



Employment Protections for Domestic Workers: An Overview of Federal Law¹

The National Domestic Workers Alliance and our affiliate organizations around the country organize to win respect, recognition, and labor standards for the more than 2.5 million domestic workers in the United States. This overview of federal law related to domestic workers is a resource and a call to action. Domestic workers are by no means the only group of workers facing explicit or implicit exclusion from labor protections, and we build alliances with other excluded workers through the Excluded Workers Congress, described at the end of this document. We are indebted to the National Employment Law Project for their tireless work, including the research for this resource.

National Labor Relations Act: Excluded

The National Labor Relations Act (NLRA) protects the rights of employees to organize and bargain collectively – for example, to form a union and negotiate for better pay and other terms of employment. This law does not protect domestic workers. It states that it does not include any individual employed “in the domestic service of any family or person at his home.” 29 U.S.C. §152(3).

Title VII of the Civil Rights Act of 1964: Excluded

Title VII prohibits employment discrimination based on race, color, religion, sex and national origin. This includes both intentional discrimination and practices with unjustified discriminatory effects. However, Title VII only applies to employers with a relatively large number of workers, so most domestic workers are excluded from its coverage. For purposes of Title VII’s coverage, an “employer” is defined as “a person engaged in an industry affecting commerce

¹ This is an overview of some federal laws and is not a listing of comprehensive coverage for domestic workers. State laws may provide better protections for domestic workers.

who has fifteen or more employees for each working day in each of twenty or more calendar weeks” in the year. 42 U.S.C. §2000(e).

Occupational Safety and Health Act: Excluded

The Occupational Safety and Health Act (OSHA) sets minimum standards of health and safety guaranteed to workers, but it does not apply to the domestic work industry. This act states that its requirements do not apply to individuals who hire people to work in their homes for the purpose of providing services that are “commonly regarded as domestic household tasks, such as house cleaning, cooking, and caring for children.” 29 C.F.R. §1975.6.

Family and Medical Leave Act: Excluded

The Family and Medical Leave Act (FMLA) allows employees to take up to 12 weeks of unpaid leave, continuing any health insurance coverage they may have, due to health conditions, the birth or care of a new child, or certain issues relating to a family member’s military service. The FMLA only applies to large employers, so it does not cover domestic workers: it exempts employees at worksites with fewer than 50 employees, as long as the employer employs fewer than 50 employees within 75 miles of that worksite. Additionally, only employees who have worked for an employer for at least a year and for at least 1,250 hours in the past year are eligible for FMLA leave. 29 U.S.C. §2611.

Americans with Disabilities Act: Excluded

The Americans with Disabilities Act (ADA) prohibits employers from discriminating against people because of their disabilities, when they are otherwise qualified for their job. This prevents the employer from treating an employee with a disability less favorably, and requires them to provide reasonable accommodations to allow the employee to do their job. However, the ADA applies only to employers who have “15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year,” 42 U.S.C. §12111(5)(a), so it does not cover most domestic workers.

Age Discrimination in Employment Act: Excluded

The Age Discrimination in Employment Act (ADEA) prohibits employers from treating employees less favorably due to their age, forbidding age discrimination against people over 40 years old. This law applies only to employers who have “twenty or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.” 29 U.S.C. § 630(b). Because of this limitation, most domestic workers are not covered by the ADEA.

Social Security: Covered

Social Security provides benefits to workers when they reach old age or if they become disabled. This program generally applies to domestic workers: the Social Security Act specifies that it applies to “home worker[s] performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by such person which are required to be returned to such person or a person designated by him.” 42 U.S.C. §410(j)(3) (c). But, domestic work is excluded when performed by someone who is under age 18, when it is not his or her primary occupation; or under age 21 if working for his or her own parents in their house. 42 U.S.C. §410(a)(21); §410(a)(3)(B).

Fair Labor Standards Act: Covered (with exemptions)

The Fair Labor Standards Act (FLSA) protects workers by providing wage-and-hour standards that employers must follow, such as paying the federal minimum hourly wage and overtime. With some significant exceptions, most of these protections apply to domestic workers. (Although domestic workers were previously excluded entirely from the law, FLSA was amended to include them in 1974.) However, domestic workers who reside in an employer’s home are not covered by overtime law, though they are still covered by the federal minimum wage law. 29 U.S.C. § 213(b)(21). Additionally, domestic workers are not covered by minimum wage or overtime law if employed on a “casual basis” to provide “babysitting services.” 29 U.S.C. §213(a)(15)(however, babysitting is not deemed to be on a “casual basis” if the worker is employed by an employer or agency other than the family or household using their services, 29 C.F.R. 552.109(b), so they would not be exempt in that case).

Similarly, domestic workers are exempt from minimum wage and overtime if employed to provide “companionship services for individuals who (because of age or infirmity) are unable to care for themselves.” 29 U.S.C. §213(a)(15). Like the babysitting exemption, the companionship exemption dates back to the 1974 FLSA amendment, when it was originally intended as a narrow carve-out to the law’s coverage. Because the existing interpretation of this exemption is overly broad when applied to today’s home care services, the U.S. Department of Labor is considering new regulations to narrow its scope. The companionship exemption should be limited to workers who chiefly provide true companionship services (such as fellowship and protection) and should not include workers employed by agencies or other third parties.²

² See NELP, Fair Pay for Home Care Workers: Reforming the U.S. Department of Labor’s Companionship Regulations Under the Fair Labor Standards Act (2011).

FLSA also contains record-keeping requirements that employers must follow. These record-keeping requirements may be expanded to provide better protections for workers in the near future. Currently, employers of live-out domestic workers must keep basic employment records that include the hours worked each week, wages paid, weekly sums claimed by the employer for meals, lodging and other benefits (which the employer can subtract from wages), and overtime premiums. 29 U.S.C. §211(c); 215(a)(5); 29 CFR § 552.110(a). However, employers of live-in domestic workers are only required to maintain a copy of the agreement between the employer and employee about what the regular hours of work will be, 29 CFR § 552.102(b), and are not otherwise required to keep records of actual hours worked or pay received. No records are required for “casual babysitters.” *Id.* The U.S. Department of Labor is considering new record-keeping standards, which should require employers to keep fuller records for domestic workers (including live-in workers).

Unemployment Insurance: Covered

Unemployment insurance provides payments to covered workers who become unemployed. Federal law on unemployment insurance (the Federal Unemployment Tax Act³) applies to employers of domestic workers (those who provide “domestic service in a private home, local college club, or local chapter of a college fraternity or sorority”) who “paid wages in cash of \$1,000 or more for such service” during “any calendar quarter in the calendar year or the preceding calendar year.” 26 U.S.C. § 3306(4). This means that the employer is required to pay unemployment tax (this amount is paid by the employer, and not deducted from the employee’s wages). All states must meet this requirement.⁴ However, the amount of unemployment benefits that the worker can qualify for, if any, will depend on the worker’s weekly wage and length of employment, and this determination varies among states.⁵

³ Note that most employees pay both state and federal unemployment taxes; the Federal Unemployment Tax Act (FUTA) requires that the employer pay tax to the I.R.S., with the revenue used to help states provide unemployment benefits to workers. FUTA covers a share of the costs of administering unemployment insurance every state and pays one-half of the cost of extended unemployment benefits (during periods of high unemployment).

⁴ See U.S. Dept. of Labor, Comparison of State Unemployment Laws at 1-4 (in “Coverage”), available at <http://www.unemploymentinsurance.doleta.gov/unemploy/pdf/uilawcompar/2011/coverage.pdf>.

Excluded Workers Congress

The [Excluded Workers Congress](#) is a collaboration among working people who face exclusion from the protections of core U.S. labor laws, whether by design or by default, based on the industry or social sector in which they work. These sectors include farmworkers, domestic workers/direct care providers, day laborers, tipped minimum-wage workers such as restaurant workers, guestworkers, workers in right-to-work states (especially in the South), taxi drivers, workfare workers, and formerly incarcerated workers.

Race and immigration status lie at the core of many of these exclusions. Some of these workers are excluded through explicit policies: farmworkers and domestic workers are named as exceptions to the right to organize, while restaurant workers are defined as “tipped workers” and excluded from minimum wage laws. Taxi drivers are explicitly excluded from the legal definition of “employee” itself and thus excluded from any labor protections. Other workers are excluded from labor rights and protections through practice—either because existing laws are not enforced or because their precarious economic and legal status make it dangerous for them to claim even their guaranteed rights. But whether these exclusions are explicit or implicit, they undercut workers’ ability to organize.

These exclusions have developed out of the convergence of two social dynamics: (1) the historical legacy of racial exclusion that has been institutionalized in U.S. labor law, and (2) the impact of globalization, which has rendered much of current labor law structurally ineffective in addressing the changed dynamics of workplaces worldwide.

The Excluded Workers Congress aims to rebuild a workers movement in this country that can expand the right to organize to include these historically marginalized sectors and improve the working conditions of the most vulnerable workers and thus raise the floor for all workers.

5 *Id.*, in “Monetary Entitlement.”