

# Domestic Workers & the Law

## *Philadelphia Can Expand Protections for Domestic Workers*

### **Who Are Domestic Workers?**

- Domestic workers are nannies, caregivers, housecleaners, and home healthcare workers (including private pay homecare providers).
- The majority are immigrants and women of color.
- A study by a UPenn Professor found that there are about 16,000 domestic workers in the Philadelphia area, who earn an average of \$10,100/year.
- Domestic workers are hidden from public view.
- There is little oversight of domestic workers by labor protection agencies.
- As a result, domestic workers often suffer exploitation and abuse, including long hours, poor working conditions, and sexual harassment.



Photo by Othello Banaci

### **The Law Has Failed Domestic Workers**

Domestic workers are both excluded from employment law protections and lack basic workplace protections.

#### Legal Exemptions

- **Minimum wage and overtime**
  - Most domestic workers have no right to minimum wage/overtime under Pennsylvania law
  - Some domestic workers who work as home healthcare aides have no right to minimum wage/overtime under the federal law
  - Live-in domestic workers have no right to overtime wages
- **Sexual Harassment and Discrimination**
  - Most domestic workers are excluded by the Pennsylvania and federal laws that protect workers from sex harassment and discrimination
- **Paid Sick Leave**
  - Most domestic workers are excluded from the Philadelphia paid sick leave law

#### Absent Basic Protections

- **Domestic workers rarely have contracts specifying their working conditions**
  - The minimum and maximum number of hours they must work in a workweek
  - Rest breaks and meals
  - Paid sick leave or time off
- **No law protects the health and safety of domestic workers on-the-job**
  - Some domestic workers routinely work with hazardous products
- **Domestic workers who complain may not be protected from employer retaliation**
  - Employers can fire workers who complain about their hours, meal breaks, rest breaks and time off

## A Domestic Workers' Bill of Rights Would Better Protect Workers

### ➤ A bill of rights often includes:

- Protections from sexual harassment and discrimination
- A written contract with employers
- Guarantees for minimum wage and overtime
- Recordkeeping requirements
- Providing a notice of rights upon hire
- Prohibiting deductions without written permission of a worker
- Protection against retaliation
- On-the-job health and safety protections
- Paid rest breaks, time off, and sick leave

### ➤ Cities and states across the country—such as Seattle, Illinois, New York, California, Oregon, Hawaii, and Massachusetts—have passed a domestic workers' bill of rights.

## Philadelphia Has the Legal Authority to Pass a Domestic Workers' Bill of Rights

There are two requirements for a city ordinance to be legally valid: (1) the city must have the legal power to pass the law; and (2) the law cannot be preempted by any state law or the state constitution.



### City's Legal Power

As a first-class city, Philadelphia can regulate “municipal functions.” According to the Pennsylvania Supreme Court, “municipal functions” is defined as matters that relate to the “health, safety, and welfare” of its citizens.

The rights in a domestic workers' bill of rights are to protect the “health, safety, and welfare” of domestic workers in Philadelphia. Therefore, Philadelphia's City Council has the power to enact a bill of rights.



### Preemption

The vast majority of protections in a domestic workers' bill of rights would not be preempted because there is no conflict with either existing Pennsylvania law or the Pennsylvania Constitution.

For most of these protections, there are neither state laws that cover these topics nor laws that prohibit localities from legislating on these topics. Therefore, a bill of rights covering most of these topics would not be preempted.

### Open Preemption Question?

Protections for minimum wage, overtime, and recordkeeping may be preempted by the Pennsylvania Minimum Wage Act (MWA), which preempts any local law “concerning the subject matter of this Act.” Since the MWA exempts domestic workers, Philadelphia could argue that the state did not specifically forbid it from granting domestic workers these protections.