

DOMESTIC WORKERS WAGE CLAIMS & ENFORCEMENT



2 WHO IS A DOMESTIC WORKER

“Domestic worker” means a person employed to perform “domestic work”

- Housekeeping;
- House cleaning;
- Home management;
- Nanny services including childcare
- Caregiving, personal care or home health services for elderly persons or persons with an illness, injury, or disability who require assistance in caring for themselves;
- Laundering;
- Cooking;
- Companion services;
- Chauffeuring; or
- Other household services for members of households or their guests in or about a private home or residence or any other location where the domestic work is performed.



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ILLINOIS DOMESTIC WORKERS BILL OF RIGHTS

The Illinois Minimum Wage Law (IMWL) was amended to include as an employee "Domestic Workers" as defined in Section 10 of the Domestic Workers Bill of Rights Act.

The IMWL was not amended to exclude domestic workers from overtime compensation nor did it distinguish domestic workers based on their status as a "live in".



4 UNIQUE WORK ENVIRONMENT

- Placement agencies, private employment agencies are often utilized for hiring and placement
- Many domestic workers are employed through verbal and informal agreements to provide care for the elderly or children of families.
- Employers may not see themselves as regular employers and may not keep accurate employment records, including pay and time documentation.
- Some workers are provided a place of residence and food in exchange for their services.
- Vulnerabilities may exist for undocumented workers

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INVESTIGATIVE PROCESS



6 BURDEN OF PROOF – EMPLOYEE

- In absence of records from employer, employee must demonstrate that he or she was hired to perform work
- Employee must demonstrate they were not compensated properly
- In the absence of records from the employer, or in the event of inadequate or inaccurate records, employee can provide testimony taken into account if credible and confirmed with other factual information provided to the compliance officer
 - Testimony must accurately portray time and work performed

7 BURDEN OF PROOF – EMPLOYER

- Must maintain record keeping requirements (820 ILCS 105 Sections 7 & 8).
- May dispute claims by producing accurate records that document the work performed
- May provide response to rebut testimony, but production of witnesses or other evidence will be considered during review such as text messages or information that supports actual time worked for specified dates or times.

8 GROUNDS FOR CLAIM DISMISSAL

- Employee fails to provide any evidence that they worked for the employer.
- If employee is unable to provide credible testimony of the approximate timeframe, approximate hours worked or nature of the work performed

9 EXAMPLES OF EVIDENCE

- Payroll & Attendance Records
- Text messages
- Tracked calls or photographs/videos taken on cell phones
- E-mails
- Documents & contracts detailing work agreement
- Cashed checks, deposit slips and other bank records
- Schedules
- 3rd party validator, witnesses
- Records from placement by a 3rd party company (placement services)
- Credible testimony
- Letters or documents that confirm employment information to receive government or employment assistance

10 FACTORS CONSIDERED BY DEPARTMENT WHEN INVESTIGATING CLAIMS

- Hours required to remain at the residence or if employees were free to leave residence
- Typical schedule and hours on call or working hours
- Consideration for meal periods, rest period (breaks) and sleep periods.
- Room and Board in exchange for wages
- Interruptions: How often? & What were the reasons?

II INVESTIGATION SHOULD UNCOVER THE FOLLOWING:

- If worker was properly compensated for overtime hours (total required hours working or on-call)
- If state minimum wage requirements were met for hours worked.
- If living restrictions are excessive and may require additional investigation

12 AGENCY DETERMINATION AND ENFORCEMENT

- Upon investigation, Notice to the Employer from IDOL will include a summary of testimony of facts and a summary of the investigation
- Findings against employer may be made with an accounting of damages as presented to the Department through testimony and records provided
- Determination will be served on the employer, similar to all minimum wage and overtime claims.
- If the Department finds that the worker's claim is valid and the employer fails to make payment, the matter will be referred to the Attorney General's office for enforcement.

13 GOAL

- Compliance Officers will make their best efforts to attempt to understand the full picture to determine if any minimum wage or overtime violations took place.
- Ensure proper payment was provided to worker for hours worked per agreement.

14 ILLINOIS DEPARTMENT OF LABOR

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QUESTIONS?

