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# The COVID-19 Crisis Underscores the Need for Sustainable Domestic Worker Protections

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## Introduction

With over 2.2 million house cleaners, care workers, and nannies working in private homes across the country, domestic workers are some of the most essential workers in our economy and homes.<sup>1</sup> These workers—predominantly being workers of color, immigrants, and 91.5 percent being women<sup>2</sup>—are critical in caring for our children, supporting older individuals and people with disabilities, and helping keep our households clean. People doing this work assist in supporting families, and, in many cases, allow working families to become more economically secure and prosper.

However, this prosperity is often at the expense of the health and economic wellbeing of domestic workers who have the fewest labor protections, are paid some of the lowest wages, and work in some of the most isolated environments. These conditions combine to make it particularly hard for domestic workers to assert their rights.<sup>3</sup> Generally speaking, domestic workers are three times as likely to live in poverty or just above the poverty line as compared to other workers. In either case, they rarely have sufficient income to make ends meet.<sup>4</sup> On top of that, a large share of domestic workers also face sexism, racism, and discrimination due to their immigration status.

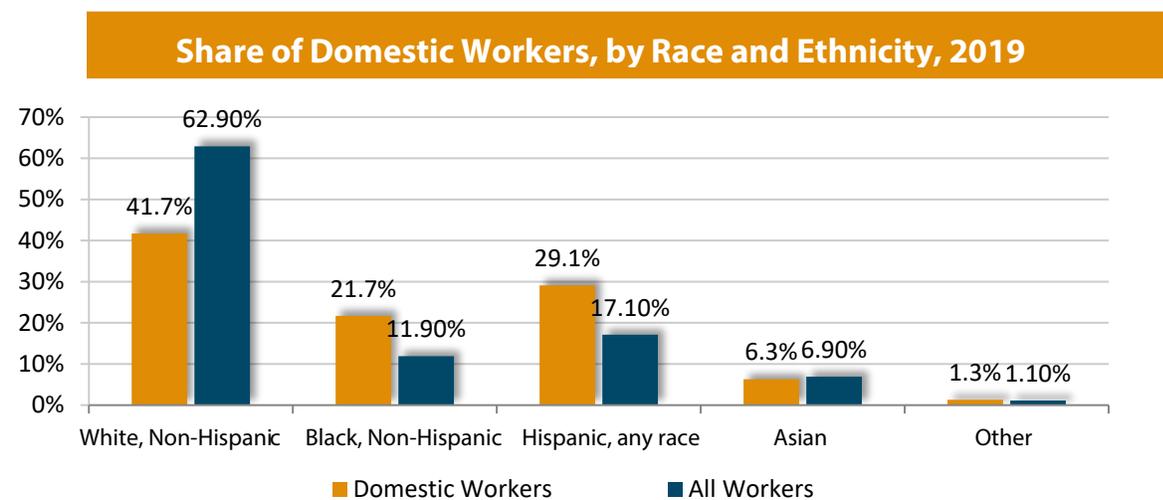
COVID-19 exacerbates existing threats to the economic livelihoods of domestic workers since many—especially those who provide home care or elder care—are considered essential workers and must continue to work through the pandemic or face high rates of unemployment. In fact, domestic workers may be the most vulnerable among the millions of workers currently unemployed or working in conditions that could endanger their own health or that of their families.

## Race, Gender, and Citizenship Barriers

In the United States, the roots of domestic work go as far back as slavery. Throughout slavery and the Jim Crow era, Black women—particularly in the South—provided care while also caring for their own families. First when they were enslaved and then as freed people, Black women were the most likely of all to be employed in jobs paying low wages that involve cooking, cleaning, and caregiving.<sup>5</sup> Domestic work was often the only work available to Black and immigrant women after slavery. In fact, it wasn't until the 1960s that more employment opportunities in different sectors became available for Black women.<sup>6</sup> Meanwhile in the North, Irish immigrants often took domestic jobs, as did Asian and Latina immigrants in the West.<sup>7</sup> As the field of domestic and care work grew from the Jim Crow era to the late 20<sup>th</sup> century, policymakers enacted many racist and sexist policies ensuring that these workers were paid extremely low wages—if they were paid at all—and had virtually no labor protections.

Congress passed the 1935 National Labor Relations Act (NLRA) granting workers the right to form unions, choose representatives, and bargain collectively, yet domestic and agricultural workers—who were mostly Black—were purposefully and systemically excluded from these protections.<sup>8</sup> These workers were also initially excluded from the federal Fair Labor Standards Act of 1938 (FLSA), which established minimum wage, overtime pay, recordkeeping, and child labor standards.<sup>9</sup> However, through the successful organizing of domestic workers, FLSA amendments were secured to allow greater inclusion of this workforce.<sup>10</sup>

Domestic workers are also disproportionately affected by small-employer exclusions in other laws. This includes Title VII of the Civil Rights Act of 1964, which protects employees from discrimination based on race, color, national origin, sex, and religion.<sup>11</sup> However, Title VII only applies to employers with 15 or more employees. Therefore, domestic workers who urgently need improved labor standards but don't work for an agency with the minimum required number of employees may lack discrimination protections.<sup>12</sup> Additionally, the continual misclassification of workers as independent contractors also presents barriers to critical labor protections needed by domestic workers.<sup>13</sup> This all contributes to the continued undervaluing of domestic work within the U.S. workforce.



Source: Economic Policy Institute (EPI) analysis of Current Population Survey basic monthly microdata, EPI Current Population Survey Extracts, Version 1.0.2 (2020), <https://microdata.epi.org>

Note: To ensure sufficient sample sizes, this figure draws from pooled 2017–2019 microdata.

Today, domestic workers continue to be disproportionately women of color— particularly Black and Latinx workers—who have historically faced and continue to struggle with intersectional barriers to equal rights in the workforce. As Mariana Viturro, Deputy Director of the National Domestic Workers Alliance, once said, “It’s both the fact that the workplace is in a private home, and also the fact that the

workforce is overwhelmingly women, and women of color and immigrant women [that discrimination violations occur]. There’s just a higher vulnerability to abuse and harassment and discrimination.”<sup>14</sup> Harassment and discrimination are commonplace for this line of work because of gender and racial constraints, physical and social isolation that prevents collective action, and the lack of bargaining power.<sup>15</sup> In a recent study of minimum wage complaints in San Francisco from 2005 to 2018, private households had the highest estimated violation rates of all industries.<sup>16</sup> However, private households also had some of the lowest complaints—possibly due to fear of retaliation. Immigrant domestic workers also fear their immigration status puts them at risk of retaliation for demanding basic workplace rights, particularly under the Trump Administration.<sup>17</sup>

Barriers to enforcing workplace remedies for domestic workers are a byproduct of the private nature of domestic work. Because they work inside other people’s homes, domestic workers face racial, gender, and citizenship discrimination that is largely out of public view. As a result, labor enforcement officials rarely investigate workplace standard violations which may include being paid a minimum wage, overtime pay, or protections against sexual harassment, if domestic workers receive these benefits at all.<sup>18</sup> In particular, immigrant domestic workers desperately need secure protections from exploitative work conditions in which their fear of being deported can prevent them from reporting violations.

The COVID crisis is exacerbating many of these fears because as domestic workers return to work after long periods of unemployment, many are even more hesitant to raise workplace concerns for fear of losing work again. These intersectional constraints of race, gender, and citizenship worsen the plight of domestic workers’ efforts to have their rights acknowledged and, in light of the COVID-19 crisis, leaves them even more vulnerable in our economy.

## The COVID-19 Crisis

Domestic workers comprise a large share of the millions of people working on the frontlines during this pandemic. These workers perform duties that include providing child care for other essential workers such as first responders and health care providers. Sadly, there are still *many* domestic workers without a job because of the economic fallout from COVID-19.

A recent study by the National Domestic Workers Alliance (NDWA) found that:

80 percent of respondents with a high volume of work<sup>19</sup> either had no work for the following week, or had lost at least half of their jobs for the following week<sup>20</sup> and;

94 percent of respondents reported experiencing coronavirus-related cancellations by their client. Of those respondents, 70 percent say they don’t know if their clients will give them their job back after the pandemic.<sup>21</sup>

The untimely risks of unemployment also have disastrous effects on the families of domestic workers. Eighty-four percent of surveyed workers reported they either would not be able to afford food for the weeks of April 6 and April 19 or were uncertain if they would be able to. Another 55 percent were unable to pay April's rent, and 77 percent feared being evicted.<sup>22</sup> These responses paint a dismal picture of how domestic workers and their families are faring during the ongoing pandemic and underscore the critical need for labor protections.

In a separate study, the Institute of Policy Studies and NDWA conducted a survey on the key impacts of COVID-19 on Black immigrant domestic workers in New York City, Massachusetts, and Miami-Dade, Florida.<sup>23</sup> They found that:

70 percent of Black immigrant domestic workers surveyed have lost their jobs;
65 percent of respondents were fearful or at risk of eviction or utility shut off in the next three months;
Over half of those domestic workers still employed report not having medical insurance or personal protective equipment; and
Nearly 50 percent of respondents were fearful of seeking assistance or resources from their federal, state, or local government due to their immigration status.

All of these rates were higher among undocumented immigrant respondents, further illustrating the critical obstacles immigrant workers face.<sup>24</sup> Regardless of employment or immigrant status, domestic workers generally face economic insecurity, a lack of labor protections, and an absence of basic, guaranteed rights to paid leave and a predictable schedule.

In March, Congress passed the Families First Coronavirus Response Act (FFCRA) granting millions of workers nationwide — including many domestic workers — a right to federal emergency paid sick and family leave.<sup>25</sup> This emergency leave legislation protects many eligible domestic workers during the ongoing pandemic. However, many domestic workers are likely to continue to fear retaliation if they seek these benefits due to working in isolation, their immigration status, or overall fear of being terminated. This fear may be even greater for undocumented workers, though the FFCRA details that all eligible employees are entitled to emergency paid sick leave and paid family leave, regardless of their immigration status.

In addition to the fear of retaliation, many workers may not even know they have these rights. According to polling data from the National Partnership for Women and Families, over half of Americans believe they do not qualify or don't know about the FFCRA legislation.<sup>26</sup> Also, the FFCRA benefits are temporary and set to sunset at the end of the year, which will leave many domestic workers without crucial worker protections and benefits during the aftermath of COVID-19. Additionally, the FFCRA has a provision allowing employers to opt out of providing emergency paid leave to their workers if they have less than 50 employees and if providing leave would threaten their economic viability. However, these opt-outs could be costly for workers employed by small businesses and in domestic and care work.<sup>27</sup> Many state and local paid sick days and paid family and medical leave laws cover domestic workers only if they are considered employees. So, if domestic workers are classified or misclassified as independent contractors, they may be excluded or unable to afford to take advantage of these crucial leave benefits. Domestic workers need sustainable and

comprehensive worker protections against being abused and exploited.

## Policy Solutions

After successful organizing and advocacy efforts of domestic workers around the country, Senator Kamala Harris (D-CA) and Representative Pramila Jayapal (D-WA) introduced legislation in 2019 for a federal Domestic Workers Bill of Rights. The bill would protect domestic workers from racial discrimination and sexual harassment, provide meal and rest breaks, require hiring entities to implement fair scheduling practices, and ensure the right to overtime and paid sick and safe days.<sup>28</sup> This legislation is crucial in establishing new benefits and solutions to address the barriers of domestic work. It is also an important strategy for strengthening work policies to prevent employers from retaliating against workers who report labor violations such as discrimination, harassment, and working long, gruelling hours. The Bill of Rights will also implement a Domestic Worker Wage and Standard Board to investigate and raise standards in the industry as well as make recommendations that promote increased safety, health, wellbeing, and livable wages.<sup>29</sup> Domestic workers can use the Wage and Standard Board as an organizing mechanism that will uplift and build power for domestic workers' voices.

To bolster enforcement, the Domestic Workers' Bill of Rights will establish a federal interagency task force including the Department of Labor, Department of Health and Human Services, and representatives of the Equal Employment Opportunity Commission. The task force will also provide grants to foster co-enforcement, outreach, and community-based education between federal agencies and members of the community.

Currently, nine states (New York, California, Hawaii, Illinois, Massachusetts, Connecticut, Nevada, Oregon, and New Mexico) have all passed their own Domestic Workers Bill of Rights. In 2018, Seattle became the first city to enact a domestic worker ordinance and create a domestic workers standard board. As a result, many domestic workers in Seattle now have the right to a minimum wage, rest breaks, meal periods, and a day of rest after working six consecutive days for live-in workers.<sup>30</sup> More recently, Philadelphia enacted a domestic workers ordinance that went into effect in May 2020.<sup>31</sup> Despite these crucial wins, the rest of the country is slow to catch up, and millions of domestic workers desperately need these fundamental rights.

Domestic workers deserve the dignity and respect their jobs require and need their rights recognized and enforced long-term. That was true before the pandemic, and it's even more true now. These workers deserve to be empowered to take up their rights and work in a safe environment. The Domestic Workers Bill of Rights should be used as a model for other new labor standards to significantly improve the working conditions of domestic workers and workers in communities that have been historically and systematically marginalized. We must not recreate inequity with old models for labor standards. Rather, we should craft policies that prioritize workers earning low wages and add value, dignity, and fairness to the work that has fueled this economy for generations.

To learn more about Domestic Workers and their organizing, go to [National Domestic Workers Alliance](https://nationaldomesticworkersalliance.org).

## Endnotes

- <sup>1</sup>Julia Wolfe, *Domestic Workers are at Risk During the Coronavirus Crisis*, April 2020, Economic Policy Institute, <https://www.epi.org/blog/domestic-workers-are-at-risk-during-the-coronavirus-crisis-data-show-most-domestic-workers-are-black-hispanic-or-asian-women/>.
- <sup>2</sup>Ibid.
- <sup>3</sup>Bernice Yeung, *Here's What Exploitation of Domestic Workers Looks Like*, April 2018, BuzzFeed, <https://www.buzzfeednews.com/article/berniceyeung/heres-what-exploitation-of-domestic-workers-looks-like>.
- <sup>4</sup>Julia Wolfe, Jori Kandra, Lora Engdahl, and Heidi Shierholz, *Domestic Workers Chartbook: A comprehensive look at the demographics, wages, benefits, and poverty rates of the professionals who care for our family members and clean our homes*, May 2020, Economic Policy Institute, <https://www.epi.org/publication/domestic-workers-chartbook-a-comprehensive-look-at-the-demographics-wages-benefits-and-poverty-rates-of-the-professionals-who-care-for-our-family-members-and-clean-our-homes/>.
- <sup>5</sup>Nina Banks, *Black Women's Labor Market History Reveals Deep-Seated Race and Gender Discrimination*, February 2019, Economic Policy Institute, <https://www.epi.org/blog/black-womens-labor-market-history-reveals-deep-seated-race-and-gender-discrimination/>.
- <sup>6</sup>Premilla Nadasen and Tiffany Williams, *Valuing Domestic Work*, Barnard Center for Research on Women, <http://bcrw.barnard.edu/wp-content/nfs/reports/NFS5-Valuing-Domestic-Work.pdf>.
- <sup>7</sup>Julie Kashen, *Domestic Workers Bill: A Model for Tomorrow's Workforce*, December 2019, The Century Foundation, <https://tcf.org/content/report/domestic-workers-bill-a-model-for-tomorrows-workforce/?agreed=1>.
- <sup>8</sup>Linda Burnham and Nik Theodore, *Home Economics: The Invisible and Unregulated World of Domestic Work*, 2012, National Domestic Workers Alliance, <https://www.domesticworkers.org/home-economics-invisible-and-unregulated-world-domestic-work>.
- <sup>9</sup>*Wages and the Fair Labor Standards Act*, U.S. Department of Labor, <https://www.dol.gov/agencies/whd/flsa>.
- <sup>10</sup>*Domestic Service Final Rule Frequently Asked Questions (FAQs)*, Department of Labor, <https://www.dol.gov/agencies/whd/direct-care/faq>.
- <sup>11</sup>*Title VII of the Civil Rights Act of 1964*, U.S. Equal Employment Opportunity Commission, <https://www.eeoc.gov/statutes/title-vii-civil-rights-act-1964>.
- <sup>12</sup>Andolan organizing south Asian workers; CASA of Maryland; Domestic Workers United; Global Rights; University of North Carolina School of Law Human Rights Policy Clinic; Stefani Bonato; McKenna Coll; Eric Tars, *Domestic Workers Rights in the United States: A report prepared for the U.N. Human Rights Committee in response to the Second and Third Periodic Report of the United States*, <https://law.unc.edu/wp-content/uploads/2019/10/domesticworkersreport.pdf>.
- <sup>13</sup>Françoise Carré, *(In)dependent Contractor Misclassification*, June 2015, Economic Policy Institute, <https://www.epi.org/publication/independent-contractor-misclassification/>.
- <sup>14</sup>Janine Jackson, *'Domestic Workers Don't Have Protections Against Discrimination and Harassment'*, December 2018, Fair & Accuracy in Reporting, <https://fair.org/home/domestic-workers-dont-have-protections-against-discrimination-and-harassment/>.
- <sup>15</sup>Julie Kashen and Rakeen Mabud, *Nevertheless, It Persists: Disrupting the Vicious Cycle of Institutionalized Sexism*, July 2020, Time's Up, [https://timesupfoundation.org/work/times-up-impact-lab/nevertheless-it-persists-disrupting-the-vicious-cycle-of-institutionalized-sexism/?utm\\_source=structural-sexism-launch-pr&utm\\_medium=email&utm\\_campaign=structural-sexism-launch](https://timesupfoundation.org/work/times-up-impact-lab/nevertheless-it-persists-disrupting-the-vicious-cycle-of-institutionalized-sexism/?utm_source=structural-sexism-launch-pr&utm_medium=email&utm_campaign=structural-sexism-launch).
- <sup>16</sup>Daniel J Galvin, Jenn Round, and Janice Fine, *A Roadmap for Strategic Enforcement: Complaints and Compliance with San Francisco's Minimum Wage*, September 2020, The Center for Innovation in Worker Organization (CIWO), <https://smlr.rutgers.edu/complaints-compliance-in-sanfrancisco-study>.
- <sup>17</sup>Alicia Garza and Ai-jen Poo, *Women Will Fight Trump's Agenda for the Next 100 Days Too*, April 2017, Cosmopolitan, <https://www.cosmopolitan.com/politics/a9556582/trump-first-100-days-women-resistance/>.

<sup>18</sup> Overtime pay is a particular benefit and protection that some live-in domestic workers are exempt from, and left vulnerable to, under the Fair Labor Standards Act:

*Elaws: Fair Labor Standards Act Advisor*, U.S. Department of Labor,

[https://webapps.dol.gov/elaws/whd/flsa/screen75.asp?\\_ga=2.188435182.754914421.1594127410-1912858600.1547233672](https://webapps.dol.gov/elaws/whd/flsa/screen75.asp?_ga=2.188435182.754914421.1594127410-1912858600.1547233672).

<sup>19</sup> In the survey, high volume work is defined as working more than 10 jobs per week—for example, house cleaners who work in multiple homes.

<sup>20</sup> *Coronavirus' Economic Impact on Domestic Workers*, National Domestic Workers Alliance,

[https://domesticworkers.org/sites/default/files/Coronavirus\\_Report\\_4\\_8\\_20.pdf](https://domesticworkers.org/sites/default/files/Coronavirus_Report_4_8_20.pdf).

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

<sup>23</sup> *Notes from the Storm: Black Immigrant Domestic Workers in the Time of COVID-19*, National Domestic Workers Alliance and the Institute for Policy Studies, <https://domesticworkers.org/sites/default/files/IPS-WDiB-survey-brief.pdf>.

<sup>24</sup> Marisa Peñaloza, *Some Undocumented Domestic Workers Slip Through Holes in Coronavirus Safety Net*, April 2020, National Public Radio, <https://www.npr.org/sections/coronavirus-live-updates/2020/04/03/826280607/some-undocumented-domestic-workers-slip-through-holes-in-coronavirus-safety-net>.

<sup>25</sup> Although many domestic workers received the right to federal emergency paid sick and family leave, there are stipulations. Domestic workers considered employees or economically dependent on the job as a live-in worker or full-time employee are eligible for the leave. However, domestic workers that are classified as independent contractors are not entitled paid leave unless they are considered a full-time employee.

<sup>26</sup> *Polling on Americans' Awareness of and Intentions to Use New Paid Family Leave and Paid Sick Days Protections*,

May 2020, National Partnership for Women and Families, <https://www.nationalpartnership.org/our-work/resources/economic-justice/americans-awareness-of-and-intentions-to-use-coronavirus-leave.pdf>.

<sup>27</sup> *Families First Coronavirus Response Act: Employer Paid Leave Requirements*, U.S. Department of Labor,

[https://www.dol.gov/sites/dolgov/files/WHD/Pandemic/FFCRA-Employee\\_Paid\\_Leave\\_Requirements.pdf](https://www.dol.gov/sites/dolgov/files/WHD/Pandemic/FFCRA-Employee_Paid_Leave_Requirements.pdf).

<sup>28</sup> *Domestic Workers Bill of Rights Act*, S.2112, 116<sup>th</sup> Congress, 2019. <https://www.congress.gov/bill/116th-congress/senate-bill/2112/text>.

<sup>29</sup> *Bill of Rights*, National Domestic Workers Alliance, <https://www.domesticworkers.org/bill-rights>.

<sup>30</sup> *Domestic Workers Ordinance*, Seattle Office of Labor Standards,

<https://www.seattle.gov/laborstandards/ordinances/domestic-workers>.

<sup>31</sup> Anna Orso, *Law Protecting Philadelphia Domestic Workers Takes Effect as They're Losing Jobs in Droves*, May 2020, *The Philadelphia Inquirer*, <https://www.inquirer.com/news/philadelphia/philadelphia-domestic-worker-bill-of-rights-takes-effect-coronavirus-20200501.html>.