



National Employment Law Project

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The Conditions Surrounding Domestic Employment in New York State
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Chairwoman John and members of the committee, thank you for this opportunity to testify on the working conditions of domestic workers in New York.

For the past 15 years, I have been conducting research on low-wage jobs and economic inequality in the United States (I hold a Ph.D. in sociology from the University of Chicago). In my current position at the National Employment Law Project (and my previous position at the Brennan Center for Justice at NYU School of Law), I also conduct policy analysis and work with community advocates and state and local legislators to develop policy responses to the core problems of the 21st century workplace.

My current research focus is on documenting the growing problem of unregulated work here in New York and across the country. Most recently, I was lead author of *Unregulated Work in the Global City: Employment and Labor Law Violations in New York City*, which was released last year (while I was still at the Brennan Center for Justice). The goal of the report was to document working conditions in low-wage industries across New York City's economy, with a particular focus on the extent to which employers were or were not complying with core employment and labor laws.

Drawing on hundreds of interviews with workers, employers, government officials, legal services lawyers and other stakeholders, we documented a wide range of workplace violations in 13 industries that span the breadth of the city's economy, such as grocery stores, building services, garment factories, car washes, nail salons, construction and industrial laundries.

But the domestic work industry stands out as featuring some of the most unregulated workplaces documented in the report. This is partly a function of how the industry is organized: wages and working conditions are negotiated employer by employer, and regulation has historically been weak or entirely absent. As well, the workforce is largely women of color facing strong labor market discrimination and segmentation. The combined impact is that violations of employment and labor laws are routine, and even when laws are not formally being violated, the lives of domestic workers can be extremely difficult.

Let me flesh out this picture with more detailed findings from the Brennan Center report (see

the industry profile attached at the end of this testimony), as well as the report *Home is Where the Work Is*, by Domestic Workers United and Datacenter (2006), to which we also contributed:

- Domestic workers are subject to minimum wage and especially overtime violations. This is especially likely to occur when workers are paid flat weekly or monthly amounts, which typically do not vary by hours worked. For example, the Domestic Workers United (DWU) report found that 67% of surveyed workers sometimes or always failed to receive overtime pay for overtime hours worked.
- Specifically, the Brennan report found that typical earnings averaged \$300-\$400 a week for live-out workers, with hours averaging 10-15 hours per day, five or six days a week. Live-in workers earned less, averaging \$100-\$300 a week, while often working more hours.¹ Such low weekly earnings, coupled with long hours, mean that domestic workers are systemically at risk of minimum wage and overtime violations.
- Domestic workers are also at risk of delays in payment and partial non-payment of wages. For example, employers claim the household is short on cash and delay full payment, sometimes indefinitely.
- For live-in workers, illegal deductions for food and lodging beyond that allowed by law are another common source of underpayment.
- Meal breaks and rest breaks are often irregular and/or denied due to family schedules. Domestic workers with child care or elder care duties are effectively always on-call, without the uninterrupted breaks that the law requires.
- Workers' compensation is rarely if ever carried by employers of domestic workers. Similarly for health insurance: in the DWU report, only 10% of surveyed workers reported that their employer provided health insurance.
- Workers' complaints may lead to immigration threats, to threats of firing, or to actual retaliatory firing. There is also strong evidence of a complex hierarchy of discrimination, in both hiring and pay, on the basis of race and immigration status.

But the problem extends beyond employment and labor law violations. Domestic work is often physically exhausting and draining, entailing long hours, heavy work loads, emotional labor, and not infrequently, verbal and sometimes even physical abuse. Even when wages are above the legal minimum, they often remain stuck in the low-wage range (only 13% of workers in the DWU survey earned a living wage, and only a third received annual raises). Paid sick days and vacation are not guaranteed, nor is advance notice or severance pay.

The root of the problem is that the domestic work industry is structurally wired to produce bad working conditions. Workers are alone at their worksite and must individually negotiate the terms of their employment, with no industry standards to help them set a floor on even the

¹ Dollar figures are from research conducted during 2003 and 2006.

most basic elements of an employment relationship. Compounding the problem is that domestic workers are only partially covered by core employment and labor laws. As a result, compensation and working conditions vary greatly from one family to the next. Some domestic workers are able to find good jobs with decent pay. For many more others, the jobs are difficult, emotionally draining, and not infrequently, in violation of one or more workplace laws.

In this context, public policy has a unique obligation to step in and help to establish a framework of core workplace standards for the industry. Policies such as the New York Domestic Worker Bill of Rights are designed to do just that, by setting a baseline floor for working conditions, including sick days, vacation days, breaks, and annual raises.

It is important to recognize that greater regulation of the industry will benefit both workers and employers. First and foremost, it will help domestic workers who, because of their structural isolation and lack of collective bargaining rights, are unable to leverage the kind of power that workers in other industries have been able to tap when advocating for improved working conditions. But responsible employers of domestic workers will also benefit. In our research, employers repeatedly voiced the frustration of having no formal guideposts to help them decide the terms of employment for their domestic workers. The default method becomes asking friends and neighbors for guidance, which results in highly uneven, unstable and unenforceable job outcomes, over which public policy has little control.

Finally, bringing clear and coherent standards to the industry is especially important during times of recession, when domestic workers are particularly at risk of workplace violations and deteriorating working conditions such as extra work load, loss of hours, loss of sick days, and more. For example, a recent online discussion among Park Slope domestic worker employers focused on how financial belt tightening would (or should) impact the compensation of their domestic workers. It was a stark example of the consequences of lack of industry regulation: a group of novices making up standards on the spot, some well-intentioned, others not, without any legal background or information on what makes for a sufficiency wage in the city.

At the National Employment Law Project, we believe that economic opportunity is built on strong labor standards that are fully enforced and that cover all workers. Domestic workers deserve a framework of strong standards that addresses the unique structural characteristics of their industry, as well as their pivotal role as front-line caregivers in families across New York City.

Thank you for your time and attention, and I would be more than happy to provide any additional information that might be useful to your deliberations.

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E. UNREGULATED WORK IN THE DOMESTIC WORK INDUSTRY IN NEW YORK CITY

Domestic workers provide essential services in the city's economic and social life – by taking care of other families' children, cleaning their homes, doing their laundry, nursing their elderly grandparents, and cooking their meals. The domestic work industry, however, features some of the most unregulated workplaces documented in this report. This is partly a function of how the industry is organized; wages and working conditions are negotiated family by family, and regulation has historically been weak. As well, the workforce is largely women of color facing strong labor market discrimination and segmentation. The combined impact is that violations of employment and labor laws are routine, and even when laws are not formally being violated, the lives of domestic workers can be extremely difficult. In the words of a community group staff member: "This industry is completely under-enforced, and the work is undervalued."

OVERVIEW OF THE JOBS & THE INDUSTRY

Domestic workers are employed by individual families and do their work in those families' homes (in contrast to child care workers in day care centers, for example). The form that this work takes can vary:

1. **"Live-in" workers** live in the family's home, and usually cover the gamut of jobs: childcare, cleaning, cooking, shopping, and elder-care when needed.
2. **Full-time "live-out" workers** do not live in the family's home. They may be hired only for child care, or for a combination of child care, cleaning and elder care, and often work for one family only.
3. **Housecleaners** are hired for cleaning on a daily or weekly basis, and piece together jobs to fill a work week. Client households sometimes work together to arrange "shares."
4. **Au Pairs** are generally brought into the country with visas and are hired exclusively for child care; they form a smaller industry segment that is largely separate from the others.

5. **Victims of trafficking:** Women are brought into the country either by professional traffickers or directly by their employer/captors, and live under conditions of servitude and imprisonment – "they suffer in silence", as one respondent put it.

The domestic work industry has grown significantly over the last three decades with the national shift of women into the labor force. Accurate numbers on the industry's size are not available because the occupation is badly classified in government data; however, it is clear that especially high-income and professional households in New York City are heavily reliant on domestic workers. The industry has also seen reorganization, with live-out arrangements supplanting live-in arrangements as the dominant form of work, and an expanded employer base that increasingly includes middle-class and even working-class households.

THE WORKERS & MOBILITY

The industry has changed in terms of who is doing the work, shifting from African American women to Caribbean, Latin American, Asian, African and Eastern European immigrant women. Domestic work is often the first job in the United States for new immigrants, although some come from manufacturing plants that have closed down, and others combine domestic work with another job.

Women who have recently arrived in the U.S. will often use storefront employment agencies and temp agencies to find their first job. There are also several day labor corners scattered across the city where domestic workers gather for day or week work – the best known is in Williamsburg, where both Latina and Polish women gather daily. Workers also place ads in local newspapers or post flyers in the neighborhood; with time, personal referral networks become the dominant route for finding work. In general, no training or certification is required, though better-paid nannies and Au Pairs may have formal child care training and often bring references.

Turnover is generally low in the industry (though with training and legal status some workers are able to move on to center-based child care or agency-based home health care). One pernicious dynamic was mentioned several times in our interviews. An employer either promises she will sponsor her worker for an immigration visa, but then delays indefinitely, or else actually submits the application, which then takes five to ten years. Either way, the result is an imbalance of power that effectively traps the worker in the current job.

WORKING CONDITIONS & VIOLATIONS

Domestic workers are only partially covered by core employment and labor laws (see Table E for an overview). In addition, the industry is structurally wired to produce bad working conditions: workers are alone at their work-site and have to individually negotiate the terms of their employment, with no industry standards to set a floor on wages, benefits, sick days, vacations and breaks. As a result, compensation and working conditions vary greatly from one family to the next. Some domestic workers are able to find good jobs with decent pay. For others, the jobs are difficult, emotionally draining, and not infrequently, in violation of one or more workplace laws. As one service provider put it, “the pay scale really depends on the clients that the workers get.”

Minimum wage and overtime violations are the most common, especially for live-in workers, who (aside from trafficking victims) undoubtedly have the most difficult jobs in the industry. As shown in Table E, workers are typically paid flat weekly or monthly amounts, for very long work days that can bring hourly wages below the minimum wage – never mind overtime pay, which many

workers never get. For example, two-thirds of domestic workers reported receiving overtime pay “sometimes or never” in a recent survey conducted by Domestic Workers United (an advocacy group organizing workers in the industry, see Section VI for more detail).

Workers are also often denied breaks – for instance, doing housekeeping or cooking when the children are sleeping. According to the above survey, 41% of domestic workers reported receiving breaks “sometimes or never.” This highlights one of the biggest problems for domestic workers, and that is job expansion, or “job creep.” Workers are hired for one job, but over time are increasingly asked to do two or three.

There is also strong evidence of a complex hierarchy of discrimination on the part of employers and employment agencies: white European women are preferred as nannies, English-speakers are preferred regardless of what the job requires, and stereotypes impacting hiring decisions abound. For example, employers have told us that Polish women steal less, Spanish women steal a lot, European women drink and smoke on the job, and African women are presumed to have AIDS. Further, the isolation of working in a private home leaves ample room for verbal abuse – and in some cases, physical abuse, sexual harassment, and sexual abuse.

Finally, the work is often physically exhausting. Workers report repetitive strain injuries in the back, neck, shoulder, and arms; pain from long hours on feet or on knees; and respiratory problems from prolonged exposure to cleaning chemicals. At least some of these symptoms are tied to the lack of health and safety training and regulation in these workplaces (which are not covered by OSHA).

TABLE E.
CHARACTERISTICS OF UNREGULATED WORK IN THE DOMESTIC WORK INDUSTRY
IN NEW YORK CITY

Note: Domestic workers are exempt from one or more employment or labor laws. In this table, we evaluate working conditions as if workers were covered by all employment and labor laws; see our definition of unregulated work in Section III.

INDUSTRY SEGMENTS WHERE WORKPLACE VIOLATIONS ARE COMMON	
Industry segments	Employers include (1) high-income families who hire live-in housekeepers and nannies, (2) middle-class professionals who hire live-out domestic workers, either full-time or part-time, and (3) immigrant employers, including diplomats, who hire domestic workers from their home country/region.
Union density	No unionization (domestic workers do not have the right to organize).
THE JOBS WHERE WORKPLACE VIOLATIONS ARE COMMON	
Occupations	Domestic workers, including nannies, housekeepers, housecleaners, and elder companions.
Typical wages	Pay varies considerably, since it is negotiated on an individual basis. Live-out nannies & housekeepers, full-time: \$300-400 per week is typical, up to \$400-500 per week in wealthy neighborhoods, or \$700 per week in some suburbs. Live-in nannies & housekeepers: \$100-300 per week. Housecleaners: Averaging \$6-\$8 per hour, up to \$10 per hour. Victims of trafficking: Aside from room and food, few or no wages.
Typical hours	Live-out workers typically work 10-15 hours per day, 5 or 6 days per week. Live-in workers often work more hours, since they are essentially always “on-call.” Victims of trafficking work round the clock.
Payment method	Large majority are paid off the books.
Benefits	Health benefits and vacation and sick days are rare. Some employers may pay for necessary medical care when the worker is sick, and nannies are sometimes given time off in lieu of an annual raise.
THE WORKERS MOST AFFECTED BY WORKPLACE VIOLATIONS	
Demographics	Almost all workers are women, and the majority are Latin American, Caribbean, Asian, African and Eastern European immigrants. A diminishing number are African Americans. Victims of trafficking are often from the same country of the employer/captor.
Immigration status	Significant numbers are undocumented, but not exclusively so.
INTERMEDIARIES PLACING WORKERS IN UNREGULATED JOBS	
The following play some role in the industry: (1) storefront employment agencies that charge one week’s salary or a flat fee of \$80-\$150 per placement; (2) domestic work temp agencies; (3) professional traffickers; and (4) day labor corners.	
INDUSTRY-SPECIFIC LAWS AND REGULATIONS	
Domestic workers are either wholly or partially excluded from a number of employment and labor laws:	
Wage and hour laws:	
<ul style="list-style-type: none"> • Federal overtime law exempts live-in domestic workers (although under New York State law, they are eligible for reduced overtime pay if they work more than 44 hours in a week). • Federal minimum wage and overtime law exempts part-time “babysitting services” employees. • For live-in workers, employers are allowed to deduct for food and lodging (up to \$9.80 per day in 2006). 	
OSHA: Health and safety regulations exclude domestic workers “as a matter of policy.”	
Civil Rights Laws: Domestic workers are almost always exempt from anti-discrimination laws (because their workplaces are too small).	
NLRA: The National Labor Relations Act does not cover domestic workers.	
New York City’s Local Law 33: Law requires domestic work employment agencies to inform workers of their employment rights, and to obtain statements from employers regarding the terms of employment.	

COMMON WORKPLACE VIOLATIONS

Minimum wage and overtime	<p>Minimum wage: Violations are common in some parts of the industry, especially for live-in domestic workers, given their “on-call” hours. Live-out workers may also drop below the minimum wage. Trafficking victims almost always earn less than the minimum wage.</p> <p>Overtime: Violations are prevalent throughout the industry.</p>
Non-payment of wages	Occurs frequently for victims of trafficking, but rarely for other domestic workers.
Illegal deductions	Occurs rarely for live-out workers. Live-in workers report that employers use food and lodging deductions as an excuse to pay nothing at all, or lower than allowed by law.
Meal breaks	Meal breaks are irregular and often denied due to family schedules. Live-in workers report that hours expand the longer they stay with a family, and meal breaks become less frequent.
Employer taxes	Employers rarely pay required taxes for their domestic workers.
OSHA	Domestic workers are not covered by OSHA as a matter of policy.
Workers’ Compensation	Employers very rarely carry workers’ compensation. Employers may pay for health care to get employees back to work, but will not pay for missed wages.
Discrimination	Workers report significant race-based discrimination in both hiring and pay. Sexual harassment and sexual abuse sometimes occur.
Retaliation & the right to organize	Domestic workers are not covered by the NLRA and therefore do not have a legal right to organize. Workers’ complaints may lead to immigration threats, to threats of firing, or to actual firing. Victims of trafficking have passports taken and are threatened with deportation.
Trafficking	Though no hard data exist, trafficking in persons is a clear problem in this industry, with domestic workers brought to the U.S. to work unpaid, as virtual captives in the family’s home.

Note: All violations were assessed using legal standards in effect when interviews were conducted, and in particular, wage rates are from 2004 and 2005.

Sources: Original data gathered by authors during fieldwork from 2003 through 2006 in New York City, as well as the following secondary sources: Domestic Workers United & Datacenter (2006), Eisenstadt (2004), Gerson (2005a), Gorman (2005), Lee (2002a), Lee (2002b), Lee (2002c), Lee (2003), Mason-Draffen (2005), Middlekauff (2003), New York State Department of Labor (2007b), New York State Department of Labor (2007c), Ponce de Leon (2003), Roberts (2005), Ruiz (2004), Ruiz (2006), Steinhauer (2005), Wilson and Wilson (2000).