

Rights Begin at Home

**Defending
Domestic Workers' Rights
in California**

Acknowledgements

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. The handbook was later revised by Jill Shenker of the San Francisco Day Labor Program of La Raza Centro Legal, Andrea Cristina Mercado of Mujeres Unidas y Activas, Anna Couey and Saba Waheed of the DataCenter and Amy Sugimori of National Employment Law Project (NELP), with assistance from Hillary Ronen, staff attorney, and Katy Chase, legal intern at La Raza Centro Legal (LRCL).

The Coalition for Domestic Worker Rights (CDWR) (a Bay Area Coalition including the Mujeres Unidas y Activas, POWER (People Organized to Win Employment Rights) and the San Francisco Day Labor Program Women's Collective of La Raza Centro Legal) contributed findings from its survey of 247 domestic workers in San Francisco Bay Area conducted in 2004-2005. The CDWR survey project utilized a participatory research process that involved domestic workers in all phases of project design, implementation and analysis, with support from the San Francisco Department of Public Health and DataCenter.

The handbook was most recently updated in 2009 by Michael Kaufman of Lawyers' Committee for Civil Rights of the San Francisco Bay Area, and Sarah Leberstein of the National Employment Law Project, with help again from Hillary Ronen of LRCL.

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Introduction

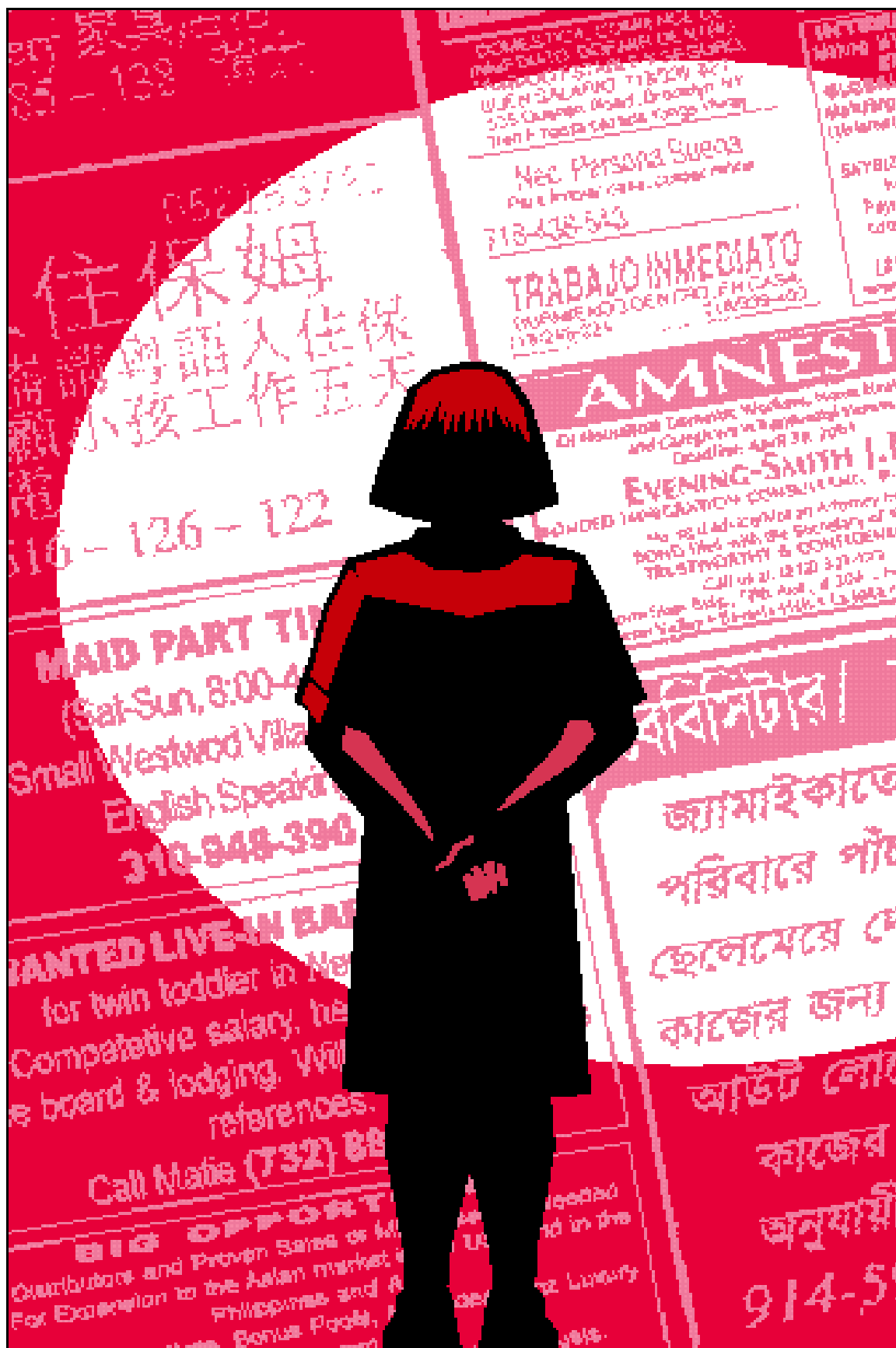
Domestic workers are nannies, housecleaners, caregivers, and more. They generally work in isolation. They may have no co-workers at the worksite who can advise them of their rights. Many are immigrants with a very limited knowledge of the laws of this country. Some are undocumented, and live in constant fear of being deported. And most are women, working in a field that has historically been based on the exploitation of women of color. Yet domestic workers are specifically and practically excluded from many labor protections.

In 2002, Mujeres Unidas y Activas and the San Francisco Day Labor Program Women's Collective of La Raza Centro Legal came together to assess and to strategize to improve the domestic work industry. We are membership-based and membership-led organizations of low-income immigrant Latina women, many of whom are domestic workers. We joined with the Data Center to create a participatory research project to assess the needs in the industry. Throughout this guide we have included relevant Domestic Worker Rights Coalition Survey results (DWRC Survey). As the survey results make clear, domestic work is a very vulnerable industry, and workers have too few resources to turn to for help in improving their jobs.

The purpose of this handbook is to help worker and women's advocates and organizers defend domestic workers rights within the context of existing employment laws and to highlight where there is a need to change inadequate and unfair laws. Our hope is that this guide will inspire you to outreach to and educate domestic workers and to help them defend the rights they have and gain the rights they deserve. While the laws do not reflect the full extent of the rights domestic workers ought to have, they do give workers some protection, regardless of their immigration status. The information in this handbook is based on the laws that apply in California. Some of this information can be easily shared with domestic workers themselves.

Despite the limitations of the law, community organizations have used creative and innovative strategies in advocating for greater protections for domestic workers. Some of these strategies are discussed throughout the guide. Through enforcement of existing legal rights and organizing for more protections, we can improve working conditions for all domestic workers and combat the racism, sexism, and worker exploitation that create deplorable conditions.

The California Coalition for Household Worker Rights will be working to pass a domestic worker rights bill through the California legislature in 2010. Contact any of the Coalition members to get involved or lend your support. See Appendix D for a list of Coalition members.



Domestic Workers Bill of Rights

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

WAGES AND HOURS

You are entitled to:
• a minimum wage of \$5.15 per hour
• payment for all hours worked:
• overtime pay of 1 and 1/2 times your hourly wage for every extra hour you work over 40 hours a week over 44 hours in a week if you live in:
• one hour's additional pay for every hour you work more than 10 hours a week
• 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 are documented and have worked at least 20 weeks and you have been laid off, you can get Unemployment Insurance
• If you are laid off because of a layoff, you can get Unemployment Insurance

ABUSE AND HARASSMENT

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



I. Domestic Workers' Labor Rights

Labor law protects all workers, regardless of immigration status. Both the Fair Labor Standards Act (FLSA) and the California Labor Code prohibit an employer from firing or otherwise retaliating against an employee for exercising her rights under wage and hour laws.¹

Wages

Workers are entitled to be paid the minimum wage required by law at the time the work was performed. Workers who are protected by both the state minimum wage and the federal wage are entitled to the higher of the two rates.

The minimum wage in California is currently \$8.00 an hour and covers all domestic workers.² Most domestic workers are also covered by the federal minimum wage, which is currently \$6.55 an hour. The federal minimum wage will rise to \$7.25 on July 24, 2009.

Cities and counties can raise the minimum wage in their area above the state's minimum wage through a living wage or local minimum wage ordinance. At the time this guide was written, San Francisco was the only city or county in California with a minimum wage higher than the state minimum wage. Workers in the city and county of San Francisco are entitled to be paid at least \$9.79 per hour as of January 1, 2009. The SF minimum wage is adjusted on January 1 of every year based on increases in the regional consumer price index. This gain was won through a ballot initiative led by low-wage worker organizations in the city.³

If you think that you were paid less than the minimum wage in past years, you may still be able to claim unpaid wages from your employer. The chart in **Appendix A** shows the state and San Francisco minimum wages over the past 5 years.

Workers must be paid for all hours worked. For information on deductions from pay, see **page 14** of this guide.

Workers have a legal right to be paid a minimum of twice every calendar month.⁴

Exemptions for Domestic Workers under Federal & State Law

Both the FLSA and the California Minimum Wage Law completely or partially exempt some types of domestic workers.⁵ Under FLSA, casual babysitters and companions are exempt from both the federal minimum wage and overtime. FLSA also exempts live-in domestic workers from overtime, though not from the federal minimum wage. The CA Wage Order

¹ 29 U.S.C. § 215(a)(3); Cal. Lab. Code § 98.6(a).

² California Wage Order 15-2001 § 4. All Wage Orders are available on the California Department of Industrial relations website at <http://www.dir.ca.gov/iwc/wageorderindustries.htm>

³ Chapter 12R.1, et. seq.

⁴ Cal. Labor Code § 204.

⁵ See 29 USC § 213(a)(15); 29 CFR § 552, et. seq.

excludes “personal attendants” (a category that includes caregivers for children, the elderly and the disabled) from its overtime protections and meal and rest break provisions, but these workers are covered by the state minimum wage.⁶

The differences in the type and scope of the exclusions in the federal and CA laws result in a confusing patchwork of protection for domestic workers in California. Aides to the elderly, for example, are classified as “companions” under FLSA and excluded from federal minimum wage and overtime provisions, but under CA law are classified as “personal attendants,” covered by the CA minimum wage but not by the state overtime laws. Full-time babysitters, on the other hand, can claim the federal minimum wage and overtime because they are considered non-exempt domestic workers under FLSA. But full-time babysitters are classified as personal attendants in California, and cannot claim overtime, only the state minimum wage. See the charts below for more information:

Coverage of Domestic workers under FLSA

	Federal Min. Wage	Overtime
Live-out domestic	yes	yes
Live-in domestic	yes	no
Casual Babysitter or Companion: a companion is a worker who works in a private home to care for an elderly or disabled individual. This category currently includes both privately-employed and agency-employed workers. If the worker spends more than 20% of her time on general housekeeping duties she is not considered a companion. _Casual babysitting means employment which is irregular or intermittent, and which is not performed by an individual whose vocation is babysitting.	no	no

Coverage of Domestic workers under CA Wage & Hour Law

	CA Min. Wage	Overtime	Meal & Rest Breaks
Live-out domestic	yes	yes	yes
Live-in domestic	yes	yes – but at reduced level (see section below for more info)	yes
Personal attendant: a worker who works in a private home to care for a child or an elderly or disabled individual. This category includes both privately-employed and agency-employed workers. If the worker spends more than 20% of her working time on other duties she is not considered a personal attendant.	yes	no	no

⁶ California Wage Order 15-2001 §§ 1(B), 2(J).

The Coalition for Domestic Worker Rights (CDWR) Survey found that 11% of domestic workers in the San Francisco Bay Area earned less than the state minimum wage (at that time, \$6.75/hr). We must educate workers and employers about minimum wage protections. Use wage cases as an opportunity to highlight the abuse and need for improvements in this industry using the media. In addition, the Survey found that during a period of only two months, 22% of domestic workers were paid less than agreed upon with their employer and 16% were not paid for their work at all or paid with a bad check. More public education, legal services, and labor code enforcement are clearly needed in this industry.

(Source: Coalition for Domestic Worker Rights Survey, 2006, cited hereinafter as CDWR Survey).

Meal and Rest Breaks

Under CA law, domestic workers (except for personal attendants) have the same rights as other workers to meal and rest breaks. Workers are entitled to a 10 minute paid break after 4 hours of work and to a 30 minute meal break after 5 hours of work if working more than a 6 hour shift.⁷ For each break missed the employer owes the equivalent of one hour's salary.⁸

Overtime

Whether a domestic worker qualifies for overtime pay in California depends on whether she lives with her employer and what her job duties are. Personal attendants do not qualify for overtime under California law, and live-in workers do not qualify for overtime under federal law. It is important to look at both Federal and state law to find the best protection for a worker. Workers are entitled to the protection of the law that benefits them the most.

Live-out workers

Overtime for “live-out” workers under Federal Law (excludes companions and casual babysitters): If a worker is not living with her employer she is entitled under Federal law to standard overtime pay of 1 and ½ times her regular hourly wage for every extra hour she works over 40 hours per week, whether or not she is documented. Her overtime pay must be calculated based on her regular rate of pay, which includes the cost of any food or lodging that the employer usually deducts from her wages.⁹

⁷ California Wage Order 15-2001 §§ 11,12. Many employers of domestic workers fail to respect the meal and rest break laws. The CDWR Survey found that 78% of domestic workers in the San Francisco Bay Area did not always receive the meal breaks they were entitled to and that 83% did not always receive their 10-minute paid break.

⁸ *Murphy v. Kenneth Cole Productions, Inc.*, 40 Cal. 4th 1094, 1099 (Cal. 2007).

⁹ 29 USC § 207(l); 29 CFR § 552.100; 29 CFR § 778.116.

Note: Federal law does not provide overtime for workers who provide babysitting services only on a *casual* basis, or who care for the aged or infirm.¹⁰

Overtime for live-out workers under California Law (workers 18 years and older, or workers 16-17 years old and not required to attend school and not prohibited from working):

- 1.5x regular hourly rate for all hours worked in excess of 8 hours, up to and including 12 hours, in a workday;
- 2x regular hourly rate for all hours worked in excess of 12 hours in a workday;
- 1.5x regular hourly rate for all hours over 40 worked in a workweek;
- 1.5x regular hourly rate for the first 8 hours on the 7th consecutive day worked in a workweek;
- 2x regular hourly rate of pay for hours in excess of 8 on the 7th consecutive day worked in a workweek.

Note: personal attendants are not covered by this provision.¹¹

Live-in workers

Overtime exemption for live-in domestic workers under Federal Law: Domestic workers who reside at the employer’s home are not covered under Federal overtime law.¹²

Overtime for live-in domestic workers under California Law¹³: Workers who live with their employers are entitled to 12 consecutive hours free of duty during each workday and at least 3 hours free of duty during the 12 hours span of work. Live-in domestic workers are also entitled to:

- 1.5x regular hourly rate for hours worked during scheduled off-duty hours or during the 12 consecutive off-duty hours;
- 1.5x regular hourly rate for first 8 hours worked after working 5 consecutive days in a workweek, up to and including 9 hours;
- 2x regular hourly rate for all hours in excess of 9 hours on the 6th and 7th consecutive day worked in a workweek.

Note: personal attendants are not covered by this provision.

Most domestic workers do not receive overtime pay to which they are legally entitled.¹⁴

Live-in workers Live-out workers	DO NOT always receive overtime when work over 12 hours/day	86% 89%
	DO NOT always receive overtime when work over 5 days/week	89%

¹⁰ 29 USC § 213(a)(15) (companionship and casual babysitting exemption).

¹¹ California Wage Order 15-2001 § 3(C).

¹² 29 USC § 213(b)(21).

¹³ California Wage Order 15-2001 § 3(A)-(B).

¹⁴ Figures exclude personal attendants. Source: CDWR Survey 2006

In 2006, the California Coalition for Household Worker Rights, presented legislation, AB 2536 (Montañez), that proposed equality in overtime protections for personal attendants and liquidated damages for all domestic workers. Liquidated damages immediately doubles the amount owed for unpaid wages. It is a strategy used in especially vulnerable industries. Garment workers have already won this right. This campaign was researched, created and led by household worker members of CHIRLA (Coalition for Humane Immigrant Rights of Los Angeles), Mujeres Unidas y Activas (Oakland, San Francisco), Pilipino Worker Center (Los Angeles), and the San Francisco Day Labor Program's Women's Collective of La Raza Centro Legal.



The bill faced opposition from agencies and disability and senior advocacy groups who feared low-income seniors and people with disabilities would face institutionalization if they could not afford to pay overtime. This points to the clear need for more government resources to ensure that people receive the care they deserve without depending on unfair exploitation of personal attendants.

While the bill was vetoed by Governor Schwarzenegger, the campaign had many successes:

- It built the leadership of immigrant domestic workers to defend themselves in their jobs and in the legislature.
- It changed public perception of domestic work and domestic workers from degraded to respected and valued.
- It called attention to the persistence of racism and sexism in our laws by naming the exclusion of domestic workers from labor protections since emancipation.

Deductions from Pay

Employers are allowed to deduct the reasonable cost of food and lodging that he or she provides for the worker and which the worker voluntarily accepts, even if the deductions mean that her cash wages are less than the minimum wage.¹⁵ The employer may make deductions only if there is a written agreement. However, there are limits to the employer's right to deduct from wages, such as:

- Employers are not allowed to force the worker to accept food or lodging in lieu of wages.¹⁶
- Employers cannot charge the worker more than the actual cost of what is provided to her.¹⁷
- Employers are not allowed to deduct the cost of anything that is primarily for the employer's own benefit, such as safety equipment, tools, or uniforms.¹⁸
- Employers cannot deduct the cost of housing that violates health or safety regulations.¹⁹
- Employers cannot deduct more than usual just because the worker worked overtime.²⁰
- Employers cannot deduct money from a worker's wages to cover the cost of a uniform required by the employer.²¹

Under California law, employers may deduct no more than these amounts from their worker's pay for food and lodging²²:

LODGING:	
Room occupied alone	\$37.63
Room shared	\$31.06
Apartment – 2/3 of the ordinary value, and never more than	\$451.89
Where a couple are both employed by the employer, two-thirds of the ordinary rental value, and never more than	\$668.46 per month
FOOD:	
Breakfast	\$2.90
Lunch	\$3.97
Dinner	\$5.35

See **Appendix A** for deduction rates from previous years.

¹⁵ 29 USC § 203(m).

¹⁶ 29 CFR § 531.30.

¹⁷ 29 CFR § 531.3(a).

¹⁸ 29 CFR § 531.3(d).

¹⁹ 29 CFR § 531.31.

²⁰ 29 CFR 531.37(a).

²¹ 29 CFR § 531.3(d)(1-2).

²² California Minimum Wage Order MW-2007.

Illegal Deductions

- Employers may not deduct money from the workers pay if she breaks or spoils something.²³
- If a worker is expected to travel with her employer, the employer must pay her expenses.
- Employers cannot ask the worker to pay the insurance premiums for workers' compensation or unemployment benefits.
- If the worker works at a party or function held by her employer, he or she cannot deduct her tips from her wages.²⁴

For more information on keeping track of your wages and hours worked, see **Appendix B: Protecting Yourself on the Job**, and **Appendix C: Sample Work Records**.

Income Tax

Regardless of whether a worker is paid in cash or by check, she is legally required to pay income taxes unless her annual income is very low. For 2008, the federal threshold for taxpayers under age 65 was \$8,750 for single taxpayers and \$17,500 for married couples filing jointly. Advocates should also check to see whether workers are obliged to pay state and municipal income taxes in addition to federal taxes.²⁵

Even if her income is very low, the worker should file a return if her employer withheld taxes because she may be entitled to a refund. If the worker is not work authorized, she can still pay her taxes or receive a refund using an Individual Taxpayer Identification Number (ITIN). This will also establish a work history that could help the worker get permanent residency in the future if the immigration laws change. For more information, see the "ITIN Fact Sheet" available at the National Employment Law Project website: <http://www.nelp.org/page/-/Justice/ITINS%20November%202004.pdf>.

For a list of groups that can assist you with your taxes, see **Appendix D**.

²³ The CDWR Survey found that thirty-three percent (33%) of Bay Area domestic workers' employers deducted money from their wages when an item was broken or lost on the job, whether or not the break or loss was the worker's fault,.

²⁴ 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."

²⁵ IRS Pub. 501, "Exemptions, Standard Deduction, and Filing Information," 2007, p 2.

How to get back unpaid wages²⁶

There are several strategies to enforce the right to be paid. Each option is different and can be used together to increase the chances of recovering unpaid wages.

Demand Letters

Demand letters are sent to employers and can be used to open negotiations to recover unpaid wages. A demand letter can be sent from an individual, an organizing group or an attorney. A typical demand letter includes:

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

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

Follow-up Steps to a Demand Letter

Follow-up steps are very important. Carefully consider what resources are available to you or your organization when proposing follow-up. Steps can be as simple as saying someone will call on a given date.

Follow-up to a demand letter can vary depending on who sends it. Below are examples of different steps:

Organizing groups can:

- Protest at the employer's place of business or home
- Publicize the employer's bad acts in the media
- File a complaint with the California Division of Labor Standards Enforcement's Labor Commission

Individuals can:

- Propose a time, date and place to meet and discuss the claim with the employer
- File a complaint with the California Division of Labor Standards Enforcement's Labor Commission
- File a complaint with the San Francisco Office of Labor Standards Enforcement

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

²⁶ Generally speaking, workers must file a claim within a certain number of years, after which they lose the right to bring the claim through an agency or the courts. This time period is called the "statute of limitations." See **Appendix E** for more information on the statute of limitations for different types of claims.

Steps for filing a wage claim with the California Division of Labor Standards Enforcement's Labor Commission:

1. File initial report or claim (DLSE Form 1) with the local office of Division of Labor Standards Enforcement's (DLSE). (Find form and the location of the appropriate office to file the form at <http://www.dir.ca.gov/dlse/HowToFileWageClaim.htm>)
2. File as soon as possible and definitely within the statute of limitations (see page 19 for explanation of statutes of limitation)
3. Gather any supporting evidence – documentation of hours worked, agreements, any correspondence with employer, past wage stubs/paychecks.
4. Once filed:
 - a. Both parties will be notified by the DLSE
 - b. The claim will be either be dismissed (if the DLSE does not have jurisdiction over the claim) or sent to a conference. If sent to conference, DLSE will send notice of the conference date and time by mail.
 - c. At the conference, the main goal is to determine the validity of the claim and to resolve the issue. A Labor Commissioner will preside over the conference and intend to help the parties reach a solution.
 - d. If the Labor Commissioner deems the claim valid but it is not able to obtain a resolution at the conference, the case will be sent to hearing: this is a formal proceeding, where both parties will have the opportunity to give testimony under oath and present evidence to prove their case. The Labor Commissioner will send notice of the hearing date and time by mail.
 - e. After the hearing, both parties will receive an "Order, Decision, or Award," (ODA) by mail. This is a formal judgment. Both parties will have fifteen days to appeal the ODA in a civil court. If there are no appeals, the ODA will be sent to Superior Court for entry as a final judgment. Once entered as a final judgment, the employee can utilize all judgment collection procedures available under the law. The employee may also assign the judgment to the Franchise Tax Board (FTB), an administration section of the Department of Industrial relations that will try to collect the judgment on the employee's behalf. Note that the FTB is very slow and usually does not act upon a case for over a year.

For more information on how to file a wage claim through the San Francisco Office of Labor Standards Enforcement call (415) 554-6292 or email MWO@sfgov.org. More information is available on the Department's website at www.sfgov.org/olse/mwo. See **Appendix D** for DSLE office locations.

Health and Safety

Workers' Compensation

Workers who are injured on the job are entitled to workers' compensation. Workers' compensation is an insurance program authorized by the state that provides compensation to workers who have suffered a job-related injury. The injured employee receives benefits regardless of who is to blame – the employee, the employer, a coworker, a client or some other person.

Outside of these guaranteed benefits, the employee usually does not have the right to demand compensation from the employer for damage for the injuries. Workers who do not qualify for workers' compensation benefits, however, may be able to sue their employer on a negligence claim.

To qualify for workers' compensation benefits, domestic workers must have worked more than 52 hours during the 90 days prior to injury and must have earned \$100 or more during the 90 days prior to injury. These minimums only apply to people working in private homes.²⁷

The California Labor Code prohibits retaliation against an employee because of a work-related injury or for filing or announcing her intention to file a worker's compensation claim.²⁸

See **Appendix D** for office locations for the California Department of Industrial Relations Division of Workers' Compensation and for the names of workers rights organizations that can help with workers compensation claims.

Occupational Safety and Health Standards

Unfortunately, the Occupational Safety and Health Administration does not regulate the domestic work industry, so there are no minimum standards of health and safety for these workers. Workers, therefore, must protect themselves on the job. See **Appendix D** for a list of safety and health training programs and resources.

The CDWR Survey found that 20% of workers had suffered a workplace injury or illness requiring medical attention. However, just 7% of workers who found their job through a worker center or community organization had suffered such workplace injuries and illness. This may be because these workers are better prepared to protect and defend themselves against hazardous work situations.

Short Term Disability

California State Disability Insurance (SDI) is a partial wage-replacement insurance plan for California workers funded through employee payroll deductions and administered by the Employment Development Department (EDD). SDI benefits are available to workers who are unable to do their regular or customary work for at least eight consecutive days; are employed or actively looking for work at the time they become disabled; have earned at least \$300 from which SDI deductions were withheld during a previous period; and who are under the care and treatment of a licensed doctor or accredited religious practitioner during the first eight days of the disability.

A worker may be eligible for the benefits even if her employer has failed to make the necessary deductions if the worker can show proof of her wages and that she met the other eligibility requirements. The EDD would then investigate the claim. Employers who do not make the necessary deductions may be subject to penalties. See the EDD website for more

²⁷ California Labor Code § 3352(h).

²⁸ California Labor Code §132a(1).

information: <http://www.edd.ca.gov/Disability/Eligibility.htm>. See **Appendix D** for office locations and phone numbers.

Sick Days for Workers in San Francisco

Beginning February 5, 2007, all workers in San Francisco, including Domestic Workers, are entitled to sick days.²⁹ For every thirty hours worked, the worker accumulates one hour of sick time. If the domestic worker was already working for her employer on February 5, 2007, she began accumulating sick leave immediately. If she began working on February 6, 2007 or after, she must wait 90 calendar days after her first day of work before she begins accumulating sick leave. If her employer has less than 10 employees, she can accumulate up to 40 hours of sick time. She can use her accumulated sick time if she is personally ill or injured or if she needs personal medical care. She may also use her accumulated sick time to care for her child, parent, sibling, grandparent, partner, grandchild, or one pre-designated person who she is entitled to name when she begins employment. A domestic worker may not be fired or otherwise retaliated against for using her accumulated sick leave.

Unemployment Insurance

If the worker is documented, she may be eligible for unemployment insurance if she leaves her job for good cause or is fired.

Under California law, a domestic worker who works in a private home is eligible for unemployment insurance if her employer paid at least \$1,000 to the domestic workers it employed in a calendar quarter.³⁰

Undocumented workers are not eligible for unemployment insurance.³¹ See **Appendix D** for a list of Unemployment Insurance office locations.

Abuse and Harassment

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

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

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

²⁹ Sick Leave Ordinance, Administrative Code Chapter 12W.

³⁰ California Unemployment Insurance Code § 629(a).

³¹ California Unemployment Insurance Code § 2128.

What can a worker do in the case of sexual or racial harassment and abuse?

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

Discrimination

Discrimination is also a form of abuse. Discrimination is when the employer commits any of the following acts because the employee possesses one of the protected characteristics mentioned below: firing, demoting, attempting to lower her wages, remarks, language used, or pranks.

An employer may not discriminate a worker based on her: “race, color, sex, national origin, religion, pregnancy, age, disability, medical condition, marital status, sexual orientation, gender identity, weight, grooming and dress requirements.” These are the categories protected if the worker lives in the San Francisco Bay Area.

Some of these characteristics are not protected under state and federal law. Protection from discrimination has been a hard won gain of civil rights movements and continues to be a struggle particularly active in LGBT and disabled communities.

Unfortunately, current discrimination law only protects people in a workplace of 5 or more employees,³² so many domestic workers are not protected, despite their vulnerability to discrimination. See **Appendix D** for a list of organizations and government offices that can help you with discrimination claims.

CDWR Survey results show that over a 2 month period, twenty percent (20%) of domestic workers were insulted or threatened on the job. Nine percent (9%) of workers reported they were sexually harassed and 9% experienced violence in the previous two months.

In addition, a significant number of workers did not respond to survey questions about workplace abuse, a far higher non-response rate than the rest of the survey that indicates a high level of discomfort with the questions (corroborated with survey collectors). To correctly interpret the statistics above, it is important to keep in mind that abuse of women is culturally normalized, to such an extent that women may not identify experiences such as verbal harassment as abuse. Women who experience abuse are not likely to talk about it with family members, much less with strangers on a survey.

Domestic workers are in an especially vulnerable position, often the only worker at their workplaces, and dependent on their employers for the income to support their families. Thus, they are more likely to put up with abuse to keep their jobs.

³² Cal. Gov't Code § 12926(d).



II. Immigration Issues Related to Employment

The California Labor Code and Wage Orders apply to both documented and undocumented workers. Undocumented workers are also covered by the Fair Labor Standards Act, and are entitled to full compensation for work already performed.³³

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

- Advise the worker to never volunteer information about her immigration status to anyone.
- Tell her she has a right to remain silent and speak to a lawyer if anyone stops her and asks her for immigration papers.

Reporting workers to immigration authorities is considered unlawful retaliation under the Fair Labor Standards Act.³⁴

Employer's Threats to Report a Worker to ICE

- It is illegal retaliation for employers to threaten to report a worker to the ICE for trying to enforce her labor rights. (A number of labor and employment laws have anti-retaliation provisions.)
- ICE maintains an internal policy called an 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.

Work authorization

Employers do not need to know a worker's immigration status. An employer only needs to know whether a worker is authorized to work in this country. Federal immigration law makes it unlawful to employ someone knowing that person does not have work authorization.³⁵

Work Authorization Verification

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

³³ See, e.g., *Singh v. Jutla & C.D. & R's Oil, Inc.*, 214 F. Supp. 2d 1056, 1058-59 (N.D. Cal. 2002); *Flores v. Albertsons, Inc.*, 2002 U.S. Dist. LEXIS 6171, No. 100515, 2002 WL 1163623, at *5 (C.D. Cal. Apr. 9, 2002).

³⁴ See, e.g., *Centeno-Bernuy v. Perry*, 302 F. Supp. 2d 128 (W.D.N.Y. 2003); *Singh v. Jutla & C.D. & R's Oil, Inc.*, 214 F. Supp. 2d 1056 (N.D. Cal. 2002).

³⁵ 8 USC 1324a(a)(1)(A).

Exception to the work authorization verification requirement

There are some very common situations in which work authorization verification is not required; that is for:

1. Persons employed for casual domestic work in a private home on “sporadic, irregular, or intermittent” basis.³⁶
2. Persons who are independent contractors.
3. Persons who provide labor to you who are employed by a contractor providing contract services (e.g., employee leasing).

It is important to note that while a person who contracts with an independent contractor is not required to complete an I-9, the person cannot contract with an independent contractor he or she knows to be undocumented.³⁷

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

- a. **Casual workers who provide domestic service in a private home that is “sporadic, irregular, or intermittent”**
 - “Sporadic, irregular, or intermittent”: If the work is regular, will not be exempt. For example, a full-time maid is covered, but an occasional baby-sitter is not.
 - “Domestic service”: Has not been consistently interpreted, with some Administrative Law Judges interpreting the regulation to exempt only in-house domestic labor, but others defining the exception more broadly to include handymen, gardeners, and furnace-men.
 - Ninth Circuit test of casual domestic work based on nature of the work: regular maintenance and upkeep work that might be performed by a family member of the house is considered “casual,” but construction or landscaping work around the home is not.³⁸
- b. **The following factors indicate independent contractor status for the purposes of immigration law³⁹:**
 - Supplies the tools or materials
 - 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.

³⁶ 274 CFR § 274a.1(h).

³⁷ 8 USC § 1324a (a)(4).

³⁸ *Jenkins v. INS*, 108 F.3d 195 (9th Cir. 1997). The court in the *Jenkins* case found that workers hired to do landscaping work near the employer’s personal residence did not fall in exception for casual domestic work.

³⁹ 8 CFR § 274a.1(j).

Filling out the I-9 Form

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

For more information, see “Employer Work Authorization Verification Fact Sheet,” available at the National Employment Law Project website: <http://www.nelp.org/page/-/Justice/Employer%20Work%20Authorization%20Verification.pdf>.

False Promises of a Green Card

Employers may offer to take care of a worker’s immigration matters, but this should be scrutinized by an immigration attorney. (The community groups listed in **Appendix G** may be able to help her find a reliable immigration attorney.) Although it is possible for an employer to sponsor an employee for a green card, it is a long process and there are no guarantees it will be successful. In order to apply for permanent labor certification, an employer has to first make an application to the US Department of Labor. (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. Additionally, permanent labor certification is only available for full-time, permanent jobs – which excludes many domestic worker positions.

As part of the application, the worker is required to sign the Application for Permanent Labor Certification saying that she intends to accept the job with the employer if the petition is approved. If she has not signed such a form, her employer has not begun the process of sponsoring her. Even if the employment certification is granted, her employer still has to file another form, the Immigrant Petition for Alien Worker (I-140).

Green cards are not easy to get, so an employee should be skeptical of anyone who promises to help her get one quickly and easily. To follow up on an employer’s promises, a worker should request copies of the labor certification application and any other correspondence with the Department of Labor.

A-3 or G-5 Visas

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

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

- A guarantee that the worker will be paid the federal or state minimum wage or prevailing wage, whichever is greater.
- A promise by the worker not to accept any other employment.
- 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.⁴⁰

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 where the worker's employer works. Did the worker sign an employment contract? What did it say? A worker who feels that her rights are being violated should consult one of the community organizations listed in **Appendix D**.

Some individual cities and counties in California have passed Sanctuary Ordinances that may provide additional limitations around immigration enforcement (See Appendix H for the San Francisco Ordinance). Anti-immigrant policy initiatives that seek to include other, non-ICE, officials in immigration enforcement jeopardize the rights of undocumented immigrants who will have reason to fear calling on labor or public safety officials to help defend their rights because of the risk it may pose. If policy like this is passed at the national level it will make it very hard to enforce local sanctuary ordinances. Every effort should be made to defeat these policy initiatives.

⁴⁰ See the U.S. Department of State Foreign Affairs Manual Volume 9 § 41.21 N.2 on the State Department website at <http://www.state.gov/m/a/dir/regs/fam/>

III. Assisting Domestic Workers in their Search for Employment

Domestic workers commonly find jobs as nannies, housekeepers, and caregivers through employment agencies, employer referrals, word of mouth and also through worker associations. Worker associations provide spaces for workers to get training, information, access to resources and job placement. Domestic workers who find a job through a worker center or community organization are four times more likely to have received trainings on job safety and how to prevent work-related injury and three times less likely to experience workplace injury or illness than workers who find a job through an employment agency, or referrals from employers or friends or relatives, according to a survey of Bay Area domestic workers.⁴¹

Domestic Worker Associations

SAN FRANCISCO BAY AREA

Caring Hands Worker Association/ Manos Cariñosas

(415) 626-2128

3543 18th Street

San Francisco, CA 94110

Specializes in childcare, housecleaning and home health care.

LANGUAGES: Predominately Spanish, also English

San Francisco Day Labor Program/ Colectiva de Mujeres of La Raza Centro Legal

(415) 553-3406

3358 Cesar Chavez St.

San Francisco, CA 94110

Specializes in cleaning, childcare, eldercare and event services

LANGUAGES: Predominately Spanish, also English

Day Worker Center of Mountain View

(650) 903-4102

748 Mercy St.

Mountain View, CA 94041

LANGUAGES: Predominately Spanish, also English

Women's Action to Gain Economic Security (WAGES)

(510) 532-5465

2647 International Blvd

Oakland CA 94601

Specializes in eco-friendly housecleaning

LANGUAGES: English and Spanish

⁴¹ Thirty-seven percent (37%) of workers who found their job through a worker center or community organization received job safety training, while only nine percent (9%) of workers who found their job through an agency, employer, friend or relative did. Twenty-two percent (22%) of domestic workers who found their job through agency, employer, friend or relative suffered workplace injury or illness, compared to seven percent (7%) of workers who found their job through a worker center or community organization.

Bananas
(510) 658-0381
5232 Claremont Ave
Oakland, CA 94618
Specializes in childcare
LANGUAGES: English and Spanish

SONOMA COUNTY

Centro Laboral de Graton
(707) 829-1864
2981 Bowen Street
Graton, CA 95444
www.gratondaylabor.org
Specializes in housecleaning and food preparation

LOS ANGELES AREA

IDEPSCA (Institute of Popular Education of Southern California)
Domestic Workers Association
500 North Lake Ave.
Los Angeles, CA 91101
Ph: (626) 440-0125
Project Manager: Porfiria Gaona
Email: mujeres@idepsca.org
Specializes in house cleaning
LANGUAGES: Predominantly Spanish, also English

Pilipino Workers' Center
153 Glendale Boulevard
Los Angeles, CA 90026
Phone (213) 250-4337
Email: pilworker@pwcsc.org
Office hours: 11am-9pm
Specializes in homecare
Languages: English and Tagalog

Tips for Workers Responding To an Ad

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

Things to remind the worker to do when responding to an ad:

- Cut out and save the ad.
- Tell someone where the interview is, when she is going and when she expects to come back. It might be good to get someone to go with her to the interview.
- Bring a notebook and pen to take notes.
- Consider asking the employer to pay for travel expenses to and from the interview.

Who is the Employer?

The Industrial Welfare Commission (IWC) Wage Orders define an employer as “any person ... who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person.”

Joint employers

An agency will be responsible for a worker’s wages if it is considered to be a joint-employer of the worker.

There is no one factor that definitively establishes whether an entity is a “joint-employer.” Courts look at the “economic reality” of the employment relationship to decide whether an entity is a joint-employer. Courts consider a number of factors including, but not limited to whether the entity:

- had the power to hire and fire employees;
- supervised and controlled employee work schedules or employment conditions;
- determined the rate and method of payment; and
- maintained employment records.

Other important factors include the relationship between the two potential employers including but not limited to whether:

- The employee performs work that simultaneously benefits two or more employers, or works for two or more employers at different times during the workweek;
- An arrangement exists between the employers to share the employee's services, as, for example, to interchange employees;
- One employer acts in the interest of the other employer(s) in relation to the employee, either directly or indirectly.

The employers are not completely disassociated and may be deemed to share control of an employee, either directly or indirectly, because one employer controls, is controlled by, or is under common control with, the other employer.

Establishing case law or a provision in the labor code in which agencies and clients are considered joint employers would provide workers the strongest labor protections.

The Interview with the Employer

The way the employer treats a worker during the interview can give her an idea of the type of employer they will be. In order to protect herself, it is important to clarify as many things as possible about the nature of the job and working conditions in advance, and for the worker to write down or tell someone about the employer's responses to her questions.

Personal Questions during Interviews

Federal discrimination laws (Title VII) apply to employers with 15 or more employees, and the California Fair Employment and Housing Act (FEHA) applies to employers with five or more employees. Therefore, no protection against discrimination exists for the majority of domestic workers, who normally work alone or in pairs. In response to personal questions, workers can ask the employer whether the question is related to a job requirement.

Payment Issues

Domestic workers are commonly paid in cash. In the San Francisco Bay Area, domestic workers reported that over half of employers pay in cash (58%).⁴² 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 (undocumented workers are not able to receive Social Security or Unemployment benefits). With paychecks, the employer creates a record of pay, which could be useful in the event of a wage dispute.

It is helpful to compare the salary the worker is offered with the salaries of other people who do the same work. For domestic workers in the San Francisco Bay Area working as nannies, housekeepers and personal attendants, the average weekly wage was \$223.33 and the average hourly wage was \$10.69 in 2004. However 93% of workers reported that their earnings are not enough to cover basic living expenses. Also, the range of wages paid to domestic workers was significant: from a low of \$1.00 per hour to a high of \$37.50 per hour. If the worker feels confident, she can always ask for a higher wage.

See **Appendix I: Sample Interview Questions for Workers** for more advice on the interviews with potential employers.

⁴² CDWR Survey, 2006.

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

attention.

Description of persons requiring constant attention:
_____ 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.

What a Worker Should Get in Writing

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

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

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

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

Only ten percent of domestic workers surveyed in the San Francisco Bay Area reported having a written contract with their employer and only eight percent had a verbal agreement. Many workers feel uncomfortable negotiating contracts. However, with support this fear can be overcome. See Appendix J for a sample contract . After reviewing the sample contract with the worker, role-playing the contract negotiation is good practice. POWER (People Organized to Win Employment Rights) has an extensive negotiation training curriculum they developed in in 2005-2006 for their membership of nannies. Contact them at: www.fairwork.org for ideas on providing this type of much needed training.

Oral employment contracts are valid in California. However, pay close attention to statute of limitations issues when the contract is oral. The statute of limitations for wages that are agreed to by an oral contract is 2 years whereas the statute of limitation for wages agreed to by a written contract is 4 years. Also note that the statute of limitations for a statutory claim (a right afforded by law like the right to minimum wage payment or overtime) is 3 years regardless whether the contract was oral or written.

Appendix A: Minimum Wage Rates and Deduction Rates

Minimum Wage Rates: 2004—2008

	2004	2005	2006	2007	2008	2009
California	\$6.75	\$6.75	\$6.75	\$7.50	\$8.00	\$8.00
San Francisco	\$8.20(nonprofits and small businesses exempt)	\$8.62 (\$7.75 for nonprofits and small businesses)	\$8.82	\$9.14	\$9.36	\$9.79

Deductions for Food & Lodging: 2002—2008

Lodging:	From 1/1/02 – 12/31/06	Effective January 1, 2007	Effective January 1, 2008
Room occupied alone	31.75	\$35.27 per week	\$37.63 per week
Room shared	26.20	\$29.11 per week	\$31.06 per week
Apartment – 2/3 of the ordinary value, and never more than	\$381.20 per month	\$423.51 per month	\$451.89 per month
Where a couple are both employed by the employer, two-thirds of the ordinary rental value, and never more than	\$563.90 per month	\$626.49 per month	\$668.46 per month
MEALS:			
Breakfast	\$2.45	\$2.72	\$2.90
Lunch	\$3.35	\$3.72	\$3.97
Dinner	\$4.50	\$5.00	\$5.34

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

How Do I Protect Myself During Employment?

- Know your employer's full name, address and phone number.
- Always keep copies of original documents with a trusted third person.
- If you give your documents to your employer, you have a right to have them returned. It is illegal for your employer to keep them from you.
- Make sure that you always have your passport and other official documents, such as bank records, in your possession. Do not give them to your employer to keep for you. If your employer insists on keeping them for you, give him/her a photocopy, not the original.

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. 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. a bank account and/or sending your money abroad.

Appendix D: Government and Community Resources

Wage/Hour

Attorney General's Office

1-800-952-5225 (Toll-free in CA) or (916) 322-3360
Attorney General's Office
California Department of Justice
Attn: Public Inquiry Unit
P.O. Box 944255

California State "Labor Commissioner" (Department of Industrial Relations, Division of Labor Standards Enforcement, or DLSE)

www.dir.ca.gov/dlse

This state agency enforces state minimum wage and overtime laws. Most individual claims for unpaid wages are filed with this agency. It accepts claims regarding unpaid regular wages, overtime, vacation or bonuses (including improper exemption from overtime or classification as contractor); minimum wage violations; improper deduction or withholding practices; child labor; and other complaints regarding hours and conditions.

LANGUAGES: English, Spanish, Cantonese

OAKLAND

(510) 622-3273
1515 Clay St., Suite 801
Oakland, CA 94612

SAN FRANCISCO

(415) 703-5300
455 Golden Gate Ave., 10th Floor
San Francisco, CA 94102

SAN JOSE

(408) 277-1266
100 Paseo de San Antonio, Suite 120
San Jose, CA 95113

LOS ANGELES

(213)897-5960
320 West 4th St., Suite 450
Los Angeles, CA 90013

LONG BEACH

(562)499-6366
300 Oceangate, Suite 302
Long Beach, CA 90802

VAN NUYS

(818)901-5315
6150 Van Nuys Blvd., Suite 206
Van Nuys, CA 91401

SAN BERNARDINO

(909)383-4334
464 West 4th Street, Suite 348
San Bernardino, CA 92401

San Francisco Office of Labor Standards Enforcement

This agency enforces the San Francisco Minimum Wage Ordinance; the San Francisco Health Care Security Ordinance; and the San Francisco Paid Sick Leave Ordinance.

(415) 554-6292
City Hall, Room 430
1 Dr Carlton B. Goodlett Place
San Francisco, CA 94102

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

www.dol.gov/esa/whd

This agency enforces federal minimum wage and overtime laws; the Family and Medical Leave Act; child labor; record-keeping violations; retaliation for firing Department of Labor claim; improper deductions; and other complaints regarding hours and conditions. Work must involve "interstate commerce."

OAKLAND

(510) 637-2949

1301 Clay St., Suite 1080-N

San Jose, CA 94612

SAN FRANCISCO

(415) 744-5590

455 Market St., Suite 800

San Francisco, CA 94105

SAN JOSE

60 S. Market St., Suite 420

San Jose, CA 95113

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

California Department of Industrial Relations Division of Workers' Compensation

This agency monitors the administration of workers' compensation claims, and assists in resolving disputes that arise in connection with claims for workers' compensation benefits.

SAN FRANCISCO

455 Golden Gate Avenue 2nd floor

San Francisco, CA 94102

(415) 703-5011

LOS ANGELES

320 W. 4th Street 9th floor

Los Angeles, CA 90013

(213) 576-7335

Workers' Rights Organizations

SAN FRANCISCO

Instituto Laboral de la Raza

(415) 431-7522

2947 16th St.

San Francisco, CA 94117

Employment Law Center: (415) 864-8208

Health & Safety Training Resources

Bay Area

Cleaning with Safety and Dignity (Limpieza con Seguridad y Dignidad)

Colectiva de Mujeres of the San Francisco Day Labor Program, La Raza Centro Legal
contact Jill Shenker for schedule, 415-553-3406, jill@lrcl.org
Curriculum from this program available for replication.

Manos Cariñosas – Caring Hands Worker Association

Mujeres Unidas y Activas
Carmen Denis
3543 18th Street, #23
San Francisco, CA 94110
(415) 621-8140
Carmen@mujeresunidas.net

WAGES (Women’s Action to Gain Economic Security)

<http://www.wagescooperatives.org/index.html>

WAGES promotes the social and economic empowerment of low-income women through cooperative business ownership. They develop eco-friendly housecleaning companies that provide stable, safe and dignified work for their worker-owners while protecting the environment in which we live. They have extensive information regarding environmentally-friendly non-toxic cleaning supplies and can provide trainings.

Labor Occupational Health Project

UC Berkeley
Can be contracted to provide trainings around the state
Contact Suzanne Teran
(510) 643-2423
steran@uclink4.berkeley.edu

Southern California

UCLA Labor Occupational Safety and Health (LOSH) Program

11000 Kinross Avenue, Suite 200
Box 951478
Los Angeles, CA 90095-1478
(310) 794-5964 general line
(310) 794-6403 fax
[Www.losh.ucla.org](http://www.losh.ucla.org)

Resources for less-toxic cleaning:

In English

<http://www.newdream.org/consumer/cleaners.php>

In English, Vietnamese, Spanish, Cambodian, Chinese)

<http://www.seattle.gov/util/Services/Garbage>

[Hazardous Waste Disposal & Reduction/Choose Safe Cleaning Products
SPU03_001956.asp](http://www.seattle.gov/util/Services/Garbage/Hazardous%20Waste%20Disposal%20&%20Reduction/Choose%20Safe%20Cleaning%20Products%20SPU03_001956.asp)

In Spanish:

http://www.ecologistasenaccion.org/article.php3?id_article=292

Disability Insurance Office Locations and Phone Numbers

Southern California

LOS ANGELES

888 South Figueroa Street, Suite 200

Los Angeles, CA 90017-5449

NORTH LOS ANGELES

15400 Sherman Way, Rm 500

Van Nuys, CA 91406

LONG BEACH

4300 Long Beach, Suite 600

Long Beach, CA 90807-2011

Bay Area

SAN FRANCISCO

745 Franklin Street, Suite 300

San Francisco, CA 94102

OAKLAND

1600 Harbor Bay Pkwy, Suite 120

Alameda, CA 94502

Disability Insurance Statewide Toll-Free Numbers

English (Nationwide Toll Free) 1-800-480-3287 S

Español (La llamada en español es gratuita a nivel nacional) 1-866-658-8846

Unemployment Insurance – Employment Development Department

ENGLISH

Filing Claims/Check Information/General Information: (800) 300-5616

ESPAÑOL

Presentación de Solicitudes/ Información sobre su Cheque/ Información General: (800) 326-8937

Website: http://www.edd.ca.gov/Unemployment/Filing_a_Claim.htm

Discrimination

Department of Fair Employment and Housing

1-800-884-1684

<http://www.dfeh.ca.gov/complaint.asp>

Equal Employment Opportunity Commission

1-800-669-4000

http://www.eeoc.gov/charge/overview_charge_filing.html

Income Taxes

San Francisco Bar Association Volunteer Legal Services Program

(415) 575-3130

1360 Mission Street, 2nd floor

Clinic, 1-4 p.m. every Tuesday

Low income only

LANGUAGES: Spanish and English

IRS

(800) 829-1040 (for assistance in Spanish, press 8)

Fed tax: www.irs.gov

State tax: www.ftb.ca.gov

VITA: Volunteer Income Tax Assistance Program

Free help for low-income persons (less than \$35,000 a year).

(415) 522- 4061 (leave a message and they will call you back)

Or visit office, 8:00 a.m. – 4:30 p.m., Monday-Friday

450 Golden Gate Ave.

San Francisco, CA 94102

Must bring photo identification

California Coalition for Household Worker Rights

Southern California:

Pilipino Workers' Center:

153 Glendale Boulevard, 2nd Floor

Los Angeles, California 90026

(213) 250-4337

pilworker@pwcsc.org

www.pwcsc.org

CHIRLA (Coalition for Human Immigrant Rights of Los Angeles)

2533 W. Third Street, Suite 101

Los Angeles, CA 90057

213.353.1333
agarcia@chirla.org
www.chirla.org

Northern California

Mujeres Unidas y Activas,
3543 18th Street, #23
San Francisco, CA 94110
(415) 621-8140 x301
andreacristina@mujeresunidas.net
www.mujeresunidas.net

SF Day Labor Program Colectiva de Mujeres of La Raza Centro Legal,
474 Valencia St., Ste 295
San Francisco, CA 94103
(415)553-3406
jill@lrcl.org
www.lrcl.org

POWER (People Organized to Win Employment Rights)
(415)864-8372
beatriz@peopleorganized.org
www.fairwork.org

Filipinos for Affirmative Action
310 8th St., Ste 306
Oakland, CA 94607
(510) 465-9876 x301
kjoaquin@gmail.com
<http://www.filipinos4action.org/>

Appendix E: Statutes of Limitations

California Law: Labor Commission Claims

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.

The statute of limitations for any claim based on a statutory requirement that does not involve a penalty, such as minimum wage, overtime, and reimbursed expenses, is 3 years. Code Civ Pro § 338. The statute of limitations for violations of a statute that amount to a penalty or forfeiture is 1 year. Code Civ Pro § 340. Under California law, meal and rest period compensation is considered a statutory wage, not a penalty, so the statute of limitations on meal and rest penalties is three years.⁴³

Unpaid wage claims based on contractual, rather than statutory, obligations are subject to different statute of limitations. The statute of limitations for terms that agreed to by oral contract is 2 years; for terms specified by a written contract, the statute of limitations is 4 years. Code Civ Pro § 337, 339.

Note that a civil action for unpaid wages filed as an unfair business practice under Business and Professional Code §17200 is subject to a 4 year statute of limitations. Thus, a civil action may still be available even if the time to file with the Labor Commissioner has passed.

Statute of Limitations for claims under the Fair Labor Standards Act

Actions for non-willful violations of FLSA must be commenced within 2 years after the violation occurs. Actions for willful violations of FLSA must be commenced within 3 years after they occur.

⁴³ *Murphy v. Kenneth Cole Productions, Inc.*, 40 Cal. 4th 1094, 1099 (Cal. 2007).

Appendix F: Sample Demand Letter

Address

Dear _____:

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

WAGES DUE

According to our client, you employed her at various rates of _____ during the period of _____.

_____ was never paid overtime for her work. California Labor Code requires, as of January 2000, that all hours worked over 8 in one day and 40 in one week must be paid at one and one-half (1.5) the regular rate of pay. According to our calculations, you therefore owe _____ \$_____ in unpaid wages for the period _____.

FAILURE TO PROVIDE MEAL OR REST BREAKS

California Wage Orders provide that employers must permit non-exempt employees to take a ten-minute rest period for every four hours worked or for every major fraction of four hours worked in a day. The ten-minute break period is compensable time. If an employer fails to authorize a non-exempt employee to take one or more mandated rest breaks during a workday, the employer must pay the employee one additional hour of pay as a penalty. Accordingly, you owe _____ 1 hours wages for each day during the last one year that she worked for you.

California Wage Orders provide that employers must provide non-exempt employees a thirty-minute rest period for every five hours worked in a day. If an employer fails to provide a non-exempt employee the mandated meal breaks during a workday, the employer must pay the employee one additional hour of pay as a penalty. Accordingly, you owe _____ 1 hours wages for each day during the last one year that she worked for you.

WAITING TIME PENALTIES

California Labor Code also requires that an employee must be paid all wages due on the day she is discharged. If an employer fails to do so, he/she will be subject to waiting time penalties of up to 30 days' wages, in addition to all wages due. Accordingly, our client has the legal right to pursue additional damages in the amount of _____ in waiting time penalties.

CONCLUSION

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

If we do not receive payment within _____ days , _____ will file an action against you with the Office of the State Labor Commission and will pursue ALL BREAK TIME PENALTIES and ALL WAITING TIME PENALTIES (as explained above).

Sincerely,

Appendix 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.

CHAPTER 12H

IMMIGRATION STATUS

- Sec. 12H.1. City and County of Refuge.
- Sec. 12H.2. Use of City Funds Prohibited.
- Sec. 12H.2-1. Chapter Provisions Inapplicable to Persons Convicted of Certain Crimes.
- Sec. 12H.3. Clerk of Board to Transmit Copies of This Chapter; Informing City Employees.
- Sec. 12H.4. Enforcement.
- Sec. 12H.5. City Undertaking Limited to Promotion of General Welfare.
- Sec. 12H.6. Severability.

SEC. 12H.1. CITY AND COUNTY OF REFUGE. It is hereby affirmed that the City and County of San Francisco is a City and County of Refuge. (Added by Ord. 375-89, App. 10/24/89)

SEC. 12H.2. USE OF CITY FUNDS PROHIBITED. No department, agency, commission, officer or employee of the City and County of San Francisco shall use any City funds or resources to assist in the enforcement of federal immigration law or to gather or disseminate information regarding the immigration status of individuals in the City and County of San Francisco unless such assistance is required by federal or state statute, regulation or court decision. The prohibition set forth in this Chapter shall include, but shall not be limited to:

(a) Assisting or cooperating, in one's official capacity, with any Immigration and Naturalization Service (INS) investigation, detention, or arrest procedures, public or clandestine, relating to alleged violations of the civil provisions of the federal immigration law.

(b) Assisting or cooperating, in one's official capacity, with any investigation, surveillance or gathering of information conducted by foreign governments, except for cooperation related to an alleged violation of city and county, state or federal criminal laws.

(c) Requesting information about, or disseminating information regarding, the immigration status of any individual, or conditioning the provision of services or benefits by the City and County of San Francisco upon immigration status, except as required by federal or state statute or regulation, City and County public assistance criteria, or court decision.

(d) Including on any application, questionnaire or interview form used in relation to benefits, services or opportunities provided by the City and County of San Francisco any question regarding immigration status other than those required by federal or state statute, regulation or court decision. Any such questions existing or being used by the City and County at the time this Chapter is adopted shall be deleted within sixty days of the adoption of this Chapter. (Added by Ord. 375-89, App. 10/24/89)

SEC. 12H.2-1. CHAPTER PROVISIONS INAPPLICABLE TO PERSONS CONVICTED OF CERTAIN CRIMES. Nothing in this Chapter shall prohibit, or be construed as prohibiting, a law enforcement officer from identifying and reporting any person pursuant to state or federal law or regulation who is in custody after being booked for the alleged commission of a felony and is suspected of violating the civil provisions of the immigration laws. In addition, nothing in this Chapter shall preclude any City and County department, agency, commission, officer or employee from (a) reporting information to the INS regarding an individual who has been booked at any county jail facility, and who has previously been convicted of a felony committed in violation of the laws of the State of California, which is still considered a felony under state law; (b) cooperating with an INS request for information regarding an individual who has been convicted of a felony committed in violation of the laws of the State of California, which is still considered a felony under state law; or (c) reporting information as required by federal or state statute, regulation or court decision, regarding an individual who has been convicted of a felony committed in violation of the laws of the State of California, which is still considered a felony under state law. For purposes of this Section, an individual has been "convicted" of a felony when: (a) there has been a conviction by a court of competent jurisdiction; and (b) all direct appeal rights have been exhausted or waived; or (c) the appeal period has lapsed.

However, no officer, employee or law enforcement agency of the City and County of San Francisco shall stop, question, arrest or detain any individual solely because of the individual's national origin or immigration status. In addition, in deciding whether to report an individual to the INS under the circumstances described in this Section, an officer, employee or law enforcement agency of the City and County of San Francisco shall not discriminate among individuals on the basis of their ability to speak English or perceived or actual national origin.

This Section shall not apply in cases where an individual is arrested and/or convicted for failing to obey a lawful order of a police officer during a public assembly or for failing to disperse after a police officer has declared an assembly to be unlawful and has ordered dispersal.

Nothing herein shall be construed or implemented so as to discourage any person, regardless of immigration status, from reporting criminal activity to law enforcement agencies. (Added by Ord. 282-92, App. 9/4/92; amended by Ord. 238-93, App. 8/4/93)

SEC. 12H.3. CLERK OF BOARD TO TRANSMIT COPIES OF THIS CHAPTER; INFORMING CITY EMPLOYEES. The Clerk of the Board of Supervisors shall send copies of this Chapter, including any future amendments thereto that may be made, to every department, agency and commission of the City and County of San Francisco, to California's United States Senators, and to the California Congressional delegation, the Commissioner of the INS, the United States Attorney General, and the Secretary of State and the President of the United States. Each appointing officer of the City and County of San Francisco shall inform all employees under her or his jurisdiction of the prohibitions in this ordinance, the duty of all of her or his employees to comply with the prohibitions in this ordinance, and that employees who fail to comply with the prohibitions of the ordinance shall be subject to appropriate disciplinary action. Each city and county employee shall be given a

written directive with instructions for implementing the provisions of this Chapter. (Added by Ord. 375-89, App. 10/24/89)

SEC. 12H.4. ENFORCEMENT. The Human Rights Commission shall review the compliance of the City and County departments, agencies, commissions and employees with the mandates of this ordinance in particular instances in which there is question of noncompliance or when a complaint alleging noncompliance has been lodged. (Added by Ord. 375-89, App. 10/24/89)

SEC. 12H.5. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL WELFARE. In undertaking the adoption and enforcement of this Chapter, the City is assuming an undertaking only to promote the general welfare. This Chapter is not intended to create any new rights for breach of which the City is liable in money damages to any person who claims that such breach proximately caused injury. This section shall not be construed to limit or proscribe any other existing rights or remedies possessed by such person. (Added by Ord. 375-89, App. 10/24/89)

SEC. 12H.6. SEVERABILITY. If any part of this ordinance, or the application thereof, is held to be invalid, the remainder of this ordinance shall not be affected thereby, and this ordinance shall otherwise continue in full force and effect. To this end, the provisions of this ordinance, and each of them, are severable. (Added by Ord. 375-89, App. 10/24/89)

Appendix I: Sample Interview Questions for Workers

1) Interview Questions for Your New Employer

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

If you will live-in

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

Things to Bring to the interview

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

Warning Signals

- The employer will not let a friend come with you to the interview.
- The employer avoids your questions.
- The employer increases the job 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 a worker signs such a document, her employer must pay the minimum wage and overtime compensation.

2) Important Questions about Agencies:

- Does the agency send someone to go with you to the interview with the employer?
- Does the agency pay for transportation to the interview with the employer?
- Does the employment agency do any background check on employers or take any steps to make sure that the household is safe?
- Does the agency provide you with a written job description, showing the name and address of the employer, wages, hours of work, the kinds of services they will perform, and the fees the agency will charge?
- The agency will have a service agreement with the employer. Ask to see it.
- Does the employment agency have a list of comments by past employees giving the reasons they left the employer?
- Is there a contract that the agency wants you to sign? What does signing it mean?
- Does the employer pay you directly, or does the agency pay you?
- How long does a worker have to remain with an employer before the agency gets its full commission?
- Does the employment agency inform employers about their obligation to pay into Social Security, workers' compensation, and unemployment insurance?
- Does the employment agency have a complaint system for workers whose employers are abusive (e.g. not paying overtime or not allowing a worker a day of rest)?
- Will the agency help such workers find a new placement?

Be on the lookout for:

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

3) How to Respond to Employer Questions and Statements

- **The employer says: *Your first week's salary will be held as a "security deposit."***
 ⇒ I have a legal right to be paid twice every calendar month. (Cal. Labor Code § 204)
- ***I don't have to pay you minimum wage. What are you going to do if I don't pay minimum wage?***
 ⇒ Whether I am documented or not, I have a right to a minimum wage. Even if I signed something that said I agreed to less than minimum wage, you still have to pay me minimum wage. A contract to pay someone less than minimum wage is illegal. If you do not pay me minimum wage, I can file a

complaint with the Department of Labor.⁴⁴

- ***You don't get overtime here.***
 - ⇒ If I do not live with my employer, I have a right to 1 ½ times my hourly wage for every hour I work over 40 hours in one week. Even if I do live with my employer, I am entitled to be paid my regular hourly wage for every hour that I work. I have this right whether I am documented or undocumented.

- ***You have to do everything I say. There are no laws to protect you.***
 - ⇒ Whether I am documented or undocumented, I have the right to be free from abusive behavior, including unwanted physical or sexual contact. As a human being, I have a right to be treated with respect and dignity. I am protected by law from abuse and harassment.

- ***No days off.***
 - ⇒ Standard practice among employers is to provide employees with two days off per week. 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.

⁴⁴ Undocumented workers are covered by the Fair Labor Standards Act, and are entitled to full compensation for work already performed. See, e.g., *Singh v. Jutla & C.D. & R's Oil, Inc.*, 214 F. Supp.2d 1056, 1058-59 (N.D. Cal. 2002); *Flores v. Albertsons, Inc.*, 2002 U.S. Dist. LEXIS 6171, No. 100515, 2002 WL 1163623, at *5 (C.D. Cal. Apr. 9, 2002).

Appendix J: Standard Contract

**CONTRATO ENTRE EL EMPLEADOR Y LA TRABAJADORA
EMPLOYER/WORKER CONTRACT**

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

Nombre completo del empleador

_____ (nombre completo del empleador/employer's full name) y/and

_____ (nombre completo de la trabajadora/worker's full name).

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

***De acuerdo al codigo laboral de California el empleador tiene la responsabilidad de pagarle
a la trabajadora todo el sueldo y beneficios que se le deba el ultimo dia del trabajo de ella.

***Under California state labor code, the employer is responsible for paying the worker all
salary and benefits which are owed on the last day of work.

El trabajo se llevara a cabo en/the work will be done at:

_____ (direccion/address).

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

lunes/Monday _____ jueves/Thursday _____

martes/Tuesday _____ viernes/Friday _____

miercoles/Wednesday _____ sabado/Saturday _____

domingo/Sunday _____

Notas acerca del horario/Work schedule notes:

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

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

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

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

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

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

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

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

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

7. El empleador le dara los siguientes beneficios de enfermedad a la trabajadora (por ejemplo dias pagados de enfermedad) cada mes/*The employer offers the worker the following sick days benefits (for example, paid sick days) each month:*

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

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

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

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

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

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

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

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

firma del empleador/*employer's signature*

fecha/*date*

firma de la trabajadora/*worker's signature*

fecha/*date*

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

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

Appendix K: Sample Confirmation Letter

DATE

Dear EMPLOYEE NAME:

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

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

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

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

NELP

National Employment
Law Project