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The Commonwealth of Massachusetts

Office of the Attorney General

NOTICE OF YOUR RIGHTS AS A DOMESTIC WORKER

Under the Domestic Workers' Bill of Rights and other applicable state and federal laws as required by Massachusetts General Laws, Chapter 149, Section 190

The law requires that your employer give you a **written notice** with basic information about your **RIGHTS as a DOMESTIC WORKER** in Massachusetts.

WHO IS A DOMESTIC WORKER?

A **Domestic Worker** is any individual who is paid to provide any service of a domestic nature within a household, including housekeeping, cleaning, childcare, cooking, home management, or caring for the elderly or ill.

Casual babysitters (those who generally work less than 16 hours per week) and personal care attendants are not considered domestic workers.

WHO IS YOUR EMPLOYER?

An **Employer** is any person or entity who hires a domestic worker to provide services within a household. This includes a family who hires a domestic worker directly, as well as a company that enters into an agreement with a family to have a domestic worker provide services in the household.

If a domestic worker provides shared services for two or more employers, **each employer** is fully responsible for fulfilling the provisions under the law. For example, in the context of childcare, shared services are commonly referred to as a "nanny share."

Staffing agencies, employment agencies and placement agencies licensed or registered pursuant to M.G.L. c. 140 are not considered employers.

Similarly, a consumer who receives services from a personal care attendant under the MassHealth personal care attendant program, pursuant to M.G.L. c. 118E is not considered an employer.

YOUR RIGHT TO INFORMATION

When you are hired and before you begin work, your employer must provide you with a **notice** of all applicable state and federal laws that apply to the employment of domestic workers.

1 This notice complies with the provisions of Massachusetts General Laws, Chapter 149, Section 190, which requires that domestic workers receive written notice of their rights.

Copies of this notice in multiple languages are available on the Attorney's General website at www.mass.gov/ago/dw.

If you work for an employer for **16 hours or more a week**, your employer must **ALSO** provide to you the following information (and keep a record for three years):

1. The rate of pay, including overtime and additional compensation for added duties or multilingual skills.
2. Working hours, including meal breaks and other time off.
3. If applicable, provisions for days of rest, sick days, vacation days, personal days, holidays, transportation, health insurance, severance and yearly raises. This information must include whether or not vacation days, personal days, holidays, severance, transportation costs and health insurance costs are paid or reimbursed.
4. Any fees or other costs, including costs for meals and lodging.
5. The responsibilities, including regularity, associated with the job.
6. The process for raising and addressing grievances and additional compensation if new duties are added.
7. The right to collect workers' compensation if injured on the job.
8. If you live on the employer's premises, the circumstances under which he or she may enter your designated living space.
9. The required notice of employment termination by you or the employer.
10. Any other benefits your employer gives to you.
11. If you live on the employers' premises, a description of what your employer deems as cause for immediate termination and removal within 48 hours from the employer's home without severance pay.

This must be in writing, and signed by both you and your employer.

RECORDKEEPING

You have a right to inspect your employer's payroll records relating to you at reasonable times. Your employer must maintain these records for three years. These records must include, at a minimum, your name, address, occupation, the amount paid each pay period, daily and weekly hours worked, and any deductions.

If you work for an employer 16 hours or more per week, then your employer must preserve copies of time sheets, notices, written agreements and any written evaluations.

EVALUATIONS

You may ask your employer for a written evaluation of your work performance after three months of employment and once annually after that. While your employer is not required to

provide such an evaluation, doing so may aid in ensuring that all job duties are performed at a satisfactory level.

If the employer agrees to provide a written evaluation, you have a right to review and receive a copy of it.

If you disagree with any information in your evaluation, you and your employer may mutually agree to make appropriate changes. **If you and your employer cannot agree**, you may submit a written statement to your employer explaining your position, which must be included as part of the personnel file; any statement you submit must be included whenever your performance evaluation is provided to anyone else. M.G.L. c. 149, § 52C.

WAGES

You must be paid **at least** the state minimum wage of \$10.00 per hour.

- On January 1, 2017, the minimum wage will be \$11.00 per hour.

You must be paid for all working time, which generally includes all time spent working in a household, on duty or at any location required by your employer, and traveling between work sites.

You must be paid in full in a timely manner – generally within six days of the end of the pay period.

At the end of employment, your employer must pay you all wages earned, including accrued, unused vacation time, on the day of termination or on the next regular payday, if you quit. For more information, see the Attorney General’s advisory regarding vacation time <http://www.mass.gov/ago/docs/workplace/vacation-advisory.pdf>.

REST PERIODS

If you work more than six hours in a day, you are entitled to a 30-minute unpaid break no later than after six consecutive hours of work. You may voluntarily give up this break, but you must be paid for the time worked. **This agreement must be made in writing before you begin work.** If there is no such agreement, your employer must pay you for these periods.

If you work 40 or more hours per week, you also must be given at least 24 consecutive hours of rest each week and at least 48 consecutive hours of rest each month, during which you are entitled to be free from all duties. These periods may be paid or unpaid. You and your employer should agree on this when you are hired. The 24- and 48-hour rest periods can run concurrently.

If you are on duty for less than 24 hours, you must be paid for all meal, rest, and sleeping periods, **unless** you are free to leave the premises, can use the time for your own use, and are free from work duties during those times.

If you are required to be on duty for 24 hours or more, you and your employer may agree to exclude some or all meal periods, rest periods, and sleep periods up to 8 hours from your paid working time.

OVERTIME

If you work more than 40 hours in a week, you are entitled to be paid overtime. The overtime rate is at least 1½ times your regular rate for all for all hours - or a fraction thereof - worked over 40 in a single week.

BANKING OF HOURS

If your employer pays you, but then does not offer enough hours to work in that pay period, your employer cannot require you to repay your wages or make up the time without compensation in a future pay period.

This arrangement is permitted only if you and your employer agree to it in writing and the time you agree to make up is less than 24 hours. If you agree to work more hours in a particular week, and work more than 40 hours in that week, you are entitled to overtime.

PAY DEDUCTIONS

Employers may only make deductions from your pay if they are required by law (such as withholding taxes or health insurance deductions) or if you have authorized them for your benefit (such as for meals or lodging) and have agreed to them in writing beforehand.

DEDUCTIONS REQUIRED OR ALLOWED BY LAW

State and federal tax withholding and wage garnishments such as court ordered child support are deductions that are required or allowed by law.

DEDUCTIONS AUTHORIZED BY YOU, FOR YOUR OWN BENEFIT

These may include deductions for health insurance, transportation costs, food and beverages, lodging, retirement contributions, and charitable deductions.

Food and Beverages

Your employer can deduct from your wages for the costs of food and beverages actually provided to you, **but only if the food and beverages are voluntarily and freely chosen by you.**

The daily deductions for food and beverages are capped at \$1.50 for breakfast, \$2.25 for lunch, and \$2.25 for dinner. If you work less than three hours in a day, then deductions are not allowed. If you work an eight-hour day, then your employer can deduct for up to two meals. No employer can deduct for three meals, unless the employer has provided you with housing.

Additionally, deductions for food and beverage are not permitted if your employer's household dietary restrictions prevent you from storing, preparing, or consuming food or beverages of your preference.

Lodging

If your employer requires you to live in the employer's premises or at a specific location, then your employer cannot deduct any lodging costs from your wages. If your employer offers you housing, and you accept and use it, deductions are permissible. In all circumstances, your housing must meet basic state and local health and sanitary code standards, including heat, potable water, and light.

If your employer is permitted to deduct lodging costs from your wages, the law caps the amount that may be deducted. Deductions are capped on a per-week basis, and depend on the number of other people sharing your room.

If you do not share your room with anyone, then your employer can deduct up to \$35.00 per week. If you share a room with another person, then the deduction cannot exceed \$30.00 per week. If you share a room with two or more persons, then your employer cannot deduct more than \$25.00 per week.

SOCIAL SECURITY AND UNEMPLOYMENT

Social Security and Income Taxes

Employees and self-employed workers earn credits toward eligibility for retirement and disability benefits based on their reported earnings. These benefits are funded by taxes paid by both employers and by workers.

If an employer pays you more than \$1,900.00 per year, they have the following obligations:

- Deduct Social Security and Medicare taxes from those wages;
- Pay these taxes to the Internal Revenue Service (IRS); and
- Report the wages to Social Security.

For more information regarding your employer's obligations on Social Security, contact the Social Security Administration at 1-800-772-1213 or visit www.ssa.gov.

Unemployment Benefits

Employees who lose their jobs through no fault of their own but are able to work, available for work and looking for work may be eligible for unemployment benefits (UI).

Funding for UI benefits comes from quarterly contributions paid by the state's employers. For more information, contact the Department of Unemployment Assistance at 617-626-6800 or visit www.mass.gov/dua.

REST PERIODS, SICK TIME, AND OTHER LEAVE

REST PERIODS

If you work 40 or more hours per week, you have a right to 24 consecutive hours off per week and 48 consecutive hours off per month. These periods may either be paid or unpaid. You and your employer should agree on this when you are hired.

If your rest periods are paid, such compensation is treated as earned wages, meaning that your employer cannot refuse to pay for your rest periods once you have earned them.

These days off, or rest periods, are considered **job-protected leave**. This means that your employer cannot punish you in any way for exercising your right to leave the premises or using your free time as you like.

If you freely choose to work during these rest periods, you must make an agreement with your employer **in writing** beforehand. You are entitled to be paid 1.5 times your hourly rate for hours worked during rest periods.

EARNED SICK TIME

You have the right to earn and use up to 40 hours of sick time in a calendar year to care for your own medical needs or those of your child, spouse, or spouse's parent. You may also use this leave to address the psychological, physical or legal effects of domestic violence.

Employers of 11 or more employees must provide paid sick time. For more information, visit mass.gov/ago/earnedsicktime.

VACATION & PERSONAL DAYS

You and your employer may agree on vacation and personal days, and whether these days will be paid or unpaid, at time of hire in a written employment agreement. A sample employment agreement can be found at www.mass.gov/ago/dw.

If your employer provides you with paid vacation time, then you are entitled to pay for all earned, unused vacation time upon termination of employment. For more information visit

<http://www.mass.gov/ago/doing-business-in-massachusetts/labor-laws-and-public-construction/wage-and-hour/vacation.html>.

PARENTAL LEAVE

Domestic workers may take up to eight weeks of unpaid, job-protected leave for the birth or adoption of a child. Your employer may not require a probationary period of more than three months before you are permitted to use this leave.

The Massachusetts Commission Against Discrimination (MCAD) enforces the parental leave law. For more information, contact MCAD at 617-994-6000 or visit www.mass.gov/mcad/maternity1.html.

OTHER LEAVE

If your employer has 50 or more employees, you may have rights to additional types of leave under state and federal law.

- You may have the right to up to 15 days of leave to address the consequences of domestic violence for you or a family member. For questions regarding the Domestic Violence and Abusive Situations Leave Act, contact the Attorney General's Fair Labor division at 617-727-3465
- You may be eligible for leave to attend certain family obligations. For more information on the Small Necessities Leave Act, contact the Attorney General's Fair Labor Division at 617-727-3465
- If you work for a company providing household services, you may be eligible for unpaid, job-protected leave for specified family and medical reasons under the federal Family and Medical Leave Act (FMLA). For more information, contact the U.S. Department of Labor at 617-624-6700 or visit www.dol.gov/whd.

PRIVACY RIGHTS AND FREEDOM OF MOVEMENT

If your employer has telephone or internet services, they are required to provide reasonable access to the telephone and/or internet service without charge to you. If the employer does not have telephone and/or internet services, the employer must provide you with a reasonable opportunity to access telephone and/or internet service at another location at your own expense.

Even if you live in your employer's household, they must respect your right to privacy. Your employer cannot:

- Monitor or record, in any manner, your use of restroom facilities, sleeping or private living quarters, or any activities associated with dressing, undressing, or changing clothes.
- Restrict, interfere with, monitor or record your private communications.
- Hold onto your passport or any of your documents or other personal effects.
- Force you to perform services by:
 - (i) causing or threatening to cause serious harm to you;
 - (ii) physically restraining or threatening to physically restrain you;
 - (iii) abusing or threatening to abuse the law or legal process;
 - (iv) knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document;
 - (v) engaging in extortion or any other illegal activity; or
 - (vi) causing or threatening to cause financial harm to you.

SAFETY AND HEALTH

Workers' compensation benefits may be available to some employees to pay for medical treatment for job-related injury or illness and compensate them for lost wages after the first five calendar days of full or partial disability.

Benefits are generally paid through an employer's worker compensation insurance, although workers may still receive benefits even if their employers fail to obtain the required insurance.

For more information, contact the Department of Industrial Accidents at 617-727-4900 or visit www.mass.gov/dia.

PROTECTIONS FOR IMMIGRANT WORKERS

The Massachusetts wage and hour laws, including the Domestic Worker's Bill of Rights, apply to workers **regardless of immigration status, including undocumented workers**. The reporting of a worker to immigration authorities because the worker has complained about a violation under the wage and hour laws is considered **retaliation and is subject to penalties under M.G.L. c. 149, §§ 27C & 148A**.

If your employer has more than three employees and you are an immigrant employee with authorization to work in the United States, then you have protections against discrimination based on your immigration status. For more information, contact the United States Department of Justice at 800-255-7688 or visit www.justice.gov/crt/about/osc/.

PROTECTION AGAINST DISCRIMINATION

An employer may not discriminate against domestic workers based on race, color, religious creed, national origin, sex, gender identity, sexual orientation, genetic information, ancestry, age, or disability, or for certain other reasons. Sex discrimination includes sexual harassment and pregnancy discrimination.

Your employer may not base decisions that affect your employment on your submission to unwelcome sexual comments or conduct, and you have the right to be free from sexual comments and conduct that unreasonably interfere with the performance of your work by creating an intimidating, hostile, or offensive work environment. You also have protections against harassment based on sexual orientation, gender identity, race, color, age, religion, national origin or disability.

It is unlawful for your employer to retaliate against you for complaining of practices that you believe to be discriminatory.

YOUR RIGHTS UPON TERMINATION

If you live in your employer's household, or in a location required by your employer, and your employer terminates you without cause, you have certain rights. First, your termination must be in writing. Next, your employer must provide you with at least 30 days' housing or severance pay equal to your average weekly earnings during two weeks of employment. Your employer must give you 24 hours to find new housing.

If you live in your employer's household, or in a location required by your employer, and your employer terminates you based upon a good faith allegation, in writing before or at the time of the termination, that you have harmed your employer or a family member, then you are not entitled to housing or a severance payment.

If you live in your employer's household, or in a location required by your employer, and termination is for cause relating to conduct other than what is described above, the employer must provide advance written notice. Your employer must also give you at least 48 hours to find new housing.

No matter the circumstances, all outstanding wages, including accrued, unused paid vacation time, must be **paid in full** upon termination.

YOUR RIGHT AGAINST RETALIATION

Your employer may not penalize or retaliate against you in any way for exercising your rights under Massachusetts wage and hour laws, including the Domestic Workers Bill of Rights.

FILING A COMPLAINT

The Attorney General's Office enforces the domestic workers law pursuant to M.G.L. c. 149, § 190(o).

If you feel that your rights are being or have been violated under this or any other Massachusetts wage and hour law, you may file a complaint with the **Attorney General's Fair Labor Division**. If you have questions about filing a complaint, visit mass.gov/ago/dw or call the Fair Labor Division at (617) 727-3465.

If you wish to pursue a civil action on behalf of yourself or yourself and other similarly situated workers, known as a **private right of action**, you must first file a complaint with the **Attorney General's Fair Labor Division** and either (1) request and receive a private right of action letter allowing you to file in court directly or (2) wait 90 days after filing with the Attorney General at which time you may file a claim directly in court.

If you feel that you are being or have been discriminated against or harassed you may file a complaint with the **Civil Rights Division in the Attorney General's Office**. If you have questions about filing a civil rights complaint, visit mass.gov/ago/dw or call the Civil Rights Division at (617) 963-2917.

You may file a complaint online, through the mail, or in person.

Online: Visit www.mass.gov/ago/dw

Through the mail: Call the AG's consumer hotline at 617-727-8400 to request a complaint form, or mail a summary of your situation to:

Office of the Attorney General
1 Ashburton Place
Boston, MA 02108

In Person: Visit one of our offices.

Boston: (617) 727-2200 – 100 Cambridge Street, 11th Floor, Boston, MA 02108

New Bedford: (508) 990-9700 - 105 William Street, # 1, New Bedford, MA 02740

Springfield: (413) 784-1240 - 1350 Main Street, #4, Springfield, MA 01103

Worcester: (508) 792-7600 - 10 Mechanic Street, Suite 301, Worcester, MA 01608