



RIGHTS BEGIN AT HOME

DEFENDING DOMESTIC WORKERS' RIGHTS IN ILLINOIS



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Acknowledgements

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Table of Contents

Introduction	6
Part I: Domestic Workers' Labor Rights	9
A. Wages and Hours	9
1. Deductions from Pay	10
2. Meal Breaks & Time Off	11
3. Overtime	11
4. Income & Other Employment Taxes	12
B. Workers' Compensation	13
C. Unemployment Insurance	13
D. Abuse, Discrimination and Sexual Harassment	14
E. Enforcing Workers' Rights	15
1. Demand Letters	16
2. Filing Complaints with State and Local Agencies	17
3. Going to Court	19
Part II: Immigration Issues Related to Employment	22
A. Employer's Threats to Report a Worker to ICE	22
B. Work authorization	23
C. False Promises of a Green Card	24
D. A-3 or G-5 Visas	24
Part III: Assisting Domestic Workers in the Search for Employment	27
A. Finding Work	27
B. The Interview With the Employer	29
C. What a Worker Should Get in Writing	30
Appendix	
A. Income Tax Resources	31
B. State & Local Government Offices	32
C. Community Resources	35
D. Sample Standard Employment Contract	38
E. Sample Confirmation Letter	42
F. Sample Work Records Community Resources	43
G. Protecting Yourself on the Job—Tips for Workers	44
H. Sample Demand Letter	45
I. ICE Policy Regarding Labor Disputes	47
J. Sample Interview Questions	49



Introduction

Domestic workers generally work in isolation. They may have no co-workers at the worksite who can advise them of their rights. Many are immigrants with a limited knowledge of the laws of this country. Some are undocumented and live in fear of being deported.

Domestic workers are those who clean, cook, and provide childcare in the private homes of others. For the purpose of this guide, workers who act as companions to the disabled or mentally ill or provide home health care are not considered domestic workers, as they are often covered by different laws.

The purpose of the handbook is to help domestic workers protect themselves with existing employment laws. While the laws do not reflect the full extent of the rights domestic workers deserve, they do give workers some protection, regardless of their immigration status.

The laws of some states afford domestic workers greater protection than the laws of other states. The information in this handbook is based on the laws that apply in Illinois.

Through enforcement of existing legal rights and organizing for more protections, workers and their advocates can improve working conditions for all domestic workers.

Laws that are not enforced have only symbolic value. The first step toward empowering workers is to educate them about their rights. This handbook is part of that first step.

Domestic Workers Bill of Rights

If you are documented or undocumented, you are protected by most federal labor laws.

WAGES AND HOURS

You are entitled to:
• a minimum wage of \$5.15 per hour;
• payment for all hours worked;
• overtime pay of 1 and 1/2 times your hourly wage for every extra hour you work over 40 hours in a week over 44 hours in a week if you live in:
• one hour's additional pay for every extra hour you work over 40 hours in a week over 44 hours in a week if you live in:
• work more than 10 hours in a week over 44 hours in a week if you live in:
• accept lower wages because of your immigration status.

BENEFITS

If you work more than 13 hours per week for the same employer, you have the right to:
• Workers Compensation and unemployment insurance;
• if you get injured on the job, you can get Unemployment Insurance;
• If you are documented and have worked for the same employer for at least 20 weeks and you leave your job for a cause or are laid off, you can get Unemployment Insurance.

ABUSE AND HARASSMENT

It is illegal for your employer to:
• to beat or mistreat you in any way;
• force you to have physical or sexual contact with anyone;
• contact you in any way that causes you distress or harm.

Part I: Domestic Workers' Labor Rights

Generally, labor laws protect all workers, regardless of immigration status. The various laws protecting workers are covered below. For information on strategies and methods of enforcement when employers violate the law, please see “Enforcing Workers’ Rights” at the end of Part I.

A. Wages & Hours

Domestic workers¹ in Illinois are not covered under the state’s minimum wage law.² However, they are covered under federal minimum wage law, which requires that they receive an hourly minimum wage of \$6.55 per hour³ – \$7.25 per hour starting July 24, 2009. Companions and home health workers, on the other hand, are covered by the Illinois minimum wage law, which is \$7.75 per hour as of July 1, 2008.⁴

Domestic workers in Illinois must be paid a minimum of twice every calendar month⁵ and no more than thirteen days after the end of the pay period.⁶ Under the Illinois Wage Payment and Collection Act, an employer **must** notify the worker at the time of hiring of the wage rate and the time and place of payment, and a worker should request that the terms be put in writing.⁷ If employment is terminated or otherwise ends, a worker should be paid at that time, if possible, but no later than the next scheduled pay period.⁸

Workers must be paid for all hours worked. All wages must be paid in cash or by check.⁹ A worker cannot be required to accept direct deposit of wages to a bank, but may choose to do so if desired.¹⁰

The Fair Labor Standards Act (FLSA), a federal law, prohibits an employer from firing or

¹ Ill. Adm. Code § 210.110 defines “domestic worker” as an individual whose primary duties include “housekeeping, cooking, laundry, baby sitting, gardening, dog walking, running errands, chauffeuring of automobiles for family use, or butler, valet, maid, governess or night watch services.” Unless otherwise indicated, the term “domestic workers” does not include “companions” or home health care workers.

² Under 820 ILCS 105/3(d)(3), domestic workers are exempt from coverage under the Illinois Minimum Wage Act.

³ Fair Labor Standards Act (FLSA) 29 U.S.C. §206(f). More information about federal minimum wage rates can be found on the U.S. Department of Labor website at <http://www.dol.gov/esa/whd/flsa/>.

⁴ 820 ILCS 105/4 and Ill. Adm. Code §210.110. Domestic workers in private homes who act as companions or who primarily administer health care services *are* covered by the Illinois Minimum Wage Law and must receive \$7.75 per hour (as of July 1, 2008). Section 210.110 defines companion as one “whose primary duty is to be a companion for individual(s) who are aged or infirm” and home health care worker as one “whose primary duty is to perform health care services in or about a private home.” Illinois minimum wage rises to \$8.00 per hour effective July 1, 2009, and \$8.25 an hour on January 1, 2010.

⁵ Illinois Wage Payment and Collection Act, 820 ILCS 115/3.

⁶ 820 ILCS 115/4. If a worker is paid weekly, wages shall be paid no more than 7 days after the end of the pay period.

⁷ 820 ILCS 115/10.

⁸ 820 ILCS 115/5. An employee who makes a request in writing may request a final payment by mail.

⁹ 820 ILCS 115/4.

¹⁰ 820 ILCS 115/4 and Ill. Adm. Code § 300.600.

otherwise retaliating against an employee – including a domestic worker – for exercising her rights under wage and hour laws.¹¹

1. Deductions from Wages

An employer may deduct from a worker's wages in very few situations, such as for the payment of taxes¹² or other deductions that a worker consents to in writing.¹³ Where an employer can show that food or lodging provided is for the benefit of the employee, the employer may be able to deduct the costs.¹⁴ The employer must provide an itemized statement of any deductions made for each pay period.¹⁵

The following limits apply to an employer's right to make deductions from a worker's wages:

- Employers are not allowed to force workers to accept food or lodging in lieu of wages.¹⁶
- Employers cannot charge workers more than the actual cost of what is provided to them.¹⁷
- Employers are not allowed to deduct the cost of anything provided to workers primarily for the employer's own benefit, such as safety equipment, tools, or uniforms required by the employer.¹⁸
- Employers cannot deduct the cost of any housing that violates health or safety regulations.¹⁹
- If a worker is expected to travel with her employer, the employer must pay her expenses.²⁰
- Employers cannot ask the worker to pay the insurance premiums for workers' compensation²¹ or unemployment.²²
- If the worker works at a party or function held by her employer, the employer cannot deduct any tips she receives from her wages.²³
- Employers cannot deduct money from a worker's pay if she breaks or spoils something owned by the employer, unless the worker signs a written agreement agreeing to the deduction at the time the deduction is made by the employer.²⁴

¹¹ 29 U.S.C. §215(a)(3).

¹² 820 ILCS 115/9.

¹³ 820 ILCS 115/9.

¹⁴ 820 ILCS 115/9.

¹⁵ 820 ILCS 115/10.

¹⁶ 820 ILCS 115/9 states that a worker's consent must be given "freely."

¹⁷ 29 CFR § 531.30, 820 ILCS 115/9.

¹⁸ 29 CFR § 531.3(d)(1-2).

¹⁹ 29 CFR § 531.31.

²⁰ 29 CFR § 778.217(a), 29 CFR § 778.217(b)(3).

²¹ 820 ILCS 305(4)(g).

²² 820 ILCS 405/2800(A)(5).

²³ 29 USC § 203(m) permits deduction of tips from wages only for a "tipped employee," defined in 29 USC § 203(t) as "any employee engaged in an occupation in which he customarily and regularly receives more than \$30 a month in tips."

²⁴ 56 Ill. Adm. Code § 300.820.

2. Meal Breaks & Time Off

Domestic workers who work 7½ hours or more in a row are entitled to a 20-minute paid²⁵ meal break no later than 5 hours into the shift.²⁶

Domestic workers are entitled to at least 24 consecutive hours of time off in every calendar week, usually Sunday.²⁷ A worker cannot be required to work on a Sunday (or another designated day of rest) but can voluntarily agree to do so.²⁸ If any worker has agreed to work on a Sunday, the employer should post a schedule in the workplace designating an alternative “day of rest” for the worker.²⁹

Employers who violate these provisions may be fined (see the “Enforcing Workers’ Rights” section, below).³⁰

3. Overtime Pay

Whether a domestic worker qualifies for overtime pay depends on whether she lives with her employer.

Overtime for “live-out” workers: If a worker does not live with her employer, she is entitled to standard overtime pay of 1 ½ times her regular hourly wage for every extra hour she works over 40 hours per week. Her overtime pay must be calculated based on her regular rate of pay, which includes the cost of any food or lodging that the employer says he/she is deducting from her wages.³¹

Overtime exemption for live-in domestic workers: Domestic workers who reside in the employer’s home are not entitled to overtime pay.³²

In contrast, companions and home health care workers covered by Illinois law *are* eligible for overtime pay of one and a half times the regular hourly wage for every extra hour of work over 40 hours in a workweek, whether or not they live with their employers.³³

²⁵ 29 CFR 785.18 considers breaks of 5-20 minutes to be compensable work time.

²⁶ 820 ILCS 140/3.

²⁷ 820 ILCS 140/2.

²⁸ 820 ILCS 140/4. Under 820 ILCS 140/8, an employer must request authorization from the Director of the Department of Labor to require workers to labor on the designated day of rest.

²⁹ 820 ILCS 140/4.

³⁰ 820 ILCS 140/7 fines employers \$25-100 for each offense of 820 ILCS 140.

³¹ 29 USC § 207(1); 29 CFR § 552.100; 29 CFR § 778.116

³² 29 C.F.R. § 552.100.

³³ 820 ILCS 105/4a. Companions and home health care workers covered by the Illinois Minimum Wage Act.

4. Income & Other Employment Taxes

Regardless of whether a worker is paid in cash or by check, she is legally required to report earnings and pay income taxes unless her annual income is low enough to fall below the federal threshold. In 2008, the federal threshold for taxpayers under age 65 was \$8,950 if single and \$17,900 if married and filing jointly.³⁴ Advocates should also check to see whether workers are obliged to pay state and municipal income taxes in addition to federal taxes.

A domestic worker can request that her employer withhold federal and state income taxes from her pay if she desires, but the employer is not required to do so.³⁵ Whether a worker requests that the employer withhold income taxes or not, the employer should provide each worker with wage and tax statements after the conclusion of the calendar year.

Even if her income is very low, a worker should file a return as she may be entitled to a refund. If a worker does not have a social security number, she can still report earnings, pay taxes, and potentially receive a refund using an Individual Taxpayer Identification Number (ITIN). This will also establish a work history that could help the worker get permanent residency in the future if the immigration laws change. The ITIN should never be used in place of a social security number where a social security number is required, however. For more information, see the "ITIN Fact Sheet" available at the National Employment Law Project website: <http://www.nelp.org/page/-/Justice/ITINS%20November%202004.pdf>.

Employers are required by law to pay unemployment taxes and workers' compensation premiums for each worker.³⁶ These payments must be made by the employer; the employer may not deduct the payments from a worker's wages.³⁷ An employer is also obligated to withhold social security taxes from a worker's wages. If an employer does not make these payments or deductions, a worker may not be able to collect unemployment, workers compensation, or social security benefits when needed.

For assistance filing taxes or advice, see **Appendix A** for a list of local clinics and other resources.

³⁴ IRS Pub. 501, "Exemptions, Standard Deduction, and Filing Information," 2008, p 2, available at <http://www.irs.gov/pub/irs-pdf/p501.pdf>. The threshold for taxpayers over age 65 was \$10,300 if single and \$18,950 if married.

³⁵ IRS Pub. 505, "Tax Withholding and Estimated Tax for 2008," Rev. Feb. 2008, p 3

³⁶ 820 ILCS 405/205.

³⁷ 820 ILCS 305(4)(g), 820 ILCS 405/2800(A)(5).

B. Workers' Compensation

Workers who are injured on the job are entitled to workers' compensation.³⁸ Workers' compensation is an insurance program authorized by the state that provides compensation to workers who have suffered a job-related injury. The injured employee receives benefits regardless of who is to blame – the employee, the employer, a coworker, or some other person. Outside of these guaranteed benefits, the employee usually does not have the right to demand compensation from the employer for the injuries.

An employer may not retaliate by discriminating or discharging an employee for filing or announcing her intention to file a workers' compensation claim.³⁹

To qualify for workers' compensation benefits, domestic workers must have worked 40 or more hours per week for 13 or more weeks a year.⁴⁰

Many employers of regular, full-time domestic workers do not have workers compensation insurance, even though they are required by law to do so. Illinois Workers' Compensation Law provides some protection to injured workers who are entitled to workers' compensation benefits under the law but whose employers do not have insurance.⁴¹ This program, called the Injured Worker Benefit Fund, provides benefits to workers who have filed a workers' compensation claim and received a final award from the Workers' Compensation Commission but whose employer has failed to pay the benefits due under the award.⁴² The worker must also comply with numerous reporting and filing requirements. Further instructions can be found on the Illinois Workers' Compensation Commission website at <http://www.iwcc.il.gov/iwbf.htm>.

See **Appendix B** for office locations for the Illinois Workers' Compensation Commission.

C. Unemployment Insurance

A domestic worker may be eligible for unemployment insurance if she leaves her job for good cause⁴³ or is fired.⁴⁴

³⁸ 820 ILCS 305(1)(b)(2).

³⁹ 820 ILCS 305/4(h).

⁴⁰ 820 ILCS 305/3(18).

⁴¹ 820 ILCS 305/4(d).

⁴² <http://www.iwcc.il.gov/iwbf.htm>. A worker injured on the job may also bring a civil suit against her employer if she is covered and her employer failed to buy workers compensation insurance. 820 ILCS 305/4(d).

⁴³ 820 ILCS 405/601. "Good cause" exists where a worker leaves her job: because her doctor has deemed her physically unable to perform her job; upon a doctor's advice that her assistance is necessary to care for her sick spouse, child or parent and cannot perform her job while giving this assistance, and where she gives her employer notice that she needs to leave her job; or because she is the victim of sexual harassment by another employee; or because she is the victim of domestic violence.

⁴⁴ 820 ILCS 405/602 renders workers who are fired for felony misconduct ineligible for unemployment insurance.

Under Illinois law, a domestic worker is eligible to receive unemployment benefits if she was paid wages of \$1,000 or more in any calendar quarter in either the current or preceding calendar year.⁴⁵

Undocumented workers are not eligible for unemployment insurance in Illinois.⁴⁶ The Unemployment Insurance office will likely check the immigration status of any applicant for UI benefits; filing false documents at the UI office can result in serious legal problems.

See **Appendix B** for office locations for the Department of Employment Security, the agency that administers UI benefits.

D. Abuse and Harassment

It is illegal for anyone, including an employer, to:

- Force a worker to have physical or sexual contact
- Hit or physically threaten a worker

These are criminal acts. They can be reported to the police. Before reporting them to the police, however, a worker may want to get assistance from a community organization, listed in **Appendix C**.

1. Protection from Discrimination and Sexual Harassment under the Cook County Human Rights Ordinance

Workers who are employed in Cook County are covered under the County's Human Rights Ordinance.⁴⁷ Under the Ordinance, no employer or employment agency may discriminate against a worker based on her "race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status, source of income, or housing status."⁴⁸ Employers and employment agencies may not use any of the above categories to make decisions about hiring, firing, discipline, or payment.⁴⁹

The ordinance also protects workers from sexual harassment by employers,

⁴⁵ 820 ILCS 405/205(7) includes employers of domestic workers and 820 ILCS 405/211.5 provides for eligibility for domestic workers in a "private home, local college club, or local chapter of a college fraternity or sorority."

⁴⁶ 820 ILCS 405/614 requires applicants who indicate they are aliens to produce evidence of legal status in order to be eligible.

⁴⁷ Ordinance No. 93-0-13(II)(D)(1) defines covered employees as "any individual whether paid or unpaid in employment for an employer"; 93-0-13(III)(A) prohibits discrimination with regard to "employment that is or would be in whole or in part in Cook County."

⁴⁸ Ordinance No. 93-0-13(II)(S) defines unlawful discrimination.

⁴⁹ Ordinance No. 93-0-13(III)(B)

employment agencies, and non-employees, such as household family members.⁵⁰ Furthermore, the Ordinance prohibits retaliation opposing or reporting unlawful discrimination.⁵¹

2. Protection from Discrimination and Sexual Harassment under the Chicago Human Rights Ordinance

Workers employed in Chicago are covered under the Chicago Human Rights Ordinance.⁵² Under the law, no employer may discriminate against a worker based on her race, sex, color, sexual orientation, ancestry, marital status, national origin, parental status, religion, age, source of income, disability, or military discharge status. Employers and employment agencies may not use any of the above categories to make decisions about hiring, firing, discipline, or pay.⁵³

The city ordinance also protects workers from sexual harassment by employers and employment agencies — even holding them liable for conduct of non-employees, non-managerial employees, and non-supervisory employees if the employer or agency is made aware of the conduct and fail to remedy it.⁵⁴

3. Filing Charges

If you work in the City of Chicago and experience discrimination, you can file a charge of discrimination with the Chicago Commission on Human Relations. If you work in suburban Cook County, such as in Wilmette, Winnetka, or Northbrook, and experience discrimination, you can file a charge of discrimination with the Cook County Commission on Human Rights. See **Appendix B** for office locations and phone numbers.

E. Enforcing Workers' Rights

There are several strategies a worker can pursue – either one at a time or simultaneously -- to enforce her rights on the job, including the right to be paid for all time worked, the right to meal breaks, and the right to be free from abuse, discrimination, and harassment. These strategies include writing demand letters, filing complaints with state and federal enforcement agencies, and filing lawsuits against employers.

⁵⁰ Ordinance No. 93-0-13(III)(E) defines sexual harassment as “any unwelcome sexual advance, request for sexual favors, or conduct of a sexual nature when (1) submission to such conduct is an explicit or implicit term of condition of an individual’s employment; or (2) submission to or rejection of such conduct by an individual is used as the basis for any employment decision affecting the individual; or (3) such conduct has the purpose or effect of substantially interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.”

⁵¹ Ordinance No. 93-0-13(IX)(A).

⁵² Chicago Ordinance 2-160-020(d) defines covered employees as any “individual who is engaged to work in the city of Chicago for or under the direction and control of another for monetary or other valuable consideration.”

⁵³ Chicago Ordinance 2-160-030.

⁵⁴ Chicago Ordinance 2-160-040.

If a worker needs to take action against an employer to enforce her rights, approaching a worker center or a legal services agency for advice or representation is strongly recommended. See **Appendix C** for a list of community resources in Illinois.

Whether or not a worker plans on taking action against an employer, and whatever enforcement strategy she chooses, she should take the following steps to help her to protect her rights in the future:

- Putting the terms and conditions of employment in writing, ideally before starting to work for an employer. See **Appendix D** for a sample employment contract and **Appendix E** for a sample confirmation letter.
- Keeping accurate records of time worked and pay received. See **Appendix F** for sample work records.
- Documenting any violations or abuse at the time they occur.

A worker should keep all notes and records in a safe place under her control. For further suggestions on protecting yourself on the job, please see **Appendix G**.

Record-keeping is very important if a worker is sexually or racially harassed or abused. If so, the worker should:

- Talk to someone she trusts.
- Keep a journal in a bound notebook. Include dates, times, locations, gestures, comments and her responses. Be as specific as possible and try to write down the events as they happen, or soon after they happen.

1. Demand Letters

Demand letters are sent to employers to notify them that they have violated a worker's rights. They can be used at any time, and can be used to open negotiations to recover unpaid wages or otherwise solve a workplace problem. A demand letter can be sent by a worker, an organizing group, or an attorney.

A typical demand letter includes:

- the law(s) violated
- dates and times worked
- a request for payment
- a proposed payment plan or meeting to negotiate
- follow-up steps including an explanation of the consequences for the employer if he or she fails to respond

See **Appendix H** for a sample demand letter.

a) Follow-up Steps to a Demand Letter

It is important to be prepared to follow up a demand letter with further action if the employer does not respond to the letter or refuses to comply with the law. A worker should carefully consider what resources are available to her, including community advocacy groups, when proposing follow-up. Follow-up to a demand letter can vary depending on who sends it; it can be as simple as saying someone will call on a given date. Below are examples of different follow up steps.

Organizing groups can:⁵⁵

- Protest at the employer's home or place of business;
- Publicize the employer's bad acts in the media; and/or
- File a complaint with the appropriate state or federal agency;

Individuals can:

- Propose a time, date and place to meet and discuss the claim with the employer;
- File a complaint with the appropriate state or federal agency; and/or
- Filing a case in court, either by herself in small claims court or by hiring a private attorney.

Whatever steps are chosen, it is very important to follow up. A demand letter without follow up is meaningless and can lead the employer to think a worker is not serious.

2. Filing Complaints with State and Federal Agencies

Various state and federal departments in Illinois handle workers' complaints, depending on whether the complaint concerns unpaid wages, meal breaks, days off, discrimination, or sexual harassment.

- a) Meal breaks and time off:** A worker denied meal breaks or required to work on a day off may file a complaint with the Illinois Department of Labor. The form can be found at <http://www.state.il.us/agency/idol/forms/pdfs/FLSODRISA02.PDF>. Local office locations are listed in **Appendix B**.
- b) Unpaid wages and overtime:** A worker owed back wages or who is paid below the federal minimum wage of \$6.55 per hour (\$7.25 per hour starting July 24, 2009) may file a complaint with the U.S. Department of Labor's Wage and Hour Division. To file a complaint, visit the closest Wage and Hour Office. Office locations in the Illinois area are listed in **Appendix J**.
- c) Workers' Compensation:**
- A worker should report any accident to her employer within 45 days.⁵⁶

⁵⁵ For more information on legal liability for organizing groups, please see the National Employment Project's "Engaging in Direct Action Campaigns without Getting SLAPP'ed" guide at <http://www.nelp.org/docUploads/SLAPP%20suit%20guide%20final%20113007%5F121107%5F110544%2Epdf>.

- A worker injured on the job who is denied workers' compensation payments may file a claim with the Illinois Workers' Compensation Commission within 3 years after the date of the injury or accident.⁵⁷ The Commission may require an employer to pay. The "Application for Benefits" form can be found at <http://www.iwcc.il.gov/ic01FORM.pdf>.
- A worker injured on the job whose employer does not have workers' compensation coverage should contact the Illinois Workers' Compensation Commission's Insurance Compliance Division ((866) 352-3033) to report the employer's name, address and the date of the injury.
- A worker who believes she has been retaliated against by her employer for filing a claim may be able to file a claim against the employer in court. She should consult a legal advocate for advice.

d) Unemployment Insurance: Eligible workers who become unemployed should file for benefits with the Illinois Department of Employment Security. Workers can file online at <http://www.ides.state.il.us/individual/certify/default.asp>. To file in person, call (888) 367-4382 for the nearest office or see **Appendix B**.

e) Discrimination and Sexual Harassment

Cook County: Workers should file a written complaint with the Cook County Commission on Human Rights within 180 days of the incident or most recent incident if the violation was ongoing.⁵⁸ The complaint form is available at http://www.cookcountygov.com/Agencies/ccchr_complaint_form.pdf. The Commission will deliver a copy of the complaint to the employer, investigate the complaint, and if it uncovers sufficient evidence of a violation, conduct a hearing.⁵⁹ A worker can also request to file an action in court, a request which the Commission may grant or deny depending on the evidence.⁶⁰ For further information, visit http://www.co.cook.il.us/portal/server.pt?open=514&objID=305&parentname=CommunityPage&parentid=1&mode=2&in_hi_userid=2&cached=true.

City of Chicago: Workers should file a written complaint with the Chicago Commission on Human Relations within 180 days of the incident or the most recent incident if the violation was ongoing.⁶¹ Guides to filing complaints and further instructions can be found at http://egov.cityofchicago.org/city/webportal/portalDeptCategoryAction.do?deptCategoryOID=536892645&contentType=COC_EDITORIAL&topChannelName=Dept&entityName=Human+Relations&deptMainCategoryOID=-536891473

⁵⁶ Illinois Workers' Compensation Commission, "Handbook on Workers' Compensation and Occupational Diseases," March 2007.

⁵⁷ *Id.*

⁵⁸ Ordinance No. 93-0-13(X)(B)(1)(a).

⁵⁹ Ordinance No. 93-0-13(X)(B)(1)(c), 93-0-13(X)(B)(2-3).

⁶⁰ Ordinance No. 93-0-13(X)(D).

⁶¹ Chicago Muni. Code § 210.120(a).

3. Going to Court

Instead of filing a complaint with a state or federal agency, a worker owed wages by her employer may instead file a complaint in court.⁶² A worker should consult an attorney at a legal aid agency or at a worker center before doing so. See **Appendix C** for a list of resources.

- a) **Small Claims Court:** A worker with a claim for money damages less than \$10,000 can file in Small Claims Court and does not need to hire an attorney.
 - For more information about Small Claims Court, visit <http://www.ag.state.il.us/consumers/smlclaims.html>.
 - Forms for filing in Cook County (Chicago) can be found at <http://198.173.15.34/?Section=FormsPage&FormsPage=ALL&FORMNAME=&TITLE=small+claims&Submit=Submit>.
- b) **Chicago Pro Se Court:** A worker with a claim for less than \$1,500 can file at *Pro Se* Court. Filing a claim *pro se* means filing without being represented by a lawyer. After filing *pro se* a worker can hire an attorney only if the employer hires one. To file, go to Room 602, Richard J. Daley Center, Clark and Randolph Streets, Chicago, IL. For more information visit http://www.cookcountyclerkofcourt.org/Community_Resources/brocures/prose/_p_rose_.htm.
- c) **Court costs:** If you feel that you cannot afford the court filing fee and service cost, you can apply to have the fees waived. The courts may provide a waiver if you can show that your income falls below a certain level, you receive public benefits, or if the court costs will cause you significant financial hardship. See http://198.173.15.31/Forms/pdf_files/CCGN689A.pdf for the application and more information about fee waivers in Illinois State Court.

The U.S. Federal District Court for the Northern District of Illinois (in cooperation with several other organizations) runs the District Court Self-Help Assistance Program, a free limited legal assistance program for pro se litigants: people who are not represented by a lawyer. Pro se litigants who have filed or who are considering filing a case in the U.S. Federal District Court for the Northern District of Illinois can meet with an attorney and receive free limited assistance regarding their legal matters. For more information, see <http://www.ilnd.uscourts.gov/home/assets/documents/Website%20Self-Help%20Program%20Announcement.pdf> or contact the Intake Desk of the Clerk's Office at (312) 435-5691.

⁶² A worker with discrimination and sexual harassment claims must file a claim with the agency first before going to court.

The federal courts may also waive filing fees for low-income people. See the above link for more information and for the application.

- d) **Making the choice:** Workers should talk to an attorney about which strategy to use and which court to use.



Part II: Immigration Issues Related to Employment

Most employment laws cover all workers regardless of immigration status. Exceptions in Illinois include the unemployment insurance laws and some remedies available under anti-discrimination law, such as being reinstated to the job the worker was fired from.

When a worker files a complaint for unpaid wages, a claim for workers' compensation, or any other employment related problem, ***she does not have to answer questions about her immigration status***. In fact, it is better for her not to answer those types of questions and to seek assistance from a community group or lawyer. Only Immigration and Customs Enforcement (ICE) enforces immigration laws, not employers or the employment agencies.

A worker should never volunteer information about her immigration status to anyone.

A worker has the right to remain silent and speak to a lawyer if anyone stops her and asks her for immigration papers. See the National Immigration Law Center's guide, "Immigration Enforcement: Know Your Rights at Home and at Work," available at http://nilc.org/ce/nilc/imm_enfrmt_homework_rts_2008-05.pdf.

A. Employer's Threats to Report a Worker to ICE

Reporting workers who are complaining about wage and hour violations to immigration authorities is considered unlawful retaliation under the Fair Labor Standards Act.⁶³ It is illegal retaliation for employers to threaten to report a worker to the ICE for trying to enforce her labor rights. (A number of labor and employment laws have anti-retaliation provisions.)

ICE maintains an internal policy called an "operating instruction" that places limitations on immigration enforcement investigations where there is an ongoing labor dispute – including wage and hour violations, health and safety violations, workers' compensation claims, and discrimination complaints. See **Appendix I**.

The National Immigration Law Center's guide, "How to Protect Yourself when Filing a Complaint Against Your Boss," offers suggestions for workers who want to report the violations of their employers. The guide is available at http://nilc.org/immsemploymnt/IWR_Material/Worker/08-How_to_protect_yourself.pdf.

⁶³ See, e.g., *Centeno-Bernuy v. Perry*, 302 F.Supp. 2d 128 (W.D.N.Y. 2003); *Singh v. Jutla & C.D. & R's Oil, Inc.*, 214 F.Supp.2d 1056 (N.D. Cal. 2002)).

B. Work authorization

Employers do not need to know a worker's immigration status. ***An employer only needs to know whether a worker is authorized to work in this country.*** Federal immigration law makes it unlawful to employ someone knowing that person does not have work authorization.⁶⁴

1. Work Authorization Verification

Employers are generally required to fill out an Employment Eligibility Verification Form (called an "I-9 Form") together with the employee in order to prove the employer did not knowingly employ someone without work authorization.

2. Exception to the work authorization verification requirement

There are some very common situations in which work authorization verification is NOT required including:

- a) **Casual Workers:** Persons employed for casual domestic work in a private home on "sporadic, irregular, or intermittent" basis.⁶⁵
 - Example: An occasional babysitter—but not a full-time maid
- b) **Independent contractors:** A worker may be considered an "independent contractor" under immigration law if she:
 - Supplies the tools or materials she uses for work
 - Makes services available to the general public
 - Works for a number of clients at the same time
 - Has an opportunity for profit or loss as a result of labor or services provided
 - Invests in the facilities for work
 - Directs the order or sequence in which the work is to be done
 - Determines the hours during which the work is to be done.⁶⁶

3. Filling out the I-9 Form

In cases where the employer is required to verify work authorization, the employer will fill out an I-9 form with the employee. On this form, the employer must verify that he or she has examined a document that shows the employee is authorized to work. The I-9 form lists acceptable forms of proof of work authorization. The worker may choose which document(s) from the list to show the employer. The employer cannot refuse to accept a document which is on the list, and cannot ask the worker for more or different documents than the ones the worker provides. The employer does not have the right to keep the original documents. A copy is enough.

⁶⁴ 8 USC § 1324a(a)(1)(A).

⁶⁵ 274 § CFR. 274a.1(h).

⁶⁶ 8 CFR §274a.1(j).

For more information, see the National Immigration Law Center’s guide, “Proving Work Authorization and Reverification,” available at http://nilc.org/immsemplymnt/IWR_Material/Worker/01-Proving_Work_Auth.pdf.

C. False Promises of a Green Card

Employers may offer to take care of a worker’s immigration matters, but immigration status is a matter for an immigration attorney. (The community groups listed in **Appendix C** may be able to help workers find reliable immigration attorneys.)

Often employers say that they will sponsor a worker for a green card; however, it can take many years to obtain a green card as a domestic worker. In order to sponsor a worker for a green card, an employer has to first make an application to the U.S. Department of Labor for employment certification using Form 750A.⁶⁷ The employer basically has to show that he or she attempted to hire someone who was already work authorized in the U.S., but that no one was available with the required qualifications.

A worker must also submit a companion form, Form 750B. The worker is also required to sign the Application for Permanent Labor Certification saying that she intends to accept the job with the employer if the petition is approved; if a worker has not signed such a form, her employer has not begun the process of sponsoring her. Then, even if the employment certification is granted, the employer still has to file more paperwork on behalf of the worker—Form I-140 Immigrant Petition for Alien Worker. If the I-140 is approved, then the worker will be granted an immigrant visa number.⁶⁸

The process can take a very long time and there are no guarantees a worker will get a green card, as they are hard to get. A worker should be skeptical of anyone who promises to help her get one quickly and easily.

D. A-3 or G-5 Visas

If a domestic worker works for certain officials of international organizations such as the International Monetary Fund (IMF), World Bank, diplomats, embassy personnel, and, in some cases, State Department personnel, her visa will be called an A-3 or G-5 visa.

The application for one of those visas must include a contract signed by employer and worker including:

- A guarantee that the worker will be paid the federal or state minimum wage or prevailing wage, whichever is greater.
- A promise by the worker not to accept any other employment.

⁶⁷ ETA Form 750.

⁶⁸ <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=84096138f898d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=4f719c7755cb9010VgnVCM10000045f3d6a1RCRD>.

- A promise by the employer not to confiscate the worker's passport.
- A statement by the employer and worker that the worker cannot be required to remain at the employer's house after working hours without pay.⁶⁹

Different international organizations, such as the U.S. State Department, the World Bank and IMF, the United Nations and the Organization of American States also have their own codes of conduct with respect to employment contracts.

Generally, these codes of conduct address:

- Maintaining records of wages paid
- A prohibition on confiscating personal property and documents of the worker
- Limitations on deductions that can be made for room and board
- Payment of overtime
- Days off
- Freedom to leave the employer's home when not working
- Payment of medical insurance and costs

If a worker feels her contract or working conditions violate her rights under the A-3 or G-5 visas, she should consult one of the community organizations listed in **Appendix C**.

⁶⁹ U.S. Department of State Foreign Affairs Manual Volume 9 § 41.21 N.2).

Part III: Assisting Domestic Workers in their Search for Employment

Domestic workers commonly find jobs as nannies, housekeepers, and caregivers through employment agencies, employer referrals, word-of-mouth and worker centers.

A. Finding Work

1. Worker Centers

Worker centers or worker associations provide spaces for workers to get job-safety training, information, access to resources and job placement. See **Appendix C** for a list of worker centers.

2. Tips for Workers Responding To an Ad

An employer will often simply want to set up a meeting time rather than talk for a long time on the phone with the worker.

When responding to an ad, a worker should:

- Cut out and save the ad.
- Tell someone where the interview is, when she is going and when she expects to come back and, if possible, ask someone to come along to the interview with her.
- Bring a notebook and pen to take notes.
- Consider asking the employer to pay for travel expenses to and from the interview.

3. Employment Agencies

Employment agencies are licensed businesses that have lists of employers who are looking for domestic help. The agency receives commissions for each domestic worker it places, either from the employer or the worker.

- a) **Placement Fees:** Workers should look for agencies that do not charge placement fees. In Illinois, employment agencies are required to note in their advertisements whether they charge applicants fees or whether the employer pays the fee so workers can be informed when they arrive at the office.⁷⁰ Employment agencies in Illinois who charge fees to workers are required to post their fees in any room where workers are interviewed.⁷¹ Employment agencies

⁷⁰ Ill. Adm. Code §680.340.

⁷¹ 225 ILCS 515/1. *But see*, 225 ILCS 515/5, which states that the agency may charge workers a “placement fee,” that the agency and worker have agreed upon, or negotiated, and put in writing. A worker should receive a copy of any agreement she signs about amount, method of payment, or time and place of payment. No fee should be paid before the worker has received a job.

are also allowed to charge workers a \$4 registration fee.⁷² Finally, whatever the fees charged by the employment agency, an employee must be paid by her employer for all time worked.

If the worker pays the placement fee to the agency and is discharged by the employer through no fault of her own within 30 days, the employment agency must refund a portion of the fees paid by the worker. The agency may keep a portion of the fee equal to 25% of the worker's wages paid during the time the worker was employed, but must return the rest within three days of being notified that the worker is no longer employed.⁷³

- b) Application:** The agency is required to ask each worker to fill out an application form. The form should only ask for her name and address, the length of time she has lived at that address, and the names and addresses of the last three people for whom the applicant worked as a domestic worker.⁷⁴ The form should not ask for a worker's social security number or immigration status.
- c) Referral Slip:** Every agency must provide a "referral slip"—either in person or by mail—to a worker who is sent out for a job or on an interview with a prospective employer. The slip must contain:
- The worker's name
 - The employer's name and address
 - The agency's name and address
 - Name of the person referring the applicant
 - Probable duration of the work
 - Whether the work is temporary or permanent
 - Whether the fee is paid by the applicant or the employer.⁷⁵

The agency should also mail a second slip to the prospective employer within 24 hours which contains the name, address, and telephone number of the agency, the date the applicant was referred to the employer, the applicant's name, and her references.⁷⁶

- d) The Interview:** Workers must be given an opportunity to speak with the employment agency before being sent to a job or to an interview with a prospective employer.⁷⁷ **Appendix J** lists suggested questions workers may wish to ask an employment agency.

⁷² 225 ILCS 515/5.

⁷³ 225 ILCS 515/5.

⁷⁴ Ill. Adm. Code §680.810, §680.820.

⁷⁵ 225 ILCS 515/5.

⁷⁶ Ill. Adm. Code § 680.860.

⁷⁷ 225 ILCS 515/5.

e) **Contract:** If a worker signs a contract with an agency, the agency must provide the worker with a copy of the contract at the time of signing.⁷⁸

f) **Physical Examination:** All agencies are required to ask domestic workers for documentation of a physical examination performed within the 12 prior months. The document(s) must be signed and dated by a doctor and contain a statement that the worker was “found free of communicable disease.”⁷⁹

If an employer wants an additional examination or documentation of an examination as a condition of employment, the employer must pay for the examination or the costs of collecting the paperwork, if any.⁸⁰

g) **Complaints:** Disputes over fees or complaints against an employment agent may be filed with the Illinois Department of Labor in writing or on the phone.⁸¹ A complaint should contain the name and address of the agency and the name of the counselor involved, if any, along with the worker’s name, address, and telephone number.⁸² IDOL Private Employment Agencies information line can be reached at (312) 793-2810.

B. The Interview with the Employer

The way the employer treats a worker during the interview can give her an idea of the type of employer they will be. In order to protect herself, the worker should clarify in advance as many details as possible about the nature of the job and working conditions, and should write down or tell someone about the employer’s responses to her questions. See **Appendix J** for a list of questions workers can ask prospective employers during the interview and for a list of warning signals.

1. Personal Questions During Interviews

Prospective employers may ask personal questions that are inappropriate or illegal. A worker can respond by asking the employer whether the question is related to a job requirement. See **Appendix J** for advice on how to respond to personal questions.

2. Payment Issues

Domestic workers are commonly paid in cash. Payment in cash makes it easier for the employer to avoid paying for unemployment insurance, workers’ compensation, and

⁷⁸ Ill. Adm. Code § 680.700.

⁷⁹ 225 ILCS 515/9.1 and Ill. Adm. Code § 680.890.

⁸⁰ 820 ILCS 235/1.

⁸¹ 225 ILCS 515/4.

⁸² Ill. Adm. Code § 680.215.

Social Security, which means that it will be harder for the worker to prove their eligibility for benefits if they need them. With paychecks, the employer creates a record of pay, which could be useful in the event of a wage dispute.

In negotiating a salary, it is helpful to know the salaries of other people who do the same work in the same area. Workers can consult with other workers, community organizations and worker centers to find out what employers in the area generally pay workers for different job duties.

C. What a Worker Should Get in Writing

It is important to put the terms and conditions of employment in writing to ensure that the worker and the employer have understood each other correctly. The contract, or agreement, should include the following:

- Hours and wages, including work schedule
- Holidays and vacation time
- Personal days and sick days
- Health benefits
- Length of employment or how much notice must be given to terminate the contract.

An alternative to a contract is a signed confirmation letter with the same information. This can also be enforced in court. See **Appendix E** for a sample confirmation letter.

If the worker cannot get a confirmation letter, she should write everything that she and the employer agreed to, date it, and keep it in a safe place.

Furthermore, a worker should keep records of hours and pay on a daily or weekly basis. See **Appendix F** for a sample chart a worker can use to record her hours.

Please see **Appendix G: Protecting Yourself on the Job—Tips for Workers** and **Appendix J: Sample Interview Questions for Workers**, which includes a section titled How to Respond to Employer Questions and Statements.

Appendix A: Income Tax Resources

Internal Revenue Service

(800) 829-1040

Federal taxes: www.irs.gov

State taxes: www.revenue.state.il.us/Individuals/index.htm

Low Income Taxpayer Clinic

Chicago-Kent College of Law

565 West Adams Street, Suite 600

Chicago, IL 60661

Phone: (312) 906-5050

Loyola University Chicago School of Law Federal Tax Clinic

Water Tower Campus

25 E. Pearson, Suite 1200

Chicago, IL 60611

Phone: (312) 915-7176

Center for Economic Progress

29 E. Madison, Suite 900

Chicago, IL 60602

Phone: (312) 630-0282

info@economicprogress.org

Bring all papers possible:

- ✓ Social Security cards for the taxpayer, their spouse and dependents, if applicable
- ✓ Birth dates for primary, secondary and dependents on the tax return
- ✓ Current year's tax package if received
- ✓ Wage and earning statement(s) Form W-2, W-2G, 1099-R, from all employers
- ✓ Interest and dividend statements from banks (Form 1099)
- ✓ A copy of last year's federal and state tax returns if available
- ✓ Bank routing numbers and account numbers for direct deposit
- ✓ Other relevant information about income and expenses
- ✓ Total amount paid for day care
- ✓ Day-care providers identifying number

Appendix B: State & Local Government Offices

Cook County Commission On Human Rights

Main Office Address:
69 W. Washington Suite 3040
Chicago, IL 60602
(312) 603-1100

Hours: M-F: 8:30AM-5PM; Sat-Sun: Closed

Chicago Commission on Human Relations

740 N. Sedgwick
Third Floor
Chicago, IL 60610
(312) 744-4111

Filing Hours:

Monday through Friday
9:00AM - 5:00PM (2 copies of all filings required)

Intake Hours:

Monday through Friday
9:00AM - 5:00PM

Department of Employment Security (Unemployment Insurance)

Web site: <http://www.ides.state.il.us/>

For more offices see: <http://www.ides.state.il.us/ietc/wdc/centers.pdf>

Chicago Region

527 South Wells, 3rd Floor
Chicago 60607
(312) 814-3143

Northwest Region

410 Elm Street
Peoria 61605
(309) 671-3157

Chicago - Metro South

16845 Halsted Street
Harvey, IL 60426
(708) 596-8801

Central Region

850 E Madison FL 1
Springfield 62702-5603
(217) 558-2469

Northern Region

260 East Indian Road
Aurora 60505
(630) 844-8455

Southern Region

403 North 42nd Street
Mount Vernon 62864
(618) 242-6121

Illinois Workers' Compensation Commission (cash benefits and/or medical care for workers with job related injuries or illnesses).

Web site: <http://www.iwcc.il.gov/>

Phone (within IL only): (866) 352-3033

Chicago

100 W. Randolph St. #8-200
Chicago, IL 60601
(312) 814-6611

Peoria

202 N.E. Madison Avenue, #201
Peoria, IL 61602
(309) 671-3019

Collinsville

1014 Eastport Plaza Dr.
Collinsville, IL 62234
(618) 346-3450

Rockford

200 S. Wyman
Rockford, IL 61101
(815) 987-7292

Springfield

701 S. Second St.
Springfield, IL 62704
(217) 785-7087

Illinois Department of Labor Office Locations

Web site: <http://www.state.il.us/Agency/idol/>

This state agency enforces state minimum wage and overtime laws. Most individual claims for unpaid wages are filed with this agency.

LANGUAGES: English, Spanish

Chicago Area

Illinois Department of Labor
160 North LaSalle, Suite C-1300
Chicago, Illinois 60601
(312) 793-2800

Springfield Area

Illinois Department of Labor
1 West Old State Capitol Plaza, Room 300
Springfield, Illinois 62701
(217) 782-6206

Southern Illinois

Illinois Department of Labor
2309 West Main St.
Marion, Illinois 62959
(618) 993-7090

U.S. Department of Labor, Wage and Hour Division, Office Locations

Web site: www.dol.gov/esa.whd

Phone: (866) 4US-WAGE (866-487-9243)

This agency enforces federal minimum wage and overtime laws, the Family and Medical Leave Act, child labor, record-keeping violations, retaliation for filing Department of Labor claim(s), improper deductions, and other complaints regarding hours and working conditions.

Chicago District Office

230 S. Dearborn Street

Room 412

Chicago, IL 60604-1591

(312) 596-7230

Springfield Area Office

3161 W. White Oaks Drive

Suite 203

Springfield, Illinois 62704

(217) 793-5028

St. Louis District Office

1222 Spruce Street

Room 9.102B

St. Louis, MO 63103-2830

(314) 539-2706

Appendix C: Community Resources

Worker Centers

Latino Union of Chicago

1619 W. 19th Street
Chicago, IL 60608
Phone: (773) 588.2641
Email: workercenter@latinounion.org

Chicago Workers' Collaborative Chicago Workers' Legal Clinic

P.O. Box 08048
Chicago, IL 60608
Phone: (312) 543-8245
Email: lotus1403@yahoo.com.mx

Arise Chicago Worker Center

1020 W. Bryn Mawr Avenue, 3rd Floor
Chicago, IL 60660
Phone: (773) 769-6000
Website: www.arisechicago.org

San Lucas Workers Center

2914 W. North Avenue
Chicago, IL 60647
Phone: (773) 227-6633
(Tuesday/Thursday only)

Centro de Trabajadores Unidos

Immigrant Workers' Project
3200 E. 91st Street
Chicago, IL 60617
Phone: (773) 297-3370

Legal Assistance and Representation (additionally, see above)

Working Hands Legal Clinic

Downtown Office

77 West Washington St., Suite 1402
Chicago, IL 60602
Phone: (312) 795-9115

Little Village Office

3753 W. 28th Street
Chicago, IL 60623
Phone: (312) 795-9115

Chicago Legal Clinic

Phone: (773) 731-1762

South Chicago Office

2938 East 91st Street
Chicago, Illinois 60617

Pilsen Office

1914 South Ashland Avenue
Chicago, Illinois 60608

Austin Circle Law Center

118 N. Central
Chicago, Illinois 60644

Downtown Office

205 W. Monroe Street, 4th Floor
Chicago, IL 60666

Micah Legal Aid

2804 W Belmont Avenue, Suite 101
Chicago, IL 60618
Phone: (773) 463-6768
Languages: Spanish, Korean

Asian Human Services

4753 North Broadway, Suite 700
Chicago, IL 60640
Phone: (773) 293-8482
Languages: English, Russian, Vietnamese, Japanese, Chinese/Mandarin

Mandel Legal Aid Clinic

6020 South University Avenue
Chicago, IL 60637
Phone: (773) 702-9611
Languages: English

Self-Help Web Center

Richard J. Daley Center
50 West Washington Street, Room 602
Chicago, IL 60602
Languages: English, Polish, Spanish

Legal Assistance Foundation of Metropolitan Chicago

Toll-free: (800) 824-4050
Languages: English, Polish, Chinese/Mandarin, Spanish

General Office

111 West Jackson Boulevard, Suite 300
Chicago, IL 60604
Phone: (312) 341-1070

Northwest Office

1279 N. Milwaukee Avenue, Suite 407
Chicago, IL 60622
Phone: (773) 572-3200
Languages: English, Spanish

West Side Office

3333 W. Arthington Avenue
Chicago, IL 60624
Phone: (773) 321-7900
Languages: English, Spanish

South Side Office

10 West 35th Street, 4th Floor
Chicago, IL 60616
Phone: (312) 949-5390
Languages: English, Spanish

North Suburban Office

828 Davis Street, Suite 201
Evanston, IL 60201
Phone: (847) 475-3703
Languages: English, Spanish

CARPLS

(legal hotline for Cook County residents)
Phone: (312) 738-9200
Languages: English, Spanish

Appendix D: Sample Standard Employment Contract

En (fecha)/On (date) _____ un acuerdo está hecho entre/an agreement is made between:

_____ (nombre completo del empleador/employer's full name) y/and
_____ (nombre completo de la trabajadora/worker's full name).

1. El empleo se iniciara el/Employment shall begin on _____ (fecha/date) hasta la fecha que el empleador o la trabajadora se ponga fin al contrato/until either party terminates employment according to this agreement.

***** De acuerdo al código laboral de Illinois el empleador tiene la responsabilidad de pagarle a el/la trabajador/ra todo el sueldo y beneficios que se le deba, si posible en el ultimo día de trabajo de el/ella, pero no más tarde de la fecha en que se efectuara el próximo período de pago.**

*****Under Illinois state labor code, the employer is responsible for paying the worker all salary and benefits which are owed on the last day of work if possible, but no later than the date of the next pay period.**

If employment is terminated or otherwise ends, a worker should be paid at that time, if possible, but no later than the next scheduled pay period.⁸³

2. El trabajo se llevará a cabo en/the work will be done at:

_____ (dirección/address).

3. El horario será el siguiente/The hours will be the following:

lunes/Monday	_____	jueves/Thursday	_____
martes/Tuesday	_____	viernes/Friday	_____
miércoles/Wednesday	_____	sábado/Saturday	_____
		domingo/Sunday	_____

Notas acerca del horario/Work schedule notes:

⁸³ 820 ILCS 115/5. An employee who makes a request in writing may request a final payment by mail.

4. Las responsabilidades principales de la trabajadora serán (lista detallada)/ *The worker's main responsibilities will be (detailed list):*

*** Cambios en las responsabilidades de la trabajadora deben estar anotadas por escrito y firmados por el empleador y la trabajadora. Un cambio substancial en las responsabilidades de la trabajadora le dará a la trabajadora el derecho de pedir un aumento de sueldo y/o horas del que ambos, empleador y trabajadora, estén de acuerdo.

*** *Changes in the worker's responsibilities must be noted in writing and signed by the worker and the employer. In the case of substantial changes in the worker's responsibilities, the worker has the right to ask for an increase in salary and/or work hours as agreed upon by the employer and the worker.*

5. El empleador es responsable de pagar a la trabajadora/ *The employer is responsible for paying the worker \$ _____ por hora/per hour, cada (semana o quincena; anote el día específico)/every (weekly or biweekly; specify exact days) _____.*

*** El código laboral de Illinois exige que el empleador le pague a la trabajadora su sueldo por lo menos dos veces al mes.

*** *Illinois labor code requires employers to pay wages at least twice per month.*

6. El empleador ofrece a la trabajadora los siguientes beneficios (por ejemplo, días de pago de enfermedad, tiempo de vacación, etc.)/ *The employer offers the worker the following benefits (for example, paid sick days, paid vacation, etc.):*

*** El empleador y la trabajadora llegarán a un acuerdo sobre los días que estará ausente del trabajo por razones de vacaciones, respetando tanto la flexibilidad necesaria para la trabajadora y las necesidades de salud del paciente (en el caso de trabajos de cuidado de pacientes) La trabajadora llamará al empleador en cuanto sepa que necesita días de enfermedad, bien sea por su propia salud o para cuidar a un miembro de su familia.

*** *The employer and the worker will arrive at an agreement about days when the worker will be absent from work, respecting both the worker's need for flexibility and the health needs of the patient (if applicable). The worker will call the employer as soon as she knows that she will need time off, either for her own health reasons or to care for a member of her family.*

7. El empleador le dará los siguientes beneficios de enfermedad a la trabajadora (por ejemplo días pagados de enfermedad) cada mes/ *The employer offers the worker the following*

sick days benefits (for example, paid sick days) each month:

8. El siguiente será el arreglo de pago a la trabajadora durante periodos de vacaciones u otras ausencias de la familia/*The following will be the arrangement for the worker's pay during her vacation or family leave of absence:* _____

9. El empleador y la trabajadora están de acuerdo que haya un periodo provisional de empleo de/*the employer and worker agree to a probationary employment period of* _____. Durante este periodo el empleador o la trabajadora pueden terminar el acuerdo con/*during this period, either party may terminate this agreement with* _____ dias de anticipacion/*days notice*.

***** Bajo el codigo laboral de Illinois, el empleador tiene la responsabilidad de pagarle a la trabajadora por todo el trabajo que haya hecho, aun estando en un periodo provisional.**

***** Under Illinois labor code, it is the employer's responsibility to pay the worker for all of the work done, including work done during the probationary period.**

10. Después del período provisional, ambos pueden terminar el acuerdo con/*after the probationary period, either party may terminate the agreement with* _____ dias de anticipación/*days notice*, excepto situaciones inusuales como que el empleador este violando los derechos laborales de la trabajadora, o que la trabajadora maltrate al paciente/*except in unusual situations such as abuse of the worker's rights by the employer, or mistreatment of the patient by the worker*.

11. En el caso de cancelación del trabajo, se avisará a la trabajadora con/*In case of job cancellation, the worker will be notified within* _____ de aviso antes de la hora de trabajo/*before the scheduled time*. Si no se avisa dentro de este período de tiempo, se pagará/*If the worker is not notified within this time, she will be paid* _____% del pago total para este día/*of the total pay for this day*.

12. Este contrato se revisará cada/*This contract will be reviewed every* _____, en las siguientes fechas/*on the following dates:*

En estas ocasiones, los dos, empleador y trabajadora, tendrán la oportunidad de evaluar el acuerdo y proponer cambios/*During these dates, each party will have the opportunity to evaluate the contract and add new changes*.

firma del empleador/*employer's signature*

fecha/*date*

firma de la trabajadora/*worker's signature*

fecha/*date*

***** El empleador y la trabajadora deben obtener copias de este documento. Cualquier cambio a este contrato debe agregarse a este y tomará parte de este contrato.**

***** *The employer and the worker must receive copies of this document. Any changes made to this contract must be recorded here and will form part of this entire agreement.***

Appendix E: Sample Confirmation Letter

DATE

Dear EMPLOYEE NAME:

This letter confirms your employment with us as a full-time nanny for two children, ages 3 and 6, commencing on January 15, 2001 for a term of one year.

The work week will be Monday through Friday from 8:00 to 5:00 with a 1 hour lunch break. The weekly salary will be \$680 or \$17/hr. You will be paid every Friday, and we will give you a signed receipt. We will pay time and a half for every additional hour worked. You may choose whether to live-in or live out.

Your responsibilities are limited to taking care of the two children, feeding them breakfast and lunch, and light housekeeping. Light housekeeping includes meal preparation and clean up as well as picking up after the children.

You will receive two weeks of paid vacation per year to be taken whenever you choose as long as appropriate notice is provided. Paid holidays include New Year's Day, Martin Luther King Jr.'s Day, President's Day, Good Friday, Memorial Day, Independence Day, Thanksgiving Day, Labor Day, and Christmas Day. If you choose to work on a holiday, we will pay you time and a half.

You will be paid when the family is on vacation whether or not you accompany us. If you accompany us, we will pay all of your travel and incidental expenses.

You are entitled to 5 sick days and 3 personal days per year. We will pay 50% of your health insurance premiums up to \$200 per month. We will also secure workers' compensation insurance.

We agree to give you at least three weeks notice or three weeks severance pay if we no longer need your services. We request that you likewise give us three weeks notice before leaving the position.

Sincerely,

EMPLOYER NAME

Appendix G: Protecting Yourself on the Job—Tips for Workers

How Do I Protect Myself During Employment?

- Know your employer's full name, address and phone number.
- Always keep copies of original documents with a trusted third person.
- If you give your documents to your employer, you have a right to have them returned. It is illegal for your employer to keep them from you.
- Make sure that you always have your passport and other official documents, such as bank records, in your possession. Do not give them to your employer to keep for you. If your employer insists on keeping them for you, give him/her a photocopy, not the original.
- Make sure others know where you work.
- If you have your own bank account, only you should have access to it. Make sure that only you have access to your money, whether or not you keep it in a bank account.
- You should receive your wages directly. Your employer may not deposit money directly into an account unless you give permission.
- It is safer for you, rather than your employer, to send your wages abroad if that is what you want.
- You can contact a community organization (**listed in Appendix C**) for help in setting up a bank account and/or sending your money abroad.

Keep a record of:

- The hours you work everyday
- Your responsibilities for each day
- Pay dates and wages paid each week
- Receipts for all paychecks, photocopies of paychecks or handwritten records of cash paid
- Names and numbers of other employees of the same boss
- Anything that makes you feel uncomfortable – write down what happened and when. (Was it something your employer said to you? Was it a task you were asked to do?)
- Any promises made by your employer
- **See Appendix F** for a sample form you can use to keep your records.
- **Keep these records in a safe place!**

Appendix H: Sample Demand Letter

Address

Dear _____:

I am writing to inform you that our services have been retained by your former employee _____ in a case regarding wages owed to her for hours she worked for you at _____.

WAGES DUE

According to our client, you employed her at a rate of _____ during the period of _____.

_____ was never paid in full for her work. Federal law requires that all employees must be paid at least \$6.55 per hour.

According to our calculations, you therefore owe _____ hours, or \$_____ in unpaid wages for the period _____.

FAILURE TO PROVIDE PAID MEAL OR REST BREAKS

According to our client, you failed to provide meal or rest breaks OR failed to pay wages during the breaks.

Under Illinois law, you must permit an employee to take a twenty-minute meal or rest break no later than 5 hours into every 7½ hour shift. Under federal law, this break period is compensable time.

According to our calculations, you therefore owe _____ hours, or \$_____ in unpaid wages for the period _____.

DEDUCTIONS FROM PAY

According to our client, you made improper deductions to her pay.

Under Illinois law, deductions are prohibited except in very few situations, such as the payment of taxes or where the worker consents to the deduction in writing.

You improperly deducted \$_____ from _____'s wages for _____.

According to our calculations, you therefore owe \$ _____ in unpaid wages for the period _____.

OVERTIME

According to our client, you employed her at a rate of _____ during the period of _____.

_____ was never paid in full for her work. Federal law requires that all hours worked over 40 in one week must be paid at 1½ times the regular rate of pay.

According to our calculations, you therefore owe \$ _____ in unpaid wages for the period _____.

CONCLUSION

I request that you provide our office with all wages due to the claimant, _____.

If we do not receive payment within _____ days, _____ will file an action against you with the appropriate state or federal agency.

Sincerely,

Appendix I: ICE Policy Regarding Labor Disputes

OI 287.3a Questioning persons during labor disputes. (Revised 12/04/96; Added to INSERTS April 99)

When information is received concerning the employment of undocumented or unauthorized aliens, consideration should be given to whether the information is being provided to interfere with the rights of employees to form, join or assist labor organizations or to exercise their rights not to do so; to be paid minimum wages and overtime; to have safe work places; to receive compensation for work related injuries; to be free from discrimination based on race, gender, age, national origin, religion, handicap; or to retaliate against employees for seeking to vindicate these rights.

Whenever information received from any source creates a suspicion that an INS enforcement action might involve the Service in a labor dispute, a reasonable attempt should be made by Service enforcement officers to determine whether a labor dispute is in progress. The Information Officer at the Regional Office of the National Labor Relations Board can supply status information on unfair labor practice charges or union election or decertification petitions that are pending involving most private sector, non-agricultural employers. Wage and hour information can be obtained from the United States Department of Labor (Wage and Hour Division) or the state labor department.

In order to protect the Service from unknowingly becoming involved in a labor dispute, persons who provide information to the Service about the employer or employees involved in the dispute should be asked the following: 1) their names; 2) whether there is a labor dispute in progress at the worksite; 3) whether they are or were employed at the worksite in question (or by a union representing workers at the worksite); and 4) if applicable, whether they are or were employed in a supervisory or managerial capacity or related to anyone who is. Information should be obtained concerning how they came to know that the subjects lacked legal authorization to work, as well as the source and reliability of their information concerning the alien's status.

It is also appropriate to inquire whether the persons who provide the information had or have a dispute with the employer of the subjects of the information. Likewise, the person providing the information about the aliens should be asked if the subjects of the information have raised complaints or grievances about hours or working conditions, discriminatory practices or about union representation or actions, or whether they have filed workers' compensation claims.

Generally there is no prohibition for enforcing the Immigration and Nationality Act, even when there may be a labor dispute in progress. However, where it appears that information may have been provided in order to interfere with or to retaliate against employees for exercising their rights, no action should be taken on this information without the review of the District Counsel and approval of the Assistant District Director for Investigations or an Assistant Chief Patrol Agent.

When Service enforcement action is taken and it is then determined that there was a labor dispute in progress, or that the information was provided to the Service to retaliate against employees for exercising their employment rights, the lead immigration officer in charge of the Service enforcement team at the worksite must ensure to the extent possible that any arrested or detained aliens necessary for the prosecution of any violations are not removed from the country without notifying the appropriate law enforcement agency which has jurisdiction over these violations.

Any arrangements for aliens to be held or to be interviewed by investigators or attorneys for the state or federal Department of Labor, the National Labor Relations board or other agencies/entities enforcing labor/employment laws will be determined on a case-by-case basis.

Appendix J: Sample Interview Questions for Workers

1) Interview Questions for Your New Employer

- What would my responsibilities be? Am I expected to do babysitting and housekeeping, only babysitting, or only housekeeping?
- If they say, “light housekeeping,” ask them to specify.
- How many people are in the household?
- Do you have pets? If so, will I be expected to care for them?
- How many employees are in the home and what are their responsibilities?
- Am I expected to go with you when you travel? If not, will I be paid when you are away?
- Am I the first person in this position?
- Why did the last babysitter/housekeeper leave? How long did she work for you?
- Will I have regular days off?
- What time will my work day begin, and what time will it end?
- How will I take my meals? Can I bring my lunch?
- Do you pay overtime after an 8 hour day?
- How much advance notice do you give when overtime is required?
- How many residences do you have?
- Do you provide paid sick leave? If so, can I rest assured that my right to take sick leave won't be unreasonably denied?
- How much paid vacation time will I have?
- When will I be eligible for a raise?
- Do you pay transportation costs? If I work late, do you pay for taxi fare home?
- Do you pay for workers compensation insurance?
- Standard contract (see **Appendix D**).

If you will live-in

- Where will I sleep? Is it heated? Am I expected to sleep in the same room as the child?
- How will I take my meals? Is there a meal allowance?
- Will my access to phone and mail be limited in any way?
- How much notice to move out will you give me if you no longer need my services?

Things to Bring to the interview

- A notebook and a pen to write down what the employer tells the worker about the job. It is important to keep a record of anything that the employer tells the worker about the work they will be doing, how much and how often they will be paid, etc.

Warning Signals

- The employer will not let a friend come with them to the interview.
- The employer avoids their questions.
- The employer increases responsibilities in the course of the conversation.

- The employer comments on a worker's English.
- The employer does not want to make a commitment to their demands right away.
- The employer makes racist or sexist comments.
- The employer asks them to sign a document that waives their right to minimum wage or overtime compensation. These rights cannot be waived. Even if the worker signs such a document, her employer must pay the minimum wage and overtime compensation.

Personal Questions

- Most personal questions are irrelevant and inappropriate. In some contexts, questions like these are illegal.
- Sometimes, an employer asks these questions to try to get to know you. Other times, an employer may use these questions to discriminate against you.
- If you don't want to answer a question, you can ask the employer whether it is related to a job requirement.
 - *How old are you?*
 - *Are you married? Do you have a boyfriend?*
 - *Where is your family?*
 - *Do you have any kids? Do you plan to have kids soon?*
 - *Where are you from?*
 - *Do you have any disabilities or health problems?*
 - *Can you read English?*
 - *Are you comfortable answering phone calls?*
 - *How long have you been in the U.S.?*

Questions About Your Immigration Status

- *Are you a citizen?*
- *Do you have a green card?*

These are inappropriate questions. Employers do not need to ask you about your immigration status during an interview. An employer only needs to know whether you are authorized to work in this country.

2) Important Questions about Agencies:

- Does the agency send someone to go with you to the interview with the employer?
- Does the agency pay for transportation to the interview with the employer?
- Does the employment agency do any background check on employers or take any steps to make sure that the household is safe?
- Does the agency provide you with a written job description, showing the name and address of the employer, wages, hours of work, the kinds of services they will perform, and the fees the agency will charge?
- The agency will have a service agreement with the employer. Ask to see it.

- Does the employment agency have a list of comments by past employees giving the reasons they left the employer?
- Is there a contract that the agency wants you to sign? What does signing it mean?
- Does the employer pay you directly, or does the agency pay you?
- How long does a worker have to remain with an employer before the agency gets its full commission?
- Does the employment agency inform employers about their obligation to pay into Social Security, workers' compensation, and unemployment insurance?
- Does the employment agency have a complaint system for workers whose employers are abusive (e.g. not paying overtime or not allowing a worker a day of rest)?
- Will the agency help such workers find a new placement?

Be on the lookout for:

- Agencies that don't let you take the contract home to review it, or don't give you adequate time to read the contract.
- Agencies that insist on receiving your wages from the employer and then paying them to you.
- Requests to hand over a passport or other documents.
- Agencies that charge you a commission for placing you.
- Agencies that do not find out about your skills before sending you to an interview.

3) How to Respond to Employer Questions and Statements

The employer says:

Your first week's salary will be held as a "security deposit."

I have a legal right to be paid twice every calendar month under Illinois law.

I don't have to pay you minimum wage. What are you going to do if I don't pay minimum wage?

Whether I am documented or not, I have a right to a minimum wage. Even if I signed something that said I agreed to less than minimum wage, you still have to pay me minimum wage. A contract to pay someone less than minimum wage is illegal. If you do not pay me minimum wage, I can file a complaint with the Department of Labor.*

You don't get overtime here.

If I do not live with my employer, I have a right to 1 ½ times my hourly wage for every hour I work over 40 hours in one week under federal law. Even if I do live with my employer, I am entitled to be paid my regular hourly wage for every hour that I work. I have this right whether I am documented or undocumented.

You have to do everything I say. There are no laws to protect you.

Whether I am documented or undocumented, I have the right to be free from abusive behavior, including unwanted physical or sexual contact. As a human being, I have a right to be treated with respect and dignity. I am protected by law from abuse and harassment.

No days off.

Standard practice among employers is to provide employees with two days off per week. In Illinois, employers are required to give one day of per week. Nationally, the standard work week is 40-44 hours per week, and employees receive overtime compensation for anything beyond that. These standards reflect the fact that it is impossible for anyone to live up to their best potential without regular periods of rest. In order for me to be as productive and as helpful to you as I can, I need to have days off to rest, to run errands, and to see my friends and family.

I don't provide health insurance. If you hurt yourself on the job, you must pay for the bills.

Whether I am documented or undocumented, if I work 40 or more hours per week for the same employer, for a period of 13 weeks or more, my employer can opt for workers' compensation coverage. Coverage will pay for my medical bills and part of my lost wages if I get injured on the job. When an injured domestic worker does not receive proper medical attention or take the necessary time to recover, it can be disruptive for the household and a strain on her relationship with the children. For this reason, employers who have not secured insurance often find themselves paying more out of pocket for health care for domestic workers so that they can return to work fully recovered and as soon as possible. Employers often also prefer to secure workers' compensation insurance because it means that they are not personally liable for any injuries that occur on the job. Securing workers' compensation insurance means that my employer and I both know that if I am injured, I will receive the medical care and rest that I need in order to return to work as quickly as possible and continue to do my job well.

What Do I do If...?

What do I do if my employer threatens to call immigration authorities or the police and have me deported?

Such threats and intimidation are usually illegal if done in response to your complaints about working conditions or unfair treatment. Reporting workers to immigration authorities is considered unlawful retaliation under the Fair Labor Standards Act.

Immigration and Customs Enforcement (ICE) has a policy that discourages it from

getting involved where there is a dispute between an employer and an employee. **See Appendix I.**

Sometimes these rules are not followed. If you are questioned about your immigration status as a result of your employer's actions, you can remind the person who questions you about these policies. It is also a good idea to contact a community organization that you trust to ask for advice if your employer threatens you.

What do I do if my employer refuses to return my passport or other important documents?

You may file a report of stolen property with the police, or contact a community organization to assist you.

NELP

National Employment
Law Project