

SENATE BILL REPORT

SB 6247

As Reported by Senate Committee On:
Labor & Commerce, February 6, 2020

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

Brief Description: Providing labor protections for domestic workers.

Sponsors: Senators Saldaña, Keiser, Conway, Nguyen, Randall, Darneille, Das, Hasegawa, Kuderer, Pedersen, Stanford, Wilson, C., Frockt and Hunt; by request of Attorney General and Governor Inslee.

Brief History:

Committee Activity: Labor & Commerce: 1/27/20, 2/06/20 [DPS, DNP, w/oRec].

Brief Summary of First Substitute 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.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 6247 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Stanford and Wellman.

Minority Report: Do not pass.

Signed by Senators King, Ranking Member; Schoesler and Walsh.

Minority Report: That it be referred without recommendation.

Signed by Senator Braun.

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

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.

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.

Under the MWA, employee does not include any individual employed in casual labor in or about a private home, unless performed in the course of the employer's trade, business, or profession.

Meal and Rest Breaks. L&I establishes requirements for meal and rest breaks for employees. Employees working over five hours must be allowed to take a 30-minute meal period. Meal periods may be unpaid if the employee is completely relieved from duties during the meal period. Meal periods must be paid if the employee must remain on the premises and act in the interest of the employer. An employee who is required to remain on the premises and act in the interest of the employer may have their meal period interrupted to perform tasks, but once the task is complete, the meal period continues until the employee receives 30 minutes total.

Regarding rest periods, employees must receive a paid rest period of at least ten minutes for each four-hour period worked. The rest period must be allowed no later than the end of the third hour worked. Employees need not be given an uninterrupted ten-minute break if the nature of the work allows for intermittent rest periods equal to ten minutes. L&I's administrative policy describes intermittent rest periods as intervals of short duration in which employees are allowed to rest, and can include personal activities such as making personal telephone calls and attending to personal business. In certain circumstances, employers may require employees to remain on-call during their paid rest breaks. Employees may remain on-call during rest periods, but if they are called to duty, the break becomes an intermittent rest period.

Variances. An employer may apply to L&I for a variance from any rule establishing hours or conditions of labor. L&I must issue a variance if the director determines that the employer has shown good cause for the lack of compliance.

Work Hours of Domestic Employees. No household or domestic employee may be employed by any person for a longer period than 60 hours in any one week. Employed time shall include minutes or hours when the employee has to remain subject to the call of the employer and when the employee is not free to follow his or her inclinations. In cases of emergency, the employee may be employed for a longer period than 60 hours. Any employer violating this law is guilty of a misdemeanor.

Summary of Bill (First Substitute): Prohibition. 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 discriminatory harassment;

- terminate a domestic worker, retaliate against a domestic worker, reduce the pay of a domestic worker, or refuse to offer future assignments to a domestic worker for requesting reassignment due to any alleged discrimination or abusive behavior;
- unreasonably interfere with the worker's work by creating an intimidating, hostile, or offensive work environment;
- 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.

A domestic worker who files a complaint or brings suit alleging discrimination in violation of the law on unfair practices of employers under the Washington Law Against Discrimination (WLAD) is entitled to all the procedural and substantive rights available under WLAD except when:

- the hiring entity is a person who is elderly or has a disability that results in discriminatory or harassing behaviors; and
- a hiring entity informs a domestic worker, providing home care or personal care services to a person who has a documented behavioral condition, that the hiring entity has reason to believe that those behaviors will result in discrimination and abusive conduct likely occurring in or around the client's home prior to assigning the employee to that client and throughout the duration of service; and
- the behaviors can be shown as directly resulting from a diagnosed and documented cognitive impairment; and
- the domestic worker voluntarily agrees to initiate or continue the employment relationship; or
- a hiring entity receiving personal care services refuses to hire an employee based on gender preferences.

Except in certain circumstances, there must be a disclosure of information about the behavioral health needs, as well as tools and supports available to the worker, including any applicable behavior management plan.

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

Retaliation. A hiring entity may not:

- interfere with, restrain, or deny the exercise of these right, including using the exercise of rights as a negative factor in any employment action such as an evaluation, promotion, or termination, or discipline;
- communicate to a person exercising these rights the intent to inform a government agency of the worker's or family members suspected citizenship or immigration status; or
- take any adverse action against a domestic worker. 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.

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.

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

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 the paid sick leave and industrial insurance available for domestic workers and to increase access to paid family and medical leave; and
- the possible role of intermediary nonprofit organizations that make referrals for domestic workers and provide assistance

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 Attorney General's office, 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) persons providing services or supports for a family member on a casual labor basis; (3) 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; (4) individual providers; (5) certain house sitting, pet sitting, and dog walking duties that do not involve domestic service; (6) persons providing services to another family member who is sick, convalescing, elderly, or a disabled person, where the family members do not intend to establish an employer-employee relationship. An employer-employee relationship does not exist under such circumstances when the family members have mutually agreed that care is provided gratuitously; or the family member provides services for fewer than 15 hours per week and the family member providing care does not provide domestic services in the person's ordinary course of business.

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 or home care agencies in certain circumstances. 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.

Discriminatory harassment is unwelcome conduct that is based on a statutory protected class where the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive, and includes sexual harassment.

EFFECT OF CHANGES MADE BY LABOR & COMMERCE COMMITTEE (First Substitute):

- Removes provisions regarding minimum wage, overtime and breaks, cooking food, requiring written agreements, notification for termination of employment, and record keeping.
- Expands actions that are prohibited by the hiring entity, including retaliating, reducing the pay, or refusing to offer future assignments for requesting reassignment due to any alleged discrimination or abusive behavior.
- Entitles a domestic worker who files a complaint or suit alleging discrimination to all the procedural and substantive rights available under WLAD and modifies the definition of employer in WLAD. There are exceptions and a disclosure of information about a person's behavioral health needs is required.
- Removes provisions allowing L&I to investigate complaints, assess penalties, related to appeals, worker's filing complaints, and L&I pursuing wage claims.
- Modifies items the work group may make recommendations on and the work group's membership.
- Removes definitions.
- Modifies definitions for family member, hiring entity, domestic service, domestic worker, including excluding family member providing services on a casual labor basis or where they do not intend to create an employer-employee relationship, including when care is provided gratuitously or for less than 15 hours per week.
- Adds a definition for discriminatory harassment.
- Modifies the intent section.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This is a bill about workers that are often considered invisible but do critical work that is highly valued by families across our state. They provide childcare and domestic work so that working moms can work. The work is precarious and isolated and sometimes performed by workers who are particularly vulnerable, largely immigrant women. These workers have not been afforded the basic working privilege that we assume are provided to all working people. This bill seeks to right the wrong. It provides for written agreements so that hiring entities and workers know what is expected of them. This a community-driven and collaborative effort. The workers need a bill of rights because although there are many great employers, there is always that one who is not.

Workers should have the basic rights, minimum wage, overtime, and freedom from discrimination and harassment. They often cannot afford basic living expenses. Examples were given of poor conditions, threats of calls to immigration, failure to pay wages, working too many hours for the wages, and sexual harassment. Workers may be exposed to cleaning products. Disabled people rely on these workers and need them to have rest breaks to help them.

This bill is similar to laws that passed in nine states and two cities across the U.S. This would repeal current unjust exclusions from workers' compensation and WLAD. When many labor laws were passed, domestic workers were left out, many who are women and people of color, particularly black women. In 2018, Seattle has passed a similar regulation and the families have welcomed the change because they believe it will increase the quality of care in their homes. They know what is expected of them. Employers are seeking guidance.

Recent court cases related to Au Pairs have guaranteed that they are covered under all state labor laws. Au Pairs often work overtime for no extra pay. The Au Pair companies receive \$166 per week.

CON: We are concerned for aging people and how it might impact frail and impaired seniors who have help. Examples were given of family members helping and given a little money. This bill would require record keeping requirements and puts them at risk of not getting that care. There are unintended consequences where one family member is caring for another family member in informal caregiving situations. They have not been adequately studied.

OTHER: Domestic workers need this but there are concerns about including Au Pairs who are regulated by the federal government U.S. Department of States 'Visitor Exchange Program. They are not here to get or keep a childcare job. They are on a cultural exchange with an educational component. They receive more protections and benefits than other workers. They may negotiate their own wages. This will increase costs to many host families with no added benefit. The host family provides all their costs paid, including room, board, cell phone, travel, school cost, sick pay, health care, vacation, and more. They get a stipend which is not used for living expenses. They have a consultant that provides guidance

and help. They are treated like part of the family. It would be a shame to restrict this program to the very wealthy families.

Persons Testifying: PRO: Senator Rebecca Saldaña, Prime Sponsor; Elyssa Morley, SEIU; Adriana Cazorla, citizen; Emily Dills, citizen; Enriqueta Vega, citizen; Barb DeMichelle, citizen; Etelbina Hauser, citizen; Doris Garcia, citizen; Krista Hanson, Hand in Hand; Leila Reynolds, citizen; Jordan Goldwarg, citizen; Yasmin Trudeau, Attorney Generals Office; Caitlyn Jekel, Governor's Office; April Sims, Washington State Labor Council; Andrew Kashyap, Senior Attorney, Legal Voice.

CON: Kayla Van Blerk, citizen.

OTHER: Noah Reandeu, Cultural Care; Natalie Jordan, Cultural Care; Crystal Leaver, citizen; Emily Ascolese, citizen; Tri Le; Michel "Allie" Prof; Maggie Clark; Laure Gallagher, citizen; Camille Rouxel, citizen; Kimberly Van Cleave Michaels, Western Field Representative, Au Pair In America; Doug Shadel, AARP; Kate White Tudor, Washington Association of Area Agencies on Aging.

Persons Signed In To Testify But Not Testifying: PRO: Steven Hooper, citizen; Martha Barrientos, citizen; Edy Dominguez, citizen.

CON: Aimee Foord, citizen; Daya Fields, citizen; Jill Sullivan, citizen; Jill Henry, citizen; Andrea Pando Lujan, citizen.

OTHER: Theresa Magruder, Counselor, Au Pair in America Community; Jim Simmons, Au Pair host father; Carol Perry, Au Pair in America; Melinda Leal, Community Counselor, Au Pair in America; Erica Frank, host mother; Stephanie Glenisky, host parent; Jenna Andersen, citizen; Michael Kelly, citizen; Kathleen Lonergan, citizen; Rachel Hagenson, citizen; Cortney Lease, citizen.