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Boston & Hyannis, MA – Bridgeport, CT – www.Braziliancenter.org – (617) 783-8001

HB 5260

Public Hearing: 2/25/16

TO: MEMBERS OF THE LABOR & PUBLIC EMPLOYEES COMMITTEE

FROM: BRAZILIAN WORKERS CENTER, BRIDGEPORT, CT

Please OPPOSE House Bill 5260 – AAC Domestic Service and Overtime Pay

This proposal to amend the “Sleep Time” and “Time Not Working” provisions under Conn. Gen. Stats. 31-76b(2) would create the following harmful results for workers:

- There is absolutely nothing in this proposal that would in any way benefit domestic workers.
- **This proposal seeks to adopt a more stringent “sleep time and time not working” standard that will result in less worker protections.** The proposal denies workers protection under the general “off duty¹, waiting time² and on duty³” Fair Labor standards Act (FLSA), which provides broader definitions that extend greater worker protection.
- We understand that the major driving force behind this legislation is the desire by certain employers to decrease the number of hours of overtime that the employer must pay to a domestic worker who lives in a client’s home to provide services. In other words, the employer does not want to pay overtime to workers after they have hit the 40-hours-worked threshold; which could happen during the first 3-days of the work-week. It appears that the sole purpose and intent of this proposal is to allow employers to shave-off more time for which they must pay overtime to their workers. This is unfair. Most if not all other workers who work more than 40-hours per work are paid overtime. Why should domestic workers be singled-out to be treated unfairly.
- **Lower worker pay.** The proposal would amend the definition of “Hours Worked”⁴ in the Connecticut Statutes to allow domestic work employers to count some work hours as unpaid time. Specifically, the recommendation would allow a third party employer such as a for-profit home care agency to *not* pay domestic workers for part of a 24-hour shift if the employer signs an agreement with the worker excluding from pay meal periods and off-duty time. The statute already allows employers to not pay domestic workers for sleep time. This recommendation would allow employers to further reduce the number of hours for which they must pay their domestic workers, potentially lowering workers’ pay significantly.

¹ At 29 CFR 785.16- Off Duty

² At 29 CFR 785.14- Waiting Time

³ AT 29 CFR 785.16- On Duty

⁴ At Connecticut General Statutes Sec. 31-76b(2).

- **Deny workers pay for time they can't realistically spend for personal purposes.** A home care or other domestic employer that hires a worker to "live in" a client's home for 24-hour shifts often does so because the client requires continual supervision, even if the client doesn't need constant hands-on care. A worker may be able to watch TV, eat a meal, or make a personal phone call while she continues to work to monitor the client to prevent against falls, accidents or wandering. And, even if the worker is theoretically allowed to leave the client's home for a short time, if the client's home is at a significant distance from the worker's home and/or the worker has no means of transportation, the worker can't effectively use this "free" time to spend with family or attend to other personal needs. It is entirely foreseeable that an agency would require workers to agree to count such time as unpaid time even if the worker can't truly use that time as she would like.
- **Make it harder for workers to assert rights.** If a worker signs an agreement with her employer agreeing to count some of her work day as unpaid time based on the premise that she won't be actively engaged with the client during every single hour on-duty, and later finds she is needed during the "free" time, she may have trouble later claiming pay for those work hours. She may assume she has no right to be paid for that time because she has signed the agreement. Even if she does attempt to claim pay for her work hours, the employer will likely present the signed agreement to a decision-making body, such as a labor enforcement agency or court, to challenge her claim. Low-wage workers don't often keep their own work records and so a worker in this situation would likely have to overcome significant obstacles to asserting her rights.
- **Encourage employers to make workers sign an agreement to get or keep a job.** We can expect that home care industry groups would counsel home care agencies to require workers to sign boilerplate agreements to exclude some work time from pay to reduce labor costs and limit liability. Individual workers would not be in a position to refuse to sign such an agreement and expect to get or keep a job.
- **Roll back newly-won rights.** Home care workers won federal wage and hour rights in 2015 as the result of a historic Obama Administration reform revising the "companionship" services exemption from the Fair Labor Standards Act. Because the Connecticut Minimum Wage Act tracks federal definitions, home care workers simultaneously won the protection of the Connecticut minimum wage and overtime laws. Now, the home care industry is proposing to degrade domestic workers' newly won rights with a special rule that reduces them to second-class status in the state's labor laws.
- **Have a devastating effect on women, immigrants and workers of color.** Domestic workers are almost all women and disproportionately women of color. A provision that degrades rights for domestic workers degrades rights for women of color. This recommendation sends a strong message that the labor of women of color is worth less than the labor of other workers.
- **Erosion of workers' rights will destabilize the care industry.** This bill will adversely impact Connecticut's direct care workforce by denying them a pathway to a good paying and stable job. This will, in turn, impact the quality of care for seniors and persons with disabilities that rely on home care services for their livelihood and well being. The effect may be high turn-over and a lack of stability of care for the growing home care needs of the residents of Connecticut.