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Nannies Join Employees Required to Receive Overtime Under California's Domestic Worker Bill Of Rights

By Eugene Ryu and Yves Nguyen

Effective January 1, 2014, California will become the third state after New York and Hawaii to require overtime compensation for all nannies and other domestic work employees.

The new law, known as the "Domestic Worker Bill of Rights," will add Sections 1450 to 1454 to the California Labor Code.¹ Assembly representative Tom Ammiano (D-San Francisco) first introduced Assembly Bill 241 in February 2013, proposing legislation that would have required employers of domestic workers to provide meal and rest breaks, paid days of rest, and workers' compensation, in addition to overtime. The final version of AB 241 signed by Governor Jerry Brown, however, requires only payment of overtime premium.

Paving the Way to Overtime for All Domestic Work Employees

Previously, domestic work employees employed as "personal attendants" were specifically exempt from overtime under the Industrial Welfare Commission's Wage Order 15-2001, which governs household occupations. The Wage Order's minimum wage provisions did apply, however. The Wage Order defines "personal attendant" to include baby sitters and "any person employed by a private householder or by any third party employer recognized in the health care industry to work in a private household, to supervise, feed, or dress a child or person who by reason of advanced age, physical disability, or mental deficiency needs supervision." Under the new law, overtime is extended to personal attendants.

Assembly representative Ammiano first attempted to extend overtime compensation to all domestic work employees under AB 889 in 2011. AB 889 proposed that by January 1, 2014, the Department of Industrial Relations would adopt regulations regarding the guarantee of overtime, meal and rest periods, and uninterrupted sleep periods for domestic work employees.

AB 889 was ultimately vetoed by Governor Brown in 2012 based on concerns for the economic and "human" impact it would have on disabled or elderly persons whose families share duties with domestic workers. Specifically, Governor Brown expressed concerns over enforcement and whether the number of jobs for domestic workers would decrease.

¹ For other new California employment laws also going into effect in 2014, see Christopher Cobey and Marina Gruber, *The Going Gets Steeper: 2013 California Employment Legislation Affecting Private Sector Employers*, Littler ASAP (Oct. 23, 2013).

Although AB 889 was unsuccessful, Ammiano introduced AB 241, which, as later scaled down to address only overtime compensation, was signed into law by Governor Brown on September 26, 2013.

AB 241's Key Provisions

AB 241's most significant provision is Section 1454, which states that domestic work employees employed as "personal attendants" must receive overtime compensation at the employee's regular rate for hours worked in excess of nine hours in any workday or 45 hours in a workweek. The law utilizes the same definition for "personal attendant" as the Wage Order, but mandates that performance of any non-personal attendant related duties cannot exceed 20% of the total weekly hours worked.

The law does not apply to "casual babysitters," defined as any person whose vocation is not babysitting and whose employment is irregular or intermittent. Also excluded from the law's application are "personal attendants" who provide domestic services to low-income individuals through California's In-Home Support Service, a program that assists qualifying elderly, disabled, or blind individuals with housecleaning, meal preparation, laundry and other personal care as an alternative to out-of-home care.

In addition to these provisions, the law creates a committee consisting of personal attendants or their representatives and employers to study and report to Governor Brown on the effects of the bill for both employers and domestic work employees.

What is the Impact on Employers?

The law will impact both households and agencies that employ domestic work employees because AB 241 specifically applies to persons who, either directly or indirectly through an agency, employ or exercise control over the wages, hours, or working conditions of domestic work employees.

Whether the Labor Commissioner will see an increase in complaints regarding nonpayment of overtime is unknown, though the law will likely increase the propensity for domestic workers to file wage-and-hour suits. Looking at the effects of New York's domestic workers' rights law serves as guidance to understanding the potential impact that AB 241 may have in California. In New York, enforcement has been slow or difficult. A survey of New York parents found that only 15% of the over 1000 respondents reported paying nannies at least 1.5 times their official rate when they worked overtime.

Households that have not traditionally viewed nannies or caregivers as "personal attendant" employees should pay particular attention to this law as they could face expensive and protracted litigation arising from unpaid overtime claims.

The law will last for three years, from January 1, 2014 until January 1, 2017. The California Legislature will then decide whether to renew it.

[Eugene Ryu](#) is a Shareholder in Littler Mendelson's Los Angeles (Downtown) office, and [Yves Nguyen](#) is an Associate in the San Francisco office. If you would like further information, please contact your Littler attorney at 1.888.Littler or info@littler.com, Mr. Ryu at eryu@littler.com, or Ms. Nguyen at ynguyen@littler.com.