



**RIGHTS BEGIN AT HOME**  
PROTECTING YOURSELF AS A DOMESTIC WORKER



**Rights Begin  
At Home:  
Protecting Yourself  
as a Domestic Worker**

## Acknowledgements

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This is a revised version of a handbook created by the Asian American Legal Defense and Education Fund (AALDEF) and the National Employment Law Project (NELP). The original handbook was written by Chaumtoli Huq and Amelia Toledo of AALDEF and Naomi Zauderer and Monika Batra of NELP, with the aid of a special grant from the Asian American Federation of New York.

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## Introduction

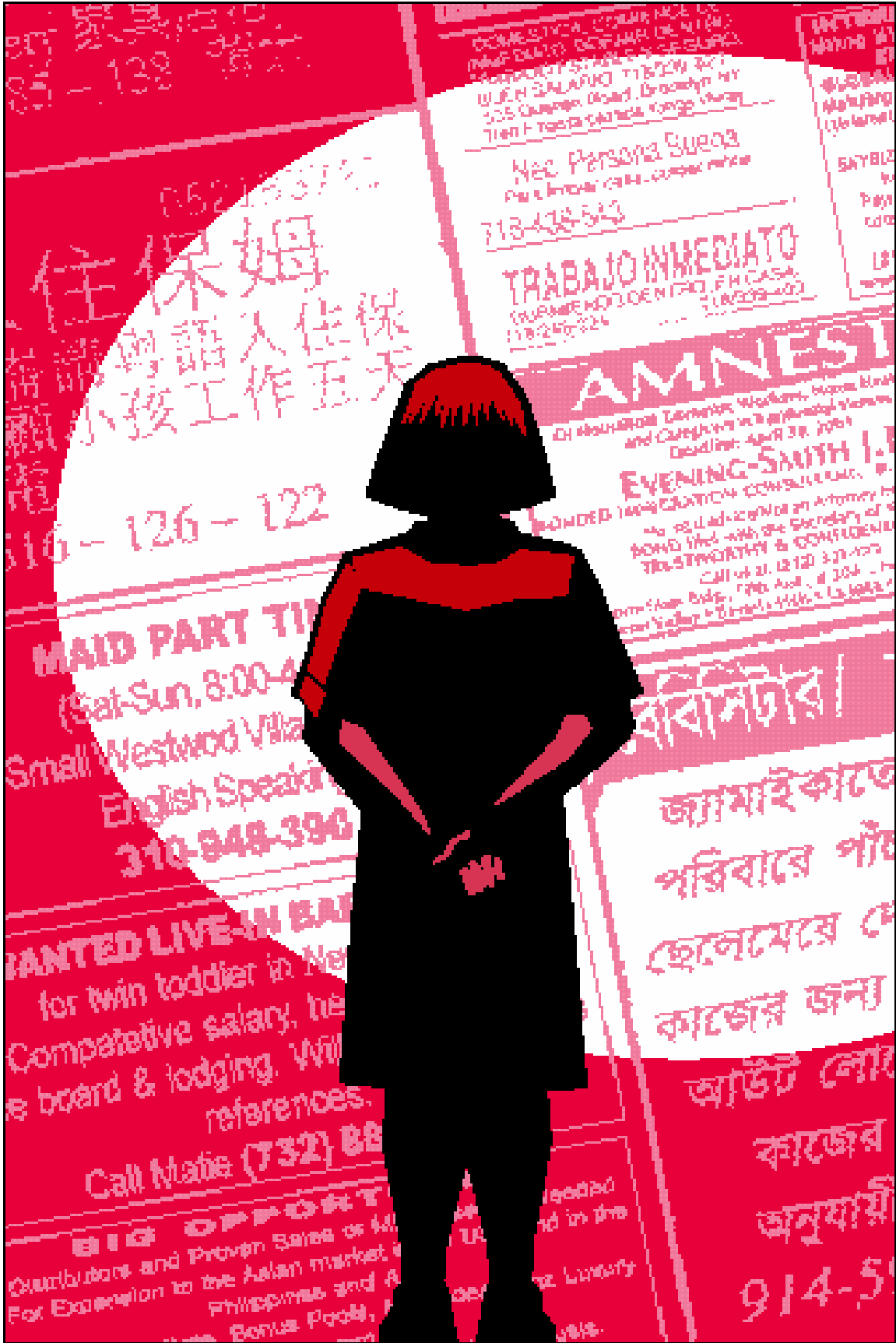
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The purpose of this handbook is to help domestic workers protect themselves within the context of existing employment laws. While the laws do not necessarily reflect the full extent of the rights workers deserve, they do give workers some protection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

The information in this handbook is based on New York law, and the average wages are for the New York City metropolitan area.

Despite the limitations of the law, community organizations in New York and elsewhere have used creative and innovative strategies to advocate for greater protection of domestic workers. Through this process of enforcing existing legal rights and organizing for more protections, we can improve working conditions for all domestic workers.

Laws that are not enforced have only symbolic value. The first step towards workers as a worker is knowing your rights. This handbook was created to help with that first step.



## Guidelines for Job Seekers

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### Introduction

To find a job as a domestic worker, you may call an agency, answer a newspaper ad, or call a person suggested by a friend. The following paragraphs describe the interview process and things to think about when you are seeking a job.

### Responding To an Ad

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

#### Things to remember when responding to an ad:

- 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 someone to go with you to the interview.
- Bring a notebook and pen to take notes.
- You can ask the employer to pay for travel expenses to and from the interview.



## Employment Agencies

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

**Fees:** If you use an agency, try to find one that does not charge you a fee. If you can't find an agency that does not charge a fee, then be sure that the agency does not 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 employment agency must let you pay the fee in installments. If your employer pays you every week, the employment agency must let you pay in ten or more equal weekly installments. If your employer pays you every other week, the employment agency must let you pay in five or more equal installments every other week. (NY CLS Gen. Bus. § 185.3)

## NYC Employment Agencies

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If you use an employment agency in New York City, the agency must give you a written description of your rights and your employer's obligations. The agency must give this written description to potential employers as well. (NYC Administrative Code § 20-771)

The description of employee rights and employer obligations developed by the NYC Department of Consumer Affairs for employment agencies is included as Appendix F to this guide.

When the agency arranges for you to apply to an employer, the agency must also give you a written job description, 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

(NYC Administrative Code § 20-772)

### **During your interview with the agency, you may want to find out the following:**

- Does the agency send someone to the interview with you and pay for your transportation?
- Does the employment agency do any background check on employers or take any steps to make sure that the household is safe?
- 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 for their leaving?
- Is there a contract that the agency wants you to sign? What does signing it mean? Can you take the contract home to look at it with a friend?
- Who gets paid — the agency or you?
- How long does a worker have to remain with an employer before the agency gets its full commission?

**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 the money from the employer and then paying you.
- Requests to hand over your 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 the interview.



## The Interview With the Employer

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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. Write down or tell someone about the employer's responses to your questions.

### Questions you may want to ask 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?
- Do you pay for workers compensation insurance?
- 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.
- Standard contract (see Appendix A ).

### If you 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

- 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.
- Standard contract (see Appendix A ).

## 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.\*
- The employer requires you to work an excessive amount of hours before paying you overtime. See page 34 for more information about overtime compensation.
- The employer tells you that the first week or two of your employment will be a “training period” during which you will not be paid. It is illegal to withhold wages during training.

\* Even if you sign such a document, your employer must pay you minimum wage and overtime compensation. (See, e.g., *Tony and Susan Alamo Foundation et al. v. Secretary of Labor*, 471 U.S. 290 (1985))

## Personal Questions

- *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.?*

Most of these 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 the question is related to a job requirement.

\* Advocates should check federal, state, and local anti-discrimination laws to determine whether the employer falls within the scope of coverage of those laws.

## 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.

When they hire someone, employers must fill out an Employment Eligibility Verification Form (called an "I-9 Form"). On this form, the employer must verify that he or she has examined documents that show your identity and work authorization. The I-9 form lists acceptable documents you can provide. You get to choose which documents from the list you want to show the employer. The employer cannot refuse to accept a document that is on the list. They also cannot ask you for more or different documents than the ones you provide. (INA § 274B(a)(6))

Your employer does not have the right to keep your original documents. For more information, see "Employer Work Authorization Verification Fact Sheet," available on the NELP website:

<http://www.nelp.org/docuploads/pub147%2Epdf>

## Payment Issues

- *I will pay you in cash (under the table).*

It can be a disadvantage to be paid in cash (under the table). It 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 you to prove your eligibility for benefits if you need them and are otherwise eligible for them. In addition, by giving you a paycheck, the employer creates a record of pay, which will be useful to you in the future if there is a wage dispute.

- *The pay here is X.*

It is helpful to compare the salary you are offered with the salaries of other people who do the same work. The following is a list of common wages for certain job responsibilities. These average wages were calculated a few years ago. The average wage is likely somewhat higher now, based on inflation and the rising cost of living in New York

### Average Wages for Domestic Work According to Job Description

Your hard work is probably worth more than these average wages. If you feel confident, you can always ask for more.

Description of Position	Average Weekly Wage
Nanny for One Child Only (no housekeeping)	\$450 or \$11/hour
Housekeeping Only	\$480 or \$12/hour
Nanny for one child + light housekeeping	\$560 or \$14/hour
Nanny for two children	\$600 or \$15/hour
Nanny for twins	\$640 or \$16/hour
Nanny for two children +light housekeeping	\$680 or \$17/hour
Nanny for three children	\$680 or \$17/hour
Nanny for three children + light housekeeping	\$720 or \$18/hour



## Income Tax

Regardless of whether you are paid in cash or by check, you are legally required to pay federal, state, and municipal income taxes unless your annual income is very low. In 2005, the threshold was \$7950 if the worker is under 65, and \$9150 if the worker is over 65. Even if your income is very low, you should file a return if your employer withheld taxes and you think you may be entitled to a refund.

If you are not work authorized, you can still pay your taxes or receive a refund using an Individual Taxpayer Identification Number (ITIN). This will also establish a work history which could help you get permanent residency in the future if the immigration laws change. For more information on ITINs and how to get one, see the "ITIN Fact Sheet" available at the National Employment Law Project website: <http://www.nelp.org/docUploads/ITINS%20November%202004%2Epdf>



# Agreement

This contract is made between \_\_\_\_\_ (the employer) and \_\_\_\_\_ (the employee) on \_\_\_\_\_ 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 attention.

\_\_\_\_\_ (specification of persons requiring constant attention: \_\_\_\_\_ hired as a full-time babysitter or nanny, responsibilities include and limited to:

- a) Feeding baby;
- b) Feeding breakfast, lunch and dinner;
- c) Helping to clean up after the child;
- d) Keeping child/baby's play area tidy;
- e) 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) for every day that the employee's wages are paid her/his.

11. 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.

12. Employee is entitled to an hour lunch break every day.

## What You Should Get in Writing

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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.

Also, a contract signed by both you and your employer can be enforced in court. 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.

See Appendix 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.
- 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 the 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 B 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.



## How Do I Protect Myself During Employment?

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- 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.

### **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 C for a sample form you can use to keep your records.

### ***Keep these records in a safe place!***

- 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. It is safer for you, rather than your employer, to deposit your wages into a bank account. Your employer must pay you directly unless you sign a consent to have your wages deposited into a bank account. (NY CLS Labor § 192)
- 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 D) for help in setting up a bank account and/or sending your money abroad.



## Your First Pay Day

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You have a right to be paid in US dollars \$ every week. (NY CLS Labor § 191) Your employer may deduct certain costs but only those described below.

### **The law authorizes only 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 CLS Labor § 193; 12 NY CRR § 195.1)

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

- For meals: \$2.05 per meal (\$2.30 per meal after January 1, 2006 and \$2.45 per meal after January 1, 2007)
- For lodging: \$3.55 per day (\$4.00 per day after January 1, 2006 and \$4.25 per day after January 1, 2007)
- If your employer provides you with your own house or apartment, with utilities: \$7.45 per day (\$8.40 per day after January 1, 2006 and \$8.90 per day after January 1, 2007)

(12 NY CRR § 142-3.5(a)(1) & (2))

### **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 CLS Labor § 193)

\*29 USC § 203(m) permits the 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."

# Domestic Workers Bill of Rights

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

## PAY AND HOURS


You are entitled to:  
• a minimum wage of \$5.15 per hour;  
• payment for all hours worked;  
• payment of wages (including overtime) on the regular payday;  
• overtime pay of 1 and 1/2 times your hourly wage for every extra hour you work over 40 hours in a week;  
• if you live in a state that has a higher minimum wage, you must 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 if you get injured on the job;  
• If you are documented, your employer must pay you an average of \$123 per week if you leave your job for a medical cause or are laid off.

## ABUSE AND HARASSMENT

It is illegal for your employer to:  
• beat or threaten you in any way;  
• force you to have physical or sexual contact with anyone;  
• contact you at your home or workplace without your permission.





## Domestic Workers' Bill of Rights

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

### Wages

You are entitled to:

- A minimum wage of \$ 6.00 per hour (\$6.75 per hour after January 1, 2006 and \$7.15 per hour after January 1, 2007). (NY CLS Labor § 652)
- Payment for all hours worked.
- Regular payment of wages in US dollars every week, and no later than seven days after the end of the week in which wages were earned.\*
- A statement with each payment showing your gross wages, deductions, and net wages. (NY CLS Labor § 195)

You and your employer can agree that you will not be paid for time you spend sleeping or eating, or other time when you are completely free of all duties. However, if you are called to work during a break, a meal, or during time you would otherwise be sleeping, you must be paid for that work.

- According to NY CLS Labor § 191.1(a), "manual workers" are entitled to weekly payment of wages. NY CLS Labor § 190.4 defines "manual worker" as "mechanic, workingman or laborer."

### Overtime

You are entitled to the following:

- If you do not live with your employer, overtime pay of 1 and ½ times your regular hourly wage for every extra hour you work over 40 hours per week. (29 USC § 207 (a)(1); 12 NY CRR § 142-2.2)
- If you live with your employer, overtime pay of 1 and ½ times the minimum wage for every extra hour you work over 44 hours per week. (12 NY CRR § 142-2.2)
- One hour's additional pay at the minimum wage for any day in which you work more than 10 hours or a split shift. (12 NY CRR § 142-2.4)

### Workers' Compensation

If you work more than 40 hours per week for the same employer and your employer has chosen to secure workers' compensation insurance, workers' compensation will pay for your medical bills and some of your lost wages if you get injured on the job and have to miss work. (NY Work Comp Law §2(4))

Workers' compensation is available to you even if you are undocumented. Your employer cannot deduct the cost of the insurance premiums from your salary.

## Short Term Disability

If you work full time and have been employed for more than a month, you may also be eligible for short-term disability benefits, which allow you to collect money if you become temporarily disabled from a non-work related injury or illness, including pregnancy. (NY Work Comp Law § 202(2))

## Abuse and Harassment

It is illegal for your employer to:

- Beat or hurt you in any way
- Force you to have physical or sexual contact
- Demand sex from you

These are violations of the Penal Code, such as assault and sex offenses. The police and prosecutors enforce these laws.

If you file a complaint for unpaid wages, or any other employment related problem, or a claim for workers' compensation, you do not have to answer questions about your immigration status. In fact, it is better not to answer those types of questions and to seek assistance from a community group or lawyer you trust if you feel pressured.

## A-3 or 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 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

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.



## Immigration Issues Related to Employment

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Only Immigration and Customs Enforcement (ICE) enforces immigration laws, not your employer or the labor agencies.

- Never volunteer information about your immigration status to anyone.
- You have a right to remain silent and speak to a lawyer if anyone stops you and asks you for immigration papers.

### Employer's Threats to Report You to ICE

- It is illegal retaliation for your employer to threaten to report you to the ICE for trying to enforce your labor rights. (A number of labor and employment laws have anti-retaliation provisions)
- ICE maintains an internal policy called an operation instruction that places limitations on immigration enforcement investigations where there is an ongoing labor dispute. Labor disputes include wage and hour violations, health and safety violations, workers' compensation claims, and discrimination complaints. See Appendix G for a copy of this policy.

### False Promises of a Green Card

Your employer may offer to take care of your immigration matters. Do not take your employer's word for it. Consult an immigration attorney on your own. (The community groups listed in Appendix D may be able to help you find a reliable immigration attorney.)

Often employers say that they will sponsor you for a green card; however, it can take many years to obtain a green card as a domestic worker.

In order to sponsor you for a green card, your employer has to first make an application to the US Department of Labor for permanent labor certification. (ETA Form 9089) The employer basically has to show that he or she attempted to hire someone who was already work authorized in the U.S. but no one was available with the required qualifications.

You would also be required to sign the Application for Permanent Labor Certification saying that you intend to accept the job with the employer if the petition is approved. If you have not signed such a form, your employer has not begun the process of sponsoring you.

Even if the employment certification is granted, your employer still has to file another form - I-140– Immigrant Petition for Alien Worker. As stated above, the entire process can take a very long time and there are no guarantees you will get a green card.

It is not easy to get a green card, so you should be skeptical of anyone who promises to help you get one quickly and easily.



## AFTER YOU START WORKING: HOW TO RESPOND TO EMPLOYER QUESTIONS AND STATEMENTS

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The employer says:

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

I have a legal right to be paid weekly. You cannot withhold my earnings for more than seven days after the end of the pay period

***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 always file a complaint with the Department of Labor.\*

\*See N.Y. Attorney General Opinion, 2003 WL 22522840 (N.Y.A.G.) (U. S. Supreme Court's decision in *Hoffman Plastic* notwithstanding, undocumented employees are entitled to payment under the New York State minimum wage law for work actually performed).

***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. If I live with my employer, I have a right to 1 ½ times the minimum wage for every hour I work over 44 hours. 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.

***No days off.***

Standard practice among employers is to provide employees with two days off 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 more than 40 hours per week for the same employer, my employer can opt for workers' compensation coverage which 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.

\*NY Work Comp. Law § 2.4.

**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.\*

Immigration and Customs Enforcement (ICE) has a policy that discourages them from getting involved where there is a dispute between an employer and an employee. See Appendix G. Furthermore, New York City police are not allowed to ask about someone's immigration status unless that person is suspected of a crime. See Appendix H.

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. See Appendix D for some groups that may be able to help you.

\* Reporting workers to immigration authorities is considered unlawful retaliation under the Fair Labor Standards Act. See, e.g., *Centeneo-Bernuy v. Perry*, 302 F.Supp.128 (W.D.N.Y. 2003); *Singh v. Jutla & C.D. & R's Oil, Inc.*, 214 F.Supp.2d 1056 (N.D. Cal. 2002). Under Second Circuit case law, however, the anti-retaliation provisions of FLSA do not apply unless the worker has filed a formal complaint, instituted a proceeding against his employer, or testified in such a proceeding. See *Lambert v. Genesee Hospital*, 10 F.3d 46, 55 (2d Cir. 1993). New York Labor Law does protect workers against retaliation for objecting to an unlawful employment practice. See NY



***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.

***What do I do in the case of sexual or racial harassment and abuse?***

1. Talk to someone you trust.
2. Keep a journal in a bound notebook. Include dates, times, locations, gestures, comments and your responses. Be as specific as possible and try to write down the events as they happen, or soon after they happen.
3. It is illegal for anyone, including your employer, to:
  - Force you to have physical or sexual contact
  - Hit or physically threaten you

These are criminal acts. They can be reported to the police. Before reporting them to the police, however, you may want to get assistance from a community organization.

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

**If you are no longer working for the employer, or if you know that you do not wish to continue working for him or her**, it is often helpful to send a demand letter to your employer to open negotiations to recover money you are owed. A demand letter can be sent from an individual, an organizing group, or an attorney. See Appendix E for a sample demand letter that can be sent by a community organization on your behalf.

It is important to follow up after sending a demand letter. A demand letter without follow up is meaningless and can lead the employer to think you are not serious. Follow-up can vary depending on who sends the letter. Individuals can propose a time, date and place to meet and discuss the claim with the employer, file a complaint with one of the government offices located in the back of this handbook, or file a complaint in Small Claims Court. You might also be able to find a lawyer to take your case to court. Organizing groups can do all of those things; they can also protest at the employer's home or place of business and publicize the employer's bad acts in the media.

If you come to an agreement with your employer about payment, you should both sign a "settlement agreement," which is a binding contract that can be enforced in court. If the amount promised is less than \$5000.00, the contract can be enforced in Small Claims Court. For more information, see the "Plaintiff's Guide to Small Claims Court," available on the National Employment Law Project website at <http://www.nelp.org/docUploads/Plaintiff%27s%20Guide%20w%20mfy%2Epdf>

**If you are still working for the same employer and wish to continue working for them,** you may or may not want to send a demand letter, depending on your relationship with your employer. Even if you don't send a demand letter, you should remind your employer of his or her obligations under the law, and let him or her know that you are aware of the problem.

If the issue is unpaid wages, it will be useful for you to figure out how much you are owed for what periods of time before you speak to your employer about it. That way you can show your calculations to him or her. See Appendix C for a sample record-keeping form. It will be much easier if you have kept records of the hours you worked and the money you were paid.

If your employer continues to delay payment, you can ask him or her to sign a written document showing that you are owed a certain amount of money. This can be enforced in court if it becomes clear that your employer does not intend to pay you.

## Appendix

A. Standard Contract for  
Domestic Workers

**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 OBGYN 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
  - b) Martin Luther King Jr.'s Birthday
  - c) President's Day
  - d) Memorial Day
  - e) Independence Day
  - f) Thanksgiving
  - g) Labor 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

## B. Sample Confirmation Letter

DATE

Dear NAME OF EMPLOYEE,

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 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 worker's 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



### C. Sample 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.

## D. Government Resources

### **Government Resources**

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**

#### **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  
New York, New York 10271  
(212) 416-8700 (English and Spanish)

#### **New York State Department of Labor, Division of Labor Standards**

*This state agency enforces state minimum wage and overtime laws.*

345 Hudson Street  
New York, NY 10014  
(212) 352-6700 (English and Spanish)

#### **US Department of Labor, Wage and Hour Division**

*This agency enforces federal minimum wage and overtime laws and the Family and Medical Leave Act.*

26 Federal Plaza, Suite 3700  
New York, NY  
(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.

**Workers' Compensation:** *cash benefits and/or medical care for workers with job-related injuries or illnesses.*

Toll-free number: 1-800-877-1373 ( English and Spanish)  
Brooklyn District Office (serves Brooklyn, Staten Island)  
111 Livingston Street, 2<sup>nd</sup> Floor  
Brooklyn, NY 11248

Manhattan District Office (serves Manhattan, Bronx)  
215 W. 125<sup>th</sup> Street  
New York, NY 10027

Queens District Office (serves Queens)  
168-46 91<sup>st</sup> Avenue  
Jamaica, NY 11432

## **Income Taxes**

### **IRS Taxpayer Education and Volunteer Assistance Program**

*You can call the following numbers to ask IRS representatives about locations, dates, and hours that volunteers may be available to assist you in preparing tax returns:*

Manhattan: (212) 436-1021  
Brooklyn: (718) 488-3655  
IRS Customer Service: 1-800-829-1040

### **Unemployment Insurance Claims\***

To file a claim by telephone call 1-800-209-8124. Service is available in English and Spanish, and translation services are available for other languages.  
To file a claim online, visit <https://ui.labor.state.ny.us/UBC/index.jsp> (available in English and Spanish).

*\*You must be work-authorized to recover unemployment benefits.*

## E. Community Resources

### Organizing Groups

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

P.O. Box 720364  
Jackson Heights, NY 11372  
Phone: (718) 426-2774  
Email: [andolan\\_organizing@yahoo.com](mailto:andolan_organizing@yahoo.com)  
Languages: Bengali, Hindi, Urdu

#### **CAAAV**

Women Workers Project  
2473 Valentine Avenue  
Bronx, NY 10458  
Phone: (718) 220-7391 ext. 12  
Email: [justice@caaav.org](mailto:justice@caaav.org)  
Languages: Khmer, Vietnamese, Tagalog, Spanish, Korean, Mandarin, Fujianese

#### **NYC Domestic Workers United**

c/o CAAAV  
2473 Valentine Ave.  
Bronx, NY 10458  
Phone: (718) 220-7391 ext. 11

#### **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](mailto:contact@damayanmigrants.org)  
Languages: Tagalog

#### **Workers AWAAZ**

4026 82<sup>nd</sup> Street  
Elmhurst, NY 11373  
Phone: (718) 565-0801  
Email: [workersawaaz@yahoo.com](mailto:workersawaaz@yahoo.com)  
Languages: Bengali, Hindi, Urdu, Punjabi

#### **Workplace Project/ Unity Housecleaners**

91 North Franklin Street, Suite 207  
Hempstead, NY 11550  
(516) 656-5377  
Languages: Spanish

**Haitian Women for Haitian Refugees**

319 Maple Street  
Brooklyn, NY 11225  
Phone: (718)735-4660  
hwhr@hotmail.com

**Legal Assistance and Representation**

**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 the helpline at (212) 417-3838 on Monday from 1 pm to 3 pm.

**Asian American Legal Defense and Education Fund (AALDEF)**

99 Hudson Street, 12<sup>th</sup> Floor  
New York, NY 10013  
Phone: (212) 966-5932  
Languages: Mandarin, Cantonese

**Brooklyn Low-Income Taxpayer Clinic**

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

105 Court Street  
Brooklyn, NY 11201  
Phone: (718) 237-5528  
Languages: Spanish, Chinese, Russian, and Haitian Creole

**Fordham University School of Law Tax Clinic** *Provides legal assistance to low-income taxpayers who have a dispute with the IRS.*

Lincoln Square Legal Services, Inc.  
33 West 60<sup>th</sup> Street, 3<sup>rd</sup> Floor  
New York, NY 10023  
Phone: (212) 636-7353

## E. 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. We have tried to contact you on several occasions, and will have to take alternative action if we do not receive an answer as soon as possible.

INSERT BRIEF DESCRIPTION OF THE ORGANIZATION THAT IS WRITING ON BEHALF OF THE EMPLOYEE.

You are completely responsible for the immediate payment to NAME OF EMPLOYEE for work she provided to you as an employee in your home. The Fair Labor Standards Act (FLSA) and New York State law provide that domestic workers have the right to receive the minimum wage and overtime compensation. See 29 USC § 203 et seq.; NY Labor Law § 650 et seq.; 12 NY CRR § 142-2.2. 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).

**[only include this paragraph if the employer seems likely to bring up the worker's immigration status as a reason not to pay:**

*You should know that employers are liable for the payment of wages and for ensuring that the employment eligibility verification process (i.e., the I-9 form) is completed at the time of hire. Completion of the I-9 requirements is the sole responsibility of the employer. Even if the employer failed to comply with I-9 requirements, all workers are entitled to receive payment for work they perform.]*

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.

NAME OF EMPLOYEE is currently owed AMOUNT in unpaid wages for work performed between DATES. The contractual agreement between you and NAME OF EMPLOYEE was to compensate her at a rate of AMOUNT 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 for work performed. You should send a check immediately in this amount to Ms. X. The check can be sent care of NAME OF 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 over to the labor department. Please do not hesitate to contact me if you have any further questions. Thank you for your prompt cooperation in this matter.

Sincerely,

## F. Statement of Employee Rights and Employer Obligations Provided by the NYC Department of Consumer Affairs to Employment Agencies



### **Domestic or Household Employees: Statement of Employee Rights and Employer Responsibilities**

This handout describes some of the basic rights of domestic or household employees and some responsibilities that their employers must fulfill. Please note that this document does not list every employee right or employer responsibility covered by state and federal law. For more information about a specific right or responsibility, you should contact the relevant state or federal agency listed below.

**Minimum Wage:** All employees are entitled to be paid at least the minimum wage. As of January 1, 2005, the minimum wage is \$6.00 per hour. It will increase to \$6.75 per hour as of January 1, 2006.

**Overtime:** Employees who work overtime are entitled to be paid at one and one-half times the regular rate of pay. Household employees who live outside the worksite are entitled to this overtime rate after working 40 hours per week. Employees who live at the worksite are entitled to this overtime rate after working 44 hours per week.

**Timely Payment:** Employees must be paid their full salary on a weekly basis, and within seven calendar days of the concluding workweek. Employers must also provide a statement that shows the employee's gross wages, deductions and net wages.

**Time Off:** Employees are entitled to at least one day off (24 consecutive hours) every week.

**Meals and Lodging:** There are minimum standards for meals and lodging which, in part, provide that employees who work a six-hour shift are entitled to a meal break of at least 30 minutes during the course of the shift.

**Notice:** Employers must notify employees at the time of hiring of the rate of pay and regular payday. Additionally, employers must notify employees in writing of the employer's policy on sick leave, vacation, personal leave, holidays and hours of work. Employers must also notify employees in writing of the date of termination from employment and the date of cancellation of employee benefits, not more than five working days after the date of termination from employment.

**Record Keeping:** Employers must maintain accurate records for three years, showing the hours worked, the rate of pay, the deductions taken from wages and the name, address and date of birth of every employee.



**Social Security:** Social Security and Medicare taxes must be paid for all employees earning more than \$1,400 annually. Employees must pay half of the amount due, or 7.65% of the gross wages, which is to be deducted from wages earned. Additionally, employers must pay half of the amount due, or 7.65% of the gross wages, which is to be paid from the employer's own funds. Employers must obtain an employer i.d. number from the Social Security Administration and must keep an accurate accounting of tax deductions.

**Income Taxes:** Employers are not required to withhold income taxes from an employee's wages unless the employee asks the employer to do so in writing and both parties agree.

**Workers' Compensation:** Employers must buy workers' compensation coverage for employees who work more than 40 hours per week. Workers' Compensation provides compensation for injuries or death that occur during the course of employment. Employers cannot deduct the cost of these payments from the employee's salary.

**Disability Insurance:** Employees who suffer an injury or become sick or pregnant outside of the workplace qualify for disability payments up to 50% of the employee's average weekly salary. Employers are required to purchase this insurance coverage and cannot deduct the cost of these payments from the employee's salary.

**Unemployment Insurance:** Employees who earn more than \$500 in a quarter of a calendar year are covered by unemployment insurance if they lose their jobs. Employers must make quarterly unemployment insurance payments following a formula set by the New York State Department of Taxation and Finance. Employers cannot deduct the cost of these payments from the employee's salary.

**No Retaliation:** Employers are prohibited from retaliating against employees who assert their rights under state and federal law.

If you have questions about these rights or responsibilities and how they apply to you, contact the following government agencies:

U.S. Department of Labor 212-264-8185  
U.S. Social Security Administration 212-264-2500  
Internal Revenue Service 1-800-829-1040  
New York State Department of Labor 212-352-6551  
New York State Workers' Compensation Board 718-802-6933

**If you have additional questions for  
the Department of Consumer Affairs,  
Call 3-1-1 within New York City.**





## Empleados domésticos: Declaración de derechos del empleado y responsabilidades del empleador

*Este folleto describe algunos de los derechos básicos de los empleados domésticos y algunas de las responsabilidades con las que sus empleadores deben cumplir. Tenga en cuenta que este documento no incluye todos los derechos de los empleados ni las responsabilidades de los empleadores recogidos en la ley estatal y federal. Para obtener más información sobre algún derecho o responsabilidad específico, comuníquese con la agencia estatal o federal correspondiente indicada abajo.*

**Sueldo mínimo:** Todos los empleados tienen derecho a que se les pague por lo menos el sueldo mínimo. Para Enero de 2005, el sueldo mínimo era de \$6.00 la hora. Comenzando Enero de 2006 se aumenta a \$6.75 la hora.

**Horas extras:** Los empleados que trabajan horas extras tienen derecho a que esas horas adicionales se les paguen una vez y media el pago regular. Los empleados domésticos que viven fuera del sitio de trabajo tienen derecho a ese pago de horas extras después de trabajar 40 horas a la semana. Los empleados que viven en el sitio de trabajo tienen derecho a ese pago de horas extras después de trabajar 44 horas a la semana.

**Pago en tiempo:** A los empleados se les debe pagar su sueldo completo semanalmente y dentro de los siete días calendarios inmediatos una vez concluida la semana de trabajo. Los empleadores tienen, además, que proporcionar un estado de pago que muestre el sueldo bruto, las deducciones y el sueldo neto.

**Tiempo de descanso:** Los empleados tienen derecho a disfrutar por lo menos un día (24 horas consecutivas) de descanso cada semana.

**Comidas y alojamiento:** Hay normas mínimas para comidas y alojamiento que en parte establecen que aquellos empleados que trabajan en un turno de seis horas tienen derecho a un receso para comer de por lo menos 30 minutos durante el turno.

**Notificación:** Los empleadores tienen que notificar a los empleados en el momento de contratación el pago que se le pagará y el día de pago habitual. Además, los empleadores tienen que notificar a los empleados por escrito su política en cuanto a licencias por enfermedad, vacaciones, licencias por asuntos personales, días feriados y horas de trabajo. Los empleadores tienen también que notificar a los empleados por escrito la fecha de terminación del empleo y la fecha de cancelación de los beneficios del empleado no más de cinco días laborales después de la fecha de terminación del empleo.

**Registros:** Los empleadores deben mantener registros exactos por tres años que muestren las horas trabajadas, el pago, las deducciones hechas a los sueldos y el nombre, dirección y fecha de nacimiento de cada empleado.

**Seguro Social:** Los impuestos correspondientes al Seguro Social y Medicare deben pagarse para todos los empleados que ganen más de \$1,400 al año. Los empleados deben pagar la mitad del monto debido o 7.65 % de sueldo bruto, que será deducido del sueldo ganado. Además, los empleadores deben pagar la otra mitad debido o 7.65 % del sueldo bruto, que será pagado de los propios fondos del empleador. Los empleadores deben obtener un número de identificación del empleador que lo da la Administración del Seguro Social y deben mantener una contabilidad exacta de las deducciones de impuestos hechas.

**Impuestos sobre la renta:** Los empleadores no son requeridos a retener impuestos sobre la renta del sueldo de un empleado, salvo que el empleado le pida al empleador por escrito que lo haga y ambas partes estén de acuerdo en hacerlo.

**Indemnización a trabajadores:** Los empleadores tienen que comprar un seguro de indemnización a trabajadores para aquellos empleados que trabajan más de 40 horas a la semana. Esta indemnización a trabajadores compensa las lesiones o muerte que ocurran durante el curso del empleo. Los empleadores no pueden deducir el costo de esos pagos del sueldo del empleado.

**Seguro por discapacidad:** Los empleados que sufren una lesión, se enferman o salen embarazadas fuera del lugar de trabajo califican para recibir pagos por discapacidad de hasta el 50% de su sueldo semanal promedio. A los empleadores se les exige comprar esta cobertura de seguro y no pueden deducir el costo de esos pagos del sueldo del empleado.

**Seguro de desempleo:** Los empleados que ganan más de \$500 en un trimestre de un año calendario están cubiertos por un seguro de desempleo si pierden el trabajo. Los empleadores tienen que hacer pagos trimestrales al seguro de desempleo siguiendo la fórmula establecida por el Departamento de Impuestos y Finanzas del Estado de Nueva York. Los empleadores no pueden deducir el costo de esos pagos del sueldo del empleado.

**Prohibición de represalias:** Está prohibido que los empleadores tomen represalias contra aquellos empleados que hagan valer sus derechos bajo la ley estatal y federal.

Si tiene alguna pregunta sobre estos derechos o responsabilidades y cómo éstos se aplican a usted, comuníquese con las siguientes agencias gubernamentales:

Departamento del Trabajo de EE. UU. 212-264-8185

Administración de Seguridad Social de EE. UU. 212-264-2500

Servicio de Impuestos sobre la Renta 800-829-1040

Departamento del Trabajo del Estado de Nueva York 212-352-6551

Junta de Indemnización a Trabajadores del Estado de Nueva York 718-802-6933



Si tiene preguntas,  
llama a 3-1-1.

## G. 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.

## H. NYC Mayor's Executive Order Limiting Police and Other Agencies' Inquiry About Immigration Status.



THE CITY OF NEW YORK  
OFFICE OF THE MAYOR  
NEW YORK, N.Y. 10007

EXECUTIVE ORDER No. 41

September 17, 2003

### **CITY-WIDE PRIVACY POLICY AND AMENDMENT OF EXECUTIVE ORDER NO. 34 RELATING TO CITY POLICY CONCERNING IMMIGRANT ACCESS TO CITY SERVICES**

WHEREAS, it is the policy of the City of New York to promote the utilization of its services by all of its residents who are entitled to and in need of them; and

WHEREAS, individuals should know that they may seek and obtain the assistance of City agencies regardless of personal or private attributes, without negative consequences to their personal lives; and

WHEREAS, the obtaining of pertinent information, which is essential to the performance of a wide variety of governmental functions, may in some cases be difficult or impossible if some expectation of confidentiality is not preserved, and preserving confidentiality in turn requires that governments regulate the use of such information by their employees; and

WHEREAS, in furtherance of this policy, confidential information in the possession of City agencies relating to immigration status or other personal or private attributes should be disclosed only as provided herein;

NOW, THEREFORE, by virtue of the power vested in me as Mayor of the City of New York, it is hereby ordered:

Section 1. As used herein, "confidential information" means any information obtained and maintained by a City agency relating to an individual's sexual orientation, status as a victim of domestic violence, status as a victim of sexual assault, status as a crime witness, receipt of public assistance, or immigration status, and shall include all information contained in any individual's income tax records.

Section 2. No City officer or employee shall disclose confidential information, unless

- (a) such disclosure has been authorized in writing by the individual to whom such information pertains, or if such individual is a minor or is otherwise not legally competent, by such individual's parent or legal guardian; or
- (b) such disclosure is required by law; or
- (c) such disclosure is to another City officer or employee and is necessary to fulfill the purpose or achieve the mission of any City agency; or
- (d) in the case of confidential information other than information relating to immigration status, such disclosure is necessary to fulfill the purpose or achieve the mission of any City agency; or
- (e) in the case of information relating to immigration status, (i) the individual to whom such information pertains is suspected by such officer or employee or such officer's or employee's agency of engaging in illegal activity, other than mere status as an undocumented alien or (ii) the dissemination of such information is necessary to apprehend a person suspected of engaging in illegal activity, other than mere status as an undocumented alien or (iii) such disclosure is necessary in furtherance of an investigation of potential terrorist activity.

Agencies shall promulgate such rules as may be appropriate to detail circumstances in which confidential information may or may not be disclosed pursuant to this executive order. Any City officer or employee with a question relating to the disclosure of confidential information under this section shall consult with the general counsel of such officer's or employee's agency.

Section 3. Section 2 of Executive Order No. 34, dated May 13, 2003, is amended by adding a new subdivision d to read as follow:

d. "Illegal activity" means unlawful activity but shall not include mere status as an undocumented alien.

Section 4. Sections 3 and 4 of such Executive Order are amended to read as follows:

Section 3. Information respecting aliens.

- a. A City officer or employee, other than law enforcement officers, shall not inquire about a person's immigration status unless:
  - (1) Such person's immigration status is necessary for the determination of program, service or benefit eligibility or the provision of City services; or
  - (2) Such officer or employee is required by law to inquire about such person's immigration status.

Section 4. Law Enforcement Officers.

- a. Law enforcement officers shall not inquire about a person's immigration status unless investigating illegal activity other than mere status as an undocumented alien.
- b. Police officers and peace officers, including members of the Police Department and the Department of Correction, shall continue to cooperate with federal authorities in investigating and apprehending aliens suspected of criminal activity.
- c. It shall be the policy of the Police Department not to inquire about the immigration status of crime victims, witnesses, or others who call or approach the police seeking assistance.

Section 5. This Order shall take effect immediately.

  
MICHAEL R. BLOOMBERG  
MAYOR





**National Employment Law  
Project**