

4-9-2014

Grassroots Policy Advocacy and the California Domestic Worker Bill of Rights

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Recommended Citation

Shah, Hina, "Grassroots Policy Advocacy and the California Domestic Worker Bill of Rights" (2014). *Publications*. 623.
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Grassroots Policy Advocacy and the California Domestic Worker Bill of Rights

On the steps of the California capitol building in Sacramento, a group of Latina and Filipina domestic workers chants, “Si Se Puede” and “Makibaka! Wag Matakot,” which roughly translate to “Yes We Can” and “Struggle! Have No Fear.” These women are part of a national domestic workers’ movement to address the systemic exclusion of domestic workers from basic labor protections. Domestic workers have been widely successful in the last three years with the passage of state domestic worker bills of rights in **New York**, **Hawaii**, and **California**, the adoption by the International Labour Organization of two key documents—the **Domestic Workers Convention and the Recommendation Concerning Decent Work for Domestic Workers**—and **federal policy changes by the U.S. Department of Labor** that will extend minimum wage and overtime for the first time to millions of home care workers.



These recent victories are a result of grassroots, worker-led campaigns to change the cultural value of domestic work and fundamentally question why the law treats these workers differently from other workers. Building visibility through worker leadership and broad-based coalitions, the domestic work campaigns have succeeded in gaining more equal treatment under the law. This is the **story of the California campaign** and the **Golden Gate University Women’s Employment Rights Clinic’s** role in the campaign.

Background on Legal Coverage of Domestic Work

Until recently, many domestic workers toiled in obscurity without legal protection or societal recognition—unseen and unprotected. Originally, **domestic workers were categorically exempted from most laws governing social security, unemployment benefits, collective bargaining, minimum wages, and other labor standards**. While other workers gained wage and hour protection at the turn of the twentieth century, domestic workers—by the 1930s numbering as many as those in “the railroads, coal mines, and automobile industry combined”—were categorically excluded (George j. Stigler, *Domestic Servants in the United States 1900-1940* 2 (1946)). During New Deal legislation, “[e]ven among women workers, they stood out as among the most poorly paid and hardest-working” (Alice Kessler-Harris, *Out to Work: A History of Wage-Earning Women in the United States* 270 (1982)).

In 1974, the Fair Labor Standards Act was amended to extend minimum wage and overtime protections to many domestic workers but not to companions for the elderly or disabled. Soon thereafter, **the Department of Labor enacted a regulation that not only broadly defined the work of a “companion” but also extended the companionship exemption to cover companions hired by third-party employers**.

Domestic workers fared no better in state wage and hour coverage. **As of January 2012, only 15 states provided minimum wage and overtime coverage to some or all domestic workers**. Domestic workers hired directly by the household continue to be excluded from the National Labor Relations Act and the Occupational Safety and Health Act. Because household workers cannot meet the jurisdictional requirement of 15 or more employees, they are, in effect, excluded from Title VII of the Civil Rights Act of 1964 (*id.*).

California regulates wage and hour laws by statute as well as by regulations, called Wage Orders, promulgated by the **Industrial Welfare Commission**. California began regulating domestic work in 1976, when the Commission adopted the **Household Occupations Wage Order 15**. Domestic workers who cared for property, such as housecleaners, cooks, and gardeners, were given full wage and hour protections, but those who cared for human beings were not. The 1976 wage order completely excluded from coverage “personal attendants”—those who spend a significant amount of time caring for children, the elderly, or people with disabilities. Unless childcare providers and caregivers spent more than 20 percent of their time on general housekeeping duties, they were considered personal attendants and were excluded from all Wage Order 15 protections. This exclusion was **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. Personal attendants did not get the right to the minimum wage until 2001 (*id.*).

The Problem

Domestic workers are a 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. Even when they have legal protections, the laws are often disregarded. In a **2013 California report issued by the National Domestic Workers Alliance**, the median hourly wage for nannies was \$8.57, for caregivers was \$8.69, and for housecleaners was \$10.11. The researchers found that 61 percent of workers were paid an hourly wage at their primary job that was below the level needed to support a family (using a conservative measure of income adequacy) (*id.*). Low wages have resulted in material hardship for domestic workers. Thirty-five percent of workers reported that in the past 12 months they were forced to pay their rent or mortgage late, and nearly one quarter 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 (*id.*). Compounding this problem, 25 percent of domestic workers were paid below the California minimum wage (*id.*).

The California Campaign

In the 1990s, immigrants' rights organizations such as Mujeres Unidas y Activas, the Women's Collective of the San Francisco Day Labor Center Program, Pilipino Workers Center, and the Coalition for Humane Immigrant Rights Organizations began organizing the predominately Latina and Filipina domestic workers in San Francisco and Los Angeles counties. Many of these organizations are grassroots, membership-based organizations that seek to educate, organize, and advocate. Focusing on worker leadership and economic self-sufficiency, they created job-training programs, established worker collectives or referral agencies, and provided a social and cultural space for personal and political empowerment. Some of these organizations assisted domestic workers in filing wage claims with administrative agencies.

In 2005, these organizations, along with People Organized to Win Employment Rights, formed the California Household Worker Coalition. Their statewide legislative priority was to remove the overtime exclusion for personal attendants as well as provide for the recovery of liquidated damages in administrative proceedings. Facing stiff opposition from home-health agencies and several disability-rights advocates, **the bill was narrowed only to extend overtime to childcare providers**. It passed the legislature in 2006 to be **vetoed by then-Governor Arnold Schwarzenegger**. The campaign galvanized many domestic workers to participate for the first time in the political process. It took almost four years before the organizations attempted another statewide legislative effort. The organizations realized they needed to build their base and broaden the coalition and ally support before going back to Sacramento. Andrea Lee of Mujeres Unidas y Activas described it as a "strategic pause" (Email message to Hina Shah from Andrea Lee, March 6, 2014).

Bolstered by the strength of the domestic worker campaign in New York, the formation of a national organization, the National Domestic Workers Alliance, and efforts internationally to recognize the dignity of domestic work, the California organizations reconvened in 2010 as the California Domestic Workers Coalition, a statewide umbrella organization of eight groups: **Mujeres Unidas y Activas, Women's Collective of the San Francisco Day Labor Center Program, Pilipino Workers Center, Coalition for Humane Immigrant Rights Organization, People Organized to Win Employment Rights, Filipino Advocates for Justice, Centro Laboral de Graton, and Instituto de Educacion Popular del Sur de California**. The coalition created a structure for full participation and decision-making. It created a statewide steering committee comprised of organizational staff and domestic worker members from each organization. To the extent possible, all decisions were vetted from the steering committee back to the full membership of each organization.

Next, the coalition set its legislative priorities: 1) to remove the total or partial exemptions of domestic workers from overtime, health and safety, and workers' compensation law; and 2) to set industry specific standards such as the right to uninterrupted sleep and the right to use kitchen facilities. In addition to the overtime exemption for personal attendants, all domestic workers are excluded from workplace health and safety protections, and many are excluded from workers' compensation. Domestic workers must work 52 hours and earn more than \$100 in the previous 90 days to be eligible for workers' compensation coverage.

In 2010, the coalition laid the groundwork for a legislative bill by advocating successfully for **Assembly Concurrent Resolution 163**. This legislative resolution recognized the vital role domestic workers play in California's economy. To educate legislators, the coalition issued "Voices from Behind Closed Doors," a one-page handout highlighting the need for greater protection of domestic workers through personal stories and photographs. The handout was so successful that the coalition published multiple issues. In one issue, an elder care worker named Anali states, "Employers need to treat us with respect as people, as woman, as workers."

In 2011, the Coalition then sponsored **A.B. 889**, the California Domestic Worker Bill of Rights. The scope of the bill was far-ranging, seeking the removal of the personal attendant exclusion from Wage Order 15 as well as the exemptions from workers' compensation and health and safety protection. In addition, the bill also sought to create industry-

specific standards around uninterrupted sleep and use of kitchen facilities. As in 2006, the bill faced opposition from home health agencies and some disability rights groups. The coalition felt strongly that agencies should not be carved out of the bill.

Early on in the campaign, the coalition engaged disability-rights advocates to discuss potential compromises that made home care affordable but still gave workers a living wage. Many individuals and organizations in the disability rights community became strong advocates for the bill as a result of the coalition's outreach. Others, however, remained fiercely opposed.

A.B. 889 stalled in the Senate Appropriations Committee, where major compromises had to be made. The compromise bill sent the issue to the Department of Industrial Relations, which was directed to study the issue and adopt regulations on overtime, meal breaks, and sleep for domestic workers. Governor Jerry Brown vetoed A.B. 889, raising concerns about the impact such a bill would have on domestic workers' jobs, hours, and flexibility, as well as the impact it would have on people with disabilities and elderly people who need 24-hour care.

The coalition was again heartbroken but not deterred. They sponsored A.B. 241 in 2013, seeking many of the same key provisions outlined in A.B. 889. As the bill progressed, the coalition decided to focus the messaging on the exclusion of personal attendants from overtime, which they believed was one of the most fundamental issues facing domestic workers. The coalition also strategized a field campaign around mobilizing support to get Governor Brown's signature, since they faced little opposition in the Democratic supermajority Legislature.

In the last months of the campaign, the coalition's messaging and field strategy yielded some powerful results. The *Los Angeles Times* editorial board **came out in favor of overtime for caregivers and A.B. 241**. The AFL-CIO 2013 Convention in Los Angeles in early September gave top billing to the issues faced by domestic workers, including giving its human rights award to domestic workers and visibly supporting the coalition's efforts to pass A.B. 241. Coalition leaders had the opportunity to meet directly with the governor's staff to provide background on the issues facing domestic workers and the need for A.B. 241.

On September 26, 2013, in a signing ceremony before 70 domestic workers and their allies, **Governor Brown signed A.B. 241 into law**. A.B. 241 extends overtime to personal attendants, with a few exceptions. A.B. 241 went into effect in January 2014 and will expire or "sunset" on January 1, 2017, unless the legislature extends or removes the sunset provision. The governor will convene a commission made up of domestic work employees and employers to study the impact of the bill.

The Role of the Lawyers

The **Golden Gate University Women's Employment Rights Clinic** has been representing low-wage immigrant workers for over 20 years, while training the next generation of ethical, competent lawyers and advocates for the working poor. In the last four years, the clinic has exclusively represented domestic workers and caregivers in small care facilities, predominantly in wage-and-hour cases. Through litigation, the clinic has developed expertise on the existing legal structure governing domestic workers.

The clinic became the coalition's legal counsel in late 2010 to help launch the legislative campaign. During the A.B. 889 campaign, other legal organizations participated in the legal team, headed by the clinic. **Victor Narro** from the **University of California, Los Angeles Center for Labor Research and Education** provided political analysis and guidance during the campaign for A.B. 889 as well as A.B. 241.

The clinic's first task was to decipher the existing regulatory protections for domestic workers under both state and federal law and to understand why personal attendants were excluded in California. Law students sifted through voluminous records from the Industrial Welfare Commission archives and found the reason for the exclusions. The clinic then drafted the legislation, translating the coalition's wishes into bill language. All bill amendments were drafted or reviewed by the clinic.

In addition, the clinic functioned as the coalition's general counsel. Throughout the campaign, it helped the coalition evaluate the impact of bill compromises on existing rights of domestic workers. The clinic cautioned against any compromise that would either dilute protections or set a bad precedent for all workers, generally. Moreover, the clinic provided feedback and guidance on messaging and strategy, attended meetings with key legislative players, gave expert testimony at legislative hearings, helped prepare and review worker testimony, and conducted trainings for coalition members on the bill and existing rights.

Lessons Learned: Community Lawyering and Grassroots Policy Advocacy

The success of the domestic worker campaign in California as well as nationally is **a testament to grassroots organizing efforts that built the leadership and visibility of a workforce comprised of low-wage, immigrant women**. Lawyers played a critical role both as technical experts as well as counselors to the coalition. The coalition and the lawyers were collaborative partners in the campaign, each with distinct roles and responsibilities. The strength of our

working relationship can be attributed to the following:

- **Direct Service Expertise:** The clinic represents domestic workers in individual wage and hour cases. This experience informed and guided the policy reform. The clinic helped answer practical questions of how the proposed legislation would affect existing rights and how it would be enforced.
- **Client-Centered Lawyering:** The clinic in its direct service cases uses the client-centered model of advocacy. A few principles that informed our work with the coalition: (1) Respect the coalition's experience and expertise. The coalition had seasoned organizers who are at the forefront of mobilizing domestic workers; (2) Educate the coalition about the legal and regulatory framework so they can make informed decisions; (3) Deep listening. To draft the bill or review compromises, the lawyers needed to understand the issues and concerns of the coalition and its members; (4) Client decision-making. The coalition made the strategic decisions, and the lawyers' role was to provide options, analysis, and insight that helped the coalition in its decision-making.
- **Clear Lines of Communication:** With a large umbrella statewide group that is dedicated to a democratic inclusive process, clear lines of communication between the lawyers and the coalition had to be set up. The coalition designated a few members of the steering committee to interface with the legal team. The clinic also designated a lead lawyer to coordinate with the coalition.
- **Formal Representation Agreement:** The clinic entered into a formal representation agreement with the coalition, outlining the channels of communication, authority for decision-making, and potential conflicts in such community representation. The agreement helped clarify what the role of the lawyers was in the campaign.

A lawyer's job is to "put law in the service of building the movement's power" (*Jennifer Gordon, Law, Lawyers, and Labor: The United Farm Workers' Legal Strategy in the 1960s and 1970s and the Role of Law in Union Organizing Today*, 8 University of Pennsylvania Journal of Labor & Employment Law 1, 71 (2005)). Using community lawyering principles allows lawyers to be an integral part of the broader grassroots movement for social change.



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Date: 2014-04-09



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