

City and County of San Francisco



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May 26, 2011

The Honorable Tom Ammiano
California State Assembly
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0013

Dear Assemblymember Ammiano:

On April 12, 2011, the San Francisco Board of Supervisors passed a resolution in support of the Domestic Work Employee Equality, Fairness, and Dignity Act of 2011 (AB 889), also known as the Domestic Workers' Bill of Rights (DWBR). In conjunction with the Board of Supervisors, we urge that you pass this critical legislation to ensure that equal rights and protections are extended to all of California's domestic workers.

Background on Domestic Workers

California's approximately 200,000 domestic workers have an essential role in contributing to the state economy. They perform the fundamental duties of the home, including child care, house cleaning and cooking, as well as caring for people with disabilities, the sick and elderly. More often than not, domestic workers are women, minorities, and undocumented immigrants. According to "Why a Domestic Workers' Bill of Rights?," a December 2010 report by Lauren D. Appelbaum of UCLA's Institute for Research on Labor and Employment:

- Of California's domestic workforce, 73 percent are foreign-born and 20 percent are white;
- In Northern California, 93 percent of domestic workers are female, 67 percent are Latina, and 73 percent were born outside of the United States; and
- Additionally, 54 percent of Northern California domestic workers are the primary income earners of the household

Unfortunately, the informal nature of the domestic labor sector and the isolation associated with performing these duties in the home has led to a number of risk factors and reported cases of trafficking, involuntary servitude, physical abuse and labor violations.

Domestic workers are particularly vulnerable to employers who may use force, threats of force, psychological manipulation, or other forms of violence and intimidation, to commit unlawful employment practices such as demanding overtime work without pay, and failing to provide sick or vacation leave. A 2006 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). In addition, the survey found that during a period of only two months, 22% of domestic workers were paid less



25 Van Ness Avenue
Suite 800
San Francisco
California 94102-6033



TEL (415) 252-2500
FAX (415) 431-5764
TDD (415) 252-2550
www.sfgov.org/site/sfhumanrights



than originally agreed upon with their employer and 16% were not paid for their work at all or paid with a bad check.¹

Moreover, race-based and sex-based discrimination, as well as insecure immigration status, further compound these vulnerabilities. According to the UCLA report, 1/5 of Northern Californian domestic workers surveyed reported having been insulted or threatened by their employers and almost 1/10 of these workers reported being sexually harassed or having experienced violence.²

In addition, the job related responsibilities of domestic workers have certain health risks. In a May 2011 Health Impact Assessment, the San Francisco Department of Public Health found that domestic workers in California experience over 4,000 work-related injuries and illnesses annually.³

California now has the opportunity to address these abuses by extending the most basic labor rights to domestic workers.

Current Legal Protections for Domestic Workers

In San Francisco, Article 33 of the Police Code provides that it is unlawful for any employer to discriminate on the basis of an employee, independent contractor or applicant for employment's actual or perceived race, color, ancestry, national origin, place of birth, sex, age, religion, creed, disability, sexual orientation, gender identity, weight or height. However, this protection is not afforded throughout California. Federal discrimination laws including, Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, as well as California's Fair Employment and Housing Act, provide protections prohibiting discrimination by employers with more than 15 or 5 employees. The reality of many domestic workers is that they are the only employee, and thus not protected by these laws. In addition, domestic workers are generally excluded from the National Labor Relations Act of 1935 and the Fair Labor Standards Act of 1938, which provides for the right to organize and the right to a federal minimum wage rate, maximum working hours, and overtime for employees of certain occupations.

Paving the way for the rest of the nation, the State of New York passed a Domestic Worker Bill of Rights on August 31, 2010. This historic piece of legislation provides that Domestic Workers have the right to overtime pay at time-and-a-half after 40 hours of work in a week, or 44 hours for workers who live in their employer's home, a day of rest (24 hours) every 7 days, or overtime pay if they agree to work on that day, 3 paid days of rest each year after one year of work for the same employer, and protection under New York State Human Rights Laws.

New York's Domestic Worker Bill of Rights now serves as a model for California. A broad based coalition of organizations across the state is advocating that domestic workers have the same basic rights afforded to their peers. They include: Filipino Advocates for Justice, a member of the National Domestic Worker Alliance and the California Domestic Worker Coalition, CHIRLA, Women's Collective of La Raza Centro Legal, POWER, Graton Day Labor Program, Caring Hands Worker Association, Mujeres Unidas y Activas, and the Lawyers Committee for Civil Rights.

¹ "Rights Begin At Home: Defending Domestic Workers Rights' in California," National Employment Law Project, 2009.

² "Why a Domestic Workers Bill of Rights?" Lauren D. Appelbaum, UCLA Institute for Research on Labor and Employment, December 2010.

³ Gaydos M., Hoover C., Lynch J.E., Weintraub J.M., Bhatia, R.A., "Health Impact Assessment of AB 889, the California Domestic Worker Employee Equality, Fairness, and Dignity Act of 2011". San Francisco Department of Public Health, Program on Health, Equity, and Sustainability., May 2011. Accessible at: http://www.sfpbes.org/Work_DWHIA.htm

Domestic Work Employee Equality, Fairness, and Dignity Act of 2011

Authored by Assemblymembers Tom Ammiano (D-San Francisco) and V.Manuel Perez (D-Coachella), AB 889 would:

- Regulate the wages, hours, and working conditions of domestic work employees;
- Provide a private right of action for a domestic work employee when those regulations are violated by his or her employer;
- Provide an overtime compensation rate for domestic work employees;
- Require paid vacation, and paid sick days for domestic work employees;
- Require all domestic work employers, as defined, to carry workers' compensation insurance and would make conforming changes;
- Delete the exclusion of employers of persons who engage in specified types of household domestic service from providing their employees with specified information regarding their wages either semimonthly or at the time of each wage payment;
- Require domestic work employers comply with the requirements of California Occupational Safety and Health Act of 1973, which requires employers to comply with certain standards ensuring healthy and safe working conditions;
- Provide a process for investigating alleged violations of the above provisions when the place of employment is a residential dwelling.

Considerations

Impact on the Community and Employers

The manner in which current law excludes domestic workers from legal protections can be confusing to small employers as well as the workers. The Domestic Workers' Bill of Rights would provide industry-wide standards, giving both employees and employers clear guidelines about their rights and obligations. Further, the bill would provide greater stability and cost savings to employers by reducing turnover.

The health impacts associated with the passage of this bill will benefit both employers and caregivers. According to the San Francisco Department of Public Health Assessment, sleep deprivation among domestic workers creates potentially severe health risks for care-recipients. Sufficient sleep would reduce risk of pre-mature death, chronic disease, and depression for 24-hour and live-in caregivers. AB 889 would provide domestic workers with the right to 8 hours of uninterrupted sleep, thus reducing the impairment of cognitive motor performance and reducing the likelihood of work errors and accidents that may negatively impact the care recipient.

Implementation

Awareness and enforcement of the bill are critical considerations, especially given that the domestic labor sector is often isolated, informal and disproportionately

populated by undocumented immigrant women with limited English proficiency.

In an April 14, 2011 article⁴, *The New York Times* highlighted the challenges New York has faced in educating domestic workers about their rights under the state's new law. These challenges stem, in part, from the nature of domestic work. The relationship between employers and domestic workers is often characterized by the intimacy associated with caring for a child or an elder in the privacy of the employer's home. The nature of this relationship can blur the lines concerning appropriate workplace practices, making workers highly vulnerable to exploitation. The DWBR would address certain risks of exploitation by leveling the playing field for all workers. The Human Rights Commission hopes to collaborate with local partners to ensure that domestic workers are informed of their legal protections.

Recommendation

Since 1964, the Human Rights Commission has championed San Francisco's fight to address the causes of and problems resulting from prejudice, intolerance, bigotry and discrimination. In an effort to extend our Commission's mission beyond our City, the Human Rights Commission recommends that the California Legislature and Governor of California pass AB 889, as an expression of respect for the dignity and equality of domestic workers and the importance of the work they perform.

Sincerely,



Michael Sweet
Commission Chair



Theresa Sparks
Executive Director

⁴ Semple, Kerk, "A Boon for Nannies, if Only They Knew," *The New York Times*, April 14, 2011.