

Department of Employment Services Oversight Hearing
Committee on Executive Administration and Labor
March 9, 2023

Sophia Balemian-Spencer
Women's Law and Public Policy Fellow
Washington Lawyers' Committee for Civil Rights and Urban Affairs

The Washington Lawyers' Committee for Civil Rights and Urban Affairs (the "Committee") enthusiastically supported the Domestic Worker Employment Rights Amendment Act of 2022 (the "Act"). The removal of statutory exclusions for domestic workers in D.C. laws will rectify some of the legacy that intentionally excluded Black people from worker protections. The Act furthers racial justice by protecting more than 47,000 domestic workers in the District of Columbia metro area from unscrupulous employers and discrimination in the workplace. The passage of this Act is a historic victory, propelled by the longtime efforts of D.C. domestic workers, the National Domestic Workers' Alliance, First Shift Justice Center, and many other groups whom we are proud to call partners.

Now that the Act has passed, the Committee urges the D.C. Council to ensure the Department of Employment Services ("DOES") works toward its careful and successful implementation. The Act will provide essential funding for education, outreach, and other support services that will play a crucial role in helping domestic workers know their rights and connect with legal services. DOES, the entity tasked with the largest role and responsibility in implementing the new law, will be critical to its success.

At the Committee, our mission is to strive for equity, and we, in particular, recognize the legacy of race discrimination in upholding unequal systems. We litigate on behalf of workers, especially low-income workers of color, and we run a Workers' Rights Clinic serving D.C. area residents. Intersectional issues are at the core of the Committee's work, and domestic work is an industry that relies largely on the labor of women of color. Domestic workers currently constitute a small portion of workers that seek our legal advice. It is the hope of the Committee that, in the event that any domestic workers experience violations of the Act in the future, our Clinic can also be a resource for these workers regarding their newly-gained legal rights.

I. DOES is Responsible for Providing Template Contracts in Preferred Languages and an Easily Accessible Website

DOES is responsible for providing template contracts to be used by domestic workers and their employers. D.C. Domestic Worker Employment Rights Amendment Act of 2022, D.C. Act 24-77 § 103(a)(1). The Act requires hiring entities, such as companies or families employing domestic workers, to execute service contracts with domestic workers, no later than their first day of work. *Id.* § 102(a). The hiring entity must also make reasonable efforts to provide the contract in the domestic workers' preferred language. *Id.* § 102(d)(1)(A). If a hiring entity violates the Act, domestic workers can either file an administrative complaint with the Mayor or a civil action against the hiring entity. *Id.* § 104(d)(1). In these cases, to determine if a hiring entity has made

reasonable efforts, a factfinder shall consider whether there were template contracts available. *Id.* § 102(d)(2).

Contract templates are crucial to the success of the Act because domestic work, by its nature, is a job in which undefined or unrealistic expectations can lead to the exploitation of workers. A contract template may include the worker's job responsibilities, hours, pay, leave, and benefits information. Contracts create recourse for those who experience wage theft and are instructed to perform duties outside the scope of their work agreement. They create accountability, transparency, and predictability. With a contract, domestic workers can plan for themselves and their families because they know their hours, duties, and pay.

The Committee operates weekly Workers' Rights Clinics. In the clinics we have observed how the absence of a written contract can facilitate exploitation of workers. One domestic worker who sought legal advice at our Clinic worked as a live-in caregiver for an elderly man. She is an immigrant and a native Spanish speaker. She and the employer, an agent of the elderly man who lived abroad, made only a verbal agreement as to her responsibilities and rights. She verbally agreed to be paid \$600 per week with unspecified hours, in addition to receiving room and board. Her duties included, but were not limited to, taking the elderly man to appointments, making him food, taking him on walks, purchasing his food, and cleaning his home. She worked seven days per week, from the moment the man woke up until he went to sleep. She was required to assist him throughout the night for bathroom breaks, which occurred two to three times every night. Essentially, she was either on the job, or on-call, 24 hours a day, seven days a week.

The employer supervised her via telephone during the morning, afternoon, and night and called her at least twice per day. She was never able to take holiday or vacation time, which prevented her from visiting family and friends, going to classes, going to the doctor, and spending time alone. Even after leaving this position, she is still owed two outstanding paychecks and compensation for the additional hours she worked. While a written contract in her native Spanish language may not have been able to prevent every workplace violation experienced by this domestic worker, its existence would have more clearly defined her right to leave time and overtime pay, and put the employer on notice of these legal requirements.

Under the Act, DOES must provide template contracts in multiple languages and have them available electronically. D.C. Act 24-77 § 103(a)(2). This includes creating a website that contains the templates, guides on how to execute the contracts, and answers to frequently asked questions. *Id.* § 103(c)(1). The website should be easily accessible for those with low technology skills and who do not speak English. This means translations beyond Google Translate that are accurate and complete. *See* D.C. Language Access Act §§ 2-1931-37. DOES must also notify hiring entities who violate these new contract provisions and enforce the provisions by collecting administrative penalties from them and, in some cases, attempt to mediate the situation. D.C. Act 24-77 § 104.

Furthermore, contracts are also beneficial to employers. Many employers in this area want to do the right thing. Providing them with notice of minimum legal requirements as well as a good sample contract can start them on this path.

Considering the importance of these contracts, we encourage the D.C. Council to ask DOES: what is the agency's timeline for creating these templates? How will DOES ensure that domestic workers and employers are aware of the new requirements and how to access and use the template contracts?

We hope that the D.C. Council encourages DOES to work collaboratively with organizations that engage with domestic workers as well organizations that work with employers as a way to spread this information to both communities.

II. DOES Must Protect Domestic Workers' Immigration Status When They Are Accessing These New Rights

The Act also aims to reduce the collection, retention, and disclosure of a domestic workers' immigration status. D.C. Act 24-77 § 105(3). The Mayor or Attorney General may not require a domestic worker to disclose their immigration status to enforce their rights under the Act. *Id.* § 104(b)(3).

At our Clinic, we often encounter workers who are immigrants with varying immigration statuses. This past year, we have counseled approximately ten workers who expressed fears of retaliation if they raised concerns about their employer's actions. Through our experience working with the immigrant worker community, we know that to be able to trust administrative systems, workers need to feel confident that sensitive information, such as immigration status, will be handled appropriately—and not shared.

To ensure this, DOES is responsible for writing regulations on how to implement these immigration status protections. The purpose is to keep immigrant domestic workers safe when accessing their rights. These regulations should specify what precautions agencies should take to protect domestic workers' immigration status. For example, DOES may consider not collecting workers' immigration status, but if it needs to be collected, never disclosing it to other parties.

We encourage the D.C. Council to ask DOES: when it will start writing these regulations? What are the ways it plans to protect a domestic workers' immigration status when they are attempting to enforcing their rights under the Act?

III. DOES Must Prioritize Language Access When Implementing the Act

More than one third of domestic workers are born outside of the United States.¹ Thus, it is imperative that all aspects of implementation of the Act be accessible to workers in their preferred language, including the creation of template contracts in many languages, and accurate translations on DOES' website.

¹ National Domestic Workers Alliance, *Press Release: National Domestic Workers Alliance Applauds DHS Decision to Protect Immigrant Workers in Pending Labor Investigation* (Jan. 13, 2022), <https://www.domesticworkers.org/press-releases/national-domestic-workers-alliance-applauds-dhs-decision-to-protect-immigrant-workers-in-pending-labor-investigations/>.

To prioritize language access, we encourage the D.C. Council to ensure DOES adheres to the D.C. Language Access Act. D.C. Code §§ 2-1931-37. The D.C. Language Access Act requires DOES to provide oral language services to D.C. residents with limited or no-English proficiency who seek to access or participate in DOES services, programs, or activities. *Id.* § 2-1932(a). Under the D.C. Language Access Act, DOES is also required to provide translations of vital documents in most situations. *Id.* § 2-1933(a).

Contracts in a domestic worker's preferred language are essential to ensure domestic workers know their new rights under the Act. We know from experience, as well as from partner organizations, that many non-English speaking D.C. residents are unable to access important D.C. government resources because they are not consistently, reliably, or correctly translated into their preferred language. For example, Legal Aid of the District of Columbia has or will submit testimony that DOES fails to properly serve English language learners in the unemployment insurance system. Through the services we provide at our Clinic, we know how important it is for workers to be able to access justice in their own language.

We encourage the D.C. Council to ensure DOES keeps issues of language access at the top of their agenda, and to incorporate best practices when implementing the Act. This is essential to ensure domestic workers have access to their new rights and know how to use them in a way they can fully comprehend.

IV. Conclusion

The Washington Lawyers' Committee looks forward to DOES' involvement in the implementation of the Act and we echo our colleagues who are asking the D.C. Council questions about timelines and tools. Thank you for the opportunity to provide testimony on this agency's important role.