



RIGHTS BEGIN AT HOME
PROTECTING YOURSELF AS A *DOMESTIC WORKER*



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DOMESTIC WORKER**



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Introduction

Domestic workers are nannies, housekeepers and elder caregivers who provide the invaluable household labor that frees others to work outside the home. They generally work in isolation and rarely have co-workers who can help them assert their rights. Many are immigrants with a limited knowledge of the laws of this country or of the state in which they work. Some are undocumented and live in fear of being deported.

Many federal and state labor laws exclude domestic workers, leaving them with fewer legal protections than most other workers. But while the laws do not reflect the full extent of the rights domestic workers deserve, they do give workers some important tools for protecting themselves on the job. Workers, advocates and organizers have used innovative organizing and advocacy strategies to make the best use of these existing legal protections and to advocate for greater rights for domestic workers.

The passage of the Domestic Worker Bill of Rights in New York this year expanded labor protections for domestic workers and has raised public awareness of the problems in the industry.

The goal of this handbook is to help domestic workers protect themselves within existing employment laws, specifically as they apply to domestic workers in New York, New Jersey, and Connecticut.

Part I of this guide explains the basic provisions of the Fair Labor Standards Act (FLSA), the main federal law that gives workers the right to a minimum wage and overtime pay; the state labor laws in New York, New Jersey, and Connecticut; tax law, workers compensation law, and unemployment insurance law; and protection from abuse, discrimination and harassment.

Part II discusses immigration issues affecting domestic workers, including employers' threats to report workers to immigration authorities, work authorization requirements, information on visas, and anti-trafficking laws and immigration relief for trafficking victims.

Part III describes methods for enforcing workplace laws through the use of demand letters and negotiations with employers, lawsuits, filing complaints with government agencies and organizing, and discusses the benefits and limitations of these strategies.

Part IV contains guidelines and tips for domestic workers in their search for work and negotiating employment arrangements.

Laws that are not enforced have only symbolic value. The first step toward empowering workers is to educate them about their rights. This handbook is part of that first step.



I. Domestic Workers' Labor Rights

This section explains the workplace laws that apply to domestic workers, including: minimum wage, overtime and wage payment laws; limitations on an employer's right to make deductions from a worker's wages; meal and rest break protections; special rules for workers who sleep at their employer's home; tax law; workers' compensation law; unemployment insurance benefits; protections from abuse, discrimination and harassment; and requirements that employers keep records of worker hours and wages.

Workers are entitled to these protections even if they are paid off-the-books.

Most, but not all, of these laws afford protection to workers regardless of their immigration status.

A. WAGES AND HOURS

Most domestic workers are protected by the Fair Labor Standards Act (FLSA), the federal minimum wage and overtime law, and, in most instances, the state labor laws as well. Part-time babysitters and some companions to the sick and elderly, however, are excluded from the federal and some state minimum wage and overtime laws.

Generally, where a worker is covered by more than one law, she is entitled to claim the protection of the law that benefits her the most. If a worker is covered by one law and excluded from the other – for example, if she is covered by the state minimum wage but exempted from the federal minimum wage – she can claim the protection of the one law that covers her.

Workers and their advocates should try to get the best remedies available under any laws that may apply. Whether a domestic worker is considered a covered employee or falls into an excluded category depends on the nature of her work duties and whether she lives at her employer's home. The distinction between covered and excluded categories is often difficult to draw. This section lays out the basic rules; workers who want to know their status under the wage and hour laws should consult a lawyer.



1. MINIMUM WAGE & WAGE PAYMENT LAWS

Workers are entitled to be paid at least the minimum wage in effect at the time the work was performed. They must be paid for all hours they work. Workers who are protected by both the state minimum wage and the federal wage are entitled to the higher of the two rates. Workers exempted from the federal minimum wage and/or overtime law but protected by a state law can claim the protection of the state law.

Workers who were paid less than the minimum wage in past years may still be able to claim unpaid wages from their employer.

*The chart in **Appendix K** shows the federal and state minimum wages over the past 6 years.*

FEDERAL MINIMUM WAGE ¹

The federal minimum wage is currently \$7.25 per hour.

Exemptions from the Federal Minimum Wage ²

Both the FLSA and the state labor laws completely or partially exempt some types of domestic workers.

Under the FLSA, casual babysitters (workers whose employment is irregular or intermittent and whose vocation is not babysitting) and “companions” (workers who provide home-based care to the elderly and disabled) are exempt from both the federal minimum wage and overtime laws. FLSA also exempts live-in domestic workers from overtime although not from the federal minimum wage.

Even if a worker is partially or completely exempted from the FLSA, she may be covered by a state-level minimum wage law.

THE FLSA COMPANIONSHIP EXEMPTION – TIME FOR A CHANGE?

Congress first granted minimum wage and overtime protections to domestic workers in 1974 - an important step forward. Unfortunately, at the same time, Congress created an exemption for casual babysitters and for workers who “provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves.”

While it seems clear that Congress only meant to exclude casual workers who provide informal elder care, the U.S. Department of Labor (DOL) has interpreted the term “companionship services” to include all home care services. The result is that home care workers are excluded from federal minimum wage and overtime protections.

The National Employment Law Project, in collaboration with unions and worker advocacy groups, is calling on the DOL to narrow the exemption so that it only applies to workers whose main duties are truly “companionship.” The millions of home care workers who provide vital medical and personal care to the elderly and disabled should be entitled to these important federal rights.

NEW YORK MINIMUM WAGE & WAGE PAYMENT LAWS

New York minimum wage³

The New York State minimum wage is \$7.25 an hour.

As of the effective date of the Domestic Worker Bill of Rights in New York - November 29, 2010 – all domestic workers are now covered by New York minimum wage and overtime laws, with the exception of part-time babysitters employed on a casual basis. Minimum wage coverage extends to all companions, who are excluded from FLSA.

*For a summary of the changes to minimum wage and overtime coverage made by the Bill of Rights, see **Appendix L**.*

“Spread of hours” pay⁴

New York workers who earn the minimum wage and whose hours add up to more than ten hours in a day—for example, from 9am to 8pm—have a right to receive an extra hour’s pay at the minimum wage rate. The calculation of the number of hours includes meal and rest breaks and time between shifts. Courts in New York are split on the issue of whether this rule applies to workers who are paid more than the minimum wage.

New York wage payment law⁵

Under New York law, “manual workers” are entitled to weekly payment of wages; the employer has seven days after the end of the week in which the wages are earned to pay the employee. New York regulations define “manual worker” as “mechanic, workingman or laborer.” Other workers must be paid at least semi-monthly on a designated, regular payday. Although there is no guidance indicating that domestic workers are “manual workers” entitled to weekly payment of wages, workers and advocates may make this argument. At the very least, domestic workers are entitled to be paid every 2 weeks.

Employers may not deposit the worker’s wages directly into the bank without the worker’s prior written consent. If the worker is terminated or the employment otherwise ends, the employer must pay the worker her wages no later than the next regular payday. The employer must send the worker her wages by mail at the worker’s request.

NEW JERSEY MINIMUM WAGE & WAGE PAYMENT LAWS

New Jersey minimum wage⁶

The New Jersey state minimum wage is \$7.25 an hour.

The New Jersey minimum wage and overtime laws exempt part-time babysitters. All other domestic workers and companions in NJ – live-in and live-out – **are** covered by the state’s minimum wage and overtime laws.

New Jersey wage payment law ⁷

In New Jersey, domestic workers must be paid at least twice a month and no more than ten days after the end of the pay period. The employer must establish a payday ahead of time with the worker. If the worker is fired or the employment otherwise ends, a worker must be paid by the next regularly scheduled payday. A worker can choose to have her wages directly deposited into the bank, but the employer cannot force her to accept direct deposit.

CONNECTICUT MINIMUM WAGE & WAGE PAYMENT LAWS**Connecticut minimum wage ⁸**

The Connecticut state minimum wage is \$8.25 an hour.

The Connecticut minimum wage law follows the FLSA exemptions and exempts casual babysitters and companions. Because the Connecticut Minimum Wage Act tracks the FLSA exemptions, any changes to coverage of domestic workers under federal law will similarly change the scope of coverage under the Connecticut minimum wage law.

Connecticut wage payment law ⁹

Domestic workers in Connecticut must be paid on a regular, weekly payday no more than eight days after the end of the pay period. If a worker quits or is laid off, she must be paid her wages in full on the next payday. If the worker is fired, her employer must pay her wages in full by the next business day.

2. OVERTIME**FEDERAL OVERTIME LAW ¹⁰**

Overtime is extra pay for hours worked over 40 per week for a single employer. Live-in domestic workers are exempted from federal overtime protections (but are generally covered by the federal minimum wage). Casual babysitters and companions are exempt from both the federal minimum wage and overtime. Whether a domestic worker qualifies for overtime pay depends on whether she lives with her employer and her job duties. As with the minimum wage laws, workers are entitled to the protection of the overtime law that benefits them the most.

Overtime for “live-out” workers under federal law ¹¹ (does not include companions and casual babysitters): If a worker does not live with her employer she has a right under federal law to receive standard overtime pay of 1½ times her regular hourly wage for every additional hour she works over 40 hours in a week, whether or not she is documented. Her overtime pay must be calculated based on her regular rate of pay (prior to any deductions for the cost of food and lodging).

Overtime for “live-in” workers under federal law: ¹² Domestic workers who reside at the employer’s home are not covered by the federal overtime law. To determine whether a worker resides in the home of her employer, courts may consider how many nights or hours per week she sleeps at her employer’s home, and the condition of her sleeping area.

NEW YORK OVERTIME LAW ¹³

Under New York law, domestic workers, including companions employed by a private household, receive overtime of 1½ times their regular rate of pay. Companions employed by an agency receive overtime at a rate of 1½ times the minimum wage. Live-out workers are entitled to overtime after 40 hours in a week, while live-in workers receive overtime after 44 hours in a week.

Overtime for “live-out” workers under New York law: Live-out domestic workers, including companions employed directly by the private household, receive 1½ times their regular hourly wage for every hour worked over 40 hours per week.

Overtime for “live-in” workers under New York law: Domestic workers who reside at the employer’s home, including companions employed directly by the private household, receive 1½ times their regular hourly wage after 44 hours of work in a week.

Overtime for “live-out” agency-employed “companions” under New York law: “Companions” who are employed by an employer or agency that is not the household using their services receive 1½ times the minimum wage for every hour worked over 40 hours per week.

Overtime for “live-in” agency-employed “companions” under New York law: “Companions” who are employed by an employer or agency that is not the household using their services receive 1½ times the minimum wage for every hour worked over 44 hours per week.

NEW JERSEY OVERTIME LAW ¹⁴

Under NJ law, all domestic workers, except for part-time babysitters, are entitled to overtime pay of 1½ times their regular hourly rate of pay for every hour worked over 40 in a week. New Jersey state overtime law applies to companions and to live-in domestic workers, who are exempt from the federal overtime law.

CONNECTICUT OVERTIME LAW ¹⁵

Live-in domestic workers in Connecticut are exempted from the state’s overtime protections. Live-out domestic workers, except for casual babysitters and companions, are entitled to overtime pay of 1½ times their regular hourly rate of pay for every hour worked over 40 in one week.

SUMMARY OF MINIMUM WAGE AND OVERTIME COVERAGE, STATE-BY-STATE

NEW YORK

	NY Minimum Wage	NY Overtime	Federal Minimum Wage	Federal Overtime
Live-out domestic workers	Yes	Yes -- 1½ times the regular rate of pay after 40 hrs in a week	Yes	Yes -- 1½ times the regular rate of pay after 40 hours in a week
Live-in domestic workers	Yes	Yes -- 1½ times the regular rate of pay after 44 hrs in a week	Yes	Not Covered
Live-out companions employed by a private household	Yes	Yes -- 1½ times the regular rate of pay after 40 hrs in a week	Not Covered	Not Covered
Live-in companions employed by a private household	Yes	Yes -- 1½ times the regular rate of pay after 44 hrs in a week	Not Covered	Not Covered
Live-out agency-employed companions	Yes	Yes -- 1½ times the minimum wage after 40 hrs in a week	Not Covered	Not Covered
Live-in agency-employed companions	Yes	Yes -- 1½ times the minimum wage after 44 hrs in a week	Not Covered	Not Covered
Casual Babysitter	Not Covered (part-time babysitters employed on a casual basis)	Not Covered	Not Covered	Not Covered

NEW JERSEY

	NJ Minimum Wage	NJ Overtime	Federal Minimum Wage	Federal Overtime
Live-out domestic workers	Yes	Yes -- 1½ times the regular rate of pay after 40 hrs in a week	Yes	Yes -- 1½ times the regular rate of pay after 40 hours in a week
Live-in domestic workers	Yes	Yes -- 1½ times the regular rate of pay after 40 hrs in a week	Yes	Not Covered
Live-out companion (employed by household and/or agency)	Yes	Yes -- 1½ times the regular rate of pay after 40 hrs in a week	Not Covered	Not Covered
Live-in companion (employed by household and/or agency)	Yes	Yes -- 1½ times the regular rate of pay after 40 hrs in a week	Not Covered	Not Covered
Live-out agency-employed companions	Yes	Yes -- 1½ times the minimum wage after 40 hrs in a week	Not Covered	Not Covered
Casual Babysitter	Not Covered (part-time babysitters)	Not Covered	Not Covered	Not Covered

CONNECTICUT

	Conn. Minimum Wage	Conn. Overtime	Federal Minimum Wage	Federal Overtime
Live-out domestic workers	Yes	Yes -- 1½ times the regular rate of pay after 40 hrs in a week	Yes	Yes --1½ times the regular rate of pay after 40 hours in a week
Live-in domestic workers	Yes	Not Covered	Yes	Not Covered
Live-out companion (employed by household and/or agency)	Not Covered	Not Covered	Not Covered	Not Covered
Live-in companion (employed by household and/or agency)	Not Covered	Not Covered	Not Covered	Not Covered
Casual Babysitter	Not Covered	Not Covered	Not Covered	Not Covered

The New York Domestic Worker Bill of Rights – VICTORY!

The Domestic Worker Bill of Rights was signed into law on August 31, 2010, marking the culmination of a six-year organizing campaign led by Domestic Workers United and the New York Domestic Workers Justice Coalition to raise standards for the more than 200,000 domestic workers in New York, most of whom are immigrants of color. The first legislation of its kind, the Bill of Rights closes gaps in labor laws that had left domestic workers with fewer rights than other workers in the state, and adds new protections. These provisions include:

Expanded minimum wage coverage. The law extends minimum wage coverage to part-time babysitters, except those employed on a casual basis, and to live-in companions. These groups had not been covered by the minimum wage.

Expanded overtime coverage. The law raises the overtime rate to 1½ times the regular rate of pay for some groups of domestic workers who were previously only entitled to 1½ times the minimum wage.

One day of rest in each calendar week. The worker receives overtime pay if she agrees to work on her day of rest.

Three paid days off per year, after one year of employment.

Workplace Protection. Protection against sexual harassment and harassment based on race, religion, or national origin by domestic employers; and coverage for full-time and part-time domestic workers for temporary disability benefits (pending legislative revision).

DOL Study. The law requires the Department of Labor to issue a report on the feasibility and practicality of domestic workers organizing for the purpose of collective bargaining.

These changes went into effect on November 29, 2010, 90 days after the signing of the Bill.

For more information, see the NY DOL's website at <http://www.labor.state.ny.us/sites/legal/laws/domestic-workers-bill-of-rights.page>.

Domestic Workers Bill of Rights

If you are documented or undocumented, you are protected by most federal labor laws.

HOURS AND HOURS

You are entitled to:
• a minimum wage of \$5.15 per hour;
• payment for all hours worked;
• payment of wages (including overtime) on the day you are paid;
• overtime pay of 1 and 1/2 times your hourly wage for every extra hour you work over 40 hours a week over 44 hours in a week if you live in California;
• one hour's additional pay for every day in which you work more than 10 hours in a shift. You do not have to accept lower wages because of your immigration status.

BENEFITS

If you work more than 13 weeks for the same employer, you have the right to:
• Workers Compensation and Unemployment Insurance;
• if you get injured on the job and have worked for at least 20 weeks and you are documented, you can get Unemployment Insurance;
• If you are documented, your employer must pay you an average of \$123 per week if you leave your job for a cause or are laid off.

ABUSE AND HARASSMENT

It is illegal for your employer to:
• to beat or mistreat you in any way;
• force you to have physical or sexual contact with anyone;
• contact you in any way that causes you fear or distress.



3. OTHER WAGE & HOUR PROVISIONS

a. Deductions for Meals and Lodging

FEDERAL LAW ON DEDUCTIONS¹⁶

FLSA permits employers of domestic workers to deduct, from the worker's wages, the reasonable cost of meals, lodging, or other benefits that they provide to the worker – even if the deductions reduce the worker's pay below the minimum wage. If the employer maintains records of its actual costs, the employer may reduce the worker's salary by the actual cost or the fair value (whichever is less) of the meal, lodging, or similar benefits. Even if an employer does not maintain any records, though, the employer may still reduce a domestic worker's salary by the following amounts:

Breakfast	\$2.72/day
Lunch	\$3.63/day
Dinner	\$4.53/day
Total for day can be no more than	\$10.88
Lodging	\$54.38/week

Note that where the state law also provides a schedule of maximum deductions, as New York and Connecticut do, the employer may only deduct the lower of the two rates.

Federal law imposes these additional restrictions on deductions:¹⁷

- Employers may not charge the worker more than the actual cost of what is provided to her, or deduct for the cost of anything that is primarily for the employer's own benefit, such as safety equipment, tools, or uniforms.
- Employers cannot deduct the cost of any housing that violates health or safety regulations.
- If a worker is expected to travel with her employer, the employer must pay her expenses.
- If the worker works at a party or function held by her employer, the employer cannot deduct any tips she receives from her wages.

NEW YORK LAW ON DEDUCTIONS¹⁸

New York law authorizes only the following kinds of deductions:

- Those required by law, such as Social Security contributions and other taxes;
- Those benefits to which the worker consents in writing, such as health insurance premiums, pension payments, and union dues; and
- Other deductions which benefit the worker and to which the worker consents in writing, as long as they do not exceed 10% of the worker's gross wages in a given pay period.

If the employer provides meals and lodging, he or she cannot deduct more than these rates:

Meals	\$2.50 per meal
Lodging	\$3.10 per day
House or apartment and utilities	\$5.80/day

Employers can only deduct for meals that are “adequate and nutritious.” Lodging “includes room, house or apartment”, and must “meet generally accepted standards for protection against fire, and all structural, sanitation and similar standards.”

NEW JERSEY LAW ON DEDUCTIONS ¹⁹

New Jersey law allows employers to make deductions for food and lodging provided to a worker but the employer faces a high burden in claiming such deductions. The deduction is limited to the “fair value” of the food and lodging, defined as “the cost of operation and maintenance including adequate depreciation plus a reasonable allowance for interest on the depreciated amount of capital invested by the employer.” An employer who claims a deduction is required to maintain records of the cost of furnishing such food or lodging. If the lodging provided is out of compliance with the law, or if there is no fair market value for the lodging, the “fair value” is zero and the employer may not deduct anything from the worker’s wages. Items found to be primarily for the benefit of the employer may not be included in the cost. Employers cannot profit from providing the worker with meals and lodging.

CONNECTICUT LAW ON DEDUCTIONS ²⁰

Connecticut law allows employers to take deductions from workers’ wages for the cost of food and lodging, even if the deductions bring the worker’s cash wages below the minimum wage, but an employer may not make any deductions from a worker’s wages for food or lodging unless the worker agrees to the arrangement when she is hired. Employers can only deduct for food that is “adequate and nutritious,” and for a room or apartment that is a reasonable size and has enough privacy, heat, light, and ventilation.

The maximum allowable deductions are included below:

LODGING:	
Room occupied alone	\$4.00/week
Room shared	\$3.00/week
Room with shared bed	No deduction allowed
Housing of more than one room	The Labor Commissioner may establish a reasonable allowance based on prevailing rentals of similar units.

FOOD:	
Light meal	\$0.45
Maximum deduction per day for light meals	\$0.70
Full meal	\$0.85
Maximum deduction per day for full meals	\$1.80

b. Special Rules for Workers who Sleep at their Employer's Home

Generally, workers must be compensated for all of the hours they work. Calculating the number of hours worked becomes more complicated when a worker lives at her employer's home or works overnight hours for all or part of the work week.

FEDERAL LAW ON SLEEP TIME ²¹

Under federal law, a worker required to be on duty for less than 24 hours at a time is considered to be working for the entire period of time she is on duty, even if she is provided with a place to sleep and allowed to sleep, or does other personal activities when not busy.

Live-in domestic workers on duty for periods of more than 24 hours at a time must be paid for the full period of time they are on duty, including sleep and meal periods, unless the worker and employer agree to exclude time for sleeping. This agreement could be in the form of a general arrangement made when the worker first starts employment.

An employer can only exclude sleeping time from working hours if:

- the employer provides the worker with adequate sleeping facilities
- the exclusion is limited to eight hours, and
- the worker is able to get an uninterrupted night of sleep.

If the worker's sleep is interrupted by a call to work, the time interrupted counts as hours worked. If the worker cannot get at least five hours of sleep during the scheduled off-duty period, she must be paid for the entire night.

The New York, New Jersey and Connecticut State laws provide additional rules regarding compensation for sleeping and on-call time.

NEW YORK LAW ON SLEEP TIME ²²

New York law states that employees who live at their employer's home are not considered to be working: (1) during their normal sleeping hours solely because they are required to be on call, or (2) at times when they are allowed to leave the home. Note that the federal rules offer better protection to workers on this issue.

NEW JERSEY LAW ON SLEEP TIME ²³

Live-in domestic workers, and workers who work irregular on-duty hours, must be paid for no less than 8 hours for each day on duty. On-call time may be counted as hours worked if the worker is called to work so frequently or is so restricted during the on-call time that she cannot use that time effectively for her own benefit. If a worker arrives for work at her employer's request, she must be paid for at least one hour of work, even if she is immediately sent home.

CONNECTICUT LAW ON SLEEP TIME ²⁴

Workers in Connecticut can count all time that they are required to be in the employer's home and all time on duty as hours worked. Meal times are not considered work time unless the worker is required to perform work during the meal time.

c. Meal & Rest Breaks and Days of Rest**FEDERAL LAW ON MEAL & REST BREAKS** ²⁵

There is no right to a meal or rest break under the federal law. However, if an employer does provide short breaks of 5 to 20 minutes, federal law provides that the break time be considered compensable work time. An employer can count longer meal breaks of 30 minutes or more as unpaid time.

NEW YORK LAW ON MEAL & REST BREAKS AND DAYS OF REST ²⁶

New York law entitles workers who work 6 or more continuous hours to a 30-minute paid meal break. The employer is not required to pay the worker for the meal period. If the shift begins before 11am and lasts six hours, the worker's break must be between 11am and 2pm. If the shift begins before 11am and ends at 7pm or later, the worker must be allowed an additional rest break of at least 20 minutes between 5pm and 7pm.

The New York Domestic Worker Bill of Rights grants most domestic workers the right to at least 24 continuous hours of time off in each calendar week. If the worker voluntarily agrees to work on her day of rest, she must be paid time-and-a-half of her regular rate of pay for all hours worked on that day.

The new law also grants workers 3 paid days off per year after one year's employment with one employer.

NEW JERSEY LAW ON MEAL & REST BREAKS

New Jersey law does not require employers to provide meal or rest breaks.

CONNECTICUT LAW ON MEAL & REST BREAKS ²⁷

Most domestic workers cannot claim the protection of Connecticut's meal and rest break laws. Although Connecticut law states that employers are required to provide employees with 30-minute meal breaks for every 7 and 1/2 hour shift, this law only applies to employers with more than 5 employees at a time and is not applicable to workers whose duties can be performed by only one individual.

4. INCOME AND OTHER EMPLOYMENT TAXES

Regardless of whether a worker is paid in cash or by check, she is legally required to report earnings and pay income taxes and FICA taxes (social-security and Medicare taxes) unless her annual income falls below the federal threshold set by the Internal Revenue Service. In 2009, the federal threshold for taxpayers under age 65 was \$9,350 for single workers and \$18,700 for married couples filing jointly.²⁸ Workers may also be required to pay state and municipal income taxes in addition to federal taxes.

A domestic worker can request that her employer withhold federal and state income taxes from her pay if she desires, but the employer is not required to do so. Whether a worker requests that the employer withhold income taxes or not, the employer should provide the worker with wage and tax statements at the end of the calendar year. Workers should double-check the statement for accuracy, making sure the employer has not over- or under-stated the wages paid.

Even if her income is very low, a worker should consider filing a return as she may be entitled to a refund. If a worker does not have a social security number, she can still report earnings, pay taxes, and potentially receive a refund using an Individual Taxpayer Identification Number (ITIN). ITINs are tax processing numbers issued by the Internal Revenue Service to people who need a U.S. taxpayer identification number but who don't have, and are not eligible for, a social security number. The ITIN should never be used in place of a social security number where a social security number is required.

For more information on ITINs, see <http://www.irs.gov/individuals/article/0,,id=96287,00.html>.

*For a list of groups that can assist low-wage workers with tax issues, see **Appendix A**.*

5. WORKERS' COMPENSATION

Workers' compensation is an insurance program authorized by the state that provides compensation to workers who have suffered a job-related injury. The injured worker receives benefits regardless of who is to blame – the worker, the employer, a co-worker, or another person. Outside of these guaranteed benefits, the employee usually does not have the right to demand compensation from the employer for the injuries (i.e. through a lawsuit). Benefits include monetary compensation (at some percentage of the worker's salary) and medical treatment.

In New York, New Jersey and Connecticut a worker's immigration status has no bearing on her eligibility for workers' compensation. Domestic workers, however, are subject to special eligibility rules in New York and Connecticut (*see below*).

In order to receive workers' compensation benefits, a worker must file a claim with the appropriate workers' compensation board in her state.

Similar to state practices with wage claims, it is against the law for an employer to fire or otherwise discriminate against any worker who claims or attempts to claim workers' compensation benefits, or because the employee testified or is about to testify in a workers' compensation matter.

NEW YORK WORKERS' COMPENSATION LAW ²⁹

Domestic workers in New York are entitled to workers' compensation if they work 40 hours or more a week for the same employer. Domestic workers who work fewer than 40 hours a week may be covered by workers compensation if their employer carries a homeowners' insurance policy that provides coverage for household workers.

NEW JERSEY WORKERS' COMPENSATION LAW ³⁰

Domestic workers in New Jersey are entitled to workers' compensation.

CONNECTICUT WORKERS' COMPENSATION LAW ³¹

Domestic workers in Connecticut are entitled to workers' compensation if they are regularly employed for 26 hours or more per week.

6. UNEMPLOYMENT INSURANCE

Unemployment insurance (UI) is a state-run program that provides some income to workers who lose their jobs. Payments are based on the amount of money the worker earned during the previous year.

The main eligibility requirements for unemployment insurance are:

1. The worker must have lost her most recent job through no fault of her own
 - ▶ *for example, the employer could not afford to employ the worker any more or moved out-of-state;*
2. The worker must be currently unemployed or partially unemployed
 - ▶ *for example, if the employer cuts the work week from five to three or fewer days and significantly cuts the worker's pay;*
3. The worker must currently be able to work and be looking for work; and
4. The worker must have worked enough weeks and earned enough in wages in the past year-and-a-half.
 - ▶ *Generally speaking, workers must have earned more than \$1,600 in a calendar quarter (3-month period) and worked more than six out of the last 18 months to qualify. It does not matter whether the earnings came from a single job or from different jobs. The earnings requirements are very complicated, however, and workers who are unsure about whether they qualify should go ahead and apply.*

A worker is no longer eligible for unemployment insurance benefits when she gets a new full-time job.

Undocumented workers are **not** eligible for unemployment benefits in any state.³²

The unemployment insurance office will likely check the immigration status of any applicant for UI benefits; filing false documents at the UI office can result in serious legal problems.

Workers who are otherwise eligible may file for benefits even if their employers failed to pay unemployment insurance taxes or paid them off-the-books. Workers paid off-the-books may be asked to show some proof of employment to the Department of Labor, including vouchers, checks, their own records of employment, personal tax returns, or record of bank deposits; even their own testimony may be a form of proof.

*For more information on the policies of state DOL offices with regards to UI claims, please see **Appendix B**.*

7. ABUSE, DISCRIMINATION, AND HARASSMENT

FEDERAL ANTI-DISCRIMINATION LAW

Domestic workers are not covered by many laws prohibiting discrimination and harassment in the workplace, either because the law specifically excludes domestic workers or because the law only applies to employers who employ multiple employees (and most domestic workers work alone).

The 1964 Civil Rights Act³³ and the **Americans with Disabilities Act**³⁴ protect workers from discrimination due to race or disability. These laws, however, only apply to employers who have at least 15 workers. Similarly, the **Age Discrimination in Employment Act**³⁵, which protects workers from age discrimination, only applies to employers with 20 or more employees.

NEW YORK ANTI-DISCRIMINATION AND ANTI-HARASSMENT LAW³⁶

The Domestic Workers Bill of Rights prohibits the sexual harassment of domestic workers by their employers, and prohibits domestic employers from harassing workers based on the workers' gender, race, national origin, or religion.

NEW JERSEY ANTI-DISCRIMINATION LAW³⁷

New Jersey's Law against Discrimination and Discrimination in Wages Law both specifically exempt domestic workers.

CONNECTICUT ANTI-DISCRIMINATION LAW³⁸

Domestic workers are excluded from the definition of "employee" under Connecticut's employment discrimination statutes. Therefore, domestic workers are not entitled to this protection under state law.

Criminal Abuse and Harassment

It is illegal for anyone, including an employer, to force a worker to engage in physical or sexual contact, or to hit or physically threaten a worker. These are criminal acts that a worker in any state can report to the police. The worker may also want to get assistance from a community organization. Workers should record the details of any abuse, including dates, times, locations, gestures, comments and her responses in a notebook.

8. RECORD-KEEPING REQUIREMENTS FOR EMPLOYERS

Federal and state laws require employers to keep accurate employment records, and employers can be penalized if they fail to do so.

FEDERAL RECORD-KEEPING REQUIREMENTS ³⁹

The FLSA requires employers to maintain payroll records that show the worker's name, social security number, address, total hours worked by the worker for each week, any deductions or credits taken by the employer, and overtime pay. No particular form of record is required, but all of the information must be kept for 3 years.

If the employer does not keep adequate records, and a legal dispute arises, the burden is on the employer to come up with evidence disproving the worker's testimony and evidence showing how much she has worked and what she is owed.

Employers are not required to keep records of specific hours worked for live-in domestic workers. Instead, the employer may create a work agreement that states the worker's hours, or can require the worker to record her own hours and submit them to the employer in regular intervals. However, if an employer does not keep good records, this does not mean that the worker cannot file a complaint.

Workers should keep their own records of wages, deductions, and hours worked whenever possible. During a dispute, employers may argue that the worker worked fewer hours than she actually did, and/or may present inaccurate or false records. In these situations, the worker's own records can be very helpful to her claim.

See **Appendix I** for a sample work record.

NEW YORK RECORD-KEEPING REQUIREMENTS ⁴⁰

New York State law requires employers to keep payroll records that show hours worked, gross wages, deductions, and net wages. These records must be preserved for six years. In the event of a legal dispute, an employer who violates the recordkeeping requirements bears the burden of proving that the complaining employee was paid all contested wages, benefits and wage supplements.



NEW JERSEY RECORD-KEEPING REQUIREMENTS ⁴¹

New Jersey law requires all employers to keep detailed records of their workers' wages and working conditions for six years. Any employer making deductions from a worker's wages for food or lodging must keep records that prove the cost of providing the food or lodging.

CONNECTICUT RECORD-KEEPING REQUIREMENTS ⁴²

Employers are required to keep records of their workers' hours, wages and working conditions for at least three years. Records must include: the worker's name, social security number, complete address, hours worked, cash wages paid, deductions claimed for food and lodging, and extra pay for overtime. Connecticut record-keeping law provides the same basic protections as the federal law. An employer who has failed to keep wage and hour records bears the burden of showing evidence of the precise amount of work performed.

II. Immigration issues related to employment

This section addresses concerns particular to immigrant workers, including employers' threats to report a worker to Immigrations and Custom Enforcement (ICE); employers' threats to confiscate a worker's passport; work authorization requirements; false promises by employers to obtain a green card, A-3 and G-5 Visas; and anti-trafficking laws.

A. EMPLOYERS' THREATS TO REPORT A WORKER TO ICE ⁴³

Regardless of immigration status, workers are entitled to file complaints for unpaid wages, workers' compensation, and most other employment-related problems under both state and federal law (except for unemployment insurance). The worker should not face questions about her immigration status, and employment and labor agencies are not allowed to enforce immigration laws. Federal law prohibits employers from reporting workers to immigration authorities in retaliation for exercising their rights.

ICE has an internal policy that limits immigration enforcement investigations in workplaces where there is an ongoing labor dispute. Labor disputes include: wage and hour violations, health and safety violations, workers' compensation claims and discrimination complaints. Nonetheless, workers should refuse to answer any questions about their immigration status or social security numbers by employers or public officials and should report any questions about these to a trusted community advocate.

The National Immigration Law Center's guide, "How to Protect Yourself when Filing a Complaint against Your Boss," offers suggestions for workers who want to report the violations of their employers. The guide is available at: http://nilc.org/immsemployment/IWR_Material/Worker/08-How_to_protect_yourself.pdf.

B. EMPLOYERS' THREATS TO CONFISCATE A WORKER'S PASSPORT

It is wrong for an employer to take away a worker's passport or threaten to do so. The worker may be able to take legal action against the employer for these wrongful acts. The worker should consult a lawyer if her employer confiscates or threatens to confiscate her passport. The lawyer and worker can decide on the appropriate legal strategy taking into consideration the worker's immigration status and whether she is currently involved in a lawsuit against her employer.

C. WORK AUTHORIZATION ⁴⁴

Employers do not need to know a worker's immigration status. **An employer only needs to know whether a worker is authorized to work in this country.** Federal immigration law makes it unlawful to employ someone knowing that person does not have work authorization.

1. WORK AUTHORIZATION VERIFICATION

Employers are generally required to fill out an Employment Eligibility Verification Form (called an "I-9 Form") together with the employee in order to prove the employer did not knowingly employ someone without work authorization.

2. EXCEPTION TO THE WORK AUTHORIZATION VERIFICATION REQUIREMENT ⁴⁵

Work authorization verification is **NOT** required for casual workers or independent contractors.

It is important to note that while a person who contracts with an independent contractor or casual worker is not required to complete an I-9 Form, the person cannot contract with an independent contractor or casual worker he or she *knows* to be undocumented.

The following are explanations of who qualifies as a "**casual**" worker (category a) and "**independent contractor**" (category b).

a. Casual Workers: ⁴⁶ Persons employed for casual domestic work in a private home on "sporadic, irregular, or intermittent" basis.

◆ *Example:* An occasional babysitter—but not a full-time nanny

b. Independent contractors:⁴⁷ A worker may be considered an “independent contractor” under immigration law if she:

- ◆ Supplies the tools or materials she uses for work
- ◆ Makes services available to the general public
- ◆ Works for a number of clients at the same time
- ◆ Has an opportunity for profit or loss as a result of labor or services provided
- ◆ Invests in the facilities for work
- ◆ Directs the order or sequence in which the work is to be done
- ◆ Determines the hours during which the work is to be done.

No one of these factors is determinative. They are all taken into consideration.

3. FILLING OUT THE I-9 FORM

In cases where the employer is required to verify work authorization, the employer will fill out an I-9 form with the employee. On this form, the employer must verify that he or she has examined a document that shows the employee is authorized to work. The I-9 form lists acceptable forms of proof of work authorization. The worker may choose which document(s) from the list to show the employer. The employer cannot refuse to accept a document that is on the list, and cannot ask the worker for more or different documents than the ones the worker provides. The employer does not have the right to keep the original documents. A copy is enough.

For more information, see the National Immigration Law Center’s guide, “Proving Work Authorization and Re-verification,” available at: http://nilc.org/immsemplymnt/IWR_Material/Worker/01-Proving_Work_Auth.pdf.

D. FALSE PROMISES OF A GREEN CARD

Employers may offer to take care of a worker’s immigration matters, but immigration status is a matter for an immigration attorney. *(The legal and community groups listed in **Appendices C and D** may be able to help workers find reliable immigration attorneys.)*

Often employers say that they will sponsor a worker for a green card; however, it can take many years to obtain a green card for a domestic worker. In order to sponsor a worker for a green card, an employer has to first make an application to the U.S. Department of Labor for employment certification using Form 750A. The employer has to show that he or she attempted to hire someone who was already work authorized in the U.S., but that no one was available with the required qualifications. A worker must also submit a companion form, Form 750B.⁴⁸ The worker is also required to sign the Application for Permanent Labor Certification saying that she intends to accept the job with the employer if the petition is approved; if a worker has not signed

such a form, her employer has not begun the process of sponsoring her. Then, even if the employment certification is granted, the employer still has to file additional paperwork on behalf of the worker—Form I-140 Immigrant Petition for Alien Worker.⁴⁹

If the I-140 is approved, then the worker will be granted an immigrant visa number.

The process can take a very long time and there are no guarantees a worker will get a green card, as they are difficult to get. A worker should be skeptical of anyone who promises to help her get one quickly and easily.

E. A-3 AND G-5 VISAS⁵⁰

If a domestic worker is employed by certain officials of international organizations such as the International Monetary Fund (IMF), World Bank, diplomats, embassy personnel, and, in some cases, State Department personnel, her visa will be called an A-3 or G-5 visa.

The application for one of those visas must include a contract signed by employer and worker including:

- ◆ A guarantee that the worker will be paid the federal or state minimum wage or prevailing wage, whichever is greater;
- ◆ A promise by the worker not to accept any other employment;
- ◆ A promise by the employer not to confiscate the worker's passport;
- ◆ A statement by the employer and worker that the worker cannot be required to remain at the employer's house after working hours without pay;
- ◆ An explanation of how much the worker will be paid, as well as how frequently she will be paid; and
- ◆ A description of the work duties, weekly work hours, holidays, sick days, and vacation days.

Different international organizations, such as the U.S. State Department, the World Bank and IMF, the United Nations and the Organization of American States also have their own codes of conduct with respect to employment contracts.

Generally, these codes of conduct address:

- ◆ Maintaining records of wages paid
- ◆ A prohibition on confiscating workers' personal property and documents
- ◆ Limitations on deductions that can be made for room and board
- ◆ Payment of overtime
- ◆ Days off
- ◆ Freedom to leave the employer's home when not working
- ◆ Payment of medical insurance and costs

If a worker feels her contract or working conditions violate her rights under the A-3 or G-5 visas, she should consult one of the community organizations listed in

Appendix D.

F. ANTI-TRAFFICKING LAWS

FEDERAL ANTI-TRAFFICKING LAWS⁵¹

Federal law defines “labor trafficking” as forcing someone to work, or recruiting someone or transporting her to engage in work from another location by (1) threatening serious harm to, or physical restraint against her or another person; (2) by making the person believe that she or another person would suffer serious harm or physical restraint; or (3) by means of the abuse or threatened abuse of law or the legal process.

Law enforcement authorities can seek fines and prison sentences for labor traffickers in criminal court. Federal anti-trafficking law provides trafficking victims with a private right of action, meaning that trafficking victims may sue their abusers in civil court.

T and U visas for victims of trafficking⁵²

Immigrant victims of trafficking may be eligible for a special type of visa called a T-visa if they cooperate with federal, state or local law enforcement agencies to assist in the investigation or prosecution of trafficking (and meet other eligibility requirements). For example, workers who are not paid for their labor, but who are kept on the job by threats to turn them into immigration authorities or harm them or their family in some way may be eligible. If successful in obtaining a T visa, a worker can remain in the U.S. and obtain employment authorization for three years, after which the worker may apply for a green card.

The U visa provides a similar relief to victims of certain criminal activities if they are willing to assist law enforcement or other government officials in the investigation or prosecution of those crimes. U visa recipients can remain in the U.S., obtain employment authorization, and apply for a green card. Qualifying criminal activities include crimes that are committed by employers in workplaces, such as abusive sexual contact, blackmail, false imprisonment, assault, involuntary servitude, obstruction of justice, peonage, perjury, trafficking, witness tampering, unlawful criminal restraint, or other substantially similar criminal activity.

NEW YORK ANTI-TRAFFICKING LAWS⁵³

Labor trafficking is a felony crime in New York State. “Labor trafficking” occurs when a person forces another person to work either by (1) providing her with drugs; (2) requiring her to repay a fraudulent debt; (3) withholding or destroying her government identification documents; or (4) compelling her to engage in labor under threat of physical injury, accusation of criminal conduct, or the threat of deportation.

A victim of labor trafficking may not be prosecuted as an accomplice to the trafficker. The law does not provide a private right of action, which means that the trafficking victim cannot sue the abuser on her own behalf; only a government entity can bring a case.

NEW JERSEY ANTI-TRAFFICKING LAWS ⁵⁴

Human trafficking is a felony crime in New Jersey law. Human trafficking occurs when a person forces another person to provide labor or services by threatening bodily harm, criminal coercion, destroying or taking possessions (including personal identifying documents such as immigration-related documents), or abuse or threatened abuse of the law.

CONNECTICUT ANTI-TRAFFICKING LAWS ⁵⁵

Under Connecticut law it is a felony to traffic persons and those subject to trafficking have a right to directly sue their trafficker. Trafficking in persons is defined as using “coercion” to compel or induce another person to engage in work.

*Workers who believe they are victims of trafficking should seek the assistance of an attorney or advocate. See **Appendix E: Resources for Trafficking Victims.***

Agreement

This contract is made between _____ (the employee) on _____ (the employer) and _____, and has the following terms:

1. The employee shall be employed for a minimum of one year commencing on _____ and ending on _____.
2. The employee shall work at employer's residence at _____.
3. The employee (shall, shall not) reside at the employer's residence. State below the number of persons to be served on a regular basis: _____ adult _____ minors (below _____ expecting babies. _____ persons requiring constant care and attention.

Description of persons requiring constant attention: _____
If employed as a full-time babysitter or nanny, responsibilities include and are limited to:

- a) Taking care of baby/child;
- b) Giving baths;
- c) Feeding breakfast, lunch and dinner;
- d) Helping to clean up after the child;
- e) Keeping child/baby's play area tidy;
- f) Arranging play-dates and any other activities;

6. If hired as a full-time housekeeper, responsibilities include and are limited to:

7. The normal work day shall be eight hours per day. Employee shall be compensated time and a half for every hour worked exceeding eight hours.
8. The employee shall not take up, and shall not be required by the employer to take up any other employment with any other person.
9. Employer shall pay employee _____ per week, not including overtime.

10. Employee shall receive her/his weekly wages every _____ (specify day of week). _____ for every day that the employee's wages are paid late.

11. Employer shall pay a penalty of _____ for every day that the employee's wages are paid late.
12. Employer shall provide a receipt for the payment of wages and any food allowance, and employee shall acknowledge receipt of this amount with her/his signature.
13. Employee is entitled to an hour lunch break every day.

III. Enforcing workers' rights

This section will explain several strategies that a worker can pursue to enforce her rights on the job – either one at a time or simultaneously. These rights include the right to be paid for all time worked, the right to breaks, and the rights to workers' compensation and unemployment insurance. These enforcement strategies include writing demand letters, filing complaints or claims with state or federal enforcement agencies, and filing lawsuits against employers.

Each strategy differs in terms of the amount of control the worker has over the enforcement process as well as the types of outcomes available. For instance, if a worker goes to a government agency to enforce her rights, agency lawyers will decide how to complete the investigation and whether or not to bring the claim before a judge. The assignment of penalties will be largely within the discretion of the agency's attorneys or the Attorney General. Alternatively, if a worker goes directly to the courts to enforce her rights, she may have more control over the process but she will have to find her own lawyer.

A worker cannot bring a criminal prosecution against her employer on her own – only government authorities may do so.

If a worker chooses to take action against an employer to enforce her rights, approaching a worker center or a legal services agency for advice or representation is strongly recommended.

See **Appendices C and D** for lists of legal and community resources in New York, New Jersey, and Connecticut.

Whether or not a worker plans on taking action against an employer, and whatever enforcement strategy she chooses, taking the following steps can help her to protect her rights in the future:

- ◆ Putting the terms and conditions of employment in writing, ideally before starting to work for an employer. See **Appendix F** for a sample employment contract and **Appendix G** for a sample confirmation letter.
- ◆ Keeping accurate records of time worked and pay received. See **Appendix I** for sample work records.
- ◆ Documenting any violations or abuse at the time they occur.

A worker should keep all notes and records in a safe place under her control.

A. DEMAND LETTERS

Demand letters are sent to employers to notify them that they have violated a worker's rights. They can be used at any time in the course of a dispute, and are often a way to begin negotiations to recover unpaid wages or otherwise solve a workplace problem. A demand letter can be sent by a worker, an organizing group, and/or an attorney.

A typical demand letter includes:

- A statement of the law(s) violated
- A summary of the dates and times worked
- A request for payment
- A proposed payment plan or meeting to negotiate, and
- Follow-up steps including an explanation of the consequences for the employer if he or she fails to respond.

See **Appendix H** for a sample demand letter.

Follow-up Steps to a Demand Letter

Workers and their advocates should be prepared to follow-up a demand letter with further action if the employer does not respond to the letter or refuses to comply with the law. Follow-up to a demand letter can vary depending on who sends it. The follow-up can be as simple as saying someone will call the employer on a given date. A worker should carefully consider what resources are available to her, including community and advocacy groups, when proposing follow-up. Below are examples of possible follow-up steps.

Organizing groups can:

- ▲ Protest at the employer's home or place of business;
- ▲ Publicize the employer's bad acts in the media; and/or
- ▲ File a complaint with the appropriate state or federal agency;

Individuals can:

- ▲ Propose a time, date and place to meet and discuss the claim with the employer;
- ▲ File a complaint with the appropriate state or federal agency; and/or
- ▲ File a case in court, either by herself in small claims court or by hiring a private attorney.

Whatever steps are chosen, it is important to follow-up. A demand letter without follow-up is meaningless and can lead the employer to think a worker is not serious.

For more information on legal liability for organizing groups, please see the National Employment Law Project's "Engaging in Direct Action Campaigns without Getting SLAPP'ed" guide at: http://nelp.3cdn.net/a1eaf7bc861e8d5ae7_kpm6bf4qn.pdf.

B. LEGAL ACTION

Before she brings a claim to a government agency or files a case in court for unpaid wages or other violations of the federal or state labor laws, a worker will have to decide whether to bring her claim(s) under federal law, state law, or both. The decision will depend on which law gives the worker better protections and/or remedies. The state and federal laws also differ in what level of damages a worker can recover if she wins.

If the worker is bringing action against an employer for a violation that took place in the past, she will also have to consider whether the applicable laws' "statute of limitations" allows her to bring a claim at all, and for what time period. A statute of limitations sets the maximum period of time after a violation has occurred in which legal proceedings can be initiated.

See **Appendix K** for more information on statutes of limitations.

1. FILING COMPLAINTS WITH FEDERAL AND STATE AGENCIES

Various state and federal agencies have offices in the tri-state area with staff available to handle workers' complaints about unpaid wages and overtime, discrimination or sexual harassment, and workers' compensation and unemployment insurance claims.

A. VIOLATIONS OF WAGE AND HOUR LAWS

U.S. Department of Labor

A worker may file a complaint with the U.S. Department of Labor's Wage and Hour Division if she is covered by FLSA and her employer paid her less than the federal minimum wage and/or failed to pay her the required overtime rate, or did not pay her at all.

See **Appendix B** for a listing of the U.S. Department of Labor offices in the tri-state area. Workers may bring a lawyer or other advocate with them to the US DOL office.

Workers covered by the state minimum wage laws may choose instead to file a claim at their State Department of Labor.

NY, NJ and CT Departments of Labor

The New York State Department of Labor's Division of Labor Standards, the New Jersey Department of Labor and Workforce Development's Division of the Wage and Hour Compliance, and the Connecticut Department of Labor's Wage and Workplace Standards Division all help workers to collect underpaid or withheld wages due under state law, including illegal deductions. If a worker decides to

resolve a dispute with her employer through her state's DOL, her first step will be to file a complaint with the Department. If she files the complaint in person, she may bring an advocate with her.

If an employer fails to pay a worker after the worker files a complaint, the state DOL may initiate an investigation and take other steps to reclaim the unpaid wages.

See **Appendix B** for more information on the NY, NJ and CT DOLs, including office addresses and telephone numbers.

B. WORKERS' COMPENSATION

A worker who is injured on the job should first seek medical care if she needs it. She should see a doctor, tell the doctor she was injured at work and ask the doctor to fill out a medical report. This will help establish a record of the injury. The worker should also notify her employer in writing of her injury and how it occurred.

The worker must then file a claim for workers compensation benefits with her state's Workers' Compensation Board. The claim forms are available on the Boards' websites. The Board will hold a hearing, where a judge may hear the worker's testimony and review medial and other evidence. A worker can appeal the judge's decision if her claim is denied.

Workers should take the following additional steps:

- ▲ Keep a log of all phone calls, medical appointments, treatments, and the impact of the injury on the worker's life;
- ▲ Keep all papers relating to the injury, medical treatment and the claims process;
- ▲ Keep a calendar noting when forms were filed, dates of medical appointments, appeals dates, etc.; and
- ▲ Get medical reports from the doctor.

In New York and New Jersey, workers must file their claims within two years of the date of the accident to be eligible for benefits. Workers in Connecticut must file their claims within one year.

New York, New Jersey, and Connecticut workers' compensation laws provide some protection to injured workers whose employers violate the law by failing to carry workers' compensation insurance. These programs include a fund to provide for payment of medical expenses and temporary disability benefits to injured workers whose employers failed to provide the required workers' compensation insurance coverage and who fail or refuse to make workers' compensation benefit payments as awarded.

See **Appendix B** for addresses and telephone numbers for the New York, Connecticut and New Jersey Workers' Compensation offices.

C. UNEMPLOYMENT INSURANCE

For a summary of basic unemployment insurance requirements, see page 19 of this guide.

Generally speaking, a worker who loses her job and meets the eligibility requirements for Unemployment Insurance must file an initial claim and then request payments on a weekly basis, usually by phone or on the internet.

To file a claim, a worker should have the following available:

▲ Pencil/pen and paper.

▲ Social Security Number.

If the worker is not a U.S. citizen, the worker will need an Alien Registration Documentation issued by the U.S. Citizenship and Immigration Services (USCIS). This includes the alien registration type and number, country of origin, name, and Employment Authorization Card or Permanent Resident Card if authorized to work in the United States.

▲ Bank information (if the worker intends to have the benefits directly deposited).

▲ Employer information on all employer(s) in the last 18 months including: name, address, telephone number, beginning and end dates of employment, and reason for separation.

The UI Division will determine the worker's entitlement and benefit rate based on the wages the employer has reported. If the employer reports less wages than the worker has actually earned, her benefits rate determination may be lower than it should be. And if the employer has failed to report any wages, the worker may be told that she is not eligible for benefits at all.

Workers should carefully review the benefits determination from the UI Division for errors and be ready to provide additional information that will help show their earnings - even their own informal records. Workers who cannot resolve problems with the initial determination and are unhappy with the UI ruling may request a hearing. In either event, workers should seek the help of an advocate familiar with the UI system.

See **Appendix B** for additional information and phone numbers.

2. GOING TO COURT

Instead of filing a complaint with a state or federal agency, a worker owed wages by her employer may file a lawsuit in court. Workers do not need immigration documentation to take legal action.

This section does not describe the process for bringing a lawsuit in state or federal court. The rules for bringing a lawsuit in state or federal court are complicated; a worker should consult with an attorney at a legal services office or at a worker center if she thinks she may want to sue her employer.

See **Appendix C** for additional information on Legal Services Organizations and **Appendix D** for information on Domestic Workers Groups, including Worker Centers.

Small claims court, on the other hand, may be a good alternative for some workers whose claims are relatively small.

A. SMALL CLAIMS COURT

Small claims proceedings are intended to provide a low-cost, simplified, and informal procedure for individuals to resolve disputes involving smaller amounts of money. People who file complaints in Small Claims courts often do not use an attorney in these matters and are not required to do so – they are called “pro se” litigants – but workers may want to consult an advocate for advice before deciding to file a complaint.

For more information, see the “Plaintiff’s Guide to Small Claims Court,” available on the National Employment Law Project website at <http://www.nelp.org/page/-/Justice/2010/AssistingNYSmallClaims.pdf?nocdn=1>.

New York small claims court

In New York City, a worker with a claim for \$5000 or less may file her claim in the Small Claims Court. The Small Claims court for New York County is located, along with the New York City Civil Courts, at 111 Centre Street, New York, NY 10013.

Outside of New York City, a worker with a claim of \$3,000 or less can bring an action in the Town and Village courts.

See <http://www.courts.state.ny.us/courts/townandvillage/> for additional court locations outside of New York City.

In order to begin an action in small claims court, a worker must file a complaint form. This form can be filed through the mail or in person with the clerk in the county in which the case will be filed.

A complaint must:

- ◆ Provide the worker's full name, address, and telephone number.
- ◆ Provide the correct name(s) and address(es) of the employer.
- ◆ State the amount of money for which the worker is suing.
- ◆ State the reason why the employer owes the worker money.
- ◆ Contain a signed and completed form.
- ◆ Include payment of the correct filing and service fees.

Workers in New York City can also visit the Civil Court's Resource Center and meet with a "Pro Se Attorney" for free. Pro Se Attorneys, also called Resource Center Attorneys, are attorneys employed by the Civil Court who provide legal and procedural information to self-represented litigants. They cannot provide specific legal advice.

For information on filing the complaint please see the Small Claims court website at:

<http://www.courts.state.ny.us/courts/nyc/smallclaims/index.shtml>.

New Jersey small claims court and the Special Civil Part

In New Jersey, a worker with a claim for money damages of \$3,000 or less may file her claim in the Small Claims Court. Workers who bring an action in Small Claims court cannot recover more than \$3,000 or raise additional claims at a later time concerning the same issue.

In order to begin an action, a worker must file a Small Claims complaint form. This form can be filed through the mail or in person with the Clerk of the Special Civil Part in the county in which the case will be filed.

A complaint must:

- ◆ Provide the worker's full name, address, and telephone number.
- ◆ Provide the correct name(s) and address(es) of the employer.
- ◆ State the amount of money for which the worker is suing.
- ◆ State the reason why the employer owes the worker money.
- ◆ State whether at the present time there is any other case involving the employer and worker and, if so, the name of the court.
- ◆ Include payment of applicable filing and service fees.
- ◆ Contain a signed and completed form.

For information on filing the complaint, see the Small Claims court FAQ website at <http://www.judiciary.state.nj.us/civil/civ-02.htm>.

New Jersey also provides forms and kits on their website to assist workers representing themselves in court at: <http://www.judiciary.state.nj.us/prose/index.htm>.

Special Civil Part

The process for filing a complaint in the Special Civil Part Court is similar to the process for filing in Small Claims court, but the threshold for claims is higher: the Special Civil Part is designed specifically for individuals with claims of **\$15,000** or less.

For information on filing the complaint, and to download the small claims form, see the Special Civil Part website at <http://www.judiciary.state.nj.us/civil/civ-03.htm>.

Connecticut small claims court

A worker with a claim for money damages less than \$5,000 can file in Connecticut's Small Claims Court.

A worker may start a Small Claims case by filing the "Small Claims Writ and Notice of Suit" Form. This form may be filed at the Centralized Small Claims Office or at the small claims area where:

- 1) The plaintiff resides; or,
- 2) The defendant resides or conducts business; or,
- 3) The transaction or injury occurred.

For more information about Small Claims Court, and to download the small claims form, visit the Small Claims website at: <http://www.jud.state.ct.us/faq/smallclaims.html#q2>.

B. COURT COSTS

If a worker feels that she cannot afford the court filing fee and service costs, she can apply to have the fees waived. The courts may provide a waiver if she can show that her income falls below a certain level, if she receives public benefits, or if the court costs will cause her significant financial hardship.

New York, New Jersey and Connecticut all permit low-income claimants to apply for "poor person status," or "indigent" status, in order to have filing fees waived.

Forms and instructions are available at the following websites:

NEW YORK: <http://www.nycourts.gov/courts/6jd/forms/SRForms/index.shtml>

NEW JERSEY: http://www.judiciary.state.nj.us/civil/forms/11208_filingfeewaivreq.pdf

CONNECTICUT: <http://www.jud2.ct.gov/webforms/forms/fm075.pdf>

C. PROTECTION FROM RETALIATION

Both federal and state laws prohibit employers from retaliating against workers who complain about violations of wage and hour protections.

FEDERAL ANTI-RETALIATION LAW ⁵⁶

Federal law prohibits employers from retaliating against workers who file formal complaints or lawsuits, or give testimony to enforce their rights. Federal appeals courts are divided as to whether the FLSA anti-retaliation clause covers individuals who make only verbal complaints to their employers. Because the law is unsettled at this stage, workers receive the greatest protection under the law when they file formal complaints in writing (and workers may want to seek the advice of a worker center when they do so).

NEW YORK ANTI-RETALIATION LAW ⁵⁷

New York law prohibits employers from firing, punishing, or discriminating against a worker for complaining to her employer or to the Department of Labor for labor disputes including but not limited to failure to make minimum wage and/or overtime payments. It is also illegal for employers to retaliate against a worker because she has filed a claim against the employer or is testifying in a lawsuit.

NEW JERSEY ANTI-RETALIATION LAW ⁵⁸

New Jersey law prohibits employers from firing or otherwise retaliating against workers who complain to their employers or to the Department of Labor about minimum wage or overtime violations. Employers are similarly prohibited from retaliating against a worker who institutes a proceeding against her employer for minimum wage and/or overtime violations.

CONNECTICUT ANTI-RETALIATION LAW ⁵⁹

Connecticut law prohibits employers from firing, disciplining, or otherwise penalizing a worker if the worker or someone acting on the worker's behalf files a claim against the employer. The law also prohibits employers from retaliating against workers for testifying in lawsuits or instituting investigations.



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16-126-122

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(Sat-Sun, 8:00-4:00)
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English Speaking
310-948-390

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535 Queens Road, Brooklyn NY
Tren F hasta parada Kings Hwy.

Nec. Persona Buena
Para limpiar casa, cuidar niños.
718-438-543

TRABAJO INMEDIATO
DURMIENDO DENTRO. EN CASA
718-246-224

AMNESTY
Of Household Domestic Workers, Home Health
and Caregivers in Residential Homes
Deadline: April 30, 2001
EVENING-SMITH J. D.
BONDED IMMIGRATION CONSULTANT, JUDGE
No legal advice/Not an Attorney but
BOND filed with the Secretary of State
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IV. Tips for finding work and negotiating with an employer

This section provides advice to workers seeking a job, such as how to respond to ads, whether to use an employment agency, how to approach an interview with a prospective employer, how to negotiate payment, and what information to obtain in writing.

A. FINDING WORK

To find a job as a domestic worker, some workers call an agency, answer a newspaper ad, search or advertise on a neighborhood parents' listserv, or call a person suggested by a friend.

1. TIPS FOR WORKERS RESPONDING TO AN AD

When you call in response to an ad, an employer will often want to set up a meeting time rather than talk for a long time on the phone.

Things to remember when responding to an advertisement:

- ▶ Cut out and save the ad.
- ▶ Tell someone where the interview is, when you're going and when you expect to come back. In fact, try to get someone to go with you to the interview.
- ▶ Bring a notebook and pen to take notes.
- ▶ Ask the employer to pay for travel expenses to and from the interview.

2. EMPLOYMENT AGENCIES

Employment agencies maintain lists of employers who are looking for domestic help. The agency receives a commission from the employer for each domestic worker it places.

Fees: If you use an agency, try to find one that does not charge you a fee. If you can't find an agency that does not charge a fee, then be sure that the agency does not charge more than the law allows.

NEW YORK LAW ON EMPLOYMENT AGENCIES ⁶⁰

New York law regulates employment agencies that provide job placement services for domestic workers and places some limits on the fee that agencies may charge. Agencies must provide workers and potential employers with a written statement of the worker's rights and employer obligations under state and federal law, including a general description of employee rights and employer obligations pursuant to laws regarding minimum wage, overtime and hours of work, record keeping, social security payments, unemployment insurance coverage, disability insurance coverage and workers' compensation.

Agencies must also provide job applicants with a written statement explaining the “nature and terms of employment, including the name and address of the person to whom the applicant is to apply for such employment, the name and address of the person authorizing the hiring for such position, wages, hours of work, the kind of services to be performed and agency fee.”

An agency in New York may not charge a worker more than:

- 10% of the worker’s first full month’s salary if the employer does not provide meals or lodging
- 12% of the worker’s first full month’s salary if one meal per day is provided
- 14% of the worker’s first full month’s salary if two meals per day are provided
- 18% of the worker’s first full month’s salary if three meals and lodging are provided

The courts have found that the New York Human Rights Law applies to employment agencies, and therefore agencies may not discriminate in their hiring process.

NEW JERSEY LAW ON EMPLOYMENT AGENCIES ⁶¹

New Jersey employment agencies are permitted to charge workers a fee. Where the worker is discharged without cause or where the worker quits for just cause, she may not be charged more than one percent of the total fee for each day worked, and she is entitled to a refund of any additional money she has already paid.

CONNECTICUT LAW ON EMPLOYMENT AGENCIES ⁶²

An employment agency in Connecticut can charge a worker a fee for finding employment. If the worker pays the placement fee to the agency and does not remain in that position for more than ten weeks, however, the employment agency must refund a portion of the fees paid by the worker. The worker is entitled to a refund or adjustment of that part of the fee paid or owing which is greater than ten percent of the amount she has received in wages for that employment.

B. THE INTERVIEW WITH THE EMPLOYER

The way the employer treats you during the interview can give you an idea of the type of employer she/he will be. In order to protect yourself, it is important to clarify as many things as possible about the nature of the job and working conditions in advance. Try to take notes on the employer's responses to your questions during or soon after the interview.

SAMPLE INTERVIEW QUESTIONS FOR WORKERS

- ? What would my responsibilities be? Am I expected to do babysitting and housekeeping, only babysitting, or only housekeeping?
- ? If they say, "light housekeeping," ask them to specify.
- ? How many people are in the household?
- ? Do you have pets? If so, will I be expected to care for them?
- ? How many employees are in the home and what are their responsibilities?
- ? Am I expected to go with you when you travel? If not, will I be paid when you are away?
- ? Am I the first person in this position?
- ? Why did the last babysitter/housekeeper leave? How long did she work for you?
- ? Will I have regular days off?
- ? What time will my work day begin, and what time will it end?
- ? How will I take my meals? Can I bring my lunch?
- ? Do you pay overtime after an 8 hour day?
- ? How much advance notice do you give when overtime is required?
- ? How many residences do you have?
- ? Do you provide paid sick leave? If so, can I rest assured that my right to take sick leave won't be unreasonably denied?
- ? How much paid vacation time will I have?
- ? When will I be eligible for a raise?
- ? Do you pay transportation costs? If I work late, do you pay for taxi fare home?
- ? Do you pay for workers' compensation insurance?

*For an example of a Standard contract, see **Appendix F**.*

If you will live-in

- ? Where will I sleep? Is it heated? Am I expected to sleep in the same room as the child?
- ? How will I take my meals? Is there a meal allowance?
- ? Will my access to phone and mail be limited in any way?
- ? How much notice to move out will you give me if you no longer need my services?



Things to Bring to the Interview

◆ **A notebook and a pen** to write down what the employer tells the worker about the job. It is important to keep a record of anything that the employer tells the worker about the work they will be doing, how much and how often they will be paid, etc.

Warning Signals

- ✘ The employer will not let a friend come with you to the interview.
- ✘ The employer avoids your questions.
- ✘ The employer increases responsibilities in the course of the conversation.
- ✘ The employer comments on your English.
- ✘ The employer does not want to make a commitment to your demands right away.
- ✘ The employer makes racist or sexist comments.
- ✘ The employer asks you to sign a document that waives your right to minimum wage or overtime compensation. These rights cannot be waived. Even if the worker signs such a document, her employer must pay the minimum wage and overtime compensation.

Personal Questions

Most personal questions are irrelevant and inappropriate. In some contexts, questions like these are illegal. Sometimes, an employer asks these questions to try to get to know you. Other times, an employer may use these questions to discriminate against you. If you don't want to answer a question, you can ask the employer whether it is related to a job requirement.

- ◆ How old are you?
- ◆ Are you married? Do you have a boyfriend?
- ◆ Where is your family?
- ◆ Do you have any kids? Do you plan to have kids soon?
- ◆ Where are you from?
- ◆ Do you have any disabilities or health problems?
- ◆ Can you read English?
- ◆ Are you comfortable answering phone calls?
- ◆ How long have you been in the U.S.?

Questions About Your Immigration Status

- ✘ Are you a citizen?
- ✘ Do you have a green card?

These are inappropriate questions. Employers do not need to ask you about your immigration status during an interview. An employer only needs to know whether you are authorized to work in this country.

IMPORTANT QUESTIONS ABOUT AGENCIES:

- Does the agency send someone to go with you to the interview with the employer?
- Does the agency pay for transportation to the interview with the employer?
- Does the employment agency do any background check on employers or take any steps to make sure that the household is safe?
- Does the agency provide you with a written job description, showing the name and address of the employer, wages, hours of work, the kinds of services they will perform, and the fees the agency will charge?
- The agency will have a service agreement with the employer. Ask to see it.
- Does the employment agency have a list of comments by past employees giving the reasons they left the employer?
- Is there a contract that the agency wants you to sign? What does signing it mean?
- Does the employer pay you directly, or does the agency pay you?
- How long does a worker have to remain with an employer before the agency gets its full commission?
- Does the employment agency inform employers about their obligation to pay into Social Security, workers' compensation, and unemployment insurance?
- Does the employment agency have a complaint system for workers whose employers are abusive (e.g. by not paying overtime or not allowing a worker a day of rest)?
- Will the agency help such workers find a new placement?

Be on the lookout for:

- ▶ Agencies that don't let you take the contract home to review it, or don't give you adequate time to read the contract.
- ▶ Agencies that insist on receiving your wages from the employer and then paying them to you.
- ▶ Requests to hand over a passport or other documents.
- ▶ Agencies that charge you a commission for placing you.
- ▶ Agencies that do not find out about your skills before sending you to an interview.



C. NEGOTIATING PAYMENT

It is helpful for workers to compare the salary they are offered with the salaries of other employees who do the same work. Advocacy groups may provide standard wage rate schedules for workers to reference. At the least, workers should talk to advocacy groups and other workers to find out the standard rates in their area.

Domestic workers are commonly paid in cash. Payment in cash makes it easier for the employer to avoid paying for unemployment insurance, workers' compensation, and Social Security, which means that it will be harder for the worker to prove their eligibility for benefits if they need them. With paychecks, the employer creates a record of pay, which could be useful in the event of a wage dispute.

D. WHAT A WORKER SHOULD GET IN WRITING

It is important to put the terms and conditions of your employment in writing to ensure that you and your employer have understood each other correctly. Both spoken and written agreements are enforceable in court. For example, if you make an oral agreement with your employer to be paid a certain hourly rate above the minimum wage, and the employer later refuses to pay what she or he promised, you may be able to bring a claim for a breach of oral agreement. However, a contract signed by both you and your employer will be even stronger evidence if you have to go to court.

The contract, or agreement, should include the following:

- Hours and base wage
- Daily work schedule
- Holidays and vacation time (including any restrictions on when you can take paid time off)
- Personal days and sick days
- Health benefits
- Length of employment or how much notice must be given to terminate the contract.

Workers should take the time they need to read through the contract and make sure they understand the contract terms before signing.

See **Appendix F** for a model contract.

In presenting the model contract to your employer, here are some things you can say:

“Domestic workers and their employers are using this agreement throughout New York City (or New Jersey or Connecticut). I thought it would be helpful for us to use it as well.”

“This is an example of what an agreement for this kind of work might look like. We can make changes to it or draft our own. Just read through it, and then we can discuss any parts you are not comfortable with.”

If you cannot get a contract, ask your employer to give you a signed confirmation letter with the same information. This can also be enforced in court.

See **Appendix G** for a sample confirmation letter.

If you cannot get a confirmation letter, write down everything that you and your employer have agreed to, date it, and keep it in a safe place.

APPENDICES

APPENDIX A: Income Tax Resources

TRI-STATE TAX RESOURCES

Volunteer Income Tax Assistor (VITA)

If you make under \$40,000, volunteer tax specialists can help you file your taxes. VITA programs are available across the country. To find a VITA clinic near you, call 1-800-906-9887 (English/Spanish).

Low-Income Taxpayer Clinic (LITC)

Provides free legal advice to low-income taxpayers across the country who have a dispute with the IRS or the State Department of Taxation and Finance.

LITC has sites in each of the 5 boroughs in New York City. Depending on the location, many LITCs can assist you in multiple languages. To find an LITC in your city or state, go to <http://www.irs.gov/advocate> and choose "Low-Income Taxpayer Clinics." Or call IRS Customer Service at 1-800-829-1040 (English/Spanish).

NEW YORK

NY Low-Income Taxpayer Clinics (LITCs)

BROOKLYN:

Bedford-Stuyvesant LITC: 718-636-1155. Languages spoken: Spanish/Haitian/Chinese

Brooklyn Low Income Taxpayer Clinic: 718-237-5528. Languages spoken: Spanish/140 other languages.

MANHATTAN:

Fordham Law School Tax Litigation Clinic: 212-636-7353. Languages spoken: Spanish

New York Legal Aid Society LITC: 212-426-3013. Languages spoken: Spanish/Chinese

BRONX:

718-928-3700 Languages spoken: English

JAMAICA:

Queens Legal Services Corporation: 718-657-8611 and 347-592-2178. Languages spoken: Chinese/Creole/Hindi/Korean/ Russian/ Spanish/Urdu

FLUSHING:

MinKwon Center for Community Action: 718-460-5560 and 718-460-5600. Languages spoken: Korean.

NEW JERSEY

NJ Low-Income Taxpayer Clinics (LITCs)

EDISON: **Taxpayers Legal Assistance Program:** 1-888-576-5529 or 732-575-9100. Languages spoken: Spanish/French/Creole/19 other languages.

JERSEY CITY: **Northeast New Jersey Legal Services:** 201-792-6363. Languages spoken: Spanish/Tagalog/Korean.

BRIDGETON: **South Jersey Legal Services:** 1-800-496-4570 OR 856-691-0494. Languages spoken: Spanish

Tax Legal Assistance Project (TLAP)

Provides advice and legal representation in tax matters to low-income taxpayers. Call 1-888-576-5529.

NJ TAX COURT FORMS: <http://www.judiciary.state.nj.us/taxcourt/index.htm>

CONNECTICUT

CT Low-Income Taxpayer Clinics (LITCs)

HAMDEN: **Quinnipiac University School of Law LITC:** 203-582-3238. Languages spoken: Spanish/ Other languages as arranged.

HARTFORD: **University of Connecticut School of Law Tax Clinic:** 860-570-5165. Languages spoken: Spanish

Connecticut Department of Revenue Services

25 Sigourney Street Ste 2

Hartford, CT 06106-5032

Phone: 860-297-5962 • <http://www.ct.gov/drs/cwp/view.asp?a=1462&q=271504>

Community Accounting Aid & Services, Inc.

Provides assistance with tax preparation and conducts tax clinics for low income individuals.

965 East Main Street

Meriden, CT 06450

Phone: 203-235-2333 x7146 • E-mail: ctcaas@hotmail.com

APPENDIX B: Federal and State Government Offices

You have a right to access government agencies, and can ask for a translator if you need help in a language that is not listed.

In general, you should call and ask for an appointment before you go, and ask what kind of ID you will need to show to get into the building.

You should not be asked about your immigration status. Seek assistance from a trusted community organization before providing any information about your immigration status.

NEW YORK FEDERAL AND STATE GOVERNMENT OFFICES

Wage/Hour

US DEPARTMENT OF LABOR, WAGE AND HOUR DIVISION

This agency enforces federal minimum wage and overtime laws.

26 Federal Plaza, Suite 3700
New York, NY 10278
Phone: 212-264-8185

A number of government agencies are located at 26 Federal Plaza, including Immigration and Customs Enforcement. If you have any concerns, you can ask if there are locations other than 26 Federal Plaza where you could meet with a representative of the Wage and Hour Division.

US DEPT. OF LABOR, WAGE & HOUR DIVISION
1-866-4-USWAGE (1-866-487-9243) (English and Spanish)

Brooklyn Area Office

625 Fulton Street, 7th Floor
Brooklyn, NY 11201
Phone: 718-254-9410

Long Island District Office

1400 Old Country Road
Suite 410
Westbury, NY 11590-5119
Phone: 516-338-1890

Hudson Valley Area Office

140 Grand Street
Suite 304
White Plains, NY 10601
Phone: 914-682-6348

NEW YORK STATE DEPARTMENT OF LABOR, DIVISION OF LABOR STANDARDS

This state agency enforces state minimum wage and overtime laws.

New York City District Office

75 Varick Street
New York, NY 10013
Phone: 212-775-3880

Claims for unpaid wages can be submitted to:

NYS DOL
Division of Labor Standards
State Campus, Bldg 12, Room 185B
Albany, NY 12240
Phone: 518-457-9796

NEW YORK STATE ATTORNEY GENERAL'S OFFICE, LABOR BUREAU

This office enforces New York State's labor laws, including the right to minimum wage, the right to receive payment of wages and fringe benefits, and the right to workers compensation and disability benefits.

120 Broadway, 26th Floor
New York, New York 10271
Phone: 212-416-8700 (English and Spanish)

**Workers' Compensation:**

cash benefits and/or medical care for workers with job-related injuries or illnesses.

ADVOCATE FOR INJURED WORKERS:

The Advocate for Injured Workers, helps injured and sick individuals navigate the state workers' compensation system. The Advocate has a toll-free number (800-580-6665) and offices in Albany (518-474-8182, FAX 518- 486-7510) and Brooklyn (718-802-6664).

TO FILE THE EMPLOYEE CLAIM (C-3) FORM:

- Complete the form online by going to: www.wcb.state.ny.us, click on "Workers," and then click on "File a Claim" and follow the instructions.
- Or call 877-632-4996 (English, Spanish and translation services for all other languages) for help filling out the form over the phone or to have it mailed to you.
- Or fill out a paper copy of the form by visiting any Customer Service Center or District Office. To locate the district office near you, call 877-632-4996 or go to http://www.nycosh.org/workers_comp/compensation.html

NYC WORKERS' COMPENSATION BOARD NYC DISTRICT OFFICES:**Brooklyn District Office (serves Brooklyn, Staten Island)**

111 Livingston Street, 2nd Floor
Brooklyn, NY 11248

Manhattan District Office (serves Manhattan, Bronx)

215 W. 125th Street
New York, NY 10027

Queens District Office (serves Queens)

168-46 91st Avenue
Jamaica, NY 11432

**Unemployment Insurance Claims**

To file a claim online, visit <https://ui.labor.state.ny.us/UBC/index.jsp> (available in English and Spanish). Or call the Telephone Claims Center at: 888-209-8124 (English, Spanish, Russian, Cantonese, Mandarin, Creole, or translation services for all other languages). You must be work-authorized to recover unemployment benefits.

For **each week** a worker is claiming benefits, she must request payment using the web or telephone system. Both systems are available in Spanish.

To claim weekly benefits:

- Visit the Department of Labor's website at www.labor.ny.gov, click on "Unemployment Assistance," and then click on "Claim Weekly Benefits."
- Or call: (888) 209-8124 to request benefits over the phone.

NEW JERSEY FEDERAL AND STATE GOVERNMENT OFFICES

Wage/Hour:

US DEPARTMENT OF LABOR, WAGE AND HOUR DIVISION

NJ District Office Locations:

Northern New Jersey District Office

200 Sheffield Street, Room 102
Mountainside, New Jersey 07092
Phone: (908) 317-8611

Southern New Jersey District Office

3131 Princeton Pike, Bldg. 5, Room 216
Lawrenceville, New Jersey 08648
Phone: (609) 538-8310

NEW JERSEY LABOR AND WORKFORCE DEVELOPMENT, DIVISION OF WAGE AND HOUR COMPLIANCE

This office enforces New Jersey's labor laws, including the right to minimum wage and overtime, and the right to receive payment of wages and fringe benefits.

1 John Fitch Plaza
Trenton, New Jersey 08625-0110
Phone: (609) 292-2305 or (609) 292-2337

For mailing or faxing wage and hour claims:

Division of Wage and Hour Compliance
P.O. Box 389
Trenton, NJ 08625-0389
Fax: (609) 695-1174

A worker who lives in New Jersey or works in New Jersey should file a MW-31A form in English or MW-31S in Spanish. These forms are available at: http://lwd.dol.state.nj.us/labor/wagehour/complnt/complaint_forms.html



Workers' Compensation:

cash benefits and/or medical care for workers with job-related injuries or illnesses.

INITIAL APPLICATIONS FOR WORKERS' COMPENSATION IN NEW JERSEY SHOULD BE MAILED TO:

State of New Jersey

Department of Labor and Workforce Development Division of Workers' Compensation
P.O. Box 381
Trenton, NJ 08625-0381
Phone: (609) 292-2515

Newark District office: serves Essex County

124 Halsey Street, 2nd floor
Newark, New Jersey 07101-0226
Phone: (973) 648-2663

For a list of all Worker's Compensation district offices, please visit:
<http://www.wcb.state.ny.us/content/main/DistrictOffices/MainPage.jsp>

Unemployment Insurance Claims

There are two ways to apply for unemployment benefits:

- You can apply online at <http://njsuccess.dol.state.nj.us/html/uimain.html>
- Or you can apply by phone through a call center. In order to find out which center serves your area, call (609) 292-7162.

Workers who live in Bergen, Essex, Hudson, Middlesex, Passaic or Union Counties but commute to work in New York and are looking for new work in New York must file an unemployment claim by telephone with the State of New York at 1-888-209-8124.

CONNECTICUT FEDERAL AND STATE GOVERNMENT OFFICES

Wage/Hour:

US DEPARTMENT OF LABOR, WAGE AND HOUR DIVISION

CT District Office Locations:

Hartford Connecticut District Office

135 High Street, Room 210
Hartford, Connecticut 06103-1111
Phone: 860-263-6000

New Haven Connecticut Area Office

150 Court Street, Room 423
New Haven, Connecticut 06510
Phone: 203-773-2249

CONNECTICUT DEPARTMENT OF LABOR, WAGE AND WORKPLACE STANDARDS DIVISION

This office enforces Connecticut's labor laws, including the right to minimum wage and overtime, and the right to receive payment of wages and fringe benefits.

For additional information about filing a wage claim in Connecticut go to:
<http://www.ctdol.state.ct.us/wgwkstnd/forms/wca1intr.htm>

Hartford Connecticut District Office

135 High Street, Room 210
Hartford, Connecticut 06103-1111
Phone: 860-240-4160

New Haven Connecticut Area Office

150 Court Street, Room 423
New Haven, Connecticut 06510
Phone: 203-773-2249

Workers' Compensation:

cash benefits and/or medical care for workers with job-related injuries or illnesses.

To find out which office to visit, call 1.800.223.9675 or go to: <http://wcc.state.ct.us/wcc/dist-ct.htm>

Unemployment Insurance Claims

To apply for Unemployment Insurance, visit: <https://iic.ctdol.state.ct.us/welcome.aspx> or visit <http://www.ctdol.state.ct.us/progsupt/unempl/tele-benphone.htm> to find the call center in your area.

Additional information on claiming unemployment benefits in Connecticut is available at:
<http://www.ctdol.state.ct.us/progsupt/unempl/claimant-guide/uc-288.pdf>

APPENDIX C

Legal Services & Law Firms

NEW YORK LEGAL SERVICES OFFICES

www.lawhelp.org/NY (English and Spanish)

Provides helpful know-your-rights guides to workplace issues including unemployment insurance, overtime, and wage and hour. You can also find contact information and locations for legal services near you.

Volunteers of Legal Service (VOLS) Unemployment Insurance Advocacy Project

The VOLS Unemployment Insurance Advocacy Project provides free legal services to individuals who have lost their jobs and subsequently have been denied unemployment insurance benefits.

Phone: 347-521-5720

Email: info@volsprobono.org

Web site: www.volsprobono.org

MFY Legal Services Workplace Justice Project

Provides legal advice and representation on unpaid wage claims, health and safety violations, employment discrimination, and minimum wage and overtime violations.

Call 212-417-3838 on Monday & Tuesday, 2:00 pm - 5:00 pm.

Legal Aid Society: Employment Law Project

Call 212-577-3300 (English, Spanish)

for information about legal services and locations.

Legal Services for New York City

Call 212-431-7200 for legal advice or to find the office nearest you.

New York Legal Assistance Group

To reach the legal hotline, call 212-613-5000, ext. 3.

Workers' Rights Law Center Of New York, Inc.

101 Hurley Ave., Suite 5

Kingston, New York 12401

Call 845-331-6615 for information about legal services.

Asian American Legal Defense and Education Fund (AALDEF)

99 Hudson Street, 12th Floor

New York, NY 10013

Phone: 212-966-5932

Languages: Mandarin, Cantonese

NEW JERSEY LEGAL SERVICES OFFICES

Legal Services of New Jersey

Legal Hotline at 1-888-LSNJ-LAW (1-888-576-5529)

100 Metroplex Drive, Suite 402

P.O. Box 1357

Edison, NJ 08818-1357

LSNJ also has a website with helpful resources for many legal issues. Go to www.lsnjlaw.org.

CONNECTICUT LEGAL SERVICES OFFICES

Connecticut Legal Services

1-800-453-3320

860-344-0380

Between 9:00 a.m. and 3:00 p.m. on Mondays, Wednesdays, and between 9:00 am and 4:00 pm on Tuesdays, Thursdays, and Fridays.

<http://www.connlegalservices.org/>

Greater Hartford Legal Aid, Inc.

999 Asylum Ave., 3rd Floor

Hartford, CT 06105-2465

Phone: 860-541-5000

Fax: 860-541-5050

Email: ghla@ghla.org

<http://www.ghla.org/>

Languages: English and Spanish

New Haven Legal Assistance Association, Inc.

426 State Street

New Haven, Connecticut 06510-2018

Phone: 203-946-4811

Fax: 203-498-9271

Email: legalaidd@nhlegal.org

Languages: English and Spanish

Worker & Immigrant Rights Clinic of Yale Law School

Jerome N. Frank Legal Services Organization

P.O. Box 209090

New Haven, CT 06520-9090

Phone: 203-432-4800

Fax: 203-432-1426

Languages: English, Spanish, and French

Connecticut Network for Legal Aid

This website is a joint project of all Connecticut's legal aid programs and has helpful tools and resources:

<http://www.ctnla.org>.

Often the best way to find legal advice or representation is to work with a non-profit legal services organization because they do not charge for their services. However, some firms and private attorneys will take a case on a contingency basis, which means that they will charge a fee only if the lawsuit is successful.

If you are seeking a lawyer to represent you, contacting some of the non-profit organizations listed above is the best way to find legal aid that is free. But if you cannot find an organization to take your case, you may want to contact a lawyer affiliated with the National Employment Lawyers Association, a network of lawyers who represent workers in employment cases.

You can find a NELA member near you through a search on the NELA website: <http://www.nela.org>.

Another option is Outten and Golden, an employment law firm with offices in New York City and Connecticut.

Outten and Golden LLP
3 Park Avenue 29th Floor
New York, New York 10016
Telephone: (212) 245-1000
Fax: 212-977-400

CONNECTICUT OFFICE:
191 Post Road West
Westport, CT 06880
Telephone: (203) 363-7888
Fax: 203-363-0333

APPENDIX D:

Domestic Workers Groups & Worker Centers

NEW YORK

Domestic Workers United

1201 Broadway Suite 907- 908

New York, NY 10001

Phone: 718-220-7391 ext. 11 or 23

Email: domesticworkersunited@gmail.com*Website:* www.domesticworkersunited.org*Languages:* Spanish, French**Adhikaar**

71-07 Woodside Avenue 1st Fl

Woodside, NY 11377

Phone: 718-937-1117

Email: adhikaar@gmail.com*Website:* http://www.adhikaar.org/*Languages:* Nepali, English**Andolan:****Organizing South Asian Workers**

P.O. Box 720364

Jackson Heights, NY 11372

Phone: 718-426-2774

Email: andolan_organizing@yahoo.com*Languages:* Bengali, Hindi, Urdu**CAAAV**

2473 Valentine Avenue

Bronx, NY 10458

Phone: 718-220-7391 ext. 12

Email: justice@caaav.org*Languages:* Khmer, Vietnamese, Mandarin, Fujianese, Cantonese**Cidadao Global**

394 Broadway, 5th Fl

New York, NY 10013

ASTORIA

33-11 36th Avenue

Astoria, NY 11106

Phone: 718-619-8529

Email: Info@cidaoaglobal.org*Website:* www.cidaoaglobal.org*Languages:* Portuguese, English**DAMAYAN****Migrant Workers Association**

c/o Metro Baptist Church

406 W. 40th Street, 2nd Fl

New York, NY 10018

Phone: 212-564-6057

Email: contact@damayanmigrants.org*Languages:* English, Tagalog**El Centro del Inmigrante**

1546 Castleton Ave

Staten Island, NY 10302

Phone: 718-420-6466

Email: info@elcentronyc.org*Website:* http://elcentronyc.org/*Languages:* English, Spanish**Haitian Women for Haitian Refugees**

319 Maple Street

Brooklyn, NY 11225

Phone: 718-735-4660

Email: haitianwomen@aol.com*Website:* http://haitianwomen.wordpress.com/**Workers AWAAZ**

4026 82nd Street

Elmhurst, NY 11373

Phone: 718-565-0801

Email: workersawaaz@yahoo.com*Languages:* Bengali, Hindi, Urdu, Punjabi**Workplace Project/ Unity Housecleaners**

91 North Franklin Street, Suite 207

Hempstead, NY 11550

Phone: 516-656-5377

Languages: Spanish

NEW JERSEY

Casa Freehold

Phone: 732-492-4766

Email: gemgavriel@yahoo.com**CATA: El Comité de Apoyo a Los Trabajadores Agrícolas
(The Farmworker Support Committee)**

P.O. Box 510

Glassboro, NJ 08028

Phone: 856-881-2027

Email: cata@cata-farmworkers.org**New Labor**

103 Bayard Street, 2nd Fl

New Brunswick, NJ 08901

Phone: 732-246-2900

Email: info@newlabor.net*Languages:* Spanish**United Labor Agency of Bergen County Day Laborer Project**

205 Robin Road, Ste. 106

Paramus, NJ 07652

Phone: 201-967-5953

Email: ULA@BergenCLC.org**Wind of the Spirit Immigrant Resource Center**

19 Market Street

Morristown, NJ 07960

Phone: 973-538-2035

Email: windofthespirit@verizon.net

CONNECTICUT

ConnectiCOSH

683 North Mountain Road

Newington, CT 06111

Phone: 860-953-COSH (2674)

Email: Connecticosh@snetnet**HART's Immigrant Rights Committee**

423 Washington Street

Hartford, CT 06106

Phone: 860-525-3449

Email: glenda.aponte@hartofhartford.org**JUNTA for Progressive Action, Inc.**

169 Grand Avenue

New Haven, CT 06513

Phone: 203-787-0191

Fax: 203-787-4934

Languages: Spanish

APPENDIX E

Resources for Victims of Trafficking

THE NATIONAL HUMAN TRAFFICKING RESOURCE CENTER

24 Hour Toll-Free Hotline: 1-888-373-7888

Website: <http://nhtrc.polarisproject.org/>

The New York Anti-Trafficking Network is a network of service providers and advocates in New York dedicated to ending human trafficking and coordinating resources for trafficked persons.

See the website for more information and links to the websites of member groups, at:

<http://nyatn.wordpress.com/> and <http://nyatn.wordpress.com/nyatn-links/>

THE NEW YORK CITY RESOURCE DIRECTORY

See <http://www.nyc.gov/html/endht/html/home/home.shtml> for general information and

http://www.nyc.gov/html/misc/downloads/2009_human_trafficking_resource_directory_8_10_09.pdf for a listing of service providers.

THE FREEDOM NETWORK (USA) lists service providers in several states.

<http://www.freedomnetworkusa.org/members/index.php>

APPENDIX F

Sample Standard Employment Contract

DOMESTIC WORKERS UNITED
Standard Employment Contract for Domestic Workers in New York

This contract is for full time domestic workers.
 This contract was made between _____ (the employer) and
 _____ (the employee) on _____ (date) and has the following terms of employment:

1. The employee shall be employed beginning on _____ (date).
2. The employee shall work at employer’s residence at _____.
3. The employee is live-in / live-out (circle one).
4. State number of children to be cared for: _____
 Description of children (age, gender, activities, etc.) _____

5. Work Responsibilities:
- | | |
|----------------------------|---|
| Job entails the following: | Job does not entail the following: |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

6. The employee shall not be required to work for any person other than the employer.
7. Employer shall pay employee \$ _____ per week, not including overtime. The normal rate of pay is \$ _____ per hour. Overtime rate of pay is \$ _____ per hour.
8. The work week shall be **40** (live-out work) or **44** (live-in work) hours.
 - In accordance with state and federal labor laws, employee shall be compensated one and a half times the normal rate of pay for every hour worked beyond 40 (live-out work) or 44 (live-in work) hours.
 - Sleepovers for live-out worker shall be compensated at an additional rate of \$ _____ per day.
 - Employee cannot be required to work more than _____ hours per week.
9. Employee shall receive her/his weekly wages every _____ (day of the week) at _____ am/pm.
10. Employer shall pay a penalty of _____ % for every day that the employee’s wages are paid late.
11. Both employer and employee shall have a signed record of the payment of wages.
12. Employer shall provide a letter of reference at the end of the first year and at the end of each subsequent year of employment.
13. Domestic workers are particularly vulnerable to illness due to constant exposure to illness or toxic cleaning agents. The employer shall provide medical insurance for the employee. Alternatively, employer agrees to cover the cost of regular annual checkups and OB/GYN exams, as well as the cost of emergency medical treatment when the employee is ill or injured.
14. Employer who lives on the outskirts of New York City or in suburban areas such as Westchester County, New Jersey, and Long Island shall cover the cost of transportation to and from work.
 - Employer shall cover the cost of a taxi ride home when employee works past eight in the evening.

15. Upon completion of six months of employment, employee shall receive _____ weeks of paid vacation annually.

- The timing of the vacation shall be determined by the employee. The employer cannot require employee to take her/his vacation to coincide with that of the employer.
- If the contract is terminated before the employee takes her/his vacation, the employee shall be paid for the above number of weeks at the time of termination.

16. Employee shall receive, with pay, the following eight nationally observed holidays:

- | | |
|---|----------------------------|
| a. New Year's Day | e. Independence Day |
| b. Martin Luther King Jr.'s Birthday | f. Thanksgiving |
| c. President's Day | g. Labor Day |
| d. Memorial Day | h. Christmas Day |

• Employee shall also receive an additional religious/cultural holiday of her/his affiliation: _____
(e.g. Good Friday, Lunar New Year)

In the event that the employee agrees to work on any of these holidays, s/he will be compensated one-and-a-half times the normal rate for each hour worked.

17. Employee shall receive _____ paid sick days.

- At the end of the year, the employee shall be paid for the above number of sick days if those days were not taken. In addition, employee is entitled to _____ paid personal days.
- At the end of the year, the employee shall be paid for the above number of personal days if those days were not taken.

18. Employee shall receive one month of maternity leave, of which _____ weeks shall be paid. Employment shall not be terminated under this provision if employee can resume employment after the month of maternity leave.

19. Employee is entitled to periodic breaks throughout the day, including meal breaks.

- Child care worker may take these breaks when the child(ren) is/are sleeping or otherwise safe.

20. Employer and employee agree to the following food arrangement:

21. Employee shall have access to employer's phones for necessary local calls during the work day.

- Live-in worker shall have free, private, and reasonable access to employer's phones.

22. Lodging (for live-in domestic workers only): Employer shall provide private, suitable and furnished accommodation for the employee free of charge, with adequate heat, ventilation, and light. Employee shall have full access to use of the kitchen and a bathroom.

23. Employer agrees to notify employee should workplace be under electronic surveillance. Surveillance shall not extend to bathrooms.

- Live-in worker's private room(s) shall not be subject to surveillance.

24. Employer and employee shall make good faith efforts to discuss and resolve any conflicts arising under this contract.

25. Either party may terminate the contract by giving three weeks' notice.

- The employer may give three weeks' pay in lieu of notice to terminate the contract.
- After one year of employment, the employer must provide one week salary as severance pay. One additional week severance shall be paid for every year of work.

26. Employee is entitled to a raise of at least _____ % every year.

27. Any addition to the family reflects a significant change in the job description. For this reason, for each additional child, employer shall compensate employee with a raise in salary of \$ _____ per week.

28. If the employer would like the employee to travel with them, this must be mutually agreed upon and shall be compensated at an additional rate of \$ _____ per day, in addition to paying for travel and other incidental expenses related to the trip. Employee shall be provided their own accommodations for the trip.

29. Employer understands that workers are protected by labor laws, regardless of race, gender, immigration status or age.

Date _____

Signed by the Employer _____

Name of Employer _____

Signed by the Employee _____

Name of Employee _____

In the Presence of _____

Name of Witness

Signature of Witness

APPENDIX G

Sample Confirmation Letter

DATE

Dear EMPLOYEE NAME:

This letter confirms your employment with us as a full-time nanny for two children, ages 3 and 6, commencing on January 15, 2001 for a term of one year.

The work week will be Monday through Friday from 8:00 to 5:00 with a 1 hour lunch break. The hourly rate will be \$17/hr. You will be paid every Friday, and we will give you a signed receipt. We will pay time and a half for every additional hour worked. You may choose whether to live-in or live out.

Your responsibilities are limited to taking care of the two children, feeding them breakfast and lunch, and light housekeeping. Light housekeeping includes meal preparation and clean up as well as picking up after the children.

You will receive two weeks of paid vacation per year to be taken whenever you choose as long as appropriate notice is provided. Paid holidays include New Year's Day, Martin Luther King Jr., Day, Presidents Day, Memorial Day, Independence Day, Thanksgiving Day, Labor Day, and Christmas Day. If you choose to work on a holiday, we will pay you time and a half (\$25.50).

You will be paid when the family is on vacation whether or not you accompany us. If you accompany us, we will pay all of your travel and incidental expenses.

You are entitled to 5 sick days and 3 personal days per year. We will pay 50% of your health insurance premiums up to \$200 per month. We will also secure workers' compensation insurance.

We agree to give you at least three weeks notice or three weeks severance pay if we no longer need your services. We request that you likewise give us three weeks notice before leaving the position.

Sincerely,

EMPLOYER NAME

APPENDIX H

Sample Demand Letter in New York

DATE

Dear NAME OF EMPLOYER,

I am writing to you on behalf of NAME OF EMPLOYEE with regard to wages owed to her.

WAGES DUE

According to our client, you employed her at a rate of HOURLY RATE/ hour during the period of DATES OF VIOLATION.

NAME OF EMPLOYEE was never paid in full for her work. The Fair Labor Standards Act (FLSA) and New York State law provide that domestic workers have the right to receive the minimum wage. See 29 USC § 203 et seq.; NY Labor Law § 650 et seq.

OVERTIME

NAME OF EMPLOYEE was never paid overtime for her work. The Fair Labor Standards Act (FLSA) and New York State law provide that domestic workers have the right to receive overtime compensation at the rate of one-and-a-half times their regular rate for hours worked over 40 in a week. [For live-in domestic workers: after 44 hours in a week]. 29 USC § 207; NY Labor Law § 170.

According to our calculation to date, you therefore owe \$ AMOUNT OWED in unpaid wages for the period DATES OF VIOLATION.

If you are found in violation of these laws, you may be liable for the amount of unpaid wages plus liquidated damages. 29 U.S.C. § 216(b); N.Y. Labor Law § 663.1. Under FLSA, liquidated damages may be equal to the amount of unpaid wages.

29 U.S.C. § 216(b).

Therefore, you should provide NAME OF EMPLOYEE with her wages as soon as possible. New York's Wage Payment Act prohibits the unlawful withholding of wages and requires all wages due no later than seven (7) calendar days after the week in which the wages are earned. See N.Y. Labor Law § 191.1(a).

When employment is terminated, the employer is obligated to pay wages no later than the regular pay day for the pay period in which termination occurred, and by mail if requested by the employee. See N.Y. Labor Law § 191.3.

NAME OF EMPLOYEE has the right to bring a formal complaint to the New York State Department of Labor or a civil action in court. Such complaints may subject you to investigation and administrative hearings, penalties, and attorneys' fees.

DEDUCTIONS FROM PAY

According to our client, you made improper deductions to her pay.

The Fair Labor Standards Act (FLSA) limits the amount of money employers may deduct from a worker's pay for food and lodging. The FLSA and New York State law place limits on the circumstances in which an employer may make deductions.

You improperly deducted \$ AMOUNT OF ILLEGAL DEDUCTION from NAME OF EMPLOYEE's wages for ALLEGED REASON FOR DEDUCTION.

According to our calculations, you therefore owe \$ AMOUNT OWED in unpaid wages for the period DATES OF VIOLATION.

BREACH OF EMPLOYMENT CONTRACT/ AGREEMENT

NAME OF EMPLOYEE is currently owed \$ AMOUNT OWED in unpaid wages for work performed between DATES OF VIOLATION. The contractual agreement between you and NAME OF EMPLOYEE was to compensate her at a rate of \$ HOURLY RATE PROMISED per hour for her services as a domestic employee. According to NAME OF EMPLOYEE, she worked NUMBER OF HOURS, for which she was not received payment. Based on your agreement with NAME OF EMPLOYEE, she is owed \$ AMOUNT OWED for work performed.

You should send a check immediately in this amount to NAME OF EMPLOYEE. The check can be sent to EMPLOYEE'S ADDRESS or CARE OF WORKER'S RIGHTS ORGANIZATION AND ADDRESS.

I write this letter in the interest of resolving this matter as expeditiously as possible. However, if we do not receive the wages owed to the above employees within seven (7) days from the date you receive this letter, we will be forced to turn this matter with the appropriate state or federal agency.

Please do not hesitate to contact me if you have any further questions. Thank you for your prompt cooperation in this matter.

Sincerely,

APPENDIX J:

ICE Policy Regarding Labor Disputes**OI 287.3a Questioning persons during labor disputes.****(Revised 12/04/96; Added to INSERTS April 99)**

When information is received concerning the employment of undocumented or unauthorized aliens, consideration should be given to whether the information is being provided to interfere with the rights of employees to form, join or assist labor organizations or to exercise their rights not to do so; to be paid minimum wages and overtime; to have safe work places; to receive compensation for work related injuries; to be free from discrimination based on race, gender, age, national origin, religion, handicap; or to retaliate against employees for seeking to vindicate these rights.

Whenever information received from any source creates a suspicion that an INS enforcement action might involve the Service in a labor dispute, a reasonable attempt should be made by Service enforcement officers to determine whether a labor dispute is in progress. The Information Officer at the Regional Office of the National Labor Relations Board can supply status information on unfair labor practice charges or union election or decertification petitions that are pending involving most private sector, non-agricultural employers. Wage and hour information can be obtained from the United States Department of Labor (Wage and Hour Division) or the state labor department.

In order to protect the Service from unknowingly becoming involved in a labor dispute, persons who provide information to the Service about the employer or employees involved in the dispute should be asked the following: **1)** their names; **2)** whether there is a labor dispute in progress at the worksite; **3)** whether they are or were employed at the worksite in question (or by a union representing workers at the worksite); and **4)** if applicable, whether they are or were employed in a supervisory or managerial capacity or related to anyone who is. Information should be obtained concerning how they came to know that the subjects lacked legal authorization to work, as well as the source and reliability of their information concerning the alien's status.

It is also appropriate to inquire whether the persons who provide the information had or have a dispute with the employer of the subjects of the information. Likewise, the person providing the information about the aliens should be asked if the subjects of the information have raised complaints or grievances about hours or working conditions, discriminatory practices or about union representation or actions, or whether they have filed workers' compensation claims.

Generally there is no prohibition for enforcing the Immigration and Nationality Act, even when there may be a labor dispute in progress. However, where it appears that information may have been provided in order to interfere with or to retaliate against employees for exercising their rights, no action should be taken on this information without the review of the District Counsel and approval of the Assistant District Director for Investigations or an Assistant Chief Patrol Agent.

When Service enforcement action is taken and it is then determined that there was a labor dispute in progress, or that the information was provided to the Service to retaliate against employees for exercising their employment rights, the lead immigration officer in charge of the Service enforcement team at the worksite must ensure to the extent possible that any arrested or detained aliens necessary for the prosecution of any violations are not removed from the country without notifying the appropriate law enforcement agency which has jurisdiction over these violations.

Any arrangements for aliens to be held or to be interviewed by investigators or attorneys for the state or federal Department of Labor, the National Labor Relations board or other agencies/entities enforcing labor/employment laws will be determined on a case-by-case basis.

APPENDIX K:

Statutes of Limitations and Minimum Wage Rates, 2004-09

Generally speaking, workers have only a limited number of years in which they can bring a legal claim against their employers. This “statute of limitations” varies depending on the type of claim.

Federal Law

The FLSA has a **two year** statute of limitations for actions to enforce its provisions, and a **three year** statute of limitations if the violation is considered “willful.” A violation is considered “willful”⁶³ if the employer either knew that he or she was breaking the law, or was reckless about whether or not the behavior was breaking the law.

New York

New York State has a longer statute of limitations than the federal law.

A civil action under New York law must be started within **six years** of the incident, whether the action is filed by the employee or the commissioner.⁶⁴

If there is a good reason why the worker was unable to file suit during the six-year period, the worker may ask for “equitable tolling,” which, if granted, increases the amount of time available to file suit. However, this is only allowed in “rare and exceptional circumstances,” when the worker is prevented from exercising her rights for some extreme reason.”⁶⁵

New Jersey

Workers with claims for unpaid minimum wages, unpaid overtime compensation, or other damages under the New Jersey State Wage and Hour Law must bring their claim within **two years**.⁶⁶

New Jersey also recognizes the principle of equitable tolling, if extreme circumstances prevented the timely filing of a suit.

Connecticut

The statute of limitations in Connecticut is **two years**, meaning that workers who want to enforce wage and hour violations must bring their claims to the Department of Labor within two years.⁶⁷

Connecticut also recognizes the principle of equitable tolling, if extreme circumstances prevented the timely filing of a suit.⁶⁸ This means that in some circumstances a court will permit a claim to be asserted beyond the limited time period.

Statutes of Limitations for Wage Claims

	Statute of Limitations
Federal	2 years
New York	6 years
New Jersey	2 years
Connecticut	2 years

Minimum Wage Rates: 2004-2009

	2004	2005	2006	2007	2008	2009
New York	\$5.15	\$6.00	\$6.75	\$7.15	\$7.15	\$7.25
New Jersey	\$5.15	\$5.15	\$6.15	\$7.15	\$7.15	\$7.25
Connecticut	\$7.10	\$7.10	\$7.40	\$7.65	\$7.65	\$8.00

APPENDIX L

New York Domestic Worker Bill of Rights

summary of changes to minimum wage (MW) coverage and overtime rates

Minimum Wage coverage before and after the passage of the Bill of Rights	
BEFORE NOVEMBER 29, 2010	AFTER NOVEMBER 29, 2010
<p>Covered:</p> <ul style="list-style-type: none"> ■ Domestic workers, including full-time baby-sitters, housecleaners, etc. ■ Live-out companions – all, whether employed by household or agency ■ Live-in companions if agency/3rd party is the sole employer and client is not an employer 	<p>Covered:</p> <ul style="list-style-type: none"> ■ Domestic workers, including all babysitters who work on other than a part-time casual basis ■ Live-out and live-in companions employed by the householder and/or by an agency.
<p>Exempt:</p> <ul style="list-style-type: none"> ■ Part-time babysitters working in employer’s home ■ Live-in companions who live in “the home of an employer” 	<p>Exempt:</p> <ul style="list-style-type: none"> ■ Part-time babysitters employed on a casual basis
<p>Changes: The law takes out the exemption for live-in companions, and narrows the exemption for part-time babysitters to casual, part-time babysitters.</p>	

Overtime Rates before and after the passage of the Bill of Rights	
BEFORE NOVEMBER 29, 2010	AFTER NOVEMBER 29, 2010
<ul style="list-style-type: none"> ■ Live-out domestic workers = 1½ x regular rate after 40 hours in a week ■ Live-in domestic workers = 1½ x MW after 44 hrs ■ Live-out companions employed by private householder or agency = 1½ x MW after 40 hours ■ Live-in companions employed solely by agency = 1½ x MW after 44 hours 	<ul style="list-style-type: none"> ■ Live-out domestic workers = 1½ x regular rate after 40 hours in a week ■ Live-in domestic workers = 1½ x regular rate after 44 hrs ■ Live-out companions employed by private householder = 1½ x regular rate after 40 hours ■ Live-out companions employed by agency = 1½ x MW after 40 hours ■ Live-in companions employed by private householder = 1½ x regular rate after 44 hours ■ Live-in companions employed solely by agency = 1½ x MW after 44 hours
<p>Exempt: Live-in companions employed by private householder</p>	<p>No exemptions from overtime provision</p>
<p>Changes:</p> <ul style="list-style-type: none"> ■ Live-in domestic workers now get 1½ times their regular hourly rate after 44 hours in a week as opposed to 1½ times the MW after 44 hours ■ Live-in companions employed by the private household now receive 1½ times their hourly rate after 44 hours in a week; they were previously exempted ■ Live-out companions employed by the private household now receive 1½ times their regular hourly rate after 40 hours in a week; previously they received 1½ the MW after 40 hours a week 	

¹29 USC § 206. The US Department of Labor website contains links to the federal statutes and regulations. Statutes are available at <http://www.dol.gov/whd/regs/statutes/0002.fair.pdf> (webpage unavailable as of March 2010).

Regulations are available at http://www.dol.gov/dol/allcfr/ESA/Title_29/Chapter_V.htm.

²FLSA excludes “any employee employed on a casual basis in domestic service employment to provide babysitting services or any employee employed in domestic service to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves...” 29 USC § 213(a) (15). The federal regulations define companionship services as “services which provide fellowship, care, and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for is or her own needs.” 29 CFR § 552.6. These services may include household work related to the care of the individual, and may include general household work to the extent that the work is incidental – does not exceed 20% of the total weekly hours worked. Id. If the worker spends more than 20% of her time on general housekeeping duties she is not considered a companion. The companionship exemption currently includes home health workers employed through agencies. 29 CFR 552.109.

This interpretation of the statute was upheld in the 2007 Supreme Court case *Long Island Care at Home v. Coke* (551 U.S. 158). Casual babysitting means employment which is irregular or intermittent, and which is not performed by an individual whose vocation is babysitting. 29 CFR §§ 552.4, 552.103-104.

³NY Labor Law § 650 (NY Minimum Wage Act); 12 NYCRR § 142 et seq.; (Minimum Wage Order for Miscellaneous Industries and Occupations), available at <http://www.labor.ny.gov/formsdocs/wp/PART142s.pdf>.

⁴NYCRR § 142-2.4,-.18.

⁵NY Labor Law § 190-1.

⁶NJ Stat. Ann. § 34:11 -56a et seq.; N.J. Admin. Code § 12:56-3.1 et seq. You can find New Jersey’s wage and hour laws on the New Jersey Department of Labor website at: http://lwd.state.nj.us/labor/wagehour/lawregs/nj_state_wage_and_hour_laws_and_regulations.html.

⁷NJ Stat. Ann. § 34:11-4.2 et seq.

⁸Conn. Gen. Stat. § 31-58 et seq. If the federal minimum wage is ever raised above the state rate, the Connecticut minimum wage increases to the federal rate plus 1/2 percent more than the federal rate (rounded to the nearest whole cent). Conn. Gen. Stat. §31-58(j).

⁹Conn. Gen. Stat. § 37-71a et seq.

¹⁰29 USC § 207; 29 CFR Parts 778 and 785.

¹¹29 USC §207(a)(1).

¹²29 USC § 213(b)(21); 29 CFR §§ 552.100,.102.

¹³NY Labor Law § 170; 12 NYCRR § 142-2.2.

See also *Ballard v. Community Home Care Referral Serv., Inc.*, 264 A.D.2d 747 (2d Dept 1999).

¹⁴NJ Stat. Ann. § 34:11-56a4.

¹⁵Conn. Gen. Stat. §§ 31-60, -76b.

¹⁶29 USC § 203(m); 29 CFR § 552.100(c)-(d).

¹⁷29 CFR §§ 531.1 et seq., 778.217(a), (b)(3). 29 USC § 203(m) permits the deduction of tips from wages only for a “tipped employee,” defined in 29 USC § 203(t) as “any employee engaged in an occupation in which he customarily and regularly receives more than \$30 a month in tips.”

¹⁸NY Labor Law § 193; 12 NYCRR §§ 142-2.5, -2.19-20,195.1. See also, *Almeida v. Aguinaga*, 500 F. Supp. 2d 366 (S.D.N.Y. 2007).

¹⁹NJ Admin. Code §§ 12:56-8.1,-.8.

²⁰Conn. Agencies Regs. § 31-60-3.

²¹29 CFR § 785.21 et seq.

²²12 NYCRR §142-2.1(d).

²³NJ Admin. Code §§ 12:56-5.3, .5(a).

²⁴Conn. Agencies Regs. § 31-60-11.

²⁵29 CFR §§ 785.18-19.

²⁶NY Labor Law §§ 161-162.

²⁷Conn. Gen. Stat. § 31-51ii.

²⁸IRS Pub. 501, "Exemptions, Standard Deduction, and Filing Information," 2009, p 3, available at <http://www.irs.gov/pub/irs-pdf/p501.pdf>. The threshold for taxpayers over age 65 was \$10,750 if single and \$19,800 if married.

²⁹NY Workers' Comp. Law § 2(4), 3(1). Also see the NY Workers Compensation Board website for more information on coverage of domestic workers: <http://www.wcb.state.ny.us/content/main/onthejob/CoverageSituations/domesticWorkers.jsp>. General workers compensation laws and regulations are available on the New York State Workers Compensation Board website at <http://www.wcb.state.ny.us/content/main/wclaws/newlaws.jsp>.

³⁰NJ Stat. Ann. § 34:15-36 (containing no exemption for domestic workers).

³¹Conn. 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.

³²26 USC § 3304(a)(14)(A).

³³42 USC § 1981.

³⁴42 USC § 12112.

³⁵29 USC § 621.

³⁶NY Exec. Law §§ 290, 296-B.

³⁷NJ Stat. Ann. §§ 10:5-5(f); 34-11-56.1(a).

³⁸Conn. Gen. Stat. § 46a-51(9).

³⁹29 USC § 211(c); 29 CFR § 516.2 et seq., 552.110. See also, *Anderson v. Mt. Clemens Pottery Co.*, 328 US 680 (1946).

⁴⁰NY Labor Law § 661-2; 12 N.Y.C.R.R. § 142-2.6.

⁴¹NJ Admin. Code § 12:56-4.1 et seq.

⁴²Conn Gen. Stat. § 31-66.

⁴³OI 287.3a Questioning persons during labor disputes. (Revised 12/04/96; Added to INSERTS April 99). See Appendix J. See, e.g., *Patel v. Quality Inn South*, 846 F.2d 700 (11th Cir. 1988), *Singh v. Jutla & C.D. & R's Oil, Inc.*, 214 F. Supp. 2d 1056, 1058-59 (N.D. Cal. 2002); *Flores v. Albertsons, Inc.*, 2002 U.S. Dist. LEXIS 6171, No. 100515, 2002 WL 1163623, at *5 (C.D. Cal. Apr. 9, 2002).

⁴⁴INA § 274A(a)(1)(A); 8 USCA. § 1324a(a)(1)(A).

⁴⁵8 USC § 1324a (a)(4).

⁴⁶8 CFR § 274a.1(h).

⁴⁷8 CFR §274a.1(j).

⁴⁸These two forms are available on the DOL website at <http://www.foreignlaborcert.doleta.gov/750inst.cfm>.

⁴⁹This form is available on the department of Homeland Security website at <http://www.uscis.gov/files/form/i-140.pdf>. Instructions for I-140, Immigrant Petition for Alien Worker are available at: <http://www.uscis.gov/files/form/i-140instr.pdf>.

⁵⁰For these and other requirements of A-3 and G-5 visa contracts, see U.S. State Department, "Informational Pamphlet to Protect Guest Workers and other Non-immigrants" available at <http://www.travel.state.gov/pdf/Pamphlet-Order.pdf>; see also US Department of State Foreign Affairs Manual Volume 9 § 41.21 N.2.

⁵¹18 USC §§ 1589,1595.

⁵²INA § 101(a)(15)(T)-(U).

⁵³NY Penal Law §135.35-36.

⁵⁴NJ Stat. Ann. § 2C:13-8.

⁵⁵Conn. Gen. Stat. §§ 53a-192; 52-571i (civil action).

⁵⁶29 USC §215(a)(3).

⁵⁷NY Labor Law §§ 215, 662(1).

⁵⁸NJ Stat. § 34:11-56a24.

⁵⁹Conn. Gen. Stat. § 31-51m, -69b(a).

⁶⁰NY Labor Law § 691-93.

⁶¹NJ Stat. Ann. § 34:8-51(a)(4).

⁶²Conn. Gen. Stat. § 31-131.

⁶³29 USC §255(a). See also *Herman v. RSR Sec. Servs.*, 172 F.3d 132, 141 (2d Cir.1999); *U.S. v. Sabhani*, 566 F. Supp. 2d. 139 (E.D.N.Y. 2008); *Ramirez v. Rifkin*, 568 F. Supp. 2d 262, 268 (E.D.N.Y. June 23, 2008). The Second Circuit courts generally leave the question of willfulness to the jury. *Id.*

⁶⁴NY Labor Law §198(3).

⁶⁵In *U.S. v. Sahbnani*, for example, the Eastern District of New York found that workers who were held in forced servitude, spoke no English and had no knowledge of the Fair Labor Standards Act were entitled to equitable tolling. 566 F. Supp. 2d 139, 146 (E.D.N.Y. 2008).

⁶⁶NJ Stat. Ann. § 34:11-56a25.1

⁶⁷Conn. Gen. Stat. § 52-596.

⁶⁸The Connecticut Supreme Court has applied equitable tooling in an employment discrimination case, citing the "remedial nature of the statute." *Williams v. Commission on Human Rights and Opportunities*, 257 Conn. 258 (2001).

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