

Date: Apr 22, 2022

To: SB 321 Health and Safety Advisory Committee

From: Maria Gabriela Sanchez, Health and Safety Policy Fellow at the California Domestic Workers Coalition

Re: Health and Safety for Domestic Workers Literature Review

I. Introduction

Domestic workers are a crucial component of California's economic fabric and “perform essential services in the most intimate realm of the home,” creating conditions for other work to be done.¹ The care economy is one of the fastest-growing segments of the labor market as an aging population requires health aides.² While often dismissed as not “real” work, domestic workers care for children, people with disabilities who wish to live independently, provide companionship and run households for others. Riley and Majano report that there are about 358,000 domestic workers working in over 2 million households in California, accounting for almost 16% of all California households. In California, the overwhelming majority of domestic workers are immigrant women of color, 86% of domestic workers are women and over three-quarters of domestic workers are people of color.³ Despite the significance of the services they provide, domestic workers often feel undervalued, invisible, disrespected, and as though they do not receive dignity for their work.⁴

Even though domestic workers have been historically excluded from labor protections, California law guarantees minimum wage, overtime payment, rest breaks, workers compensation, and protection from harassment (See Section *California*). Despite these great strides and the tireless advocacy from community organizations, domestic workers in California still do not enjoy full health and safety protections in their workplace.

Through the years, community-based organizations like the California Domestic Workers Coalition (CDWC), have partnered with experts in occupational health and safety think tanks like UCLA’s LOSH and UC Berkeley’s LOHP, to document and study the hardships domestic workers face in their everyday lives, including poverty, lack of access to healthcare, issues with employers, and a lack of clear health and safety guidelines.

¹ Verónica Ponce de León, Rosario Majano, Kevin Riley, and RJ Ronquillo, “Hidden work, Hidden pain: Injury experiences of domestic workers in California” UCLA Labor Occupational Safety and Health Program, National Domestic Workers Alliance, and California Domestic Workers Coalition, (2020): <https://losh.ucla.edu/wp-content/uploads/sites/37/2020/06/Hidden-Work-Hidden-Pain.-Domestic-Workers-Report.-UCLA-LOSH-June-2020-1.pdf>.

² Augusta Saraiva, “Immigrant Domestic Employees Slip Through Relief Cracks in U.S.,” Bloomberg Equality, August 20, 2021, a <https://www.bloomberg.com/news/articles/2021-08-20/immigrant-domestic-employees-slip-through-relief-cracks-in-u-s>.

³ Saba Waheed, Michele Wong, and Megan Whelan, “Profile of Domestic Workers in California,” UCLA Labor Center and the California Domestic Workers coalition, 2020.

⁴ Secretary of Commerce and Trade. *Report on Domestic Service Workers*, RD10, Richmond, Virginia: The Virginia General Assembly, 2021. <https://rga.lis.virginia.gov/Published/2021/RD10/PDF>.

In 2021, Governor Newsom signed into law SB 321, which creates an advisory committee made up of domestic workers, day laborers, employers, and representatives from advocacy organizations to create voluntary health and safety guidelines for domestic workers and their employers. In addition, the committee will provide recommendations “on what additional policies may be adopted by the Department of Industrial Relations or the Legislature to protect the health and safety of household domestic service employees.” These recommendations for future enforcement mechanisms must consider privacy protections for employers.

This report is intended to provide information on the challenges domestic workers face as a result of lack of health and safety protections in California. Additionally, the report will also provide information on enforcement mechanisms as seen in other jurisdictions.

Historically, domestic work has been excluded from various regulations and protections due to anti-Black policies rooted in the legacies of slavery. Additionally, employers may not always see themselves as employers, with public discourse also asserting that the relationship between domestic workers and employers is different than the traditional relationship between workers and employers.

II. History of a Lack of Protection

The exclusion of protection for domestic workers dates back to racist policies against Black workers. In 1938, the Fair Labor Standards Act excluded farmworkers and domestic workers from minimum wage and overtime protections, two industries with mostly Black workers. Smith reports that by 1941, only Washington state had extended overtime protection to domestic workers.⁵ During the labor movement of the 20th century, domestic work was not seen as dangerous or in need of protection and regulations.⁶ Discourse went even further, arguing that young, unmarried women made up most of the domestic worker force, therefore no protections or regulations were needed as this work prepared them to take on their own family duties in the future.⁷ However, Smith notes, the supposed benefits from domestic work were only sold as such to the working class; middle-class women were instead advised to “avoid physically demanding tasks such as housework.”⁸

While current discourse is different around who is able to do domestic work, exclusions persist. Currently, anxiety around protecting employers’ right to privacy have led decision makers to be hesitant to grant domestic workers the same health and safety protections as other workers.⁹

The National Domestic Workers Alliance (NDWA) has worked on many battles at the state-level to end this historic exclusion. Alexis Rodgers from NDWA explained to the Virginia SB 84

⁵ Peggie Smith, “The Pitfalls of Home: Protecting the Health and Safety of Paid Domestic Workers,” *Canadian journal of women and the law* 23, 1 (2011): 309-339.

⁶ Smith, “Pitfalls,” 314.

⁷ Smith, “Pitfalls,” 315.

⁸ Smith, “Pitfalls,” 316.

⁹ California General Assembly, *SB 1257 Senate Floor Analysis*, Durazo, et al, Sacramento, California: Senate Rules Committee Office of Senate Floor Analyses, California General Assembly, 2020, https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200SB1257, (Accessed March 2022).

committee that the first step in advancing domestic workers' rights in any state is to strike the legal exemptions in legislation. This exclusion may be explicit in the legislation or implicit in requiring minimum size of employees for workplace protections.¹⁰ Therefore, the NDWA advocates for state legislation to use a broad definition of domestic worker to encompass as many domestic workers as possible. The preferred definition is the one from Seattle's domestic worker's bill of rights: "any worker who 1) is paid by one or more hiring entities; and 2) provides domestic services to an individual or household in or about a private home as a nanny, house cleaner, home care worker, gardener, cook, or household manager. "Domestic worker" includes hourly and salaried employees, independent contractors, full-time and part-time workers, and temporary workers."¹¹

III. History of Domestic Workers' Rights in California

As of 2022, Domestic workers in California have rights to minimum wage, overtime pay, regular meal and rest breaks, worker's compensation, paid sick leave, and protection against retaliation. In 2013, the Domestic Work Bill of Rights was signed by Governor Brown. The law provided overtime pay rights to "certain personal attendants working in the home" after working 9 hours in a day or over 45 hours in a week.¹² This applied to workers who otherwise were not "entitled" to overtime pay. Domestic workers who are not personal attendants are protected against wage theft under Wage Order No. 15.¹³ Employers must provide written, detailed information about how much domestic workers are paid, as well as information about the workers' compensation insurance carrier's name and contact information.¹⁴ According to DIR, domestic workers "earn 1 hour of paid sick time for every 30 hours worked for your employer. [Domestic workers] can begin using paid sick time after a period of 90 days from [their] employment start date. [Their] employer may limit the use of paid sick time per year to 24 hours or 3 days, whichever is more."¹⁵ With regards to retaliation protection, employers are not allowed to illegally fire employees, cut hours or call immigration as a result of employees exercising their rights.¹⁶ In order to ensure access to these rights, workers must initiate the complaint process either via phone or online or contact the CDWC.

¹⁰ Secretary of Commerce and Trade, *Report on Domestic Service Workers*.

¹¹ City of Seattle, *AN ORDINANCE relating to employment in Seattle; establishing labor standards for domestic workers; establishing a Domestic Workers Standards Board; prescribing remedies and enforcement procedures; amending Section 6.208.020 of the Seattle Municipal Code; and adding a new Chapter 14.23 to the Seattle Municipal Code*, Teresa Mosqueda. CB 119286, Seattle, WA: City Clerk, 2018 <http://seattle.legistar.com/LegislationDetail.aspx?ID=3532201&GUID=232AE887-44C6-4450-A040-84225AD4F11D&FullText=1> (Accessed March 2022).

¹² California Department of Industrial Relations, "The Domestic Worker Bill of Rights (AB 241)," California Department of Industrial Relations, 2022, <https://www.dir.ca.gov/dlse/DomesticWorkerBillOfRights.html>

¹³ Ibid.

¹⁴ GTM Payroll & HR, "What Families Need to Know When Hiring a Domestic Employee in California," GTM Payroll & HR, July 27, 2018, <https://gtm.com/household/california-domestic-employment/>.

¹⁵ Los Angeles County, "Know Your Rights," Los Angeles County, 2021, <https://oia.lacounty.gov/domestic-work/for-workers/>

¹⁶ Los Angeles County, "How do I file a Complaint?" Los Angeles County, 2022, <https://oia.lacounty.gov/domestic-work/for-workers/>

In 2020, as a result of the wildfires in California, AB 2658 made it a crime for a person to “direct an employee to remain in, or enter, an area closed under prescribed provisions of law due to a menace to the public health or safety.”¹⁷ This is particularly relevant when considering the wildfire season in California (See Climate Change).

SB 83 and Co-Enforcement Initiatives

In 2018, the CDWC worked with Assembly Member Ting to pass AB 2314 The Domestic Worker Rights Implementation Act, which established the Domestic Worker Rights Education and Outreach Program within the California Division of Labor Standards Enforcement. The program would have “[provided] outreach, education, and training to both domestic workers and employers on domestic worker rights with the goal of increasing awareness of and compliance with existing labor protections.”¹⁸

The Assembly Floor Analysis reported that the fiscal effect of this bill would include a one-time cost of \$2.6 million and ongoing costs of \$2.2 million for implementation and enforcement. These costs would cover additional staff for training and outreach, in addition to online resources hub, telephone helpline, worksite inspections, and investigations on retaliation and wage cases. The bill was vetoed by Governor Brown in 2018, arguing that “given the wide variety of domestic work and the sparse information available” the assembly should wait for the findings of a report from the Division of Labor Standards Enforcement and then hold hearings about the topic.¹⁹

In 2019, thanks to the “Our Work, Our Dignity” campaign launched by the CDWC in 2018, SB 83 established an outreach program through the Division of Labor Standards Enforcement “to promote awareness of, and compliance with, labor protections that affect the domestic work industry and to promote fair and dignified labor standards.”²⁰ Through this program, community based organizations that have proven experience working with domestic workers and low wage workers, are able to develop materials to educate workers on minimum wage laws, sick leave, overtime guarantees, record-keeping, and retaliation. CDWC partners with 14 organizations including Nuestras Manos of Orange County, the Chinese Progressive Association in San Francisco, CHIRLA in Los Angeles, and the Filipino Migrant Center in Long Beach among

¹⁷ California Senate Committee on Labor, Public Employment and Retirement, *Employment safety standards: household domestic services*, Sacramento, California: California State Senate, 2021.
https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220SB321 (Accessed March 2022).

¹⁸ California Domestic Workers Coalition, “Campaigns: Domestic Worker Rights Education and Outreach Program,” California Domestic Workers Coalition, 2022, <https://www.cadomesticworkers.org/policy-advocacy/campaigns/>

¹⁹ California General Assembly, *AB 2314 Assembly Floor Analysis*, Megan Lane, Sacramento, California: California General Assembly, California Legislative Information, 2018,
https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB2314# (Accessed April 8, 2022.)

²⁰ California General Assembly, *Senate Bill No. 83, 2019-2020*, Sacramento, California: California General Assembly, California Legislative Information, 2019,
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB83 (Accessed March 2022).

others. Through the program, CBO's do peer to peer digital and in-person outreach, training about labor rights, and leadership development. The program is set to continue until 2024.²¹

SB 1257

In 2021, Senate Bill 1257 was introduced by Senator Durazo. The Health and Safety for All Workers Act was “designed to extend Cal OSHA protections to domestic workers and day laborers who are hired to carry out tasks in private homes.”²² In May 2020, The Bulosan Center for Filipinx Studies reported that SB 1257 would have been “likely to offer initial workplace protections that can prevent future health risks.”²³ Scholar Eileen Boris explains that “SB1257 recognized the challenges of the residential workplace by including a complaint process to maintain employer privacy on other personal or financial matters. An inspection warrant would only have come after notification, education and conciliation failed.”²⁴ IDEPSCA explains that the bill would have required employers to develop emergency procedures and identify hazards in their home, along with providing necessary protections.²⁵ The bill was introduced with a sense of urgency given the COVID-19 pandemic and the ongoing wildfires in California. Jabola-Carolus recommended extending occupational health and safety protections to domestic workers, supporting the passing of SB 1257.²⁶ He explains that without legislative action, employers are not required to provide basic safety training, PPE, or inform workers of unsafe conditions.²⁷

The Assembly Appropriations Committee reported that the fiscal impact of SB1257 would result in millions of dollars of costs for Cal OSHA, arguing that “any one of California’s 13 million households that hires a domestic worker would now be subject to Cal OSHA’s enforcement authority.”²⁸ This is misleading, as it is well documented that only about 2 million households in California hire domestic workers. Activists and scholars have also documented the areas where domestic workers are most likely to work. This figure is a significant overestimation, as it is unreasonable to expect every household in California would become an employer upon the passing of workplace protections for domestic workers.

The Senate and Assembly Analysis of the Bill received no opposition on record. Over 100 community organizations signed on in support of the bill. Governor Newsom, however, vetoed the bill, arguing that “new laws in this area must recognize that the places where people live

²¹ California General Assembly, *Senate Bill No. 83, 2019-202*.

²² Instituto de Educación del Sur de California, “On the Frontlines: The Role of Domestic Workers and Day Laborers in Confronting Recent Wildfires in Southern California” IDEPSCA, September 2020, + https://drive.google.com/file/d/1zuCsFLkuGO1s0tsZO9lB4_-5jr2GvZ9O/view, 7.

²³ Cruz et al., “Lapses in Protection.”

²⁴ Eileen Boris, “The California battle for health and safety for domestic workers,” *International Journal of Care and Caring* 2022 6(1-2): 283–287.

²⁵ IDEPSCA, “Wildfires.”

²⁶ Isaac Jabola-Carolus, “Unprotected on the Job: How Exclusion from Safety and Health Laws Harms California Domestic Workers,” CUNY Academic Works, 2020, https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1776&context=gc_pubs.

²⁷ Ibid.

²⁸ California General Assembly, *SB 1257 Senate Floor Analysis*, Durazo, et al, Sacramento, California: Senate Rules Committee Office of Senate Floor Analyses, California General Assembly, 2020, https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200SB1257, (Accessed March 2022).

cannot be treated in the exact same manner as a traditional workplace or worksite from a regulatory perspective.”²⁹ Additionally, the veto note explains, the bill would require private homes “to create an injury prevention plan and requirement to conduct outdoor heat training,” which would be onerous to employers.

SB 321

In September 2021, Governor Newsom signed SB 321, which gives the Chief of Cal OSHA the power to convene an advisory committee made up of domestic workers, day laborers, employers and health experts to create voluntary health and safety guidelines for the industry. The committee is set to have between 13 and 18 individuals, who will make “recommendations, in consultation with other specified divisions and entities, to the department or Legislature to protect the health and safety of household domestic service employees.”³⁰ SB 321 text specifies that the advisory committee shall be geographically and demographically diverse and shall require representation of employers and employees from housecleaning, childcare, day laborer and homecare sectors of the domestic work industry. . Each individual must have been in their roles for at least 5 years. Representatives from nonprofit organizations working with day laborers, domestic workers, and employers will also be included in the committee. The advisory committee must take into consideration how to protect the privacy of individuals who employ domestic workers, how to “identify workplace hazards specific to the industry”, how to conduct training and outreach to employers and domestic workers, and the need to develop requirements tailored to the industry.³¹ The recommendations coming out of this committee will be submitted to the Cal OSHA and legislature by January 1, 2023.

IV. Employers

Individuals and families who hire domestic workers have a wide variety of needs and realities. Scholars, such as Riley and Majano, report that employers of domestic workers often do not recognize themselves as such. Smith also reports that implementing health and safety regulations “must account for a number of competing concerns and interests” such as balancing affordable care services for elderly and disabled clients and having safe working conditions.³² Employer organizations like Hand in Hand have aligned themselves with domestic workers groups in order to advocate for better working conditions that benefit the employer and worker alike.³³ As aforementioned, about 2 million households employ domestic workers in California. According to the UCLA Labor Center, the majority of employers hire house cleaners (54%). Housecleaner employers tend to be white, wealthier, work in professional occupations, and have higher levels of education. About 27% of employers use homecare support, while the remaining 19% rely on

²⁹ California General Assembly, *SB 1257 Senate Floor Analysis*.

³⁰ California General Assembly, *Senate Bill No. 321*, Durazo et al., Sacramento, California: California Legislative Information, 2021, https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=20210220SB321 (Accessed March 2022).

³¹ California General Assembly, *Senate Bill No. 321*.

³² California General Assembly, *SB 1257 Senate Floor Analysis*.

³³ Hand in Hand, “About Us,” Hand in Hand the Domestic Employers Network, 2022, <https://domesticemployers.org/about/>.

domestic workers for childcare.³⁴ As opposed to housecleaner employers, childcare employers in California are mostly Latino and are younger individuals working in frontline and service jobs. Meanwhile, homecare employers are retired, older individuals, people with disabilities and people who tend to have less than a bachelor's degree. About half of these employers are white and half are low-income. In 2016, about 21% of domestic work employers earned between \$50,000 and \$100,000. About 47% of employers fall into the "less than 25,000" household income brackets or earn between \$25,000 and \$50,000. Waheed et al. also report that about 34% of domestic work employers are retired and about 26% are in managerial or professional occupations.³⁵ These statistics illustrate that many domestic work employers could benefit from support to create better working conditions for their employees. The 2016 UCLA Labor Center report explains that "Employers want to raise wages, but would require enhanced public investment to manage that enlarged financial responsibility. Many working families struggle to sustain the costs of vital childcare and homecare."³⁶

In general, employers struggle with a lack of guidance from the government around the rights and expectations of hiring domestic workers. For example, Waheed et al. explain that about half of employers "didn't consult any sources when they were figuring out" terms of employment.³⁷ Employers also hire through a variety of avenues, such as personal references, agencies or websites.³⁸ Many individuals requiring these services may also have accessibility barriers to understanding vague guidance from the government.

Homecare Employers

As aforementioned, domestic work is essential to allowing seniors and people with disabilities to live in their homes and communities. However, the lack of "robust government funding" causes families and individuals to "struggle to pay for care or rely on unpaid support."³⁹ This creates a precarious situation for two vulnerable groups as "the majority of homecare work is performed by women of color who face challenging working conditions—including low wages and a high turnover rate."⁴⁰ UCLA and Hand in Hand report that more than 25% of homecare workers live below the poverty line and more than half use public assistance.⁴¹ Most employers, the UCLA Labor center reports, hire workers for themselves, while a third hires workers to care for family members. While about 61% of employers receive government support, about 20% of these employers still have to make up a portion of their worker's wages.⁴² In general, almost 40% of employers pay for domestic services out of pocket, either from retirement funds, long-term care

³⁴ Seba Waheed, Lucero Herrera, Renya Orellana, Blake Valenta, and tia Koonse, "Profile, Practices and Needs of California's Domestic Work Employers," *UCLA Labor Center* (2016): https://www.labor.ucla.edu/wp-content/uploads/2018/06/UCLA_domesticworkers_report_final.pdf.

³⁵ Waheed et al., "Profile", 57.

³⁶ Waheed et al., "Profile", 35

³⁷ Waheed et al., "Profile", 27.

³⁸ Waheed et al., "Profile."

³⁹ UCLA Labor Center, Hand in Hand, Senior & Disability Action, Pilipino Workers Center, Caring Across Generations, "Struggles and Support: Homecare Employers in California," *UCLA Labor Center* (2017): https://www.labor.ucla.edu/wp-content/uploads/2018/06/UCLA_StrugglesandSupportCAEmployers_Final.pdf.

⁴⁰ UCLA Labor Center et al., "Struggles and Support," 2.

⁴¹ UCLA Labor Center et al., "Struggles and Support," 11.

⁴² Ibid.

insurance, or with help from family and friends. Government assistance is only available to very low-income households, leaving many out of the criteria to receive benefits. Employers who pay for some or all of workers' wages may be living in modest means themselves, with 44% surveyed by UCLA and Hand in Hand making less than \$50,000 in household income.⁴³ Employers, however, value the services provided by domestic workers and most of them (two-thirds) would pay higher wages if they could. Due to the cost of services and lack of support, many employers report “not getting the full support they need.”⁴⁴

Policy makers in California and other jurisdictions alike find themselves hesitant to enact policy that might, in their view, place undue burden on domestic employers. For example, the Virginia SB 804 report explains that “recordkeeping required to provide unemployment and workers’ compensation benefits to employees is complex and challenging for... employers, particularly individual and family employers.”⁴⁵

V. COVID-19 Pandemic

The COVID-19 pandemic hit the domestic work industry particularly hard. The UC Davis Environmental Health Science Center collected data from domestic workers in California before vaccines became widely available and recently published the study results. The researchers report that workers were three times at higher risk of becoming infected with COVID-19 than the general CA population.⁴⁶ In a survey conducted by Asian Americans Advancing Justice and UC Berkeley’s LOHP, low-wage workers reported that they received little or no information about safety precautions to mitigate COVID-19 transmissions.⁴⁷ This reinforces the findings of UC Davis, which reports that 79% of domestic employers did NOT inform workers about the risk of COVID exposure in their homes.⁴⁸ Additionally 59% of employers did not mandate social distancing indoors while there were workers present in their homes.⁴⁹ This has real implications, as one third of respondents to the UC Davis study reported believing they caught the virus at a workplace.⁵⁰ Workers are also less likely to bring up COVID-19 concerns for “of a fear of retaliation or a lack of confidence that the employer will address the problem.”⁵¹ Additionally, 72% of workers surveyed by UC Davis reported feeling stress related to health coverage during the pandemic.

⁴³ Ibid.

⁴⁴ UCLA Labor Center et al., “Struggles and Support”, page 4.

⁴⁵ Secretary of Commerce and Trade, *Report on Domestic Service Workers*.

⁴⁶ UC Davis Environmental Health Sciences Center, “COVID-19 & DOMESTIC WORKERS,” UC Davis Environmental Health Sciences Center, March 2022, https://environmentalhealth.ucdavis.edu/sites/g/files/dgvnsk2556/files/media/documents/COVID-19%20%26%20Domestic%20Workers%20FINAL%20DATA%20v8_0.pdf.

⁴⁷ Advancing Justice - Asian Law Caucus and University of California, Berkeley Labor Occupational Health Program, “Few Options, Many Risks: Low-Wage Asian and Latinx Workers in the COVID-19 Pandemic,” April 2021, https://www.advancingjustice-alc.org/news_and_media/covid-workers-report.

⁴⁸ UC Davis, “COVID”..

⁴⁹ Ibid.

⁵⁰ UC Davis, “COVID.”

⁵¹ Advancing Justice, “Few Options.”

Workers did not have reliable access to safety equipment, even the most effective and accessible ones. About 77% of workers reported not receiving masks from employers. UC Davis also reports that workers preferred having cloth masks, but those were least likely to be offered by an employer, if the employer provided any masks at all.⁵² This is a result of the exclusion from Cal OSHA standards, Jabola-Carolus argues, since employers are not required to provide safety equipment, many workers were left without any protection during the beginning of the pandemic.⁵³

Through a chatbot, the National Domestic Workers Alliance surveyed more than “20,000 Spanish-speaking cleaners, nannies, and homecare workers” beginning in March 2020 to learn about the challenges they were facing as domestic workers.⁵⁴ After six months and 25 weekly surveys, the NDWA found that more than 90% of workers lost jobs due to the pandemic and more than half of workers were unable to make rent or mortgage payments for six consecutive months. Even for those who did not lose all their source of income, the NDWA and UC Davis both report lower wages among domestic workers as a result of the economic impact of the pandemic.^{55, 56} Many workers were asked to perform work without proper protection, putting their own health on the line.

VI. Health and Safety Concerns

Domestic workers were excluded from the 1973 California’s Occupational Safety and Health Act, and the effects of this are ongoing. The Bulosan Center for Filipino Studies reports that domestic workers in California suffer from over 4,000 work-related injuries or illness, highlighting the need for protection.⁵⁷ Jabola-Carolus reports that due to exclusions from workplace protections, “large percentages of domestic workers have experienced workplace injuries, been exposed to toxic cleaning chemicals, and contracted contagious illness from sick clients or children”.⁵⁸ Common adverse health outcomes for domestic workers, Jabola-Carolus, explains include injury, skin or eye irritation, and breathing difficulty.⁵⁹ Hill et al. find four categories of common occupational hazards in migrant domestic workers: “fatigue, psychosocial

⁵² UC Davis, “COVID.”

⁵³ Isaac Jabola-Carolus, “Unprotected on the Job: How Exclusion from Safety and Health Laws Harms California Domestic Workers,” CUNY Academic Works, 2020, https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1776&context=gc_pubs, 3.

⁵⁴ National Domestic Workers Alliance, “6 Month in Crisis: The Impact of COVID-19 on Domestic Workers,” NDWA, October 2020, https://www.domesticworkers.org/wp-content/uploads/2021/06/6_Months_Crisis_Impact_COVID_19_Domestic_Workers_NDWA_Labs_1030.pdf.

⁵⁵ ILO, “Guidance on occupational safety and health for domestic workers and employers to prevent and mitigate COVID-19,” *International Labour Organization* (2022): https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/publication/wcms_834920.pdf

⁵⁶ UC Davis, “COVID.”

⁵⁷ Colleen Cruz, Anelle Maranan Garcia, Jeff Stanley, Carmela Marie Distura, Katherine Nasol, “Lapses in Protections for Domestic Workers: Prospects Under SB 1257,” *Bulosan Center for Filipinx Studies*, (2020): https://drive.google.com/file/d/1DYK1ru-K67iuYQnAUXC7uRoFIEJ0YXc_/view.

⁵⁸ Jabola-Carolus, “Unprotected,” 3.

⁵⁹ Jabola-Carolus, “Unprotected,” 6.

stress, physical hazards, and exposure to harassment and abuse.”⁶⁰ Smith reports that domestic workers face environmental risks as well, such as exposure to second-hand smoke, harsh chemicals, faulty electrical wiring, and attacks from animals in and around a client’s home.⁶¹ Workers who administer injections or care for the hygiene of their clients, face exposure to infectious material (i.e. bedpans and soiled linen). According to Jabola-Carolus, over three-quarters of workers surveyed reported at least one job-related injury or illness in the past 12 months. About a quarter reported contracting an illness on the job and about a quarter reported “experiencing verbal or physical aggression.”⁶² Smith adds that live-in workers may not have safe and adequate living quarters or access to adequate food. In addition, workers who serve as aids to elderly and patients with limited mobility are likely to sustain injuries due to lifting or “violence stemming from combative and abusive clients”⁶³

Harsh chemical cleaning products, such as bleach and ammonia also contribute to health hazards. Smith reports that domestic workers have higher risk of asthma, chronic bronchitis, and other respiratory issues.⁶⁴ Domestic workers have also reported skin irritation, burning sensation in eyes and throat, nausea, dizziness, aches, nasal congestion, and coughing due to cleaning products.⁶⁵ Moreover, housekeepers are twice as likely to suffer chemical burns than the general working population.⁶⁶

In 2011, Smith reported that 75% of domestic workers did not receive protective gear to prevent injury or illness, about 86% did not receive “training in job safety or injury protection,” and 95% of workers did not receive health insurance coverage through their employer.⁶⁷ More recently, Jabola-Carolus’s work reinforces this, as he reports that, despite expressed interest, only 25% of workers interviewed between 2019 and 2020 received safety training from their employer, “training that is required by law in other industries.”⁶⁸

A Health Impact Assessment by the Department of Public Health in San Francisco revealed that domestic workers are more likely to experience strains, tears, and back pain. They are also “three times more likely than the general working population to experience bruises, back pain, and contusions.”⁶⁹ In addition to physical safety concerns, domestic workers are also much more likely to experience verbal and sexual harassment at the hands of their employer. UCLA LOSH report that about 23% survey respondents reported being sexually harassed or assaulted while working.⁷⁰

⁶⁰ Nicole Hill, Sara Dorow, Bob Barnetson, Javier Martinez, and Jaren Matsunaga-Turnbull, “Occupational Health and Safety for Migrant Domestic Workers in Canada: Dimensions of (Im)mobility,” *NEW SOLUTIONS: A Journal of Environmental and Occupational Health Policy* 29,3 (2019): DOI: 10.1177/1048291119867740.

⁶¹ Smith, “Pitfalls,” 311.

⁶² Jabola-Carolus, “Unprotected,” 3.

⁶³ Smith, “Pitfalls,” 310.

⁶⁴ Smith, “Pitfalls,” 318.

⁶⁵ Smith, “Pitfalls,” 319.

⁶⁶ Cruz et al., “Lapses in Protection,” 2.

⁶⁷ Smith, “Pitfalls,” 311.

⁶⁸ Jabola-Carolus, “Unprotected,” 3.

⁶⁹ Cruz et al., “Lapses in Protection,” 2.

⁷⁰ UCLA, NDWA, CDWC, “Hidden Work, Hidden Pain: Injury Experiences of Domestic Workers in California,” *UCLA LOSH*, 2020,

Parallels with other Industries

Researchers and advocates alike have repeatedly pointed out that the tasks and hazards of domestic work are not only comparable but closely follow the hazards and injuries of similar industries. These industries, advocates point out, have health and safety regulations. Smith writes that domestic workers actually “reported more frequent exposure to respiratory irritants, a significantly higher incidence of physical reactions to using cleaning products, and using more products that contain irritants” than their janitorial counterparts.⁷¹ Unlike workers in a janitorial role, domestic workers rely heavily on advice from other workers, family members, or trial and error.⁷² Due to this, however, domestic workers may not be completely aware of the harmful effects of certain chemicals. Moreover, even if domestic workers are aware of the harmful effects of chemicals, they are only able to use whatever is provided to them by their employer, who may also be unaware of the consequences of using certain chemicals without protection. Smith reports that UCLA’s LOSH, UC Berkeley’s LOHP, and the Caring Hands Worker Associations do provide training for safe use of cleaning chemicals, showing that this protection is left up to community organizations rather than the government.

Data gathered by UCLA LOSH, the NDWA and CDWC shows that domestic workers face injuries similar to counterparts in the formal sector such as injuries caused due to “repetitive motions (81%), lifting of heavy objects (76%) lifting of children or care recipients (70%), and exposure to cleaning chemicals (62%) and biological hazards (79%).”⁷³ The most common type of injury among those interviewed was musculoskeletal (85%). This is significant because these types of injuries are not easily resolved and workers are forced to work through painful conditions for fear of losing income.⁷⁴ While less than half of the respondents in this study reported seeking medical care, about 68% reported having to pay for care out of pocket, and about 92% of those who missed work due to an injury were not paid for lost work time.⁷⁵

Worker’s Compensation

Currently, under California law, a domestic worker is eligible for worker’s compensation if they worked 52 or more hours during the 90 days before the incident and if they earn \$100 or more during the job. However, many domestic workers and day laborers do not file worker’s compensation claims. In Los Angeles, less than 10% of low-wage workers filed a claim; from this we can assume that greater barriers exist for members of the informal economy.⁷⁶ Riley and Majano conducted a study looking at worker’s compensation claims filed between 2008-2018 from residential workers. The researchers found claims that were filed by workers working at a

<https://losh.ucla.edu/wp-content/uploads/sites/37/2020/06/Hidden-Work-Hidden-Pain.-Domestic-Workers-Report.-UCLA-LOSH-June-2020-1.pdf>

⁷¹ Ibid.

⁷² Smith, “Pitfalls,” 319.

⁷³ UCLA, NDWA, CDWC, “Hidden Work, Hidden Pain: Injury Experiences of Domestic Workers in California,” *UCLA LOSH*, 2020,

<https://losh.ucla.edu/wp-content/uploads/sites/37/2020/06/Hidden-Work-Hidden-Pain.-Domestic-Workers-Report.-UCLA-LOSH-June-2020-1.pdf>

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Riley and Majano, “Worker’s Comp”, 2.

private residence for an individual or a family. With their search criteria, the authors identified 5,463 compensation claims that were likely to have been filed by a domestic worker. About 60% of the claims were submitted by women and about half had taken place in the Los Angeles metropolitan area. The most common injuries reported included: falling, slips and trips, or fall on stairs, along with falls from ladders and lifting.⁷⁷ Claims of amputations of fingers and toes of workers performing construction and maintenance tasks accounted for 17 claims. 81.9% of claimants received a form of initial treatment for their injuries, most commonly at a hospital or clinic. Workers performing construction and maintenance were more likely to require hospitalization. About two-thirds of claims (65.7%) resulting in payment (of whatever amount) to the worker, most common was payment for medical care. About a quarter of the claims required temporary disability, while almost 22% ended in permanent disability. Medical care payment amounted to \$250 or more in about 90% of claims, “the threshold at which the Workers’ Compensation Insurance Rating Bureau of California (WCIRB) distinguishes between first aid and more serious medical treatment.”⁷⁸ Childcare workers were likely to receive slightly more than \$250.

The authors note that construction and landscaping workers were less likely to receive payments for medical care. Additionally, housekeeping, and childcare workers were more likely to receive payments for legal settlements. Workers who had worked at least eight days before incident of injury were more likely to receive compensation, indicating that employment tenure is an important factor in determining the likelihood of payment. In fact, workers who had been employed between 6 months and a year were most likely to receive payment.⁷⁹ Despite the fact that some domestic workers access worker’s compensation programs, Smith reports that 64% of workers interviewed back in 2007 did not receive medical attention after an injury endured at their workplace.

Live-in Caregivers

Caregiving is one of the fastest growing industries in the nation, as an aging population requires round-the-clock care, costs of institutional care become inaccessible to many, and smaller family sizes leads many hire caregivers. Live-in caregiving is unique in that workers may live with patients full time or complete long shifts over a few consecutive days. Duties for these workers range from bathing and grooming, to keeping up with housework and providing “sanctioned medical care.”⁸⁰ Workers are hired via a variety of avenues, such as through agencies or referrals. Riley et al. point out that live-in caregivers “may effectively work up to 24 hour per day depending on the patient’s health status and care needs.”⁸¹ The exclusion of domestic workers from the Fair Labor Standards Act applies to live-in caregivers, whose work arrangements do not always include provisions on meal and rest breaks.⁸²

⁷⁷ Riley and Majano, “Worker’s Comp”, 4.

⁷⁸ Riley and Majano, “Worker’s Comp”, 2.

⁷⁹ Riley and Majano, “Worker’s Comp”, 7.

⁸⁰ Riley et al., “Live-in Caregivers”, 1120.

⁸¹ Riley et al., “Live-in Caregivers”, 1120.

⁸² Riley et al., “Live-in Caregivers”, 1121.

Riley et al. report that 24-hour caregivers suffer from sleep deprivation and poor working conditions. In collaboration with the Pilipino Worker Center (PWC), the scholars interviewed 32 Filipino caregivers in Los Angeles and reviewed their sleep logs; the scholars found that, on average, caregivers only record 6.4 hours of sleep over 2.4 sleep periods.⁸³ Filipino workers in the Los Angeles area, past research has shown, are likely to be over the age of 50 and undocumented.⁸⁴ Most of the respondents worked for homecare agencies, where they were more likely to have received a written contract. About one-third of respondents were hired directly by patients and guardians; no caregivers hired in this manner had written contracts. Over a 24-hour work period, the respondents recorded only 1.2 hours of meal breaks and less than a full hour for other breaks, adding up to 8.5 hours of combined sleep and breaks. Additionally, respondents reported a lower quality of sleep during workdays. Moreover, the respondents reported that they do not enjoy designated sleeping areas during their shifts, sometimes resorting to “sleeping on couches, recliner chairs, or cots near their patients.”⁸⁵ Many report that employers “expect them to regularly sleep on the floor beside the patient’s bed.”⁸⁶ The inability to get quality sleep while working seems to be concentrated among female workers interviewed, showing the role of gender in negotiating day-to-day terms of employment. Additionally, the researchers found that workers hired directly by guardians were more likely to have better sleep outcomes. This is in line with other realities agency-affiliated workers face: respondents reported that they “aced threats of reduced work hours or other consequences if they complained about work conditions.”⁸⁷

The lack of adequate sleep has real health implications. Riley et al. report that “Chronic work-related fatigue and sleeplessness may in turn increase risk for gastro-intestinal problems, Type 2 diabetes, cancer, and cardiovascular disease.”⁸⁸ Irregular sleeping schedules lead to higher chances of occupational injury and illness. Fatigue also prevents workers from performing at the highest caliber at their job: the brain fog and other health issues may cloud judgment or lead to errors in care. Moreover, day-time sleepiness may cause traffic accidents and other consequences outside the workplace.⁸⁹ The authors of the study explain that legislation must address the lack of protections for live-in caregivers and suggest that written contracts “include provisions for rest and meal breaks, standard hours of uninterrupted sleep when possible, dedicated beds for caregivers, and assurance of paid rest and sick days.”⁹⁰

Mental Health

The Bulosan Center for Filipinx Studies reminds readers that mental health should be an important consideration when talking about domestic workers’ rights. The lack of job security, along with demanding work duties and “negative relationships at work are linked to poor mental

⁸³ Riley et al., “Live-in Caregivers.”

⁸⁴ Riley et al., “Live-in Caregivers,” 1121.

⁸⁵ Riley et al., “Live-in Caregivers,” 1124.

⁸⁶ Ibid.

⁸⁷ Riley et al., “Live-in Caregivers,” 1126.

⁸⁸ Ibid.

⁸⁹ Cruz et al., “Lapses in Protection,” 2.

⁹⁰ Riley et al., “Live-in Caregivers,” 1127.

health outcomes.”⁹¹ Strains on the mental health of workers are only exasperated by the power dynamics of race, gender, class, and immigration status. For example, foreign-born immigrant workers are more likely to be exposed to work-related hazards than their U.S.-born counterparts.⁹² These realities make it difficult for workers to negotiate good working conditions, further adding to stressors. Perceived racial discrimination is also a significant stressor for workers, Cruz et al. report.

Climate Change

In 2021, over 3.2 million acres of land in California, comparable to the size of Connecticut, burned as a result of wildfires.⁹³ The site of wildfires is a hub for domestic work: “Nearly 70,000 domestic workers typically work in the counties where [2020’s] three largest fires have burned”.⁹⁴ The wildfires bring about many concerns for the state’s most vulnerable groups. Domestic workers and gardeners lose their place of work and income when houses are ravaged by wildfires.⁹⁵ In 2020, about 52% of workers who responded to an IDEPSCA survey reported permanently losing work in communities impacted by the wildfires. If workers did not lose their jobs, they lost about 15 workdays, amounting to about \$1,289 in lost wages.⁹⁶ During the fire season in 2019, reports came to light of domestic workers being asked to help residents fight the fires and clean up houses covered in ash or houses with fire damage, despite the hazards.⁹⁷ The ash and fumes from a fire are hazardous to breath in and its full effects have not been studied. During the 2020 wildfires, day laborers were hired to perform tasks common for wildfire firefighters, such as clear dry bushes, hose down rooftops and patios, and set up makeshift fire lines, without the protective gear firefighters have access to. On average, a report from IDEPSCA explains, workers report exposure to hazards for five workdays during the fire season. IDEPSCA points out that the threat of having no income due to homes burning down is enough to force many to work under dangerous situations.⁹⁸ Adding insult to injury, a number of domestic workers also lose their jobs after taking on hazardous clean-up assignments.⁹⁹ In 2020, Then Cal OSHA Chief Doug Parker identified that these instances “would be a violation if [domestic workers and employers had] a traditional employer-employee relationship.”¹⁰⁰

In 2020, Senate Analysis for SB 1257, stated:

⁹¹ Cruz et al., “Lapses in Protection,” 2.

⁹² Cruz et al., “Lapses in Protection.”

⁹³ IDEPSCA, “Wildfires.”

⁹⁴ Jabola-Carolus, “Unprotected,” 3.

⁹⁵ Teresa Cotsirilos, “Domestic workers adapt lessons learned during wildfires to COVID-19 pandemic,” USC Annenberg, 2020, <https://centerforhealthjournalism.org/resources/lessons/during-covid-19-pandemic-domestic-workers-apply-lessons-learned-during-wildfire>

⁹⁶ IDEPSCA, “Wildfires.”

⁹⁷ KALW, “As California’s Wildfires Get Worse, Domestic Workers Fight For Protection”, KALW Public Media, February 26, 2020, <https://www.kalw.org/show/crosscurrents/2020-02-26/as-californias-wildfires-get-worse-domestic-workers-fight-for-protection>.

⁹⁸ IDEPSCA, “Wildfires.”

⁹⁹ Ibid.

¹⁰⁰ KALW, “As California’s Wildfires.”

“The current COVID-19 health pandemic and recent California 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 natural disasters requires that legislators take immediate legislative action to protect the health and safety of these workers.”^{101, 102}

VII. Enforcement Mechanisms as seen in other Jurisdictions

Scholars for the UCLA Institute for Research and Labor Employment write about Domestic Worker Bill of Rights laws in California, New York, Hawaii, and Massachusetts. The authors write that these states “use civil litigation and administrative claims, relying upon a department of labor for enforcement processes,” which places “the burden on individual domestic workers to file and initiate enforcement processes.”¹⁰³ However, this is still the preferred method of enforcement, as health and safety violations in the home are seen as a lower priority by government agencies, who’s low funding and lack of staff leads to stringent enforcement priorities.

Virginia

During the 2020 session, SB 804 passed, which granted domestic workers the right to minimum wage and instructed the Secretary of Commerce and Trade “to convene a work group to make recommendations, including any necessary statutory and regulatory changes, with regard to protecting domestic service employees from workplace harassment and discrimination, providing remedies for such employees for the nonpayment of wages, ensuring their safety and health in the workplace, and protecting them from loss of income as a result of unemployment or employment-related injury by including coverage in the Virginia Unemployment Compensation Act and the Virginia Workers' Compensation Act.”¹⁰⁴ Similar to California’s SB 321 committee, the Virginia committee included representatives from government agencies including the Department of Labor and Industry, the Virginia Employment Commission, Workers’ Compensation, as well as domestic workers and employers. The committee met virtually three times over the first year of the COVID pandemic. The committee also provided considerations for the general assembly including:

- Increase funding for the State Trafficking Response Coordinator.
- Develop and distribute “an accessible, multilingual resource guide that includes a hotline number and information for domestic service employees and their employers on workplace rights,” which will also be housed virtually in the Department of Labor and Industry website. The guide should include examples of contracts between domestic workers and their employers.
- Call upon the Department of Social Services’ Office of New Americans (ONA) to “develop a plan for helping undocumented workers to access their workplace rights.”

¹⁰¹ California General Assembly, *SB 1257 Senate Floor Analysis*, 5.

¹⁰² This was before the passing of AB 2658.

¹⁰³ Eileen Boris, Merita Jokela, Megan Undén, “Enforcement Strategies for Empowerment: Models for the California Domestic Worker Bill of Rights,” UCLA Policy Brief, May 5, 2015.

¹⁰⁴ Secretary of Commerce and Trade, *Report on Domestic Service Workers*.

Within the ONA, the Immigrant Services unit would act as a trusted resource for undocumented domestic workers.

- Consider unemployment insurance systems and what would trigger households to pay into it.
- “Explore the feasibility of voluntary third-party portable benefit systems for domestic workers.”¹⁰⁵

In 2021, the governor of Virginia signed a group of bills (HB 2032, HB 1864, SB 1310) to ensure domestic workers were covered by “employee protections, fair pay laws and the Virginia Human Rights Act.” SB 1310 includes domestic workers in occupational health and safety considerations, allowing for the inspection of a workplace, in this case private homes. These bills, collectively known as the Domestic Workers’ bill of Rights allows for these important provisions:

- Workers are able to file complaints regarding workplace safety (HB 2032).
- The Commission of Labor has power to investigate these claims (HB 2032).
- Prohibits workplace discrimination based on race, religion, sexual orientation, gender identity, disability, and other factors (HB 1864).
- Workers are also now included in protection laws regarding payment of wages (SB 1310).

SB 1310 defines an employer to include any individual who employs one or more domestic worker. HB 2032 allows domestic workers to file complaints regarding workplace safety. The Bill allows the inspection of a home as a workplace. The Commissioner or their representative must provide credentials to the owner or present a warrant and may “enter without delay and at reasonable times...any place where an individual is engaged to perform domestic service.”¹⁰⁶

Health and Safety

In terms of health and safety, the Department of Labor and Industry confirmed its “authority to investigate complaints related to worker safety, including domestic service workers.”¹⁰⁷ Robert Field, Hearing and Legal Services Officer at the Virginia Department of Labor and Industries, explained during the SB 804 meetings that “current law requires there be an employer-employee relationship in order for DOLI to have enforcement authority and be able to investigate a complaint.”¹⁰⁸ Additionally, he explained that complaints would trigger inspections. At the time, there had not been any inspections of private homes on record at the Virginia Occupational Safety and Health Program. If the definition of domestic work “includes, ‘engages an individual to perform domestic service,’ it will be clear that VOSH can respond to all complaints from domestic service workers.”¹⁰⁹

¹⁰⁵ Secretary of Commerce and Trade, *Report on Domestic Service Workers*, 4.

¹⁰⁶ Virginia General Assembly, *House Bill No. 2032*, Richmond, Virginia: Virginia General Assembly, 2021, <https://lis.virginia.gov/cgi-bin/legp604.exe?211+ful+HB2032E+pdf> (Accessed March 2022).

¹⁰⁷ Secretary of Commerce and Trade, *Report on Domestic Service Workers*, 4.

¹⁰⁸ Secretary of Commerce and Trade, *Report on Domestic Service Workers*, 8.

¹⁰⁹ Ibid.

However, inspections had been done of home healthcare companies. Since domestic workers are protected by Virginia’s health and safety standards, domestic workers are able to file a complaint with the Virginia Department of Labor and Industry. Employees in Virginia need to first try to resolve “safety and health issues by reporting them to their supervisors [or] managers.”¹¹⁰ However, employees may contact a local VOSH office to ask for an investigation or inspection without having to bring the issue up to their employer.¹¹¹ An employee is also able to opt out of sharing their name with the employer. VOSH is able to perform an off-site investigation, known as a “phone/fax investigations”, which are usually used for less dangerous hazards. Employees are able to request an on-site inspection if they are unhappy with the result of the off-site inspection.

Uruguay

Uruguay is considered a middle-income country with declining income inequality due to various initiatives focused on working conditions and other reforms. In 2011, the international community came together to approve Convention 189, a convention relating to the rights of domestic workers. A year later, Uruguay took a step further and incorporated these provisions in its own legislation. In 2013, about 17% of women worked as domestic workers.¹¹² While Black Uruguayans make up 7.7% of the country’s population, they represent 12.8% of domestic workers.¹¹³

There is no general labor code in Uruguayan law, as labor legislation usually addresses specific workers and topics. Since the late 20th century, domestic workers in Uruguay have had access to disability insurance, social security, maternity benefits, and medical coverage. In 2006, domestic workers became included in Uruguayan law with the adoption of Law 18.065, which established the following:

- Defined domestic work and a job performed “in a household by a person in a dependency relationship in order to provide care and housework to one or various persons or one or various families, without these tasks resulting in a direct economic profit for the employer.”¹¹⁴
- Minimum work age of 18 years.
- “Recognizes domestic workers’ rights to an eight-hour workday, 44 hour work week, nine-hour rest period during the night for live-in workers, rest periods during the workday, a 36-hour weekly rest.”
- Right to negotiate wages and job categories.
- Severance pay after 90 days of work.
- Additional compensation in the case of dismissal during pregnancy.
- Right to receive a pay slip.

¹¹⁰ Department of Labor and Industry, “VOSH Programs: How to File a VOSH Complaint,” Department of Labor and Industry, 2022, <https://www.doli.virginia.gov/vosh-programs/how-to-file-a-vosh-complaint/>.

¹¹¹ DOLI, “Complaint.”

¹¹² Mary Goldsmith, “Collective Bargaining and Domestic Workers in Uruguay,” *Women in Informal Employment Globalizing and Organizing*, (2013): <https://base.socioeco.org/docs/goldsmith-collective-bargaining-uruguay.pdf>.

¹¹³ Goldsmith, “Collective Bargaining”, 3.

¹¹⁴ Goldsmith, “Collective Bargaining”.

- Right to unemployment insurance
- Right to labor inspection.
- A choice between private and public health institutions for medical care.¹¹⁵

In 2009, the Social Security Institute launched a large campaign increase registration for social security among domestic workers. Part of the campaign included labor inspections where representatives visited “over 9,000 homes” to encourage domestic workers to register for social security. The inspectors never entered the home but requested documents. Additionally, households would receive tags to hang on doorknobs with the message “The domestic worker in this house is enrolled in the Social Security Institute.”¹¹⁶ This was a way to formalize the industry and make sure domestic workers were part of the social security system. By 2013, about 63,000 domestic workers were registered with social security. More recently in 2014, Uruguay adopted ILO Convention 189 “Decent work for Domestic Workers.” The ILO report that formalizing domestic work has led to higher wages for workers and the government continues to try to bring domestic workers into the formal economy.¹¹⁷ Additionally, Uruguay has its own branch of labor inspection mechanism specialized in domestic work.¹¹⁸ It is important to note that while these provisions helped domestic workers in Uruguay, registry models may not be a viable enforcement option for the California context, given the added complexity of the immigration status of many domestic workers (see Immigration Status section.)

While the collective bargaining agreement in Uruguay has proven to be beneficial to domestic workers in the country, an alternative that requires a registry of some kind would not be viable for the California context, given the political climate around immigration (see Immigration Status).

Health and Safety

According to Convention 189, which was ratified by Uruguay, “Every domestic worker has the right to a safe and healthy working environment.”¹¹⁹ In 2010, domestic workers were able to bargain for a Tripartisan Commission for Safety and Health “aimed at the prevention of risks in the household caused by repetitive tasks, stretching and bending, carrying heavy loads, exposure to heat sources (stove, iron, etc.) and the use of sharp objects (knives, etc.), the handling of toxic cleaning products, prolonged exposure to dusts, and the use of electrical appliances.”¹²⁰ This committee included domestic worker groups and representatives from the government.¹²¹ Currently, Uruguay also provides accident and illness insurance for domestic workers through the nation’s social security program.¹²² As of 2006, labor inspectors in Uruguay are able to enter

¹¹⁵ Goldsmith, “Collective Bargaining”, 2.

¹¹⁶ Goldsmith, “Collective Bargaining”, 2.

¹¹⁷ Alma Espino González, “Resultados de las reformas jurídicas relativas a las trabajadoras y los trabajadores domésticos en Uruguay,” Oficina Internacional del Trabajo, 2016.

¹¹⁸ Espino González, “Uruguay.”

¹¹⁹ Karina Betthány, “Estudio sobre trabajo doméstico en Uruguay”, Oficina Internacional del Trabajo, 2012, https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_187308.pdf

¹²⁰ Goldsmith, “Collective Bargaining,” 14.

¹²¹ Betthány, “Estudio.”

¹²² Espino González, “Uruguay.”

homes if there is a “presumption” of workers’ rights being violated.¹²³ Uruguayan law grants domestic workers regular rest breaks, at least 9 hours of sleeping break, adequate food, and a right to a private and clean lodging accommodation.

New York

The domestic workers’ rights movement started in the late 1990s. Taking a traditional route, the enforcement options in New York are two: civil lawsuits or filing claims through the Department of Labor.

NY Hero Act

As a response to the ongoing pandemic, NY state legislature passed the NYS Health and Essential Rights Act, the NY Hero Act, “which protects private sector employees against exposure and disease during a future airborne infectious disease outbreak.”¹²⁴ Here, “employees” includes all workers, regardless of immigration status. The safety measures and regulations outlined in these acts are protected by NY state law and violations could be grounds for complaints. The NY Department of Labor produced industry specific templates for Exposure Prevention Plans, including one for domestic workers. In the plan, it is outlined that workers are not to show up to work if they show symptoms. Additionally, employees will be screened for symptoms of the infectious disease at the beginning of their shifts. The Act also indicates the need for the use of face coverings and physical distancing. Employers are also expected to use engineering controls by using natural ventilation, air purifiers, portable disinfestation system, and physical barriers when possible. Along with engineering controls, employers are expected to set administrative controls, which include training employees, providing additional short breaks for handwashing and work with employees regarding high touch surfaces. The Act lays out that PPE “will be provided, used and maintained in a sanitary and reliable condition at no cost to the employee.”¹²⁵

Hawaii

Hawaii took a different approach to enforcement and relies on Immigrant Resource Centers, which are nonprofits contracted by the state, “to help advocate and assist with worker compensation claims and fulfill the legal obligations of the Office of Community Services.”¹²⁶ The Office of Community Services (OCS) is tasked with providing programs to “economically disadvantaged, immigrants, and refugees”¹²⁷ The OCS is a consolidation of various state and federal agencies “tasked with anti-poverty services, civil rights, immigration needs and labor

¹²³ Uruguay Parlamento, *Ley No 18.065, Trabajo Doméstico Normas Para Su Regulación*. November 24, 2006, Montevideo, Uruguay, https://parlamento.gub.uy/documentosyleyes/leyes?Ly_Nro=&Ly_fechaDePromulgacion%5Bmin%5D%5Bdate%5D=01-04-1800&Ly_fechaDePromulgacion%5Bmax%5D%5Bdate%5D=06-04-2022&Ltemas=TRABAJADOR+A+DOMICILIO&tipoBusqueda=T&Searchtext=

¹²⁴ New York State Department of Labor, “Health & Safety Precautions for Worksites: NYS HERO Act, Emergency Preparedness Law, and COVID-19 Regulations,” Department of Labor, 2022, <https://dol.ny.gov/ny-hero-act>.

¹²⁵ Boris et al., “Enforcement Strategies for Empowerment.”

¹²⁶ Ibid.

¹²⁷ Ibid.

laws specifically including legal assistance and advocacy programs.”¹²⁸ Through nonprofits, private organizations, and community programs, the OCS “outsources” responsibilities to comply with state and federal regulations.¹²⁹ Funding for programs that protect Domestic Workers’ rights are allocated through Hawaiian legislators. In recent years, however, these resource centers suffered from a lack of funding and have closed in recent years. In March 2022, SB 2457 appropriated funding from the general revenues of the state to fund these centers for fiscal year 2022-2023.¹³⁰ Along with accessing OCS-affiliated offices, individual domestic workers may use civil lawsuits or file a complaint through the Department of Labor.

Europe

As of 2021, only about 8 EU member states have ratified the ILO Convention 189, which outlines comprehensive rights for domestic workers.¹³¹ There are about 9.5 million domestic workers in Europe.¹³² The European Commission reports that labor inspectors faced barriers when enforcing health and safety of domestic workers in EU member states. Challenges included lack of knowledge around where domestic workers are working along with difficulties entering residential buildings, where inspectors would need permission of the homeowner, a judicial mandate, or be accompanied by the police.¹³³ In response to this, the ILO suggests that labor administrations “rely on a range of different methods, such as requiring contract registration, asking employers to submit documentation (e.g. proof of salary payment, tax payment), requesting meetings with domestic workers and/or employers, and cooperation with unions and NGOs.”

In Spain, labor inspectors do have limitations in inspecting private homes, “but, labor inspection may be carried out if it safeguards the inviolability of the home and the right to personal and family privacy.”¹³⁴ More recent efforts in Spain seek to grant more power to labor inspectors.¹³⁵ In Ireland, labor inspectors issue appointment letters to private households should they be subject to a labor inspection. The letters include information to the employer about their right to refuse and encourage employers to meet with inspectors in an alternative location to talk through issues. This initiative was accompanied by campaigns educating domestic workers and their employers

¹²⁸ Boris et al., “Enforcement Strategies for Empowerment.”

¹²⁹ Ibid.

¹³⁰ Hawaii State Legislature, *HI SB 2457*, Luke Yamashita, Honolulu, Hawaii: Hawaii State Legislature, 2022, <https://legiscan.com/HI/text/SB2457/2022> (Accessed March 2022).

¹³¹ European Commission, “European alliance calls on EU governments to implement convention on domestic workers,” Employment, Social Affairs, and Inclusion, The European Commission, June 28, 2021, <https://ec.europa.eu/social/main.jsp?catId=89&furtherNews=yes&langId=en&newsId=10037>.

¹³² Ibid.

¹³³ Committee of Senior Labor Inspectors, “Challenges faced by Labour Inspectorates relating to enforcement - Contribution to the ex-post evaluation of the OSH legislation,” European Commission, 2015.

¹³⁴ ILO, “Promoting the Integration,” 12.

¹³⁵ Labor Alert Spain, “Spanish Ministry of Work publishes Labor Inspection Authority’s Strategic Plan for 2021-2023” Garrigues, March 12, 2021, https://www.garrigues.com/en_GB/new/spanish-ministry-work-publishes-labor-inspection-authority-strategic-plan-2021-2023.

about labor rights. These were undertaken in “high risk areas”, where domestic workers were likely to work.¹³⁶

VIII. Considerations for Implementation Mechanisms

Domestic workers face particular challenges due to the gaps of legal protection and little opportunity for workplace inspections “render the monitoring of the occupational safety and health of domestic workers even more complex.”¹³⁷ Additionally, the preferred informal arrangements between domestic workers and employers, along with the intimate relationship of domestic work, make enforcement solutions particularly complex. Moreover, effective enforcement mechanisms require deep knowledge of the characteristics of work functions, which vary widely among domestic workers. The International Labour Organization (ILO) reports that there is little transparency around what countries are doing to protect domestic workers and their rights.¹³⁸ Smith also writes that in order to “effectively address the health and safety issues in domestic service, one must allow both for the work’s unique characteristics and for the differing workplace arrangements.”¹³⁹ The ILO lays out important considerations for enforcement mechanisms:

“Balanced responses that include prevention, deterrence and punishment are difficult to achieve and call for clear and adequate legislation; employers’ knowledge of that legislation; social acceptance of the value of domestic work; effective recognition of domestic workers’ rights; measures to encourage compliance with legal requirements; and a functioning system for responding to complaints, settling disputes and ensuring respect for the rule of law.”¹⁴⁰

Laying out clear expectations of work could be one-way employers create more formal working conditions for domestic workers. Arrangements between domestic workers and their employers often resemble independent contractor relationships.¹⁴¹ Smith suggests that domestic workers organize and/or have an industry representative to facilitate development of health and safety standards.

Immigration Status Consideration

As the statistics suggest, a significant proportion of domestic workers in California are foreign-born, meaning some might be undocumented. Irregular immigration status makes workers particularly vulnerable to exploitation and harassment and may make them less likely to seek legal help for fear of deportation and retaliation. Since most domestic workers are women of color, this adds another layer of complexity and consideration as gendered violence is a

¹³⁶ Workplace Relations Commission, “Inspections of private households as places of employment: Ireland, Republic of Ireland, <https://ec.europa.eu/social/BlobServlet?docId=20736&langId=en>

¹³⁷ ILO, “Guidance.”

¹³⁸ ILO, “Labour Inspection.”

¹³⁹ Smith, “Pitfalls,” page 311

¹⁴⁰ International Labour Organization, “Labour inspection and other compliance mechanisms in the domestic work sector: Introductory guide”, *Labour Administration Labour Inspection Occupational Safety and Health* (2016), 16.

¹⁴¹ Smith, “Pitfalls,” 311.

prevalent, unfortunate occurrence.¹⁴² Therefore, these unique circumstances must be considered when making recommendations. California law, undocumented workers are protected by California health and safety laws and are able to complain to Cal OSHA, which “should not question [an employee] about [their] immigration status or report [their] lack of status if it is somehow revealed.”¹⁴³ Undocumented workers are allowed to engage in “concerted activity” which allows an individual to “improve working conditions for all employees even if there is no union yet.”¹⁴⁴ There are still limits to what benefits undocumented workers may claim, however.

While it is illegal for employers to retaliate against workers who refuse to work in or report the employers unsafe/illegal working conditions, Legal Aid explains that workers may still face significant consequences if an employer reports an undocumented worker to the Immigration and Customs Enforcement (ICE). ICE is allowed to follow up on a report and may begin deportation proceedings against an undocumented individual, even if the individual is “married to a U.S. citizen, [has] U.S. citizen children, or [has] lived in the U.S. for many years.”¹⁴⁵ Legal Aid admits that, under these circumstances, it is entirely understandable that many undocumented workers do not file complaints against unfair and unsafe working conditions. This dynamic is present in domestic work too, where few claims are actually filed by domestic workers.

Protection against retaliation

Nationally, there are pushes to protect immigrant workers, regardless of status, in labor disputes. In 2010 and in 2011, democratic senators introduced the Protect Our Workers from Exploitation and Retaliation Act (POWER Act), which would expand U-Visa eligibility to include workplace civil claims. This would have allowed immigrants to not only stay in the country while in a labor dispute but would provide them with the extra security of being eligible for immigration benefit.¹⁴⁶ More recently, labor organizers have pushed for deferred action for workers who report labor abuses, including safety violations.¹⁴⁷ In 2021, Secretary Mayorkas from the Department of Homeland Security issued a Policy Statement adopting policies that will “Reduce the demand for illegal employment by delivering more severe consequences to exploitative employers and their agents; and increase the willingness of workers to report violations of law by exploitative employers and cooperate in employment and labor standards investigations.”¹⁴⁸

¹⁴² Abigail Adelle Roman, “Undocumented Domestic Workers: A Penumbra in the Workforce,” *The Scholar: St. Mary’s Law Review on Race and Social Justice*, 23(1), <https://commons.stmarytx.edu/cgi/viewcontent.cgi?article=1063&context=thescholar>

¹⁴³ Legal Aid at Work, “Employment Rights of Undocumented Workers,” Legal Aid at Work, 2022, <https://legalaidatwork.org/factsheet/undocumented-workers-employment-rights/>.

¹⁴⁴ Legal Aid at Work, “Employment Rights.”

¹⁴⁵ Legal Aid at Work, “Employment Rights.”

¹⁴⁶ National Immigration Law Center, “The U Visa and How It Can Protect Workers,” *The National Immigration Law Center*, September 2010, <https://www.nilc.org/wp-content/uploads/2016/03/u-visa-protect-workers-2010-09-15.pdf>

¹⁴⁷ Jennifer Solis, “Labor organizers seek deferred action to stem abuse of undocumented workers,” *Nevada Current*, July 8, 2021, <https://www.nevadacurrent.com/2021/07/08/labor-organizers-seek-deferred-action-to-stem-abuse-of-undocumented-workers/>.

¹⁴⁸ U.S. Department of Homeland Security, *Worksite Enforcement: The Strategy to Protect the American Labor Market, the Conditions of the American Worksite, and the Dignity of the Individual*, by Alejandro Mayorkas. Policy Statement 065-06, Washington, D.C.: Department of Homeland Security. 2021,

Privacy Concerns and Labor Inspections

Throughout the movement for domestic workers' rights, the privacy rights of homeowners and employers has been a point of contention. Politicians and decision makers have found it difficult to strike a balance between honoring the privacy of employers while also granting domestic workers the same rights as other workers. The ILO, however, "considers labour inspection as the primary mechanism", along with access to complaint processes and education, "in promoting the enforcement and compliance of labour laws".¹⁴⁹ The California Senate Committee on Labor, Public Employment and Retirement pointed out in 2021 that "The requirement of employers to provide a healthy and safe work environment *does* extend to private homes in the case of non-domestic workers under California Labor Code sections 6303(a) and 6307" (emphasis original).¹⁵⁰ Senator Durazo explains that workers working remotely from home are covered under Cal OSHA laws. Similarly, federal OSHA has conducted inspections of private residences "where workers have engaged in manufacturing and piece rate assembly of goods."¹⁵¹ The federal directive is to inspect workplaces, including private residences, after a complaint has been filed or through a referral process. Similarly, injuries and illness acquired as part of non-domestic work that takes places in private homes "are subject to state and federal reporting requirements under both Labor Code section 6409.1 and Federal OSHA Directive CPL 2-0.125."¹⁵²

The ILO recognizes the various challenges of labor inspection in the case of domestic workers. With this in mind, the ILO provides ideas around prevention, in order to work around the difficulties in conducting labor inspections. Informing domestic workers and employers on labor legislation is particularly important. Agencies must utilize various channels, such as print, social media, and the internet, to reach domestic workers and inform them of their rights.¹⁵³ The ILO recommends that labor inspectors "should be involved in the provision of information before the worker enters into the employment relationship."

Isolation Among Workers

Domestic workers may work through agencies, in a singular household, or be self-employed, where they service various households. Each of these arrangements provide their own challenges. The SB 804 report from Virginia explains that reaching workers is particularly difficult if they work on their own. Due to this dynamic, the ILO also encourages decision makers to provide comprehensive frameworks for domestic workers' rights by enlisting the partnership of NGOs and community-based organizations.

https://www.dhs.gov/sites/default/files/publications/memo_from_secretary_mayorkas_on_worksite_enforcement.pdf (Accessed April 25, 2022)

¹⁴⁹ International Labour Office, "Promoting the Integration of Migrant Domestic Workers in Europe," The International Labor Office, 2014, <https://www.ilo.org/sites/default/files/media/documents/DW-Training%20module%20IV%20for%20print%20ow%20res.pdf>, 9.

¹⁵⁰ California General Assembly, *SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT: SB 321*, Durazo, Sacramento, CA: California General Assembly, 2021 (Accessed March 2022).

¹⁵¹ Ibid.

¹⁵² Ibid.

¹⁵³ ITC-ILO, "Module."

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