

SENATE BILL REPORT

SB 6247

As of February 5, 2020

Title: An act relating to providing labor protections for domestic workers.

Brief Description: Providing labor protections for domestic workers.

Sponsors: Senators Saldaña, Keiser, Conway, Nguyen, Randall, Darneille, Das, Hasegawa, Kuderer, Pedersen, Stanford, Wilson, C., Frockt and Hunt; by request of Attorney General and Governor Inslee.

Brief History:

Committee Activity: Labor & Commerce: 1/27/20.

Brief Summary of Bill

- Requires a hiring entity to pay a domestic worker at least the minimum wage and overtime and to provide certain meal and rest breaks.
- Requires a written agreement between the hiring entity and the domestic worker with the employment terms.
- Mandates (1) a two-week termination notice or four-weeks for a live-in domestic worker; or (2) severance pay.
- Prohibits retaliation against a domestic worker.
- Provides for investigations, administrative action, penalties, and civil action.
- Requires the Attorney's General's Office to develop a model disclosure statement written agreement.
- Establishes a workgroup on domestic worker issues.

SENATE COMMITTEE ON LABOR & COMMERCE

Staff: Susan Jones (786-7404)

Background: Labor Laws. Several laws address employment standards. The Minimum Wage Act (MWA) sets forth minimum wage and overtime requirements. The Industrial Welfare Act deals with wages, hours, and working conditions. The Wage Payment Act

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provides for administrative or court action to collect wages under the MWA and other wage laws. It is unlawful to make certain deductions from wages and to fail to pay wages. Under the MWA, it is a gross misdemeanor for an employer to discriminate against an employee because the employee complained to the employer or the Department of Labor and Industries (L&I) that the MWA has been violated, or because the employee was involved in a proceeding related to the MWA.

Under the MWA, employee does not include any individual employed in casual labor in or about a private home, unless performed in the course of the employer's trade, business, or profession.

Meal and Rest Breaks. L&I establishes requirements for meal and rest breaks for employees. Employees working over five hours must be allowed to take a 30-minute meal period. Meal periods may be unpaid if the employee is completely relieved from duties during the meal period. Meal periods must be paid if the employee must remain on the premises and act in the interest of the employer. An employee who is required to remain on the premises and act in the interest of the employer may have their meal period interrupted to perform tasks, but once the task is complete, the meal period continues until the employee receives 30 minutes total.

Regarding rest periods, employees must receive a paid rest period of at least ten minutes for each four-hour period worked. The rest period must be allowed no later than the end of the third hour worked. Employees need not be given an uninterrupted ten-minute break if the nature of the work allows for intermittent rest periods equal to ten minutes. L&I's administrative policy describes intermittent rest periods as intervals of short duration in which employees are allowed to rest, and can include personal activities such as making personal telephone calls and attending to personal business. In certain circumstances, employers may require employees to remain on-call during their paid rest breaks. Employees may remain on-call during rest periods, but if they are called to duty, the break becomes an intermittent rest period.

Variations. An employer may apply to L&I for a variance from any rule establishing hours or conditions of labor. L&I must issue a variance if the director determines that the employer has shown good cause for the lack of compliance.

Work Hours of Domestic Employees. No household or domestic employee may be employed by any person for a longer period than 60 hours in any one week. Employed time shall include minutes or hours when the employee has to remain subject to the call of the employer and when the employee is not free to follow his or her inclinations. In cases of emergency, the employee may be employed for a longer period than 60 hours. Any employer violating this law is guilty of a misdemeanor.

Summary of Bill: Minimum Wage and Overtime. A hiring entity must pay the domestic worker at least the state minimum hourly rate and overtime of one and one-half times the worker's regular rate for hours worked in excess of 40 hours in a workweek

Meal and Rest Breaks. Domestic workers are entitled to:

- to an uninterrupted 30 minute meal period commencing no less than two hours nor more than five hours from the beginning of the shift. Meal periods must be paid when the worker is required to remain on duty on the premises or the worksite. No domestic worker may be required to work more than five consecutive hours without a meal period. Domestic workers working three or more hours longer than a normal workday are allowed at least one 30-minute meal.
- a rest period of not less than ten minutes, on the hiring entity's time, for each four hours of working time scheduled as near as possible to the midpoint of the work period. No domestic worker shall be required to work more than three hours without a rest period.

A hiring entity may not discourage these breaks and may not request that a worker voluntarily waive the breaks. Scheduled rest breaks are not required where the work allows for equivalent intermittent rest periods. If the work does not allow a worker to be relieved of all duties and an uninterrupted meal break or intermittent rest breaks may be impractical or impossible, the worker must be paid for breaks.

For domestic workers living in hiring entity's home, the entity must permit the worker to cook and consume the worker's own food, subject to reasonable restrictions based on the religious or health needs of the home's residents. The worker must have the right to retain personal effects, including any legal and identification documents.

Written Agreement Required. All employment terms must be in a written, signed, and dated agreement in the languages understood by the worker and entity, including the work location; rate of pay, overtime, compensation for additional duties, if any; the work schedule and breaks; deductions; information about and leave; and transportation, severance, health insurance, and other costs. The agreement may not waive the worker's rights under the law; contain mandatory predispute arbitration clauses or noncompete, nondisclosure agreements, or nondisparagement agreements. When the entity initiates a written agreement, a disclosure of rights must accompany that agreement.

Termination. The entity must provide a minimum two-week notice before employment termination; and four weeks for a live-in domestic worker. No notification period is required (1) if the work is performed on a casual labor basis; (2) during an agreed-upon probationary period; (3) if the termination is based on a good faith belief of certain misconduct or circumstances outside of the hiring entity's control, including death, or care needs in certain situations; or (4) the worker becomes unable to meet the agreement's requirements. If the required notice is not provided, the domestic worker is entitled to severance pay for the period when the notice was not provided.

Records. A hiring entity must create and maintain certain records and, if a complaint is filed, make these records accessible to the enforcement entity.

Prohibition. A hiring entity that employs a domestic worker may not:

- request possession of the worker's personal effects, including any legal and identification documents;
- engage in any form of discrimination or harassment;

- unreasonably interfere with the worker's work by creating an intimidating, hostile, or offensive work environment;
- monitor or record bathroom activities, private living quarters, dressing or changing areas;
- monitor, record, or interfere with the private communications of a domestic worker;
- communicate to a person exercising protected rights, the intent to inform about the worker's citizenship or immigration status to authorities; or
- take any adverse action against a domestic worker for exercising certain rights.

If there are multiple hiring entities, the entities are subject to joint liability as well as concurrent fines and penalties. State agencies are generally exempt.

Investigations & Penalties. L&I may investigate the complaints, except where the alleged violation occurred more than three years before the complaint was filed. L&I may issue either a citation assessing a civil penalty or a closure letter within 60 days after receipt of the complaint. For willful violations, L&I may assess a civil penalty of \$1,000 or for a repeat willful violator, not be less than \$2,000 but not greater than \$20,000 for each repeat willful violation.

L&I may not issue a citation if the hiring entity reasonably relied on certain documents of L&I's. L&I may waive or reduce a penalty. All civil penalties are paid into a domestic workers rights grant program, which L&I will administer the grant program.

Penalties may be appealed within 30 days of the citation issuance. Upon receipt of a notice of appeal, L&I will assign an administrative law judge to conduct the hearing and issue an initial order. Any party challenging an initial order may filing a review petition within 30 days of service of the initial order. L&I will issue all final orders after appeal, which are subject to judicial review.

Retaliation. A hiring entity may not:

- interfere with, restrain, or deny the exercise of these right, including using the exercise of rights as a negative factor in any employment action such as an evaluation, promotion, or termination, or discipline;
- communicate to a person exercising these rights the intent to inform a government agency of the worker's or family members suspected citizenship or immigration status; or
- take any adverse action against a domestic worker. Adverse action is defined. There is a rebuttable presumption of retaliation if adverse action is taken within 90 days of the worker's exercise of rights, except with certain seasonal employment, the presumption applies if worker is not rehired at the next opportunity for work in the same position. The hiring entity may rebut the presumption with clear and convincing evidence that the adverse action was taken for a permissible purpose.

A domestic worker may file a complaint regarding retaliation with L&I within 180 days of the alleged retaliatory action, which may be extended by L&I because of recognized equitable principles or extenuating circumstances. L&I may investigate the complaint and issue a citation or a determination of compliance within 90 days of the complaint. A

complaint may be resolved by mutual agreement of the parties. L&I may make further investigations in certain circumstances.

L&I may allow for corrective action to remedy the retaliatory action. If the complaint is not otherwise resolved, then L&I may issue a citation and notice of assessment. L&I's citation may order the hiring entity to: pay earnings not received due to the retaliation plus one percent interest per month; restore the domestic worker's employment position or equivalent position; and pay L&I a civil penalty, of not be less than \$1,000 or an amount equal to ten percent of the unpaid earnings attributable to the retaliatory action, whichever is greater; or double the penalty for a repeat violation of \$20,000 for the first violation and \$40,000 for each repeat violation, which may be waived or reduced for taking certain corrective action. Within 30 days after the date of a decision, a person may request reconsideration or submit an appeal. The procedures for reconsideration and appeal are provided similar to those for violations of worker's rights.

More Favorable Laws Apply. These are minimum standards for wages and working conditions of domestic workers in this state. Any applicable federal, state, or local law or ordinance, or any rule or regulation, which is more favorable is not be affected.

Attorney General's Model Disclosure and Agreement. The Attorney General's Office (AGO) must develop and make available a model disclosure statement and written describing a hiring entity's obligations and domestic worker's rights, in at least eight of the most commonly spoken languages in Washington State.

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

Other L&I Actions. L&I may also:

- conduct investigations to ensure compliance with this law;
- order the payment of all wages owed and institute actions to collect amounts owed; and
- take assignments and prosecute wage claims of persons who are financially unable to employ counsel.

Work Group. A work group on domestic workers administered by the AGO is formed to establish:

- a structure for an ongoing domestic worker standards board;
- an infrastructure and outreach plan regarding certain labor matters; and
- methods to make the industrial insurance state fund available for hiring entities to provide industrial insurance coverage for domestic workers.

The work group must also make recommendations to L&I on certain matters. The work group must include certain listed membership; legislators from both caucuses of the House and Senate, appointed by their respective caucus; two L&I employees in an ex officio capacity; and one representative from the Department of Social and Health Services. The work group must report its findings to the Legislature committees and L&I by April 1, 2021.

Definitions. Domestic worker includes hourly and salaried employees and includes any worker who (1) works for one or more hiring entity; and (2) is an individual who works in residences as a nanny, house cleaner, home care worker, cook, gardener, or household manager, or for any domestic service purpose including but not limited to: caring for a child; providing support services for a person who is sick, convalescing, elderly, or a person with a disability; providing housekeeping or house cleaning services; cooking; providing food or butler services; parking cars; cleaning laundry; gardening; or working as a household manager. Domestic service means services related to the care of persons in private homes or the maintenance of private homes or their premises. Domestic worker does not include: (1) babysitting on a casual labor basis; (2) any individual employed in casual labor in or about a private home, unless in the course of the hiring entity's trade, business, or profession; (3) individual providers; (4) certain house sitting, pet sitting, and dog walking duties that do not involve domestic service.

Hiring entity means any employer employing a domestic worker, as well as any individual and entities, which pays wages, directly or indirectly, for the services of a domestic worker. It does not include state agencies or in-home services agencies in certain circumstances.

Casual labor refers to work that is irregular, uncertain, and incidental in nature and duration or is different in nature from the type of paid work in which the worker is customarily engaged in.

Standard rate of pay means the agreed-upon rate of pay between the hiring entity and domestic worker, as reflected in the written agreement.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: Yes.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony: PRO: This is a bill about workers that are often considered invisible but do critical work that is highly valued by families across our state. They provide childcare and domestic work so that working moms can work. The work is precarious and isolated and sometimes performed by workers who are particularly vulnerable, largely immigrant women. These workers have not been afforded the basic working privilege that we assume are provided to all working people. This bill seeks to right the wrong. It provides for written agreements so that hiring entities and workers know what is expected of them. This a community-driven and collaborative effort. The workers need a bill of rights because although there are many great employers, there is always that one who is not.

Workers should have the basic rights, minimum wage, overtime, and freedom from discrimination and harassment. They often cannot afford basic living expenses. Examples were given of poor conditions, threats of calls to immigration, failure to pay wages, working too many hours for the wages, and sexual harassment. Workers may be exposed to cleaning

products. Disabled people rely on these workers and need them to have rest breaks to help them.

This bill is similar to laws that passed in nine states and two cities across the U.S. This would repeal current unjust exclusions from workers' compensation and WLAD. When many labor laws were passed, domestic workers were left out, many who are women and people of color, particularly black women. In 2018, Seattle has passed a similar regulation and the families have welcomed the change because they believe it will increase the quality of care in their homes. They know what is expected of them. Employers are seeking guidance.

Recent court cases related to Au Pairs have guaranteed that they are covered under all state labor laws. Au Pairs often work overtime for no extra pay. The Au Pair companies receive \$166 per week.

CON: We are concerned for aging people and how it might impact frail and impaired seniors who have help. Examples were given of family members helping and given a little money. This bill would require record keeping requirements and puts them at risk of not getting that care. There are unintended consequences where one family member is caring for another family member in informal caregiving situations. They have not been adequately studied.

OTHER: Domestic workers need this but there are concerns about including Au Pairs who are regulated by the federal government U.S. Department of States 'Visitor Exchange Program. They are not here to get or keep a childcare job. They are on a cultural exchange with an educational component. They receive more protections and benefits than other workers. They may negotiate their own wages. This will increase costs to many host families with no added benefit. The host family provides all their costs paid, including room, board, cell phone, travel, school cost, sick pay, health care, vacation, and more. They get a stipend which is not used for living expenses. They have a consultant that provides guidance and help. They are treated like part of the family. It would be a shame to restrict this program to the very wealthy families.

Persons Testifying: PRO: Senator Rebecca Saldaña, Prime Sponsor; Elyssa Morley, SEIU; Adriana Cazorla, citizen; Emily Dills, citizen; Enriqueta Vega, citizen; Barb DeMichelle, citizen; Etelbina Hauser, citizen; Doris Garcia, citizen; Krista Hanson, Hand in Hand; Leila Reynolds, citizen; Jordan Goldwarg, citizen; Yasmin Trudeau, Attorney Generals Office; Caitlyn Jekel, Governor's Office; April Sims, Washington State Labor Council; Andrew Kashyap, Senior Attorney, Legal Voice.

CON: Kayla Van Blerk, citizen.

OTHER: Noah Reandeau, Cultural Care; Natalie Jordan, Cultural Care; Crystal Leaver, citizen; Emily Ascolese, citizen; Tri Le; Michel "Allie" Prof; Maggie Clark; Laure Gallagher, citizen; Camille Rouxel, citizen; Kimberly Van Cleave Michaels, Western Field Representative, Au Pair In America; Doug Shadel, AARP; Kate White Tudor, Washington Association of Area Agencies on Aging.

Persons Signed In To Testify But Not Testifying: PRO: Steven Hooper, citizen; Martha Barrientos, citizen; Edy Dominguez, citizen.

CON: Aimee Foord, citizen; Daya Fields, citizen; Jill Sullivan, citizen; Jill Henry, citizen; Andrea Pando Lujan, citizen.

OTHER: Theresa Magruder, Counselor, Au Pair in America Community; Jim Simmons, Au Pair host father; Carol Perry, Au Pair in America; Melinda Leal, Community Counselor, Au Pair in America; Erica Frank, host mother; Stephanie Glenisky, host parent; Jenna Andersen, citizen; Michael Kelly, citizen; Kathleen Lonergan, citizen; Rachel Hagenson, citizen; Cortney Lease, citizen.