

Legislation Text

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Amending Chapter 9-1100 of The Philadelphia Code, entitled "Fair Practices Ordinance: Protections Against Unlawful Discrimination," amending Chapter 9-4100, entitled "Promoting Healthy Families and Workplaces," and adding a new Chapter, entitled "Protections for Domestic Workers," all to provide protections for domestic workers and to establish remedial and enforcement provisions, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Chapter 9-1100 of The Philadelphia Code is hereby amended as follows:

TITLE 9. REGULATION OF BUSINESSES, TRADES, AND PROFESSIONS.

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CHAPTER 9-1100. FAIR PRACTICES ORDINANCE:
PROTECTIONS AGAINST UNLAWFUL DISCRIMINATION

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§ 9-1102. Definitions.

(1) For purposes of this Chapter the following terms shall have the following meanings:

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[(g) Domestic Worker. An individual employed in a home or residence for the purpose of caring for a child, serving as a companion for a sick, convalescing or elderly person, housekeeping, or for any other domestic service purpose. Domestic worker does not include any individual who is (.1) working on a casual basis, (.2) engaged in providing companionship services, as defined in Section 213 (15)(a) of the Fair Labor Standards Act of 1938, and who is employed by an employer or agency other than the family or household using his or her services; or (.3) a Life Partner or relative through blood, marriage or adoption of the employer or the individual for whom the worker is delivering services under a program funded or administered by federal, state or local government.]

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§ 9-1104. Exemptions from Unlawful Employment Practices.

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(2) It shall not be an unlawful employment practice for:

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(d) An employer to express a preference in the hiring or firing of an individual [as a domestic worker or] in a personal or confidential capacity, provided such work in a personal or confidential capacity is not work as a domestic worker, as defined in Chapter 9-4500 (“Protections for Domestic Workers”).

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SECTION 2. Title 9 of The Philadelphia Code is hereby amended to add a new Chapter as follows:

TITLE 9. REGULATION OF BUSINESSES, TRADES, AND PROFESSIONS.

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CHAPTER 9-4500. PROTECTIONS FOR DOMESTIC WORKERS

§ 9-4501. Definitions.

(1) "Domestic worker" includes hourly and salaried employees, independent contractors, full-time and part-time individuals and temporary individuals and is narrowly construed to mean any worker who: (i) works for one or more hiring entities; and (ii) is an individual who works in residence for the purposes of caring for a child, serving as a companion or caretaker for a sick convalescing, elderly or a person with a disability; housekeeping or house cleaning; cooking; providing food or butler service; parking cars; cleaning laundry; gardening; personal organizing, or for any other domestic service purpose; provided that the term Domestic Worker does not include:

(a) A family member of the service user, as the term family member is defined in Chapter 9-4100 (“Promoting Healthy Families and Workplaces”).

(b) An individual primarily engaged in house sitting, pet sitting, or dog walking.

(c) An individual working at a business operated primarily out of the residence, such as a home day-care business.

(d) An individual whose primary work involves household repair or maintenance, such as a roofer, plumber, mason, painter or other similar contractor.

(e) A home health care worker while they are paid through public funds, such as a home

health care worker while paid through Medicaid or Medicare.

(f) An individual less than 18 years of age.

(2) “Enforcement Agency.” The Mayor’s Office of Labor or such other office as the Mayor shall designate.

(3) “Hiring Entity.” Any employer, as defined by the Pennsylvania Wage Payment Collection Law and the Minimum Wage Act, who employs a domestic worker, as well as any individual, partnership, association, corporation, business trust or combination thereof, that pays a wage or wages for the services of a domestic worker. It includes any such entity, person or group of persons that provides compensation directly or indirectly to a domestic worker for the performance of domestic services and any such entity, person or persons acting directly or indirectly in the interest of the hiring entity in relation to the domestic worker.

(4) “Live-in’ Domestic Worker.” A domestic worker who resides in the household where they are employed.

(5) “Referral Agency.” An entity that provides information or services in order to facilitate connections between hiring entities and domestic workers, but that is not otherwise involved in an employment relationship with a domestic worker.

(6) “Work on a Casual Basis.” Work that is irregular and casual in nature and duration, as shall be further defined by regulation.

§ 9-4502. Contract And Other Requirements.

(1) No hiring entity shall employ a domestic worker, except for work on a casual basis or work of less than 5 hours per month, unless the engagement is governed by a written contract governing the following: a specific list of job duties; hourly wage and overtime wage; weekly schedule including number of hours per week; the manner and frequency of payment; breaks for rest and meals; paid or unpaid leave including sick time; paid holidays; any other benefits provided; modes of transportation required and whether provided; value of housing if provided; sleeping period and personal time for live-in workers; the term of the contract; and any other terms and conditions as agreed upon by the domestic worker and the hiring entity or as mandated pursuant to this Chapter, provided that no provisions in the written agreement may waive a domestic worker’s rights under federal, state, or local law. The contract must be signed and dated by all parties after ample opportunity to review.

(2) The agreement must be in English and such other language as may be preferred by the worker. The hiring entity shall make reasonable efforts to determine if the worker would prefer the

agreement to be in another language.

(3) When the person utilizing the services of a domestic worker obtains services through a person, agency or entity that is the hiring entity, the hiring entity shall have a contract with such person that sets forth the rights of a domestic worker under this Chapter.

(4) Template agreements complying with this Chapter shall be made available in multiple languages by the Enforcement Agency through regulations, as provided in §9-4506.

(5) A referral agency shall provide domestic workers and hiring entities with information concerning the contract requirements of this Chapter at the time a hiring entity is connected with a worker and shall make any contract templates adopted by the City available to the hiring entity through the medium used to communicate with the hiring entity, such as through a link to the City's template webpage on the referral agency's website.

§ 9-4503. Minimum Protections.

(1) Except as otherwise provided, the following minimum terms, and such other minimum terms as may be established by the Enforcement Agency by regulation, shall apply to a work relationship between a domestic worker and a hiring entity or hiring entities.

(2) Meal and Rest Breaks.

(a) The hiring entity shall allow the domestic worker an uninterrupted paid rest-period of not less than ten minutes for each four consecutive hours worked, unless the nature of the work prevents the domestic worker from being relieved of all duties for such period of time, such as some types of child care and caretaker work for a sick, elderly or disabled person. The hiring entity shall pay the domestic worker for the time spent on a rest break at the domestic worker's regular rate of pay.

(b) The hiring entity shall allow an uninterrupted 30-minute meal break after more than five consecutive hours worked. Unless the domestic worker is relieved of all work duties during such 30-minute period, the meal period shall be considered an "on-duty" meal period and shall be paid at the domestic workers regular rate of pay.

(i) An "on-duty" meal period shall be permitted only when the nature of the work prevents a domestic worker from being relieved of all duties and when, by written agreement between the parties, an "on-duty" meal period is agreed to. Such agreement may be revoked by the domestic worker, in writing, at any time.

(c) The hiring entity shall not impede or discourage a domestic worker from taking such meal or rest breaks.

(d) Failure to allow a meal or rest period in accordance with this subsection 9-4503(2) shall entitle the domestic worker to one additional hour of pay at the domestic worker's regular rate of compensation for each workday that the meal or rest period was not provided. Payment of this extra pay shall not excuse non-compliance with this subsection.

(3) Unpaid Leave Time.

(a) Except with respect to work on a casual basis, a domestic worker shall accrue unpaid leave time with respect to a hiring entity pursuant to the rules of Section 4-4104 of the Code ("Accrual of Paid Sick Time") and shall be permitted to utilize such time pursuant to the rules of Section 9-4105 ("Use of Paid Sick Time"). Use of such time shall be counted against accruals whether or not the domestic worker is compensated for such time pursuant to the system established under subsection 9-4503(4) ("Paid Leave Time").

(b) A "live-in" domestic worker shall not be required to work more than six consecutive days for a hiring entity without a 24-hour period of rest, which may be unpaid.

(4) Paid Leave Time.

(a) The following paid leave time requirements shall be effective upon adoption of regulations by the Enforcement Agency establishing a centralized portable benefits system for: recording and dispersing paid leave time earned by domestic workers on an aggregated basis for work performed for multiple hiring entities; collecting funds from hiring entities to pay for such leave time; and developing the infrastructure to administer portable access to such funds for domestic workers who earn such leave time.

(b) Except with respect to work on a casual basis, and any exemptions created as part of the establishment of the portable benefits system, a hiring entity shall be required to pay funds into the portable benefits system based on the hours worked for the hiring entity and such funds will become the compensation for earned paid leave time.

(c) Paid leave time shall be accrued at a rate of 1 hour per 40 hours of work and capped at 40 hours earned in a calendar year. Live-in workers shall accrue time only for on-duty time. Paid leave time shall be calculated and accrued in the same manner as the regular rate of pay for the workweek in which the hiring entity engages the domestic worker for domestic worker services.

(d) All contributions made by hiring entities shall be maintained in a centralized Paid Leave Time account designated for each hiring entity and Domestic Worker that is engaged in domestic worker services. Once a domestic worker meets the required accrual hours for paid leave time as described

under Section 9-4503(4)(c), then the workers' rights shall be deemed as vested for purposes of the Paid Leave Time provision. This will guarantee the domestic worker a right for Paid Leave Time and access to funds accrued and maintained in their designated Paid Leave Time account. The domestic worker retains such rights and access to her account regardless of changes that may occur in the relationship between the Domestic Worker and Hiring Entity that contributed to the Paid Leave Time account.

(e) The Enforcement Agency shall develop the infrastructure that facilitates the creation and the implementation of the Paid Leave Time Account through which hiring entities and domestic workers will have access in order to comply with all the provisions of Paid Leave Time. The infrastructure that is developed by the Enforcement Agency must permit the collection of hiring entity contributions and that allows for the disbursement of the domestic worker vested compensation that is in compliance with the provisions of this section.

(f) Payment for leave time shall be accessed by the domestic worker based on a demonstration of compensation needed to replace lost regularly-scheduled work time because of: a change in work schedule or cancellation of planned work time by the employer; the need for leave time for any of the reasons for which sick leave may be used under Chapter 9-4100 of the Code ("Promoting Healthy Families and Workplaces"); personal time needed for significant and unexpected personal matters; or any other reason established by Enforcement Agency by regulation.

(5) Agreement Termination.

(a) The hiring entity shall provide a minimum two-week notification period before termination of the workplace relationship, and for "live-in" domestic workers a minimum four-week notification period before termination of the workplace relationship. No notification period is required in connection with termination of work performed on a casual basis for a hiring entity.

(b) The hiring entity may terminate the relationship without complying with the full notification period based on a good-faith belief that the domestic worker has engaged in significant misconduct.

(c) Failure to provide notification as required under this Section shall entitle the domestic worker to severance pay in the amount of the worker's regular hourly rate multiplied by the regular number of hours worked over the period of time during which the required notification was not provided.

(6) Worker Documents and Privacy. No hiring entity shall:

(a) Keep or hold the original copies of any personal documents of a domestic worker.

(b) Monitor or record, through any means, the activities of a domestic worker: (i) using any bathroom or similar facility; (ii) in the private living quarters of a domestic worker; or (iii) while the

worker is engaged in any activities associated with dressing or changing clothes.

- (c) Monitor, record or interfere with the private communications of a domestic worker.

§ 9-4504. Notification of Rights and Record Keeping.

(1) A hiring entity shall provide to a domestic worker such notification of the rights of domestic workers under this Chapter, and such information on how to file a complaint for violation of such rights, as shall be determined by the Enforcement Agency by regulation.

(2) A hiring entity shall create and maintain records documenting hours worked, pay rate, leave time earned and used and the existence of a written contract, all pursuant to requirements established by regulation. If a hiring entity does not maintain such records or does not allow the Enforcement Agency reasonable access to such records, an adverse inference may be drawn with respect to facts alleged regarding the issues about which records were not kept.

(3) The Enforcement Agency shall maintain the confidentiality of all records it obtains in connection with enforcement activities to the full extent permitted by law.

§ 9-4505. Rights Protected; Retaliation Prohibited.

(1) It shall be unlawful for a hiring entity or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right set forth in this Chapter.

(2) The minimum requirements of Section 9-4503 (“Minimum Protections”) shall be deemed incorporated into any contract, whether actual or implied, between the hiring entity and the domestic worker.

(3) A material breach by a hiring entity of a contract with a domestic worker shall constitute a violation of this Chapter, without regard to whether the breach is of a provision required by this Chapter.

(4) No hiring entity or any other person shall take or threaten retaliatory action against any person because a domestic worker has exercised rights or pursued a claim of violation under this Chapter. Such rights include the right to use break and leave time pursuant to this Chapter; the right to demand compliance with protections established by contract; the right to file a complaint or inform any person about a hiring entity’s alleged violation of this Chapter; the right to cooperate with the Enforcement Agency in any investigation pursuant to this Chapter; and the right to inform any person of the rights established under this Chapter.

(5) Retaliatory action includes communicating to a person the willingness or intent to contact a government agency regarding the suspected citizenship or immigration status of a domestic worker or family member of a domestic worker because the worker has or has expressed an intent to exercise rights protected under this Chapter or because of a belief the worker may do so.

(6) The protections of this Section 9-4505 shall apply to any person who mistakenly but in good faith alleges a violation of this Chapter.

§ 9-4506. Regulations.

(1) The Enforcement Agency is authorized to coordinate implementation, administration, and enforcement of this Chapter and shall promulgate appropriate guidelines or regulations for such purposes. Regulations of the Agency concerning minimum protections may establish different minimum protections for different types of work and may include terms that apply only in the event of a lack of a written contract.

§ 9-4507. Liability, Administration, Enforcement and Penalties.

(1) Joint Liability. More than one person or entity may have an employment relationship with a domestic worker in connection with the same work. Individuals and entities with an overlapping employment relationship with a domestic worker are subject to joint and several liability, and concurrent fines and penalties, in connection with violations of this Chapter.

(2) A domestic worker or other person representing a Domestic Worker may report to the Agency any suspected violation of this Chapter.

(3) The Agency is authorized to take such steps as it deems appropriate to resolve complaints and enforce this Chapter, including, but not limited to, establishing a system to receive complaints regarding non-compliance with this Chapter, investigating alleged violations in a timely manner and resolving complaints through mediation.

(4) The Agency shall have the power to subpoena records and testimony from any party to a complaint. Such records shall be provided to the Agency within thirty (30) days after receipt of the subpoena.

(5) Any person alleging a violation of this Chapter shall file a complaint with the Agency within two years of the date the person knew or should have known of the alleged violation.

(6) Upon establishment of a system of administrative adjudication, the Agency shall have the

power to impose penalties and fines for violation of this Chapter and to provide or obtain appropriate relief. Remedies may include reinstatement and full restitution to the domestic worker for lost wages and benefits, including presumed damages to be awarded to a domestic worker for the hiring entity's violation of this chapter. The Agency shall also fix by regulation an amount of presumed damages.

(7) A hiring entity who retaliates against an employee for any activity protected under this Chapter shall be a Class III offense under § 1-109 (3.) All other violations of this Chapter shall be Class II offenses under § 1-109(2) of this Code.

(8) Any domestic worker aggrieved by a violation of this Chapter, any entity a member of which is aggrieved by a violation of this chapter, or the City may bring a civil action in a court of competent jurisdiction against a hiring entity violating this Chapter. Nothing in this Chapter or its implementing regulations shall be construed to require a complaint to be filed with the Agency before bringing an action in court. Upon prevailing in an action brought pursuant to this Section, an aggrieved person shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation, that is not duplicative of any relief provided to the person in administrative proceedings, including, without limitation, reinstatement in employment, back pay and injunctive relief. The aggrieved person shall be entitled to an award of reasonable attorney's fees and cost.

§ 9-4508. Other Protections.

(1) Nothing in this Chapter shall supersede, affect the applicability of, or allow contractual waiver of, the prohibitions and requirements of Chapter 9-1100 ("Fair Practices Ordinance: Protections Against Unlawful Discrimination"); Chapter 9-4100 ("Promoting Healthy Families and Workplaces"); or any other law that provides protections to domestic workers.

§ 9-4509. Domestic Workers Standards and Implementation Task Force.

(1) The Mayor's Office of Labor is authorized to establish, within ninety days of the passage date of this ordinance, a Domestic Workers Standards and Implementation Task Force, which shall regularly convene members of the Administration, City Council and affected stakeholder organizations to discuss mechanisms to support implementation of this Chapter, including regulations promulgated under this chapter.

(2) The Mayor's Office of Labor shall, no less than one time a year, file a report with the Chief Clerk of Council that shall include, in addition to such other information the Mayor's Office of Labor determines should be included, information concerning Domestic Workers, and reporting any policy recommendations or findings from the Domestic Workers Standards and Implementation Task Force.

§ 9-4510. Severability.

If any provision of this Chapter or application thereof to any person or circumstance is judged invalid, the invalidity shall not affect other provisions or applications of the Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared severable.

SECTION 3. This Ordinance shall be effective May 1, 2020.

Explanation:

[Brackets] indicate matter deleted.

Italics indicate new matter added.