

# SENATE BILL REPORT

## SHB 2511

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As of February 26, 2020

**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:** Passed House: 2/18/20, 59-39.

**Committee Activity:** Labor & Commerce: 2/25/20.

### Brief Summary of Bill

- Prohibits retaliation against a domestic worker.
- Requires the Attorney's General's Office to develop a model disclosure statement and written agreement.
- Establishes a workgroup on domestic worker issues.

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### SENATE COMMITTEE ON LABOR & COMMERCE

**Staff:** Susan Jones (786-7404)

**Background:** Labor Laws. Several laws address employment standards. The Minimum Wage Act (MWA) sets forth minimum wage and overtime requirements. The Industrial Welfare Act deals with wages, hours, and working conditions. The Wage Payment Act provides for administrative or court action to collect wages under the MWA and other wage laws. It is unlawful to make certain deductions from wages and to fail to pay wages. Under the MWA, it is a gross misdemeanor for an employer to discriminate against an employee because the employee complained to the employer or the Department of Labor and Industries (L&I) that the MWA has been violated, or because the employee was involved in a proceeding related to the MWA.

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*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.*

Washington Law Against Discrimination. The Washington Law Against Discrimination (WLAD) prohibit discrimination in employment based on race, creed, color, national origin, sex, marital status, age, disability, retaliation, sexual orientation, gender identity, honorably discharged veteran or military status, or use of a trained dog guide or service animal by a person with a disability. WLAD is administered by the Washington State Human Rights Commission (HRC). The HRC investigates complaints alleging unfair practices in violation of the WLAD. If the HRC finds there is reasonable cause to believe discrimination has occurred, it must first try to eliminate the unfair practice via conference and conciliation. If the parties do not reach an agreement, the HRC must refer the matter to an administrative judge for a determination. Any person deeming himself or herself injured by any act in violation of WLAD may file a civil action in a court to enjoin further violations, or to recover the actual damages sustained by the person, or both, together with the cost of suit including reasonable attorneys' fees or any other appropriate remedy authorized by WLAD or certain other federal laws.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (Proposed Striking Amendment):** Certain Actions by Hiring Entity Prohibited. A hiring entity that employs a domestic worker may not:

- request possession of the worker's personal effects, including any legal and identification documents;
- engage in any form of discrimination or subject the worker to a hostile work environment;
- take adverse action against a domestic worker for the exercise of rights, including denying use of the rights under the act; denying or delaying payment; terminating or demoting the worker; reducing hours or pay; threatening action based on immigration status;
- monitor or record bathroom activities, private living quarters, dressing or changing areas;
- monitor, record, or interfere with the private communications of a domestic worker;
- communicate to a person exercising protected rights, the intent to inform about the worker's citizenship or immigration status to authorities; or
- take any adverse action against a domestic worker for exercising certain rights.
- requiring or requesting a written agreement containing waivers, noncompetes, nondisclosure, or nondisparagement inhibiting a worker's rights or ability to seek employment.

A domestic worker is be entitled to all the rights available under WLAD. It is not discrimination when the alleged discrimination relates to challenging behavior of a hiring entity or the exercise of gender or religious preferences in hiring related to the care for a child. A disclosure is required regarding challenging behavior and relevant behavioral health needs. The exceptions to discrimination and hostile work environment do not relieve a hiring entity from liability for assault or workplace violence or allow an agreement to consent to those actions.

Adverse action is defined. There is a rebuttable presumption of retaliation if adverse action is taken within 90 days of the worker's exercise of rights, except with certain seasonal employment, the presumption applies if worker is not rehired at the next opportunity for

work in the same position. The employer may rebut the presumption with clear and convincing evidence that the adverse action was taken for a permissible purpose.

If there are multiple hiring entities, the entities are subject to joint liability as well as concurrent fines and penalties.

More Favorable Laws Apply. Any applicable federal, state, or local law or ordinance, or any rule or regulation, which is more favorable is not be affected.

Attorney General's Model Disclosure and Agreement. The Attorney General's Office (AGO) must develop and make available a model disclosure statement describing a hiring entity's obligations and domestic worker's rights, in at least eight of the most commonly spoken languages in Washington State, and a model written employment agreement.

Work Group. A work group on domestic workers administered by the AGO is formed to make recommendations on:

- a structure for an ongoing domestic worker standards board;
- methods to make industrial insurance available for domestic workers; to increase access to the sick leave and paid family and medical leave;
- the role of intermediary nonprofit organizations that assists and refer impacted domestic workers in increasing access to paid sick leave and paid family and medical leave; and
- wage and hour models.

The work group must also make recommendations to L&I on certain matters. The work group must include certain listed membership. The work group must report its findings and recommendations to the Governor's Office, the AGO, and the Legislature committees by April 1, 2021.

Definitions. Domestic worker includes hourly and salaried employees who are paid wages and includes any worker who (1) works for one or more hiring entity; and (2) is an individual who works in residences as a nanny, house cleaner, home care worker, cook, gardener, or household manager, or for any domestic service purpose including but not limited to: caring for a child; providing support services for a person who is sick, convalescing, elderly, or a person with a disability; providing housekeeping or house cleaning services; cooking; providing food or butler services; parking cars; cleaning laundry; gardening; or working as a household manager. Domestic worker does not include: (1) babysitting on a casual labor basis; (2) any individual employed in casual labor in or about a private home, unless in the course of the hiring entity's trade, business, or profession; (3) individual providers; (4) certain house sitting, pet sitting, food delivery services, and dog walking duties that do not involve domestic service; (5) persons providing services for family member service providers; when services are gratuitous; when the services are not in the worker's ordinary course of business; when there is no agreement or expectation of consistent or regular pay; or the services are irregular, uncertain, and incidental in nature and duration or different from the type of work the person customarily does.

Domestic service means household services for household members or their guests in private homes, including the maintenance of private homes or their premises.

Hiring entity means any employer employing a domestic worker, as well as any individual and entities, which pays wages, directly or indirectly, for the services of a domestic worker. It does not include state agencies; certain home care agencies; certain licensed adult family homes; licensed assisted living, enhanced services, or long-term care facilities; DSHS; or entities providing state services. Hiring entity is added to the definition of employer under WLAD.

Casual labor refers to work that is irregular, uncertain, and incidental in nature and duration and is different in nature from the type of paid work in which the worker is customarily engaged in.

Discrimination has the same meaning as WLAD.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** Yes.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Proposed Striking Amendment:** PRO: Domestic workers should have the same protections as other workers. There may be some overlap with federal law on au pairs. We will be looking at these issues. Domestic workers need protections against discrimination and harassment. These are the most basic rights. This strengthens the rights of domestic workers. Domestic workers bring economic value to the economy. They need bargaining power.

This is a priority for the Governor's Office. There was concern about live-in and family workers. The work group will address this over the interim along with additional rights and benefits for domestic workers.

Examples were given of harassment where a person was requested to work unclothed; a homeowner was naked; a worker was told she was there for sex work, not house work.

Au pairs work 45 hours a week, clean, and are asked to do work beyond care. Au pairs live in the home and are especially vulnerable to harassment. There are many kinds of au pair experiences. Some may be stuck in a hostile environment. Au pairs need a clear pathway to where to turn if there is a problem. If they go to the State Department, they may get their visas revoked. Agencies are part of the system. Au pairs are students and we should protect the student and vulnerable population.

OTHER: Au pairs are already regulated by federal law and should not be regulated by the state. The public should have had time to weigh in. This should not link one type of federal program with another, H-2A. The bill protects nannies but inclusion of au pairs is not needed. Host families should be able to determine who is in their home. What it an au pair

makes inappropriate or discriminatory comments. The Legislature needs to see the difference between au pairs and nannies.

There is a rematch program and au pairs do not need additional protections. Au pairs have counselors available to them. They usually get a response within one hour. They may be housed with the counselor or other host families until they are rematched. There are two 1-800 numbers at the State Department. Most get rematched.

Why not include babysitters? They vary in age and roles. This brings up contradictions and inconsistencies.

We appreciate the work of stakeholders and the changes related to family members.

**Persons Testifying:** PRO: Representative Monica Jurado Stonier, Prime Sponsor; Adriana Cazorla; Emily Dills, Nanny Network; Etelbina Hauser, citizen; Kim England, University of Washington Department of Labor Studies; Doris Garcia, Fair Work Center; Denise Hearn; Yasmin Trudeau, Attorney General's Office; Caitlyn Jekel, Governor's Office; Matthew Sutherland, Vice-President of Legislative Affairs, Graduate and Professional Student Association.

OTHER: Elisabeth Guthrie, citizen; Leslie Rathburn, citizen; Geoffrey Beers, citizen; Roman Pohorecki, citizen; Amanda Goodsell, citizen; Camille Rouxel, citizen; Kyle Hall, citizen; Melinda Leal, citizen; Melisa Barbera, Au Pair Allies; Noah Reandeu, Cultural Care; Cathy MacCaul, AARP.

**Persons Signed In To Testify But Not Testifying:** No one.