

April 2, 2018

MEMORANDUM

To: Housing, Health, Energy, and Workers' Rights Committee
From: Patricia Lee, Legislative Analyst
Subject: Domestic Workers: Existing Laws and Laws in other Jurisdictions

Introduction

Over the next several months, the Council will address strategies to strengthen protections for domestic workers. Domestic workers include nannies, gardeners, housekeepers and other individuals who work in or about a private residence.

This memo provides:

- I. An overview of the existing Federal, State of Washington and City of Seattle laws addressing compensation, benefits and legal protections for domestic workers. Attachment A to this memo provides the same information in chart form. Note this summary and chart apply to domestic workers who are employees, not independent contractors.
- II. A high-level summary of the laws that have been enacted in other jurisdictions specifically addressing domestic workers. Attachment B to this memo provides the same information in chart form.

When all applicable labor laws are considered, domestic workers working in the City of Seattle, are covered by most existing labor laws because even if they are not covered by Federal laws, they are covered by State or City of Seattle laws.

The following are areas where domestic workers are not covered by existing Federal, State or City of Seattle laws:

- **Minimum wage, overtime.** State and City of Seattle laws do not cover:
 - casual labor, defined as irregular, intermittent work, such as babysitting or snow shoveling,
 - workers who are required to reside at their place of employment, such as apartment managers, or
 - workers who spend a substantial portion of their time on call
- **Rest breaks.** State regulations requiring rest breaks do not cover domestic or casual labor around a private residence.
- **Unemployment Compensation.** State law does not cover casual labor for an employer who has not paid more than \$1,000 in the last quarter.

- **Workers compensation.** State law does not cover domestic workers who do gardening, maintenance or repair work around a private home or if the employer has less than two full time employees.
- **Federal Family Medical Leave Act (FMLA) and State Family Leave Act.** Unpaid leave applies only to employers with 50 or more employees who worked 1,250 hours in the past year.
- **Paid State Family and Medical Leave.** Coverage is unclear as Rules have not been finalized.
- **Health Benefits.** The Federal Affordable Care Act mandatory coverage requirements only apply to employers with 50 or more employees. This does not cover most domestic workers.
- **Collective Bargaining.** The Federal National Labor Relations Act does not cover domestic workers.

Eight states have enacted ordinances directly addressing domestic workers. Section II of this memo summarizes the provisions of these ordinances. The main areas where other jurisdictions have chosen to legislate, not covered by State of Washington and City of Seattle current laws, are:

- Rest breaks,
- Privacy protections,
- Restrictions on keeping worker's documents,
- Limits on deductions for food, lodging and uniforms for live-ins,
- Performance evaluations,
- Notice of termination, and
- 30 days lodging if terminate live-in without cause

The chart at the end of this memo depicts the areas where compensation, benefits and working conditions for domestic workers are not covered by existing Federal, State of City laws and areas where other jurisdictions have enacted protections not covered by existing State of Washington or City of Seattle laws.

SECTION I.

OVERVIEW OF EXISTING FEDERAL, STATE OF WASHINGTON AND CITY OF SEATTLE LAWS ADDRESSING COMPENSATION, BENEFITS AND LEGAL PROTECTIONS FOR DOMESTIC WORKERS.

COMPENSATION

1. **Federal Taxes.** Employers must pay Federal Taxes, pay the employer portion of Social Security and Medicare Taxes and withhold employees Social Security and Medicare taxes from their wages if the employer pays cash wages of \$2,100 per year or more to any one employee who is over 18 years of age. If the employer pays \$1,000 per quarter they must also pay Federal unemployment tax (FUTA)

2. Minimum Wage

a. Federal Fair Labor Standards Act. (FLSA)

The FLSA requires the Federal minimum wage and overtime be paid to employees who work more than eight hours a week and earn \$2,100 from one employer.

Exemptions to the requirement to pay the Federal minimum wage and overtime are:

- Employees who less than eight hours a week and earn \$2,100.00 from one employer are not covered by the Federal minimum wage or overtime.
- Casual babysitters or workers employed directly by the household who provide companionship care are not covered by the Federal minimum wage or overtime.
- Live-in domestic workers employed directly by the household are entitled to the Federal minimum wage but not overtime.

However, the State of Washington and City of Seattle Minimum Wage and Overtime laws are broader than the FLSA.

b. State of Washington Minimum Wage Act.

The State Minimum Wage RCW 49.46 applies to “employees” as defined in 49.46.010. There are two exemptions that may apply to domestic workers; those engaged in “casual labor,” “live-in” workers, and on-call workers.

Casual Labor Exemption to Minimum Wage: Any individual employed in casual labor in or about a private home, unless performed in the course of the employer’s trade, business, or profession. RCW 49.46.010 (b)

Casual Laborers are defined in ES.A.1 Administrative Policy State of Washington, Labor & Industry Employment Standards as:

“(b) Casual Laborers. Casual refers to employment that is irregular, uncertain or incidental in nature and duration. This must be determined on a case-by-case basis by looking at the scope, duration and continuity of employment. Employment that is intended to be permanent in nature is not casual, and is not exempt, regardless of the type of work performed. Employment of housekeepers, caregivers, or gardeners on a regular basis is not considered ‘employed in casual labor’ and such workers may be subject to the protections of the MWA”

Therefore, the exemption applies only to irregular, intermittent work such as occasional babysitting or snow shoveling.

Live-in Employees Exemption to Minimum Wage: (j) Any individual whose duties require that he or she reside or sleep at the place of his or her employment or who otherwise spends a substantial portion of his or her work time subject to call, and not engaged in the performance of active duties. RCW 49.46.010 (j).

ES.A.1 defines the reside or sleep exemption as:

“(j) Reside or sleep: Employees whose job duties require them to reside at the place of employment are exempt from both the minimum wage and overtime requirements. Merely residing or sleeping at the place of employment does not exempt individuals from the Minimum Wage Act. In order for individuals to be exempt, their duties must require that they sleep or reside at the place of their employment. An agreement between the employee and employer for the employee to reside or sleep at the place of employment for convenience or merely because housing is available at the place of their employment would not meet the exemption.

Typical examples of this exemption, if their duties require them to reside or sleep at the place of employment may include apartment managers, maintenance personnel, hotel/motel managers, managers of self-storage facilities, and agricultural workers such as shepherders.”

Substantial portion of work time subject to call: The ES.A.1 does not provide further clarification on the exemption for employees who “otherwise spends a substantial portion of his or her work time subject to call, and not engaged in the performance of active duties.”

Most domestic service work is covered by the State Minimum Wage Act as exemptions are much narrower than may appear from the reading of the statute. Only irregular, intermittent, and ad hoc work is excluded as casual labor. Live-in situations where residing on the premises is a requirement of the job or where a substantial portion of work time is subject to call and not active work is excluded under the live-in exemption.

c. City of Seattle Minimum Wage ordinance

The City of Seattle Minimum Wage ordinance uses the same definition of “employee” as the State Minimum Wage so the same analysis applies.

3. **Overtime.** If the domestic worker is covered by the State Minimum Wage Act they are also entitled to overtime of at least one and on-half an employee’s regular rate of pay for hours worked in excess of 40 in a week. RCW 49.46.130
4. **Maximum Hours.** Domestic employees cannot be required to work more than 60 hours/week. RCW 49.28.080
5. **Rest Breaks.** Domestic or casual labor around a private residence is excluded from State regulations requiring rest and meal breaks.
6. **Wage Theft.** The City of Seattle Wage Theft Ordinance, SMC 14.20.010 et. seq. currently provides both a civil penalty for wage theft and affirmative duties on the employer.

Employers are required to pay employees on an established regular pay day at no longer than monthly intervals. At time of hire employers must provide employees the

employer's contact information and the employee's rate of pay, pay rate and pay day. With their compensation, employees must be given written information on their hours worked, pay rate, gross pay, and deductions. Employers must post notice that employees have a right to be paid on an established regular pay day at no longer than monthly intervals, to be protected from retaliation for exercising their rights, and their right to file a complaint with the City or bring a private right of action. Employers are required to maintain employee pay records for three years.

7. **Unemployment Compensation.** Households that employ a domestic employee must contribute to unemployment unless the employee is engaged in "casual labor" for an employer who has not paid more than \$1,000 in a quarter during the last calendar year for domestic services

BENEFITS

1. Paid Sick and Safe Time

- a. State of Washington Paid Sick and Safe Time (PSST)

If a domestic worker falls within the definition of employee under the State Minimum Wage Act they will also be covered under the state PSST. PSST provides employees with paid time off accrued at a rate of one hour of PSST for every 40 hours worked.

- b. City of Seattle Paid Sick and Safe Time (PSST) SMC 14.16.010 et. seq.

The City of Seattle PSST defines an employee as any individual employed by an employer, including but not limited to, full-time, part-time, and temporary workers. Employer is defined as any individual or entity that employs more than one individual.

Therefore, the City of Seattle PSST covers domestic workers who work for a family even if they are the only worker.

The City's PSST ordinance has been conformed to the State PSST law. Where the City's benefit is more generous, the City ordinance will apply where applicable. For example, employees who work for a large employer accrue one hour for every 30 hours worked instead of the state accrual rate of one hour for every 40 hours worked.

In brief, domestic workers are covered by the City's PSST ordinance.

2. Unpaid Family Medical Leave

- a. Federal Family and Medical Leave Act (FMLA) and Washington Family Leave Act (FLA). (unpaid)

Due to the coverage and eligibility requirements, domestic employees may not have protections under the Federal Family and Medical Leave Act or Washington's Family Leave Act. Both the Federal and State Act only cover employers with 50 or more employees, and the employee must have worked for the employer for 1,250 hours in the past year.

b. State of Washington Paid Family and Medical Leave

Starting in 2020, domestic employees will be entitled to paid family leave (12-18 weeks of paid leave benefits) under the state Paid Family and Medical Leave Act if they meet the eligibility requirements (820 hours in the first four of the last five calendar quarters). They are currently in the rule-making process so it is not clear if all domestic workers will be covered, there may be an exemption for very casual workers similar to the State Minimum Wage Act.

3. **Health Benefits.** Due to the employer size requirement of 50 more employees, most domestic employees are not entitled to the mandatory health coverage under the Affordable Care Act. There are no State or local health benefit requirements applicable to domestic workers.

LEGAL PROTECTIONS

1. **Discrimination and Harassment**

a. Federal and State Anti-Discrimination Laws

Harassment is a form of discrimination. Due to the employer size requirements, domestic workers may not be covered by the Federal anti-discrimination laws (15 employees) or the State law against discrimination (eight employees).

b. City of Seattle Anti-Discrimination Laws

The City of Seattle's Fair Employment Ordinance covers all employers with one or more employees. Harassment, including sexual harassment, is legally a form of discrimination. Therefore, domestic workers are covered under the City of Seattle Anti-Discrimination laws.

2. **Safety**

a. Federal Occupational Safety and Health Act. (OSHA)

Domestic employees are not covered by the federal OSHA.

b. Washington Industrial Safety and Health Act (WISHA)

Domestic employees are covered by the WISHA. These requirements include having an Accident Prevention Plan and providing safety equipment.

3. **Workers Compensation.** Some domestic workers are covered by Workers Compensation. Domestic employees are excluded if (1) they are employed to do gardening, maintenance, or repair around a private home **or** (2) if the employer has less than two employees regularly employed for forty or more hours a week.
4. **Collective Bargaining.** Domestic workers are excluded from the National Labor Relations Act, which protects workers' rights to organize and collectively bargain. There is no state law authorizing unionization or collective bargaining rights for domestic workers.
5. **Immigration.** Employers of domestic employees are required to complete an I-9 unless (1) the services are sporadic, irregular, or intermittent, **or** (2) the employee is employed by a domestic service company or agency.

SECTION II.

HIGH LEVEL SUMMARY OF DOMESTIC WORKER ORDINANCES IN OTHER JURISDICTIONS.

Eight states have enacted ordinances directly addressing domestic workers. Below is a summary of the eight laws in other jurisdictions. This information is also summarized in a table as Attachment B to this memo.

1. NEW YORK: Passed 2010, Chapter 481

<p>Provides:</p> <ul style="list-style-type: none">• Overtime Pay: Over 40 hours/week or over 44 hours/week if live-in,• One day of rest every seven days or overtime,• Three paid rest days/year after one year with same employer,• Coverage under state harassment law,• Must offer written notice that lists pay rates and payday,• Must pay weekly with written statement showing pay and deductions, and• Protections against retaliation
<p>Excludes:</p> <ul style="list-style-type: none">• Casual work, i.e. intermittent work such as babysitter, or family members
<p>Notes:</p> <ul style="list-style-type: none">• Different requirements apply if working for an agency.• Domestic workers already covered by NY Minimum Wage.• Covers all workers whether citizen, resident, other lawful status or undocumented.

2. CALIFORNIA: Passed 2013, AB 241; SB 1015 removed the sunset clause in AB 241 that would have sunset the bill in 2017

<p>Provides:</p> <ul style="list-style-type: none">• Overtime required for personal attendants who work in an individual home for more than nine hours/day or 45 hours/week.
<p>Excludes:</p> <ul style="list-style-type: none">• Family members and baby-sitters under the age of 18
<p>Notes:</p> <ul style="list-style-type: none">• Overtime for other domestic workers already provided by existing Wage Order No. 15• Domestic workers already covered by California Minimum Wage.

3. HAWAII: Passed 2013, ACT 248

Provides: <ul style="list-style-type: none">• Overtime: Over 40 hours/week, and• Coverage by discrimination laws including sexual harassment but not in hiring/firing.
Excludes: <ul style="list-style-type: none">• Casual labor defined as intermittent or irregular and less than 20 hrs/week
Notes: <ul style="list-style-type: none">• Babysitting and companionship services are not considered “casual” if performed by an individual whose vocation is babysitting or companionship.• Companionship services do not include services performed by a trained professional, such as a nurse.

4. MASSACHUSETTS: Passed 2014, Mass. Acts Chapter 148

Provides: <ul style="list-style-type: none">• Written agreement with information on pay, benefits, work schedule, job duties, rest periods, charges or deductions, eligibility for worker’s compensation, process for raising or resolving disputes, termination notice and for live-in workers employers access to worker’s living space and what constitutes “cause” for termination,• Notice of worker’s rights and employer’s obligations,• Eight weeks of unpaid maternity leave,• Rest: One day/week & two consecutive days/month,• Extension of anti-discrimination and sexual harassment laws,• Prohibition on monetary deductions unless required by law or request by worker,• Limits to deductions for food/drink for “live-in,”• Prohibition of monitoring “live-in” living space or communications,• Prohibition of keeping worker’s personal documents,• “Live-In” terminated without cause: written notice and 30 days housing/severance pay; if for cause advance written notice and at least 48 hours to move out,• Prohibition on retaliation,• The ability to prosecute an employer for threatening or reporting to immigration authorities a worker for complaining about a violation of this ordinance, and• Coverage for domestic workers who work 16 or more hr/week.
Excludes: <ul style="list-style-type: none">• Personal care attendants,• Individuals whose vocation is not childcare,• Casual, intermittent, or irregular work, and• Staffing agencies
Notes: <ul style="list-style-type: none">• Massachusetts law already included domestic workers in minimum wage.

5. CONNECTICUT: Passed 2014, 5527

<p>Provides:</p> <ul style="list-style-type: none">• Protection of state anti-discrimination laws including sexual harassment,• Minimum wage and overtime,• In writing at time of hiring: the pay rate, hours, benefits, terms, duties, and fees or costs rights under applicable laws,• Paid time off: One hour/40 hours (56 hours max). In addition, after one year, eight hours/quarter,• Rest: work no more than six days/week. Overtime provided if working on day off,• “Live-ins” may make reasonable deductions for food, lodging if voluntarily agreed to,• Privacy: may not restrict, monitor or interfere with communications, keep, search or inspect personal belongings, or enter living space without permission,• Termination: Seven-day notice of termination and provide severance pay if not eligible for unemployment compensation (if not for cause), and• Prohibition of retaliation.
<p>Excludes:</p> <ul style="list-style-type: none">• Casual, intermittent, or irregular work, and• Personal care attendants under a state-funded program.
<p>Notes:</p> <ul style="list-style-type: none">• Complaints go to Labor Commissioner.• Convened one-year taskforce on outreach and education.• Does not exempt staffing agencies. (Massachusetts law enacted during the same time does.)

6. OREGON: Passed 2015, SB552

<p>Provides:</p> <ul style="list-style-type: none">• Overtime for hours over 40/week or 44/week if “live-in,”• 24 hours rest/every 7 days or overtime if work on the rest day,• “Live-in” receives eight hours of rest/24 hours,• “Live-In” may cook their own personal food,• Three paid personal days if worked at least 30 hours/week in the previous year,• Protection from harassment based on gender, race, religion, disability, sexual orientation or national origin,• Prohibition of employers keeping workers passport,• Prohibits retaliation and discrimination in hiring and employment, and• Private right of action.
<p>Excludes:</p> <ul style="list-style-type: none">• Parents or spouse of the employer and child of the employer under 26 years of age,• Elementary or high school students,• Casual babysitting or ad hoc labor e.g. snow shoveling,• Home care workers who provide services to seniors and persons with disabilities• Independent contractors,• House sitters, and• Persons who provide domestic service in exchange for an in-kind good or service

7. ILLINOIS: Passed 2017, Public Act 099-0758

Provides:

- Minimum Wage,
- 24 hours of rest each calendar week or overtime if that day is worked,
- Protects against sexual harassment,
- Prohibits employers from paying women and minors an “oppressive and unreasonable wage,” and
- Includes domestic work where the employee is hired directly by the family or through a labor placement agency.

Excludes:

- Family members,
- Home health or companion caregiving services
- Child and day care home providers under the Illinois Public Aid Code
- Work that is less than 8 hours a week, and independent contractors.

8. NEVADA: Passed 2017, SB232

Provides:

- Written employment agreement outlining conditions of his employment that includes the work terms, rate of pay and any other benefits, deductions, frequency and method of payment and required termination notice, all applicable state and federal laws,
- Minimum wage,
- Overtime. If over eight hours/day or 40 hours/week and if paid less than half of the the minimum wage overtime of one and a half times the regular wage, except “Live-ins”
- Rest period: 24 consecutive hours per week and 48 hours consecutive hours per month,
- Sets limits for food and lodging credits for live-in domestic workers and worker must agree to these offset,
- Uniform cost or care of uniform cannot be deducted from wages,
- Worker may request a written evaluation of work performance after 3 months and then annually,
- If “Live-in” terminated without cause employer must provide written notice and 30 days of paid lodging either at the residence or off-site,
- Cannot monitor worker’s private communications or hold personal documents, and
- Employees must keep record of the wages and hours of workers

Excludes:

- Casual, intermittent or irregular work.

Summary.

The chart below shows areas where domestic workers’ working conditions are not covered by existing Federal, State or City of Seattle laws and areas where other jurisdictions have enacted protections not covered by existing State or City laws.

Not covered by existing Federal, State of Washington or City of Seattle Laws	Protections by other jurisdictions not covered by existing State of Washington or City of Seattle laws.
<p>Minimum wage, overtime. State and local laws do not cover (1) casual labor which is defined as irregular, intermittent work, such as babysitting or snow shoveling, or (2) workers who are required to reside at their place of employment, such as apartment managers, or (3) workers who spend a substantial portion of their time on call.</p>	
<p>Rest breaks. State regulations requiring rest breaks do not cover domestic or casual labor around a private residence.</p>	<p>Rest breaks. New York, Massachusetts, Connecticut, Oregon, Illinois, and Nevada</p>
<p>Unemployment Compensation. State law does not cover casual labor for an employer who has not paid more than \$1000 in the last quarter.</p>	
<p>Workers compensation. State law does not cover domestic workers who do gardening, maintenance or repair work around a private home or if the employer has less than two full time employees.</p>	
<p>Family Medical Leave (Federal and State). Unpaid leave applies only to employers with 50 or more employees who worked 1250 in the past year.</p>	
<p>Paid State Family and Medical Leave. Coverage is unclear as Rules have not been finalized.</p>	
<p>Health Benefits. The Federal Affordable Care Act mandatory coverage requirements only apply to employers with 50 or more employees which likely does not cover most domestic workers.</p>	
	<p>Privacy protections. Massachusetts, Connecticut, Oregon, and Nevada</p>

Not covered by existing Federal, State of Washington or City of Seattle Laws	Protections by other jurisdictions not covered by existing State of Washington or City of Seattle laws.
	Restrictions on keeping worker’s documents. Massachusetts, Connecticut, Oregon, Nevada
	Deduction Limits (“Live-Ins”): food, lodging and uniforms. Massachusetts, Nevada
	Written notice or contract of duties. Massachusetts, Connecticut
	Performance evaluations. Nevada
	Notice of termination. Massachusetts, Connecticut, Nevada
	30 days lodging if terminate live-in without cause. Nevada

Attachments:

- A. Current Legal Framework for Domestic Employees
- B. Chart of Other Jurisdictions with Domestic Workers Ordinances

cc: Kirstan Arestad, Central Staff Director
 Dan Eder, Deputy Director

CURRENT LEGAL FRAMEWORK FOR DOMESTIC EMPLOYEES¹

Subject Area	Summary	Legal Source	Relevant Statutory Provisions
COMPENSATION			
IRS	Cash wages of \$2,100 from one employer must be reported to the IRS for purposes of FICA, Social Security, and Medicare.	<u>Federal</u> IRS Pub. 926: Household Employment Tax Guide	<u>Coverage:</u> •Cash wages of \$2,100 or more from one employer in 2018

¹ This chart presumes employment by the household and does not address the employee/independent contractor analysis or a joint employment analysis.

Attachment A: Current Legal Framework for Domestic Employees

Subject Area	Summary	Legal Source	Relevant Statutory Provisions
<p>MINIMUM WAGE/ OVERTIME</p>	<p>Minimum wage and overtime requirements differ under Federal and State laws, i.e. an employee may be covered under Federal but not State law and vice-versa. Coverage is the same for Washington State and the City of Seattle.</p> <p>When both federal and state requirements are applied, almost all domestic employees are entitled to overtime and minimum wage, with two narrow exceptions i.e. the following categories of employees are not covered under Federal, State or local minimum wage and overtime laws:</p> <ul style="list-style-type: none"> •Casual employees who either (1) make less than \$2,100/year and never work more than 8 hours in any workweek or (2) perform babysitting services are not entitled to minimum wage or overtime. •Domestic employees employed directly by the household who are required to reside or sleep at their place of employment are not entitled to overtime (they are entitled to minimum wage) 		

Attachment A: Current Legal Framework for Domestic Employees

Subject Area	Summary	Legal Source	Relevant Statutory Provisions
<p>FEDERAL MINIMUM WAGE</p>	<p>Federal coverage for minimum wage and overtime differs from state law.</p> <p>For the purposes of federal law:</p> <p>Employees who make less than \$2,100/yr and who always work less than 8 hours in a workweek are not covered by minimum wage or overtime.</p> <p>Casual babysitters are not covered by minimum wage or overtime.</p> <p>Live-in domestic workers are covered by minimum wage but not overtime.</p> <p>Workers providing companionship care are not covered by minimum wage and overtime.</p>	<p>Federal Fair Labor Standards Act (29 U.S.C. § 201)</p>	<p><u>Coverage:</u></p> <ul style="list-style-type: none"> •Cash wages of \$2,100 from one employer or •Work a total of more than 8 hours a week for one or more employers <p><u>Exemptions:</u></p> <ul style="list-style-type: none"> •Employees performing babysitting services on a casual basis (MW & OT) •Live-in domestic workers employed directly by the individual, family, or household (not third-party employers) (OT only) •Workers employed directly by the individual, family, or household who provide “companionship care” are exempt if they meet the narrow “companionship care” duties test (OT & MW)

Attachment A: Current Legal Framework for Domestic Employees

Subject Area	Summary	Legal Source	Relevant Statutory Provisions
<p>STATE OF WASHINGTON MINIMUM WAGE</p>	<p>State coverage differs from Federal law and entitles most domestic employees to minimum wage and overtime. There are two narrow exceptions:</p> <ul style="list-style-type: none"> •Casual employees are not entitled to minimum wage or overtime. Casual means irregular, uncertain, or incidental in nature. •Domestic employees who are required to reside or sleep at place of employment as part of their job duties (such as apartment managers) or who spend a substantial portion of work time subject to call and not engaged in the performance of active duties are not entitled to minimum wage or overtime or if they. 	<p>State Washington’s Minimum Wage Act (RCW 49.46 and ES.A.1)</p>	<p><u>Exemptions:</u></p> <ul style="list-style-type: none"> •An individual employed in casual labor in or about a private home, unless performed in the course of the employer’s trade, business, or profession (MW & OT) (RCW 49.46.010(b)) <ul style="list-style-type: none"> --According to L&I: “Casual labor refers to employment that is irregular, uncertain or incidental in nature and duration. This must be determined on a case-by-case basis by looking at the scope duration and continuity of employment. Employment that is intended to be permanent in nature is not casual, and is not exempt, regardless of the type of work performed. Employment of housekeepers, caregivers, or gardeners on a regular basis is not considered ‘employed in casual labor’ and such workers may be subject to the protections of the WMWA.” •Any individual whose duties require that he or she reside or sleep at the place of his or her employment or who otherwise spends a substantial portion of his or her work time subject to call, and not engaged in the performance of active duties (MT & OT) (RCW 49.46.010(j))

Attachment A: Current Legal Framework for Domestic Employees

Subject Area	Summary	Legal Source	Relevant Statutory Provisions
CITY OF SEATTLE MINIMUM WAGE		<u>Local</u> Seattle Minimum Wage Ordinance (SMC 14.19.010, SMC 12A.28.200)	<u>Exemptions:</u> •Mirrors the exemptions in Washington’s Minimum Wage Act
MAXIMUM HOURS	Domestic employees cannot be required to work more than 60 hours/week.	<u>State</u> RCW 49.28.080	Prohibits employment of household and domestic workers beyond 60 hours a week, including when the domestic worker is subject to the call of the employer and the employee is not free to follow his or her inclinations, absent an emergency situation.
REST BREAKS/ MEAL BREAKS	State regulations requiring rest breaks and meal breaks do not apply to “domestic or casual labor around a private residence.” The term “domestic” is not defined.	<u>State</u> WAC 296-126-001	<u>Exclusions:</u> •Excludes domestic or casual labor around a private residence
WAGE THEFT	All domestic employees appear to be covered by Seattle’s Wage Theft Ordinance, including the wage notification requirements.	<u>Local</u> SMC 14.20	<u>Coverage:</u> •“'Employer' means any individual, partnership, association, corporation, business trust, or any entity, person or group of persons, or a successor thereof, <i>that employs another person</i> and includes any such entity or person acting directly or indirectly in the interest of an employer in relation to an employee.” (Emphasis added)

Attachment A: Current Legal Framework for Domestic Employees

Subject Area	Summary	Legal Source	Relevant Statutory Provisions
UNEMPLOYMENT COMPENSATION	Households that employ a domestic employee must contribute to unemployment insurance with one narrow exception: unemployment compensation is not required if the employee is engaged in “casual labor” for an employer who has not paid more than \$1000 in a quarter during the last calendar year for all domestic services combined.	<u>State</u> RCW 50	<u>Exclusions:</u> <ul style="list-style-type: none"> •Casual labor not in the course of the employer’s trade or business. “Temporary labor in the usual course of an employer’s trade or business or domestic services as defined in 50.04.160 shall not be deemed to be casual labor.” (RCW 50.04.270) •“Domestic services in a private home, local college club or local chapter of a college fraternity or sorority shall not be considered services in employment unless the services were performed after December 31, 1977 and for a person who paid remuneration of one thousand dollars or more to individuals employed in this domestic service in any calendar quarter in the current or preceding calendar year.” (RCW 50.04.160)
BENEFITS			
PAID LEAVE: SICK AND SAFE	Many domestic employees are covered under Washington’s paid sick leave law, and all domestic employees appear to be covered under Seattle’s Paid Sick and Safe Time law.	<u>State</u> Paid Sick Leave (RCW 49.46.210) <u>Local</u> Seattle Paid Sick and Safe Time (SMC 14.16)	<u>Exclusions:</u> <ul style="list-style-type: none"> •This is part of Washington’s Minimum Wage Act, and the same exemptions apply: domestic workers employed in “casual labor” or “live-in” workers where residency or substantial on-call is a job requirement. <u>Coverage:</u> <p>“‘Employer’ means any individual, partnership, association, corporation, business trust, or any entity, person or group of persons, or a successor thereof, <i>that employs another person</i> and includes any such entity or person acting directly or indirectly in the interest of an employer in relation to an employee.” (Emphasis added)</p>

Attachment A: Current Legal Framework for Domestic Employees

Subject Area	Summary	Legal Source	Relevant Statutory Provisions
<p>PAID LEAVE: FAMILY AND MEDICAL LEAVE</p>	<p>Starting in 2020, domestic employees will be entitled to paid family leave (12-18 weeks of paid leave benefits) under the state Paid Family and Medical Leave Act if they meet the eligibility requirements (820 hours in the first four of the last five calendar quarters).</p>	<p><u>State</u> RCW 50A.04.010</p>	<p><u>Coverage:</u></p> <ul style="list-style-type: none"> Covers all employees. The rulemaking process is still in progress; it is administered by the Employment Security Division so there might be a similar carve-out for very domestic employees (employers who pay all domestic employees less than \$1000 in a quarter) that currently exists for purposes of Unemployment Compensation (see above). The eligibility requirement would already effectively exclude those workers. <p><u>Eligibility:</u></p> <ul style="list-style-type: none"> Employee must have worked 820 hours in the first four of the last five calendar quarters.
<p>FAMILY MEDICAL LEAVE</p>	<p>Given the coverage/eligibility requirements, few domestic employees have protections under the federal Family and Medical Leave Act or Washington’s Family Leave Act.</p>	<p><u>Federal</u> Family Medical Leave Act (29 U.S.C. sec. 2611(4)(A)(i))</p>	<p><u>Coverage</u></p> <ul style="list-style-type: none"> Only applies to employers with 50 or more employees <p><u>Eligibility:</u></p> <ul style="list-style-type: none"> Employee must have (1) worked for the employer for one year and (2) have worked 1,250 hours in the past year.
		<p><u>State</u> Family Leave Act (RCW 49.78)</p>	<p><u>Coverage</u></p> <ul style="list-style-type: none"> Only applies to employers with 50 or more employees <p><u>Eligibility:</u></p> <ul style="list-style-type: none"> Employee must have (1) worked for the employer for one year and (2) have worked 1,250 hours in the past year.

Attachment A: Current Legal Framework for Domestic Employees

Subject Area	Summary	Legal Source	Relevant Statutory Provisions
HEALTH BENEFITS	Due to the employer-size requirement, domestic employees largely are not entitled to mandatory health coverage under the ACA	<u>Federal</u> Affordable Care Act (26 U.S.C. sec. 4980H(c)(2))	<u>Exemptions from Mandatory Coverage:</u> •Employers with fewer than 50 fulltime employees
LEGAL PROTECTIONS			
DISCRIMINATION/ HARASSMENT	The employer-size requirements of federal and state employment anti-discrimination laws exclude many domestic workers from those laws’ protections. But all domestic employees appear to be protected from discrimination and harassment by Seattle’s Fair Employment Ordinance, which has a broad list of protected classes.	<u>Federal</u> EEOC-Enforced Statutes (Title VII, ADA, ADEA, EPA, GINA) <u>State</u> Washington’s Law Against Discrimination (RCW 49.60.040)	<u>Coverage:</u> •Only applies to employers with 15 or more employees (or, in the case of the ADEA, 20) •Only applies to employers who are engaged in an industry affecting commerce. <u>Coverage:</u> •Only applies to employers with 8 or more employees. <u>NOTE:</u> Despite the coverage requirement, the Washington Supreme Court has held it violates public policy to terminate an employee on the basis of sex, regardless of the size of the employer. This could likely be extended to other protected categories that could be characterized as civil rights.

Attachment A: Current Legal Framework for Domestic Employees

		<p><u>Local</u> Seattle’s Fair Employment Ordinance (SMC 14.04)</p>	<p><u>Coverage:</u></p> <ul style="list-style-type: none"> •Employers with one or more employees <p><u>Protection:</u></p> <ul style="list-style-type: none"> •Prohibits discrimination based on “race, color, sex, marital status, sexual orientation, gender identity, genetic information, political ideology, age, creed, religion, ancestry, national origin, honorably discharged veteran or military status or the presence of any sensory, mental or physical handicap; provided that, nothing in this chapter shall prevent an employer from ascertaining and recording data as to race, color, sex, marital status, sexual orientation, gender identity, political ideology, age, creed, religion, ancestry, national origin, honorably discharged veteran or military status or the presence of any sensory, mental or physical handicap whether before or after employment, for the purpose of making reports specifically required by agencies of federal, state or local government for the purpose of eliminating and preventing discrimination or overcoming its effects, or for other purposes authorized by law or the rules and regulations of Washington State Human Rights Commission, the Equal Employment Opportunities Commission or [SOCR].” <p><u>NOTE:</u> it is it is not an unfair employment practice under this chapter for an employer, employment agency, or labor organization to discriminate in those instances where religion, sex, national origin, or age is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise</p>
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Attachment A: Current Legal Framework for Domestic Employees

Subject Area	Summary	Legal Source	Relevant Statutory Provisions
<p>FAIR CHANCE EMPLOYMENT ORDINANCE</p>	<p>Domestic employees who have unsupervised access to children under 16, developmentally disabled persons, or vulnerable adults are excluded from the protections of Seattle’s Fair Chance Employment Ordinance (which limits an employer’s use of criminal background information in making hiring decisions); all remaining domestic workers appear to be covered.</p>	<p><u>Local</u> SMC 14.17</p>	<p><u>Exclusions:</u></p> <ul style="list-style-type: none"> •Excludes "an individual who will or may have unsupervised access to children under 16 years of age, developmentally disabled persons, or vulnerable adults during the course of the individual's employment."
<p>SAFETY</p>	<p>Employers of domestic employees are subject to the requirements of Washington’s Industrial Safety and Health Act, such as the requirements of having an Accident Prevention Plan and providing safety equipment. There are no exclusions for domestic workers.</p>	<p><u>Federal</u> Occupational Safety and Health Act (29 CFR 1975.6)</p>	<p><u>Exclusions:</u></p> <ul style="list-style-type: none"> • Excludes individuals who, in their own residences, privately employ individuals performing what are commonly regarded as domestic household tasks, such as house cleaning, cooking, and caring for children. OSHA has further stated in an opinion letter this extends to caring for the elderly.
		<p><u>State</u> Washington’s Industrial Safety and Health Act (RCW 49.17; WAC 296-24; WAC 296-62)</p>	<p><u>Coverage:</u></p> <ul style="list-style-type: none"> •Applies to anyone who employs or contracts with one or more employees <p><u>Exclusions:</u></p> <ul style="list-style-type: none"> •There are no exclusions for domestic workers.

Attachment A: Current Legal Framework for Domestic Employees

Subject Area	Summary	Legal Source	Relevant Statutory Provisions
WORKERS COMP	Some domestic workers are covered by Workers Compensation. Domestic employees are excluded if: (1) they are employed to do gardening, maintenance, or repair around a private home <u>or</u> (2) if the employer has less than two employees regularly employed for forty or more hours a week.	<u>State</u> RCW 51	<u>Exclusions:</u> <ul style="list-style-type: none"> •Any person employed as a domestic servant in a private home by an employer who has less than two employees regularly employed forty or more hours a week in such employment (RCW 51.12.020(1)) •Any person employed to do gardening, maintenance, or repair, in or about the private home of the employer. For the purposes of this subsection, “maintenance” means the work of keeping in proper condition, “repair” means to restore to a sound condition after damage, and “private home” means a person’s place of residence. (RCW 51.12.020(2))
COLLECTIVE BARGAINING	It is unclear whether the City could pass an ordinance permitting domestic employees to bargain collectively.	<u>Federal</u> National Labor Relations Act (29 U.S.C. sec. 152(3))	<u>Exemptions:</u> <ul style="list-style-type: none"> •Domestic workers
		<u>State</u>	There is no state law authorizing unionization/collective bargaining rights of domestic workers
IMMIGRATION	Employers of domestic employees are required to complete an I-9 unless (1) the services are sporadic, irregular, or intermittent, or (2) the employee is employed by a domestic service company or agency.	<u>Federal</u> US Citizenship and Immigration Services website	<u>Exclusions:</u> <ul style="list-style-type: none"> •No need to complete an I-9 form for a domestic worker who (1) provides services that are sporadic, irregular, or intermittent; or is (2) employed by a domestic service company or agency.

Attachment B: Chart of Other Jurisdictions with Domestic Workers Ordinances

State	Min. Wage	Deductions	Over-time	Rest	Harassment	Retaliation	Written Notices	Privacy	Excludes	Other
New York 2010 Chap 481	covered		>40 hrs or >44 hrs (live-in)	1 day/7 days or overtime 3 paid days per year (after 1 year)	covered (NY State Human Rights Law)	covered	<ul style="list-style-type: none"> • pay days • pay rates • pay statement (w/ deductions) 		<ul style="list-style-type: none"> • casual work • family members 	<ul style="list-style-type: none"> • Agency requirements differ. • Requested report on feasibility of DW collective bargaining.
Hawaii 2013 ACT 248	covered		>40 hrs		covered					<ul style="list-style-type: none"> • Casual labor
California 2013 SB 1015			In-home personal attendants						<ul style="list-style-type: none"> • family members • babysitters (under 18) 	
Mass. 2014 Chapter 148		Limits deductions		1 day/week 2 days/month	covered	covered	<ul style="list-style-type: none"> • pay • working conditions • termination 	May not: <ul style="list-style-type: none"> • monitor private areas • keep personal documents 	<ul style="list-style-type: none"> • Casual labor • Non-child care vocation • Personal care attendants • Staffing agencies 	<ul style="list-style-type: none"> • 8 weeks unpaid maternity leave
Connecticut 2014 5527	covered		covered	1 day/6 days or overtime	covered	covered	<ul style="list-style-type: none"> • pay • duties • working conditions • termination 	May not: <ul style="list-style-type: none"> • monitor private areas • keep personal documents 	<ul style="list-style-type: none"> • Casual labor • State funded Personal care attendants 	Paid time off: <ul style="list-style-type: none"> • 1hr/40 hrs worked • 8 hrs/quarter (after 1 year)

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State	Min. Wage	Deductions	Over-time	Rest	Harassment	Retaliation	Written Notices	Privacy	Excludes	Other
Oregon 2015 SB 552			>40 hrs or >44 hrs (live-in)	1 day/7 days or overtime Live-In: 8 hrs/24 hrs	covered	covered		May not: <ul style="list-style-type: none"> keep personal documents 	<ul style="list-style-type: none"> Family casual and ad hoc home care workers, house sitters, in kind exchange 	<ul style="list-style-type: none"> 3 paid days off Private right of action
Illinois 2017 Public Act 099-0758	covered			1 day/7 days or overtime					<ul style="list-style-type: none"> Family members Home health/ companion caregivers child care providers (< 8 hrs/week) 	<ul style="list-style-type: none"> Includes staffing agencies.
Nevada 2017 SB232	covered	No Uniform Deductions	>40 hrs (except live-in)	1 day/week 2 days/month			<ul style="list-style-type: none"> written agreement of pay and working conditions termination 	May not: <ul style="list-style-type: none"> monitor private areas keep personal documents 		<ul style="list-style-type: none"> May request written evaluation Employers must keep records