

# EMPLOYING A NANNY IN NEW YORK STATE JUST GOT MORE COMPLICATED — AND MORE EXPENSIVE

*Labor & Employment Alert*  
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New York recently passed the “Domestic Workers Bill of Rights,” which takes effect on November 28, 2010. This far-reaching legislation imposes a number of significant new obligations upon employers of “domestic workers,” which is broadly defined with limited exclusions. The Domestic Workers Bill of Rights, the first of its kind in the nation, provides New York domestic workers with the following rights.

## Protection from Harassment

The act makes it an unlawful discriminatory practice for an employer to subject a domestic worker to unwelcome harassment based on gender, race, religion, or national origin. Under the act, individuals and families employing even one domestic worker in their private home are now subject to harassment complaints, which could render them liable for damages to the domestic worker and civil penalties to the state of up to \$100,000.

## Overtime

The act increases the rate of overtime pay for live-in domestic workers and domestic workers who perform certain companionship services to 1.5 times their “normal wage rate” if they work over 40 hours per week — 44 hours for live-in domestic workers. This is a significant new source of potential liability because a claim for unpaid wages under New York law can be brought up to six years after the wages were earned. And if an employer did not pay the required wages, it is liable for the unpaid wages, 25 percent liquidated damages, a civil penalty up to 200 percent of the unpaid wages if the commissioner of labor is involved, attorneys’ fees, and potential criminal penalties.

## Day of Rest

The act requires that domestic workers receive 24 consecutive hours of rest in each calendar week unless they voluntarily agree to work on their rest day and are paid overtime for that day. The day off should coincide with the traditional day reserved

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by the worker for religious worship.

### Paid Time Off

After one year of employment with the same employer, the act requires that employers provide their domestic workers with three paid days off at their regular rate of compensation, annually.

### Disability Benefits Coverage

The act amends the Workers' Compensation Law to require employers of domestic workers to obtain disability benefits coverage for such workers.

### Minimum Wage Act Protection

The act eliminates the exclusion of live-in domestic workers who provide companionship services from the protections of the New York Minimum Wage Act. As a result, this previously excluded subcategory of domestic workers could now be eligible for spread-of-hours, call-in, and split-shift pay.

### Collective Bargaining Rights

The act requires the commissioner of labor to report to the governor and legislature before November 1, 2010 on whether it would be feasible to extend collective bargaining rights to domestic workers.

### Implications

Employers of domestic workers should take immediate steps to ensure they are in compliance with the Domestic Workers Bill of Rights by November 28, 2010. Specifically, employers of domestic workers should prepare to track and maintain all required information regarding their domestic workers, including: (a) daily and weekly hours worked; (b) break time (i.e., meal, rest, and sleep time); (c) gross and net wages; (d) deductions; (e) allowances; and (f) rates of pay. These records should be maintained for six years. Employers of domestic workers should also consider adopting a non-discrimination and non-harassment policy that contains an internal complaint procedure if they have not done so already. The complaint procedure should, at a minimum, require employers to investigate all complaints of discrimination or harassment made by their domestic workers, document the investigations, and, where appropriate, take appropriate corrective action. Additionally, employers of domestic workers should contact their insurance carriers to ensure they have disability benefits coverage in place for their domestic workers.

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## Bottom line for employers

The Domestic Workers Bill of Rights significantly changes the rules for employers of domestic workers in New York. To reduce the risk of liability, individuals and families who employ domestic workers should immediately ensure their domestic worker employment practices and policies are in compliance with New York law.