
**Labor & Workplace Standards
Committee**

HB 2511

Brief Description: Providing labor protections for domestic workers.

Sponsors: Representatives Stonier, Sells, Gregerson, Ormsby, Chapman, Valdez, Chopp, Bergquist, Davis, Doglio, Frame, Ramel, Pollet, Macri, Goodman, Riccelli and Robinson; by request of Attorney General and Office of the Governor.

Brief Summary of Bill

- Requires employers of domestic workers, and individuals who pay wages for services of domestic workers, to provide minimum wages, overtime, and meal and rest breaks, and to have terms and expectations of employment in written agreements.
- Prohibits hiring entities from engaging in certain conduct, including taking adverse action against domestic workers exercising their rights, and creates a rebuttable presumption of retaliation under certain circumstances.
- Establishes notification requirements before terminating employment, procedures for administrative investigations, civil penalties, a private cause of action, and other provisions for domestic workers.

Hearing Date: 1/27/20

Staff: Trudes Tango (786-7384).

Background:

Employment standards and benefits generally apply only if an employer-employee relationship exists. The Minimum Wage Act, the industrial insurance laws, and the unemployment insurance laws each have various exemptions for domestic services. For example, persons doing "casual labor" in a home, and persons whose duties required they sleep or reside at their place of employment, are exempt from the Minimum Wage Act.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Under the Wage Payment Act, it is unlawful for an employer to withhold an employee's wages or to willfully pay an employee less than the employer is required to pay. If the employer fails to pay wages owed, the employee may file a wage complaint with the Department of Labor and Industries (Department) and the Department must investigate. An employee may also pursue a private cause of action to enforce a wage claim.

The Washington Law Against Discrimination (WLAD) prohibits discrimination in employment based on the person's protected status, such as race, creed, color, national origin, sex, disability, and other protected categories. The WLAD applies to employers who employ eight or more persons and does not include any nonprofit religious or sectarian organization. An aggrieved person may file a complaint with the Human Rights Commission or may file a private cause of action in court.

Summary of Bill:

The Legislature declares that health, safety, wage protections, and general welfare are guaranteed for domestic workers.

Responsibilities of Hiring Entities.

A "hiring entity" is any employer who employs a domestic worker or any individual or entity that pays a wage for services of a domestic worker. Home care agencies are not hiring entities. A "domestic worker" includes hourly and salaried employees and includes any worker who works for one or more hiring entity and works in residences as a nanny, house cleaner, home care worker, cook, gardener, or household manager, or for other domestic service purposes. Domestic worker does not include individuals who provide care subsidized under the Department of Social and Health Services (DSHS) or babysitting, dog walking, pet sitting, or house sitting.

A hiring entity employing a domestic worker must:

- pay at least minimum hourly wages;
- pay overtime wages for hours worked in excess of 40 hours per work week;
- allow for uninterrupted meal breaks of at least 30 minutes if the domestic worker works five or more hours;
- allow for 10 minute rest breaks if the domestic worker works more than three hours;
- permit the domestic worker to cook and consume the domestic worker's own food, with reasonable restrictions allowed, for domestic workers living in the home of their hiring entity; and
- keep and maintain records documenting hours worked, pay rate, and if applicable, the leave time earned and used.

A hiring entity may not:

- request that a domestic worker allow the hiring entity to take possession of the worker's personal effects, including any legal documents such as passports or other forms of identification;
- subject a domestic worker to conduct that creates an intimidating, hostile, or offensive work environment;
- monitor or record the domestic worker using the bathroom or changing clothes;
- monitor or record, or interfere with, private communications;

- communicate an intent to inform a government entity about the citizenship or immigration status of a domestic worker or the worker's family member, in response to the domestic worker exercising any of the worker's rights; or
- take any adverse action against a domestic worker for exercising his or her rights, including the right to organize, participate in political speech, disclose immigration status, or institute any proceeding under the law.

In addition, the hiring entity may not engage in any form of discrimination or harassment, as defined under the WLAD. A hiring entity is considered an employer under the WLAD regardless of the number of employees the hiring entity employs.

Written Agreement.

The terms and expectations of employment must be in a written agreement with details such as: the location where the work will be done, rate of pay, work schedule, and if applicable, information about sick days, vacation days, severance, health insurance costs, and other expectations. The written agreement must be provided in a language understood by the worker, and the hiring entity, and must be signed and dated by both parties. A written agreement may not contain provisions waiving a domestic worker's rights under federal, state, or local laws. The agreement may not contain a mandatory predispute arbitration clause for employee claims, or any nondisclosure, noncomplete, or nondisparagement clause.

Termination of Employment.

The hiring entity must provide a minimum of two-weeks notice before terminating employment. For live-in domestic workers, a minimum of four-weeks notice is required. A domestic worker is entitled to severance pay if a hiring entity fails to comply with notification requirements.

No notice is required if termination:

- is in connection with termination of work performed on a casual labor basis;
- occurs during an agreed-upon probationary period;
- is based on a good faith belief that the domestic worker engaged in misconduct or if circumstances outside of the hiring entity's control apply; or
- is because the domestic worker is unable to meet the requirements of the agreement.

Administrative Enforcement and Private Cause of Action.

A domestic worker may file a complaint with the Department within three years of when the alleged violation occurred. The Department may investigate and, within 60 days of the filing of the complaint, must either issue a citation assessing a civil penalty or, if the allegations are not substantiated, a closure letter.

The Department may order the hiring entity to pay a civil penalty of \$1,000 for each willful violation. If the hiring entity is a repeat violator, the Department may impose a civil penalty of not less than \$2,000, nor more than \$20,000, for each willful violation. The Department may waive or reduce the civil penalties and may not order any penalty if the hiring entity reasonably relied on a written order, ruling, opinion, advice, determination, agency interpretation, or other agency policy.

The Department must deposit civil penalties into a domestic workers rights grant program to enforce rights under the act, educate domestic workers and hiring entities, and assist domestic workers in pursuing their rights.

A domestic worker may also bring a civil action for any violation of the worker's rights.

Retaliation Claims.

It is unlawful for a hiring entity to use a domestic worker's exercise of rights as a negative factor in any employment action, such as disciplining the domestic worker, denying or delaying payment of wages, terminating or demoting the worker, or reducing the number of work hours the worker is scheduled to work.

A domestic worker may file a claim with the Department alleging retaliation within 180 days of the alleged retaliatory action. The Department may investigate and issue either a citation assessing a civil penalty, or a determination of compliance, within 90 days of receiving the complaint, unless the complaint is resolved. The Department may provide the hiring entity up to 30 days to take corrective action.

If the complaint is not resolved, the Department may, among other things, order the hiring entity to: pay lost earnings due to the retaliatory action; restore the domestic worker to employment; and pay civil penalties.

There is a rebuttable presumption of retaliation if the hiring entity takes adverse action against a domestic worker within 90 days of the domestic worker exercising his or her rights. The hiring entity may rebut the presumption with clear and convincing evidence that the adverse action was taken for a permissible purpose.

Civil penalties for a retaliatory action may not be less than \$1,000, or an amount equal to 10 percent of the total amount of unpaid earnings attributable to the retaliatory action, whichever is greater. The maximum civil penalty is \$20,000 for the first violation and \$40,000 for each repeat violation. The Department may waive or reduce civil penalties if the hiring entity took corrective action.

Civil penalties must be deposited in a fund dedicated to enforcement of the provisions in this act.

Work Group.

The Attorney General's Office (AGO) must administer a work group on domestic workers, which must establish:

- a structure for a domestic workers' standards board that will address standards such as training, benefits, protections, safety standards, accreditation, and other issues;
- an infrastructure and outreach plan for paid sick leave, paid family and medical leave, and accessing other applicable benefits such as paid time off and health care; and
- methods for making state fund industrial insurance available for hiring entities to provide coverage for domestic workers.

The work group must consist of at least one representative from each of the following:

- directly impacted domestic workers employed in private homes;

- unions, work centers, or intermediary nonprofit organizations that assist or refer directly impacted domestic workers;
- hiring entities who directly employ single domestic workers in private homes;
- an organization that educates and organizes household hiring entities;
- legislators from both caucuses of each chamber of the Legislature, appointed by their caucuses;
- at least two members of the Department in an ex officio capacity; and
- one member from the DSHS.

The Governor must appoint members to the work group no later than June 1, 2020, and the work group must report its findings to the appropriate committees of the Legislature and the Department by April 1, 2021.

Miscellaneous.

Applicable federal, state, and local laws that are more favorable to domestic workers are not affected and still apply to domestic workers.

The AGO must develop model disclosure statements describing a hiring entity's duties and a domestic worker's rights and a model written agreement.

Definitions for various terms are provided.

Appropriation: None.

Fiscal Note: Requested on January 21, 2020.

Effective Date: This bill takes effect on July 1, 2021, except for section 19, establishing the work group, which takes effect July 1, 2020.