homemaker-home health  
186 aide agency;

187 (4) "Homemaker services" means homemaker services, as defined in  
188 section 20-670 of the general statutes;

189 (5) "Companion services" means companion services, as defined in  
190 section 20-670 of the general statutes;

191 (6) "Homemaker-home health aide services" means homemaker-  
192 home health aide services, as defined in section 19a-490 of the general  
193 statutes;

194 (7) "Live-in domestic worker" means a domestic worker who resides  
195 in or about an employer's private dwelling for at least four consecutive  
196 twenty-four-hour periods during at least two consecutive weeks  
197 within one calendar year;

198 (8) "Full-time employment" means an average working period of  
199 forty hours or more per week within the previous month; and

200 (9) "Part-time employment" means an average working period of  
201 less than forty hours per week within the previous month.

202 Sec. 7. (NEW) (*Effective January 1, 2017*) (a) Upon a domestic

203 worker's completion of one year of employment with an employer,  
204 such employer shall provide (1) in the case of a domestic worker  
205 engaged in part-time employment, seventy-two hours of paid leave,  
206 annually, and (2) in the case of a domestic worker engaged in full-time  
207 employment one hundred twenty hours of paid leave, annually. Such  
208 paid leave shall accrue beginning January 1, 2017, or for a domestic  
209 worker hired after said date, beginning on the domestic worker's date  
210 of employment. A domestic worker may take such leave consecutively  
211 or intermittently.

212 (b) Each domestic worker shall be entitled to carry over up to fifty-  
213 six unused hours of paid leave from the current calendar year to the  
214 following calendar year, except no domestic worker shall be entitled to  
215 use more than the maximum number of hours of paid leave, as  
216 described in subdivisions (1) and (2) of subsection (a) of this section, in  
217 any calendar year.

218 (c) Each employer shall pay each domestic worker for paid leave at  
219 a pay rate equal to the normal hourly wage for that domestic worker in  
220 effect for the pay period during which the domestic worker uses paid  
221 leave. For any domestic worker whose hourly wage varies depending  
222 on the work performed by the domestic worker, the "normal hourly  
223 wage" means the average hourly wage of the domestic worker in the  
224 pay period prior to the one in which the domestic worker used paid  
225 leave.

226 (d) Nothing in this section shall be construed to (1) prevent an  
227 employer from providing more leave, whether paid or unpaid, than is  
228 required under this section, (2) diminish any rights provided to any  
229 domestic worker under the terms of the domestic worker's  
230 employment, or (3) prevent an employer from complying with the  
231 requirements of state or federal statutes, rules or regulations.

232 Sec. 8. (NEW) (*Effective January 1, 2017*) (a) No employer shall (1)  
233 restrict or interfere with a domestic worker's private communications,  
234 (2) seize, search or inspect the domestic worker's personal belongings,  
235 or (3) engage in any conduct against a domestic worker that violates

236 subsection (a) of section 53a-192a of the general statutes or any other  
237 section of the general statutes.

238 (b) No employer of a live-in domestic worker shall enter a live-in  
239 domestic worker's designated living area in or about the employer's  
240 private dwelling without such live-in domestic worker's informed and  
241 voluntary consent, except the employer may enter such designated  
242 living area if emergency repairs are required, provided (1) securing  
243 such live-in domestic worker's consent within a reasonable time is not  
244 feasible, and (2) the employer provides notice to the live-in domestic  
245 worker that the employer entered the live-in domestic worker's  
246 designated living area to conduct such emergency repairs within a  
247 reasonable time after doing so.

248 (c) No employer of a domestic worker shall monitor a domestic  
249 worker's activities or communications by any means other than direct  
250 observation, including the use of a computer, telephone, wire, radio,  
251 camera, electromagnetic, photoelectronic or photo-optical systems,  
252 without such domestic worker's informed and voluntary consent,  
253 except an employer may use such devices to monitor a domestic  
254 worker while he or she is performing care-giving tasks including, but  
255 not limited to, babysitting, child care and caretaking of sick,  
256 convalescing or elderly individuals.

257 (d) A domestic worker who is required to utilize cleaning products  
258 as part of his or her employment shall have the right to (1) alert his or  
259 her employer to health hazards and allergies that the domestic worker  
260 believes to be related to these cleaning products, (2) negotiate with his  
261 or her employer regarding the substitution of alternative cleaning  
262 products, and (3) substitute cleaning products he or she believes to be  
263 less harmful to his or her health, or to the health of others, except  
264 where the employer can demonstrate medical necessity for the use of a  
265 particular cleaning product.

266 Sec. 9. (NEW) (*Effective January 1, 2017*) (a) (1) Except as otherwise  
267 provided in subdivision (2) of this subsection, if a domestic worker has  
268 been employed by an employer for a period of ninety days or longer,

269 such employer shall provide the domestic worker with written notice  
270 prior to the termination of employment. Such notice shall be provided  
271 not less than seven days prior to the effective date of such termination,  
272 except, if such domestic worker is a live-in domestic worker, such  
273 notice shall be provided not less than fourteen days prior to the  
274 effective date of such termination.

275 (2) If a domestic worker has been employed by an employer for a  
276 period of ninety days or longer, such employer may terminate such  
277 domestic worker immediately and without written notice, provided  
278 such employer compensates such domestic worker at a rate not less  
279 than the amount the domestic worker would have earned had the  
280 employer continued to employ such domestic worker after providing  
281 notice of such termination pursuant to subdivision (1) of this  
282 subsection.

283 (b) The provisions of subsection (a) of this section shall not apply to  
284 any employer who terminates a domestic worker due to the domestic  
285 worker's wilful misconduct in the course of his or her employment. For  
286 the purposes of this subsection, "wilful misconduct" means deliberate  
287 misconduct in wilful disregard of the employer's interest and shall  
288 include any abuse, assault or other harmful or destructive conduct  
289 committed by the domestic worker against the employer, the  
290 employer's possessions, members of the employer's family, guests or  
291 other individuals residing in or about the employer's private dwelling.

292 (c) Compensation provided in lieu of notice of termination pursuant  
293 to subdivision (2) of subsection (a) of this section shall be provided  
294 upon termination of the domestic worker. Such compensation shall not  
295 release an employer from any obligation to make payments as may be  
296 necessary to comply with chapter 567 of the general statutes or any  
297 other applicable municipal, state or federal law.

298 Sec. 10. (NEW) (*Effective January 1, 2017*) No employer shall  
299 discharge, discipline, penalize, retaliate against or in any manner  
300 discriminate against any domestic worker because such domestic  
301 worker has (1) complained to the employer, an authorized

302 representative of the domestic worker or any other person, (2) filed  
303 any complaint or instituted or caused to be instituted any proceeding  
304 under section 11 of this act or any other provision of the general  
305 statutes, (3) has testified or is about to testify in any such proceeding,  
306 or (4) exercised any right afforded to him or her by any provision of  
307 section 31-71f of the general statutes, as amended by this act, section  
308 53-303e of the general statutes, as amended by this act, or sections 7 to  
309 11, inclusive, of this act.

310       Sec. 11. (NEW) (*Effective January 1, 2017*) (a) A domestic worker may  
311 file a complaint with the Labor Commissioner alleging a violation of  
312 any provision of section 31-71f of the general statutes, as amended by  
313 this act, section 53-303e of the general statutes, as amended by this act,  
314 or sections 7 to 10, inclusive, of this act. Upon receipt of the complaint,  
315 the commissioner shall investigate such complaint and may hold a  
316 hearing. After the hearing, the commissioner shall send each party a  
317 written copy of his or her decision. A domestic worker who prevails in  
318 such hearing shall be awarded reasonable attorney's fees and costs.

319       (b) If the commissioner finds a domestic worker has been aggrieved  
320 by an employer's violation of any provision of section 31-71f of the  
321 general statutes, as amended by this act, section 53-303e of the general  
322 statutes, as amended by this act, or sections 7 to 10, inclusive, of this  
323 act, the commissioner shall (1) levy against the employer a civil  
324 penalty of up to five hundred dollars for the first violation and one  
325 thousand dollars for each subsequent violation, and (2) award such  
326 domestic worker all appropriate relief including rehiring or  
327 reinstatement to his or her previous job, payment of back wages and  
328 any interest due on such wages, compensation for the denial of days of  
329 leave, reestablishment of employee benefits or any other remedies that  
330 the commissioner may deem appropriate.

331       (c) Any party aggrieved by the decision of the commissioner may  
332 appeal the decision to the Superior Court, in accordance with the  
333 provisions of chapter 54 of the general statutes.

334       (d) The commissioner may request the Attorney General to bring an

335 action in the Superior Court to recover the penalties levied pursuant to  
336 subsection (b) of this section.

337 (e) Nothing in this section shall prohibit a domestic worker from  
338 filing a civil suit against an employer in a court of competent  
339 jurisdiction to recover all appropriate relief including rehiring or  
340 reinstatement to his or her previous job, payment of back wages and  
341 any interest due on such wages, compensation for the denial of days of  
342 leave, reestablishment of employee benefits or any other remedies that  
343 the judge may deem appropriate.

344 (f) A third party that arranges for the employment or contracting of  
345 a domestic worker shall be jointly and severally liable for a violation of  
346 any provision of section 31-71f of the general statutes, as amended by  
347 this act, section 53-303e of the general statutes, as amended by this act,  
348 or sections 7 to 10, inclusive, of this act that occur in or about the  
349 private dwelling to which the domestic worker was referred or sent by  
350 such third party.

351 Sec. 12. (NEW) (*Effective from passage*) (a) The Labor Commissioner  
352 may, subject to available appropriations, appoint a domestic work  
353 outreach coordinator to develop and implement a multilingual  
354 outreach and education program for domestic workers and employers  
355 of domestic workers. Such program shall provide materials to  
356 domestic workers and employers of domestic workers, including, but  
357 not limited to, information about the rights of domestic workers in the  
358 state, model employment agreements and educational materials for  
359 employers detailing the responsibilities of such employers in relation  
360 to domestic workers.

361 (b) The Labor Commissioner may, subject to available  
362 appropriations, establish an interagency program coordinating  
363 committee comprised of members that may include, but need not be  
364 limited to, the domestic work outreach coordinator appointed  
365 pursuant to subsection (a) of this section, representatives of various  
366 employment agencies within the Labor Department and a  
367 representative of the Permanent Commission on the Status of Women.

368 The interagency program coordinating committee shall coordinate the  
 369 available public resources required to implement the provisions of this  
 370 section.

371 (c) For the purpose of enforcing the provisions of section 31-71f of  
 372 the general statutes, as amended by this act, section 53-303e of the  
 373 general statutes, as amended by this act, and sections 7 to 11, inclusive,  
 374 of this act, the Labor Commissioner may contract with community-  
 375 based organizations and legal services organizations to (1) disseminate  
 376 information to domestic workers or other types of employees  
 377 concerning the protections afforded by said sections and the process  
 378 by which domestic workers and other types of employees may file a  
 379 complaint or pursue other legal action under the provisions of said  
 380 sections or any applicable municipal, state or federal law; and (2)  
 381 investigate, prepare and, if necessary, represent domestic workers and  
 382 other types of employees in filing complaints pursuant to section 11 of  
 383 this act and any other relevant provisions of the general statutes.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>January 1, 2017</i>	31-58(e)
Sec. 2	<i>January 1, 2017</i>	31-71f
Sec. 3	<i>January 1, 2017</i>	31-275(9)
Sec. 4	<i>January 1, 2017</i>	46a-51(10)
Sec. 5	<i>January 1, 2017</i>	53-303e
Sec. 6	<i>January 1, 2017</i>	New section
Sec. 7	<i>January 1, 2017</i>	New section
Sec. 8	<i>January 1, 2017</i>	New section
Sec. 9	<i>January 1, 2017</i>	New section
Sec. 10	<i>January 1, 2017</i>	New section
Sec. 11	<i>January 1, 2017</i>	New section
Sec. 12	<i>from passage</i>	New section

**Statement of Legislative Commissioners:**

In Section 7(a) subdivisions (1) and (2), "part-time domestic worker" and "full-time domestic worker" were changed to "domestic worker engaged in part-time employment" and "domestic worker engaged in full-time employment" for clarity and consistency; Section 10

subdivision (4) was rewritten for clarity; Section 11(f) was rewritten for clarity; and in Section 12(c)(2), "domestic employees" was changed to "domestic workers and other types of employees" for clarity and consistency.

**LAB**      *Joint Favorable Subst. -LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

### **OFA Fiscal Note**

#### **State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 17 \$</b>	<b>FY 18 \$</b>
Labor Dept.	GF - Cost	110,269	220,538
State Comptroller - Fringe Benefits <sup>1</sup>	GF - Cost	44,041	88,083

Note: GF=General Fund

**Municipal Impact:** None

#### **Explanation**

The bill expands various wage, overtime, and workers compensation laws to certain domestic workers. This results in a General Fund cost to the Department of Labor (DOL) of \$154,310 in FY 17 (partial year) and \$308,621 in FY 18.

The bill significantly expands the number of labor laws that apply to domestic workers against which alleged violations require investigations and potential administrative hearings of appeals. In order to accommodate the expanded workload, it is anticipated that the DOL would require one part-time Staff Attorney (\$53,038 for salary and \$21,183 for fringe costs) and two Wage Enforcement Agents (\$83,750 for salary and \$33,450 for fringe costs each).

The bill also extends coverage under the employment-related anti-discrimination and harassment laws administered by the Commission on Human Rights and Opportunities (CHRO) to certain domestic workers. Currently, these laws cover all domestic workers who work for employers with at least three employees. The bill extends coverage

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<sup>1</sup>The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 39.94% of payroll in FY 17 and FY 18.

regardless of the number of employees. As the number of new complaints filed is anticipated to be minimal, there is no cost to CHRO associated with this provision. In FY 15, there were 2,017 complaints filed with CHRO associated with employment discrimination.

***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

**OLR Bill Analysis****SB 393*****AN ACT CONCERNING DOMESTIC WORKERS.*****SUMMARY:**

This bill expands minimum wage and overtime laws to include all domestic workers (except irregular, intermittent, and casual babysitters) and changes the threshold for determining when employers must provide workers' compensation coverage to them.

The bill also has several provisions that apply only to certain domestic workers and their employers. These provisions do not apply to (1) personal care attendants (PCAs) providing services under a state-funded program (e.g., the Connecticut Home Care Program for Elders) or (2) irregular, intermittent, and casual babysitters. Among other things, these provisions require employers of these domestic workers to:

1. annually provide 72 hours of paid leave to part-time domestic workers and 120 hours of paid leave to full-time domestic workers,
2. provide severance pay to domestic workers terminated in violation of the bill's advance termination notice requirements, and
3. provide domestic workers with certain work-related written information when they are hired.

For these domestic workers, the bill also:

1. extends coverage under the employment-related anti-discrimination and harassment laws administered by the Commission on Human Rights and Opportunities (CHRO),

2. prohibits employers from requiring them to work more than six days in a calendar week unless they agree and receive overtime pay,
3. provides certain privacy protections and protections against employer retaliation, and
4. allows the Department of Labor (DOL) to enforce the bill.

Lastly, the bill allows the labor commissioner to (1) establish an outreach and education program for domestic workers and their employers and (2) contract with community-based and legal services organizations to help disseminate information to domestic workers and help them prepare and file complaints with DOL.

EFFECTIVE DATE: January 1, 2017, except for the provision about domestic worker outreach and education programs and contracting, which is effective upon passage.

### **§ 1 — MINIMUM WAGE AND OVERTIME**

The bill expands the definition of “employee” under the state’s minimum wage and overtime laws to include all domestic workers except those who babysit on an irregular and intermittent or casual nature. This requires people who directly employ domestic workers to work in their homes (“consumer employers”) to meet (1) minimum wage and overtime pay requirements for domestic workers providing “companionship services” and (2) overtime pay requirements for live-in domestic workers.

Under current law, state minimum wage and overtime requirements apply only to those domestic workers who must be paid minimum wage and overtime under the federal Fair Labor Standards Act (FLSA). The FLSA does not require consumer employers to meet minimum wage or overtime pay requirements for domestic workers providing companionship services or overtime pay requirements for live-in domestic workers (see BACKGROUND).

### **§ 3 — WORKERS’ COMPENSATION**

The bill changes the threshold used to determine whether an employer must provide a domestic worker with workers' compensation coverage. Under current law, the owner or occupier of a private dwelling who employs someone to provide service in or about the dwelling (i.e., a domestic worker) does not have to provide workers' compensation coverage for the worker unless he or she regularly works for at least 26 hours per week.

Under the bill, the owner or occupier does not have to provide workers' compensation coverage for the worker unless he or she paid the worker at least \$1,000 in any calendar quarter in the current or preceding calendar year. The worker must be engaged in "domestic service," which the bill defines as any service provided to the dwelling's owner or occupier for the dwelling's operation or maintenance but not service as an employee pursuing an employer's trade, occupation, profession, enterprise, or vocation. (This is the same wage threshold and a similar definition used to determine whether an employer and domestic worker are covered under the state's unemployment law.)

## **§ 6 — "DOMESTIC WORKERS" AND THEIR "EMPLOYERS"**

The bill has several provisions that apply only to certain domestic workers. Under the bill, these domestic workers are individuals or employees paid or told they will be paid to perform work of a domestic nature in or about a private dwelling. This work includes housekeeping; home management; child care; laundering; meal preparation; home companion services; caretaking of sick, convalescing, or elderly individuals; and other household services for the dwelling's occupants or their guests. They do not include (1) casual or intermittent babysitters or (2) PCAs providing home care to consumers in state-funded programs ("state-funded PCAs"), including the acquired brain injury Medicaid waiver program, personal care assistance Medicaid waiver program, Connecticut Home Care Program for the Elderly, pilot program to provide home care services to disabled persons, and Department of Developmental Services' individual and family support waiver program and comprehensive

waiver program.

The domestic workers' "employer" under the bill is any owner or person, partnership, corporation, LLC, or association of people acting directly as, on behalf of, or in an employer's interest in relation to a domestic worker (i.e., consumer employers and third-party employers who employ domestic workers to work in a consumer's home).

The provisions described below apply only to domestic workers and their employers who meet the above definitions.

### **§ 7 — Paid Leave**

The bill requires an employer to provide its domestic workers with paid leave after the workers complete one year of employment. Part-time workers (those who averaged less than 40 hours of work per week within the previous month) must receive 72 hours of paid leave annually. Full-time workers (those who averaged at least 40 hours of work per week within the previous month) must receive 120 hours of paid leave annually. (It is unclear how these requirements would apply to workers whose full-time status varies on a month-to-month basis, as the amount of annual leave to which they were entitled would also vary on a month-to-month basis.) Workers may take the leave consecutively or intermittently.

The paid leave must begin accruing on January 1, 2017, or the date the worker is hired, whichever is later. (Presumably, this means that workers begin fulfilling their requirement for one year of employment on that date.) Workers must be able to carry up to 56 unused hours of paid leave from the current calendar year to the next calendar year, but part-time workers are not entitled to use more than 72 hours per year and full-time workers are not entitled to use more than 120 hours per year.

Employers must pay for the leave at the worker's normal hourly wage rate during the pay period in which the worker uses paid leave. If a worker's hourly wage varies depending on the work performed, the worker must be paid the average hourly wage he or she was paid

in the pay period prior to using paid leave.

The bill specifies that it must not be construed to (1) prevent an employer from providing more paid or unpaid leave than required by the bill; (2) diminish any rights provided to domestic workers under their employment terms; or (3) prevent an employer from complying with state or federal laws, rules, or regulations.

### **§ 9 — Termination Notice and Severance Pay**

Subject to certain exceptions, the bill requires employers to provide domestic workers who they have employed for at least 90 days with either advance written termination notice or severance pay. Regular domestic workers must receive the notice at least seven days in advance and live-in domestic workers at least 14 days in advance. Under the bill, “live-in” domestic workers are those who reside in an employer’s home for at least four consecutive 24-hour periods during at least two consecutive weeks within one calendar year.

The bill requires employers who terminate such a worker immediately and without the required notice to pay the worker the amount that the worker would have earned if the employer had provided proper notice (i.e., seven days’ pay for regular domestic workers and two weeks’ pay for live-ins). The bill requires employers to provide this pay upon the worker’s termination and specifies that it does not release the employer from any obligations to make payments under the state’s unemployment law or any other applicable municipal, state, or federal law.

The bill allows an employer to immediately terminate a domestic worker without notice or severance pay due to the worker’s willful misconduct in the course of his or her employment. Under the bill, “willful misconduct” is deliberate misconduct in willful disregard of the employer’s interest, including any abuse, assault, or other harmful or destructive conduct committed against the employer, or the employer’s possessions, family members, guests, or other people living in or about the employer’s home.

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**§ 2 — Employer Notice Requirements**

The bill requires domestic workers' employers to advise them in writing at the time of hire about:

1. their pay rate, work hours, and pay schedules (this is already required by existing law);
2. their job duties and responsibilities;
3. the availability of sick leave, days off, vacation, personal days, and holidays, whether these days are paid or unpaid, and the rate at which they accrue;
4. necessary or required transportation modes and whether they are provided, paid, or reimbursed;
5. the availability of health insurance and whether it is paid or reimbursed;
6. any applicable severance pay, yearly raises, or other types of compensation;
7. whether the employer may charge for room and board; and
8. any other rights provided by the bill on paid leave, termination notice and severance pay, notice requirements, six-day workweek limits, privacy, retaliation protections, and DOL enforcement of the bill.

**§ 4 — CHRO Employment Discrimination & Harassment**

Current employment-related anti-discrimination and harassment laws administered by the Commission on Human Rights and Opportunities (CHRO) cover all domestic workers who work for employers with at least three employees. The bill extends this coverage to domestic workers as defined above, regardless of how many employees their employers employ. (This excludes state-funded PCAs and casual babysitters from the CHRO protections.)

Among other things, this provides the covered domestic workers with:

1. protections against employment-related discrimination based on their race, color, religion, age, sex, gender identity, sexual orientation, marital status, national origin, ancestry, or mental or physical disability;
2. certain pregnancy-related protections, including a right to a reasonable leave of absence for a disability resulting from a pregnancy; and
3. protections against sexual harassment.

By law, employees covered under the CHRO statutes can enforce their rights by filing a complaint with the commission.

#### **§ 5 — Six-Day Workweek Limit**

The bill prohibits employers from requiring domestic workers to work for more than six days in a calendar week. A worker's refusal to work more than six days cannot be grounds for his or her dismissal. By law, employers similarly cannot require employees in commercial occupations or industrial processes to work for more than six days in any calendar week.

The bill allows domestic workers to work seven days in a calendar week if (1) the workers and their employers agree in writing and (2) the workers are paid one-and-a-half times their average hourly salary for the hours they work on the seventh day.

#### **§ 8 — Privacy**

The bill prohibits employers from (1) restricting or interfering with a domestic worker's private communications; (2) seizing, searching, or inspecting a domestic worker's personal belongings; or (3) engaging in any conduct against a domestic worker that violates any state law.

It also generally prohibits employers from monitoring a domestic worker's activities or communications by any means other than direct

observation, including using a computer, telephone, wire, radio, camera, electromagnetic, photoelectronic, or photo-optical systems, without the worker's informed and voluntary consent. However, the bill allows an employer to use these devices without the worker's consent to monitor a worker performing care-giving tasks, including babysitting; child care; and caretaking of sick, convalescing, or elderly people.

**Live-ins.** The bill generally prohibits employers from entering a live-in domestic worker's designated living area in or about the employer's home without the worker's informed and voluntary consent. However, employers may enter if emergency repairs are required and (1) securing the worker's consent within a reasonable time is not feasible and (2) the employer notifies the live-in worker within a reasonable time after entering the worker's living area.

**Cleaning Products.** The bill gives domestic workers who must use cleaning products as part of their employment the right to (1) alert their employers about the health hazards and allergies that they believe are related to the cleaning products; (2) negotiate over substituting alternative cleaning products; and (3) substitute cleaning products they believe are less harmful, unless the employer can demonstrate the medical necessity for using a particular cleaning product.

#### **§ 10 — Retaliation Protections**

The bill prohibits employers from discharging, disciplining, penalizing, retaliating against, or in any manner discriminating against a domestic worker because the worker (1) complained to the employer, the worker's authorized representative, or anyone else; (2) filed a complaint with DOL, as allowed under the bill, or started a proceeding under any other state law; (3) testified or will testify in any such proceeding; or (4) exercised any right provided by the bill on paid leave, termination notice and severance pay, notice requirements, six-day workweek limits, privacy, retaliation protections, and DOL's enforcement of the bill.

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**§ 11 — Enforcement**

The bill allows domestic workers to file a complaint with the labor commissioner alleging a violation of the bill on paid leave, termination notice and severance pay, notice requirements, six-day workweek limits, privacy, and retaliation protections. Upon receiving the complaint, the commissioner must investigate and may hold a hearing. After the hearing, he must send the parties a written copy of his decision. A domestic worker who prevails in a hearing must be awarded reasonable attorney's fees and costs.

If the commissioner finds that a domestic worker was aggrieved by the violations, he must (1) fine the employer up to \$500 for the first violation and \$1,000 for each subsequent violation and (2) award the worker all appropriate relief including rehiring or reinstatement to the worker's previous job, payment of back wages with interest, compensation for denied leave days, reestablishment of employee benefits, or any other remedies he deems appropriate. The commissioner can ask the attorney general to bring an action in Superior Court to recover these penalties. Any party aggrieved by the commissioner's decision can appeal to the Superior Court.

(Because the bill's privacy provisions prohibit employers from engaging in any conduct against a domestic worker who violates any state law, it appears that the bill requires the labor commissioner to investigate and enforce violations of any state law against a domestic worker. It is unclear how this power would interact or overlap with other investigations and enforcement powers provided under individual laws.)

The bill specifies that it does not prohibit a domestic worker from filing a civil suit against an employer to recover all appropriate relief, including the types specified above.

The bill also makes a third party that arranges for a domestic worker's employment or contracting (e.g., home care registries that refer domestic workers for employment by consumer employers)

jointly and severally liable for any violations of the bill's provisions on paid leave, termination notice and severance pay, notice requirements, six-day workweek limits, privacy, and retaliation protections.

## **§ 12 — DOMESTIC WORKER OUTREACH & EDUCATION**

The bill allows the labor commissioner, subject to available appropriations, to appoint a domestic work outreach coordinator to develop and implement a multilingual outreach and education program for domestic workers and their employers. The program must provide them with information about domestic workers' rights in the state, model employment agreements, and educational material for employers that details their responsibilities to domestic workers.

The bill also allows the commissioner, subject to available appropriations, to establish an interagency program coordinating committee with members that may include the domestic work outreach coordinator, representatives from various employment agencies within DOL (it is unclear what agencies these are), and a representative from the Permanent Commission on the Status of Women. The committee must coordinate the available public resources needed to implement the bill's outreach and education provisions.

Lastly, the bill allows the labor commissioner to contract with community-based organizations and legal services organizations to:

1. disseminate information to domestic workers or other types of employees about the (a) protections provided in the bill's provisions on paid leave, termination notice and severance pay, notice requirements, six-day workweek limits, privacy, retaliation protections, and DOL enforcement and (b) process through which workers and employees can file complaints or pursue other legal actions and
2. investigate, prepare, and if necessary, represent domestic workers and other employees in filing complaints under the bill's enforcement provisions or any other relevant state law.

**BACKGROUND*****FLSA “Companionship Services”***

Under the FLSA, “companionship services” are those providing fellowship and protection to an elderly person or a person with an illness, injury, or disability who requires assistance in caring for himself or herself. It does not include providing assistance with activities of daily living for more than 20% of the total hours worked per week, general domestic services performed primarily for the benefit of other household members, or medically related services typically performed by trained personnel.

***Related Bills***

SB 210 (File 55), reported favorably by the Labor and Public Employees Committee, requires the state to provide workers’ compensation coverage for state-funded PCAs regardless of how many hours they work in a consumer’s home.

HB 5368, reported favorably by the Labor and Public Employees Committee, designates homemaker-companion agencies, registries, and homemaker-home health aide agencies as the employers of the individuals they provide for homemaker, companion, and homemaker-home health aide services, making the agencies and registries responsible for meeting an employer's obligations under specified laws (e.g., paying unemployment taxes, meeting minimum and overtime wage requirements, and obtaining workers' compensation insurance). It also requires the agencies and registries to provide workers’ compensation coverage to their employees under the bill, regardless of how many hours they work in someone’s home.

sHB 5586, reported favorably by the Human Services Committee, requires the social services commissioner to procure workers' compensation coverage for PCAs employed directly by a consumer in a Community First Choice program (i.e., state-funded PCAs).

**COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable

Yea 8 Nay 5 (03/10/2016)