TESTIMONY

OF

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NATIONAL EMPLOYMENT LAW PROJECT

ON

CONDITIONS FOR DOMESTIC WORKERS IN CONNECTICUT

AND

THE CONNECTICUT DOMESTIC WORKERS BILL OF RIGHTS

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HARTFORD, CONNECTICUT

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To the members of the Connecticut Task Force on Domestic Workers:

The National Employment Law Project is a non-profit, non-partisan research and advocacy organization specializing in employment policy. We are based in New York with offices across the country, and we partner with federal, state and local lawmakers on a wide range of workforce issues.

Across the country, our staff is recognized as policy experts in areas such as unemployment insurance, wage and hour enforcement, minimum wages, and workplace protections for low-wage workers. This latter work has included a special focus on improving conditions for domestic workers, including work to pass Domestic Worker Bills of Rights in several states and to extend federal minimum wage and overtime rights to home care workers.

NELP was a strong supporter of House Bill 5527, the Connecticut Domestic Worker Bill of Rights, which we helped to draft. Introduced in the General Assembly's last session, HB 5527 would close exemptions for domestic workers in the state's workplace laws and establish new crucial and sensible industry-specific protections. With a workforce of approximately 40,000 in Connecticut, improving standards in this fast-growing sector will not only better the lives of thousands of workers and their families, it will boost the economy and improve the quality of care that families and individuals enjoy. We strongly recommend that the taskforce support a Connecticut Domestic Worker Bill of Rights based on HB 5527.

Poor Working Conditions for Domestic Workers

Domestic workers are subject to numerous exemptions from state and federal workplace protections and suffer high rates of violations of the laws that do cover them.[1]

Domestic workers are excluded from several core Connecticut workplace laws:

- The Connecticut Minimum Wage Act (CMWA) exempts some domestic workers from the state minimum wage and overtime laws. The CMWA, at Conn. Gen. Statutes § 31-58(e), defines "employee" as "any individual employed or permitted to work by any employer but **shall not include any individual . . . employed in domestic service in or**

[1] The definition of "domestic worker" is not uniform across all laws workplace laws, and some workplace laws do not contain an explicit exemption for "domestic worker" but instead exempt workers employed in private dwellings, which has the effect of excluding domestic workers, or exempt most domestic workers on a de facto basis because they apply only to employers with more than a certain number of employees. Domestic worker is almost always defined to include nannies and babysitters as well as housekeepers. Depending on the law, the term domestic worker may also include caregivers to seniors and people with disabilities, although some laws only consider caregivers employed by the individual receiving care or his or her family, as opposed to those employed by third parties.

about a private home, except any individual in domestic service employment as defined in the regulations of the Fair Labor Standards Act, or . . . any individual engaged in babysitting . . . ." This exclusion of certain federally-exempt workers has meant that home care workers, who are currently exempted from the federal Fair Labor Standards Act, are also shut out of the higher Connecticut Minimum Wage. The US Department of Labor has issued revised regulations that, when they go into effect on January 1, 2015,[2] will significantly narrow the federal exemption of home care workers and, simultaneously, the exemption of home care workers from the Connecticut minimum wage. This language, however, creates needless confusing about the scope of the law. Additionally, the CMWA's exclusion for "babysitters," which we believe is not meant to encompass nannies, nevertheless also adds confusion to the scope of coverage for workers providing childcare services.

- Connecticut's Workers Compensation Law exempts a significant portion of the domestic worker workforce. The Workers Compensation law provides that "Employee" **does not include "any person engaged in any type of service in or about a private dwelling provided** he is not regularly employed by the owner or occupier over twenty-six hours per week."[3] Conn. Gen. Stat. § 31-327(9)(A). This restriction does not apply to other workers in the state.

- Connecticut's Human Rights Statute, which includes protections against discrimination and sexual harassment, excludes domestic workers. The law **excludes from its definition of "employee" "any individual employed… in the domestic service** of any person. Conn. Gen. Stat. § 46a-51(9). The statute also exempts virtually all domestic workers on a *de facto* basis because it defines "employer" as "any person or employer with three or more persons in such person's or employer's employ". Conn. Gen. Stat. § 46a-51(10).

- Connecticut's sick days law applies only to businesses with 50 or more employees, therefore exempting most domestic workers on a de facto basis. Conn. Gen. Stat. 31-57r(f).

[2] The US DOL's revised companionship rules will significantly narrow the scope of the Fair Labor Standards Act's companionship services exemption, which currently encompasses virtually all home care workers, including those employed by agencies. When the rules go into effect on January 1, 2015, only a small group of home care workers will remain exempt: those workers who are both solely employed by an individual or household and who primarily provide fellowship and protection. All other home care workers will be entitled to wage protections. See the National Employment Law Project's fact sheet on the companionship regulations at http://www.nelp.org/page/content/state_chart_companionship.

[3] Conn. Gen. Stat. § 31-327(9)(A). In assessing whether worker is "regularly" employed over 26 hours per week, the Workers Compensation Board looks to the twenty-six week period preceding the injury. *Smith v. Yurkovsky*, 2001 Conn. Wrk. Comp. LEXIS 110 (December 12, 2001). Case No. 4324 CRB-3-00.

These state-level exemptions are compounded by domestic workers' exclusion from important federal workplace protections:

- The Fair Labor Standards Act (FLSA), which sets a federal minimum wage rate, maximum hours, and overtime for employees of certain occupations, excludes "casual" employees such as babysitters and "companions" for the sick or elderly. Live-in domestic workers are exempt from FLSA's overtime protections. And while the federal exemption will close in January 2015, decades of exclusion has meant that home care workers have not received minimum wage and overtime protections.

- The National Labor Relations Act (NLRA), which guarantees employees the right to organize, **excludes domestic workers from the definition of "employee".** The NLRA would be of little practical help to domestic workers even if did not exclude them, however, because the law is predicated on workers organizing collectively to negotiate with a common employer. (Home care workers employed by agencies are covered by the NLRA, although their NLRA rights are difficult to enforce in practice. Personal care attendants employed through state-funded programs in Connecticut have organizing and bargaining rights through a state law.)

- **Domestic workers are also exempt** from the Occupational Safety and Health Act (OSHA); Title VII (protections from discrimination on the basis of race, color, religion, sex, or national origin, applies only to employers with 15 or more employees); the Americans with Disabilities Act (applies only to employers with 15 or more employees), and the Age Discrimination in Employment Act (applies only to employers with 20 or more employees).

Domestic workers experience high rates of minimum wage and overtime violations

Domestic workers' exclusion from key workplace laws is compounded by their physical isolation in private homes, which makes them less likely to be able to exercise the few rights they do enjoy or negotiate for decent standards, and placing them at unique risk of abuse. The impact of exclusions and workers' isolation is made clear by the results of NELP's 2009 landmark study of employment practices in low-wage industries in the U.S.'s three largest cities—New York City, Chicago, and Los Angeles—*Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in American Cities*. The study revealed systemic and severe violations of employment and labor laws across core sectors of the economy, with domestic work standing out among the most unregulated and prone to violations.

Domestic workers are routinely subject to minimum wage and overtime violations, especially when paid flat weekly or monthly amounts for very long work days. The NELP report found that workers in the domestic service industry experienced the following:

- Minimum wage violations: 41.5% of domestic workers were paid less than the minimum wage in the week preceding the survey;

- Overtime pay violations: 88.6% of domestic workers were not paid the required weekly overtime pay at the time of the survey;

- "Off-the-clock" work: 82.6% of domestic workers who worked before or after their shift were not paid for that part of their working time;

- Meal break violations: 83.6% of domestic workers who worked enough hours to qualify for a meal break had their breaks denied, shortened, or interrupted.

- Workers' complaints about these abuses frequently lead to immigration threats, to threats of firing, or to actual firing.

In addition to these violations, domestic workers are often subject to illegal deductions from pay for food and lodging or travel costs. They rarely receive paid sick days, vacation days or employer-provided health insurance. And the work is often physically exhausting and draining.

Summary of HB 5527

In the context of the exemptions and violations described above, Connecticut has a unique obligation to step in and help to establish a framework of core workplace standards for the industry. The Connecticut Domestic Worker Bill of Rights introduced last session would have done exactly that. I will briefly summarize its provisions. We support the inclusion of these provisions in future legislative efforts.

Closing Domestic Worker Exemptions in Workplace Laws

- Close exemptions in the Connecticut Minimum Wage Act at Conn. Gen. Stat. § 31-58(e) through two changes: (1) removing the exemption for "any individual . . . employed in domestic service in or about a private home, except any individual in domestic service employment as defined in the regulations of the Fair Labor Standards Act" and (2) narrowing the exemption for "any individual engaged in babysitting" to "any individual engaged in babysitting of an irregular and intermittent or of a casual nature."

- Narrow the exemption in the Workers Compensation Act by replacing the provision at Conn. Gen. Stat. § 31-275(9)(B)(iv), which exempts from coverage "Any person engaged in any type of service in or about a private dwelling provided he is not regularly employed by the owner or occupier over twenty-six hours per week" with the following provision: "Any person engaged in domestic service in a private home, unless that home or household paid cash

remuneration to individuals employed in such domestic service equal to one thousand dollars or more in any calendar quarter in the current or preceding calendar year." The language we propose is derived from the Connecticut Unemployment Insurance law.[4] By aligning the two statutes we would make it easier for employers to understand their obligations to workers. Several states' workers compensation statutes use similar language, including the following: CA, DE, DC, HI, IO, KS, MD, MN, OH, and OK.[5]

- Amend the Connecticut Fair Employment Practices Act to eliminate the exemption for domestic workers at Conn. Gen. Stat. § 46a-51(9). Amend § 46a-51(10) to provide that domestic workers are protected by the Statute notwithstanding language limiting coverage to employers with three or more employees. One key benefit of this reform would be to extend protections from sexual harassment to domestic workers.

Establish industry-specific workplace protections.

HB 5527 provided for the establishment of baseline standards and for greater protections from abuses that are common in the domestic work industry. As drafted, these protections would have only applied to domestic workers as defined in a new section of the Labor Law, and would have included individuals employed to perform work of a domestic nature in or about a private home, including, but not limited to, housekeeping, house cleaning, home management, nanny services including childcare and child monitoring, caretaking of individuals in the home including sick, convalescing and elderly individuals, laundering, cooking, home companion services and other household services for members of households or their guests in private homes. The term would have excluded babysitters employed on a casual basis and personal care attendants employed through state-funded programs. The new protections included:

[4] Conn. Gen. Stat. §31-222(a)(1)(J) uses nearly identical language.

[5] CA domestic workers are eligible for workers compensation if they have worked more than 52 hours during and earned more than $100 in the 90 days prior to the injury, Cal. Lab. Code §3352(h); DE domestic workers in private homes are covered if they earn at least $750 in any 3-month period from a single household, Del. Code. Ann. Tit 19, § 2307; D.C.'s workers compensation statute covers employers of domestic workers who in a calendar quarter employed one or more domestic workers for at least 240 hours; D.C. Code Ann § 32-1501(9)(E); under HI's workers compensation statute, "excluded employment" includes domestic workers earning less than $225 (cash) per calendar quarter and domestic workers of public welfare recipients. An employer can elect to provide coverage, Haw. Rev. Stat. §§ 386-1; IO's workers compensation statute covers employees engaged in service in or about a private home who earn at least $1,500 from their employer during the 12 consecutive months before the injury, Iowa Code Ann. § 85.1(1); KS's workers compensation law applies to employers who had a total gross annual payroll for the preceding calendar year of not more than $20,000 for all employees, Kan. Stat. Ann. § 44-505(a)(2); MD's workers compensation law covers domestic workers in private home who are paid at least $1,000 by their employer in a calendar quarter. Md. Code Ann. LE § 9-209; MN's workers compensation law covers household workers paid at least $1,000 by their employer in a 3-month period in the preceding year, Minn. Stat. Ann. §176.041(n); OH's workers compensation law covers household workers who earn at least $160 in any calendar quarter from a single household, and casual workers who earn at least $160 in any calendar quarter from a single employer, Ohio Rev. Code Ann. § 4123.01(A)(1)(b); OK's workers' Compensation Act does not apply to . . . [a]ny person who is employed as a domestic servant or as a casual worker in and about a private home or household, which private home or household had a gross annual payroll in the preceding calendar year of less than Ten Thousand Dollars ($10,000.00) for such workers." Okla. St. Ann. tit. 85, § 2.1(1).

- Annual paid leave time: accrues at the rate of one hour of leave for every 40 hours worked, up to 56 hours per year;

- One day off per 7-day calendar week - with premium pay of one-and-a-half times the worker's regular rate of pay if she voluntarily agrees to work on this day;

- Seven days advance notice of termination or severance pay for workers, excepting cases involving good faith allegations of abuse or neglect;

- Written disclosure at the time of hire of the worker's pay rate, work hours, wage payment schedule, job duties, availability of leave time, deductions, and of the rights provided under the Bill of Rights;

- Increased protection from impermissible deductions for food and lodging;

- Protection for sleep time for workers required to spend the night at their employer's home, and compensation for all hours worked when sleep is interrupted;

- A right to privacy in private living spaces and in a worker's private communications and protection from seizure of a worker's documents; and

- A private right of action and an administrative mechanism for enforcing the Bill of Rights provisions and protection from retaliation for enforcing these new rights.

Strengthen Mechanisms for Worker and Employer Education and Outreach

HB 5527 included a provision establishing a Domestic Workers Taskforce. This provision is obviously no longer needed, but we do strongly recommend the Taskforce explore policies to educate workers and employers of the law and to ensure robust enforcement of domestic workers' rights, for inclusion in the bill. Additional and valuable reforms might also include funding for worker training and for workers' organizations.

Several States and the Federal Government Have Recently Acted to Improve Protections for Domestic Workers.

The Connecticut Domestic Worker Bill of Rights is part of a larger trend towards increasing workplace protections for domestic workers.

In the past several years, coalitions of domestic workers rights groups, domestic employers, labor unions, and other supporters have run state-level campaigns to pass Domestic Worker

Bills of Rights. New York passed the first Domestic Worker Bill of Rights in 2010.[6] The NY law achieved minimum wage and overtime protections for some groups of domestic workers who had previously been excluded; established annual paid days off and a day of rest; and charged the New York State Department of Labor with studying the feasibility of unionization for domestic workers and with reporting on the agency's enforcement of the bill.

Hawaii[7] and California[8] followed suit, both passing Bills of Rights in 2013. Massachusetts is the latest state to have passed a Domestic Worker Bill of Rights.[9] Signed into law this July, the MA DWBOR is arguably the furthest-reaching so far, and its provisions generally consistent with those in the Connecticut bill.

Workers and advocates have also made great strides towards raising standards for the home care workforce, which is a sub-group of the overall domestic worker industry. The most significant success has been the closing of the federal companionship exemption, which has long excluded home care workers from basic federal wage and hour protections. On September 17, 2013, the U.S. Department of Labor issued final regulations, effective January 2015, that apply the federal minimum wage and overtime protections of the Fair Labor Standards Act to most of the two-million-plus home care workers in the United States. The new rules significantly narrow the exemption, correcting a decades-old injustice that has fueled poverty wages and destabilized an increasingly vital industry. Movement is now underway to ensure the smooth implementation of these new federal regulations.

Conclusion

Over 40,000 nannies, housekeepers and caregivers report to work at homes across Connecticut each day so other families can go to their own jobs. This vital workforce keeps Connecticut's economy moving, but domestic workers are not protected by some of the state's most basic workplace laws. They have little recourse when they're denied wages or forced into unpaid overtime, and no place to turn if injured on the job or sexually harassed. The Connecticut Domestic Workers' Bill of Rights addresses the longstanding, unfair exclusion of domestic workers from core labor protections, reflects the unique conditions and demands of the industry in which they work, and clarifies employers' obligations. We strongly urge you to support a CT DWBOR. Thank you very much.

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For more information, please contact NELP Staff Attorney Sarah Leberstein at sleberstein@nelp.org or (212) 285-3025 x313.

[6] 2010 Sess. Law News of N.Y. Ch. 481 (A. 1470-B).
[7] HI HB 56.
[8] CA AB 241.
[9] For a summary of the bill's provisions, see http://www.domesticworkers.org/new-rights-under-the-massachusetts-domestic-workers-bill-of-rights.