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October 17, 2014

To: Members of the Task Force on Domestic Workers
From: James Bhandary-Alexander, Task Force Member

RE: Summary of Domestic Worker Rights under Existing Law

Dear Task Force Members,

This is a brief summary of the legal protections domestic workers enjoy and those they do not. I hope it may be useful to you. I produced this with the help of Sarah Leberstein of the National Employment Law Project.

I. Domestic workers are excluded from the following federal employment and labor laws:

- ⇒ National Labor Relations Act (NLRA): Guarantees employees the right to organize, but excludes domestic workers from the definition of “employee,” leaving them unprotected from retaliation should they organize for better working conditions and form labor unions.¹
- ⇒ Fair Labor Standards Act (FLSA): Sets a federal minimum wage rate and requires employers to pay overtime pay for hours worked over forty in a week, but excludes casual babysitters² and “companions” to the sick, elderly, and people with disabilities. Live-in domestic workers are exempt from federal overtime laws as well.³
- ⇒ Occupational Safety and Health Act (OSHA): Although it aims to assure “every working man and woman in the Nation safe and healthful working conditions,” domestic workers are excluded “[a]s a matter of policy” by OSHA regulations.
- ⇒ Civil Rights Laws: Domestic workers are *not* protected against discrimination based on race, color, religion, sex, national origin, disability, or age. Title VII (race, color, religion, sex, or national origin) and the Americans with Disabilities Act apply only to employers with 15 or more employees, and the Age Discrimination in Employment Act applies only to employers with 20 or more employees.

¹ Agency-employed home care workers are covered by the NLRA. Many “independent provider” home care workers have organizing and bargaining rights under a state law.

² Federal law defines casual babysitters as those whose employment is irregular or intermittent and whose vocation is babysitting. 29 CFR § 552.5.

³ The US DOL recently issued revised companionship rules to drastically narrow the scope of the companionship exemption, which currently encompasses virtually all home care workers, including those employed by agencies. When the rules go into effect on January 1, 2015, only a small group of privately-employed workers who primarily provide fellowship and protection will remain exempt. See the National Employment Law Project’s fact sheet on the companionship regulations at http://www.nelp.org/page/content/state_chart_companionship.

II. Domestic workers are also excluded from key Connecticut Labor Laws:

- ⇒ The Connecticut Minimum Wage Act (CMWA) does not protect all domestic workers. It defines “employee” consistent with federal law, resulting in the exemption of “companions” to the elderly and people with disabilities⁴ and casual babysitters. Conn. Gen. Stat. § 31-58(e). It also separately excludes “babysitters,” who are not covered by the state minimum wage, which is higher than the federal minimum wage, or by state overtime rights.
- ⇒ Connecticut’s Workers Compensation Law covers workers who provide services in a private dwelling (which encompasses all domestic workers) *only if* they regularly work over 26 hours a week, a limitation that does not apply to other workers. Conn. Gen. Stat. § 31-327(9)(A).
- ⇒ Connecticut’s employment discrimination statutes specifically exclude domestic workers. The statute also exempts virtually all domestic workers on a *de facto* basis because it defines “employer” as “any person or employer with three or more persons in such person’s or employer’s employ”. Conn. Gen. Stat. § 46a-51(9)-(10).
- ⇒ Domestic workers are not covered by Connecticut’s new sick days law, which applies only to businesses with 50 or more employees, Conn. Gen. Stat. 31-57r(f), and rarely have a written employment contract laying out the employer’s promise on paid leave time.

III. Answers to Other Questions posed for October 17, 2014 Task Force on Domestic Workers

- Domestic workers do have a right to a meal break if they work a 7 ½ hour shift. Conn. Gen. Stat. 31-51ii.
- Room and Board may constitute a part of a domestic workers’ wages. However, there are strict limitations on the amounts, and there must be full disclosure. Additionally, the employer must pay tax on the portion of wages accounted for by room and board. Conn. Agencies Regs. § 31-60-3.
- Record-keeping requirements. Employers of domestic workers are required by law to record daily and weekly hours worked regular and overtime wages paid, additions or deductions to wages, total wages paid for each paid period, and other basic information. Conn. Agencies Regs. § 31-60-12.

The protections that do exist in Connecticut for domestic workers **are rarely enforced**. Employers violate the law knowing that there is little risk of being caught. A 2009 study on low-wage work led by the National Employment Law Project found high rates of violations of wage and hour laws in private households: 41.5 percent of workers were paid below the minimum wage; 88.6 percent weren’t paid required overtime; and 82.6 percent weren’t paid for work they did before or after their official shift. And domestic workers are **isolated working inside individual homes**, so it is difficult for them to organize collectively to improve working conditions, as is possible in most other industries.

⁴ But coverage of home care workers under CT law should expand consistent with changes in federal law starting 1/1/15. See above.