



New Requirements In Massachusetts For Employers Of "Domestic Workers"

By: William Dunham

On April 1, 2015, a new statute took effect in Massachusetts governing the employment of certain household workers. Known as the "Domestic Workers' Bill of Rights," this new law applies many traditional Massachusetts employment law concepts in the household-worker context. Anyone who uses the services of a maid, housekeeper, cook, nanny, au pair, or other household worker should take note.

Who Qualifies As A Domestic Worker?

Under the new law, a domestic worker is a person who is paid to perform "work of a domestic nature within a household." The statute lists examples of the tasks a domestic worker may perform, including:

- Housekeeping;
- House cleaning;
- Home management;
- Nanny services;
- Caretaking of individuals in the home, including sick, convalescing, or elderly individuals;
- Laundering;
- Cooking;
- Home companion services; and
- Other household services for members of households or their guests.

While language in the statute seems to exclude any worker whose "vocation is not childcare," forthcoming regulations from the Massachusetts Attorney General will likely clarify that the new law applies broadly to workers who perform the tasks listed above.

Which Hours Are "Working Hours" Under The New Law?

The new law grants domestic workers significant compensation rights for the hours they spend at work. If a worker does not live at the employer's house and works a shift of less than 24 consecutive hours, all hours at work are treated as "working time" and must be compensated accordingly. If a worker is required to be on-duty for 24 consecutive hours or more, the worker may agree to exclude from working time a regularly scheduled sleeping period of not more than eight hours for each 24-hour period. Absent such agreement, the worker must be paid for all meal periods, rest periods, and sleeping periods. This differs from federal law, which does not require compensation for meal times under all circumstances.

An employer who employs a household worker for 40 hours per week or more must provide "periods of rest" of at least 24 consecutive hours each week and at least 48 consecutive hours each month, during which time the worker must have complete freedom from all duties. A worker can agree (in writing) to work on a day of rest, but must be paid overtime for all hours worked that day.

Can Employers Still Charge For Meals And Lodging?

An employer can deduct an amount for food and beverages from a domestic worker's wages if three conditions are met:

- The worker "voluntarily and freely" accepts the meals;
- The worker could otherwise "easily bring or prepare meals on the premises"; and
- The worker provides prior written consent for the deduction.

Similarly, an employer can deduct amounts for lodging if:

- The worker voluntarily and freely accepts, desires, and actually uses the lodging;
- The lodging meets certain statutory standards of adequacy, decency, and sanitation;



- The employer does not require that the worker use the lodging; and
- The worker consents in writing to the deduction.

The amounts an employer is allowed to deduct for meals and lodging are set forth in a separate statutory and regulatory scheme.

If a worker resides at an employer's household and is terminated without cause, the employer must provide written notice and either 30 days of lodging (on-site or elsewhere) or two weeks of severance pay. This provision does not apply where the employer reasonably and in good faith believes (and alleges in writing) that the worker has abused, neglected or caused harm to the employer or the employer's family.

What Else Must Employers Do To Comply?

Under the new law, domestic workers are entitled to request written performance evaluations from their employers after three months of employment and annually thereafter. The worker may inspect and dispute these evaluations under the Massachusetts law governing personnel records.

Employers of domestic workers must keep records of wages and hours that meet the standards applicable to Massachusetts employers generally. In addition, an employer who employs a domestic worker for 16 hours or more per week must provide a written record of the following information:

- The responsibilities of the job;
- The rate of pay, including overtime and additional compensation for added duties or multilingual skills;
- Working hours, including meal breaks and other time off;
- Provisions for any days of rest, sick days, vacation days, personal days, holidays, transportation, health insurance, or yearly raises;
- An accounting of vacation days, personal days, or holidays granted or earned;
- Any fees or costs assigned to the worker, such as for meals or lodging;
- The process for raising and addressing grievances or increasing compensation if new duties are added;
- The right to collect workers' compensation;
- The circumstances under which the employer may enter the worker's designated living space on the employer's premises;
- The required notice of termination by either party; and
- Any other rights or benefits afforded to the worker.

Employers must also provide a notice containing all applicable state and federal laws that apply to the employment of domestic workers. The Attorney General's Office will post a sample notice on its website for employers to use, as well as a sample written record of the information listed above.

Additional Protections For Domestic Workers

The new law grants domestic workers a right to privacy under the Massachusetts Privacy Act and specifies that an employer must not restrict, interfere with, or monitor a worker's private communications. Employers are also prohibited from taking and keeping domestic workers' documents or other personal effects.

A separate section of the new law provides domestic workers with protection from unlawful discrimination. The prohibited conduct falls into three categories:

- Engaging in unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature toward a domestic worker if submission to such conduct is a condition of the worker's employment, forms the basis for employment decisions concerning the worker, or creates an intimidating, hostile, or offensive working environment;
- Subjecting a domestic worker to unwelcome harassment based on sex, sexual orientation, gender identity, race, color, age, religion, national origin, or disability, if the harassment creates an intimidating, hostile, or offensive working environment; or
- Refusing job-protected leave for the birth or adoption of a child, as provided elsewhere in Massachusetts law.

While the new law took effect April 1, 2015, the Attorney General has yet to issue final regulations interpreting it. Once final regulations are in place, we will circulate a supplemental *Locke Lord Quick Study* detailing any glosses, clarifications, and additional requirements the Attorney General may impose. In the meantime, please contact the author:

William Dunham | 617-239-0248 | william.dunham@lockelord.com