

EMPLOYMENT RIGHTS

of

DOMESTIC WORKERS

IN TEXAS



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* All workers have the right to be paid for the work they perform, whether or not they have work authorization.

Employment Rights of Domestic Workers in Texas

Domestic workers are entitled to basic employment protections. Domestic workers provide services of a household nature in or about a private home and include companions, cooks, maids, housekeepers, nannies, nurses, caretakers, gardeners, home health aides, personal care aides, drivers, and others who work in or around a home, whether temporarily or permanently. This pamphlet provides general information related to some common questions asked by domestic workers.*

Do domestic workers have the right to a minimum wage?

A domestic worker is entitled to minimum wage regardless of whether she is “live-in” (resides with her employer) or “resides elsewhere.” Live-in domestic service workers may be exempt from overtime (time-and-a-half for hours worked beyond 40 in a workweek).

What is a “live-in” worker?

To be a “live-in” home care worker who is not entitled to overtime, the employee must either live at the employer’s private home full-time (seven nights per week) or spend at least 120 hours or five consecutive days or nights per week in the employer’s home. Employees working in a private home who do not meet this definition are not considered live-in domestic service workers and must be paid at least the minimum wage and any overtime pay (time and a half) for hours worked beyond 40 in a work week.

* This pamphlet is not legal advice. If you want legal advice about your specific situation or want help with a problem at work, please consult a lawyer.

Which domestic workers do not have the right to minimum wage or overtime?

- **casual baby-sitters** who watch children, but not on a regular basis as their main occupation; and
- some **companions** for elderly or disabled people.

Which companions have the right to minimum wage and overtime?

- The companionship exemption is very narrow.
- **All** companions who work for a company (agency) have the right to the minimum wage and overtime.
- A companion who works in a private house for a family **without a company involved** has the right to minimum wage and overtime unless all of the following are true:
 - o The companion spends 80% or more of total weekly working time engaging the patient in social, physical and mental activities such as reading, games, conversation, or accompanying client at home or on walks, errands, appointments or social events;
 - o The companion spends no more than 20% of total weekly working time doing things such as preparing food, feeding, grooming, dressing, bathing, giving medicine, and other household work;
 - o The worker does not perform any medically related tasks;
 - o The worker does not perform general household work for members of the household other than the elderly or disabled person; and
 - o The companion is not employed by a company (agency).

What is the minimum wage an employer must pay a domestic worker?

In Texas, an employer must pay a minimum of \$7.25 an hour. Workers cannot give up their right to the minimum wage, even if they sign something that says they agree to work for less money.

Can domestic workers take rest breaks, and do those breaks have to be paid?

For most workers, rest breaks are not required by Texas or federal law, but if breaks are given, the employer must pay a worker for short breaks (of about 20 minutes or less).

An employer generally does not have to pay for time spent on a meal break, if the break is at least 30 minutes and the employee doesn't have to work at all during that time.

In general, an employer must pay a worker for all of the time when the worker is doing something for the employer's benefit, including when the worker is required to wait for work or travel from worksite to worksite.

A *Live-in worker* who works shifts of more than 24 hours can agree with an employer to exclude meal breaks, longer breaks, and sleep time from paid time, but only if the employee has the time completely to herself, without interruptions.

Are domestic workers entitled to overtime pay?

Maybe.

Workers who do not reside with the employer: These workers are entitled to receive overtime (time and a half) for hours worked over 40 hours in a single week. This right to overtime applies even if workers are paid a weekly salary, a day rate, or a piece rate.

Live-in workers: Domestic workers who live in the home of their employer do not have the right to overtime pay, but must still be paid \$7.25 per hour for every hour worked.

Can employers deduct the cost of meals or lodging from pay?

Employers may reduce the amount paid to a worker by the value of the meals or lodging provided, even if the deductions reduce the worker's pay to below the minimum wage. The employer can deduct the actual cost or fair value of furnishing meals, whichever is less, if the employer keeps records. But if the employer does not keep records, the employer can deduct up to the following amounts:

Breakfast: \$2.72/ day

Lunch: \$3.63/ day

Dinner: \$4.53/ day

Max.Total: \$10.88/ day

Total: cannot exceed 150% of minimum wage for any day.

Lodging: \$54.38/ week

The following additional limits apply to an employer's right to make deductions from a worker's wages:

- Employers are not allowed to deduct the cost of anything that is primarily for the employer's own benefit, such as safety equipment, tools, or uniforms.

A worker must agree to these deductions in writing and the employer should provide the worker with a pay stub or statement showing the deduction. An employer cannot force or coerce a worker to take these deductions.

Can an employer deduct income taxes?

Yes. An employer is required to deduct taxes and pay them to the federal government. The employer must give the worker a W-2 Form postmarked no later than January 31 of the year following the year in which the wages were paid, showing the total wages paid and taxes deducted during the prior year.

How often must a worker be paid?

Under the Texas Payday Law, most workers (those who are covered by the federal overtime law) must be paid at least twice per month and each pay period should be approximately an equal number of days. Workers who do not have a right to overtime must be paid at least once per month. If a worker is fired, the worker is entitled to receive her last paycheck within six days. If a worker quits, then the worker must receive her last paycheck by the next regular payday.

What can a domestic worker do if an employer pays less than \$7.25/hour, does not pay overtime, does not pay the worker at all, or does not pay on time?

There are several options. If you would like advice on your options or legal assistance, contact a lawyer or worker center.

If you think your employer won't retaliate against you, try to talk with your employer about why s/he has not paid you correctly. If possible, take a co-worker with you.

Contact the U.S. Department of Labor's Wage and Hour Division at 1-866-478-9243. All services are free and confidential, whether you are documented or not.

For wages due within the last 180 days, file a complaint with the Texas Workforce Commission. The Commission's website is www.twc.state.tx.us and the phone number is (800) 832-9243.

File a claim with the Justice of the Peace for amounts less than \$10,000.

What deadlines apply?

As noted above, a wage claim must be filed with the Texas Workforce Commission within 180 days of when the wages were due. A worker who is owed minimum wages or overtime also can file a lawsuit against the employer for up to twice the amount of wages owed. A complaint or lawsuit must usually be filed within two years of when the unpaid wages were due.

What can a worker do if an employer threatens to call immigration or fires the worker for filing a complaint with the U.S. Department of Labor?

Employers cannot legally fire or punish a worker for demanding the right to be paid the minimum wage or overtime pay, and it is also illegal for an employer to threaten to call immigration or the police in retaliation for complaints about unfair treatment or conditions at work.

Whether a worker is documented or not, the worker has the right to be free from abuse at work and to sue in court. Some immigration-related retaliation can be considered a crime, and in some cases, victims who cooperate with authorities may apply for visas and authorization to work in the United States. Victims can also bring retaliation claims against their employers in court to try to recover money.

If you are concerned about retaliation or want to know your options, consult with a lawyer.

If an employer tries to do this, then the worker should contact advocates or the U.S. Department of Labor (DOL) and report the employer. DOL's phone number is 1-866-4-USA-DOL (1-866-487-2365).

Can domestic workers get unemployment insurance if they lose a job?

Maybe. A worker qualifies for unemployment insurance if he or she earned enough in the period before the date she applies for unemployment benefits. An unemployed worker can make a claim for unemployment benefits with the Texas Workforce Commission. The Commission's website is www.twc.state.tx.us and the phone number is (800) 832-9243. Workers who do not have authorization to work do not qualify for unemployment insurance.

Can a domestic worker get worker's compensation benefits if injured at work?

It depends. In Texas, employers are not required to purchase workers' compensation insurance to cover workplace injuries. However, an employer can voluntarily provide such coverage. If the employer is not insured and an employee is injured at work, she may have other legal options.

What should a domestic worker do if an employer discriminates against them?

It is illegal for an employer to slap, touch a worker, or demand sex from a worker. If this happens, the worker should contact the police and make a report.

It is usually illegal to treat someone differently in the conditions of their work because of their sex, race, national origin, ethnic background, age, religion, mental or physical disability, or pregnancy. Discrimination based on sexual orientation or gender status may also count as sex discrimination.

Sexual harassment at work is also a type of discrimination. It includes unwanted behavior or actions, sexual advances, requests for sexual favors, and other physical or verbal conduct of a sexual nature.

To be covered by most federal and Texas discrimination laws, an employer must have 15 or more employees. (Race discrimination is prohibited under federal law for employers of all sizes. Age discrimination laws require that the employer have at least 20 employees.)

A worker should speak up if they feel an employer is treating them unfairly. In general, it is unlawful for a covered employer to retaliate against a worker for complaining about unlawful discrimination. The law gives you a very short time to make a complaint to the right government agency about discrimination. In some cases, you have only 180 days from the incident to file a complaint.

What if my employer is taking actions to keep me working, like threatening me or refusing to return a passport or other important document?

It is illegal to use threats or take actions to keep someone working. You should be free to leave your work when you want to.

If you have been told that something bad will happen to you or another person if you leave work, or that you have to continue to work to pay a debt, or that immigration will be called if you leave work, you could be a victim of labor trafficking.

Many of these abuses can be considered crimes. In some cases, victims who cooperate with authorities may apply for visas and authorization to work in the United States. Victims can also bring civil claims against their employers.

When is a worker an employee?

Federal and state employment laws apply to employees, but not to "independent contractors," workers who are in business for themselves. There is no simple rule that determines when a worker is considered an employee, but the majority of domestic workers are employees. A worker is more likely to be considered an employee the more closely the employer directs her work, telling her what to do, and how and when to do it. Whether a worker is considered an employee does not depend on whether the work is full or part time, or whether the worker is paid in cash or by check. Workers who advertise their business to the public, own their own tools and have their own customers, are true independent contractors. For example, yard maintenance workers who use their own equipment, set their own hours, and work for multiple households are likely to be considered independent contractors.

A worker can often be considered the employee of more than one employer. For example, if a domestic worker's work is controlled by both a maid service company and the company's customer whose house she cleans, the company and the customer are likely "joint employers" and are both responsible for making sure the worker is paid correctly.

This pamphlet provides some information on basic employment rights of domestic workers. In order to best understand their rights and options, workers should consult with a worker center, legal services organization or a private attorney before contacting any governmental body or taking other action.

Texas RioGrande Legal Aid (TRLA)**www.trla.org**

phone: 1-888-988-9996

Equal Justice Center**www.equaljusticecenter.org**

phone: 1-800-853-4028

Houston Interfaith Worker Justice Center**www.hiwj.org**

(Fe y Justicia Worker Center)

1805 West Alabama, 2nd Floor

Houston TX 77098

phone: (713) 862-8222

<http://www.houstonworkers.org/>**Southwest Public Workers Union****www.swunion.org**

1416 E. Commerce Street

San Antonio, TX 78205

phone: (210) 299-2666

info@mujerobrera.org**Workers' Defense Project / Proyecto Defensa Laboral****www.workersdefensa.org**

5604 Manor Road

Austin, TX 78723

phone: (512) 391-2305

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Border Workers United**Labor Justice Committee/El Comité de Justicia Laboral**

1317 E. Rio Grande Ave.

El Paso, TX 79902

phone: (915) 209-2551

info@justicialaboral.org

Border Workers United**Fuerza del Valle**

1017 W. Hackberry Ave.

Alamo, TX 78516

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