

# DOMESTIC WORKERS AND COLLECTIVE BARGAINING

A Proposal for Immediate Inclusion of Domestic Workers  
in the New York State Labor Relations Act

A report by Domestic Workers United, National Domestic Workers Alliance, and  
the Community Development Project at the Urban Justice Center



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**Domestic Workers United (DWU):** Founded in 2000, Domestic Workers United is an organization of Caribbean, Latina, and African nannies, housekeepers, and elder caregivers in New York City that organizes for power, respect, and fair labor standards, and is building a movement to end exploitation and oppression for all.



**National Domestic Workers Alliance (NDWA):** Founded in 2007, the National Domestic Workers Alliance is an alliance of 33 membership organizations of domestic workers in the United States organizing for respect, recognition, and labor standards. Through leadership development, strategic campaigns, and alliance-building, NDWA seeks to help build a powerful movement for social and global justice.



**Community Development Project, Urban Justice Center (CDP):** Founded in 2001, CDP provides legal, technical, and research-and-policy assistance to community organizations working for positive social change in low-income communities. CDP's Research and Policy Initiative provides methodological and technical assistance in support of community-organizing efforts, seeking to generate data and develop public-policy solutions that come from the experience and leadership of low-income communities of color.

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## I. THE BACKDROP:

### Moving Forward from the New York State Domestic Workers Bill of Rights

*I kept waiting for the law [Domestic Workers Bill of Rights] that would benefit us to come into effect... to sit down with her [employer]. I was thinking because I had been working for almost three years that I could ask for my vacation or sick days. So I was waiting for the law. And because I had overheard so many conversations about the mother wanting to fire me, I thought that if I talk to them now, before the law, if I talk to them about such a thing, they would tell me to leave. –Domestic Worker #2*

Since 2000, Domestic Workers United (DWU), a community-based organization of 4000 nannies, housekeepers, and elder caregivers, has organized for power and fair labor standards, building a movement for change.<sup>1</sup> This summer, DWU's efforts culminated in a historic victory: New York became the first state in the nation to pass a Domestic Workers Bill of Rights.<sup>2</sup>

In accordance with this new law, the New York State Department of Labor (DOL) is to prepare a report by November 1, 2010 on the feasibility of collective bargaining in the domestic-work industry.<sup>3</sup> As domestic workers are currently excluded from collective-bargaining laws, DWU has begun to study what inclusion would mean and which models of collective bargaining would function best in this industry.

Based on DWU's research and as an appropriate next step after the passage of the Bill of Rights, DWU recommends that the New York State Legislature amend Section 701(3) of the State Labor Relations Act (SLRA) by December 31, 2010 to eliminate the exclusion of domestic workers.<sup>4</sup> The DOL and the Legislature should also ensure that the Public Employment Relations Board (PERB), the SLRA's governing body, has the flexibility and authority necessary to determine bargaining structures for this sector.

This report documents the inconsistent, informal, and uncertain nature of domestic employment and concludes that domestic workers need the right to collectively bargain. Inclusion under the SLRA would represent more than a symbolic gesture: the law's important protections would allow New York State's domestic workforce to lead the way in exploring collective bargaining.

#### A. NEW PROTECTIONS FOR DOMESTIC WORKERS UNDER THE BILL OF RIGHTS

Once the Domestic Workers Bill of Rights goes into effect on November 29, 2010, New York State's 200,000 domestic workers will be protected by new, basic labor standards, including a higher rate of overtime pay for live-in domestic workers and companions employed by private households, coverage of live-in companions under the New York State Minimum Wage Law, three paid days of rest after a year of employment, extension of temporary disability benefits to part-time employees, and inclusion of domestic workers under the New York State Human Rights Law.<sup>5</sup>

This new law represents a momentous advance for New York's domestic workers—housecleaners, nannies, elder companions, and other home-based workers—who have historically been excluded from state and federal labor laws.<sup>6</sup>

1 See Domestic Workers United website, at <http://www.domesticworkersunited.org>.

2 See, e.g., Nicholas Confessore, *Domestic Workers' Rights Bill Passes*, N.Y. TIMES, July 1, 2010, available at <http://cityroom.blogs.nytimes.com/2010/07/01/domestic-workers-rights-bill-passes>; A1470B/S2311E, 2010 Leg. (N.Y. 2010), available at <http://assembly.state.ny.us/leg/?bn=A01470>.

3 See A1470B/S2311E § 10, 2010 Leg. (N.Y. 2010), available at <http://assembly.state.ny.us/leg/?bn=A01470>.

4 See *infra* n. 20.

5 See generally A1470B/S2311E, 2010 Leg. (N.Y. 2010), available at <http://assembly.state.ny.us/leg/?bn=A01470>; Informational Release, Domestic Workers United, *The New NYS Domestic Workers Bill of Rights Summary* (July 2010), available at <http://www.domesticworkersunited.org/media/files/251/Bill-of-Rights-provisions-english.doc>; "Domestic Workers United Media: Statistics on Domestic Workers in New York State," at <http://www.domesticworkersunited.org/media.php?show=69>.

6 Until 1974, domestic workers were excluded from the national Fair Labor Standards Act of 1938, which provides workers with minimum wages and overtime compensation. See Fair Labor Standards Act of 1938, ch. 676, § 2, 52 Stat. 1060 (codified at 29 U.S.C. § 202 (2000)); Fair Labor Standards Amendments of 1974, Pub. L. No. 93-259, 88 Stat., 55 (codified at 29 U.S.C. §§ 201-210 (2000)). To date, domestic workers are still excluded from the National Labor Relations Act, which protects workers' right to organize and collectively bargain, see National Labor Relations Act, Pub.L. 74-198, 49 Stat. 449, codified as amended at 29 U.S.C. 141 *et seq.*, as well as from the New York State Labor Relations Act, N.Y. Labor L. § 700 *et seq.*

Table 1: Domestic Workers' Rights under NYS Laws Before and After the Bill of Rights

Right / Benefit	Included in NY Laws BEFORE Bill of Rights	Included in NY Laws AFTER Bill of Rights
Minimum Wage <sup>7</sup>	Yes, except part-time babysitters and live-in companions	Expanded coverage of domestic workers, including companions solely employed by households; exclusion narrowed to part-time, casual babysitters
Overtime <sup>8</sup>	Yes, but lower rate of overtime for pay for live-in domestic workers (and only after 44 hours), and not for live-in companions of the sick and elderly	All live-in (still after 44 hours) domestic workers and live-out companions receive higher rate of overtime pay
Time Off from Work <sup>9</sup>	None provided	Mandatory 24 consecutive hours of rest per week After one year of employment, three paid days of rest
Protection from Sexual Harassment and Various Kinds of Discrimination <sup>10</sup>	No protection unless household employs four or more workers	Coverage for domestic workers regardless of total employee number
Temporary Disability <sup>11</sup>	Only for domestic worker employed 40 or more hours per week for same employer	Coverage for part-time (pending legislative revision) and full-time domestic workers
Workers' Compensation <sup>12</sup>	Only for domestic worker employed 40 or more hours per week for same employer	Same as before
Paid Vacation Days	None provided	None provided
Paid Sick Days <sup>13</sup>	None provided	None provided
Paid Personal Days	None provided	None provided
Notice of Termination and Severance	None provided	None provided
Right to Organize / Collective Bargaining <sup>14</sup>	None provided	None provided

7 See N.Y. Labor L. § 651(5)(a) (exempting part-time babysitters and live-in companions to the elderly or ill whose principal duties do not include housekeeping for other members of the household); A1470B/S2311E § 2, 2010 Leg., (N.Y. 2010), available at <http://assembly.state.ny.us/leg/?bn=A01470>.

8 See 12 N.Y.C.R.R. § 142-2.2 (exempting part-time babysitters and live-in companions to the elderly or ill); 12 N.Y.C.R.R. § 142-2.1 (defining "residential employee"); A1470B/S2311E §§ 2, 6, 2010 Leg., (N.Y. 2010), available at <http://assembly.state.ny.us/leg/?bn=A01470>.

9 See A1470B/S2311E § 7, 2010 Leg., (N.Y. 2010), available at <http://assembly.state.ny.us/leg/?bn=A01470>.

10 See New York State Human Rights Law, N.Y. Exec. L. § 292(5) (defining "employer" as employing at least four workers); A1470B/S2311E §§ 3, 4, 2010 Leg. (N.Y. 2010), available at <http://assembly.state.ny.us/leg/?bn=A01470>.

11 See N.Y. Work. Comp. L. § 201; A1470B/S2311E § 9, 2010 Leg. (N.Y. 2010), available at <http://assembly.state.ny.us/leg/?bn=A01470>.

12 See N.Y. Work. Comp. L. § 4.

13 Recent efforts to pass a paid-sick-leave bill in New York City have reached an impasse. See, e.g., Celeste Katz, *No NYC Paid Sick Leave Bill for Now: Updated x 2*, N.Y. DAILY NEWS, Oct. 14, 2010, available at <http://www.nydailynews.com/blogs/dailypolitics/2010/10/no-paid-sick-leave-bill-for-no.html>.

14 See *supra* n. 6.

## B. KEY BENEFITS THAT DOMESTIC WORKERS STILL NEED AND THE FEASIBILITY STUDY

While the Bill of Rights represents improved labor standards, as noted in Table 1, the final version of the law did not include five critical benefits: 1) paid sick days; 2) paid personal days; 3) paid vacation days; 4) advance notice of termination; and 5) severance pay. These benefits, by conferring job security and stability, would better enable domestic workers to stand up for their rights to fair wages and workplaces free of harassment.

Instead of passing these five benefits into law, the New York State Legislature commissioned the Department of Labor (DOL) to complete a study by November 1, 2010 on the feasibility of domestic workers' collectively bargaining for these gains.<sup>15</sup> According to the law, the DOL is tasked with examining: 1) whether an employee organization could be formed in accordance with the State Labor Relations Act; 2) how bargaining units could be formed; 3) whether there are issues unique to the domestic work context; and 4) alternative frameworks for collective organization.<sup>16</sup>

## C. SUPPORTING COLLECTIVE BARGAINING RIGHTS FOR DOMESTIC WORKERS

Domestic Workers United supports the right of all workers, including domestic workers, to organize and collectively bargain for rights and benefits. Throughout our nation's history, unions and other forms of collective organization have been the primary vehicle for securing equitable, safe, and dignified working conditions, and this is particularly true in New York, the state with the highest union density in the country.<sup>17</sup> The right to organize is considered fundamental under most domestic and international legal regimes, including the New York State Labor Relations Act (SLRA), which declares it the state's public policy "to encourage the practice and procedure of collective bargaining, and to protect employees in the exercise of full freedom of association, self-organization and designation of representatives of their own choosing for the purposes of collective bargaining, or other mutual aid and protection, free from the interference, restraint or coercion of their employers."<sup>18</sup>

Domestic workers are currently excluded from the SLRA.<sup>19</sup> This exclusion can be remedied by deleting a small portion of SLRA Section 701(3) and ensuring that the SLRA's governing body, the Public Employment Relations Board (PERB), has the necessary authority to oversee bargaining in this sector.<sup>20</sup> In connection with the Domestic Workers Bill of Rights and the DOL's current study, therefore, the DOL should recommend that the New York State Legislature use this opportunity to bring domestic workers under the SLRA.

### What is the New York State Labor Relations Act (SLRA)?

Also called the "State Employment Relations Act," this statute primarily applies to private-sector workers who are not covered by the National Labor Relations Act, such as those who work for very small companies or who have no or very few coworkers. The SLRA is the private-sector analog to New York State's Taylor Act, which covers certain public-sector workers. Unfortunately, domestic workers and farm workers are not covered by the SLRA.

The SLRA protects workers' right to collectively bargain with their employers and prohibits employers from engaging in "unfair labor practices," such as interfering with unionization, blacklisting, or monitoring workers who organize together. It is governed by the Public Employment Relations Board (PERB), which, despite its name, handles private-sector matters as well. The PERB is responsible for mediating and arbitrating labor disputes and overseeing the union-recognition process, for example, through elections and card-checks.

<sup>15</sup> See A1470B/S2311E § 10, 2010 Leg. (N.Y. 2010), available at <http://assembly.state.ny.us/leg/?bn=A01470>.

<sup>16</sup> See *id.*

<sup>17</sup> See Steven Greenhouse, *New York State Still Has Highest Unionization Rate*, N.Y. TIMES, Sept. 8, 2010, available at <http://economix.blogs.nytimes.com/2010/09/08/new-york-state-still-has-highest-unionization-rate>.

<sup>18</sup> New York State Labor Relations Act, N.Y. Labor L. § 700.

<sup>19</sup> See *id.* at § 701(3).

<sup>20</sup> The Legislature would only need to delete the following exclusionary language from the definition of "employees" in Section 701(3) of the SLRA: "but shall not include any individual employed by his parent or spouse or in the domestic service of and directly employed by his parent or spouse or in the domestic service of and directly employed, controlled and paid by any person in his home, any individual whose primary responsibility is the care of a minor child or children and/or someone who lives in the home of a person for the purpose of serving as a companion to a sick, convalescing or elderly person or any individuals employed only for the duration of a labor dispute," *id.*

## II. DOCUMENTED EXPERIENCES: Negotiating for Benefits

In order to better understand the nature of worker-employer relations in this industry, in the absence of collective bargaining, DWU has documented the employment conditions of domestic workers in New York City, specifically focusing on access to benefits and the ability of workers to negotiate for benefits. The results of this research show that domestic workers—due to factors including physical isolation, intimate relation to employers, vulnerability in the workplace, and lack of legal standards—experience a wide variation in wages, hours, job duties, and benefits, and are dependent on the decisions made in individual households. Furthermore, the study reveals that many domestic workers are without any paid benefits and consequently lack the job security necessary to negotiate with their employers. The Bill of Rights, once in effect, will establish minimum labor standards, but domestic workers will continue to face ill-defined, precarious terms of employment and little access to key benefits. It is, in other words, precisely the kind of industry that would benefit from collective organizing—and one that requires a particularly innovative structure for doing so.

### A. DWU'S RESEARCH METHODOLOGY

Between August and October 2010, DWU and its research partner, the Community Development Project of the Urban Justice Center, conducted 505 surveys with a wide range of domestic workers employed in communities across New York City (see Table 2), as well as 10 in-depth interviews with workers and employers.<sup>21</sup> This study builds on DWU's 2006 research, which documented the harsh working conditions endured by domestic workers.<sup>22</sup> The new research provides additional data about benefits, employer-employee negotiations, and employment agreements.

Table 2: Characteristics of Survey Respondents

Characteristic	Percentage
Currently Employed	82%
Formerly Employed	18%
Work at Only 1 Household (in last month of work)	77%
Work at More than 1 Household (in last month of work)	23%
Work more than 40 hours/week at 1 Household (in last month of work)	74%
Live-in Worker	9%
Live-out Worker	91%
Female	99.5%
Have 1 or more child under 21	65%
Live with 1 or more child under 21	52%
Identify as Caribbean	48%
Identify as Latino/a	39%

Table 3: Type of Work Done by Survey Respondents

Type of Work	Percentage
Childcare	77.4%
Baby-nursing	7.7%
Elder Care	8.7%
Pet Care	5.1%
Administering Medication	11.3%
Cleaning	50.5%
Laundry	44.2%
Cooking	44.8%
Running Errands	28.9%

<sup>21</sup> Members of DWU participated in the design and implementation of the survey. Workers were surveyed in playgrounds, parks, on the subway and trains, and at various other locations. Employer and worker interviews were conducted by Urban Justice Center researchers, in conjunction with Jews for Racial and Economic Justice, who contacted the employers.

<sup>22</sup> See DOMESTIC WORKERS UNITED AND DATACENTER, HOME IS WHERE THE WORK IS: INSIDE NEW YORK'S DOMESTIC WORK INDUSTRY (2006), available at <http://www.datacenter.org/reports/homeiswheretheworkis.pdf>.



## B. GENERAL FINDINGS ABOUT HOURS AND WAGES AND PROVISION OF BENEFITS

*“They [domestic workers] are subject to an employer’s whim and desires more than in most jobs where the job may be more clearly specified. There is no one else around, in a sense. There is potentially more power in an employer of a domestic worker. So it is really important for there to be safeguards for domestic workers; ways to define the job, what we are obliged to do and what we are not obliged to do.”—Employer #3*

The results of the survey and interviews show high variation in the benefits received and in workers’ experiences negotiating employment terms. Surveyed domestic workers expressed considerable uncertainty about the types of benefits to which they were entitled. Furthermore, comparative analysis of wage, hour, and benefit data reveals that these workers earn less while working longer hours than those in comparable industries in New York or in New York City’s workforce generally, and are less likely than other workers to receive certain benefits, such as paid sick leave.<sup>23</sup> The following findings suggest that collective bargaining is needed to secure more robust, consistent standards for domestic workers and that the industry’s complexities demand creative structures for collective bargaining.

### 1. Domestic Workers Work More Hours for Lower Wages than Other Workers.

Hourly wages and weekly schedules vary greatly for domestic workers. In the absence of industry standards, domestic workers are left to negotiate wages on an individualized basis. Consequently, many workers take home less but work longer hours than their counterparts in other industries.

- **Many workers do not earn enough to meet their basic needs.** Given that most domestic workers are raising their own families (survey respondents had an average of 2.2 children), their wages do not bring them up to the “Self-Sufficiency Standard” of \$29.91 per hour for 40 hours of work.<sup>24</sup> Indeed, the average hourly wage was \$12.66 per hour. Moreover, 17% of respondents were found to be living below the federal poverty line of \$8.80 per hour, 93% below the “low wage” level, and 96% below the Self Sufficiency Standard for a three-person household.

Table 4: Domestic Workers that Earn Below Poverty Level, Low Wage Level and Self Sufficiency Standard

Wage Level	Dollars per hour for a Family of 3	% of Survey Respondents Below Wage Level
Federal Poverty Level	\$8.80	17%
Low wage (200% of Federal Poverty Level) <sup>29</sup>	\$17.60	93%
Self-Sufficiency Standard	\$21.29	96%

- **The industry is extremely hours-intensive.** The average number of hours per week was 44.4, with 73% of respondents employed between 40 and 70 hours per week. Domestic workers also work more hours than other workers in comparable industries.

Table 5: Comparison of Domestic Worker Mean Hourly Wage and Hours per Week with Other Industries<sup>26</sup>

	Domestic Worker Survey Respondents (2010)	NYC Childcare Workers (2009)	NYS Education and Health Services Workers (2010)	NYS Leisure and Hospitality Workers (2010)	NYC Workforce (2009)
Mean Hourly Wage	\$12.66	\$13.31	\$16.36	\$22.62	\$35.54
Mean Hours Worked per Week	44.4	33.1	29	32.7	33.8

<sup>23</sup> See *infra*.

<sup>24</sup> This is based on the Self-Sufficiency Standard for a single parent with two children residing in Brooklyn, as DWU survey respondents had an average of 2.2 children and lived overwhelmingly in Brooklyn. The Self-Sufficiency Standard, developed by The Women’s Center for Education and Career Advancement, measures the real cost of living based on a “market-basket” of six basic needs for working families, as opposed to the federal poverty level, which is calculated based exclusively on food costs. See generally “The Self-Sufficiency Standards,” at <http://www.selfsufficiencystandard.org>.

<sup>25</sup> See COMMUNITY SERVICE SOCIETY OF NEW YORK, THE UNHEARD THIRD 2010 (2010), [http://www.cssny.org/research/unheard\\_third/](http://www.cssny.org/research/unheard_third/) (follow “Site Downloads: The Unheard Third 2010” hyperlink).

<sup>26</sup> See NEW YORK STATE DEPT. OF LABOR, QUARTERLY CENSUS OF EMPLOYMENT AND WAGES, <http://www.labor.ny.gov/stats/lscqew.shtm> (last visited Oct. 21, 2010). Comparator industries were selected based on their similarity in type of work performed. Disaggregated data for Education and Health Services Workers and Leisure and Hospitality are not available for New York State.

## 2. Domestic Workers Lack Paid Sick and Personal Days and are Unable to Choose Vacation Days.

More than half of the domestic workers surveyed do not receive any paid sick days; almost three-quarters do not receive paid personal days; and almost a third do not receive any paid vacation (see Table 6). Furthermore, as shown in Table 7, many workers are uncertain about whether they are entitled to any kind of paid day off, with 47% reporting that they do not know if they receive sick days, 56% not knowing about personal days, and 22% not knowing about vacation days. As compared to other workers, domestic workers are less likely to have paid sick leave.<sup>27</sup> And with respect to vacation, more than two-thirds of workers (68%) surveyed are unable to choose when to take vacation, as it is determined by their employers' schedules; others are forced to take unpaid leave while their employers are on vacation, depriving them of much-needed household income.

- 57% of domestic workers surveyed do not receive any paid sick days, as compared to 48% of all working New Yorkers.<sup>28</sup>
- 71% of domestic workers surveyed do not receive any paid personal days.
- 29% of domestic workers surveyed do not receive any paid vacation days.
- 68% of those with vacation days must take their vacation based on their employer's schedule.

Table 6: Distribution of Paid Sick, Personal and Vacation Days

# of Paid Days Workers can take off per year	% of Respondents Who Could Take Paid Day Off by Number and Type of Days		
	Paid Sick Days	Paid Personal Days	Paid Vacation Days
No Days	57%	71%	29%
1	1%	2%	0%
2	4%	4%	0%
3	7%	8%	0%
4	4%	3%	0%
5	15%	7%	9%
6	6%	2%	2%
7	3%	0%	7%
8+	3%	3%	53%

Table 7: Respondents Uncertain about Receiving Paid Benefits

Type of Benefit	% of Respondents Not Sure if They Received the Benefit
Paid Sick Days	47%
Paid Personal Days	56%
Paid Vacation Days	22%

<sup>27</sup> See COMMUNITY SERVICE SOCIETY OF NEW YORK, SICK IN THE CITY (2009), <http://www.cssny.org/publications/downloads/> (follow "Site Downloads: Sick in the City" hyperlink).

<sup>28</sup> See *id.*

### 3. Domestic Workers Lack Notice of Termination and Severance Pay.

*I would certainly feel a great deal of responsibility to her, but I don't know what would be an appropriate amount of notice or severance. I never thought of that actually. I don't even know what some of the legal requirements. It would be easier if there some guidance or rules about what I should do. Then it would be understood on both sides. As an employee you know your rights, and as an employer you know your obligations. – Employer #3*

The survey and interview data convey the insecurity and instability of domestic employment. Not only is there a lack of certainty at the inception of the employer-employee relationship, but there are no standards governing its termination. With no guarantee of notice of termination or severance pay, domestic workers are vulnerable to being unemployed and entirely without income on hours' notice. For live-in domestic workers, this can result in homelessness. Furthermore, domestic workers are less likely to receive severance pay than those in the general workforce. Nationwide, six out of ten companies have a written severance policy,<sup>29</sup> and state and federal laws protect many workers in the context of large company closures.<sup>30</sup> The precarious nature of the low-wage domestic-work industry makes it difficult for workers to negotiate better terms and conditions. When a worker's predominant concern is job retention, she is unlikely to feel confident enough to assert her rights or bargain with her employer.

- 49% of respondents were *not* given any advance notice if they were fired or let go.
- 70% of respondents were *not* given any severance pay if they were fired or let go.

### C. NEGOTIATING FOR BENEFITS: ISOLATION, INFORMALITY, AND UNCERTAINTY

*I don't have the same level of intimacy with other people that have worked for me. Having a domestic worker lends itself to an intimate relationship in ways that other jobs don't. If you have someone working in your home, taking care of your children, it is incredibly intimate. – Employer #1*

Domestic workers face unique challenges in their workplaces. Operating inside their employers' homes, they experience the combination of isolation, an intimate employment relationship, historical exclusion from labor laws, and job insecurity, undermining their ability to bargain for better conditions on an individual basis.<sup>31</sup> The individual domestic worker generally lacks coworkers and must therefore bargain alone with her employer for reasonable wages, hours, job duties, and benefits. In fact, the majority of those surveyed reported having no coworkers, and the vast majority of those who did have coworkers reported only occasional contact with one other domestic worker.

Domestic workers attempting to negotiate with their employers must do so in the employer's home, concerning matters that affect the employer's loved ones, property, and intimate household dynamics. This is a weighty undertaking for an isolated worker. As compared to other workplaces, the home is a charged, sensitive space often lacking the emotional distance necessary for negotiation to take place. Unsurprisingly, then, DWU's survey indicates that many workers either do not discuss the terms of employment with their employers or, when discussions are had, come away with an unclear understanding of what is agreed upon. This provides further evidence of the need for clear standards and the right to collectively bargain.

<sup>29</sup> See LEE HECHT HARRISON, SEVERANCE & SEPARATION PRACTICES BENCHMARK STUDY 2008-2009 (2008), available at [http://www.lhhitalia.com/it/Documents/LHH\\_SevStudy08.pdf](http://www.lhhitalia.com/it/Documents/LHH_SevStudy08.pdf).

<sup>30</sup> Pursuant to the both the federal and New York WARN Acts, private employers must provide notice to all affected employees (and, under the New York Labor Law, the representatives of affected employees, the state Department of Labor, and local workforce partners) prior to any plant closings, mass layoffs, and, under state law, relocations that would result in employment loss. See 20 C.F.R. § 639 *et seq.*; N.Y. Lab. Law § 860-b(1). Under federal law, WARN Act protections only apply when the employer has 100 or more full-time employees, and is triggered when the employer intends to close a plant or engage in a mass layoff of more than 33% (or 50 individual persons) of the active workforce. Under New York state law, WARN Act protections are triggered in circumstances of mass layoffs, relocations, or any employment loss that would affect at least 25 full-time employees (where those employees constitute at least one-third of the total workforce) or at least 250 full-time employees during any 30-day period.

<sup>31</sup> On the particular conditions of work faced by domestic workers, historical exclusions, and resulting challenges, see generally PIERRETTE HONDAGNEU-SOTELO, DOMÉSTICA: IMMIGRANT WORKERS CLEANING AND CARING IN THE SHADOWS OF AFFLUENCE (Univ. of Cal. Press 2001); Peggie Smith, *Organizing the Unorganizable: Private Paid household Workers and Approaches to Employee Representation*, 79 N.C. L. REV. 45 (2000); Molly Biklen, *Healthcare in the Home: Reexamining the Companionship Services Exemption to the Fair Labor Standards Act*, 35 COLUM. HUM. RTS. L. REV. 113 (2003); and Dorothy Bolden, *Women Helping Women*, in NOBODY SPEAKS FOR ME! SELF-PORTRAITS OF AMERICAN WORKING CLASS WOMEN (Simon and Schuster 1976).

## 1. Domestic Workers Lack Agreements for Notice of Termination and Severance Pay.

*No, we didn't have a discussion [about benefits]. She [the domestic worker] didn't give any input. She has so many other issues going on, and there is a lot of fear. She doesn't want to lose the job, and there is a lot of anxiety there. – Employer #2*

Table 8 shows that a high percentage of respondents *do not* have an agreement with their employers about critical benefits, such as notice of termination (73%) and severance pay (84%). Even for those workers who have made agreements with their employers, they feel a high level of uncertainty as to whether those agreements have been kept or broken. In fact, 63% of those with an agreement about severance and 40% of those with an agreement about notice of termination are not sure if the agreement was kept or broken.

Table 8: Agreements with Employers about Benefits

	Did you have an agreement?			Was the agreement kept or broken?		
	NO	NOT SURE	YES	NOT SURE	BROKEN	KEPT
Sick Days	58%	2%	40%	23%	6%	71%
Personal Days	61%	3%	36%	19%	12%	69%
Holidays	35%	3%	62%	13%	7%	80%
Vacation Days	35%	2%	63%	12%	8%	80%
Severance	84%	7%	9%	63%	13%	24%
Notice of Termination	73%	5%	22%	40%	18%	42%

## 2. Domestic Workers Have Uncertainty about Sick, Vacation, and Personal Day Agreements.

*There was never a conversation. It was just, you work hourly, so you just do whatever we ask while you are here. – Domestic Worker #1*

Table 9 indicates that even if domestic workers are given sick days, vacation days, or personal days, they are not clear about the terms of those benefits. Specifically, 79% (personal days), 68% (sick days), and 56% (vacation days) of these respondents are “not sure” what happens in the event they do not take these days.

Table 9: What Happens if Workers Don't Take Sick, Personal, or Vacation Days

	What Happened if You Didn't Take Your Days?			
	Not Sure	Lose	Paid	Roll-Over
Sick Days	68%	28%	3%	1%
Personal Days	79%	18%	2%	1%
Vacation Days	56%	33%	9%	2%

### 3. Domestic Workers Experience Discomfort in Negotiating for Benefits.

Table 10 indicates domestic workers' varying levels of comfort in talking to their employers about benefits. Due to the intimate, informal, and isolated nature of their workplace, many domestic workers do not feel comfortable discussing benefits with their employers. Survey respondents report feeling particularly uncomfortable discussing notice of termination (52%) and severance (55%).

Table 10: Reported Level of Comfort in Talking to Employers about Benefits

	Uncomfortable	Somewhat Comfortable	Comfortable
Sick Days	35%	16%	49%
Personal Days	42%	10%	48%
Holidays	26%	14%	60%
Vacation Days	28%	14%	58%
Severance	55%	6%	39%
Notice of Termination	52%	4%	44%

### 4. Domestic Workers are Isolated in the Workplace.

Table 11 shows that domestic workers are far more isolated in the workplace than workers in other industries. The average respondent works alone, and of those surveyed who have coworkers, 82% report having only one other coworker with whom they seldom interact.

Table 11: Comparison of Average Number of Workers in a Workplace<sup>32</sup>

Type of Industry	Average number of Workers in Workplace
Domestic Workers	1
Nursing and Residential Care Assistance	62
Social Assistance	40
Accommodation and Food Services	12
NYC Overall Workforce	15.51

## D. SUMMARY OF DATA

Overall, the data portrays a complex industry characterized by diverse, nonstandard employment arrangements and inconsistent labor standards. Domestic workers and their employers require guidance in order to develop agreements and standardize terms of employment. The wide variation in wages, hours, benefits, and their corresponding negotiability demonstrates the need for collective organization, especially in light of the isolation and uneven power dynamics inherent to this industry. A creative structure must be established by which domestic workers can come together to engage in collective bargaining with their employers. As set out below, DWU recommends that domestic workers be protected by collective-bargaining laws in New York.

<sup>32</sup> See *supra* n. 30.

### III. A “COLLECTIVE STANDARDS” APPROACH: Four Building Blocks of Collective Bargaining

All workers, including domestic workers, should enjoy equal rights and fair standards, including the right to collectively bargain. Specifically, DWU believes that the DOL should recommend amendment of the SLRA to include domestic workers and allow the PERB to determine the nature and structure of collective bargaining for domestic workers.

By November 1, 2010, the DOL must submit a study to the New York State Legislature that contemplates: 1) whether a domestic worker employee organization could be formed in accordance with the State Labor Relations Act; 2) how bargaining units could be formed; 3) whether there are issues unique to the domestic work context; and 4) alternative frameworks for collective organization.<sup>33</sup>

The DOL should explore these issues and immediately endorse amendments to the SLRA that support collective bargaining for domestic workers. With this framework in place, DWU would have the legally-protected right to form a worker entity pursuant to the SLRA and begin bargaining initiatives. From DWU’s perspective, collective bargaining should be pursued in the context of the four-part “collective standards” approach outlined below.

#### **BUILDING BLOCK 1: INCLUDE DOMESTIC WORKERS UNDER THE SLRA TO ENABLE COLLECTIVE BARGAINING IN THIS INDUSTRY.**

All workers in New York should enjoy the right to organize and be covered by the SLRA, which currently excludes domestic workers.<sup>34</sup> The right of workers to collectively bargain is among the core labor standards recognized under domestic and international laws.<sup>35</sup> History has shown that unions are often central to the advancement of workers and the realization of their rights.<sup>36</sup>

In addition to the symbolic significance of covering domestic workers under the SLRA, the law’s protection of workers engaged in collective bargaining will be necessary to transform the culture and standards of this industry.<sup>37</sup> Domestic workers must be protected against retaliation by their employers for participating in campaigns for fair working conditions.

Collective bargaining will occur incrementally in the domestic-work context, and it is likely that small-scale experimentation and organizing will be the point of departure. The PERB should oversee the process by which domestic workers conclude agreements with their employers and designate which entities and bargaining units are appropriate, whether on the basis of geography, type of domestic labor, or other criteria.

#### **BUILDING BLOCK 2: CONTINUE PURSUING LEGISLATIVE AND REGULATORY REFORMS AS NEEDED.**

Even in sectors that have long benefited from collective bargaining, unions have not relied solely on collective bargaining: they have simultaneously pushed for laws and regulations that would improve conditions for all workers and fortify enforcement mechanisms. Therefore, statutory and regulatory reforms should operate in tandem with collective bargaining to raise the standards in the domestic-work industry.

33 See A1470B/S2311E § 10, 2010 Leg. (N.Y. 2010), available at <http://assembly.state.ny.us/leg/?bn=A01470>.

34 Farm workers are also excluded from the New York State Labor Relations Act, N.Y. Labor L. § 701(3).

35 For example, the United Nations’ Universal Declaration of Human Rights, states that “everyone has the right to form and to join trade unions for the protection of his interests,” UDHR art. 23 § 4, adopted December 10, 1948, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948); almost identical language is included in the International Covenant on Civil and Political Rights, adopted Dec. 16, 1966, G.A. res. 2200A (XXI) (1966). The preamble to the National Labor Relations Act, while couched in the protection of commerce, acknowledges that “*protection by law of the right of employees to organize and bargain collectively* safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and *by restoring equality of bargaining power between employers and employees.*” 29 U.S.C. § 151 (emphasis added).

36 For an excellent case study on this phenomenon, see JOHN FABIAN WITT, *THE ACCIDENTAL REPUBLIC: CRIPPLED WORKINGMEN, DESTITUTE WIDOWS, AND THE REMAKING OF AMERICAN LAW* (Harvard Univ. Press 2006) (tracing the rise of workers’ compensation through the lens of collective organization from the Industrial Revolution through the Progressive Era).

37 The SLRA would protect domestic workers engaged in collective bargaining from “unfair labor practices,” such as retaliatory firings, and provide remedies for the same. See New York State Labor Relations Act, N.Y. Labor L. § 706.

As documented in the foregoing research, five benefits are critical for domestic workers to achieve stability in their employment: 1) paid sick days; 2) paid personal days; 3) paid vacation days; 4) advance notice of termination; and 5) severance pay. Such benefits could be negotiated through collective bargaining, but legislation or regulatory promulgation of certain benefits may be necessary, in part to create the conditions for negotiation. For example, notice of termination and severance promote security in the domestic workforce, preventing employers from treating workers as disposable and thereby supporting bargaining efforts.

### **BUILDING BLOCK 3: CONDUCT COMMUNITY EDUCATION AND ENFORCE EXISTING RIGHTS THROUGH COMMUNITY PARTNERSHIPS.**

Public awareness and enforcement of existing laws are required to realize domestic workers' rights and to lay the foundation for collective bargaining. Toward this end, a collaborative model involving the DOL, DWU members, and employers would draw effectively on existing resources, capacity, and industry expertise.

In addition, a DWU-DOL enforcement partnership, similar to the New York Wage Watch program, would encourage DWU members to monitor compliance in the communities where they live and work.<sup>38</sup> Elected officials in the neighborhoods of DWU members could also contribute to this model by establishing "domestic worker justice zones."

#### **New York Wage Watch**

Modeled after Neighborhood Watch programs, this NYS DOL initiative draws on the local expertise and connection of community-based organizations/workers' centers to monitor "wage theft" (non-payment of minimum wages, overtime, tips, etc.) in their own neighborhoods.

#### **Domestic Worker Justice Zones**

In collaboration with NYS Senator Eric Adams (D-20<sup>th</sup> Dist.) and other supporters, DWU plans to establish localized initiatives to ensure employer and employee education and the enforcement of employees' rights.



### **BUILDING BLOCK 4: CONTINUE TO ORGANIZE DOMESTIC WORKERS.**

Throughout its 10-year history, DWU has prioritized organizing for fair, not minimum, labor standards. Currently, DWU has a membership of 4000 workers in the New York City area, and with the support of community organizations, labor unions, and government institutions, DWU hopes to expand its reach, building power as a precondition of collective bargaining.

<sup>38</sup> See NEW YORK STATE DEPT. OF LABOR, LABOR DEPARTMENT INITIATIVE EMPOWERS ORDINARY PEOPLE TO JOIN THE FIGHT AGAINST WAGE THEFT NEW YORK WAGE WATCH, THE ONLY ONE OF ITS KIND IN THE NATION, TO ROLL OUT IN NEW YORK CITY AND LONG ISLAND (2009), [http://www.labor.ny.gov/pressreleases/2009/Jan26\\_2009.htm](http://www.labor.ny.gov/pressreleases/2009/Jan26_2009.htm).

## IV. Domestic Workers United’s Position on the Feasibility Study

Based on extensive research and organizing experience, DWU believes collective bargaining is feasible for domestic workers. In the course of studying the four topics of the feasibility study outlined in the Domestic Workers Bill of Rights—1) forming an employee organization pursuant to the State Labor Relations Act (SLRA), 2) forming bargaining units, 3) issues unique to the domestic-work context, and 4) alternative frameworks for collective organization—the DOL should affirm this fundamental right to organize and recommend that the New York State Legislature include this industry in the SLRA. Furthermore, the Public Employment Relations Board should oversee implementation of bargaining models and exercise its authority to engage in rulemaking or otherwise establish terms and structures for the domestic workforce as needed.

### A. FORMING AN EMPLOYEE ORGANIZATION UNDER THE STATE LABOR RELATIONS ACT

Collective bargaining normally takes place between a group of workers, typically represented by a union, and a corresponding employer entity. This basic premise is challenging to conceptualize in the domestic worker context, since most workers deal with their employers on a one-to-one basis. Nevertheless, there are promising models to draw upon.

The organizing successes of DWU prove that domestic workers, overcoming their isolation, could form a cross-workplace employee organization pursuant to the SLRA. More difficult is the question of what form an employer entity would take, as household employers are not generally organized. This issue is explored further in the discussion of bargaining units below.

### B. FORMING BARGAINING UNITS

In the domestic-work context, bargaining units could be organized according to many different criteria, such as geography or work tasks. Standards in this sector tend to be transmitted informally and on the basis of neighborhood and type of domestic worker, such as housecleaner, nanny, or elder companion.<sup>39</sup>

The SLRA gives the PERB great flexibility in designating bargaining units. In Section 705(2) of the law, the PERB is empowered to decide “the unit appropriate for the purposes of collective bargaining,” which may include “the employer unit, multiple employer unit, craft unit, plant unit, or any other unit.”<sup>40</sup>

For domestic workers, straightforward designation of the “employer unit” as the bargaining unit would mean preserving the one-to-one relation between the domestic worker and her employer. While this seems somewhat counter to the idea of “collective” bargaining, it is both appropriate and with precedent under the SLRA.<sup>41</sup>

Another option for domestic workers may be the designation of “multiple employer units.” This could initially involve localized, small-scale attempts at collective bargaining, with employees organized, for example, by geography and/or job duties and employers organized, for example, through neighborhood parents’ associations or residential groups. This model is contemplated by the SLRA and well-practiced in many contexts, including the building trades.<sup>42</sup>

### C. ISSUES UNIQUE TO THE DOMESTIC WORK CONTEXT

The foregoing survey and interview data in Section II document the peculiar constellation of challenges that domestic workers face in their workplaces: namely, isolation, uneven power dynamics, emotional linkages, and inconsistent and informal terms of employment. As concerns collective bargaining, it is also significant that workers in this industry do not typically relate to a common employer or other potential entity with which to negotiate.

In addition, domestic workers’ diversity of background and immigration histories must be considered. Among those domestic workers recently surveyed by DWU, 87% were immigrant women of color, a population particularly vulnerable to exploitation by unscrupulous employers. Enforcement here is crucial: strong worker protections are needed to ensure that domestic workers can effectively exercise their leverage in collectively bargaining for rights and benefits.

<sup>39</sup> Interview with DWU members in New York City, N.Y. (Oct. 2010).

<sup>40</sup> New York State Labor Relations Act, N.Y. Labor L. § 705(2).

<sup>41</sup> See *id.*; *Matter of Rexton Realty Co.*, No. 1702, v. 4, at 1108 (N.Y. S.E.R.B. Dec. 31, 1941); Interview with Jerome Lefkowitz, Chairman, N.Y. Public Employment Relations Bd., in New York City, N.Y. (Oct. 21, 2010).

<sup>42</sup> New York State Labor Relations Act, N.Y. Labor L. § 705(2); Interview with Jerome Lefkowitz, Chairman, N.Y. Public Employment Relations Bd., in New York City, N.Y. (Oct. 21, 2010); E-mail from Matthew Ginsburg, Associate General Counsel, AFL-CIO, to E. Tammy Kim, Staff Attorney, Urban Justice Center (Oct. 19, 2010, 1:50 p.m. EST) (on file with Urban Justice Center).



## D. ALTERNATIVE FRAMEWORKS FOR COLLECTIVE ORGANIZATION

The success of DWU since its establishment in 2000 speaks to the efficacy of innovative forms of labor organizing. Through this model workers' center, an important contemporary framework for collective organization, domestic workers have fought for recognition and legislative changes. Nevertheless, DWU's members have not benefited from the protections of collective-bargaining laws, nor has the structure existed for formal employee-employer negotiations to occur in this industry.

Table 12: Relevant Bargaining Models in the United States<sup>43</sup>

*As DWU's survey data shows, the typical domestic worker operates alone and is employed by a discrete individual or family. This makes collective bargaining in this industry particularly difficult to conceptualize. Nevertheless, many lessons can be learned from analogous industries with isolated, dispersed workers. The following comparative chart analyzes existing models relevant to the domestic-work industry. These case studies will inform future collective bargaining and industry-wide standard setting.*

Worker Group	Similarities to Domestic Workers	Differences from Domestic Workers
In-home childcare workers and home healthcare workers employed as "independent providers"	Workers are isolated and dispersed and work in individual homes; they lack a common employer.	In some states, a public authority/agency, sometimes designated as the "employer of record," regulates the flow of public salaries to workers, and sets licensing and training requirements. Domestic workers, by contrast, are paid with private funds by individual households.
Home healthcare workers employed by private homecare agencies	Workers are isolated and dispersed and work in individual homes.	Workers have the right to demand recognition from and bargain with a common employer, the homecare agency. Domestic workers, by contrast, are paid with private funds by individual households.
Building trades workers (e.g., carpenters)	Workers are dispersed on job sites managed by different entities. Workers set standards based on a model contract with particulars negotiated with each employer (multi-employer bargaining).	Workers usually have coworkers, and the jobsites have relationships with the "hiring halls" through which they are hired. Domestic workers, by contrast, are generally hired by word-of-mouth because of the nature of the industry.
Residential building superintendents and janitors	Workers are dispersed in buildings managed or owned by different companies. Workers set standards based on a model contract with particulars negotiated with each employer (multi-employer bargaining).	In some cities, workers, sometimes alone but also in small groups, are employed by building-management companies at multiple sites. The union bargains with an employer association comprising several of these management companies. Domestic workers, by contrast, are employed by individual employers.
Musicians	Workers are dispersed and lack a common employer. Workers and small groups of workers set standards based on a model contract with particulars negotiated with each employer (multi-employer bargaining).	Star musicians have more leverage to negotiate and more boycotting power. Musicians often have coworkers. Domestic workers, by contrast, are considered "easily replaceable" by employers.
Writers	Workers are dispersed and sometimes isolated. Workers set standards based on a model contract with particulars negotiated with each employer (multi-employer bargaining).	Writers have coworkers, leverage to negotiate, and more boycotting power. Many employers are unified through an umbrella association. Privately, individually employed domestic workers, by contrast, are considered "easily replaceable" by employers.
"Independent workers," mainly in creative fields	Workers are isolated and dispersed and lack a common employer.	These are independent contractors organized primarily for a healthcare/benefits pool. Domestic workers, by contrast, have sought to organize more broadly.

<sup>43</sup> The information in this chart is based on legal memoranda and interview (telephonic and in-person) notes compiled between August and October 2010, on file with the Urban Justice Center.

## V. CONCLUSION: A Call to Action

On the heels of the Domestic Workers Bill of Rights victory, Domestic Workers United (DWU) is prepared to build upon its historic organizing success. To this end, it recommends that the New York State Department of Labor endorse domestic workers' immediate inclusion under the State Labor Relations Act (SLRA). All workers, including those as isolated and dispersed as domestic workers, should have the right to bargain collectively under the law and press for equitable, industry-wide standards.

A simple amendment to Section 701(3) of the SLRA, which could be accomplished before 2011, would end the unjust exclusion of domestic workers from New York's collective-bargaining law and enable them to seek creative forms of organization. This would open a new, historic chapter in the labor movement at large and create the opportunity for domestic workers to collectively bargain.

Including domestic workers in the SLRA will help facilitate the enforcement of existing laws, including the newly enacted Bill of Rights. The domestic workforce is at the core of our economy, yet it remains in the shadows, beyond the realm of government enforcement and advocacy. The invisibility of domestic workers undermines labor standards and ultimately diminishes labor rights for all workers. Enactment and enforcement of the Domestic Workers Bill of Rights, inclusion in the SLRA, and continued expansion of labor rights and benefits will help end employer abuses in this industry. By supporting equality and expanded rights for one of New York's most vulnerable workforces, we strengthen collective bargaining, workers' rights, and human rights for all. This is an important step in creating a sustainable, 21st-century economy that works for everyone.



### Global Dimensions

We are witnessing, despite decades of legal exclusion and invisibility, a surge in domestic workers' organizing, activism, and visibility. Building on the work of DWU and similar organizations in three other cities, the National Domestic Workers Alliance was established at the U.S. Social Forum in 2007 and already boasts some 33 affiliates in 11 states and the District of Columbia.<sup>33</sup> California groups affiliated through the California Household Worker Rights Coalition are currently organizing to pass the California Domestic Worker Bill of Rights.<sup>34</sup>

Outside the United States, domestic workers are mobilizing in countries as diverse as South Africa, India, Italy, and France.<sup>35</sup> The International Labour Organization has taken notice and proposed the "Decent work for domestic workers" Convention and Recommendation, which would establish formal recognition of the workforce and minimum standards at the international level.<sup>36</sup> All of these developments will inform collective bargaining among domestic workers in New York.

44 The California Household Worker Rights Coalition comprises the Coalition for Human Immigrant Rights of Los Angeles, the Day Labor Program Women's Collective of La Raza Centro Legal, Mujeres Unidas y Activas, Pilipino Workers Center, Filipino Advocates for Justice, and People Organized to Win Employment Rights. See "CA Domestic Workers' Bill of Rights," at <http://www.nationaldomesticworkeralliance.org/campaigns/ca-domestic-workers-bill-of-rights>.

45 On South Africa, see Basic Conditions of Employment Act, No. 75 of 1997, Sectoral Determination 7: Domestic Worker Sector, South Africa, Government Notice (GN) R. 1068 of 15 August 2002; on India, see, e.g., *Fix minimum wage: domestic workers*, EXPRESS NEWS SERVICE, Aug. 19, 2010, available at <http://expressbuzz.com/cities/chennai/fix-minimum-wages-domestic-workers/199291.html>; on Italy, see Memorandum and E-mail from Karin Pape to Jill Shenker (Sept. 24, 2010) (on file with NYU Immigrant Rights Clinic); on France, see Convention collective nationale des salariés du particulier employeur, Nov. 24, 1999, J.O., Mar. 11, 2000, available at <http://www.bitwiin.com/documents/CCN-Salaries-du-Particulier-Employeur.pdf>.

46 See International Labour Organization, *Report IV(1): Decent work for domestic workers* (June 2010), available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_143337.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_143337.pdf).

47 See International Labour Organization, *Report IV(1): Decent work for domestic workers* (June 2010), available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_143337.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_143337.pdf).



A report by Domestic Workers United, National Domestic Workers Alliance, and  
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