OLR Bill Analysis
sHB 6931

AN ACT CONCERNING DOMESTIC WORKERS.

SUMMARY
This bill expands the state’s minimum wage and overtime laws to include all domestic workers, except irregular, intermittent, and casual babysitters (§ 1).

For domestic workers who are not personal care attendants (PCAs) providing services under a state-funded program (e.g., the Connecticut Home Care Program for Elders), the bill generally:

1. requires employers to provide them with certain work-related written information when they hire them (§ 2);

2. extends protection to them under the employment-related anti-discrimination and harassment laws administered by the Commission on Human Rights and Opportunities (CHRO) (§ 3);

3. prohibits employers from requiring them to work more than six days in a calendar week unless they agree (§ 4);

4. establishes certain privacy protections (§ 5);

5. requires employers to give severance pay to those terminated in violation of the bill’s termination notice requirements (§ 5); and

6. establishes protections against employer retaliation and allows the domestic workers to bring an action in Superior Court (§§ 6 & 7).

EFFECTIVE DATE: January 1, 2020

§ 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 babysitters working on an irregular and intermittent basis or a casual nature. In doing so, the bill 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 (CGS §§ 31-60, 31-76b, & 31-76c).

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 generally requires domestic workers to be paid minimum wage and overtime rates, but it 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).

§ 5 – “DOMESTIC WORKERS” AND THEIR “EMPLOYERS”

The bill’s remaining provisions apply only to certain domestic workers. Under the bill, these are individuals or employees who are 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.

Under the bill’s provisions about privacy, termination notices and severance pay, and retaliation protections and enforcement, a domestic
worker’s “employer” 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.

The bill also specifies that for purposes of the state’s unemployment law, an employer includes a homemaker-companion agency, registry, or homemaker-home health aide agency that refers a domestic worker to a consumer to provide homemaker services, companion services, or homemaker-home health aide services. (It is unclear if this provision has any legal effect, as these entities already may be considered a domestic worker’s employer under the unemployment law, depending on the nature of their employment relationship with the worker.)

§ 2 – 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. the rights provided by the bill’s provisions on a 6-day workweek, privacy, termination notices and severance pay, and
§ 3 – CHRO DISCRIMINATION AND HARASSMENT PROTECTION

Current employment-related anti-discrimination and harassment laws administered by CHRO cover all domestic workers who work for employers with at least three employees. The bill extends this coverage to domestic workers as defined in section five, regardless of their employer’s size. In doing so, it 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.

§ 4 – SIX-DAY WORKWEEK LIMIT

Current law prohibits employers from requiring employees in commercial occupations or industrial processes to work more than six days in any calendar week. The bill generally extends this prohibition to include domestic workers, but it 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 at the appropriate rate, including any applicable overtime pay.

As under current law, a worker’s refusal to work more than six days cannot be grounds for his or her dismissal. A worker who believes that
he or she was discharged in violation of the prohibition may appeal to
the State Board of Mediation and Arbitration. If the board rules in the
employee’s favor, it may order whatever remedy will make the
employee whole.

§ 5 – PRIVACY AND TERMINATIONS

Privacy

The bill prohibits employers from (1) restricting or interfering with a
domestic worker’s private communications made when the worker is
not expected to be working; (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, photo-electronic, 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.

Under the bill, a live-in domestic worker is one who resides in or
about an employer’s private dwelling for at least four consecutive 24-
hour periods during at least two consecutive weeks in a calendar year.

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 medical necessity for using a particular cleaning product.

**Termination Notice & 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. Employers must give regular domestic workers at least seven days’ advance notice and live-in domestic workers at least 14 days’ advance notice.

The bill requires employers who terminate a domestic worker immediately and without the required notice to pay the worker the amount that the worker would have received 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 also 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 dwelling.

**§§ 6 & 7 – RETALIATION PROTECTIONS & ENFORCEMENT**

The bill prohibits employers from discharging, disciplining, penalizing, or retaliating or 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 or
started a proceeding; (3) testified or will testify in any such proceeding; or (4) exercised any right provided by the bill.

The bill allows a domestic worker or terminated domestic worker to bring an action in Superior Court (presumably, alleging a violation of the bill) against an employer to recover all appropriate relief, including rehiring or reinstatement to his or her previous job, payment of back wages with interest, compensation for denied days of leave, reestablishment of employee benefits, or any other remedies the court deems appropriate.

BACKGROUND

**FLSA “Companionship Services”**

Under the FLSA and its regulations, “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 him 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 (29 C.F.R. § 552.6).

**Related Bills**

SB 1051, reported favorably by the Human Services Committee, among other things, (1) requires the consumer protection commissioner to maintain a directory of homemaker-companion agency employees and (2) establishes certain training and education requirements for these employees.

HB 7316, reported favorably by the Labor and Public Employees Committee, establishes a task force to study labor-related rights that could be provided to workers treated as independent contractors when providing services in a private home.

**COMMITTEE ACTION**

Labor and Public Employees Committee
Joint Favorable
Yea  9   Nay  5   (03/19/2019)