



LABOR & EMPLOYMENT DEPARTMENT

# ALERT

## NEW YORK ENACTS LEGISLATION EXPANDING WORKPLACE RIGHTS FOR DOMESTIC WORKERS

By John D. Horowitz and Daniel N. Kuperstein

For decades, many New York domestic workers have been exempt from protection under a number of New York state employment laws, and their employers have had wide latitude in establishing the terms and conditions of their employment. However, on August 31, 2010, Governor David A. Paterson signed new legislation (A. 1470), effective November 29, 2010, that drastically changes this landscape.

Under the new legislation, domestic workers — defined as persons employed in a home or residence for the purpose of (1) caring for a child; (2) serving as a companion for a sick, convalescing or elderly person; (3) housekeeping; or (4) for any other domestic service purpose — now enjoy significant legal protections in the workplace. As a result, countless New York employers (i.e., households) must now learn and comply with various New York state employment laws for the first time.

Under the new legislation, domestic workers are now entitled to:

- Receive overtime pay at a rate that is at least one and one-half times the normal wage rate after working more than 40 hours per week, or more than 44 hours per week for live-in domestic workers.
- One day off per week, which should, whenever possible, coincide with the traditional day reserved by the domestic worker for religious worship.

Domestic workers can voluntarily agree to work on such day, provided that the worker is compensated at the overtime rate for all hours worked.

- At least three paid days off per year, at the regular rate of compensation, after working for the same employer for at least one year.
- The same rights as other employees covered under New York's workers' compensation and disability insurance laws.

The new legislation does not, however, apply to individuals who: (1) work on a casual basis; (2) provide companionship services as defined in the Fair Labor Standards Act (a federal law governing wages and hours of work), and are employed by an employer or agency other than the family or household using their services; or (3) are a relative through blood, marriage or adoption of the employer, or the person for whom the worker is delivering services under a program funded or administered by federal, state or local government.

That said, the new legislation permits covered domestic workers to file claims against their employers under the New York State Human Rights Law (NYSHRL) for sexual harassment and discrimination based on gender, race, religion or national origin. The law amends the definition of employer under the NYSHRL to apply its protections to employers employing at least one domestic worker.

Accordingly, persons who employ one or more covered domestic workers should obtain the insurance coverage required under the new law and begin tracking their domestic workers' hours of work, frequency of pay, break time, net compensation, gross wages, straight and overtime rate of compensation and any deductions from wages. Such records should be maintained for at least six years under New York law (and under federal law, it may be important to keep such records indefinitely).

Significantly, the New York State Commissioner of Labor will begin a study on the feasibility and

practicality of giving domestic workers collective bargaining rights. This means that a person who employs a domestic worker could one day be bargaining with the worker's union representative. Persons who employ domestic workers in New York should familiarize themselves with the obligations of this new law.

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