



## **Who is a domestic worker under the Domestic Workers Bill of Rights?**

You are a domestic worker if you work in another person's home:

- Caring for children or an elderly person
- Keeping house (cleaning and cooking)
- Doing other domestic jobs in the home (gardening or repairs)

If you work directly for another person – caring for their children or elderly family member, for example – this law applies to you.

However, if you do occasional baby-sitting or yard work for a person at their home, for example, this law does **not** apply to you.

## **What if I work for an agency?**

If you work for an agency, the laws that apply to you are different from those that apply to someone who works directly for a family.

If you perform companionship services – for example, if you take care of an elderly person, and do not perform additional work such as cleaning services – you are not subject to the overtime and day of rest rules under the new law. Other agency employees who perform domestic work are subject to those provisions.

If you work for an agency and perform companionship services, you cannot bring suit for harassment against the family for which you work. But if the agency has at least four employees, and you are fired or subject to other negative change in your terms of work by the agency because of your race, creed, national origin, sex, sexual orientation, disability, age, marital status, military status, arrest or conviction record, genetic characteristics, or status as a victim of domestic violence, you can bring a claim against that agency under the Human Rights Law.

As an employee of an agency, you may be entitled to the other employment benefits described in this document, such as unemployment insurance and workers' compensation.

If you work for an agency and are represented by a union, you may wish to speak to your union representative to get further information. Otherwise, you may wish to contact the appropriate agency (contact information can be found under each benefit

area in this document) to better understand whether or not you are entitled to particular benefits.

## What if I'm not a citizen of the United States?

The Domestic Workers Bill of Rights and New York State Labor Laws protect you, whether you are:

- A citizen of the United States
- A legal permanent resident
- An immigrant with other lawful status (such as temporary protected status)
- An undocumented worker

These laws cover **all** workers. Their immigration status does not matter. However, workers must have work authorization in order to receive unemployment insurance.

## Protections under Labor Law

Under New York State labor law, including the Domestic Workers Bill of Rights, your employer must:

- Pay you **at least** the minimum wage for your region. See the minimum wage schedule at [www.labor.ny.gov/minimumwage](http://www.labor.ny.gov/minimumwage).
- Pay you overtime at 1 1/2 times your basic rate of pay after 40 hours of work in a calendar week. If you live in their home, they must pay you overtime after 44 hours of work in a week
- Give you one day (24 hours) of rest per week – or, if you agree to work on that day, you must be paid at an overtime rate
- Give you **at least** three paid days off after one year of work for the same employer
- Pay you each week
- Not deduct money from your pay without your written permission, except for deductions authorized by law for your benefit, such as:
  - Income tax withholding
  - Social Security
  - Medicare
  - Health insurance and
  - Automatic savings plans
- Not take money from your wages for breakage or other such reasons.
- Give you written notification of all deductions, whether you are paid in cash, by check, or by direct deposit.
- Keep detailed payroll and time records of:
  - The hours you work
  - Your wages and
  - Any deductions from those wages

*If your employer(s) give(s) you meals and/or a place to live, they may get a specific credit toward the minimum wage they pay to you.*

If you complain to your employer or the Labor Department about a violation of these laws, your employer cannot retaliate against you. To file a complaint with the Labor Department, call 1-888-52-LABOR.

For a list of Labor Department district offices go to the [agency web site](#).

Also see more information about the Labor Department's [Division of Labor Standards](#).

## **Insurance Coverage**

You may also be covered by unemployment insurance (UI). If your employer pays a total of \$500 or more in quarterly wages, he or she must register and pay the contributions for UI coverage for you. It does not come out of your pay. This means that if you lose your job through no fault of your own, you may be eligible to receive payments to replace part of your income while you look for a new job. To find out more about UI and what it means to you, go to the Department of Labor's [Unemployment Insurance web page](#). Please note that unlike the other legal protections described here, UI is only available to workers who are legally authorized to work in the United States.

If you work at least 40 hours per week for a single employer, your employer must also provide you with [Workers' Compensation insurance](#). This insurance pays your medical expenses if you are hurt on the job. It also will replace some of your lost income. Workers Compensation is available to workers regardless of immigration status.

If you work over 40 hours a week, you are also entitled to statutory disability benefits. When you cannot work because you are injured or sick (defined to include pregnancy) as a result of something that does not occur in the course of your work, your employer must have an insurance policy that pays you up to \$170 per week for up to 26 weeks, if you cannot return to work during that period and are not receiving other compensation from your employer. The employer can charge you up to sixty cents a week for the cost of that policy.

The new law included language meant to extend such benefits to part-time domestic workers. It did not make clear, however, the period of time for which an employer had to employ such a worker before the benefits would apply. This issue is currently under review, and further guidance will be provided as soon as it is clarified by follow-up legislation or action by the Workers' Compensation Board.

## Protection under Human Rights Law

The Domestic Workers Bill of Rights now protects you from certain forms of harassment. Your employer cannot condition employment decisions on your submission to unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature; or engage in unwanted sexual advances or other sexual conduct that creates a hostile environment. Your employer also cannot harass you based on gender, race, religion or national origin; or retaliate against you if you complain about harassment. If you experience these kinds of harassment or retaliation, you can file a complaint with the New York State Division of Human Rights. Find out how at the [Division for Human Rights website](#).

## Health Insurance

Your employer is not required to provide health insurance for you or your family under the law. However, you can find out about low-cost health insurance for you and your family on the New York State [Department of Health website](#).

## Business Services for Domestic Workers

If you are in business for yourself, or if you want to start a business, the [Empire State Development Corporation](#) has two programs that may help you:

- The [Entrepreneurial Assistance Program](#) can help you start your business, prepare business plans, market your products and services, and manage your business
- The [Division of Minority and Women-Owned Businesses](#) can help you develop your business and become certified as a Minority and Women's Business Enterprise (MWBE)

## Income Tax Considerations for Domestic Workers

It is your responsibility to file any state and federal income tax returns that may be due each year. This may result in you receiving a tax refund from your federal taxes paid because of the [Earned Income Tax Credit](#).

The Earned Income Tax Credit (EITC) is a federal income tax **credit** for working people and families who have low to moderate incomes. It was passed by Congress in 1975 in part to offset the burden of social security taxes on low- to moderate-income workers and also to provide an incentive to work. When the EITC is more than the amount of taxes you owe, you will receive a tax refund if you claim and qualify for the credit.

To qualify, you must meet certain requirements and file a tax return, even if you are not required to file one. To find out more about the EITC and if you qualify, go to the [IRS website](#).

New York State and New York City also offer an Earned Income Tax Credit to taxpayers who qualify for the federal credit. The State and City credits are also refundable. More information on these credits is available on the [NYS Department of Taxation and Finance](#) web site.

## NYS Department of Labor Division of Labor Standards

The New York State Department of Labor's Division of Labor Standards enforces wage and hour laws that affect domestic workers.

Domestic workers are covered for minimum wage and overtime wages. See the minimum wage schedule at [www.labor.ny.gov/minimumwage](http://www.labor.ny.gov/minimumwage). You and your employer can agree on a higher rate of pay. If you don't live in your employer's home, you are entitled to overtime pay of 1 ½ times your regular rate of pay when you work more than 40 hours a week. If you live in your employer's home, they must pay you overtime after 44 hours of work.

When you are hired, your employer must give you a written notice of:

- The rate of pay you both have agreed on
- Your overtime rate of pay
- The regular payday

Employers must pay domestic workers each week. They can pay you in cash or by check.

Each week you must get a written statement that shows:

- The number of hours you worked
- Your gross pay (total before any deductions)
- Any deductions for taxes or other money taken out of your pay

You must agree in writing to any deductions from your pay. An employer only can take deductions authorized by law. The employer cannot charge you for breakage, supplies, and equipment. Also, your employer must keep an accurate record of your daily and weekly hours. They must provide this record to the Department of Labor if we ask for it.

Domestic workers are entitled to a day of rest (24 hours) in each calendar week. You and your employer need to agree on what day of the week you can take off. The day you take off may be the same as your day of worship, and the law encourages employers to allow this where possible, but it is not required. You can agree to work on your day off, but if you do, the employer has to pay you overtime for any hours worked that day.

If you work a shift of more than 6 hours on any day, you are entitled to at least 30 minutes free from duty for a meal period. The employer does not have to pay you for this time. If your employer gives you short (10 to 15 minute) breaks, these are considered time worked and cannot be deducted from your pay.

After working more than one year for the same employer, you are entitled to three paid days of rest. Some employers give their workers other benefits such as more than three paid vacation days, sick leave, or health insurance. If your employer does give you

these benefits, he or she must put the benefit plan (including vacation days) in writing and give you a copy.

If you believe that your employer has not been following the law, you can contact the offices of the Division of Labor standards. You may write, call or visit.

**Our address is:**

NYS Department of Labor  
Division of Labor Standards  
W. Averell Harriman State Office Campus  
Building 12  
Albany, NY 12240

**Our phone number** for Labor Standards questions is: 1-888-52-LABOR

**Our email is:** [labor.sm.ls.ask@labor.ny.gov](mailto:labor.sm.ls.ask@labor.ny.gov)

**To find a local office:**

Visit the [Department of Labor website](#).

## **New York State Human Rights Law Employment Rights of Domestic Workers**

As of November 29, 2010, the New York State Human Rights Law protects domestic workers from certain forms of harassment based on gender, race, religion or national origin. Also, an employer cannot retaliate against a worker if they complain about harassment. *Laws of 2010, Chapter 481*.

A person is considered a domestic worker if they work in another person's home to care for a child; serve as a companion for a sick, convalescing or elderly person; do housekeeping; or perform any other domestic service purpose. *N.Y. Labor Law § 2.16 and Human Rights Law (N.Y. Exec. Law) § 296-b*.

For other kinds of work, the Human Rights Law applies only to employers who have four or more employees. However, the Human Rights Law has special provisions barring harassment against domestic workers that apply to **all** employers of domestic workers, regardless of the number of employees they have.

### **What kinds of harassment are against the law?**

The law bars several kinds of harassment against domestic workers, both men and women. Unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature can be the subject of a claim under the Human Rights Law if any of the following occurs:

- Either explicitly or implicitly, your employer has made giving in to sexual advances or requests for sexual favors a term or condition of you keeping your job. You believe that if you object, you will be fired, and the only way to escape the harassment is to quit your job
- Your employer bases employment decisions, such as hours of work or how much you are paid, on whether or not you submit to the employer's sexual advances or other verbal or physical conduct of a sexual nature
- The unwanted advances or other sexual conduct, either purposely or in effect, interfere with your work performance by creating an intimidating, hostile, or offensive working environment

Examples of harassment forbidden by the new law can include:

- Pressure to engage in unwelcome sexual activities
- Unnecessary or inappropriate physical contact
- Sexual assault
- A pattern of sexual comments or questions or the creation of an atmosphere that taken together, constitutes harassment or abuse

An action taken based on an employee's race, gender, religion or national origin is also considered harassment under the law if it is intended to interfere with another person's work performance by creating an intimidating, hostile or offensive work environment.

Harassment of a domestic worker that constitutes a hostile work environment under the Human Rights Law can include offensive or humiliating comments or jokes about an employee's gender, race, religion or national origin.

## **Retaliation for complaining about harassment**

Under the New York State Human Rights Law, an employer cannot retaliate against a worker who complains about harassment in the workplace, or who files a complaint with the NYS Division of Human Rights. This means that an employer cannot fire an employee who complains about harassment, nor can the employer take any other negative actions against the employee because the employee filed a complaint.

## **What Human Rights Law does *not* cover**

The Human Rights Law does *not* cover domestic workers who:

- Work on only a casual basis, such as those who occasionally babysit or do other household services for a limited amount of time
- Work for a person they are related to by blood, marriage or adoption

## **How to file a complaint**

If you think that you have been:

- sexually harassed by an employer,
- harassed because of your gender, race, religion or national origin, or
- retaliated against because you complained about harassment,

you can file a complaint with the New York State Division of Human Rights.

You must file your complaint with the NYS Division of Human Rights within one year of when the harassment occurred. The harassment must have occurred on or after November 29, 2010 in order for you to be able to file a complaint.

You can also file a complaint in state court within three years of when the alleged harassment occurred. You will probably need an attorney to help with this.

The Division of Human Rights has regional offices throughout the state. You can file a complaint at the regional office nearest to your home or place of employment. For more information, please go to the web site of the [NYS Division of Human Rights](#).

## **New York State Department of Health Programs**

The programs most likely to be of help to you are the [New York State of Health Marketplace](#) and [Medicaid](#).

Medicaid is a program for those who cannot afford to pay for medical care. It provides broad coverage, including routine health care, hospitalizations, prescriptions and other services. Go to the Department of Health [Medicaid web page](#) for more information.

## **Entrepreneurial Assistance Program of the Empire State Development Corporation**

The Entrepreneurial Assistance Program is operated by the Empire State Development Corporation. It has 24 centers around New York State that help people (mostly low-income, minority or women) start and run a small business. Each Center provides business owners with a 60-hour course on the basics of starting and operating a small business. The Centers also provide one-on-one counseling about a variety of business issues, including:

- business plan development
- marketing
- financial management
- financing

In the last 3 years alone, Entrepreneurial Assistance Program Centers have helped:

- Launch 427 businesses
- Increase the sales of 733 businesses by \$31.6 million
- Create 895 new jobs
- Businesses get loans totaling \$13.6 million

For more information go to the Empire State Development Corporation [Entrepreneurial Assistance Program web page](#).

## **Division of Minority and Women's Business Enterprise Development**

The Division of Minority and Women's Business Enterprise Development:

- Reviews applications from businesses seeking state certification as a Minority and Women's Business Enterprise (MWBE)
- Maintains a directory of certified MWBEs
- Helps MWBEs develop their businesses through education and outreach

For more information go to the Empire State Development Corporation [Division of Minority & Women Business Development web page](#).