



New York State Enacts the Domestic Workers Bill of Rights

September 2, 2010

On August 31, 2010 Governor Patterson signed into law the New York Domestic Workers' Bill of Rights, which sets out the responsibility of all employers to provide certain paid and unpaid days of rest to domestic workers, and also provides for the protection of domestic workers against unwelcome sexual advances, hostile sexual environment or harassment based on gender, race, religion or national origin. This legislation is significant because it affects individual households that employ domestic workers and will, for the first time, subject those households to potential liability for unlawful harassment as well as for not observing the maximum hours and overtime pay requirements of the new law.

Unlike prior versions of the bill that has become law, the enacted law does not mandate that employers of domestic workers provide paid public holidays, paid sick and vacation time (other than the paid days of rest described above), or observe a notice period before the termination of a domestic worker may become effective.

The New York statute covers most persons employed in a home or residence for domestic purposes (*e.g.*, caring for a child, serving as a companion, housekeeping, etc.). However, it does exclude from its coverage casual workers (*e.g.*, ad hoc babysitters), certain companions who are employed through an agency other than the family or household using their services, and relatives by blood or marriage.

Among the mandatory compensation and benefits that are required to be provided to domestic workers are:

- Compensation for overtime work at a rate which is at least one and one-half times the worker's normal wage rate for work in excess of 40 hours in a week (or 44 hours in a week for domestic workers who reside in the home of the employer).
- At least 24 consecutive hours of rest in each calendar week, with the employee being authorized to agree voluntarily to work on the day of rest so long as the worker is compensated at overtime rates for all hours worked on the day of rest (the statute provides that whenever possible the day of rest should coincide with the day reserved by the domestic worker for religious worship); and
- For domestic workers who have completed one year of work with the same employer, at least three days of rest in each calendar year at the regular rate of compensation.

The statute as enacted also provides that the provisions of the New York State Human Rights Law apply to domestic workers to the extent of that it will be an unlawful discriminatory

practice for an employer to engage in unwelcome sexual advances, request for sexual favors, other verbal or physical conduct of a sexual nature, or to subject a domestic worker to unwelcome harassment based on gender, race, religion or national origin. Unlike other protections under the New York State Human Rights Law that apply only to employers of four or more employees, these protections for domestic workers apply to employers who employ but one domestic worker.

The statute extends coverage under the New York State Disability Benefits Law to domestic workers. This coverage normally involves an employer participating in a state insurance fund that will provide up to 26 weeks of disability benefits to employees who are unable to work due to non-occupational illness or injury.

The statute further directs the Labor Commissioner to report to the legislature by December 1, 2010 on the feasibility and practicality of allowing domestic workers to unionize.

The new law becomes effective on November 29, 2010.

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For further information regarding these issues, please contact J. Scott Dyer or Julie Levy of the Firm's Labor and Employment Group.

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