

HELP "THE HELP"

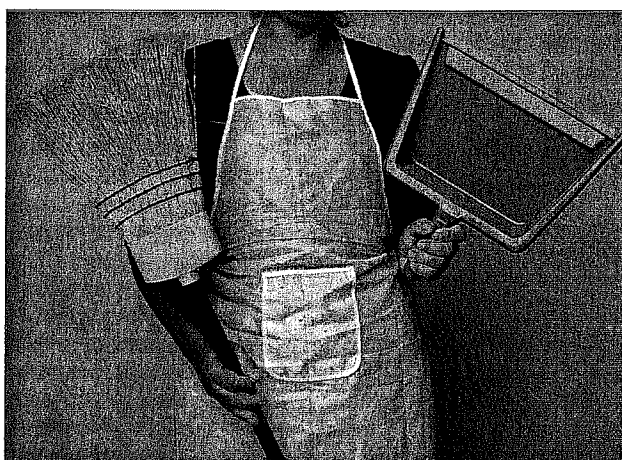


WHY THE U.S. SHOULD COMPLY WITH THE INTERNATIONAL LABOR ORGANIZATION CONVENTION ON DOMESTIC WORKERS

By Richard Winsten and
Deanne Braveman

The release of the feature film based on the bestselling novel, *The Help*, has focused national attention on the work conditions and role of domestic workers in the United States of America. These workers provide vital services that permit their employers to participate in the work force.

While many parents are at work, their children, elderly parents and homes are looked after by a mostly immigrant and mostly female workforce. These domestic workers feed, clothe and bathe their charges while completing household chores and assist in the education of the children they watch. By virtue of working in private homes, domestic workers are isolated and most of the work they do is invisible to the outside world. Individual domestic workers have difficulty achieving improved working conditions without their work being acknowledged by the law and without the opportunity to band together with other domestic workers.



The nature of domestic work, alone and in private homes, makes it difficult to know with certainty the number of domestic workers in New York State. Estimates by Domestic Workers United, the New York State Department of Labor and others range from 200,000 to 450,000 in New York City alone. An estimated 93 percent of domestic workers are women and 95 percent are people of color. Many are immigrants.

In 2006 Domestic Workers United and DataCenter published "Home is Where

the Work Is: Inside New York's Domestic Work Industry," which provides insight into the working conditions of domestic workers. This study found that nearly half of domestic workers earn low wages — many are below the poverty line. Working overtime is not uncommon, with nearly half of domestic workers working 50-60 hours per week, 10-12 hours per day. If overtime pay is provided it is at the standard rate, not one and half times as required by law for other employment. Domestic workers are often not paid on time and receive little to no notice of termination and no severance pay.

Domestic workers perform a wide range of housework, childcare, and home health care. They clean, iron, wash clothing, cook, run errands for employers, buy groceries, administer medication, provide childcare and attend to the elderly. Domestic workers are exposed to toxic chemicals in cleaning products and contagious diseases from the sick they care for. Often these duties are not within their job descriptions and domestic workers feel that they have more tasks assigned to them

than they can safely complete.

While domestic workers provide vital services that help to support our economy they are without the legal protections that are provided to all other workers, with the exception of farm workers. The protections that domestic workers are denied include a day of rest, overtime pay, vacation, sick days, workplace health and safety, safety net programs such as unemployment and disability, the right to collective bargaining and protection from discrimination. Domestic workers are excluded from labor law protection on both the federal and state levels although New York State recently became the first State to provide some protections.

These quotations from the Congressional debate over the Fair Labor Standards Act in the 1930's show why the invidious exclusions of domestic and farm workers were the political price paid to win protection for other workers:

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"There is another matter of great importance in the South, and that is the problem of our Negro labor. There has always been a difference in the wage scale of white and colored labor... You cannot put the Negro and the white man on the same basis and get away with it."

— Representative James Mark Wilcox, (D-Fla.)

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"[Under the FLSA] what is prescribed for one race must be prescribed for the others, and you cannot prescribe the same wages for the black man as for the white man."

— Representative Martin Dies, (D-Texas)

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"Organized Negro groups of the country are supporting [the FLSA] because it will... render easier the elimination and disappearance of racial and social distinctions, and... throw into the political field the determination of the standards and the customs which shall determine the relationship of our various groups of people in the South."

— Representative Edward Cox (D-Ga.)

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"Any man on this floor who has sense enough to read the English language knows that the main object of this bill is, by human legislation, to overcome the great gift of God to the South."

— Senator "Cotton Ed" Smith (D-S.C.)



The United States of America must extinguish this shameful "Jim Crow" legacy by extending to domestic workers and farm workers the same labor and civil rights enjoyed by all other American workers. Domestic workers are denied the right to organize for better working conditions because they are excluded from the definition of "employee" under the National Labor Relations Act (NLRA). Live in domestic workers, who are among the most exploited, are denied overtime pay by the Fair Labor Standards Act (FLSA). Agency regulations that implement the Occupational Safety and Health Act (OSHA) specifically exclude domestic workers as a matter of policy. OSHA was designed to provide a safe and healthful working environment for all employees and yet it unfairly excludes the domestic workers that face many dangers in the workplace.

For many years New York State Assembly Member and now Assembly Labor Committee Chair, Keith Wright, sponsored the Domestic Workers Bill of Rights in the New York State Assembly to recognize domestic workers as employees and provide them with basic labor protections. In 2010 this bill, also sponsored by Senator Diane Savino in the New York State Senate, became law (Chapter 481 of the Laws of 2010) and took effect on November 29, 2010. This is the first law of its kind in the United States to apply labor protections to domestic workers, recognizing their status as employees.

The New York State Domestic Worker Bill of Rights requires overtime pay of one and a half times the regular rate after 40 hours of work (44 for live in domestic workers), payment of at least minimum wage, twenty four hours of rest every seven days or overtime pay if the domestic worker waives the day or rest, at least three paid rest days each year after one year of work for the same employer, and coverage under the New York State Human Rights

Law for domestic workers who have been subject to harassment because of sex, gender, race, religion or national origin or retaliation against them for complaining of such harassment. This historic law provides the over 200,000 domestic workers in New York State with parity, equity, dignity and justice for their work.

On June 16, 2011 the International Labour Organization (ILO) adopted the Convention Concerning Decent Work for Domestic Workers. This convention sets standards for working hours, social security protection, occupational health and safety, minimum wages and many other fundamental principles and rights in the work place including freedom of association and the right to collective bargaining. It empowers domestic workers with the same knowledge that employers are generally required by law to give to other types of employees, such as terms and conditions of employment, job description, and grounds for termination. The standards for employment in the Convention give dignity to domestic workers, ensure safe work places, provide a framework for achieving better working conditions and formalize the employer employee relationship.

The ILO's Convention Concerning Decent Work for Domestic Workers will come into force one year after two countries have ratified it. The United States should lead the way in putting this important convention into force either by adopting it as a treaty under Article II, Section 2 of the United States Constitution or by the convening of a Congressional committee to review the Convention in relationship to existing United States law. Congress could then introduce legislation to be passed and sent to the President for approval. Adoption of the Convention by the United States would send the right signal to the entire world, and ensure that domestic workers are treated no less favorably than workers generally. Federal action would ensure that all domestic workers throughout the United States have minimum basic labor protections.

Individual states might still provide for greater protections at their discretion. As stated earlier, New York State already has done this by law and has broken ground by its requirement that all domestic workers receive a minimum of three days off with pay each year. As this article goes to print, California has passed a Domestic Workers Bill of Rights in its State Assembly and the bill is being voted on in State Senate Committee.

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