



RIGHTS BEGIN AT HOME

PROTECTING YOURSELF AS A *DOMESTIC WORKER*



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DOMESTIC WORKER**



ACKNOWLEDGMENTS

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Introduction

Domestic workers are nannies, housekeepers, and elder caregivers who provide the invaluable household labor that frees others to work outside the home. They clean and cook and care for children and the elderly. They generally work in isolation and rarely have co-workers who can help them assert their rights. Many are immigrants with a limited knowledge of the laws of this country or of the state in which they work. Some are undocumented and live in fear of being deported.

Many federal and state labor laws exclude domestic workers, leaving them with fewer legal protections than most other workers. But while the laws do not reflect the full extent of the rights domestic workers deserve, they do give workers some important tools for protecting themselves on the job. Workers, advocates and organizers have used innovative organizing and advocacy strategies to make the best use of these existing legal protections and to advocate for greater rights for domestic workers. The passage of the New York Domestic Worker Bill of Rights this year expanded labor protections for domestic workers and has raised public awareness of the problems in the industry.

The goal of this handbook is to help domestic workers protect themselves within existing employment laws.

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.



I. Domestic Workers' Labor Rights

Whether you are documented or undocumented, you are protected by most federal and state labor laws.

Both the Fair Labor Standards Act (FLSA) and New York Labor Law prohibit an employer from firing or otherwise retaliating against you for exercising your rights under wage and hour laws. (29 USC § 215(a)(3); NY Lab. Law §§ 215(1), 662(1))

A. WAGES AND OVERTIME

What is the minimum I must be paid?



You are entitled to be paid at least \$7.25 an hour. You are entitled to be paid the minimum wage that was in effect at the time the work was performed.

The minimum wage only sets a floor – most domestic workers earn more than this rate.

(NY Labor Law § 652)

What if I agreed to be paid less than the minimum wage when I got my job?



Even if you signed something that said you agreed to be paid less than the minimum wage, your employer still has to pay you the minimum wage. A contract to pay less than the minimum wage is unenforceable.

NOTE: This guide describes the minimum wage and overtime laws as of the effective date of the Domestic Worker Bill of Rights - November 29, 2010. If you think that you were paid less than the minimum wage or not paid overtime before this date, you may still be able to claim unpaid wages from your employer. The chart in **Appendix J** shows the minimum wage rates in New York in past years. The chart in **Appendix K** shows minimum wage and overtime coverage before November 29, 2010.

Are any domestic workers not covered by the minimum wage?



The only group of domestic workers exempted from the New York minimum wage is part-time babysitters employed on a casual basis. As of the effective date of the Domestic Worker Bill of Rights in New York – November 29, 2010 – all other domestic workers are covered by New York minimum wage, including all companions.

Unfortunately, the federal minimum wage law exempts both casual babysitters (who provide less than 20 hours per week of childcare services, or provide childcare services only irregularly) and “companions” (workers who care for the elderly and disabled in the home).

Workers exempted from the federal minimum wage but protected by the New York minimum wage can claim the protection of the New York minimum wage.

(NY Labor Law § 651, 29 USC § 213(a)(15))

What is overtime pay?



Overtime is extra pay for hours worked over 40 in a week for live-out workers and over 44 in a week for live-in workers.

When am I entitled to overtime?



Under New York law, if you don't live in your employer's home, you are entitled to overtime pay at one-and-a-half times your regular rate of pay for hours worked over 40 in a week for a single employer.

If you are a live-in worker, you are entitled to overtime pay at one-and-a-half times your regular rate of pay for hours worked over 44 in a week.

Companions who work for an agency are entitled to a reduced rate of overtime: one-and-a-half times the minimum wage.

*For coverage before the Domestic Worker Bill of Rights see **Appendix K**.*

(NY Labor Law § 170, NYCRR § 142-2.2)

What is “spread-of-hours” pay?



New York workers who earn the minimum wage and whose hours add up to more than ten hours in a day—for example, from 9am to 8pm—have a right to receive an extra hour's pay at the minimum wage rate. The calculation of the number of hours includes meal and rest breaks and time between shifts. Courts in New York are split on the issue of whether this rule applies to workers who are paid more than the minimum wage.

(NYCRR § 142-2.4, -18)

Can my employer deduct money from my wages?



Yes, but only for certain purposes, and only within certain monetary limits.

Under New York law, your employer can only make the following kinds of deductions:

- Those required by law, such as Social Security and federal, state, and municipal income taxes
- Those which benefit you and to which you consent in writing, such as health insurance premiums, pension payments, and union dues
- Other deductions which benefit you and to which you consent in writing, as long as they do not exceed 10% of your gross wages in a given pay period

(NY Labor Law § 193; 12 NYCRR § 195.1)

If your employer provides you with meals and a place to stay, he or she can only deduct:

- For meals: \$2.50 per meal
- For lodging: \$3.10 per day
- For your own house or apartment, with utilities: \$5.80 per day

(12 NYCRR §§ 142-2.5, -2.19-20)

Illegal deductions:

- Your employer may not

deduct money from your pay if you break or spoil something.

- If you are expected to travel with your employer, he or she must pay your expenses.
- Your employer cannot ask you to pay the insurance premiums for workers compensation or unemployment benefits.
- If you work at a party or function held by your employer, he or she cannot deduct your tips from your wages.

(NY Labor Law § 193)

If my employer asks me to stay overnight sometimes, or if I live-in, must I be paid for overnight hours?



If you're on duty for periods of **more than 24 hours at a time** you must be paid for the full period of time you're on duty, including sleep and meal periods, **unless** you and your employer agree to exclude time for sleeping. An employer can only exclude sleeping time from working hours if:

- the employer provides you with adequate sleeping facilities
- the exclusion is limited to



eight hours, and

- you're able to get an uninterrupted night of sleep.

If your sleep is interrupted by a call to work, the time interrupted counts as hours worked. If you can't get at least five hours of sleep during the scheduled off-duty period, you must be paid for the entire night.

If you are required to be on duty for **less than 24 hours at a time**, you must be paid for the entire period of time you're on duty, even if you're given a place to sleep and allowed to sleep, or do other personal activities when you're not busy.

(29 CFR § 785.20-.23)

Do I have the right to a day off during the workweek?



Yes, if you're covered by The New York Domestic Worker Bill of Rights. As of the Bill's effective date, covered workers have the right to at least 24 continuous hours of time-off in each calendar week. If you voluntarily agree to work on your day of rest you must be paid one-and-a-half times your regular rate of pay for all hours worked on that day.

(NY Labor Law § 161)

Do I have the right to paid time off?



Yes, if you're covered by The New York Domestic Worker Bill of Rights. The Bill grants workers a minimum of 3 paid days of rest per year after one year's employment with one employer. But domestic workers can, and often do, negotiate with their employer for additional paid time off beyond this 3 day minimum requirement.

(NY Labor Law § 161)

Do I have the right to take a rest break or a meal break?



Yes. If you work 6 or more hours in a row you have the right under New York law to take a 30-minute meal break. Your employer isn't required to pay you for meal periods you take, but must pay you for shorter breaks or meal periods that you work through. If your shift begins before 11am and ends at 7pm or later, you have the right to an additional rest break of at least 20 minutes between 5pm and 7pm.

(NY Labor Law § 162)

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 (or the state minimum wage, whichever is higher);
• payment for all hours worked; and
• 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 a state that has a shorter workweek.
• one hour's additional pay for any day in which you work more than 10 hours in a shift. You do not have to accept lower wages because of your immigration status.

BENEFITS

If you work more than 13 weeks for the same employer, you have the right to:
• Workers Compensation and unemployment insurance.
• If you are documented and have worked for at least 20 weeks and your employer pays you an average of \$123 per week, you can get Unemployment Insurance.
• If you are undocumented because of your immigration status, you may not be eligible for these benefits.

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 fear or distress



The New York Domestic Worker Bill of Rights – VICTORY!

The nation's first Domestic Worker Bill of Rights was signed into law on August 31, 2010, marking the culmination of a six-year organizing campaign led by Domestic Workers United and the New York Domestic Workers Justice Coalition to raise standards for the more than 200,000 domestic workers in New York, most of whom are immigrant women of color. The first legislation of its kind, the Bill of Rights closes gaps in labor laws that had left domestic workers with fewer rights than other workers in the state, and adds new protections. These provisions include:

Expanded minimum wage coverage. The law extends minimum wage coverage to part-time babysitters, except those employed on a casual basis, and to live-in companions. These groups have not been covered by the minimum wage.

Expanded overtime coverage. The law raises the overtime rate to 1½ times the regular rate of pay for some groups of domestic workers who were previously only entitled to 1½ times the minimum wage.

One day of rest in each calendar week. The worker receives overtime pay if she agrees to work on her day of rest.

Three paid days off per year, after one year of employment.

Workplace Protection. Protection against sexual harassment and harassment on the basis of race, religion or national origin by domestic employers; coverage for full-time and part-time domestic workers for temporary disability benefits (pending legislative revision).

DOL Study. The law requires the Department of Labor to issue a report on the feasibility and practicality of domestic workers organizing for the purpose of collective bargaining.

My employer pays me in cash off-the-books. Am I protected by the new law?



Yes. You're entitled to the same rights and protections as other domestic workers. However, it's important that you keep records of your hours worked and the wages you're paid for evidence in case your rights are violated.

My employer currently gives me more vacation time than the minimum 3 paid days off per year required by the new law – will the Bill of Rights cause me to lose my vacation time?



No. The Domestic Worker Bill of Rights sets a minimum floor for paid days off. Your employer should not reduce your vacation time because of the law.

Can my employer fire me for asking about the new rights provided by the Bill of Rights?



No. New York law prohibits employers from firing, punishing, or discriminating against a worker for complaining to her employer or to the Department of Labor about violations of wage and hour laws.

N.Y. Lab. Law §§ 215(1), 662(1).

Does the Bill of Rights protect me from being fired without notice or provide me with the right to severance pay?



No, unfortunately. Workers and advocates fought for these protections but didn't win them in this law. The law does protect you from being fired in retaliation for trying to protect your rights, however. (*See question and answer above.*)

The Domestic Worker Bill of Rights *is a huge step forward for domestic workers in New York, but the law still doesn't provide the full range of rights and benefits workers deserve. Domestic Workers United is exploring the potential of unionization and collective bargaining to secure additional rights.*

For more information, see Domestic Workers and Collective Bargaining, a report co-authored by DWU the Urban Justice Center, available at http://domesticworkersunited.org/media/files/259/Domestic_Workers_and_Collective_Bargaining.pdf.

B. WORKERS' COMPENSATION

What protection do I have if I get hurt at work?



If you hurt yourself while at work, you may qualify for workers' compensation – an insurance program authorized by the state that provides compensation to workers who have suffered a job-related injury. Workers' compensation insurance provides benefits regardless of who is to blame – you, your employer, a co-worker, or another person. Benefits include monetary compensation (at some percentage of your salary) and medical treatment. Outside of these guaranteed benefits, you usually do not have the right to demand compensation from your employer for the injuries (*i.e. through a lawsuit*).

Am I covered by workers' compensation?



As a domestic worker in New York, you're entitled to workers' compensation if you work 40 hours or more per week for the same employer. If you work fewer than 40 hours a week you may be covered by workers' compensation if your employer carries a homeowners' insurance policy that provides coverage for household workers.

(NY Workers' Comp. Law §§ 2(4), 3(1))

How do I apply for workers' compensation benefits?



If you injure yourself at work, you should first seek medical care if you need it. You should tell the doctor you were injured at work and ask the doctor to fill out a medical report. This will help establish a record of the injury. You should also notify your employer in writing of your injury and how it happened. You must then file a claim for workers' compensation benefits at the workers' compensation board.

You must file your claim within two years of the date of the accident to be eligible for benefits.

In New York, a worker's immigration status has no bearing on her eligibility for workers' compensation.

My employer says she doesn't have workers' compensation insurance – what should I do?



You can still apply. New York workers' compensation laws protect injured workers whose employers violate the law by failing to carry workers' compensation insurance. This protection includes a fund to provide for payment of

medical expenses and temporary disability benefits to injured workers whose employers failed to provide the required workers' compensation insurance coverage and who fail or refuse to make workers' compensation benefit payments as awarded.

See **Appendix B** for more information on the Division of Workers' Compensation, including addresses and telephone numbers.

C. UNEMPLOYMENT INSURANCE

What protection do I have if I lose my job?



You may be eligible for Unemployment Insurance (UI) benefits. UI is a state-run program that provides some income to workers who lose their jobs. UI benefits are based on the amount of money you earned during the previous year.

Am I eligible for unemployment insurance?



You are eligible for unemployment insurance if:

- 1.** You lost your most recent job through no fault of your own
 - ▶ *for example, your employer couldn't afford to employ you any more or moved out-of-state;*
- 2.** You are currently unemployed or partially unemployed

▶ *for example, if your employer cuts your work week from five to three or fewer days and significantly cuts your pay;*

3. You are currently able to work and are looking for work; *and*

4. You have worked enough weeks and earned enough in wages in the past year-and-a-half

▶ *Generally speaking, you must have earned more than \$1,600 in a calendar quarter (3-month period) and worked more than six out of the last 18 months to qualify. It doesn't matter whether the earnings came from a single job or from different jobs. The earnings requirements rules are*

very complicated, however, and if you're unsure whether you qualify you should go ahead and apply.

You're no longer eligible for unemployment insurance benefits when you get a new full-time job.

Undocumented workers are not eligible for unemployment benefits in any state.

Am I eligible for UI even if my employer paid me off-the-books?



Yes, as long as you meet the eligibility requirements, you may file for benefits even if your employer paid you off-the-

books or failed to pay unemployment insurance taxes. If you were paid off-the-books, the Department of Labor may ask you to show some proof of your employment, such as vouchers, checks, your own records of employment, personal tax returns, record of bank deposits, or even your own testimony of when you worked and how much you were paid.

For information on how to file a UI claim, please see
Appendix B.

D. INCOME AND OTHER EMPLOYMENT TAXES

Are domestic workers required to pay income taxes?



Yes - you are legally required to report earnings and pay income taxes unless your annual income falls below the federal threshold set by the Internal Revenue Service (IRS). In 2009, the federal threshold for taxpayers under age 65 was \$9,350 for single workers and \$18,700 for married couples

filing jointly. Workers may also be required to pay state and municipal income taxes in addition to federal taxes. Even if your income is very low, you should file a return as you may be entitled to a refund.

See IRS Pub. 501, "Exemptions, Standard Deduction, and Filing Information," 2009, p 3, for more information, available at <http://www.irs.gov/pub/irs-pdf/p501.pdf>.

Is my employer required to make income tax withholdings from my pay?



You can ask your employer to withhold federal and state income taxes from your pay if you desire, but your employer isn't required to do so. Whether you request that your employer withhold income taxes or not, your employer should provide you with wage and tax statements at the end of the calendar year.

Can I file a tax return even if I don't have a social security number?



Yes – you can file an income tax return with an ITIN – an Individual Taxpayer Identification Number. ITINs are tax

processing numbers issued by the Internal Revenue Service to people who need a U.S. taxpayer identification number but who don't have, and are not eligible for, a social security number. You can report earnings, pay taxes, and potentially receive a refund using an ITIN. The ITIN should never be used in place of a social security number where a social security number is required.

*For a list of groups that can assist low-wage workers with tax issues, see **Appendix A**.*

E. ABUSE, DISCRIMINATION, AND HARASSMENT

Whether you are documented or undocumented, you have the right to be free from abusive behavior. As a human being, you have the right to be treated with respect and dignity.

What protection do I have from abuse and harassment at work?



The New York Human Rights Law prohibits sexual harassment of domestic workers and harassment of domestic workers based on gender, race, national origin or religion.

See the New York State Division of Human Rights website for information on how to file a complaint, at <http://www.dhr.state.ny.us/>.

(NY Exec Law § 290.296-B et seq.)

It is illegal for anyone, including an employer, to force a worker to engage in physical or sexual contact, or to hit or physically threaten a worker. These are criminal acts that should be reported to the police. You can also get assistance from a community organization. If possible, you should also record the details of any abuse, including dates, times, locations, gestures, comments and her responses in a notebook.

My employer forced me to work for him and/or isn't letting me leave – what should I do?



You should get help. If your employer is forcing you to work, or recruited you to work, or brought you here from another location by **1.** threatening serious harm to, or physical restraint against you or another person, **2.** by making you believe that you or another person would suffer serious harm or physical restraint, or **3.** by means of the abuse or threatened abuse of law or the legal process, your employer may have committed the crime of labor trafficking.

Law enforcement authorities can seek fines and prison sentences for labor traffickers in criminal court. Federal anti-trafficking law provides trafficking victims with a private right of action, meaning that trafficking victims may sue their abusers in civil court.

(18 USC §§ 1589,1595)

See **Appendix E: Resources for Trafficking Victims** to find an advocate who can help you.



II. Immigration Issues Related to Employment

This section addresses concerns particular to immigrant workers, including work authorization requirements, false promises by employers to obtain a green card, A-3 and G-5 Visas, and employer threats to report a worker to Immigrations and Custom Enforcement (ICE).

My employer says I can't do anything to protect my rights because I'm undocumented – is that right?



No. You are entitled to file complaints for unpaid wages, workers compensation, and most other employment-related problems under both state and federal law (except for unemployment insurance) regardless of your immigration status. Employment and labor agencies are not allowed to enforce immigration laws, and you should not face questions about your immigration status.

I was told I need to fill out an I-9 form – what is that?



Employers are generally required to fill out an Employment Eligibility Verification Form (called an “I-9 Form”) together with you in order to prove the employer did not knowingly employ someone

without work authorization. On this form, the employer must verify that he or she has examined a document that shows you are authorized to work. The I-9 form lists acceptable forms of proof of work authorization. You may choose which document(s) from the list to show the employer. The employer cannot refuse to accept a document that is on the list, and cannot ask you for more or different documents than the ones you provide. The employer does not have the right to keep the original documents. A copy is enough.

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

Are there any exceptions to the Work Authorization Verification Requirement?



Work authorization verification is NOT required for **casual workers** or **independent contractors**.

It is important to note that while a person who contracts with an independent contractor or casual worker is not required to complete an I-9 Form, the person cannot contract with an independent contractor or casual worker he or she knows to be undocumented.

The following are explanations of who qualifies as a **“casual” worker** (*category a*) and **“independent contractor”** (*category b*).

a. Casual Workers: Persons employed for casual domestic work in a private home on “sporadic, irregular, or intermittent” basis.

▶ *Example: An occasional babysitter—but not a full-time nanny or 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.

No one of these factors is determinative. They are all taken into consideration.

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



You should contact a community organization for advice or assistance. It is wrong for an employer to take away your passport. Your options to get your documents back may include going to the police or your consulate, but your legal strategy will depend on your immigration status and whether you are currently involved in a lawsuit against your employer.

My employer promised to get me a green card – should I trust him?



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

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, showing 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 and 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 additional paperwork—Form I-140 Immigrant Petition for Alien Worker. If the I-140 is approved, then the worker will

be granted an immigrant visa number.

Employers may offer to take care of a worker's immigration matters, but immigration status is a matter for an immigration attorney.

*The legal and community groups listed in **Appendices C and D** may be able to help workers find reliable immigration attorneys.*

A-3 & G-5 Visas



If you work for certain officials of international organizations such as the IMF, World Bank, diplomats, embassy personnel, and, in some cases, State Department personnel, your 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.
- 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.

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

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 contact 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

*Try to make note of the organization for which your employer works. Did you sign an employment contract? What did it say? If you feel that your rights are being violated, consult one of the community organizations listed in **Appendix D**.*

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, for example, is considered unlawful retaliation under the Fair Labor Standards Act.

And, 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.

Nonetheless, 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 and you should refuse to answer questions about your immigration status. It is also a good idea to contact a community organization that you trust to ask for advice if your employer threatens you.

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/immsemplymnt/1WR_Material/Worker/08-How_to_protect_yourself.pdf.

Do I have to tell my employer what my immigration status is?



No. Your employer only needs to know whether you are authorized to work in this country. Employers do not need to know a worker's immigration status. Federal immigration law only makes it unlawful to employ someone knowing that person does not have work authorization.

(I.N.A. § 274A(a)(1)(A); 8 U.S.C.A. § 1324a(a)(1)(A))

I think I'm a trafficking victim but I don't have work authorization. What can I do?



If you're a trafficking victim you may be eligible for a special type of visa called a T-visa if you cooperate with federal, state or local law enforcement agencies to assist in the investigation or prosecution of trafficking (and meet other eligibility requirements). For example, you may be eligible if you aren't paid for your work, but are kept on the job by threats to turn you into immigration authorities or harm you or your family in some way. If successful in obtaining a T visa, a worker can remain in the U.S. and obtain employment authorization for three years, after which the worker may apply for a green card.

The U visa provides a similar relief to victims of certain criminal activities, including crimes committed by employers in workplaces, if they are willing to assist law enforcement or other government officials in the investigation or prosecution of those crimes. U visa recipients can remain in the U.S., obtain employment authorization, and apply for a green card.

(I.N.A. § 101(a)(15)(T)-(U))

Agreement

This contract is made between _____ (the employee) on
(the employer) and _____, and has the following terms:

1. The employee shall be employed for a minimum of one year commencing on _____ and ending on _____
2. The employee shall work at employer's residence at _____
3. The employee (shall, shall not) reside at the employer's residence.

State below the number of persons to be served on a regular basis:
_____ adult _____ minors (below
_____ expecting babies. _____ persons requiring constant care
_____ mention.

Description of persons requiring constant attention:
_____ served as a full-time babysitter or nanny, responsibilities include and
limited to:

- a) Taking care of baby/child;
 - b) Giving baths;
 - c) Feeding breakfast, lunch and dinner;
 - d) Helping to clean up after the child;
 - e) Keeping child/baby's play area tidy;
 - f) Arranging play-dates and any other activities;
6. If hired as a full-time housekeeper, responsibilities include and are limited to:

7. The normal work day shall be eight hours per day. Employee shall be compensated time and a half for every hour worked exceeding eight hours.
8. The employee shall not take up, and shall not be required by the employer to take up any other employment with any other person.
9. Employer shall pay employee _____ per week, not including overtime.
10. Employee shall receive her/his weekly wages every _____ (specify day of week).

11. Employer shall pay a penalty of _____ for every day that the employee's wages are paid late.
12. Employer shall provide a receipt for the payment of wages and any food allowance, and employee shall acknowledge receipt of this amount with her/his signature.
13. Employee is entitled to an hour lunch break every day.

III. Enforcing your rights

What if my employer does not pay all my wages, delays payment or illegally deducts from my wages?



You have a range of options, including sending a demand letter to your employer, filing complaints or claims with state or federal enforcement agencies, and filing lawsuits against your employer.

Options explained below.

How do I choose a legal strategy?



Each strategy differs in terms of the amount of control the worker has over the enforcement process as well as the types of outcomes available. For instance, if you go to the federal or state Department of Labor to enforce your rights, agency lawyers will decide how to complete the investigation and whether or not to bring the claim before a judge. The assignment of penalties will be largely within the discretion of the agency's attorneys or the Attorney General. Alternatively, if you go directly to the courts to enforce your rights, you may have more control over the

process but you will have to find your own lawyer.

You will also have to decide whether to bring your claims under federal law, state law, or both. The decision will depend on which law gives the worker better protections and/or remedies. The state and federal laws also differ in what level of damages a worker can recover if she wins.

You cannot bring a criminal prosecution against your employer on your own – only government authorities may do so.

If you choose to take action against an employer to enforce your rights, approaching a worker center or a legal services agency for advice or representation is strongly recommended.

See Appendices C and D for lists of legal and community resources. For listings of US DOL and NY DOL offices, see **Appendix B.**

What is a demand letter?



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

A typical demand letter includes:

- A statement of the law(s) violated

- A summary of the dates and times worked
- a request for payment
- a proposed payment plan or meeting to negotiate, and
- 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.

Follow-up Steps to a Demand Letter

Workers and their advocates should 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. Follow-up to a demand letter can vary depending on who sends it. The follow-up can be as simple as saying someone will call the employer on a given date. A worker should carefully consider what resources are available to her, including community advocacy groups, when proposing follow-up. *Below are examples of possible follow-up steps.*

Community organizations can:

- 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*
- File a case in court, either by herself in small claims court or by hiring a private attorney.

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

What is Small Claims Court?



Small claims courts offer a low-cost, simplified, and informal procedure for individuals to resolve disputes involving smaller amounts of money. The limit in New York is \$5,000. People who file complaints in Small Claims courts often do not use an attorney in these matters and are not required to do so – they are called “pro se” litigants – but workers may want to consult an advocate for advice before deciding to file a complaint.

For more information on Small Claims Court, see the “Plaintiff’s Guide to Small Claims Court,” available on the National Employment Law Project website at <http://www.nelp.org/page/-/Justice/2010/AssistingNYSmallClaims.pdf?nocdn=1>

How long do I have to take legal action?



It depends on which law you’re attempting to enforce. Each law has a “statute of limitations,” which sets the maximum period of time after a violation has occurred in which legal proceedings can be initiated.

See **Appendix J** for more information on statutes of limitations for claims under the FLSA and New York Labor Law.

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85-138 黃太

052153721

住保姆

請粵語入住保
小孩工作五天

16-126-122

MAID PART TIME

(Sat-Sun, 8:00-4:00)

Small Westwood Villa

English Speaking

310-948-390

WANTED LIVE-IN BABYSITTER

for twin toddler in New York
Competitive salary, he/she
on board & lodging. Will
provide references.

Call Mattie (732) 888-8888

BIG OPPORTUNITY

Distributors and Proven Sales or Marketing
For Expansion to the Asian market in
Philippines and Australia
Bonus Pools, etc.

DOMESTICA, COMIENZE DE
INMEDIATO, DORMIR DENTRO.
TRABAJO ESTABLE Y SEGURO.
BUEN SALARIO. 718/339-827
535 Queens Road, Brooklyn NY
Tren F hasta parada Kings Hwy.

Nec. Persona Buena
Para limpiar casa, cuidar niños.
718-438-543

TRABAJO INMEDIATO
DURMIENDO DENTRO. EN CASA
718-246-224 718/339-403

INTER
Making Mill
ST

GLOBAL
Marketing
1) Internet

SKYBIZ
N
Pay
com

(2)
www

AMNESTY
Of Household Domestic Workers, Home Health
and Caregivers in Residential Homes
Deadline: April 30, 2001

EVENING-SMITH J. I.
BONDED IMMIGRATION CONSULTANT, J.U.

No legal advice/Not an Attorney but
BOND filed with the Secretary of State
TRUSTWORTHY & CONFIDENTIAL

Call us at: (212) 321-132
Empire State Bldg., Fifth Ave., # 304, NY
Manhatten Valley • Beverly Hills • La Jolla •

বিসিটার।

জ্যামাইকাতে

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IV. Tips for finding work and negotiating with an employer

This section discusses important things for you to consider when seeking a job, such as how to respond to ads, whether to use an employment agency, how to approach an interview with a prospective employer, how to negotiate payment, and what information to obtain in writing.

A. FINDING WORK

To find a job as a domestic worker, some workers call an agency, answer a newspaper ad, or call a person suggested by a friend.

1. Tips for Workers Responding To an Ad

When you call in response to an ad, an employer will often want to set up a meeting rather than talk for a long time on the phone.

Things to remember when responding to an advertisement:

- ▲ Cut out and save the ad.
- ▲ Tell someone where the interview is, when you're going and when you expect to come back. In fact, try to get some one to go with you to the interview.
- ▲ Bring a notebook and pen to take notes.
- ▲ Ask the employer to pay for travel expenses to and from the interview.

2. Employment Agencies

Employment agencies maintain lists of employers who are looking for domestic help. The agency receives a commission from the employer for each domestic worker it places.

New York law regulates employment agencies that provide job placement services for domestic workers. Agencies must provide workers and potential employers with a written statement of the worker's rights and employer obligations under state and federal law.

(12 NYCRR § 20-771)

Employment agencies must also give you a written statement explaining the “nature and terms of employment,” including

- ▲ The name and address of the employer
- ▲ Wages
- ▲ Hours of work
- ▲ The kinds of services you will perform
- ▲ The fees the agency will charge

(12 NYCRR § 20-772)

Fees: If you use an agency, try to find one that doesn’t charge you a fee. If you can’t find an agency that doesn’t charge a fee, then be sure that the agency doesn’t charge more than the law allows.

The maximum fees are as follows:

- ▲ 10% of your first full month’s salary if the employer does not provide meals or lodging
- ▲ 12% of your first full month’s salary if one meal per day is provided
- ▲ 14% of your first full month’s salary if two meals per day are provided
- ▲ 18% of your first full month’s salary if three meals and lodging are provided

(NY CLS Gen. Bus. § 185.5)

The courts have found that the New York Human Rights Law applies to employment agencies, and therefore may not discriminate in their hiring process.

To file a complaint with the Department of Consumer Affairs (DCA) against an agency, call 311.

See DCA’s website for more information:

http://www.nyc.gov/html/dca/downloads/pdf/ea_nylaw_poster.pdf.

B. THE INTERVIEW WITH THE EMPLOYER

The way the employer treats you during the interview can give you an idea of the type of employer she/he will be. In order to protect yourself, it is important to clarify as many things as possible about the nature of the job and working conditions in advance. Try to take notes on the employer's responses to your questions during or soon after the interview.

SAMPLE INTERVIEW QUESTIONS FOR WORKERS

- ❗ 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?

*For an example of a Standard contract, see **Appendix F**.*



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 you deduct from my wages for meals or lodging?
(see maximum deduction rates on page 5 of this guide)
- ❓ 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 you about the job. It is important to keep a record of anything that the employer tells you about the work you will be doing, how much and how often you will be paid, etc.

Warning Signals

- ✗ The employer will not let a friend come with you to the interview.
- ✗ The employer avoids your questions.
- ✗ The employer increases responsibilities in the course of the conversation.
- ✗ The employer comments on your English.
- ✗ The employer does not want to make a commitment to your demands right away.
- ✗ The employer makes racist or sexist comments.
- ✗ The employer asks you to sign a document that waives your right to minimum wage or overtime compensation. These rights cannot be waived. Even if you sign such a document, your 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.

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.

C. NEGOTIATING PAYMENT

It is helpful to compare the salary you are offered with the salaries of other employees who do the same work. Talk to advocacy groups and other workers to find out the standard rates in your area.

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 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.

D. WHAT A WORKER SHOULD GET IN WRITING

It is important to put the terms and conditions of your employment in writing to ensure that you and your employer have understood each other correctly. Both spoken and written agreements are enforceable in court. For example, if you make an oral agreement with your employer to be paid a certain hourly rate above the minimum wage, and the employer later refuses to pay what she or he promised, you may be able to bring a claim for a breach of oral agreement. However, a contract signed by both you and your employer will be even stronger evidence if you have to go to court.

The contract, or agreement, should include the following:

- ▲ Hours and base wage
- ▲ Daily work schedule
- ▲ Holidays and vacation time
(including any restrictions on when you can take paid time off)
- ▲ Personal days and sick days
- ▲ Health benefits
- ▲ Length of employment or how much notice must be given to terminate the contract.

See **Appendix F** for a model contract. In presenting the model contract to your employer, here are some things you can say:

“Domestic workers and their employers are using this agreement throughout New York City. I thought it would be helpful for us to use it as well.”

“This is an example of what an agreement for this kind of work might look like. We can make changes to it or draft our own. Just read through it, and then we can discuss any parts you are not comfortable with.”

If you cannot get a contract, ask your employer to give you a signed confirmation letter with the same information. This can also be enforced in court. See **Appendix G** for a sample confirmation letter.

If you cannot get a confirmation letter, write down everything that you and your employer have agreed to, date it, and keep it in a safe place.

APPENDICES

APPENDIX A

Income Tax Resources

Volunteer Income Tax Assistor (VITA)

If you make under \$40,000, volunteer tax specialists can help you file your taxes.

VITA programs are available throughout the state and across the country. To find a VITA clinic near you, call 1-800-906-9887 (English/Spanish).

Low-Income Taxpayer Clinic (LITC)

Provides free legal advice to low-income taxpayers across the country who have a dispute with the IRS or the State Department of Taxation and Finance.

LITC has sites in each of the 5 boroughs in New York City. Depending on the location, many LITCs can assist you in multiple languages. To find an LITC in your city or state, go to <http://www.irs.gov/advocate> and choose “Low-Income Taxpayer Clinics.” Or call IRS Customer Service at 1-800-829-1040 (English/Spanish).

NY Low-Income Taxpayer Clinic Locations (LITCs)

BROOKLYN

Bedford-Stuyvesant LITC: 718-636-1155.

Languages spoken: Spanish/Haitian/Chinese

Brooklyn Low Income Taxpayer Clinic: 718-237-5528.

Languages spoken: Spanish/140 other languages.

MANHATTAN

Fordham Law School Tax Litigation Clinic: 212-636-7353.

Languages spoken: Spanish

New York Legal Aid Society LITC: 212-426-3013.

Languages spoken: Spanish/Chinese

BRONX

718-928-3700

Languages spoken: English

JAMAICA

Queens Legal Services Corporation: 718-657-8611 and 347-592-2178.

Languages spoken: Chinese/Creole/Hindi/Korean/ Russian/Spanish/Urdu

FLUSHING

Young Korean American Service & Education Center LITC:

718-460-5560 and 718-460-5600.

Languages spoken: Korean.

APPENDIX B

State and Local Government Offices

You have a right to access government agencies, and can ask for a translator if you need help in a language that is not listed.

In general, you should call and ask for an appointment before you go, and ask what kind of ID you will need to show to get into the building.

You should not be asked about your immigration status. Seek assistance from a trusted community organization before providing any information about your immigration status.

Wage/Hour

US DEPARTMENT OF LABOR, WAGE AND HOUR DIVISION

This agency enforces federal minimum wage and overtime laws.

26 Federal Plaza, Suite 3700
New York, NY 10278
Phone: 212-264-8185

A number of government agencies are located at 26 Federal Plaza, including Immigration and Customs Enforcement. If you have any concerns, you can ask if there are locations other than 26 Federal Plaza where you could meet with a representative of the Wage and Hour Division.

US DEPT. OF LABOR, WAGE & HOUR DIVISION
1-866-4-USWAGE (1-866-487-9243) (English and Spanish)

Brooklyn Area Office

625 Fulton Street, 7th Floor
Brooklyn, NY 11201
Phone: 718-254-9410

Long Island District Office

1400 Old Country Road
Suite 410
Westbury, NY 11590-5119
Phone: 516-338-1890

Hudson Valley Area Office

140 Grand Street
Suite 304
White Plains, NY 10601
Phone: 914-682-6348

NEW YORK STATE DEPARTMENT OF LABOR, DIVISION OF LABOR STANDARDS

This state agency enforces state minimum wage and overtime laws.

New York City District Office

75 Varick Street
New York, NY 10013
Phone: 212-775-3880

Claims for unpaid wages can be submitted to:

NYS DOL
Division of Labor Standards
State Campus, Bldg 12, Room 185B
Albany, NY 12240
Phone: 518-457-9796



NEW YORK STATE ATTORNEY GENERAL'S OFFICE, LABOR BUREAU

This office enforces New York State's labor laws, including the right to minimum wage, the right to receive payment of wages and fringe benefits, and the right to workers compensation and disability benefits.

120 Broadway, 26th Floor
New York, New York 10271
Phone: 212-416-8700 (English and Spanish)



Workers' Compensation:

cash benefits and/or medical care for workers with job-related injuries or illnesses.

ADVOCATE FOR INJURED WORKERS:

The Advocate for Injured Workers, helps injured and sick individuals navigate the state workers' compensation system. The Advocate has a toll-free number (800-580-6665) and offices in Albany (518-474-8182, FAX 518- 486-7510) and Brooklyn (718-802-6664).

TO FILE THE EMPLOYEE CLAIM (C-3) FORM:

- Complete the form online by going to: www.wcb.state.ny.us, click on "Workers," and then click on "File a Claim" and follow the instructions.
- Or call 877-632-4996 (English, Spanish and translation services for all other languages) for help filling out the form over the phone or to have it mailed to you.

- Or fill out a paper copy of the form by visiting any Customer Service Center or District Office.
To locate the district office near you, call 877-632-4996 or go to http://www.nycosh.org/workers_comp/compensation.html

NYC WORKERS' COMPENSATION BOARD NYC DISTRICT OFFICES:

Brooklyn District Office (serves Brooklyn, Staten Island)

111 Livingston Street, 2nd Floor
Brooklyn, NY 11248

Manhattan District Office (serves Manhattan, Bronx)

215 W. 125th Street
New York, NY 10027

Queens District Office (serves Queens)

168-46 91st Avenue
Jamaica, NY 11432

■

Unemployment Insurance Claims

To file a claim online, visit <https://ui.labor.state.ny.us/UBC/index.jsp> (available in English and Spanish). Or call the Telephone Claims Center at: 888-209-8124 (English, Spanish, Russian, Cantonese, Mandarin, Creole, or translation services for all other languages).

For **each week** a worker is claiming benefits, she must request payment using the web or telephone system. Both systems are available in Spanish.

To claim weekly benefits:

- Visit the Department of Labor's website at www.labor.ny.gov, click on "Unemployment Assistance," and then click on "Claim Weekly Benefits."
- Or call: (888) 209-8124 to request benefits over the phone.

Note for workers paid off-the-books: The Department of Labor should automatically send a special form to any worker who has a blank work history, meaning she was paid off-the-books and/or her employer didn't report wages. You can also request the form from the Department of Labor (Form TC 403HR -- Request for Reconsideration, available on the NY DOL website.) You should fill out the form and explain your work history, the hours you worked, and the amount that you were paid, and you should attach any receipts, pay stubs, notes, letters, or any other proof of your hours and wages. However, even if you don't have anything on paper, you should still apply—your own testimony is a form of proof.

APPENDIX C

Legal Services Offices

www.lawhelp.org/NY (English and Spanish)

Provides helpful know-your-rights guides to workplace issues including unemployment insurance, overtime, and wage and hour. You can also find contact information and locations for legal services near you.

Volunteers of Legal Service (VOLS) Unemployment Insurance Advocacy Project

The VOLS Unemployment Insurance Advocacy Project provides free legal services to individuals who have lost their jobs and subsequently have been denied unemployment insurance benefits.

Phone: 347-521-5720

Email: info@volsprobono.org

Web site: www.volsprobono.org

MFY Legal Services Workplace Justice Project

Provides legal advice and representation on unpaid wage claims, health and safety violations, employment discrimination, and minimum wage and overtime violations.

Call 212-417-3838 on Monday & Tuesday, 2:00 pm - 5:00 pm.

Legal Aid Society: Employment Law Project

Call 212-577-3300 (English, Spanish)

for information about legal services and locations.

Legal Services for New York City

Call 212-431-7200 for legal advice or to find the office nearest you.

New York Legal Assistance Group

To reach the legal hotline, call 212-613-5000, ext. 3.

Workers' Rights Law Center Of New York, Inc.

101 Hurley Ave., Suite 5

Kingston, New York 12401

Call 845-331-6615 for information about legal services.

Asian American Legal Defense and Education Fund (AALDEF)

99 Hudson Street, 12th Floor

New York, NY 10013

Phone: 212-966-5932

Languages: Mandarin, Cantonese

APPENDIX D

Domestic Workers Groups & Worker Centers

Domestic Workers United

1201 Broadway Suite 907- 908
New York, NY 10001
Phone: 212-481-5747

Email:
dwuinfo@domesticworkersunited.org

Website:
www.domesticworkersunited.org

Languages: Spanish, French, English

**Adhikaar**

71-07 Woodside Avenue 1st Fl
Woodside, NY 11377
Phone: 718-937-1117

Email: adhikaar@gmail.com

Website: www.adhikaar.org

Languages: Nepali, English

**Andolan:****Organizing South Asian Workers**

P.O. Box 720364
Jackson Heights, NY 11372
Phone: 718-426-2774

Email: andolan_organizing@yahoo.com

Website: <http://www.andolan.net/>

Languages: Bengali, Hindi, Urdu, English

**Cidadao Global**

394 Broadway, 5th Fl
New York, NY 10013Astoria
33-11 36th Avenue
Astoria, NY 11106
Phone: 718-619-8529

Email: Info@cidadaoglobal.org

Website: www.cidadaoglobal.org

Languages: Portuguese, English

DAMAYAN**Migrant Workers Association**

c/o Metro Baptist Church
406 W. 40th Street, Second Floor
New York, NY 10018
Phone: 212-564-6057

Email: contact@damayanmigrants.org

Website:
<http://www.damayanmigrants.org/>

Languages: English, Tagalog

**El Centro del Inmigrante**

1546 Castleton Ave
Staten Island, NY 10302
Phone: 718-420-6466

Email: info@elcentronyc.org

Website: <http://elcentronyc.org/>

Languages: English, Spanish

**Haitian Women for Haitian Refugees**

319 Maple Street
Brooklyn, NY 11225
Phone: 718-735-4660

Email: haitianwomen@aol.com

Website:
<http://haitianwomen.wordpress.com/>

Languages: French, English

**Workplace Project/
Unity Housecleaners**

91 North Franklin Street, Suite 207
Hempstead, NY 11550
Phone: 516-656-5377

Website:
<http://www.workplaceprojectny.org/>

Languages: Spanish, English

APPENDIX E

Resources for Victims of Trafficking

THE NATIONAL HUMAN TRAFFICKING RESOURCE CENTER

24 Hour Toll-Free Hotline: 1-888-373-7888

Website: <http://nhtrc.polarisproject.org/>

The New York Anti-Trafficking Network is a network of service providers and advocates in New York dedicated to ending human trafficking and coordinating resources for trafficked persons.

See the website for more information and links to the websites of member groups, at:

<http://nyatn.wordpress.com/> and <http://nyatn.wordpress.com/nyatn-links/>

THE NEW YORK CITY RESOURCE DIRECTORY

See <http://www.nyc.gov/html/endht/html/home/home.shtml> for general information and

http://www.nyc.gov/html/misc/downloads/2009_human_trafficking_resource_directory_8_10_09.pdf for a listing of service providers.

THE FREEDOM NETWORK (USA) lists service providers in several states.

<http://www.freedomnetworkusa.org/members/index.php>

APPENDIX F

Sample Standard Employment Contract

DOMESTIC WORKERS UNITED
Standard Employment Contract for Domestic Workers

This contract is for full time domestic workers.

This contract was made between _____ (the employer)
 and _____ (the employee) on _____ (date)
 and has the following terms of employment:

1. The employee shall be employed beginning on _____ (date).
2. The employee shall work at employer's residence at _____
 _____.

3. The employee is live-in / live-out (circle one).

4. State number of children to be cared for: _____

Description of children (age, gender, activities, etc.) _____

5. Work Responsibilities:

Job entails the following:

Job does **not** entail the following:

6. The employee shall not be required to work for any person other than the employer.

7. Employer shall pay employee \$ _____ per week, not including overtime.

The normal rate of pay is \$ _____ per hour.

Overtime rate of pay is \$ _____ per hour.

- 8.** The work week shall be **40** (live-out work) or **44** (live-in work) hours.
- In accordance with state and federal labor laws, employee shall be compensated one and a half times the normal rate of pay for every hour worked beyond 40 (live-out work) or 44 (live-in work) hours.
 - Sleepovers for live-out worker shall be compensated at an additional rate of \$ _____ per day.
 - Employee cannot be required to work more than _____ hours per week.
- 9.** Employee shall receive her/his weekly wages every _____ (day of the week) at _____ am/pm.
- 10.** Employer shall pay a penalty of _____ % for every day that the employee's wages are paid late.
- 11.** Both employer and employee shall have a signed record of the payment of wages.
- 12.** Employer shall provide a letter of reference at the end of the first year and at the end of each subsequent year of employment.
- 13.** Domestic workers are particularly vulnerable to illness due to constant exposure to illness or toxic cleaning agents. The employer shall provide medical insurance for the employee. Alternatively, employer agrees to cover the cost of regular annual checkups and OB/GYN exams, as well as the cost of emergency medical treatment when the employee is ill or injured.
- 14.** Employer who lives on the outskirts of New York City or in suburban areas such as Westchester County, New Jersey, and Long Island shall cover the cost of transportation to and from work.
- Employer shall cover the cost of a taxi ride home when employee works past eight in the evening.
- 15.** Upon completion of six months of employment, employee shall receive _____ weeks of paid vacation annually.
- The timing of the vacation shall be determined by the employee. The employer cannot require employee to take her/his vacation to coincide with that of the employer.
 - If the contract is terminated before the employee takes her/his vacation, the employee shall be paid for the above number of weeks at the time of termination.

16. Employee shall receive, with pay, the following eight nationally observed holidays:

- | | |
|---|----------------------------|
| a. New Year's Day | e. Independence Day |
| b. Martin Luther King Jr.'s Birthday | f. Thanksgiving |
| c. President's Day | g. Labor Day |
| d. Memorial Day | h. Christmas Day |

• Employee shall also receive an additional religious/cultural holiday of her/his affiliation: _____ (e.g. Good Friday, Lunar New Year)

In the event that the employee agrees to work on any of these holidays, s/he will be compensated one-and-a-half times the normal rate for each hour worked.

17. Employee shall receive _____ paid sick days.

• At the end of the year, the employee shall be paid for the above number of sick days if those days were not taken.

In addition, employee is entitled to _____ paid personal days.

• At the end of the year, the employee shall be paid for the above number of personal days if those days were not taken.

18. Employee shall receive one month of maternity leave, of which _____ weeks shall be paid. Employment shall not be terminated under this provision if employee can resume employment after the month of maternity leave.

19. Employee is entitled to periodic breaks throughout the day, including meal breaks.

• Child care worker may take these breaks when the child(ren) is/are sleeping or otherwise safe.

20. Employer and employee agree to the following food arrangement:

21. Employee shall have access to employer's phones for necessary local calls during the work day.

• Live-in worker shall have free, private, and reasonable access to employer's phones.

22. Lodging (for live-in domestic workers only): Employer shall provide private, suitable and furnished accommodation for the employee free of charge, with adequate heat, ventilation, and light. Employee shall have full access to use of the kitchen and a bathroom.

23. Employer agrees to notify employee should workplace be under electronic surveillance. Surveillance shall not extend to bathrooms.

• Live-in worker's private room(s) shall not be subject to surveillance.

24. Employer and employee shall make good faith efforts to discuss and resolve any conflicts arising under this contract.

25. Either party may terminate the contract by giving three weeks' notice.

- The employer may give three weeks' pay in lieu of notice to terminate the contract.
- After one year of employment, the employer must provide one week salary as severance pay. One additional week severance shall be paid for every year of work.

26. Employee is entitled to a raise of at least _____ % every year.

27. Any addition to the family reflects a significant change in the job description. For this reason, for each additional child, employer shall compensate employee with a raise in salary of \$ _____ per week.

28. If the employer would like the employee to travel with them, this must be mutually agreed upon and shall be compensated at an additional rate of \$ _____ per day, in addition to paying for travel and other incidental expenses related to the trip. Employee shall be provided their own accommodations for the trip.

29. Employer understands that workers are protected by labor laws, regardless of race, gender, immigration status or age.

Date _____

Signed by the Employer _____

Name of Employer _____

Signed by the Employee _____

Name of Employee _____

In the Presence of _____

Name of Witness

Signature of Witness

APPENDIX G

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 hourly rate will be \$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., Day, Presidents Day, 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 (\$25.50).

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 H

Sample Demand Letter

DATE

Dear NAME OF EMPLOYER,

I am writing to you on behalf of NAME OF EMPLOYEE with regard to wages owed to her.

WAGES DUE

According to our client, you employed her at a rate of HOURLY RATE/ hour during the period of DATES OF VIOLATION.

NAME OF EMPLOYEE was never paid in full for her work. The Fair Labor Standards Act (FLSA) and New York State law provide that domestic workers have the right to receive the minimum wage.

See 29 USC § 203 et seq.; NY Labor Law § 650 et seq.

OVERTIME

NAME OF EMPLOYEE was never paid overtime for her work. The Fair Labor Standards Act (FLSA) and New York State law provide that domestic workers have the right to receive overtime compensation at the rate of one-and-a-half times their regular rate for hours worked over 40 in a week. [For live-in domestic workers: after 44 hours in a week].

29 USC § 207; NY Labor Law § 170.

According to our calculation to date, you therefore owe \$ AMOUNT OWED in unpaid wages for the period DATES OF VIOLATION.

If you are found in violation of these laws, you may be liable for the amount of unpaid wages plus liquidated damages. 29 U.S.C. § 216(b); N.Y. Labor Law § 663.1. Under FLSA, liquidated damages may be equal to the amount of unpaid wages. 29 U.S.C. § 216(b).

Therefore, you should provide NAME OF EMPLOYEE with her wages as soon as possible. New York's Wage Payment Act prohibits the unlawful withholding of wages and requires all wages due no later than seven (7) calendar days after the week in which the wages are earned.

See N.Y. Labor Law § 191.1 (a).

When employment is terminated, the employer is obligated to pay wages no later than the regular pay day for the pay period in which termination occurred, and by mail if requested by the employee.

See N.Y. Labor Law § 191.3.

NAME OF EMPLOYEE has the right to bring a formal complaint to the New York State Department of Labor or a civil action in court. Such complaints may subject you to investigation and administrative hearings, penalties, and attorneys' fees.

DEDUCTIONS FROM PAY

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

The Fair Labor Standards Act (FLSA) limits the amount of money employers may deduct from a worker's pay for food and lodging. The FLSA and New York State law place limits on the circumstances in which an employer may make deductions.

You improperly deducted \$ AMOUNT OF ILLEGAL DEDUCTION from NAME OF EMPLOYEE's wages for ALLEGED REASON FOR DEDUCTION.

According to our calculations, you therefore owe \$ AMOUNT OWED in unpaid wages for the period DATES OF VIOLATION.

BREACH OF EMPLOYMENT CONTRACT/ AGREEMENT

NAME OF EMPLOYEE is currently owed \$ AMOUNT OWED in unpaid wages for work performed between DATES OF VIOLATION. The contractual agreement between you and NAME OF EMPLOYEE was to compensate her at a rate of \$ HOURLY RATE PROMISED per hour for her services as a domestic employee. According to NAME OF EMPLOYEE, she worked NUMBER OF HOURS, for which she was not received payment. Based on your agreement with NAME OF EMPLOYEE, she is owed \$ AMOUNT OWED for work performed.

You should send a check immediately in this amount to NAME OF EMPLOYEE. The check can be sent to EMPLOYEE'S ADDRESS or CARE OF WORKER'S RIGHTS ORGANIZATION AND ADDRESS.

I write this letter in the interest of resolving this matter as expeditiously as possible. However, if we do not receive the wages owed to the above employees within seven (7) days from the date you receive this letter, we will be forced to turn this matter with the appropriate state or federal agency.

Please do not hesitate to contact me if you have any further questions. Thank you for your prompt cooperation in this matter.

Sincerely,

APPENDIX I Work Records

Sample Work Records

Employer Name: _____

Address: _____ City: _____ State: _____ Zip: _____

Phone number: _____

Job Description: _____

Employee name: _____

Date	Time In	Time Out	Pay Rate	Actual Payment

RECORD KEEPING STRATEGIES!

- Keep any payroll stubs or receipts you get from your employer.
- Share this sample form with friends and co-workers.

Make copies of all of this form for your own records.

APPENDIX J

Minimum Wage Rates & Statutes of Limitations

NEW YORK MINIMUM WAGE RATES: 2004—2009

2004	2005	2006	2007	2008	2009
\$5.15	\$6.00	\$6.75	\$7.15	\$7.15	\$7.25

Statute of Limitations

Generally speaking, workers have only a limited number of years in which they can bring a legal claim against their employers. This “statute of limitations” varies depending on the type of claim.

Federal Law

The FLSA has a **two year** statute of limitations for actions to enforce its provisions, and a **three year** statute of limitations if the violation is considered “willful.” A violation is considered “willful” if the employer either knew that he or she was breaking the law, or was reckless about whether or not the behavior was breaking the law.

New York

New York State has a longer statute of limitations than the federal law. A civil action under New York law must be started within **six years** of the incident, whether the action is filed by the employee or the commissioner. A civil action under New York law must also be started within six years.

If there is a good reason why the worker was unable to file suit during the six-year period, the worker may ask for “equitable tolling,” which, if granted, increases the amount of time available to file suit. However, this is only allowed in “rare and exceptional circumstances,” when the worker is prevented from exercising her rights for some “extreme reason.”

STATUTES OF LIMITATIONS FOR WAGE CLAIMS

	Statute of Limitations
Federal	2 years
New York	6 years

APPENDIX K

New York Domestic Worker Bill of Rights

summary of changes to minimum wage (MW) coverage and overtime rates

Minimum Wage coverage before and after the passage of the Bill of Rights	
BEFORE NOVEMBER 29, 2010	AFTER NOVEMBER 29, 2010
<p>Covered:</p> <ul style="list-style-type: none"> ■ Domestic workers, including full-time baby-sitters, housecleaners, etc. ■ Live-out companions – all, whether employed by household or agency ■ Live-in companions if agency/3rd party is the sole employer and client is not an employer 	<p>Covered:</p> <ul style="list-style-type: none"> ■ Domestic workers, including all babysitters who work on other than a casual basis ■ Live-out and live-in companions employed by the householder and/or by an agency.
<p>Exempt:</p> <ul style="list-style-type: none"> ■ Part-time babysitters working in employer’s home ■ Live-in companions who live in “the home of an employer” 	<p>Exempt:</p> <ul style="list-style-type: none"> ■ Part-time babysitters employed on a casual basis
<p>Changes: The law takes out the exemption for live-in companions, and narrows the exemption for part-time babysitters to casual, part-time babysitters.</p>	

Overtime Rates before and after the passage of the Bill of Rights	
BEFORE NOVEMBER 29, 2010	AFTER NOVEMBER 29, 2010
<ul style="list-style-type: none"> ■ Live-out domestic workers = 1½ x regular rate after 40 hours in a week ■ Live-in domestic workers = 1½ x MW after 44 hrs ■ Live-out companions employed by private householder or agency = 1½ MW after 40 hours ■ Live-in companions employed solely by agency = 1½ x MW after 44 hours 	<ul style="list-style-type: none"> ■ Live-out domestic workers = 1½ x regular rate after 40 hours in a week ■ Live-in domestic workers = 1½ x regular rate after 44 hrs ■ Live-out companions employed by private householder = 1½ regular rate after 40 hours ■ Live-out companions employed by agency = 1½ MW after 40 hours ■ Live-in companions employed by private householder = 1½ regular rate after 44 hours ■ Live-in companions employed solely by agency = 1½x MW after 44 hours
<p>Exempt: Live-in companions employed by private householder</p>	<p>Exempt: No exemptions from overtime provision</p>
<p>Changes:</p> <ul style="list-style-type: none"> ■ Live-in domestic workers now get 1½ times their regular hourly rate after 44 hours in a week as opposed to 1½ times the MW after 44 hours ■ Companions employed by the private household now receive 1½ times their hourly rate as opposed to 1½ x the minimum wage 	

¹ 8 USC § 1324a (a)(4).

² 8 CFR § 274a.1(h).

³ 8 CFR §274a.1(j).

⁴ 29 U.S.C. §255(a). See also *Herman v. RSR Sec. Servs.*, 172 F.3d 132, 141 (2d Cir.1999); *U.S. v. Sabhani*, 566 F. Supp. 2d. 139 (E.D.N.Y. 2008); *Ramirez v. Rifkin*, 568 F. Supp. 2d 262, 268 (E.D.N.Y. June 23, 2008). See also *Ramirez*, 568 F. Supp. 2d at 268. The Second Circuit courts generally leave the question of willfulness to the jury. *Id.*

⁵ *Id.* See also *Ramirez*, 568 F. Supp. 2d at 268. The Second Circuit courts generally leave the question of willfulness to the jury. *Id.*

⁶ N.Y. Lab. Law §198(3).

⁷ N.Y. Lab. Law §663(3).

⁸ *Ramirez v. Rifkin*, 568 F. Supp. 2d 262, 269 (E.D.N.Y.,2008). In *U.S. v. Sabhnani*, the Eastern District of New York found that workers who were held in forced servitude, spoke no English and had no knowledge of the Fair Labor Standards Act were entitled to equitable tolling. *U.S. v. Sabhnani*, 566 F. Supp. 2d 139, 146 (E.D.N.Y. 2008).

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Katulong

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गृह मंत्रालय

Domestic

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가정부 Domestic