

December 30, 2014

Massachusetts Extends Labor and Employment Protections to Domestic Workers

By Christopher Kaczmarek, Jennifer Duke and Stephen Melnick

Effective April 1, 2015, Massachusetts will become the fourth state (after New York, California and Hawaii) to extend employment protections specifically to domestic workers. The “Domestic Workers’ Bill of Rights”¹ creates new legal obligations for any individual or family in Massachusetts who employs a domestic worker, and is expected to affect approximately 67,000 nannies, housekeepers, caregivers and other domestic workers. Although portions of the law clarify that domestic workers are covered by existing state employment laws, the statute creates a number of new rights for domestic workers—and obligations for their employers—such as recordkeeping and notice requirements, a statutory right to privacy, and limitations on when and how a live-in domestic worker may be terminated. Almost all of these rights apply regardless of how many hours the person works for an individual or family.

Who is Covered by the Law?

The law applies to any person or entity that employs a “domestic worker” within a household, regardless of whether the domestic worker lives in the household. The law does not apply to any licensed or registered staffing, employment or placement agencies. “Domestic workers” are individuals who are paid to perform work of a domestic nature within a household, such as housekeeping, house cleaning, home management, nanny services, laundering, cooking, home companion services, and caretaking of individuals. While the law applies to nannies, it does not apply to casual babysitters (defined as individuals who provide childcare services on a casual, intermittent and irregular basis, or individuals whose primary job is not childcare). Also excluded from the law are individuals who provide services to persons with disabilities or seniors under the MassHealth personal attendant program.

Key Provisions of the Domestic Workers’ Bill of Rights

The new statute extends certain existing laws to domestic workers. The prohibition against unlawful harassment now applies to domestic workers. Likewise, domestic workers must be given leaves of absence for childbirth or adoption under the Massachusetts Maternity Leave Act.

¹ M.G.L. c. 149, §§ 190-91.

The protections against retaliation for wage and hour complaints also now apply to domestic workers. In addition, the law clarifies that domestic workers are covered by the unemployment and workers' compensation statutes.

The statute also creates a number of new rights and duties that differ from those available to other employees in Massachusetts:

Notice Requirements: When a domestic worker starts, he or she must be given a notice that outlines all applicable state and federal rights that apply to him or her. The state attorney general is expected to publish a form notice in the coming months. Additionally, if the employee works for 16 hours or more in a week, he or she must be provided a detailed 10-point notice, made specifically for that employee. The notice must identify: (i) the employee's rate of pay, including overtime and additional compensation for added duties or multilingual skills; (ii) the employee's working hours, including meal breaks and other time off; (iii) if applicable, the provisions for days of rest, sick days, vacation days, personal days, holidays, transportation, health insurance, severance, yearly raises and, whether or not earned, vacation days, personal days, holidays, severance, transportation costs and if health insurance costs are paid or reimbursed; (iv) any fees or other costs, including costs for meals and lodging; (v) the responsibilities associated with the job; (vi) the process for raising and addressing grievances and additional compensation if new duties are added; (vii) the right to collect workers' compensation if injured; (viii) the circumstances under which the employer will enter the domestic worker's designated living space on the employer's premises; (ix) the required notice of employment termination by either party; and (x) any other rights or benefits afforded to the domestic worker.

Definition of "Working Time." The time for which domestic workers must be paid includes all time in which the worker "is required to be on the employer's premises," time "required to be on duty," and "any time worked before or beyond the end of the normal scheduled shift." In particular, domestic workers must be paid for all meal periods, as well as rest and sleeping periods, when they are not free to leave the employer's premises and are not completely relieved of all work-related duties. Domestic workers who are on duty for more than 24 consecutive hours are required to be paid for all meal and rest periods, including time spent sleeping, unless a prior written agreement is made. If such a worker agrees to an unpaid "sleeping period," it is limited to 8 hours per day.

Time Off: Domestic workers who work 40 hours or more a week must be given at least 24 consecutive hours off each calendar week, and at least 48 consecutive hours off each calendar month. The worker can agree to work during this time off, but the agreement must be in writing, and the worker must be paid time-and-a-half for those hours.

Right to Privacy: The new law gives domestic workers an affirmative right to privacy. Employers cannot monitor, restrict or interfere with domestic workers' private communications and cannot take their documents or personal effects.

Deductions from Wages for Food, Beverages or Lodging: Employers can take limited deductions from an employee's wages for meal or lodging in certain circumstances, but only with the domestic worker's prior written consent.

Written Evaluations: A domestic worker can request a written evaluation of his or her work performance after three months of employment, and annually thereafter. He or she can also inspect and dispute the written evaluation.

Recordkeeping: Employers are required to keep a record of wages and hours for domestic workers for two years.

Notice of Termination and Severance Pay: Special rules will apply when an employer terminates a domestic worker who resides in the employer's household. In a significant departure from existing law, if the employer terminates the employee without cause, the employee must receive written notice, and he or she will be entitled to at least 30 days of lodging (on-site or in comparable off-site conditions), or two weeks of severance pay. For terminations in cases where the employer reasonably believes the live-in employee has been abusive or neglectful or engaged in other harmful conduct, notice and severance are unnecessary.

What Should Employers of Domestic Workers be Doing Now?

While well-intentioned, this new law places significant new burdens on the employers of domestic workers—most of whom are families and households. The statute allows domestic workers to file lawsuits in court, and to bring claims of harassment to the Massachusetts Commission Against Discrimination, so employers may face costly litigation and possibly even personal liability for violations.

To minimize the threat of liability, employers of domestic workers should carefully review the requirements of this law in advance of the April 1, 2015 effective date and consult with experienced employment counsel if they have any questions about how to comply with the law's

requirements. Particular care should be taken in responding to allegations of harassment, and when terminating the employment of a live-in domestic worker. Employers should also look for guidance from the Massachusetts Attorney General's Office, which is expected before the law goes into effect and should help to clarify employers' obligations.

[Christopher Kaczmarek](#) is a Shareholder, and [Jennifer Duke](#) and [Stephen Melnick](#) are Associates, in Littler's Boston office. If you would like further information, please contact your Littler attorney at 1.888.Littler, info@littler.com, or Mr. Kaczmarek at ckaczmarek@littler.com, Ms. Duke at jduke@littler.com or Mr. Melnick at smelnick@littler.com.