

DEPARTMENT OF INDUSTRIAL RELATIONS  
Division of Occupational Safety and Health  
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**SB 321 - Employment Safety Standards Advisory Committee:**  
**Household Domestic Services**  
Minutes of Meeting  
Thursday, April 29, 2022

Attendees

Suzanne Teran  
Laura Stock  
Jessica Lehman (*joined via Zoom*)  
Lian Mann  
Eileen Boris  
Martha Marquez  
Erika Alonso  
Julietta Hua  
Anna Pisarello  
Kevin Riley  
Martha Herrera  
Megan Whelan  
Nancy Zuniga  
Socorro Diaz  
Jose Mercado  
Theresa Peterson  
Hina Shah  
Eduardo Garcia  
Nicole Brown-Booker

Sulma Guzman, *Deputy Director of Policy, Legislation, and Regulatory Affairs, DIR*  
Carl Paganelli, *Deputy Chief of Cal/OSHA*  
Carmen Cisneros, *Cal/OSHA Area Manager of Consultation*  
Deanna Ping, *Chief Deputy Director, DIR*  
Kumani Armstrong, *Attorney, DIR*

**Welcome and Introductions**

**History of Exclusion**

Aquilina Soriano, *Pilipino Workers Center of Southern California*

## History of Exclusion

- 1920s:
  - Organizing and uprising from immigrant and other workers to improve working conditions that led to Roosevelt's New Deal
  - One of the landmark pieces of the New Deal was the Fair Labor Standards Act (FLSA), but excluded domestic workers
- 1930s: Negotiation of New Deal
  - The South still entrenched in and trying to preserve plantation economy
  - Need/want for cheap labor and to maintain a racial hierarchy between whites and blacks in the South
  - 79% of the South's domestic service sector were black workers
  - Southern lawmakers at the state and national level worked to maintain the status quo, resulting in policies that would keep black people economically dependent, and politically disenfranchised.
  - Prevented upward mobility – restricting employment opportunities for black women
- 1938: FLSA
  - Established federal minimum wage, and maximum working hours
  - Excluded areas overrepresented by black workers, e.g., agriculture
  - Codified structural racism
  - Does not on its face exclude domestic workers, but limits to those “engaged in commerce” which was interpreted to exclude domestic work
  - Congress concluded that domestic work did not implicate commerce, and even Roosevelt himself was quoted saying that the FLSA was not meant to include domestic workers
  - Domestic labor not recognized as “real work”
  - During this time, it could not happen that white workers would receive equal wages as black workers
  - Lynching still legal at this point; opposition to law as anti-lynching law
  - Domestic workers still seen as servants; domestic work as “the natural work of women” and does not deserve the protections and recognition like other work
- 1970s
  - Recognition that domestic work did impact commerce
  - Organization of black domestic workers allowed for more domestic workers to be included in minimum wage and overtime protections
  - Organization of domestic workers challenging because most domestic workers do not work in the same location
    - Organizers ride buses, go to laundry rooms of apartment buildings to find workers
  - National Domestic Workers Union – Atlanta; influenced by Civil Rights Movement
    - Improve labor conditions for workers, and helped workers with job placement and negotiation skills
    - All members required to register to vote
    - Mobilize workers to boycott racist businesses

- 1974: FLSA amended to include domestic workers
  - Minimum wage & hours
  - Domestic work does impact commerce
    - Domestic workers handle goods produced in/for interstate commerce
    - Ability for women especially to participate in the workforce dependent upon availability of domestic workers
    - 2 exemptions
      - Domestic workers who provide companionship to older persons or disabled persons
      - Domestic workers who reside in the home
- 2013: FLSA extended to home care workers
  - Baby boomers are coming into retirement age, so that really expanded the number of folks above age 65, which expands need for long-term support and services exponentially
  - Companionship defined narrowly to limit the workers who are provided the sorts of limited non-professional services Congress envision when creating the exemption in 1974.
  - Ends the exclusion at the national level
- Long-term impacts of exclusion
  - Generational ability for upward mobility and gaining wealth
  - Ability to build a more equitable society
  - Maintained racial inequities and hierarchies
  - Industry is still overwhelmingly women and people of color
    - 90% women
    - Over 50% women of color
    - Over 1/3 are immigrants
  - Workers devalued, underpaid, and unprotected in the workplace
    - Domestic workers make about \$16k/year, significantly lower than the average annual income of \$39k
  - Wage theft and workplace violations are common
  - Exposed to workplace hazards
- How will we address these inequities?
  - Focus on health & safety on the job
  - Shift structural racial inequalities
- Day Laborers
  - History of forced migration and exploitation
  - Often immigrant men, who are seeking short-term work at worker centers or public location street corners outside Home Depot, Lowe's, or other home improvement stores.
  - Often misclassified as independent contractors; complicates study

### **Advisory Committee: Goals and Roles**

- Goals

- Draft voluntary industry-specific guidance for purpose of educating household domestic service employees and employers
- Develop recommendations for policies to protect workers in household domestic services (due to the legislature by the end of the year)
- Role of DOSH/DIR
  - Attend and serve as technical resource
  - Provide consultation on DOSH standards, processes, and consultation on final report
  - Coordinate logistics
- Role of LOHP
  - Plan and facilitate the meetings
  - Coordinate work – make sure the committee is advancing to get to the final outputs
- Proposed Meeting timeline for the Advisory Committee
  - April 29, 2022
  - May 26
  - June 23
  - July 28
  - Aug 19
  - Sept 22
  - Oct 18 – feedback on draft
  - Nov 15 – feedback on draft
  - Dec 8 – report finalized
  - Jan 2023 – report due to Legislature Jan 1
- Meeting locations
  - Meetings will mostly be held in Oakland, CA
  - Possibility of holding some meetings in Southern California will be explored within the requirements of the Bagley-Keene Open Meetings Act and establishment of quorum.

### **Overview: Bagley-Keene Open Meeting Act**

Kumani Armstrong, *Attorney*

- Government Code Sections 11120-11132
  - Multimember bodies (3 or more people)
  - The body created by statute or required by law to conduct official meetings
  - Ensures transparency
  - Conduct meetings publicly
  - To prepare agendas, accept public testimony and again to conduct meetings in public unless authorized by the Act to meet in closed session (limited exceptions).
- What is a “meeting”?
  - Occurs when a quorum convenes
  - Quorum is considered a majority of the group, convened either serially or all together in one place to address issues under the Body’s jurisdiction

- Gatherings where members discuss issues or receive information relevant to the business of the body
- Pitfalls to Avoid
  - Serial Meetings – expressly prohibited
    - Use of direct communication, personal intermediaries, or technological devices that are employed by a majority of the members of a state body to develop a collective concurrence as to actions to be taken on an item by the members of the state body outside of an open meeting
  - Public contact of individual members
    - Communication from member of the public to discuss an issue does not violate the Act. Issue arises when an individual contacts a quorum.
- Key Takeaways
  - Avoid talking about Advisory Committee business or potential business outside / with other members outside a public meeting
  - Goal is transparency
  - Use common sense
  - To the extent feasible, avoid discussing Advisory Committee business with the public outside a public meeting
  - When in doubt, don't discuss Advisory Committee business outside a public meeting and seek legal counsel
  - The Act does provide penalties. Decision of the body may be overturned, costs & fees, criminal misdemeanor penalties if there's an intent to deprive the public of information
- Committee members request clarification on Bagley-Keene Open Meeting Act:
  - Teleconference options
  - Quorum
  - Extension (AB 361)
  - Kumani Armstrong stated he would do additional research and provide follow-up at the next advisory committee meeting.

## **Domestic Work Research Highlights**

Saba Waheed, *UCLA Labor Center*

### Profile of Domestic Workers

- 5-year sample 2014-2018; report released in 2020 (Census – government data)
- Estimated 324,829 in CA (believe this is a big undercount)
  - 34% in Los Angeles
  - 25% housecleaners
  - 10% childcare
  - 64% homecare attendants

### Demographics

- Male to female
  - Overall: 14%/86%
  - Housecleaners: 6%/94%

- Childcare: 3%/97%
- Race
  - Latinx (approx.): 50%
  - White: 23%
  - Asian: 16%
  - Black: 8%
- Immigration
  - Foreign-born: 58%
  - Mexico: 41%
  - Philippines: 11%
  - El Salvador: 10%
  - Guatemala: 6%
  - China 5%
  - Vietnam 4%
  - Korea 1%
  - Iran 1%
- English Proficiency (foreign-born)
  - Little to none: 42%
  - Proficient: 27%
  - Very proficient/ fluent: 31%
- Years in the U.S.
  - 0-5: 7%
  - 6-10: 10%
  - 11-15: 12%
  - 16-20: 13%
  - 21+: 58%
- Age
  - 16-30: 17%
  - 31-45: 28%
  - 46-60: 39%
  - 60+: 16%
  - Median: 40
  - 46+: 54%
- Education
  - Less than High School: 31%
  - High School: 28%
  - Some college: 29%
  - B.A. or above: 12%
- Children living at home: 51%

#### Work Characteristics

- Homecare attendants: 84% Agency, 16% Non-agency
- Labor force (active working/looking) participation: 83%
  - House cleaners: 85%

- Childcare: 77%
- Homecare attendants: 84%
- Employment status: 94%
  - House cleaners: 94%
  - Childcare: 91%
  - Homecare attendants: 94%
- Full-time/ Full Year: 45%/80%:
  - Full Time
    - House cleaners: 38%
    - Childcare: 50%
    - Homecare attendants: 48%
  - Full Year
    - House cleaners: 80%
    - Childcare: 68%
    - Homecare attendants: 81%
- Employee / Self Employed: 53%/ 47%
  - House cleaners: 20%/80%
  - Childcare: 51%/49%
  - Homecare attendants: 79%/21%
- Low wage (\$15.29/hr): 77%
  - House cleaners: 73%
  - Childcare: 69%
  - Homecare attendants: 78%
- Median hourly wage: \$10.79
  - House cleaners: \$10.92
  - Childcare: \$11.50
  - Homecare attendants: \$10.73

#### Employers

- 3 surveys, one for each workforce
- 55k households, 3654 screened, 590 qualified, 501 completed
- Report released 2016 (non-government data)
- 2 million households, 1 in 7 households
  - Homecare attendants: 27%
  - Childcare: 19%
  - Housecleaners: 54%
  - Demographics
  - Southern CA: 63%
  - Central CA: 11%
  - Northern CA: 26%
  - LA: 32%
- Gender
  - Female: 65%
  - Male: 35%
  - Trans: <1%

- Age
  - 18-24: 3%
  - 25-50: 35%
  - 51-70: 35%
  - 71+: 27%
- Race
  - White: 57%
  - Latino: 21%
  - Black: 8%
  - Asian: 6%
  - Other: 8%
- Education
  - Less than High School: 8%
  - High School: 17%
  - Some college: 28%
  - B.A.: 23%
  - M.A. or above: 23%
  - Other: 1%
- Occupation
  - Working/ Not working: About 50%/50%
  - Not working
    - Retired: Approx. 33%
    - Other: Approx. 50%
  - Working
    - Managerial/professional occupations
    - Frontline or service occupations
- Household size
  - About 1/3 had children present in the house
  - About 1/3 had people older living in the house
- Income
  - Varied, moderate/higher income folks among the housecleaning employers vs. the child care, and in-home care that had much more of a range in terms of low or moderate income people
- Type of work – hiring
  - Live-in: 10%
  - 24-hour care: 6%
  - Housecleaners: 29% use cleaning crew
  - Childcare
    - 81% hire from family or community
    - 10% use nanny share
    - 53% work in employer’s home
    - 20% work in employer’s home and own home
    - 25% in own home only
  - Homecare attendants
    - 26% hire more than one attendant



- 25% hire to work in someone else's home
  - 33% IHSS
  - 71% find worker through friend / family
  - 49% of them were actually setting employment terms based on their own research and their own experience
  - They didn't really consult any sources when they tried to figure out what terms to set
  - Almost three quarters of them are actually paying it through a day rate or weekly rates
  - 54% hire for a few hours a month, seasonally, or on call
  - 35% would pay more
  - 41% said that they needed more hours and more support than they were able to get from the current work.
- Who needs more support?
    - Housecleaners: 19%
    - Childcare: 22%
    - Homecare attendants: 59%
  - Practices that we are seeing is just needing more information and more infrastructure given to both workers and employers
  - As it is written in the legislation for the tasks of this committee, which includes voluntary guidelines and for our policy recommendations, the places that we are covering are privately funded household domestic service employees
  - Lack of education and infrastructure persists
  - Need to support employers in understanding relationship and thinking of home as a workplace
  - For employers who want to do the right thing, it is nearly impossible to figure it out on your own. People want to do the right thing, but where do we get that information?
  - The data point of the proportion of low-income employers for the childcare sector seemed to be out of proportion with some of the other data about employers. Moving forward, that is something to take into consideration as we craft that educational message for employers that many employers themselves would be kind of categorized as low wage, especially for parents and child care needs.
  - Discussion of this bill: exclusion is just IHSS and family daycare providers. It is the publically funded aspect that excludes them.

## **Hazards for Domestic Workers & Day Laborers in Private Homes in CA**

Kevin Riley, *UCLA LOSH*

- Injuries that workers face and their access to workers' compensation. There is actually a little known eligibility that both domestic workers and day laborers have access to workers' compensation if they are injured on the job. The California Labor code actually has language that protects workers that allows workers when they are injured, to access workers' compensation through a homeowner. Homeowner's insurance provides for workers' compensation for injuries.

- CA Labor Code definition recognizes this situation
  - 3351(d) someone hired to work inside or outside the home
- If someone is injured, in order for them to be eligible for workers' compensation, they must work at least 52 hours in a 90 day period, or earned more than \$100 in wages. A lot of day laborers and domestic workers are potentially eligible. Workers' compensation would cover lost wages and provide temporary or long-term disability. You don't need a written contract and you don't need to be a legal resident in order for this to apply. Any person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed.
- We interviewed 144 workers, working as day laborers or as domestic workers
  - Common Hazards among Day Laborers:
    - Heights
    - Heavy lifting
    - Dust/fumes
    - Outdoor heat
    - Repetitive motion
  - House cleaners
    - Repetitive motion
    - Dust/fumes
    - Chemical exposure
    - Heights
    - Heavy objects
  - Caregivers
    - Lifting patients
    - Biological hazards
    - Heavy objects
    - Repetitive motion
    - Syringes
  - Risks similar to other workplaces
- Injury reporting and workers' compensation access
  - Did you tell the employer of your injury?
    - Day Laborer: 69% Yes
    - Domestic Worker: 55% Yes
  - Many don't know they have access to Workers' compensation
  - Concerns regarding immigration if they are undocumented
  - Don't want to damage relationship with employer, risk losing their job
  - Eligibility for workers' compensation
    - Day Laborers: 52%
    - Domestic Workers: 84%
  - Received workers' compensation
    - Day Laborers: 5%
    - Domestic Workers: 6%
  - Only 26% of Domestic Workers and 5% of Day Laborers had a written contract with employer

- Examined 5,463 Workers' Comp claims between 2008-2018 working for homeowners and experienced an injury
  - Location
    - LA-Long Beach: 48%
    - SF-Oakland: 12%
    - San Diego: 6.9%
    - Riverside: 5.4%
  - Type of work
    - Housekeeping : 37.9% (Female: 88.9%/ Male: 11.1%)
    - Construction/Maintenance: 26.7% (Female: 2.8%/ Male: 97.2%)
    - Caregiving: 20.5% (Female: 89.6%/ Male: 10.4%)
    - Gardening/Landscaping: 7.4% (Female: 3.7%/ Male: 96.3%)
    - Nanny/Childcare: 5.9% (Female: 97.9%/ Male: 2.1%)
    - Other: 1.9% (Female: 43.4%/ Male: 56.6%)
  - Top Causes of Injury of Domestic Workers
    - House Keeper
    - Fall, same level
    - Cumulative, NOC
    - Fall, slip, trip
    - Strain or injury
    - Fall on stairs
    - Fall from elevation
    - Repetitive motion
    - Lifting
    - Absorption/Inhalation of chemicals
    - Violence
  - Top Causes of Injury of Day Laborers
    - Fall from ladder, scaffolds, and elevations
    - Acute injuries such as power tools, object flying around, etc
    - Animal or insect
    - Caregiver
    - Lifting
    - Fall, same level
    - Fall, slip, trip
    - Strain or injury
    - Cumulative, NOC
    - Fall on stairs
    - Fellow worker, other person
  - Other causes:
    - Childcare
    - Construction / Maintenance
    - Fall, ladder
    - Fall
    - Gardening / Landscape

- Fall, ladder
  - Other
  - Strain
- Nature of injury
  - Many musculoskeletal injuries
  - Median length of employment at time of injury
    - Construction/Maintenance: less than .5 year
    - Gardener/Landscaper 1 year
    - Nanny/Childcare 1 year
  - Many day laborers injured on the very first day of work
  - The hazards we see in households are very similar to other sectors
  - People may be hired for one thing, but do something completely different is also important. For example, a caregiver who ends up having to do gardening or construction work
  - It is important for us to look at how frequently people are injured on the first day.
  - How do we get employers to anticipate hazards from day one, from the very beginning of that work relationship? Those can be some of the most dangerous times since people are in a new environment and do not know the work.
  - Workers compensation deals with the problem after the fact. We are looking to prevent these injuries from happening in the first place
  - Range of tasks in the home may be more varied than other work settings
  - Employers must anticipate hazards from day one
- Does the shortage of home care workers contribute to more injuries?
  - Employers asking someone to do something because they do not have someone else who can do it, creates a bad situation for everybody.
  - From Cal OSHA's perspective, it does not matter whether someone is documented or undocumented, legal or illegal. Employers have a responsibility to provide a safe work environment. We can be thinking about a framework where workers are unable to stand up and say there is a problem in the workplace, and would like the agency to come and look.
  - Create better outreach and education for workers. Workers' compensation has free legal clinics, where you could get a doctor to certify your injury.
- Education around hazards. What should a healthy job entail?
  - Information about hazards and employee rights and how to obtain those rights in writing.
  - Clarify roles & responsibilities
  - Safe work place and equipment needed to work safely
  - Workers and employers together identifying problems and hazards in a workplace
  - Training to correctly use tools and equipment. Work safety training.
  - Many workers lie about the knowledge they have about the work because they need to work and end up putting themselves and the employers at risk. Develop a risk profile to ask questions about the work they are going to provide. Create a filter that we could use for day laborers for domestic workers to find out if they are adequate for that specific task and avoid some things.

- Some of these may be achieved by education outreach, and some of them may need policy or regulatory change.

### **Future Agenda Meeting Topics and Suggestions**

- Member would like to see a bit more on in-depth on daily birth, gardening, and some of those topics so we can get a full scope
- Reflections or open time at the beginning of every meeting
- Suggestion to give information to employers and workers about what to do if there is an injury or an accident. For example, have homeowners provide a first aid kit at the work area.
- Concern that meeting once per month is not sufficient. There is a possibility of having subcommittee meetings. However, these are also subject to the Bagley-Keene requirements.
- Member suggestion: It would be helpful if there were reports or recommendations that we could individually review before we come to the main meeting. There could pre-work each member does before each meeting.
  - Response: These materials would need to be in both languages. We need to ensure that the work happens in a way that is transparent, that meets the statutory guidelines, but also allows the Advisory Committee to fulfill the mandate of SB 321. We also want all materials available in Spanish. If there are things in between, we would want it to be accessible to everyone. Some of the reports may only be available in one language, and so one of the ways that we thought it would be accessible is if we had a presentation, because we have translators, who can make sure that that information is given to everybody.
- Conflicts with the meeting plan dates can be directed to the [SB 321 email](mailto:SB321@dir.ca.gov) (SB321@dir.ca.gov). Please indicate if you have an all-day conflict or morning or afternoon conflict. We have to have a quorum or we cannot meet.
- If we could know if meetings will be morning or afternoon meetings.
  - Response: Might be long or full days. Most meetings will take place here in Oakland, possibly some in Southern California depending on the quorum requirements of the Bagley-Keene Open Meetings Act.
- For future meetings, committee members are welcomed to share articles, journal notes, or other literature with the committee. For example, a resource report or a presentation from outside experts, etc.

### **Public Comment**

- Meagan Ortiz, Executive Director of Instituto de Educacion Popular del Sur de California
  - Would like to shed a little bit more light on the issue of day laborers doing this work, especially in terms of the exclusion. Day laborers, like domestic workers, have the right to minimum wage and overtime and there is also other specific mechanisms such as mechanic's liens that they can use when there is failure to pay them, but what I do want to talk about is that is a recourse, like many other recourses that are time-limited and also have a cost and don't apply to health and safety issues. While we do know that the majority of domestic workers are

identified as women, it is important to note that domestic workers include those who do not identify as women, and there are day laborers who do identify as women. There will exist even within that system, barriers to them reporting health and safety violations. Under SB 321, day laborers doing work beyond house cleaning, child care, and elder disability support are excluded in the areas of gardening, outdoor maintenance, and landscaping. This exclusion has been based on skill, often defined as things as random as the size of a tree. Would like the committee to look at ways to expand protections and take all this into the account. The way that defining work and private homes is labeled as skilled or not, this is a gendered and racialized way of looking at labor, especially towards day laborers across the state.

- *Member response:* Have a guide that tells the owner of the home of day labor workers and domestic workers their responsibilities. Provide exactly what is included in the job.
- *Member response:* For those of who work directly with workers that educate workers around health and safety, could share some best practices or some of the barriers to just to help this committee understand a little bit deeper what some of those issues are around education and outreach.