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A Long Journey to Secure Permanent Overtime Rights for California Domestic Workers

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California was amongst the first states to regulate long-hours and impose overtime premium pay at the turn of the twentieth century. However, it was not until almost a century later, that the Legislature and Governor recognized that there was no justification to exclude domestic workers from this fundamental protection. On September 12, 2016, Governor Brown signed SB 1015

Photo Courtesy of the CA Domestic Workers Coalition

http://www.leginfo.ca.gov/pub/15-16/bill/sen/sb_1001-1050/sb_1015_bill_20160211_introduced.html), a bill making overtime rights permanent for more than 300,000 nannies and caregivers for seniors and people with disabilities. For over a decade, domestic workers in California have mobilized a grassroots, worker-led statewide movement for equal treatment under the law. Golden Gate University School of Law's Women's Employment Rights Clinic (WERC)

<http://law.ggu.edu/clinics-and-centers/clinics/womens-employment/>) has served as

legal counsel to the California Domestic Workers Coalition (<http://www.cadomesticworkers.org/>) since 2010 in the Coalition's effort to extend basic wage and hour protections to domestic workers.



A combination of racism, sexism, and the fear of regulating the home resulted in excluding domestic workers from most legal protections. While other workers gained labor protection at the turn of the twentieth century, domestic workers—by the 1930's numbering as many as those in "the railroads, coal mines, and automobile industry combined" (<http://www.datacenter.org/reports/homeiswheretheworkis.pdf>)—were categorically excluded. In 1974, the Fair Labor Standards Act extended minimum wage protections to domestic workers but not to home care companions for the elderly or disabled. Domestic workers fared no better in state wage and hour coverage. Approximately 18 states gave minimum wage and overtime coverage to some domestic workers. California regulates wage and hour laws by statute as well as by regulations, called Wage Orders, promulgated by the Industrial Welfare Commission (<http://www.dir.ca.gov/iwc/iwc.html>). California began regulating domestic work in 1976, when the Industrial Welfare Commission adopted the Household Occupations Wage Order 15 (<https://www.dir.ca.gov/iwc/WageOrders2006/iwcarticle15.html>). Domestic workers who cared for property (housecleaners) were given full wage and hour protections but those who cared for human beings were not. The 1976 wage order completely excluded "personal attendants" – childcare providers and caregivers who spent a significant amount of time caring for children, elderly or people with disabilities from coverage. Personal attendants were excluded from wage and hour coverage based on the erroneous belief that these workers were primarily young or elderly persons doing the work to supplement income received from their parents or social security benefits, respectively.

Domestic workers are crucial part of the economic and social fabric of our country. However, isolated and hidden behind closed doors and mostly unprotected under the law, domestic workers face harsh working conditions. In a California report (<http://www.datacenter.org/wp-content/uploads/HomeTruths.pdf>) issued by the National Domestic Workers Alliance, the median hourly wage for nannies is \$8.57, for caregivers is \$8.69, and for housecleaners is \$10.11. The researchers found that sixty percent (60%) of workers were paid an hourly wage at their primary job that is below

the level needed to adequately support a family (using a conservative measure of income adequacy). Low wages have resulted in material hardship for domestic workers. Thirty-five percent (35%) of workers reported that in the past twelve months they were forced to pay their rent or mortgage late and nearly one quarter (23%) reported that in the month prior to the survey there were times when there was no food to eat in their own homes because they had no resources to obtain it. Compounding this problem, twenty-five percent (25%) of domestic workers were paid below the California minimum wage.

In 2001, personal attendants got the right to minimum wage. Thanks to the California Domestic Worker Coalition, personal attendants gained overtime protections in 2014, through [AB 241](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB241) (https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB241). AB 241 went into effect in January 2014 but was set to expire or “sunset” on January 1, 2017, unless the Legislature extended or removed the sunset provision. SB 1015 removed the sunset provision, making overtime a permanent reality for personal attendants in California. Now, personal attendants (with some exceptions) are entitled to overtime after nine (9) hours of work in a day and after forty-five (45) hours in a week.

One reason why the overtime bills garnered opposition was the fear that home care would become unaffordable for many low to modest income households. However, available evidence is to the contrary. According to the [Paraprofessional Healthcare Institute](http://phinational.org/about) (<http://phinational.org/about>), institutionalization rates are not higher in states that provide home care workers with minimum wage and overtime. In California, since the passage of AB 241, there is no evidence that institutionalization rates have increased. Furthermore, in the first [comprehensive study](http://www.irlle.ucla.edu/publications/documents/UCLA_domesticworkers_report.pdf) (http://www.irlle.ucla.edu/publications/documents/UCLA_domesticworkers_report.pdf) of California’s employers, the UCLA Labor Center found that only eight percent (8%) of domestic service employers hire for overtime.



Photo Courtesy of the CA Domestic Workers Coalition

Based on our on-the ground experience, the Clinic has seen a positive impact on both workers and consumers as a result of the new overtime rules. Many agencies and household employers have genuinely complied with the mandate of AB 241. In some cases, workers have seen a reduction in their hours but an increase in their pay, as their employers have eliminated a flat daily or weekly rate. AB 241 has also addressed the most egregious cases, where a single worker works 24/7 shift. These shifts, not only result in significant wage and hour violations, but also detrimentally impact the health of the worker and the quality of care for the consumer. As a result of AB 241, these employers have re-evaluated their shift scheduling and have moved away from 24-hour shift scheduling. With the passage of SB 1015, domestic workers and employers will have clear standards that provide clarity and fosters a stable workforce.

Today's domestic workers are staffed by trained professionals. These workers are their families' breadwinners. Making permanent overtime rights for these workers is an important first step in valuing their labor as real work, and recognizing the dignity of those who care for our loved ones.

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