

HOUSE BILL REPORT

SHB 2511

As Amended by the Senate

Title: An act relating to providing labor protections for domestic workers.

Brief Description: Providing labor protections for domestic workers.

Sponsors: House Committee on Labor & Workplace Standards (originally sponsored by Representatives Stonier, Sells, Gregerson, Ormsby, Chapman, Valdez, Chopp, Bergquist, Davis, Doglio, Frame, Ramel, Pollet, Macri, Goodman, Riccelli and Robinson; by request of Attorney General and Office of the Governor).

Brief History:

Committee Activity:

Labor & Workplace Standards: 1/27/20, 2/6/20 [DPS];
Appropriations: 2/10/20, 2/11/20 [DP2S(w/o sub LAWS)].

Floor Activity:

Passed House: 2/18/20, 59-39.
Senate Amended.
Passed Senate: 3/5/20, 48-1.

Brief Summary of Substitute Bill

- Prohibits those employing or hiring domestic workers from engaging in certain conduct, such as discrimination and taking adverse action against domestic workers exercising their rights, and creates a rebuttable presumption of retaliation under certain circumstances.
- Establishes a private cause of action and other provisions for domestic workers.
- Requires the Office of the Attorney General to establish a stakeholder work group.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Sells, Chair; Chapman, Vice Chair; Gregerson and Ormsby.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Do not pass. Signed by 3 members: Representatives Mosbrucker, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Hoff.

Staff: Trudes Tango (786-7384).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Labor & Workplace Standards. Signed by 21 members: Representatives Ormsby, Chair; Robinson, 1st Vice Chair; Bergquist, 2nd Vice Chair; Caldier, Chopp, Cody, Dolan, Fitzgibbon, Hansen, Hudgins, Kilduff, Macri, Pettigrew, Pollet, Ryu, Senn, Springer, Steele, Sullivan, Tarleton and Tharinger.

Minority Report: Do not pass. Signed by 11 members: Representatives Stokesbary, Ranking Minority Member; Rude, Assistant Ranking Minority Member; Chandler, Corry, Dye, Hoff, Kraft, Mosbrucker, Schmick, Sutherland and Ybarra.

Staff: Jessica Van Horne (786-7288).

Background:

Employment standards and benefits generally apply only if an employer-employee relationship exists. The Minimum Wage Act, the industrial insurance laws, and the unemployment insurance laws each have various exemptions for domestic services. For example, persons doing "casual labor" in a home, and persons whose duties require they sleep or reside at their place of employment, are exempt from the Minimum Wage Act.

The Washington Law Against Discrimination (WLAD) prohibits discrimination in employment based on the person's protected status, such as race, creed, color, national origin, sex, disability, and other protected categories. The WLAD applies to employers who employ eight or more persons and does not include any nonprofit religious or sectarian organization. An aggrieved person may file a complaint with the Human Rights Commission or may file a private cause of action in court.

Summary of Substitute Bill:

Hiring Entities and Domestic Workers.

A "hiring entity" is any employer who employs a domestic worker or any individual or entity that pays a wage for services of a domestic worker. State agencies and certain home care agencies are not hiring entities.

A "domestic worker" includes hourly and salaried employees and includes any worker who works for one or more hiring entities and works in residences as a nanny, house cleaner, home care worker, cook, gardener, or household manager, or for other domestic service purposes. Domestic worker does not include persons who provide:

- Medicaid-funded home care services as "individual providers;"
- babysitting on a casual labor basis;

- services or supports for family members on a casual labor basis;
- casual labor in a private home, unless performed in the course of the hiring entity's trade, business, or profession;
- dog walking, pet sitting, or house sitting; or
- services to another family member who is sick, convalescing, elderly, or a person with a disability, where the family members do not intend to establish an employer-employee relationship and other conditions are met.

A hiring entity may not:

- request that a domestic worker allow the hiring entity to take possession of the worker's personal effects, including any legal documents such as passports or other forms of identification;
- subject a domestic worker to conduct with the purpose or effect of unreasonable interfering with the domestic worker's work by creating an intimidating, hostile, or offensive work environment;
- monitor or record the domestic worker using the bathroom or changing clothes;
- monitor or record, or interfere with, private communications;
- communicate an intent to inform a government entity about the citizenship or immigration status of a domestic worker or the worker's family member, in response to the domestic worker exercising any of the worker's rights; or
- take any adverse action against a domestic worker for exercising his or her rights, including the right to organize, participate in political speech, disclose immigration status, or institute proceedings.

"Adverse action" includes denying or delaying payment due, reducing the number of work hours already scheduled, reducing the rate of pay, and threatening to take action based on the immigration status of a domestic worker or the worker's family member.

In addition, the hiring entity may not engage in employment discrimination, as defined under the WLAD, and any discriminatory harassment. The hiring entity may not terminate a domestic worker, retaliate against a domestic worker, reduce the domestic worker's pay, or refuse to offer assignments to a domestic worker, for the domestic worker requesting reassignment due to alleged discrimination or abusive behavior prohibited by the WLAD. An exception from the prohibition against discrimination is created when a hiring entity informs the domestic worker that the hiring entity has reason to believe the person receiving care has a documented behavioral condition that will result in discrimination and abusive conduct, and the domestic worker agrees to the employment. A hiring entity is considered an employer under the WLAD regardless of the number of employees the hiring entity employs.

There must be disclosure of information about the behavioral health needs of the individual being cared for, as well as tools and supports available to the domestic worker, including any applicable behavioral management plan. The disclosure should be reviewed regularly and must be updated when any changes in behavior occur.

It is unlawful for a hiring entity to interfere with, restrain, or deny the exercise of any right provided to a domestic worker. The hiring entity may not use a domestic worker's exercise of rights as a negative factor in any employment action, such as disciplining the domestic

worker, denying or delaying payment of wages, terminating or demoting the worker, or reducing the number of work hours the worker is scheduled to work.

There is a rebuttable presumption of retaliation if the hiring entity takes adverse action against a domestic worker within 90 days of the domestic worker exercising his or her rights. The hiring entity may rebut the presumption with clear and convincing evidence that the adverse action was taken for a permissible purpose.

A domestic worker may also bring a civil action for any violation of the worker's rights.

Work Group.

The Office of the Attorney General (AGO) must administer a work group on domestic workers, which must make recommendations on:

- a structure for a domestic workers' standards board whose scope and authority include training on labor laws, benefits, protections, safety standards, accreditation, fair scheduling practices, and other issues;
- access to benefits, including paid sick leave and state industrial insurance; and
- the possible role of intermediary nonprofit organizations that make referrals for domestic workers and provide assistance.

The work group must consist of at least one representative from each of the following:

- directly impacted domestic workers employed in private homes;
- unions, work centers, or intermediary nonprofit organizations that assist or refer directly impacted domestic workers;
- hiring entities who directly employ single domestic workers in private homes;
- an organization that educates and organizes household hiring entities;
- at least two members of the Department of Labor and Industries (L&I) in an ex officio capacity;
- the Department of Social and Health Services;
- an organization representing the Area Agencies on Aging;
- an organization representing retired persons;
- the Office of the Governor; and
- the AGO.

The Governor must appoint members to the work group no later than July 1, 2020, and the work group must report its findings to the Office of the Governor, the AGO, and the appropriate committees of the Legislature by April 1, 2021.

Miscellaneous.

The AGO must develop model disclosure statements describing a hiring entity's obligations related to domestic workers and a model written agreement describing actions that are prohibited by a hiring entity and describing domestic workers' rights.

Applicable federal, state, and local laws that are more favorable to domestic workers are not affected and still apply to domestic workers.

Definitions for various terms are provided.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment:

- modifies the definition of "domestic worker" to: (1) exclude au pairs and food delivery service workers; and (2) exclude individuals providing services to family members when: the family members have mutually agreed that care is provided gratuitously; the person providing services does not provide domestic services in the person's ordinary course of business; there is no expectation of consistent and regular payment; the person is providing services less than 15 hours per week; or the services are irregular, uncertain, and incidental in nature and duration or different in nature from the type of paid work the person is customarily engage in;
- modifies the definition of "hiring entity" to exclude certain licensed adult family homes, assisted living facilities, enhanced services facilities, long-term care facilities, and other entities providing state services;
- modifies provisions related to discrimination by: (1) amending the definition of "discrimination;" (2) removing the provision exempting certain conduct from action under the Washington Law Against Discrimination when the behavior results from a cognitive impairment of the recipient of services; (3) adding a definition of "challenging behavior;" (4) requiring disclosure of challenging behavior; (5) exempting challenging behavior from what constitutes discrimination; and (6) providing that the exceptions to discrimination do not relieve a hiring entity from liability under the act nor is the agreement to continue employment considered consent to workplace violence;
- prohibits a hiring entity from requiring or requesting any written agreement that waives a domestic worker's rights or contains noncompete or nondisclosure provisions;
- removes the provision creating a private cause of action;
- modifies and clarifies prohibited adverse actions against domestic workers;
- modifies the work group regarding recommendations and requires the work group to include a nanny, a worker outside of child care, a current or former au pair, and organizations representing au pairs and persons with disabilities; and
- removes the provision regarding a state agency's liability if the agency directly interfered with a domestic worker's rights.

Appropriation: None.

Fiscal Note: Available.

Effective Date: This bill takes effect July 1, 2021, except for section 10, relating to establishing the work group, which takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Labor & Workplace Standards):

(In support) Domestic work has a racial history and many house cleaners and nannies are women of color. Traditionally, many labor laws, such as minimum wage, were not available for domestic service work. This bill helps right some historic wrongs. When many of the labor laws were passed, significant portions of the work force were excluded. Many workers

have been exploited through the nature of the work and the worker's immigration status. The bill creates best practices for employers whether the worker is hired through an agency or by an individual. The bill clearly defines what retaliation looks like and requires written agreements that will help with clarity. It allows consumers to make informed choices. Domestic workers experience wage theft, having to work excessive hours, and sexual harassment. The bill will allow domestic workers to enjoy standards that all other employees in the state enjoy. They currently lack legal protection and are excluded from the WLAD. Au pair companies are just like any other employer and should be included. The economy depends on these workers. Domestic service work allows two-parent households to work outside the home.

(Opposed) Au pairs should be excluded from the bill. Host families of au pairs pay much higher than minimum wages when you total the cost of housing, time off, and other benefits the families give au pairs. The au pair program is a cultural exchange program and the au pairs become part of the family. This bill would raise the cost of the au pair program to the point that it will not be accessible. New York's domestic worker bill exempts au pairs. Au pairs are not responsible for paying rent or paying for food. Host families need to follow all the federal laws around au pair programs.

(Other) There are potential unintended consequences of this bill for situations when one family member compensates another family member for personal care. Family care givers will be negatively impacted. This bill is meant to protect workers who do not have protections already, and the au pair industry is already regulated and limited under federal law. This bill will increase the existing problem of child care deserts.

Staff Summary of Public Testimony (Appropriations):

(In support) This bill will help workers, who are vulnerable and often working alone and in private residences, access workplace protections against harassment and discrimination. A coalition of workers and employers support this bill. The version passed out of policy committee removes many of the wage and hour provisions that would have required enforcement by the L&I.

The bill does not replace any protections for au pairs that currently exist at the federal level. All workers in the state would be able to file complaints if their employer has demonstrated discriminatory or harassing behavior.

(Opposed) None.

(Other) Individuals who are part of the au pair program are very satisfied with their experience. Au pairs are regulated under the State Department at the federal level, do not stay in the United States for an extended period of time, and receive more protections and benefits than the bill would provide. The relationship between au pairs and host families is unique, and host families are subject to federal inspections, audits, and regulations. Au pairs can report concerns directly to the State Department, not au pair agencies. The proposed worker protections are duplicative of federal protections and enforcement mechanisms. Changes to the au pair program should be done at the federal level. While the substitute bill

removes provisions that caused concern for the au pair and host family communities, further clarification is needed.

There is language in the substitute bill that is problematic around serving aging clients or clients with disabilities. The language links certain diagnoses such as dementia to harassing behavior and abusive conduct, and may discriminate against people with disabilities. Reframing these provisions as "challenging behaviors" rather than a specific diagnosis would avoid stereotyping. There should also be privacy protections for people with disabilities who may be assisted by domestic workers.

Persons Testifying (Labor & Workplace Standards): (In support) Representative Stonier, prime sponsor; Krista Hanson; Doris Garcia; Leila Reynolds; Jordan Goldwarg; Kim England; Andrew Kashyap, Legal Voice; April Sims, Washington State Labor Council; Caitlyn Jekel, Office of the Governor; Yasmin Trudeau, Office of the Attorney General; Steve Hooper; Eltebina Hauser; Martha Barrientos; Barb deMichelle; Adriana Cazorla; Emily Dills; and Enriqueta Vega.

(Opposed) Jill Sullivan; Daya Fields; Kayla Van Blerk; and Aimee Foord.

(Other) Doug Shadel, American Association of Retired Persons Washington; Christy Woodruff; Noah Reandeau and Natalie Jordan, Cultural Care Au Pair; Emily Ascolese; Michel Proff; Tri Le; Maggie Clark; Laure Gallagher; Camille Rouxel; Jim Simmons; Kate White Tudor, Washington Association of Area Agencies on Aging; Jenna Andersen; and Michael Kelly.

Persons Testifying (Appropriations): (In support) Yasmin Trudeau, Office of the Attorney General; and Caitlyn Jekel, Office of the Governor.

(Other) Kate White Tudor, Washington Association of Area Agencies on Aging; Kimberly Van Cleave Michaels, Au Pair in America; Michael Kelly, Au Pair Allies; and Jim Simmons.

Persons Signed In To Testify But Not Testifying (Labor & Workplace Standards): Kimberly Van Cleave Michaels; Theresa Magruder; Carol Perry; and Erica Frank.

Persons Signed In To Testify But Not Testifying (Appropriations): None.