

Insight

IN-DEPTH DISCUSSION

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Illinois Becomes Seventh State to Expand Employment Rights to Domestic Workers

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On August 21, 2016, Illinois Governor Bruce Rauner signed into law the Illinois Domestic Workers' Bill of Rights, amending four existing state employment laws so they will now apply to domestic workers. Effective January 1, 2017, the law is expected to affect approximately 35,000 employees. With an estimated two million domestic workers nationwide, the trend to extend employment rights to domestic workers will likely continue at both the state and federal levels.

Overview of Laws Nationwide

In 2010, New York became the first state to pass a domestic workers' bill of rights, requiring overtime pay and a day of rest per week, or overtime pay on the day of rest, for covered domestic workers. The law also expanded the protections of the New York Human Rights Law to cover these workers, and created a special cause of action for domestic workers who experience sexual or racial harassment.

In the last three years, California,¹ Connecticut, Hawaii, Massachusetts and Oregon enacted legislation similar to New York's with respect to overtime pay, and except for California, enacted similar laws providing discrimination and harassment protections. The laws vary somewhat with regards to who is covered as a "domestic worker." For example, Oregon's law excludes home care workers who provide services to seniors and persons with disabilities and independent contractors. Also, some states impose higher requirements than others. In Massachusetts, for instance, domestic workers can request written evaluations after three months of employment and employers are required to keep a record of wages and hours for two years. Importantly, domestic workers in Massachusetts also

¹ Although California's law is set to expire January 1, 2017, in early August, the California Assembly passed a bill that would make its state law permanent and sent the bill to the governor for signature. The California law does not provide for discrimination and harassment protection.

have an affirmative right to privacy, prohibiting employers from monitoring, restricting or interfering with their private communications.

The Illinois Domestic Workers' Bill of Rights

Under Illinois's law, domestic work means: housekeeping; house cleaning; home management; laundering; cooking; chauffeuring; nanny services; companion services and caregiving, personal care or home health services for elderly persons or persons with an illness, injury, or disability who require assistance caring for themselves; and other household services. The law affects four existing laws: the Illinois Minimum Wage Law, Illinois One Day in Seven Act, Illinois Human Rights Act and the Illinois Wages of Women and Minors Act.

Illinois Minimum Wage Law: Illinois law already requires home health care providers to be paid minimum wage and overtime, but the Domestic Workers' Bill of Rights expands these obligations to all domestic workers. In January, employers must pay all domestic workers the minimum wage in Illinois, currently \$8.25 an hour, and must pay overtime for any hours worked in excess of 40 hours in a workweek.

Illinois One Day in Seven Act: a domestic worker shall be allowed at least 24 consecutive hours of rest in every calendar week. If the domestic worker voluntarily agrees to work on the employee's day of rest, the employer must compensate the employee at the overtime rate for all hours worked that day. The day of rest should coincide with the traditional day reserved by the domestic worker for religious worship.

Illinois Wages of Women and Minors Act: expands fair wage rights for women and minors to domestic workers.

Illinois Human Rights Act (IHRA): expands all of the discrimination and harassment protections of the IHRA to domestic workers. The IHRA's coverage is limited to employers employing 15 or more employees within Illinois during a certain period. Of note, the IHRA rights extended to domestic workers includes the protections extended to pregnant women in the workplace when the IHRA was last amended in August of 2014, such as reasonable accommodation for pregnancy, childbirth, or medical or common conditions related to pregnancy or childbirth.

Next Steps

Illinois companies employing domestic workers who employ more than 15 employees or more should review their postings and handbooks to ensure compliance with the notice requirements in the IHRA. Attention should also be paid to ensure domestic workers receive at least 24 consecutive hours of rest every calendar week, unless there is an agreement otherwise. Finally, Illinois employers should review their timekeeping and recordkeeping policies to ensure they are in compliance with the minimum wage and overtime requirements.