



Urban Justice Center
123 William Street, 16th floor, New York, NY 10038
Tel: (646) 602-5600 • Fax: (212) 533-4598
www.urbanjustice.org

**TESTIMONY OF THE URBAN JUSTICE CENTER TO THE STATE
ASSEMBLY COMMITTEE ON LABOR IN REGARDS TO THE
CONDITIONS SURROUNDING DOMESTIC EMPLOYMENT IN
NEW YORK STATE, NOVEMBER 21, 2008**

My name is Molly Biklen, staff attorney with the Community Development Project of the Urban Justice Center, and I want to thank you for the opportunity to testify before the Assembly Committee on Labor.

The Community Development Project (CDP) was formed in September 2001 to provide legal, technical, research, and policy assistance to grassroots community groups engaged in a wide range of community development efforts throughout New York City. Our work is informed by the belief that real and lasting social change in low-income, urban neighborhoods is rooted in the empowerment of grassroots, community institutions. We work with many organizations that support domestic workers in their struggles to obtain fair and decent working conditions, and we have represented numerous individual domestic workers subjected to abuse and unpaid minimum wages and overtime premiums. I am here today to urge the passage of the Domestic Workers' Bill of Rights (A.628A/S.5235), which addresses domestic workers' exclusion from basic labor laws and would stabilize the domestic work industry to make it more fair, safe, and equitable for both employers and employees.

Since the 1930s, domestic workers have been fighting to obtain the basic rights that workers in most other industries take for granted. At a time when 60% of all black female workers were employed in domestic service,¹ Congress excluded domestic workers from such landmark New Deal legislation as the National Labor Relations Act and the Social Security Act in order to satisfy Southern segregationists.² Although domestic workers later fought for and won coverage under the Social Security Act and the minimum wage provisions of the Fair Labor Standards Act, federal wage and hour law continues to exclude live-in domestic workers from overtime compensation, and domestic workers are outside the definition of “employee” for purposes of the National Labor Relations Act. Further, very few domestic workers are covered by Workers Compensation Law or the anti-discrimination provisions of the New York State Human Rights Law.

The lack of legal protections and isolated nature of domestic work create a significant power imbalance between employer and employee. The absence of clear standards with regard to employee benefits further exacerbates this power imbalance. As a result, individual domestic workers are generally unable to negotiate with their employers for sick days, vacation pay, severance pay, or health insurance. Although some employers of domestic workers provide these types of benefits, most do not. Many employers do not even consider providing such benefits because they do not view their households as places of employment. Too often, employers still describe domestic workers as “just one of the family” and what family member gets vacation days and sick days?

¹ See J. Jones, *Labor of Love, Labor of Sorrow* 200 (1995) (In 1940, 60% of all female black workers were domestic workers, as compared to only 10% of all white women workers.); see also Palmer, *Outside the Law: Agricultural*

² See National Labor Relations Act, ch. 372, § 2(3) (1935); and Social Security Act, ch. 531, tit. II, §210(b)(1)-(2) (1935).

We regularly encounter clients who believe they have no rights. Several domestic workers have told me that their employers responded to requests for vacation days or more pay by telling them that they had no rights or did not deserve such benefits. And yet these same employers entrust their children to these children all day, or in one recent case, for an entire week while they took the older child to Disney World. Although domestic service is often belittled or not considered "real work," it is the work that makes it possible for this 24-hour city to run.

The employer-employee power imbalance and prevailing attitude toward domestic work also create conditions ripe for abuse and exploitation. We have seen many situations where workers hired to work 40 or 50 hours a week find themselves working over a 100 hours or more each week without any overtime or additional compensation.

For example, we recently obtained a significant settlement for a worker hired as a live-in nanny. When she first interviewed for the job, our client was told that she would be caring for one child for about 12 hours each day while her employers were at work and school. Soon after she started her employment, however, she found herself working 15 to 20 hours each day, seven days a week without any additional pay or overtime premiums. Further, she was also required to care for a second child and do all the cleaning and cooking. Her effective pay rate was little more than \$1 an hour, even though she was entrusted to care for her employers' children and household while they were at work.

When she told her employers that this job was not what she had agreed to and that she wanted to leave their employ, they became angry. The situation then escalated until the employers locked her inside the house and prevented her from leaving for several months.

During most of this time, our client had no chance to escape because was responsible for a baby and did not want to leave him unattended or with strangers.

In another case, a worker was badly burned on the job while heating water in her employer's home. When the employer took her to the hospital, he told her to say that she was not an employee and just a friend staying with the family. Although this worker did not want to lie to the doctors, she felt she had to because she was a live-in employee and feared what would happen when returned home with the employer.

Even minor disagreements or requests for better conditions are complicated because domestic workers are isolated within the home and do not have co-workers, supervisors, or any kind of third-party intermediaries to turn to resolve problems that arise. As a result, domestic workers are often unable to confront their employers over issues like long hours, subminimum wages, or other problems until the situation has become completely untenable.

The Domestic Workers' Bill of Rights will provide much needed regularization and stability to the domestic work industry in New York. For those employers who want to do the right thing, the Bill of Rights sets forth basic standards like sick pay and vacation days that are the norm in almost every other industry. For domestic workers, the Bill of Rights will level the playing field and provide them with the kind of benefits for which other workers can negotiate.

New York State has long been a leader in the regulation and improvement of domestic work. In 1973, our own congresswoman Shirley Chisholm led the fight to include domestic workers within the minimum wage provisions of the FLSA.³ The Domestic Workers Bill of Rights will put New York back in a leadership position and provide domestic workers the rights they deserve.

³ Martin Tolchin, *Mrs. Chisholm Led Fight for Domestic's Base Pay; Grasp of Problem Cited*, N.Y. Times, June 21, 1973, at 45.

The Urban Justice Center believes that the passage of the Domestic Workers' Bill of Rights will be a significant step toward improving working conditions for domestic workers and, by extension, ALL of New York City's families with child care or household needs. Thank you for your time.

Molly Biklen
Staff Attorney
Community Development Project
Urban Justice Center
123 William Street, 16th Floor
New York, NY 10038
(646) 459-3008
mbiklen@urbanjustice.org