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**THE COUNCIL OF THE CITY OF NEW YORK**

**COMMITTEE REPORT OF THE**

**GOVERNMENTAL AFFAIRS DIVISION**

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**COMMITTEE ON CIVIL AND HUMAN RIGHTS**

Hon. Mathieu Eugene, Chair

**July 29, 2021**

**PROPOSED INT. NO 339-B:** Council Members Rose, Rosenthal, Ayala, Reynoso, Menchaca, Perkins, Rivera, Kallos, Powers, the Public Advocate (Mr. Williams), Van Bramer, Lander, Ampry-Samuel, Chin, Levine, Adams, Eugene, Moya, Barron, Cumbo, Cornegy, Treyger, Dromm, Brannan, Holden, Grodenchik, Gibson, Miller, Louis, Rodriguez, Koo, Salamanca, Maisel and Koslowitz

**TITLE:**  A Local Law to amend the administrative code of the city of New York, in relation to protections for domestic workers under the human rights law

1. **INTRODUCTION**

 On July 29, 2021, the Committee on Civil and Human Rights, chaired by Council Member Mathieu Eugene, held a vote on Proposed Introductory Bill Number 339-B (Int. 339-B), in relation to expanding the definition of employer under the human rights law to provide protections for domestic workers. On November 18, 2019, the Committee heard a previous version of the bill (Int. 339-A) and received testimony from the New York City Commission on Human Rights, and various advocates, stakeholders and members of the public. This testimony informed changes to the bill. The bill passed with 5 votes in the affirmative, 0 votes in the negative, and no abstentions.

1. **BACKGROUND**

Nationally, there are an estimated 2.5 million domestic workers and the industry is considered one of the Country’s fastest growing professions.[[1]](#footnote-2) New York has approximately 328,000 domestic workers with approximately 71 percent in New York City.[[2]](#footnote-3)

With an aging population and more women joining the workforce, the Bureau of Labor Statistics expects the number of home health care and personal care aides to increase three times as fast as other occupations.[[3]](#footnote-4) Despite the growing demand for these professionals, domestic workers often face poor working conditions and are vulnerable to abuse, including sexual harassment, assault, and various other forms of discrimination. The nature of domestic work often perpetuates the vulnerability of workers, as it is often intermittent, isolated or performed for very small employers such as an individual family.

Domestic work is highly gendered. According to data from the Census Bureau’s American Community Survey (ACS), of the 328,000 domestic workers in New York State, 92 percent are women. A majority of this workforce was also comprised of women of color with 34 percent identifying as Hispanic, 28 percent identifying as Black and 13 percent identifying as Asian American Pacific Islanders, as well as 63 percent identifying as foreign born, according to the ACS data.[[4]](#footnote-5) The gender and racial composition of the domestic workforce makes this group of workers particularly vulnerable to labor abuses and discrimination. When workers experience poor working conditions, discrimination or sexual harassment, they are fearful of reporting such incidents. Statistics from the NDWA survey show that 91 percent of the workers surveyed who had experienced problems with their working conditions did not complain because they were fearful that they would lose their job.[[5]](#footnote-6) Of those that were fired from their job, nearly a quarter were fired in retaliation for their complaints.[[6]](#footnote-7) Additionally, 85 percent of domestic workers who were surveyed who were also undocumented reported that they did not complain about their poor working conditions out of fear that their immigration status would be used against them.[[7]](#footnote-8) The NDWA survey also showed that, across the board, undocumented domestic workers face even worse conditions than their colleagues.[[8]](#footnote-9) As such, even though their employment conditions are often worse, their added vulnerability means that undocumented domestic workers are less likely to complain or quit their jobs.[[9]](#footnote-10)

According to a report from NDWA and the Institute for Policy Studies (IPS), in 2016, domestic workers made up the largest sector of all labor trafficking cases reported to the National Human Trafficking resource Center.[[10]](#footnote-11) This is despite the fact that at least 70 percent of these workers come to the United States with employment-related visas.[[11]](#footnote-12) The graphic below illustrates some of the findings related to the labor and civil rights abuses that this group of domestic workers reported experiencing. The graph demonstrated that domestic workers of all types regularly experience unfair labor practices, poor employment protections and a raft of abuses.

**Summary of findings of trafficked domestic workers survey[[12]](#footnote-13)**

Human trafficking is also deeply connected to domestic work and the abuses suffered by domestic workers. A report by Polaris and the NDWA noted that while awareness of human trafficking has become more widespread, most educational campaigns focus on sex trafficking, leaving the labor trafficking that affects domestic workers unaddressed.[[13]](#footnote-14) The exclusion of domestic workers from many legal protections manifests in the poor working conditions that these workers face. An extensive survey of domestic workers conducted by NDWA and IPS revealed the information below.

[[14]](#footnote-15)

Despite these rampant violations, there can be limited legal recourse for domestic workers. For example, Title VII of the Civil Rights Act of 1964, which prohibits discrimination against workers, exempts employers with fewer than 15 workers.

New York State was one of the first to pass legislation to protect domestic workers. In 2010, New York passed the “Domestic Worker Bill of Rights,” which extended several labor protections to domestic workers, including paid sick time, minimum wage requirements, overtime and standard work hours, among others.[[15]](#footnote-16) The New York State Human Rights Law (NYSHRL) was also amended in 2010 to protect domestic workers from sexual and discriminatory harassment.[[16]](#footnote-17) On August 12, 2019, Governor Cuomo signed S6577/A8421 into law, which removed the four employee requirement from the NYSHRL.[[17]](#footnote-18) However, domestic workers remain excluded from the definition of “employee” under the State’s human rights law, thereby limiting the extent of the NYSHRL’s application.[[18]](#footnote-19) Notably, legislation has passed in the New York State Senate and Assembly that would expand the definition of “employer” to include those who employ domestic workers.[[19]](#footnote-20)

Employment-related protections offered pursuant to the City’s Human Rights Law (NYCHRL) only apply to employers with four or more employees. As such, domestic workers, who are often employed in private homes by those who have few employees, miss out on many of the City’s human rights protections. In 2018, the City Council passed Local Law 98, which removed the four-employee requirement for gender-based harassment claims.

The deeply personal nature of domestic work can pose some challenges for human rights laws. For example, a patient with mobility issues who requires assistance bathing or going to the toilet may only feel comfortable being in such a vulnerable position with a domestic worker of the same gender. Some courts have found such concerns to be legitimate, but have struck down general employer policies that automatically assigned homecare workers by gender.[[20]](#footnote-21)

**Domestic Workers and the COVID-19 Pandemic**

The COVID-19 pandemic has had, and continues to have, significant impacts on the lives of people across all demographics. While some have been fortunate enough to continue to work from home, both able to earn an income and stay safely distanced, others have not been able to do so. Previously left out of several workplace protections, domestic workers quickly found the existing issues of their jobs exacerbated by the pandemic.[[21]](#footnote-22)

While some domestic workers were able to continue to work, many did so in enclosed spaces, at times without personal protective equipment (“PPE”) provided, despite their status as essential workers.[[22]](#footnote-23) A survey of domestic workers conducted by the IPS found that 73 percent of survey respondents said that their employer did not provide PPE.[[23]](#footnote-24) Many domestic workers lost their jobs altogether during the pandemic. An October 2020 study released by the NDWA found that 90 percent of domestic workers had lost their jobs by late March.[[24]](#footnote-25) By September, the unemployment rate amongst domestic workers was nearly four times that of its pre-pandemic rate of nine percent.[[25]](#footnote-26) The NDWA report also found that the majority of domestic workers did not apply for unemployment insurance because they did not believe that they qualified, while more than half of workers struggled to pay their rent or mortgage for the first six months of the pandemic.[[26]](#footnote-27) In an industry predominantly made up of immigrant employees, many domestic workers were afraid to seek out any sort of government aid due to their immigration status.[[27]](#footnote-28)

1. **BILL ANALYSIS**

Section one of Int. 339-B amends section 8-107 of the Administrative Code to extend employment protections to domestic workers regardless of staff size. Currently, the definition of employer excludes employers with less than four employees. The definition of domestic worker tracks the definition of section 2 of the Labor Law. According to the Labor Law, domestic workers include a person employed in a residence for the purpose of caring for a child, serving as a companion for a sick, convalescing or elderly person, housekeeping, or for any other domestic service purpose but does not include any individual (a) working on a casual basis, (b) who is employed by an employer or agency other than the family or household using his or her services, or (c) who is a relative through blood, marriage or adoption of: (1) the employer; or (2) the person for whom the worker is delivering services under a program funded or administered by federal, state or local government. Individuals working on a casual basis could be part-time babysitters or individuals who provide occasional household services for a limited amount of time, irregularly or during intermittent periods. The protections in this section include prohibitions against discrimination in employment, apprentice training programs, religious observance in the employment context, unemployment status, disparate impact discrimination in the employment context, and unlawful discrimination against victims of domestic violence, sex offenses or stalking. Employers with fewer than four domestic workers would not be obligated to comply with the City’s requirement for a dedicated lactation room. However, domestic workers would also be entitled to reasonable accommodations for pregnancy, childbirth and related conditions such as lactation accommodations, upon request. Employers with fewer than four domestic workers would not be obligated to comply with the Fair Chance Act.

If passed, Int. 339-B would extend most of the NYCHRL’s employee protections to domestic workers.

The bill would take effect 200 days after it becomes law.

Proposed Int. No. 339-B

By Council Members Rose, Rosenthal, Ayala, Reynoso, Menchaca, Perkins, Rivera, Kallos, Powers, the Public Advocate (Mr. Williams), Van Bramer, Lander, Ampry-Samuel, Chin, Levine, Adams, Eugene, Moya, Barron, Cumbo, Cornegy, Treyger, Dromm, Brannan, Holden, Grodenchik, Gibson, Miller, Louis, Rodriguez, Koo, Salamanca, Maisel and Koslowitz

..Title

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to protections for domestic workers under the human rights law

..Body

Be it enacted by the Council as follows:

Section 1. Subdivision 23 of section 8-107 of the administrative code of the city of New York, as amended by local law number 172 for the year 2019, is amended to read as follows:

23.   Additional provisions relating to employment; interns, freelancers, independent contractors, and domestic workers. The protections of this chapter relating to employees apply to interns, freelancers and independent contractors. The protections of this chapter relating to employees also apply to a person’s employment of one or more domestic workers as defined in subdivision 16 of section 2 of the labor law, without regard to the number of other employees such person has in their employ, provided however that subdivisions (10), (11-a) and paragraphs (b), (c) and (d) of subdivision (22) shall not apply.

§ 2. This local law takes effect 200 days after it becomes law.

ASB/JJD/BAM/JG

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1. Jennifer Calfas. *’There is a real crisis’: Domestic workers are in high demand, but the jobs have few protections and little pay*, Money, (April 4, 2019) *Available at* <http://money.com/money/longform/domestic-workers-crisis/>. [↑](#footnote-ref-2)
2. Shamier Settle. *Domestic Workers Are Essential Workers: By the Numbers in New York*. Fiscal Policy Inst. (April 12, 2021) *Available at* <https://fiscalpolicy.org/wp-content/uploads/2021/04/Domestic-Workers-in-New-York_By-the-Numbers.pdf>, p. 1. [↑](#footnote-ref-3)
3. Id. at p. 2 [↑](#footnote-ref-4)
4. Id. at p. 3-4. [↑](#footnote-ref-5)
5. Linda Burnham and Nick Theodore. *Home economics: The invisible and unregulated world of domestic work*, National Domestic Workers Alliance (NDWA) (2012) *Available at* [https://idwfed.org/en/resources/home-economics-the-invisible-and-unregulated-world-of-domestic-work/@@display-file/attachment\_1](https://idwfed.org/en/resources/home-economics-the-invisible-and-unregulated-world-of-domestic-work/%40%40display-file/attachment_1) , p. xii. [↑](#footnote-ref-6)
6. Id. [↑](#footnote-ref-7)
7. Id. [↑](#footnote-ref-8)
8. Id. at p. 20. [↑](#footnote-ref-9)
9. Id. [↑](#footnote-ref-10)
10. NDWA and IPS. *The human trafficking of domestic workers in the United States*, (2017) *Available at* [https://www.domesticworkers.org/wp-content/uploads/2021/06/bs\_report2017.pdf](https://www.domesticworkers.org/wp-content/uploads/2021/06/bs_report2017.pdf%20), p. 5. [↑](#footnote-ref-11)
11. Id. at p. 21. [↑](#footnote-ref-12)
12. Id. at p. 6. [↑](#footnote-ref-13)
13. *Human Trafficking at Home*. Polaris and NDWA. (Sept. 2019) *Available at* <https://polarisproject.org/wp-content/uploads/2019/09/Human_Trafficking_at_Home_Labor_Trafficking_of_Domestic_Workers.pdf>, p. 5, 10. [↑](#footnote-ref-14)
14. NDWA and Institute for Policy Studies. *The human trafficking of domestic workers in the United States*, (2017) *Available at* [https://www.domesticworkers.org/wp-content/uploads/2021/06/bs\_report2017.pdf](https://www.domesticworkers.org/wp-content/uploads/2021/06/bs_report2017.pdf%20)  [↑](#footnote-ref-15)
15. 2009 NY A.B. 1470; N.Y. Labor Law § 170. [↑](#footnote-ref-16)
16. N.Y. Exec. Law § 296-b. [↑](#footnote-ref-17)
17. Press Release, Governor Andrew Cuomo, *Governor Cuomo Signs Legislation Enacting Sweeping New Workplace Harassment Protections* (Aug. 12, 2019), <https://www.governor.ny.gov/news/governor-cuomo-signs-legislation-enacting-sweeping-new-workplace-harassment-protections> [↑](#footnote-ref-18)
18. N.Y. Exec. Law § 292. [↑](#footnote-ref-19)
19. *See* Senate Bill S5064 and Assembly Bill A8007. [↑](#footnote-ref-20)
20. See e.g. *Spragg vs. Shore Care*, 679 A. 2d 685 (N.J. App., 1996). [↑](#footnote-ref-21)
21. Mariah A. Lindsay. *Overworked, Overlooked, and Unprotected: Domestic Workers and COVID-19*. Harvard Law Petrie-Flom Center. (Dec. 3, 2020) *Available at* https://blog.petrieflom.law.harvard.edu/2020/12/03/domestic-workers-covid19-pandemic/ [↑](#footnote-ref-22)
22. Id. [↑](#footnote-ref-23)
23. Marc Bayard and Kimberly Freeman Brown. *Black Immigrant Domestic Workers in the Time of COVID-19*. IPS *Available at* <https://ips-dc.org/black-immigrant-domestic-workers-covid-19/> (*accessed* July 28, 2021). [↑](#footnote-ref-24)
24. NDWA Labs. *6 Months in Crisis: The Impact of COVID-19 on Domestic Workers.* NDWA (Oct. 2020) *Available at* https://www.domesticworkers.org/wp-content/uploads/2021/06/6\_Months\_Crisis\_Impact\_COVID\_19\_Domestic\_Workers\_NDWA\_Labs\_1030.pdf [↑](#footnote-ref-25)
25. Id. [↑](#footnote-ref-26)
26. Id. [↑](#footnote-ref-27)
27. *Supra* note 21. [↑](#footnote-ref-28)