

THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

Civil LITIGATION

State passes Bill of Rights for domestics

New York's Domestic Workers Bill of Rights will take effect Nov. 29.

The law is the culmination of a six year organizing campaign by Domestic Workers United, an organization of nannies, housekeepers and elderly caregivers in New York.

The law makes New York the first state in the country to provide extensive workplace protection to domestic workers, and amends New York Labor Law, in addition to other statutes.

The legislation defines a domestic worker as "a person employed in a home or residence for the purpose of caring for a child, serving as a companion for a sick, convalescing or elderly person, housekeeping or for any other domestic service purpose."

The law subjects individual households that employ domestic workers to potential liability for unlawful harassment and failure to observe maximum hours and overtime pay requirements.

The law excludes from coverage casual workers such as *ad hoc* babysitters; those who engage in companionship services as defined under the Fair Labor Standards Act and who are employed by an employer or agency other than the family or the household and those who are a relative through blood, marriage or adoption of the employer or the person for whom the worker is delivering services under a program funded or administered by federal, state or local government.

Harassment and discrimination provisions

It will be unlawful discriminatory practice under the state Human Rights Law for an employer to engage in unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature to a domestic worker when submission to such conduct is made a term or condition of employment, or used as the basis for employment decisions, or when it creates an intimidating, hostile or offensive work environment.

It will be unlawful to subject a domestic worker to unwelcome harassment based on gender, race, religion or natural origin where such harassment unreasonably interferes with his or her work performance by creating an intimidating, hostile or offensive work environment.

The Bill of Rights opens the door for harassment suits by nannies, caregivers and other domestic workers based not only on the conduct of the employer, but also on alleged conduct by the children, elderly or infirm persons for whom they provide care, without regard to their maturity or mental stability.

Unlike other protections under the state Human Rights Law that apply only to employers of four or more employees, protections for domestic workers apply to employers who employ one or more domestic workers.

Wage and hour requirements

The new Law also creates a new section of Labor Law, §170, which prohibits an employer from requiring domestic workers to work more than 40 hours in a week, or 44 if they reside in the home of their employer, unless they receive compensation at an overtime rate of at least one and one-half times the worker's normal rate.

Domestic workers will be entitled to one full day of rest, defined as "24 consecutive hours," in each calendar week; however, domestic workers may waive the full day requirement voluntarily if the employee is compensated at the overtime rate for all hours worked on such day of rest.

After one year of work with the same employer, all domestic workers shall be entitled to at least three paid days of rest in each calendar year.

Other provisions

The legislation also amends New York's Worker's Compensation Law and extends the rights to statutory disability benefits to domestic workers to the same degree as other workers.

The law requires a study to be performed by the state's Commissioner of Labor on the practicality of extending collective bargaining rights to domestic workers.

What does it for employers?

Individuals and families employing domestic workers should keep accurate records of the terms and conditions of employment for all domestic workers.

Employers should maintain records concerning hours worked, break time, meals and rest periods, sleep time, frequency of pay,

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straight and overtime rate of compensation, gross wages, any amounts deducted from those wages and the net compensation received by the domestic worker for at least six years. All complaints of discrimination received by domestic workers should be documented, investigated and remedied if there is any merit to the complaint.

As New York law permits claims to be brought for unpaid overtime and other wages up to six years after they were earned, employers who fail to provide domestic workers with the requisite overtime pay may be sued several years after the employ-

ment relationship has ended.

In addition to unpaid overtime or other wages, employers could be held liable for a domestic worker's attorney's fees, costs, interest and a penalty equal to 25 percent of the unpaid wages, as well as potential civil fines and criminal penalties.

Employers should consult an employment attorney before Nov. 29 to ensure compliance with the new law.

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