

LABOR RIGHTS

of

DOMESTIC WORKERS

IN TEXAS



Labor Rights of Domestic Workers in Texas

Domestic workers are entitled to basic labor protections. People who work in a house (“domestic workers”) for an individual or a family are protected by specific state and federal laws. This pamphlet provides answers to some of the common questions asked by domestic workers.*

Do domestic workers qualify for a minimum wage?

If a domestic worker is an employee, the worker is entitled to receive at least the minimum wage if the worker:

- works in one house and makes more than \$1,700 a year in that house; OR
- works more than eight hours a week in one house, even if the worker provides services to other houses.

Exception: The federal minimum wage and overtime laws exempt:

- yard maintenance workers who use their own equipment, set their own hours, and work for other people;
- casual baby-sitters who watch children, but not on a regular basis as their main occupation; and
- companions for elderly or disabled people.

What is the minimum wage an employer must pay a domestic worker?

An employer must pay a minimum of \$7.25 an hour. Workers cannot give up their right to the minimum wage, even if they sign something that says they agree to work for less money.

* This pamphlet is not intended to substitute for legal advice. Please consult a lawyer.

Can domestic workers take rest breaks?

The Texas Labor Code does not require mandatory rest or meal breaks.

Live-out workers: Workers who qualify for minimum wage and do not live with their employer, must be paid for every hour that they are at the house. Federal regulations state that short breaks less than 20 minutes should be counted as paid work.

Live-in workers: If a worker lives with their employer or stays at the house for more than 24 consecutive hours, then the employer can deduct break times or personal times from the wages.

Do domestic workers qualify for overtime pay?

Maybe. Live-out domestic workers are entitled to receive time and a half overtime for hours worked over 40 hours in each week. Domestic workers who live in the home of their employer do not qualify for overtime pay.

Can employers deduct the cost of meals or lodging from pay?

Employers may reduce the amount paid to a worker by the value of the meals or lodging provided, even if the deductions reduce the worker's pay to below the minimum wage. The employer can deduct the actual cost of meals and lodging only if the employer has receipts. But even if the employer does not have receipts, they can subtract up to the following amounts:

Breakfast: \$2.46/day

Lunch: \$3.28/day

Dinner: \$4.09/day

Lodging: \$49.12/week

Total: cannot exceed 150% of minimum wage for any day.

The following additional limits apply to an employer's right to make deductions from a worker's wages:

- Employers are not allowed to deduct the cost of anything that is primarily for the employer's own benefit, such as safety equipment, tools, or uniforms.
- Employers cannot deduct more than usual just because the worker worked overtime.

A worker must agree to these deductions in writing. An employer cannot force a worker to take these deductions.

Can an employer deduct income taxes?

Yes. An employer is required to deduct taxes and pay them to the federal government. The employer must give a worker a W-2 Form after the end of the year, showing the total wages paid and taxes deducted.

How often must a worker be paid?

Under the Texas Payday law, if a worker qualifies for minimum wage, then the worker must be paid at least twice per month and each pay period should be approximately an equal number of days. Also, if a worker is fired or let go, the worker is entitled to receive the last paycheck within six days. If a worker quits, then the worker must receive their final check by the next regular payday.

What should a worker do if a homeowner does not pay the worker at all or does not pay twice monthly?

If an employer violates the Texas Payday Law, then the worker should contact a workers center or other advocate. A worker may also file a complaint with the Texas Workforce Commission within 180 days (or approximately 6 months) of the date that the wages were due. The Commission's website is www.twc.state.tx.us and the phone number is (800) 832-9243.

What should a worker do if an employer pays less than \$7.25 an hour?

The worker should contact a workers center or other advocate. A worker may also file a complaint with the U.S. Department of Labor (1-866-487-2365). In some cases, a worker also can file a lawsuit against the employer for up to twice the amount of wages owed. A complaint or lawsuit must be filed within two years of the time that the worker did not receive the minimum wage.

Should undocumented workers get paid minimum wage?

Yes. Workers have the right to receive the minimum wage even if they are undocumented and undocumented workers may file a complaint with the DOL about federal wage and hour violations. Under DOL policy, the agency will not ask about a worker's work authorization and will not make referrals to the U.S. Immigration and Customs Enforcement (ICE) regarding immigration violations.

What can a worker do if an employer threatens to call immigration or fires the worker for filing a complaint with the U.S. Department of Labor?

Employers cannot legally fire or punish a worker for demanding the right to be paid the minimum wage or overtime pay. If an employer tries to do this, then the worker should contact advocates or the U.S. Department of Labor (DOL) and report the employer. DOL's phone number is 1-866-4-USA-DOL (1-866-487-2365). DOL may file civil or criminal actions against the employer.

Can domestic workers get unemployment insurance if they lose a job?

Maybe. A worker qualifies for unemployment insurance if he or she earned more than \$1,000 in the year or was employed as a domestic worker for at

least one day a week in 20 or more weeks during the year, is looking for work and is ready, willing, and physically able to work in the United States, and is out of work through no fault of his or her own. Undocumented workers do not qualify for unemployment insurance. An unemployed worker can make a claim for unemployment benefits with the Texas Workforce Commission. The Commission's website is www.twc.tx.us and the phone number is (800) 832-9243.

Can a domestic worker get worker's compensation insurance if they are injured at work?

Probably not. A domestic worker employed in a family home is exempted from worker's compensation coverage under Texas law. However, an employer can voluntarily provide such coverage.

What should a domestic worker do if an employer discriminates against them because of race or gender?

It is illegal for an employer to slap or touch a worker or demand sex from a worker. Unless an employer has 15 or more workers in the house, state or federal law does not protect a domestic worker from discrimination on the basis of race or gender. A worker should speak up if they feel an employer is treating them unfairly.

What should a domestic worker do if an employer refuses to return a passport or other important document?

A worker may file a report of stolen property with the police or contact a workers center or other advocate.

When is a worker an employee?

Federal and state labor laws apply to employees, but not to "independent contractors," workers who are in business for themselves. There is no simple rule that determines when a worker is considered an employee of a

homeowner. A worker is more likely to be considered an employee the more closely the homeowner she works for directs her work, telling her what to do, and how and when to do it. Whether a worker is considered an employee does not depend on whether the work is full or part time, or whether the worker is paid in cash or by check. Workers who advertise their business to the public, clean several different houses, and bring their own brooms, mops and cleaning supplies are, in most cases, considered independent contractors. For example, yard maintenance workers who use their own equipment, set their own hours, and work for other people are likely to be considered independent contractors. If a worker cleans houses for a maid service company, which the homeowner pays directly and the company then pays the worker, the worker is probably considered an employee of the maid service.

Who is a domestic worker?

Under federal law, a domestic worker is a person who works in a private home including:

- Cooks, waiters, butlers, or valets;
- Maids, housekeepers, janitors, or laundresses;
- Regular babysitters or nannies;
- Nurses or caretakers; and
- Handymen or gardeners.

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Workers should consult with a workers center or legal services program to get advice on the best way to enforce the law. The following organizations may be able to assist you.

Texas RioGrande Legal Aid (TRLA)**www.trla.org**

phone: 1-888-988-9996

Texas Civil Rights Project**www.texascivilrightsproject.org**

phone: (512) 474-5073 (Austin)

phone: (915) 532-3799 (El Paso)

phone: (956) 787-8171 (South Texas)

Border Agricultural Workers Project**www.farmworkers.org/bawppage.html**

201 E. Ninth Avenue

El Paso, Texas 79901

phone: (915) 532-0921

fax: (915) 532-4822

e-mail: sinfront@farmworkers.org**Equal Justice Center (Austin)****www.equaljusticecenter.org**

510 South Congress Ave., Suite 206

Austin, Texas 78704

phone: 512-474-0007

Equal Justice Center (San Antonio)**www.equaljusticecenter.org**

6609 Blanco Rd, Suite 260

San Antonio, Texas 78216

phone: 210-308-6222

Fuerza Unida**www.lafuerzaunida.org**

710 New Laredo Hwy

San Antonio, Texas 78211

phone: (210) 927-2294

fax: (210) 9217-2295

Houston Interfaith Worker Justice Center**www.hiwj.org**

1805 West Alabama, 2nd Floor

Houston, TX 77098

phone: (713) 862-8222

La Mujer Obrera**www.mujerobrera.org**

2000 Texas Avenue

El Paso, Texas 79901

phone: (915) 533-9710

fax: (915) 544-3730

info@mujerobrera.org**Harris County AFL - CIO****www.hcaflcio.org**

2506 Sutherland Street

Houston, Texas 77023

phone: (713) 923-9473

fax: (713) 923-5010

Southwest Public Workers Union**www.swunion.org**

1416 E. Commerce Street

San Antonio, Texas 78205

phone: (210) 299-2666

info@mujerobrera.org**Workers' Defense Project / Proyecto Defensa Laboral****www.workersdefensa.org**

5604 Manor Road

Austin, TX 78723

phone: (512) 391-2305

TRLA

Texas RioGrande Legal Aid

4920 N. IH-35, Austin, Texas 78751

www.trla.org