



West Coast Domestic Workers' Association

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A Submission by the West Coast Domestic Workers' Association to The Fair Wages Commission 7 December 2017

Introduction

West Coast Domestic Workers' Association is a non-profit organization that provides *pro bono* legal advice, representation, and education to caregivers and other migrant workers in British Columbia. Since 1986, we have been advocating for the rights of foreign national caregivers who come to Canada under the federal Live-in Caregiver and Temporary Foreign Worker Programs.

We appreciate the opportunity to provide recommendations to the Fair Wages Committee regarding wage rates and entitlements for domestic workers in the Employment Standards Act (ESA) and Regulations.

Context

Domestic work is work that takes place in private residences and often consists of care work for children, the elderly, or people with disabilities or high medical needs.¹ It can also include housekeeping and cleaning work.

Domestic work is valuable work and helps British Columbia thrive, as it is the work that makes other work possible. Paid domestic work benefits families, employers, and the economy as a whole. With Canada's aging population and increasing life expectancies, the need for domestic workers will continue to grow.

Domestic workers are uniquely marginalized. In British Columbia, many domestic workers are migrant women of colour here as temporary foreign workers.² They face marginalization and difficulty accessing their rights as workers in BC due to many factors: the temporary nature of their immigration status, work visas that are tied to a single employer, low-wage precarious jobs, language barriers, and unfamiliarity with employment standards in BC. As a result, they are particularly vulnerable to labour exploitation and discrimination based on gender, class, race, and nationality.

The important work that domestic workers do is undervalued as it is often perceived as the traditional work of a female homemaker and seen as help, but not work. Unfortunately, this outdated view of domestic work is still reflected in BC's Employment Standards Act and Regulations, which restrict the ability of these workers to receive a fair wage in the form of hourly minimum and overtime wages like other workers.

¹ According to the National Occupation Classification, these jobs are classified as NOC 4411 Home child care providers and NOC 4412 Home support workers. See <http://noc.esdc.gc.ca/English/noc/welcome.aspx?ver=11>

² In the first 3 quarters of 2017 (January 1, 2017 – September 30, 2017), for example, Employment and Social Development Canada approved 1,149 positions for home child care providers and 317 positions for home support workers in British Columbia under the Temporary Foreign Worker Program. See Employment and Social Development Canada, *Temporary Foreign Worker Program 2017 Q3* at http://open.canada.ca/data/en/dataset/e8745429-21e7-4a73-b3f5-90a779b78d1e?_ga=2.24247994.1239877317.1512578766-536812370.1481074597



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Recommendations:

In our view, the Fair Wages Commission must not only consider the timeline for moving towards the \$15 hourly minimum wage, but also review and revise the classes of employees who will subject to it.

We have three recommendations for changes to the ESA and Regulations in regard to access to fair wages for domestic workers, as follows.

1) All domestic workers should receive wages no less than the hourly minimum wage, and should receive overtime wages.

Currently, the ESA and Regulations provide five different classes of domestic workers who are subject to different rights regarding wages.

Domestics: live-in caregivers and the only class who are fully covered by the Act, including hourly minimum and overtime wages.

Sitters: live-out caregivers and the only class who are completely excluded from the Act. They have no legislated hourly minimum or overtime wages.

Residential care workers: caregivers who work in group homes or family type residential dwellings. They are subject to hourly minimum wages but not overtime wages.

Night attendants: caregivers who work during the night. They are subject to hourly minimum wages but not overtime wages.

Live-in home support workers: caregivers who work on a 24-hour live-in basis, and are employed through a government funded program. The minimum wage for a live-in home support worker is \$113.50 per day for each 24-hour period.

The different classes of domestic workers in the ESA and Regulations serve to confer different rights for workers who essentially do the same work. The classifications serve to carve out exemptions and exclusions for caregivers from existing statutory rights and protections in the ESA and Regulations. By default, all workers in BC are covered by the ESA and Regulations unless they are explicitly exempted or excluded.

The classification system in place for domestic workers constitutes a significant barrier for workers to assert their rights. In the most extreme case, sitters do not have any rights under the ESA and Regulations. On the other end of the spectrum, domestics have the most rights, but these rights are undermined by the fact that domestics are required to live in the residence where they work, which increases their vulnerability to exploitation, as discussed further below.



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To illustrate the problematic nature of the current classifications, the examples of sitters and live-in home support workers are discussed below.

Sitters

A sitter is defined in the Regulations as:

a person employed in a private residence solely to provide the service of attending to a child, or to a disabled, infirm or other person, but does not include a nurse, domestic, therapist, live-in home support worker or an employee of

- (a) a business that is engaged in providing that service, or
- (b) a day care facility;

According to s. 32(1)(c) of the Regulations, sitters are excluded from all of the rights and protections in the ESA. A sitter is a home child care provider or home support worker who does not live in the home where they are employed. Sitters include foreign caregivers who come to British Columbia to work full-time under the Temporary Foreign Worker Program.

As of November 30, 2014, temporary foreign worker caregivers are able to choose whether to live in the home where they are employed or to live out. Whereas previously caregivers under the Live-in Caregiver Program were required to live-in, the federal government ended this requirement, as "requiring caregivers to live in the home of their employer can place them in vulnerable situations, including uncompensated overtime, poor working conditions, or worse."³

While the intention of this federal change was to decrease the potential for exploitation of caregivers, in British Columbia, the practical consequence is that the employment of foreign caregivers who live-out is not subject to any statutory protections, thus increasing the potential for exploitation of these caregivers.

Sitters also include home child care providers and home support workers who are permanent residents or citizens of Canada who may be employed directly by families, or by agencies.

Live-in Home Support Workers

A Live-in Home Support Worker is defined in the Regulations as:

a person who

³ Government of Canada, *Improving Canada's Caregiver Program* at <https://www.canada.ca/en/news/archive/2014/10/improving-canada-caregiver-program.html>



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(a) is employed by an agency, business or other employer providing, through a government funded program, home support services for anyone with an acute or chronic illness or disability not requiring admission to a hospital, and

(b) provides those services on a 24 hour per day live-in basis without being charged for room and board;

Live-in home support workers are distinguished from the other classes of caregivers according to the ESA and Regulations by virtue of their employment being connected to a government-funded program. These workers are subject to extremely egregious working conditions, including living in the home where they are employed and providing services on a 24-hour a day basis.

In addition, Live-in home support workers consist of one of two categories of workers in British Columbia which are subject to a daily minimum wage. According to s. 16(1) of the Regulations, the daily minimum wage for live-in home support workers is \$113.50.

According to s. 34(q) of the Regulations, Live-in home support workers are excluded from part 4 of the ESA which governs hours of work and overtime. As such, Live-in home support workers are not protected from working excessive hours, nor do they have the right to periods of rest or breaks.

Given this, Live-in home support workers could be expected to be at work for 24 hours a day in which case their hourly wage would only be \$4.79. In contrast, a domestic under the ESA would be entitled to the hourly minimum wage of \$11.35 and overtime wages which would amount to \$431.30 for a 24-hour period. Although these 2 classifications of domestic workers are regulated in drastically different ways, the nature of their work is essentially the same.

According to s. 1 of the Regulations, Live-in home support workers are not charged for room and board, but this does not compensate for their extremely low wages. According to s. 14 of the Regulations, domestics can be charged a maximum of \$325 per month for room and board. Saving \$325 on room and board is greatly overshadowed by the money that live-in home support workers do not receive for their overtime hours.

The fact that domestic workers provide care work and their workplace is a private residence does not bar domestic work from regulation. If care is required for 24 hours a day, domestic workers' shifts could be scheduled so that 2 domestic workers work 12-hour shifts, or 3 domestic workers work 8-hour shifts in a 24-hour period. The requirement for Live-in home support workers to provide services on a 24-hour a day basis is akin to a form of domestic servitude and should be abolished.

Even for those domestic workers who have some limited rights under the ESA and Regulations, the classification system is so complex that domestic workers are unlikely to understand what their rights are, and as such, are less likely to assert their rights. Employers also misunderstand their obligations. The system appears to be designed in such a way as to discourage domestic workers from filing complaints with the Employment Standards Branch if their rights have been violated.



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As such, all 5 classifications should be removed from the ESA and Regulations. This would result in all domestic workers being subject to hourly minimum and overtime wages for their labour. It would also simplify the ESA and Regulations so that domestic workers can meaningfully understand and assert their rights.

2) If live-in caregivers are on-call while at their residence, they should be deemed to be at work and receive wages.

Section 1(2) of the ESA says that “an employee is deemed to be at work while on call at a location designated by the employer unless the designated location is the employee’s residence.”

The consequence of this provision is that home child providers and home support workers who live in the residence where they work can be required to be on-call up to 24 hours per day, but cannot claim wages for these excessive hours. We regularly encounter employers who take unfair advantage of this provision to require that their live-in caregiver be available for work around the clock. In any other workplace, workers who are on call are entitled to receive wages. It is only fair that live-in caregivers are granted the same entitlements. Having to be on call and available to work at any time is also akin to a form of domestic servitude and should be abolished.

3) The minimum wage in BC should be raised to \$15 an hour by the end of 2018.

Alberta and Ontario are both increasing their minimum wage within a similar timeline and British Columbian workers should not be left behind. An immediate significant increase in the minimum wage is a necessary component of a comprehensive poverty reduction strategy.

Low wages push domestic workers to live in the residence where they work, increasing their vulnerability. A substantial increase in the minimum wage and a further transition to a living wage for all workers will empower domestic workers to leave exploitative situations.

Conclusion

There is a labour market shortage of home child care providers and home support workers in BC. Yet, the need for caregivers is expected to grow given Canada’s changing demographics. If home child care providers and home support workers continue to be exempted from the basic rights and protections in the ESA and Regulations, or excluded altogether, this will continue to be a disincentive for workers to enter or continue to work in these fields.

Thank you for taking the time to consider these recommendations. The current situation for domestic workers in British Columbia is bleak, but there is a clear way forward. We must ensure that all domestic workers are subject to fair wages in the form of hourly minimum and overtime wages. After all, it is 2017, and time to recognize the value of domestic work and reflect this in our laws.