

Labor and Employment Law Bulletin

New York's New Domestic Workers Bill of Rights Provides Broad Protection for Domestic Employees

On August 31, Governor Paterson signed the Domestic Workers Bill of Rights (DWBOR) into law, making New York the first state to provide explicit workplace protections to domestic workers. The law takes effect on November 29, 2010. It provides greater rights and protections for New York's 200,000 domestic workers and imposes substantial new responsibilities on those who employ them. All employers of domestic workers—regardless of the number of workers—are covered by DWBOR's prohibition against discrimination and harassment and by the application of the state's wage/hour and disability benefit laws to domestic workers.

To whom does the new law apply?

In contrast to the New York State Human Rights Law (NYSHRL) and the New York City HRL (NYCHRL), which cover only entities having four or more employees, the new law applies to any individual, family, or household that employs a single domestic worker. DWBOR protects virtually all domestic workers, including housekeepers, those who care for the elderly, and those who provide companionship for the sick. Several categories of workers are excluded, however: those engaged in companionship services and employed by an entity other than the family or household, au pairs, minors who

work on a "casual basis" (e.g., babysitters), and relatives by blood or marriage.

Prohibition on discrimination and harassment

For the first time, domestic workers will be protected from sexual, racial, and certain other forms of discrimination. DWBOR provides that it is unlawful for an employer to discriminate against a domestic worker or to subject a domestic worker to harassment based on the worker's race, gender, religion, or national origin. The law expressly prohibits sexual harassment, including unwelcome sexual advances and other conduct of a sexual nature. In addition, retaliation against a domestic worker for protesting perceived discrimination is prohibited.

Overtime pay and other protections provided by DWBOR

Among the other significant protections provided by DWBOR is the right of domestic workers to receive overtime pay at a rate equal to at least one and one-half times their regular hourly wage for work in excess of forty hours per week. Also, the state's minimum wage provisions will now also apply to domestic workers. This provision thus imports existing interpretations of the state wage/hour laws into the domestic worker context (e.g.,

“on call” hours count as worked hours if there are restrictions on the employee’s mobility).

The law also amends New York’s Workers’ Compensation Law to include domestic workers in the category of employees eligible to receive statutory disability benefits from their employer, and will thus clearly require employers to carry workers’ compensation and DBL insurance. In addition, domestic workers must receive one full day of rest (consisting of twenty-four consecutive hours) every calendar week, although this privilege is subject to waiver by the employee.

Compliance tips

For many people, the overtime pay aspects of DWBOR will not be applicable, as they employ domestic help, if at all, for less than forty hours per week.

For those who employ full-time help, as well as for those who employ domestic employees for shorter periods, compliance with most of the DWBOR will be a matter of common sense: don’t discriminate in hiring, terms and conditions of employment, and termination; make sure that all household members (and visitors and other workers) refrain from harassment of all domestic workers; have a clear understanding, preferably in writing, of the employee’s hourly rate, hours to be worked (including hours when the employee must be on the premises, even if not actually working), and time off; maintain accurate records of the time that the employee actually works or is not free to pursue his or her own activities; have accurate records of wages paid, moneys withheld, and the reasons for withholding; have accurate records of the payment of payroll taxes (which now will include deductions for the state disability benefits law); and document all disputes, disciplinary action, performance issues, and complaints.

More elaborate compliance strategies could include:

- Having a signed employment agreement that provides for employment-at-will while clearly setting out the wage rate, expected hours of work, voluntary fringe benefits (if any), and perhaps a dispute resolution mechanism, such as arbitration or pre-litigation mediation.
- Consulting insurance companies/brokers to assure that workers’ compensation and other appropriate coverages are in place; consider an Employment Practices Liability policy.
- Having the employee sign and authenticate all time and payment records.
- Engaging a professional payroll service to assure that deductions are made properly and that payroll taxes are paid.
- Learning the basics about prohibited harassment and discrimination, and being prepared to treat complaints seriously and promptly, without retaliation. Moreover, mentioning the employer’s opposition to discrimination/harassment/retaliation in the employment contract, if there is one, or in a hire letter, is a very good idea.

If you have any questions about the Domestic Workers Bill of Rights and its implications, please contact **Alan M. Koral** (212-407-7750), akoral@vedderprice.com or **Daniel C. Green** (212-407-7735), dgreen@vedderprice.com.

New York Labor and Employment Group Members

Alan M. Koral..... 212-407-7750	Lyle S. Zuckerman..... 212-407-6964	Mark S. Goldstein..... 212-407-6941
Neal I. Korval..... 212-407-7780	Valerie J. Bluth..... 212-407-7739	Daniel C. Green..... 212-407-7735
Laura Sack..... 212-407-6960	Charles S. Caranicas..... 212-407-7712	Roy P. Salins..... 212-407-6965
Jonathan A. Wexler..... 212-407-7732	Michael Goettig..... 212-407-7781	

Washington, D.C. Labor and Employment Group Members

Amy L. Bess..... 202-312-3361
Sadina Montani Boik..... 202-312-3363

Chicago Labor and Employment Group Members

Thomas G. Abram..... 312-609-7760	Benjamin A. Hartsock..... 312-609-7922	Paul F. Russell..... 312-609-7740
Bruce R. Alper..... 312-609-7890	J. Kevin Hennessy..... 312-609-7868	Richard H. Schnadig..... 312-609-7810
Paige O. Barnett..... 312-609-7676	Scot A. Hinshaw..... 312-609-7527	Robert F. Simon..... 312-609-7550
Mark I. Bogart..... 312-609-7878	Jonathan E. Hyun..... 312-609-7791	Patrick W. Spangler..... 312-609-7797
Lawrence J. Casazza..... 312-609-7770	John J. Jacobsen, Jr..... 312-609-7680	Kenneth F. Sparks..... 312-609-7877
Katherine A. Christy..... 312-609-7588	John P. Jacoby..... 312-609-7633	James A. Spizzo..... 312-609-7705
Michael G. Cleveland..... 312-609-7860	Edward C. Jepson, Jr..... 312-609-7582	Kelly A. Starr..... 312-609-7768
Christopher T. Collins..... 312-609-7706	Michael C. Joyce..... 312-609-7627	Mark L. Stolzenburg..... 312-609-7512
Emily T. Collins..... 312-609-7572	Philip L. Mowery..... 312-609-7642	Theodore J. Tierney..... 312-609-7530
Megan J. Crowhurst..... 312-609-7622	Joseph K. Mulherin..... 312-609-7725	Timothy J. Tommaso..... 312-609-7688
Thomas P. Desmond..... 312-609-7647	Christopher L. Nybo..... 312-609-7729	Thomas M. Wilde, <i>Chair</i> 312-609-7821
Aaron R. Gelb..... 312-609-7844	Angela P. Obloy..... 312-609-7541	Jessica L. Winski..... 312-609-7678
Elizabeth N. Hall..... 312-609-7795	Margo Wolf O'Donnell..... 312-609-7609	Charles B. Wolf..... 312-609-7888
Steven L. Hamann..... 312-609-7579	Michelle T. Olson..... 312-609-7643	
Thomas G. Hancuch..... 312-609-7824	James S. Petrie..... 312-609-7660	

VEDDER PRICE[®]

1633 BROADWAY, 47TH FLOOR
NEW YORK, NEW YORK 10019
212-407-7700 FAX: 212-407-7799

222 NORTH LASALLE STREET
CHICAGO, ILLINOIS 60601
312-609-7500 FAX: 312-609-5005

875 15TH STREET NW, SUITE 725
WASHINGTON, D.C. 20005
202-312-3320 FAX: 202-312-3322

www.vedderprice.com

About Vedder Price

Vedder Price P.C. is a national business-oriented law firm with more than 250 attorneys in Chicago, New York City and Washington, D.C. The firm combines broad, diversified legal experience with particular strengths in labor and employment law and litigation, employee benefits and executive compensation law, occupational safety and health, general litigation, corporate and business law, commercial finance, financial institutions, environmental law, securities, investment management, tax, real estate, intellectual property, estate planning and administration, health care, trade and professional association and not-for-profit law.

© 2010 Vedder Price P.C. The LABOR AND EMPLOYMENT LAW BULLETIN is intended to keep our clients and interested parties generally informed on labor law issues and developments. It is not a substitute for professional advice. For purposes of the New York State Bar Rules, this bulletin may be considered ATTORNEY ADVERTISING. Prior results do not guarantee a similar outcome. Reproduction is permissible with credit to Vedder Price P.C. For additional copies or an electronic copy of this bulletin, please contact us at info@vedderprice.com.

Questions or comments concerning the LABOR AND EMPLOYMENT LAW BULLETIN or its contents may be directed to the firm's Labor Practice Leader, Thomas M. Wilde (312-609-7821); the Managing Shareholder of the firm's New York office, Neal I. Korval (212-407-7780); or, in Washington, D.C., Amy L. Bess (202-312-3361).