

Health and Safety Now!

Perspectives from California domestic workers and employers about how to ensure occupational health and safety at the private home workplace.



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Introduction

About the California Domestic Worker Coalition

Founded in 2006, the California Domestic Worker Coalition (CDWC) is the state's leading voice for the more than 300,000 domestic workers in California. The CDWC is a domestic worker-led, statewide alliance of community-based organizations (CBOs), domestic employers, worker centers, labor unions, faith groups, students, and policy advocates. The coalition works to confront the history of exclusion of domestic workers from basic labor protections and to advance the rights and promote the dignity of domestic workers and their communities across the state.

The Health and Safety for All Workers Act Campaign and Passage of SB 321

In the United States, domestic workers, largely women and people of color, have been historically excluded from the most basic labor protections. Fundamental labor laws, such as the National Labor Relations Act, the Fair Labor Standards Act, and the federal Occupational Safety and Health Act, have at some point, if not currently, excluded these workers. The law's failure to recognize domestic work as real work has left domestic service workers particularly vulnerable to workplace injuries and illness, with little recourse.

In 2019 after three years of increasingly destructive wildfire seasons, it was clear for domestic workers in California that health and safety rights are more urgent than ever. Domestic workers and other household workers, such as day laborers, were asked to stay behind to fight fires, guard homes or pets, work in smoky conditions, and clean up toxic ash. Workers were further put at risk when employers failed to tell them that the homes they work in were under mandatory evacuation order. Wildfires have magnified the vulnerability and dangers that domestic workers and day laborers face on a daily basis because they are excluded from California's Occupational Health and Safety protections. The growing frequency and intensity of wildfires and other climate accelerated disasters pushed CDWC to take action, and to launch a campaign to win basic health and safety rights for domestic workers. In 2020, Senate Bill 1257, the Health and Safety for All Workers Act was introduced by Senator Maria Elena Durazo and was designed to finally eliminate the "household domestic service" exclusion from the California Occupational Safety and Health Act.

Just two weeks before the official launch of the campaign, Governor Gavin Newsom issued a statewide stay at home order to slow the spread of COVID-19. Since March 2020, the COVID-19 pandemic has further exposed how the lack of health and safety protections has devastating impacts on domestic workers in California. Domestic workers have acted as frontline and essential workers throughout the global pandemic in California. They have provided care to the most vulnerable populations to illness, like seniors and people with compromised immune systems, yet they themselves have remained vulnerable and without protections.

Studies have shown that the pandemic negatively impacted the health and financial well-being of Latinx, Asian, and Black women at a much higher rate than any other demographic. According to the California Department of Public Health, this racial demographic makes up 64% of COVID-19 related deaths. Seventy-five percent of domestic workers in California are immigrant women of color; they have been continuously exposed to the virus without protections at work, thus, putting their lives at risk as well as their families and communities. A 2021 study conducted by UC Davis Environmental Health Sciences Center showed that domestic workers contracted the illness at a rate three times higher than that of the general population in California.¹

SB 1257 passed through the California State Legislature with broad and bipartisan support, but was vetoed by Governor Newsom. The next year, on September 27, 2021, after two years of campaigning led by domestic workers across the state and again overwhelming support from the legislature, Governor Newsom signed SB 321 The Health and Safety For All Workers Act. The bill, as amended, requires the CA Division of Occupational Safety and Health to convene an advisory committee made up of domestic workers, domestic employers, and experts in the field of occupational health and safety. The Advisory Committee shall make recommendations to the department or Legislature to protect the health and safety of domestic workers and develop voluntary industry-specific occupational health and safety guidance for the purpose of educating domestic workers and their employers. The Division of Occupational Safety and Health must post a report of the findings of the advisory committee to its internet website and submit a copy to the Legislature, no later than January 1, 2023.

2022 Health and Safety Listening Sessions

As a membership led organization, CDWC sought to gather the input of its members in order to inform the SB 321 Advisory Committee Members about health and safety conditions, needs and barriers, as well as the solutions to creating healthy and safe home workplaces. To that end, CDWC engaged its members by holding listening sessions as a way to learn from the lived experiences of domestic workers, day laborers, and employers concerning health safety. This report seeks to capture trends and unique challenges by sub-sectors (house cleaning, child care, homecare, day laborer) from the listening sessions and synthesize the overall findings to inform advisory committee members through their process of developing recommendations.

In April and May 2022, CDWC convened 17 organizations to hold listening sessions with a total of approximately 600 participants: 325 domestic workers, 245 day laborers and 30 employers. A listening session is essentially a guided discussion to record the experiences, needs, and the proposed solutions of domestic workers, day laborers, and employers with regards to health and safety. A set of questions, available in Appendix A, was utilized to facilitate the conversation. Each listening session was hosted and facilitated by affiliate organizations of the California Domestic Workers Coalition, with support from CDWC staff and Goldman School of Public Policy fellow, Maria Gabriela Sanchez. The number of participants for each listening session

¹ "Covid-19 and Domestic Workers," UC Davis Environmental Health Sciences Center, September 2021

ranged from 3 to over 70. A table of all the organizations and place/time of listening sessions is provided in Appendix B.

Common Hazards

With regards to dangers, we utilized Federal OSHA and The California Worker Occupational Safety and Health Training and Education Program (WOSHTEP) hazard categories to identify common hazards in the industry:

- (1) **Physical:** physical hazards are environmental factors that can harm an employee without necessarily touching them, including heights, noise, radiation and pressure.
- (2) **Ergonomic:** ergonomic hazards are a result of physical factors that can result in musculoskeletal injuries. These are typically caused by incorrect equipment or poor design. Risk factors include repetitive work, excessive force, and awkward posture.
- (3) **Chemical and biological:** chemical hazards refers to hazardous substances that can cause harm through liquid or air that enters the body (mouth, nose, skin) and can have both health and physical impacts, such as skin irritation, inflamed respiratory system, and blindness. Chemical hazards include cleaning products, smoke, paints, and pesticides. Biological hazards refer to organic substances that can affect health and include viruses, bacteria, insects, animals, etc. For example, mold, blood, other bodily fluids, harmful plants, sewage, and vermin.
- (4) **Safety:** safety hazards are those which create unsafe working conditions and cause immediate accidents and injuries, such as spills on the floor, tripping hazards, working from heights, electrical hazards, faulty equipment etc.
- (5) **Organizational:** Work organization hazards cause stress or strain and are associated with workplace issues such as workload demands, lack of control and/or respect, workplace violence, sexual harassment, and tasks that can create anxiety, frustration or fear.

While we segregated concerns from sub-industries of household domestic services, namely, housecleaning, childcare, homecare, and day labor, there were significant overlapping concerns. All workers identified COVID-19 and infectious diseases as a hazard and many mentioned concerns about California wildfires. While housecleaners are thought to have greatest exposure to toxic chemicals from cleaning products, those performing child care, day labor, and home care also are exposed to dangerous cleaning products as the course of their duties inevitably involves cleaning. Similarly, while home care and child care workers may be at greater risk to biological hazards, communicable diseases and bio-waste, these risks may still be involved with general housecleaning and day labor as well. Tripping hazards exist for all sub-industries through the course of cleaning or repairs, carrying young children, or lifting and transferring elderly clients or those with disabilities.

| Physical | Ergonomic | Chemical/Biological | Safety | Organizational |
|---|---|--|---|---|
| Climate accelerated hazards: heat exhaustion, heat stroke | Heavy lifting: moving furniture, boxes, landscaping | Toxic cleaning products | Slips/falls on stairs and ladders | Sexual & verbal abuse |
| Lack of ventilation | Repetitive movements: crouching, dusting, vacuuming | Other chemical products, pesticides, paint, and chemical storage | Slips/falls on wet floors or bathroom while cleaning or with transferring client (showering /toileting) | Violent or aggressive behavior by person who is receiving care |
| Dehydration | Accessing hard to reach items | Transmissible diseases/illnesses (including COVID) | Trip / bump hazards due to misplaced objects, furniture, equipment, children's toys and open drawers | Addition or change in tasks. No written agreement and pressure to keep working beyond agreed upon times; heavy workload under time pressure |
| Lack of access to clean, potable, cool water | Lifting and carrying small children | Pathogens and handling of bio-waste, blood, urine bags, feces etc. | Misplaced and sharp, dangerous objects, glass | Emotional toll; working alone, in isolation |
| | Lifting and transfers of seniors and people with disabilities | Pet allergies | Electrical plugs and cords | Being locked in home, unable to leave |
| | Pushing wheelchairs | Smoke and ash from working in wildfire zones | Heavy machinery (that one is not trained to use) | Lack of sleep and inadequate sleeping quarters for workers who live in the home workplace or work 24 hour shifts |
| | Demolition | Asbestos, fiberglass insulation and exposure to mold, dust. | Falling off roofs, scaffolding and other high places | Lack of benefits such as healthcare and high frequency of labor violations, such as wage theft, not receiving paid sick time or workers compensation. |
| | | Poison oak, ticks | Required to work without shoes (slips) | |
| | | | Aggressive pets | |

Specific concerns for each of the domestic work sub-industries:

Housecleaners

Housecleaners reported on a number of common hazards they experience while cleaning private homes as well as the impacts those hazards have on their bodies:

- Harm to respiratory systems (nose, throat, and lungs), eyesight, and skin as a result of exposure to toxicants and chemicals from cleaning products.
- Allergic and asthmatic reactions that have led to headaches and vomiting.
- Suffering from back injuries, pain and loss of movement in hands, strain on joints, such as knee pain, as a result of moving heavy furniture and performing repetitive tasks, such as crouching, dusting, and vacuuming.
- Acute injuries while cleaning, as a result of slips and falls due to slick surfaces, cuts from sharp objects, or burns from duties in the kitchen.
- Risks of electrocution from unprotected electrical sockets and frayed wiring.
- Working under high temperatures or without adequate ventilation with risks of heat exhaustion, heatstroke, and dehydration.
- Working in wildfire zones and exposure to smoke and toxic ash during and after wildfires.
- Working without closed-toed, non-slip shoes, often because the cultural customs of a household require visitors to remove their shoes, resulting in many domestic workers sharing stories of slips and falls and lower back, foot and heel pain because of lack of ergonomic support.
- Lack of access to first aid kits or fire extinguishers.
- Allergic reactions to household pets as well as physical harm and fear as a result of aggressive pets, either when required to care for the household pets or simply when working in homes.

Workers in listening sessions demonstrate a general understanding of risks involved with toxic cleaning products. Some shared the specific dangers in mixing different cleaning products — a harm widely identified in health and safety literature. They remained concerned however, that their employers are not always conscientious or willing to mitigate these hazards.

“The safety concerns for products I had to learn by reading labels, because once I mixed ammonia and bleach and I almost died. There should be training on cleaning products when one goes to clean the house.”

“My employer sprayed the kitchen with bleach, and insisted I clean everything with bleach, but offered no protection. I was forced to

cover my mouth with a towel. I know inhaling bleach is dangerous to my health but continued to clean as instructed for 2 months, because I needed the work. Afterwards I tried to insist with employers who request bleach, that we at least wait for 20-25 after its application to wipe down.“

“Employers are resistant to changing cleaning products, even if they are toxic, because of preferences - such as liking a certain clean scent. Employers also do not want to spend any extra money for cleaning products that are not toxic or for the protective equipment, such as masks or shoes.”

Child Care Providers & Nannies

Those who provide child care, such as nannies, also report a range of hazards and the impacts on their bodies:

- Strains and injuries from lifting and carrying small children, especially when going up and down stairs
- Trip and bump hazards involved with children’s toys - whether misplaced, or strewn on the floor, or small ones that are not easily visible, as well as drawers left open in children’s bedrooms.
- Exposure to infectious illnesses of all kinds, including the flu
- Homes kept in unsanitary and in unclean conditions may be problematic for child care workers, which also exacerbates concerns regarding infectious diseases as well as biochemical hazards where surfaces and areas are not properly disinfected, etc.
- Hazards that occur when taking children to places outside the home, including driving.
- Being locked in the home or unable to leave beyond their agreed upon shifts because of demands or control of the employer.
- Stress from remaining vigilant of children at all times, especially in homes that are not prepared for children or adequately childproofed, such as fall hazards for children from open windows or balconies or electrical hazards from uncovered electrical outlets.
- Stress or physical harm because of misbehaving or out of control children who may also become physically aggressive.

There was also a concern about the need for training and information as it related to protecting the safety of the children they care for. Overwhelmingly child care workers requested training in CPR, which would also be beneficial to themselves.

“For nannies, we need CPR training, instructions for how to handle children who are choking, suffocating, been burned or have things stuck in their nose or ears. We need to know how to take care with light sockets, because children are curious and put things in the sockets and may be electrocuted.”

Home Care

Homecare workers emphasized physical and emotional hazards consistent with those faced by healthcare workers in facilities and hospitals. Similar to nanny participants, homecare workers also expressed concern for protecting the health and safety of the people that they care for. Health and safety concerns for home care workers include:

- Musculoskeletal injuries resulting from lifting and transferring clients, with heightened risk while supporting clients up and down stairs and transferring on wet surfaces during toileting or bathing.
- Lack of appropriate equipment to assist in lifting, such as gait/transfer belts, hoier lifts, bathroom rails, bars etc.
- Trip hazards from oversized bed sheets while transferring from bed; strewn electrical cords
- Transmissible and infectious illnesses and bio-chemical hazards and pathogens which are exacerbated with poor sanitation and lack of or insufficient PPE.
- Lack of training on how to handle biological waste safely (i.e. blood, urine, feces).
- Lack of knowledge and information about the current medical status of those they are caring for.
- Hazards related to caring for people with certain disabilities and conditions, such as Alzheimers and dementia: unattended stoves and appliances, violent or aggressive behavior, verbal and sexual harassment.
- Inadequate homes for the required care tasks, whether due to layout, design, lack of supportive equipment, sanitary conditions, and /or clutter
- Inadequate sleep and lack of adequate sleeping quarters for live-in and 24-hours shift workers
- Improper knowledge of how to handle the death of a client, both technically how to care for the body, as well as the emotional toll it can take on workers.

“When the employer knows the client’s medical history and they have a contagious illness, they should be aware this poses a hazard for caregivers so they should be upfront to

enable us to handle and avoid contracting viral infections. This hazard not only impacts us, but our families when we leave work and return home. It is emotionally taxing to carry that concern with me all the time.”

“Those of us who care for the elderly are at great risk when the houses are not suitable for them, so we risk too much.”

“If the house is not suitable, one can fall with the client.”

Day Laborers

A common misconception is that day laborers are not engaged in domestic work and only work in the construction field and for contractors. The listening sessions revealed that many day laborers are hired for work in private homes and perform what is considered traditional domestic work (i.e. cleaning) along with other tasks such as gardening, landscaping, and responding to and cleaning up after climate accelerated disasters such as wildfires. At the same time, day laborers can also be asked to perform duties which would not fall under the traditional category of “household domestic services,” for example, demolition. Day laborers would benefit from coverage under other existing standards for these activities as well as guidance for household domestic services. An additional factor to consider is that over all, day laborers tend to skew older and many have chronic, untreated health conditions such as high blood pressure, which can be exacerbated by a lack of health and safety protections.

Many of the risks faced by day laborers are similar to ones already expressed. Additional considerations follow:

- Vulnerability to heat illness, including heat stroke and exhaustion as climate accelerated disasters such as wildfires and extreme heat become more commonplace.
- Lack of access to clean, potable, cool water, with multiple workers sharing that they were told to drink from the same hose used to water the plants. Garden hoses are not manufactured to deliver safe drinking water. They can contain bacteria, mold, and toxic chemicals such as lead. Additionally, garden hoses exposed to direct sunlight can heat the water inside potentially causing injuries such as burns.
- Lack of shade, even when working under extreme heat.
- Exposure to poisonous plants such as poison oak and insects such as ticks and exposure to animal excrement, without adequate training or orientation to poisonous plants or animals that are present at the worksite
- Faulty or inadequate training with tools of the trade, resulting in Day laborers falling from ladders when working outdoors or gardening, lesions when using tools like hedge shears, and eye injuries when using tools like weed whackers.

- Requested to act as first responders to wildfires, both during and after, with workers reporting being hired to stand with hoses outside to keep the flames from the Woolsey Fire from reaching a home.
- Obligation to take up some of the most hazardous jobs because of the difficulty to find employment and make ends meet.
- Inability to work for long periods of time because of workplace injuries, resulting in depression, anxiety and even substance abuse (in some cases, connected to chronic, physical pain post injury).

Workers shared that they do not feel comfortable sharing their safety concerns with employers, because it jeopardizes the prospect of employment and would mean not getting hired. Day Laborers report bringing their own bottled water in their backpacks when going out to a job and also purchasing, out of pocket, cases of water for themselves and to share with others. Negotiating earlier working hours to avoid peak heat and bringing their own sun hats were also identified as strategies.

One way that day laborers reported attempting to document injuries on the job in private homes was through calling 9-1-1 for paramedics to document an official report. This is necessary in case the employer wants to put into question or negate that an injury happened; however workers did acknowledge that some might be scared to call because of the cost of a bill from the paramedics.

“This year we have seen a lot more heat stroke, especially after 2PM. When it gets hot sometimes I feel a shock sensation in my whole body and I feel like I’m going to faint. Often the employers don’t give us water to drink and we have to use the water hose outside.”

Lack of Personal Protective Equipment (PPE) & Supporting Equipment

Workers identified the lack of critical equipment to safely do their jobs, as well as Personal Protective Equipment (PPE) to wear. Nearly all listening sessions noted the need for basic PPE such as gloves, masks, proper footwear, and depending on the task, safety glasses. Numerous domestic workers and particularly home care workers referenced gait or transfer belts and vests as ways to protect their backs while transferring clients. Back support is critical for house cleaners and childcare providers as well, while carrying large loads and carrying children. While many listening sessions named back braces as a need, rather than PPE, the recommendation by health and safety experts is to have an ergonomics plan with appropriate controls, such as training in proper lifting techniques and arranging for more than one worker to lift people receiving care or heavy objects together. Homecare worker participants also mentioned the need for wheelchairs, power chairs, transfer chairs, and hoist lifts. Housecleaners mentioned the need for tools to get to hard to reach areas, like a long swiffer and proper ladders and step stools to avoid climbing to reach places or moving furniture. Workers also identified the need for

a first aid kit to be required at the home and made available to them as well as fire extinguishers.

Psycho-Social Harms

Workers in all subindustries named that working in isolation and alone increases their vulnerability to the occurrence of hazards, and emphasized safety concerns with regards to sexual, physical and verbal abuse by employers and consumers. Wage theft and other labor violations were repeatedly mentioned as a source of stress, uncertainty, and instability. Another stressor identified was the lack of access to health care that was needed to treat physical conditions, injuries, or the mental suffering from their employment. Many workers did not access workers compensation or paid sick leave, which underscores the need for a holistic approach to improving health and safety conditions of domestic workers despite it touching on different areas of law.

Numerous domestic workers and day laborers described the psychological and emotional harm of mistreatment by employers, employers who act in anger and at times even violently. Workers also mentioned that sometimes elderly clients or those with disabilities can act aggressively and violently unintentionally, and that workers lack the training on how to approach these situations. Other psychosocial harms occur because of the heavy workload under time pressure, where workers may also be asked to perform additional tasks or change the work being asked of them. These conditions can further lead to more accidents because of feeling rushed and possibly cutting corners on safety precautions. There was also reference to the emotional toll that comes from caregiving and domestic work, and an overarching theme of not being treated with respect. This is a longstanding cultural issue for domestic workers that stems from the sexist and racist devaluation of their contributions to households. The solutions to these issues may not fall squarely within the field of health and safety; however, ensuring that domestic workers have legal rights in their workplace, whereby employers of domestic workers understand that they are not merely encouraged but **legally obligated to ensure** the health and safety of domestic workers, is part of changing this power dynamic and achieving the cultural change required for employers to treat and respect domestic workers as a professional workforce.

Barriers to Implementation

For the effective implementation of health and safety standards, participants identified the need for a strategy to overcome the general lack of knowledge among domestic workers about their rights and employers about their responsibilities, and the challenge of reaching them effectively due to the isolated nature of workers and employers in private homes. The greatest barrier individual workers shared was the fear of retaliation, namely that raising health and safety concerns with their employers would cause them to lose their jobs. Immigrant workers and particularly those who are undocumented feared retaliation could lead to deportation of themselves or their families. More generally, workers expressed discomfort in communicating with employers about their needs because of the potential negative impacts on an amicable working relationship. Workers also face language barriers in communicating effectively on these topics with their employers.

Many workers had experiences with employers who have been dismissive of workplace concerns and are resistant to any suggested changes, particularly anything that will increase cost of services. Other employers have been generally disrespectful and rude to workers, making it challenging to speak with them about any aspect of workplace conditions. Culturally, private households still seem unwilling to see themselves as employers and thus refuse to acknowledge they have legal obligations or responsibilities as it relates to domestic workers.

Workers are also concerned that some employers can legitimately not afford the necessary equipment, particularly in the homecare sector. Nevertheless, if employers do not provide PPE, workers do not have sufficient income to cover expenses themselves. Participants discussed challenges of who assumes responsibility when the condition and state of the home may be unsafe overall and could require more serious intervention, for the safety of consumer and worker. Workers also may be hesitant to file legal complaints because they believe the legal process to be lengthy, time-intensive, and difficult to navigate. Workers also feel that filing a legal complaint is even riskier than raising concerns with the employer directly, and would likely lead to retaliation and/or termination, particularly for those workers without immigration status.

Employer Concerns

The primary concerns employers expressed was lacking the knowledge and guidance on how to identify safety hazards and mitigate them effectively. They recognized a need for easy-to-use tools for compliance, such as protocols and checklists, along with trainings, including on how to facilitate conversations with domestic workers about preventing injuries and illness. They emphasized that open communication is critical for prevention efforts, and that outside mediators could be helpful when situations arise. They recognized that information must be easy to comprehend, accessible in multiple languages and culturally appropriate. Other employers also had concerns that even when armed with recommendations, they may lack the capacity to comply, particularly in the home care context if the client/employer has a particular disability or if they cannot afford required materials or equipment such as PPE or a lift. They posited that greater support from the state would be necessary in those circumstances.

Employers were also concerned as to how to address situations in which a worker chooses not to follow safety guidelines, such as wearing masks or gloves in the performance of their duties.

Identified Solutions

Participants were asked specifically what may be the solutions to the identified barriers as well as to improving health and safety overall for domestic workers and day laborers. We've grouped the solutions as follows:

Listening Session Solutions

1. *End "Household Domestic Services" Exclusion*
2. *Detailed Health and Safety Standards for the Industry*
3. *Partnership with Community-Based Organizations*
4. *Household Domestic Service Injury and Illness Prevention Program*
5. *Consultative Services*
6. *Support for Employers to be in Compliance*
7. *Protection against Retaliation and Refusal to Work*
8. *Investigation & Rights Enforcement*

End the "Household Domestic Services" Exclusion

In 1970, Congress enacted the Occupational Safety and Health Act, establishing the federal Occupational Safety and Health Administration (OSHA) with the mission of ensuring safe and healthful working conditions for working men and women by setting and enforcing standards and by providing training, outreach, education and assistance. The statute itself does not explicitly include or exclude domestic workers. However, in 1972, the Department of Labor excluded domestic workers employed by individuals through an interpretive rule clarifying the extent of the law's coverage. 29 CFR §1975.6 sets forth OSHA's policy not to apply the requirements of the Occupational Safety and Health Act with respect to *"individuals who, in their own residences, privately employ persons for the purpose of performing for such individuals what are commonly regarded as ordinary domestic household tasks, such as house cleaning,*

cooking, and caring for children." Section 18 of the OSH Act permits any state or territory to pre-empt federal jurisdiction over occupational safety and health by establishing an approved state occupational safety and health plan. It encourages states to develop and operate their own job safety and health programs and precludes state enforcement of OSHA standards unless the state has an OSHA-approved State Plan. Approval of a state plan is contingent on the establishment of state standards (and the enforcement of standards) that are or will be **at least as effective** in providing safe and healthful employment and places of employment as the standards promulgated under federal OSHA standards and enforcement. (section 6 of OSH Act, 29 USC § 655).

California has a federally approved OSHA state plan, and the Division of Safety and Health (more commonly referred to as Cal/OSHA) is the state agency charged with health and safety. Under California's health and safety standards, codified in California Labor Code §6303, the place of employment is defined as "the carrying on of any trade, enterprise, project, industry, business, occupation, or work ... in which any person is engaged or permitted to work for hire, *except household domestic service.*" The California Supreme Court interpreted the term "household domestic service" workers" to include "a broad category of workers performing tasks in- and outside of a private residence," performing duties "that are personal to the homeowner."² The California Supreme Court reasoned that the exclusion for "household domestic service" was because "homeowners are ill-equipped to understand or to comply with the specialized requirements of OSHA." Based on case law and the narrow focus of the federal regulation, it seems that only "household domestic service" performed for individual homeowners are intended to be excluded from OSHA coverage.

Striking this exclusion is a necessary prerequisite to ensuring government jurisdiction over workers engaged in household domestic services and implementing the possible solutions to protect the health and safety of domestic workers.

Research demonstrates that the authority and *perceived* authority of the law are critical to influencing behavior changes to improve workplace health and safety³. Domestic workers and day laborers, who are in a one-on-one employment relationship (sometimes two-on-one etc.), already face enormous power differential in discussions to improve working conditions. Workers expressed in the listening sessions how they will only be able to negotiate for improved health and safety conditions if they have the backing of the law.

Cal/OSHA can provide standards and guidance that can be easily understood by homeowners/individual households in relation to domestic workers and day laborers and provide the advice and consultation needed to bring them into compliance. Given the numerous barriers to implementation such as successful outreach and guidance, instituting a legal duty to

² *Fernandez v. Lawson*, 31 Cal. 4th 31, 36 (2003).

³ Safe Work Australia, *Effectiveness of work health and safety interventions by regulators: A literature review*, April 2013, available at: <https://www.safeworkaustralia.gov.au/resources-and-publications/reports/effectiveness-work-health-and-safety-interventions-regulators-literature-review>

provide a safe workplace by ending the “household domestic service” exclusion is an absolutely necessary step to ensure any successful effort to mitigate hazards and improve occupational health and safety for domestic workers and day laborers.

Detailed Health and Safety Standards for the Industry

Participants overwhelmingly emphasized the need for detailed standards and safety training, especially on the topics of chemical safety with cleaning products, safe lifting and transferring of persons, fall protection and ladder safety, how to prevent biological hazards/communicable illnesses and handle biological waste, electrical hazards, and addressing workplace sexual, physical, or verbal abuse or violence. Other relevant topics included: how to prevent ergonomic injuries, sanitation practices, preventing heatstroke, first aid, emergency preparedness (i.e. earthquakes, wildfires) and fire safety. Domestic workers also discussed the need to integrate topics on other areas related to their working conditions and health, such as accessing sick time and workers compensation as well as negotiating organizational workload, time off and pay.

Both employers and workers expressed a need for standards that are sufficiently tailored to the home and domestic work industry and for mitigation methods to be explained in a manner that is easy-to-understand and implement. Training should be accessible and account for different languages, cultures and levels of literacy (including for employers/workers who are deaf, hard of hearing or blind). In this aspect, the importance and role of input from community-based organizations was highlighted, and participants also shared that multimedia resources, such as videos, are critical accompaniments to written documents. They also suggested easy to use checklists and templates designed for domestic employers. Participants recommended the State endorse and provide guidance and instructions that are easily accessible, including flyers or other materials workers can share with employers, and vice versa, to educate one another.

Government Partnership with Community-Based Organizations

Outreach and education to reach a fractured and isolated industry

In order for any new standards, regulation, or guidance designed to improve health and safety for domestic workers and day laborers to be effective, the information and supporting resources must reach workers and their employers. Participants - domestic workers and employers alike - all recognized the need for education and outreach programs that are state funded and pursued in partnership with trusted community-based organizations (CBOs) that are familiar with the domestic work industry. Participants emphasized that the challenges of compliance with labor standards are made more difficult by the fractured nature of the industry wherein domestic workers work one-on-one and in isolation in private homes. Partnering with community groups that are already dedicated to building trust and accessing domestic workers and their employers expands the reach of the state with limited resources.

California has already dedicated \$5 million in state funding to the pilot Domestic Worker and Employer Education and Outreach Program (DWEOP). The Department of Industrial Relations awarded the CA Domestic Workers Coalition a three-year grant which was then redistributed to

14 community organizations to reach, educate and train domestic workers and domestic employers about the rights and protections domestic workers have under California labor law. Participants of the listening sessions recommended that the state increase funding to DWEOP and expand it to include health and safety topics, such as information, tools, and training opportunities for how to create healthy and safe workplaces.

Participants also identified that Cal/OSHA could utilize existing databases within the DIR (Labor Commissioner's Office and Workers Compensation) to communicate with already identified household employers about their responsibilities, to provide resources and tools, and to refer them to the Cal/OSHA consultation unit or CBOs to support employers to comply with the law. With regards to home care, participants noted the need to establish partnerships with organizations and government agencies that serve people with disabilities or elders who receive home care and are employers. Partnership should seek to both effectively reach those diverse employers and to gain input in the development of appropriate guidance and training materials. Examples of possible partners include social workers, the Commission for People with Disabilities, the State Council for Independent Living and the entire Independent Living Center Network, and the State Council on Developmental Disabilities.

Participants further suggested a public education campaign where information is spread through advertisements, in public spaces (billboards etc), social media, media, etc.

Interactive & Accessible Trainings

Health and safety trainings should also be free-of-cost for the worker, offered by Cal/OSHA or a partner community-based organization, offered at times workers are available, available in accessible languages, and with assurances that wages are paid for any mandatory training by the employer, during the time of attendance. It is also important that individual employer households receive the necessary training to mitigate hazards for their workers. Participants of the listening sessions requested that trainings provide a health & safety certification to participants, but acknowledged that certification should not become a prerequisite or barrier to work. The certification should simply serve as encouragement to take training and acknowledge the skills that a worker has acquired.

Possible training programs include:

- Domestic workers participate in online or in-person trainings held by Cal/OSHA or a partner CBO (that is participating in a state funded health and safety program).
- Cal/OSHA offers a free, short, online webinar designed specifically for household domestic services that employers should complete within 30 days of hiring, or thereafter every two years.

Trainings should include what to do in cases of an accident or injury and cover access to healthcare and workers' compensation. As mentioned earlier, employers and workers also suggested trainings include how to have open communication, principles of non-discrimination, sexual harassment and internal bias.

Supportive Communication & Mediation

Workers and employers alike highlighted the need for tools, training, and the support of CBOs in order to facilitate conversations and improve communication between employers and employees about health and safety at the workplace. Workers identified that if they felt unable to communicate directly with employers because of fear or because of dismissive or antagonistic employer attitudes, there should be a supportive process that can help them engage their employers towards achieving a solution. As many of the listening session participants are already members of community-based organizations, they stated they would seek support from CBOs to facilitate communications with employers to address health risks or safety hazards. Some employers, particularly those that are disabled, elder and people of color, also suggested the support of trusted and culturally competent CBOs to make home visits to support them with making their homes a safe workplace. As CBOs are already supporting communication between workers and employers as a part of the existing DWEOP program, as it relates to existing wage and hour law, participants suggested CBOs receive financial funding from the state to help engage in these processes and establish programs to train worker leaders to also support with communication and mediation regarding health and safety.

Household Domestic Service Injury and Illness Prevention Program (IIPP)

Participants suggested the use of written agreements modeled after Injury and Illness Prevention Programs as a means to communicate between employers and domestic workers to identify and address safety hazards and concerns. Given that workers identified a lack of clarity about tasks and frequent increase in workload named as a health stressor, these plans would also clearly lay out the duties and responsibilities of workers.

A recommended IIPP template for the domestic household industry would include the following elements:

- (1) Identification of the person or persons responsible for implementing the plan.
- (2) A detailed description of all of the employee's job duties.
- (3) The employer's system for identifying and evaluating workplace hazards, including an initial walk through and scheduled periodic inspections alongside the employee to identify unsafe conditions and work practices, and whenever a new duty is added.
- (4) The employer's methods and procedures for correcting unsafe or unhealthy conditions and work practices in a timely manner, whether through elimination of the hazard, establishing of controls, or through ensuring the provision of PPE and necessary equipment.
- (5) The employer's methods and procedures to ensure employees are instructed in general safe and healthy work practices and to provide specific instruction with respect to hazards specific to each employee's job assignment.

(6) A system for effective communication with employees in a form readily understandable for employees, with provisions to encourage employees to inform the employer about hazards at the worksite without fear of reprisal.

Consultative Services

Workers and employers both identified the need to be able to contact health and safety experts through a hotline or helpline to ask questions or relay information regarding particular circumstances and to receive advice on addressing hazards.

Cal/OSHA Consultation Services Branch should be made available to household employers and workers; however, it is critical that they have specialized knowledge about the household domestic services industries. It would be ideal if there were dedicated staff in the branch who are multilingual (at minimum English and Spanish, though language access should be available to other communities such as Tagalog, Chinese, Vietnamese, and Nepali speaking workers) and can field inquiries regarding household domestic services. To improve general outreach and education overall, it would also be beneficial for Cal/OSHA to track and collect data on the inquiries related to household domestic services, which then can be shared with the authorized CBOs performing trainings and other stakeholders. This reporting would help to identify gaps in implementation and support analysis on how to improve strategies.

Support for Employers to be in Compliance

Employers named the need for innovative solutions to address the barriers they may face in complying with health and safety guidelines. It is critical that low-income employers, especially those who are aging or have disabilities, are able to access assistance, information, and support to be in compliance. Consistent with the only statewide statistically significant survey done of California's household employers which found that 44% of household employers are low-income⁴, employer participants shared the concern that a large percentage of domestic employers will likely struggle to afford even some of the lower-cost safety equipment such as PPE. Employer participants identified solutions to these barriers that included access to free or subsidized PPE, tax credits for health and safety related costs, grant or voucher programs, financial resource information, and in-home consultation services by Cal/OSHA or community-based partners to help assess and correct hazards. Employers agreed that health and safety measures for domestic employment should be accompanied by support programs, particularly for employers facing economic hardship. Some of these services exist or should be provided through a collaboration between public agencies and private institutions, such as the California Department on Aging, Department of Public Health, State Council on Developmental Disability, or California Foundation for Independent Living Centers, and there should be efforts to fund and bring resources across these institutions together.

More broadly, employers named the importance of increasing public investment into current and emerging public programs in order to increase affordability and meet the long term care needs

⁴ UCLA Labor Center, *Profile, Practices, and Needs of California's Domestic Work Employers, May 2016, Available at: www.labor.ucla.edu/wp-content/uploads/2018/06/UCLA_domesticworkers_report_final.pdf*

of California's older adults and people with disabilities, their families, and the workers who provide that care. They further agreed that in order for employers to come into compliance, it is critical to provide more training through an array of community-based and consumer-focused organizations.

Protection against Retaliation and Refusal to Work

It is critical that if a worker raises a health and safety concern, or feels that it is too unsafe to do a certain task or report to work because of unsafe conditions, they do not lose their job or be subject to any other retaliatory action. Once the exclusion is struck, domestic workers will be covered under the provisions of Section 6311 of the Labor Code as amended by AB 2658 (Burke), Occupational safety and health: hazards (2020), which extends anti-retaliation provisions to domestic workers. Under the statute, domestic workers have the right to refuse work that violates a health and safety standard⁵. Clear methods of effective enforcement of the anti-retaliation protections provided by AB 2658 should be developed, such as a rapid response team to field complaints of retaliation and intervene immediately to minimize harm and protect workers.

Investigation & Rights Enforcement

Participants discussed the need for a framework to investigate complaints and resolve violations of health and safety standards in domestic work. There were discussions of complaint handling procedures, referrals to mediation, providing supportive evidence through photos and videos, and having first warnings or opportunities to correct before an assessment of penalties or fines for non-compliance. Many of the proposals by the participants reflect processes already utilized by Cal/OSHA for industries that are under their jurisdiction, which apply numerous methods for resolution of issues without performing an on-site inspection.

Key enforcement themes and proposals that were emphasized are as follows:

⁵ Cal. Labor Code §6311: No employee shall be laid off or discharged for refusing to perform work in the performance of which this code, including Section 6400, any occupational safety or health standard, or any safety order of the division or standards board will be violated, where the violation would create a real and apparent hazard to the employee or their fellow employees. Any employee who is laid off or discharged in violation of this section or is otherwise not paid because the employee refused to perform work in the performance of which this code, any occupational safety or health standard, or any safety order of the division or standards board will be violated and where the violation would create a real and apparent hazard to the employee or their fellow employees shall have a right of action for wages for the time the employee is without work as a result of the layoff or discharge.

(1) Accessibility of complaint

procedures: Ensuring that there are multiple, accessible ways to file a complaint, whether phone call, in-person or in writing, and the development of a phone-base app where you can easily upload videos and images from your phone. Language access was also emphasized. Anonymity when reporting was also emphasized, and while complicated given the isolated nature of domestic work, could be achieved for those working for agencies.

(3) Need for a first warning & opportunity to correct and abate hazard:

Participants discussed the need for an opportunity for employers to correct or abate hazards in the first instance. For example, except for complaints alleging serious injury or illness or death, individual employers receive a notification or call from Cal/OSHA, have the opportunity to correct a hazard within a certain time frame, without paying a full penalty or being listed on public record for non-compliance.

(5) Referral to Mediation Program:

Similar to the dispute resolution services offered by the Civil Rights Department, in the event of a complaint, Cal/OSHA contacts the employer to let them know of the violation and informs the employer and worker that they can voluntarily choose to mediate. Mediation could be provided by authorized CBOs participating in a state funded health and safety program. The purpose of this process would be to come to an agreement on corrective action whereby employers would have the opportunity to become educated and reach compliance without intervention by Cal/OSHA.

(7) Assessment of penalties and fines for non-compliance:

Both employers and workers discussed the need for penalties and fines to

(2) Multiple ways to share evidence and off-site investigation:

Except for complaints alleging serious injury or illness or death, the use of phone and video calls to investigate and gather supporting evidence could be utilized as an alternative to on-site inspection. Cal/OSHA could also use video conferencing to speak with parties and discuss hazards, or hold investigative conferences at their offices or at an off-site location instead of the private household.

(4) Investigators dedicated and trained on the domestic work industry:

Government representatives should receive training and be well versed in the common hazards in domestic work and how to effectively communicate with domestic workers and employers. Participants recommended providing dedicated staff who have developed a specialized understanding of the industry to handle complaints and compliance.

(6) Interventions based on repeat violations and gravity of complaint:

Cal/OSHA should calibrate its approach in terms of timing, communication style and investigation based on seriousness of the danger presented. On-site inspection may be necessary where there is imminent danger of death or serious injury or illness, or when employers are willfully non-compliant or have repeat violations. Workers further emphasized the need for non-compliant employers to be included on public OSHA records for workers to be able to assess before accepting a job.

bring employers into compliance and to serve as a deterrent.

Takeaways

As noted through an international literature review by Safe Work Australia, entitled *The Effectiveness of Health and Safety Interventions by Regulators*⁶, researchers found, small and large businesses could benefit from separate models of regulation. Viewing domestic employers similarly to small businesses, it is important for regulators to provide access to individual support and advice services – aiming to be responsive in supporting them in compliance and retaining enforcement if non-compliance remains an issue. This approach is in contrast to what they view as effective for large businesses who have higher access to information and should support existing compliance and respond harshly to non-compliance.

Both compliance and enforcement policy can influence behavioral changes of employers by supporting the perceived duty to obey the law, and the consequences of non-compliance should be seen to lead to loss of reputation. Effective policy solutions also include restorative justice approaches in certain circumstances, treating guidance material and mediation as policy intervention and “enforceable undertakings,” (similar to a fix-it ticket) as an alternative to legal determinations assessing civil/criminal penalties.

The solutions offered by participants of the listening sessions reflect many of these similar principles, emphasizing the need for legal obligations by employers to ensure safety of domestic workers but creating a supportive structure to educate employers and workers and correct hazards as opposed to emphasizing punishing violations. Workers, if armed with information to make requests and educate employers themselves directly, identified that would be their first course of action. This conversation can be facilitated with official materials produced by the government, in partnership with community-based organizations, that delineate the legal obligation and corrective measures, which could easily be shared with their employer.

Workers then identified that should a direct conversation fail, the best way to move forward would be to speak to a trusted community group or organization that could facilitate supportive communication with an employer. It is critical to understand that correcting the situation is in the best interest of the domestic worker or day laborer- who wishes to maintain employment, and does not want to jeopardize the relationship while asking for their needs to be met at work. Retaliation is an enormous fear, as there the fear is that employers will respond to any discussion about working conditions with termination of employment.

Workers referenced the need to access paid sick leave, workers compensation and to receive general paid time off (i.e. vacation days), access to health care, retirement benefits, as all critical for improving their health, safety and well-being as domestic workers.

⁶ Ibid.

Policy Recommendations

Based on the information collected through these listening sessions, the California Domestic Workers Coalition proposes the following policy recommendations to the SB 321 Advisory Committee and to share with the legislature:

Proposed Policy Solutions

- (1) Eliminate the “household domestic services” exclusion under Cal/OSHA in order to establish legal responsibility.*
- (2) Adopt clear, specific, detailed standards on hazards, risks, and what steps are necessary for both employers and employees to mitigate hazards; necessary PPE and supporting equipment, develop specialized template IIPP for the domestic work industry, and ensure said information is available in popular education materials, accessible formats, and multiple languages.*
- (3) Expand the existing Domestic Worker and Employer Education and Outreach Program to include the promotion of compliance with health and safety standards for domestic workers and day laborers; expand funding for public education campaigns, targeted outreach and education, trainings to workers and employers on occupational health and safety, both online and in person, and provide individualized consultations and advice to workers and employers.*
- (4) Pilot a mediation program with community partners to work with employers and workers to correct and abate hazards as an alternative enforcement pathway.*
- (5) Utilize alternative inspection measures, such as teleconferencing and off-site meetings, to promote compliance and to balance the privacy interests of homeowners with rigorous enforcement of health and safety standards.*
- (6) Provide robust anti-retaliation protections and rapid response to complaints of possible retaliation.*
- (7) Invest into the long term care infrastructure; increase affordability and meet the long term care needs of California’s older adults and people with disabilities, and make standard safety equipment, such as PPE and non-toxic cleaning supplies, available to employers and workers free of cost and offer subsidies to those who cannot afford more costly corrective measures such as hoyer lifts.*

Appendix A

Listening Session Question Guide

1. What are the hazards that domestic workers and day laborers face at the private home?
 - a. Activity: use a visual map of a house to map out hazards
 - b. Where on our bodies do these hazards impact us? What injuries and illnesses can these hazards cause?
2. What protections, equipment, and training are needed to prevent injury and illness at your workplace?
3. If the voluntary health and safety guidelines for the industry become law, what would be the primary barriers to enforcing these protections and to make these protections a reality?
 - a. When workers have raised concerns about health and safety, what kinds of barriers have they faced?
 - b. When workers have experienced other violations to their rights (wage theft etc.), what are the barriers they face from asserting their rights?
 - c. What are the barriers that employers may face to implementing these guidelines?
4. What are some solutions to overcome these barriers?
 - a. What is the role of community-based organizations?
5. What should happen if an employer does not comply with the standards?
 - a. How would you want a government agency to intervene?
 - b. What could investigations look like?
 - c. How can we make sure workers feel safe while trying to correct or address the hazard?

Appendix B

Chart of Listening Session by Location

| Date | Organization | County |
|---|--|--|
| 4/1/2022 4/15/2022 | Nuestras Manos | Orange |
| 4/6/2022 4/13/2022 4/20/2022 | IDEPSCA, Mujeres en Acción | Los Angeles |
| 4/8/2022 | Pomona Economic Opportunity Center | Los Angeles San Bernardino |
| 4/8/2022 | Pilipino Workers Center | Los Angeles San Diego |
| 4/9/2022 | CHIRLA | Los Angeles |
| 4/12/2022 | Graton Day Labor Center, ALMAS | Sonoma |
| 4/12/2022 | Graton Day Labor Center, Day Laborers | Sonoma |
| 4/13/2022 | Dolores Street Community Services, La Colectiva de Mujeres | San Francisco |
| 4/16/2022 | Filipino Advocates for Justice | Alameda Contra Costa |
| 4/20/2022 8/9/22 (2 sessions) | Hand in Hand & Senior and Disability Action | Alameda San Francisco Los Angeles Santa Barbara |
| 4/20/2022 | Mujeres Unidas y Activas | Alameda San Francisco |
| 5/7/2022 | Chinese Progressive Association | San Francisco |
| 5/11/2022 | National Domestic Workers Alliance | Santa Clara |
| 5/11/2022 | CA State Independent Living Council | Sacramento |
| 5/21/2022 | Disability Rights Education & Defense Fund | Alameda |
| 5/21/2022 | Pilipino Association for Workers and Immigrants | Santa Clara |
| 5/11/2022 5/13/2022 5/14/2022 5/16/2022 5/18/2022 | IDEPSCA, Day Laborers | Los Angeles |