

NATIONAL DOMESTIC WORKERS ALLIANCE

TOP MYTHS ABOUT THE AU PAIR PROGRAM

MYTH #1:

AU PAIRS COME TO THE U.S. JUST TO STUDY AND HAVE FUN.

FACT: Au Pairs work full time, providing live-in child care for up to 45 hours per week.¹ Au Pairs pay for the opportunity to come to the U.S. They typically pay program fees between \$1,500 and \$3,000 to sponsor agencies, as well as visa application fees to the U.S. Department of State.² For the educational component, au pairs take six semester hours of academic credit at a post-secondary institution.³ Host family employers contribute \$500 *maximum* to the cost of coursework—much less than the cost of a typical post-secondary course.⁴

MYTH #2:

AU PAIRS ARE NOT CONSIDERED EMPLOYEES.

FACT: The U.S. Department of State, U.S. Department of Labor, and courts agree that the au pair program includes an employment relationship.⁵ Au Pairs are employees because they provide child care.

MYTH #3:

AU PAIR HOST FAMILIES ARE NOT CONSIDERED EMPLOYERS.

FACT: Host families are employers of au pairs.⁶ The employment relationship is the same as if the family employed a live-in nanny who was a U.S. citizen, undocumented, or designee of some other immigration status.

¹ 22 C.F.R. § 62.31(j)(2).

² Centro de los Derechos del Migrante, Inc., et al., [Shortchanged: The Big Business behind the Low Wage J-1 Au Pair Program](#) (2018), at 7–8.

³ 22 C.F.R. § 62.31(a).

⁴ *Id.* § 62.31(k)(1).

⁵ *Capron v. Office of the Attorney General of Massachusetts*, 944 F.3d 9 (1st Cir. 2019); *Beltran v. InterExchange, Inc.*, 176 F. Supp. 3d 1066 (D. Colo. 2016); 22 C.F.R. § 62.31(j); Exchange Visitor Program, 62 Fed. Reg. 34632 (June 27, 1997); [Exchange Visitor Program](#), 60 Fed. Reg. 8547, 8550 (Feb. 15, 1995).

⁶ See *supra* note 5.

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MYTH #4:

AU PAIRS PROVIDE CHILD CARE, BUT THEY ARE MORE LIKE “PART OF THE FAMILY.”

FACT: Child care is work. Domestic work is real work. When we say that domestic workers are just “part of the family,” we continue the history of devaluing the work of Black women, women of color, and immigrants. During the pandemic, au pairs have continued to perform the essential work that makes all other work possible.

MYTH #5:

BECAUSE THE AU PAIR PROGRAM IS A FEDERAL PROGRAM, STATE LAWS DON’T NEED TO COVER AU PAIRS.

FACT: The au pair program lacks oversight, so au pairs deserve the same state law protections as other workers. The program is under the jurisdiction of the U.S. Department of State, but the Department fails to oversee the program in any meaningful way.⁷ A Government Accountability Project review found that the Department does not take action against sponsor agencies who fail to report exploitation and abuse. The Department has not sanctioned a sponsor agency in the last 15 years.⁸

MYTH #6:

AU PAIRS WHO FACE EXPLOITATION OR ABUSE CAN GET HELP FROM THEIR SPONSOR AGENCY, SO STATE LAWS DON’T NEED TO COVER AU PAIRS.

FACT: Sponsor agencies lobby against basic worker protections for au pairs and have enormous power over au pairs who complain. Sponsor agencies have lobbied in many states to carve out au pairs from worker protection bills.⁹ When au pairs raise concerns about their working conditions, sponsor agencies favor the host family employer.¹⁰ There is a significant potential for retaliation, because sponsor agencies control an au pair’s visa and can simply fire her—pushing her into undocumented status overnight.¹¹

⁷ See generally *Shortchanged*, *supra* note 2, at 13–20.

⁸ Zack Kopplin, *Au Pairs Come to the U.S. Seeking Cultural Exchange, But the State Department Often Fails to Protect Them*, Huffington Post (July 31, 2020), https://www.huffpost.com/entry/au-pair-america-cultural-care_n_5f204d6ac5b69fd473126c61.

⁹ *Shortchanged*, *supra* note 2, at 15–18.

¹⁰ *Id.* at 18–19.

¹¹ “In most complaints, the companies put the onus on the au pair, giving them two weeks to find a new family if a mediation process with the consultant doesn’t work. If they fail to find new hosts, their visas are canceled.” Zack Kopplin, *They Think We Are Slaves*, Politico (Mar. 27, 2017), <https://www.politico.com/magazine/story/2017/03/au-pair-program-abuse-state-department-214956>.

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MYTH #7:

AU PAIRS ALREADY HAVE ADEQUATE PROTECTIONS AGAINST DISCRIMINATION AND HARASSMENT.

FACT: Current protections are severely underenforced, and au pairs deserve the same protections as other New Jersey domestic workers. The federal law against workplace discrimination and harassment does not exclude au pairs, but it does have an employer threshold of 15 or more employees.¹² In practice, this threshold excludes host family employers of one au pair. Au pairs can report discrimination or harassment to sponsor agencies or the Department of State, but in reality, these complaints go unaddressed.¹³ Au pairs deserve the full protections of state law.

AU PAIRS PERFORM THE ESSENTIAL CAREGIVING WORK THAT MAKES ALL OTHER WORK POSSIBLE. LIKE ALL DOMESTIC WORKERS, THEY DESERVE BASIC LABOR PROTECTIONS.

The National Domestic Workers Alliance (NDWA) works for the respect, recognition and inclusion in labor protections for domestic workers. For more information contact Rocío A. Ávila, Senior Employment Law Counsel & State Policy Director, at rocio@domesticworkers.org.

¹² 42 U.S.C. § 2000e(b); *id.* § 12111(5)

¹³ See Kopplin, *supra* note