

**A DAY IN THE LIFE OF A DOMESTIC WORKER:**  
**CARIBBEAN IMMIGRANT WOMEN AND THE CAMPAIGN FOR**  
**FAIR LABOR STANDARDS**  
*(with related Policy Recommendations)*

*By*

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C. The U.S. government should enact federal legislation similar to the Domestic Workers' Act in South Africa and other countries.

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I am enormously indebted to the following individuals without whom this policy report would not have been possible:

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- My sister, Alison M. Roberts, who never hesitates when called upon to do a ‘*second shift*’ as my trusted legal research assistant and editor.
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- Christine Yvette Lewis, who welcomed me to spend a Saturday afternoon with Caribbean domestic workers then followed up with an invitation for a home visit, where I stayed until 1 a.m. on Saturday, so intense was our discussion.
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- The New York Public Library, one of the finest institutions in the country, where research materials are readily available to patrons like me with the scan of a barcode.

## PREFACE

Last fall I attended a panel discussion, as I do most weeknights in New York City. That evening, the topic was *Protecting Domestic Workers Worldwide*. The panel comprised four women – two of them represented the rights of migrant women workers in Asia; the third advocated for Nepali workers in the United States; and the fourth organized domestic workers in New York City. As the forum got underway, I was struck by the marked absence of a ‘voice’ for the Caribbean community which, by my estimation, make up the majority of domestic workers in New York City.

My attendance at the forum was not my initiation into the world of domestic workers’ rights. In the summer of 2009, I wrote an opinion piece for the *Huffington Post*, where I am a regular contributor, titled *The Nanny Diaries – A Caribbean Version*. (See [www.huffingtonpost.com/arlene-m-roberts/the-nanny-diaries-a-carib\\_b\\_249962.html](http://www.huffingtonpost.com/arlene-m-roberts/the-nanny-diaries-a-carib_b_249962.html)). I provisionally set aside the issue of domestic workers’ rights to better focus on another campaign I had launched, advocating for Caribbean immigrants in detention, facing deportation. (See *The Faces of Detention and Deportation: A Report on the Forced Repatriation of Immigrants from the English-speaking Caribbean*). I coordinated efforts through December 2010, at which time the Governor of New York pardoned several Caribbean immigrants. Then I re-visited the issue of Caribbean immigrant women and domestic workers’ rights, with the aim of expanding my opinion piece into a report.

The narrative of the Caribbean nanny has been framed in a fictional or semi-autobiographical context. Some time ago, at the annual Brooklyn Book Festival, I met author Nandi Kyei, who self-published her work, *The Real Nanny Diaries – a Novel* (2009), as seen through the eyes of a nanny from Trinidad. At a Caribbean literary lime at a college campus in Brooklyn, one of the featured speakers was Trinidadian author Victoria Brown, whose book *Minding Ben* (Hyperion Voices, 2011) chronicled the experiences of a nanny, inspired in part by the author’s life events. Sociologist/ethnographer Tamara Mose Brown, weighed in with her book *Raising Brooklyn:*

*Nannies, Child Care and Caribbeans Creating Community* (NYU Press, 2011).

However, the narrative has yet to be framed in a legal or policy context. The goal of my report with related policy recommendations is to fill this void. I hope my report can bolster member-driven organizing efforts already underway and necessary to realize comprehensive reform.

At the onset, my goal was to capture fist hand accounts of ‘real life’ nannies. To that end, I adopted a direct approach. First, I stopped by the office of Domestic Workers United (DWU) in New York City – as I did when I wrote my opinion piece – in search of a few willing candidates. After a couple person-to-person and phone conversations with various Caribbean members at DWU, it seemed as if I had hit a wall. The designated spokeswoman informed me that members had grown weary of research/media folks (like me) who often stopped by for a story or interview, never to be heard from again. Not only did the members not see the finished product, they got nothing in return/out of it. (‘Appropriation’ of stories is a recurring theme amongst domestic workers who take issue with *privileged others* claiming their stories for career advancement, without corresponding trickle down benefit to the actual storyteller). I did my best to reassure the designated spokesperson this was not the case with me. After all, the link to my 2009 opinion piece is still prominently displayed on the DWU website. I was a bit hard pressed to dispel (the perception) of *privilege* - although I argue that privilege, like everything else, is relative - but my shared heritage as a fellow Caribbean islander conferred on me a certain degree of ‘insider status’ and endeared me to the workers.

The designated spokesman called back almost one week later and invited me to the DWU office to meet with several Caribbean members. After an initial round of suspicion (Who are you? What do you want? What benefits do we stand to gain from your report?), the workers gave me not only a warm welcome but also the assurance, "Don't worry, we got this!" And indeed, they did. Two members invited me to their homes for follow-up discussions. In one case, my visit lasted almost five hours and I did not leave until 1 o'clock in the morning, so intense was our discussion. Another worker kept the ‘icing on the cake’ for last, engaged in a bit of ‘show and share’ by directing me to

a You Tube video clip highlighting the lawsuit she filed against a former employer. At the end of the three minutes video clip, I was speechless.

Second, I reached out to a colleague, a former nanny now a mother of two, who still frequents the neighborhood parks and playgrounds in Brooklyn. My colleague thought she had lined up the ideal candidate for me – a nanny who had recently poured her heart out about her employer. However, when asked to go on the record for my report – even with the offer of using an alias to protect her identity – the nanny declined. She was unwilling to air her dirty laundry in public by speaking out against her employer or, in other words, to bite the proverbial hand that feeds her. Obviously, what is said on a park bench in Brooklyn between two nannies stays on the park bench.

This is an independent study. It was not undertaken at the behest of or in collaboration with any organization. I did not receive funding from foundations or any institutional support. Although the focus of my report is on Caribbean domestic workers, the proposed policy recommendations herein have widespread application.

## EXECUTIVE SUMMARY

Several Christmases ago I gave a family friend a copy of *The Nanny Diaries*, a book later adapted into a movie. Given the nature of her then line of work – as a nanny to a Manhattan family – I thought she would relate. As fate would have it, the family friend had previously read the book, then proceeded to regale us with tales of her own adventures – the Caribbean version of *The Nanny Diaries*, if you will. Everyone seated at my dinner table hailed from Trinidad, West Indies - the country of my birth.

The family friend began her day at five o'clock in the morning, to ready herself and set off on her ninety minutes commute from Brooklyn to Manhattan, reporting at her work site by eight o'clock. Her primary responsibility was as care-giver to two children, one of whom was school-aged. Nevertheless, the employer would often unilaterally amend her job functions, tacking on additional tasks such as tidying the kitchen, light laundry and/or ironing, or other house-keeping duties – without any corresponding increase in pay. The workday usually ended around six o'clock in the evening, provided her employer did not need her to stay late due to some unforeseen circumstance – with no overtime pay, mind you. Similar requests by the employer to come in on weekends or the occasional holiday would not be compensated.

Sadly, the family friend's experience was not unique to her alone. Rather, it was – and remains- representative of many Caribbean domestic workers<sup>1</sup> who constitute a majority in the New York City area. The New York State Division of Human Rights notes that “domestic workers often labor under harsh conditions, work long hours for low wages with few benefits and little job security, are isolated in their workplaces, and can be endangered by sexual harassment and assault, as well as verbal, emotional and psychological abuse on the basis of gender, race, religion or national origin.” Despite the surge in demand for domestic workers, they remain one of the most vulnerable groups on the labor force, excluded from protections usually afforded other workers.

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<sup>1</sup> “A person is considered a domestic worker if they work in another person's home or care for a child; serve as a companion for a sick, convalescing or elderly person; do housekeeping; or perform any other domestic purpose.” N.Y. Labor Law Sec. 2.16 and Human Rights Law (N.Y. Exec Law) Sec 296-b

The challenges facing domestic workers dates back one hundred years. Organizing efforts were set in motion in 1881 with the “Washerwomen’s Strike” - when 20 laundresses called a strike unless they received a uniformed raise. By the 1930s and 50s, different generations had taken up the struggle in the northeast, protesting against “slave markets”, locales frequented by white women seeking potential domestic help.

In 2000, Domestic Workers United was born out of organizing efforts of Women Workers Project of the Committee Against Anti-Asian Women (CAAV) and the Andolan Organizing South Asian Workers (AOSAW). In 2010, after years of organizing, DWU attained a landmark victory.

On August 31, 2010, then New York Governor David Paterson signed a law [A.1470B (Wright)/S.2311-E (Savino)] which extended labor protections to domestic workers. The law, otherwise known as the Domestic Workers Bill of Rights, went into effect on November 29, 2010 and gives domestic workers, among other provisions:

- The right to overtime pay at time-and-a-half after 40 hours of work, or 44 hours for workers who live in their employer’s home;
- A day of rest (24 hours) every seven days, or overtime pay if they agree to work on that day;
- Three paid days of rest each year after one year of work for the same employer;
- Protection under New York State Human Rights Law, and the creation of a special cause of action for domestic workers who suffer sexual or racial harassment.

Most importantly, the Domestic Workers Bill of Rights protects all workers, whether they are a citizen of the United States, a Legal Permanent Resident (LPR); an immigrant worker with other lawful status; or an undocumented worker.<sup>2</sup>

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<sup>2</sup> See <http://www.labor.ny.gov/legal/domestic-workers-bill-of-rights.shtm> The provision of the Bill of Rights is significant given that a large percentage of domestic workers are undocumented. Employers are well aware of their immigration status and often use the threat of a call to the authorities/USCIS as an intimidation tactic against workers.



But this is only in the state of New York and, months after the Bill of Rights has been enacted, a mere five complaints have been lodged.<sup>3</sup> According to a Labor Department spokesperson, enforcement of the law depends on complaints from workers and educators.<sup>4</sup> California is the second state considering a Bill of Rights, but more comprehensive reform is needed.

First, the Obama administration should revise the Fair Labor Standards Act (FLSA) so that the provisions extend coverage to domestic workers - a group that has long been excluded from basic minimum wage and overtime protections.

Second, absent a federal Bill of Rights, the U.S. government should ratify the Convention Concerning Decent Work for Domestic Worker adopted at the International Labour Conference in June 2011. By ratifying the Convention, a country subjects itself to international scrutiny thereby putting pressure on member States to ensure that their laws and policies comply with the Convention.

Third, the U.S. government should adopt a Bill of Rights similar to those that exist in South Africa and other countries.

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<sup>3</sup> Kirk Semple, "*A Boon to Nannies, if Only They Knew,*" New York Times (April 14, 2011) Available at: <http://www.nytimes.com/2011/04/15/nyregion/few-domestic-workers-know-about-law-protecting-them.html>

<sup>4</sup> *Id.*

## **MIGRATION PATTERNS AND DOMESTIC WORKERS**

### **A. The Migration Trajectory of Caribbean Workers**

Caribbean immigration accounted for approximately 3.4 percent of all immigrants to America from 1891 to 1970<sup>5</sup>. In the early 1900s, the main factor propelling the northbound migration was prevailing economic hardship in the Caribbean, coupled with the prospect of opportunity in the United States. By all accounts, of the approximately thirty thousand West Indian<sup>6</sup> immigrants to the United States from 1900 to 1910, many were highly skilled as professional or white-collar workers, particularly when compared with European immigrants or native-born white population of the United States.<sup>7</sup> Trends in Caribbean migration increased steadily through the first quarter of the 1900s. However, there was a significant shift in voluntary migration in the mid-1960s, on account of legislation enacted in 1965 then fully implemented in 1968. The Hart-Celler Immigration Act abolished national-origins quota system, originally established in 1921 and modified in 1952.<sup>8</sup>

In 2000, the Caribbean-born accounted for almost 10 percent of the total U.S. foreign-born population; Cuban nationals ranked first, followed by Dominican Republic, Jamaica, Haiti and Trinidad and Tobago.<sup>9</sup> Florida, New York, Massachusetts and New Jersey were the top four states in which Caribbean-born resided.<sup>10</sup> The Caribbean-born (age 16 and older in the civilian labor force) were more likely to work in sales and office occupation (24.6 percent), as well as service occupation (24.4 percent), than the overall foreign-born population.<sup>11</sup> Domestic workers are a majority of the service sector. [Table]

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<sup>5</sup> Shaw-Taylor, Yoku and Steven A. Tuch, Editors 2007. *The Other African-Americans – Contemporary African and Caribbean Immigrants in the United States*. Maryland: Rowman & Littlefield Publishers, Inc.

<sup>6</sup> Throughout my report, I will be using the label West Indian interchangeably with Caribbean.

<sup>7</sup> Mose Brown, Tamara 2011. *Raising Brooklyn: Nannies, Childcare and Caribbeans Creating Community*. New York: New York University Press.

<sup>8</sup> *Supra* note 5 at p.7

<sup>9</sup> See DEPARTMENT OF HOMELAND SECURITY (DHS) YEARBOOK OF IMMIGRATION STATISTICS: 2007 (Sept 2008), “Persons Obtaining Legal Permanent Resident Status By Broad Class of Admission And Region And Country of Birth: Fiscal Year 2007”, available at <http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2008/table03d.xls>

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

## **B. Why Domestic Work?**

### **HOUSEHOLD HELP WANTED NEW JERSEY**<sup>12</sup>

Live - in nanny

Girls: 5,7,9

Duties: homework, cook, drive

Call: 201-805-7313

### **HOUSEHOLD HELP WANTED LONG ISLAND**<sup>13</sup>

MOM HELPERS INC.

Lots of live-in jobs available immediately for placement

References a MUST.

Driving not required put a+

Call today: 516-822-2693

### **HOUSEHOLD HELP WANTED MANHATTAN**<sup>14</sup>

Seeking professional laundress

Presser for UES family.

Excellent references MUST be provided

BEFORE interview.

Contact: 347-302-5489

So who places the want ads and who responds to them? Those placing the ads are white working women who, faced with a paucity of publicly provided day care or support systems from extended families, ‘look for domestic help, specifically low cost, “off the books” immigrant domestic help.’<sup>15</sup>

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<sup>12</sup> The Irish Echo Online (week starting April 4, 2102 and accessed April 02, 2012)  
[http://irishecho.com/page\\_id=27](http://irishecho.com/page_id=27)

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Mose Brown, Tamara 2011. *Raising Brooklyn: Nannies, Childcare and Caribbeans Creating Community*. New York: New York University Press. p.12

The demand for domestic help is higher in urban centers, given the maternal labor force. Sociologist/ethnographer Tamara Mose Brown notes, “as the economic disparity in urban centers increases, the rich hire the poor to do private domestic work, supporting further economic disparity. This dynamic, especially in a place like New York City, sets the condition for West Indian and other immigrants who come to the United States looking for employment.”<sup>16</sup>

Those responding to the want ads are largely recent immigrants, amongst whom live-in work is common as a strategy for economic incorporation.<sup>17</sup> When Patricia<sup>18</sup> first relocated to the United States, she sought employment opportunities readily available as a means to support herself. Patricia was a certified massage therapist in her home country of Trinidad, West Indies. So when offered the chance to fill in as weekend relief as a home health aide in a senior residential facility, she readily accepted. The goal, as the Caribbean refrain goes, was to “make do until something better comes along.”

### **C. The Ever Changing Faces of Domestic Workers**

*We are determined to stand to our pledge and make extra charges for washing, and we have agreed and are willing to pay \$25 or \$50 for licenses as a protection, so we can control the washing for the city. We can afford to pay these licenses, and will do it before we are defeated, and then we will have full control of the city's washing at our own prices, as the city has control of our husbands' work at their prices. Don't forget this. We hope to hear from your council Tuesday morning. We mean business this week or no washing.*<sup>19</sup>

The current challenges which domestic workers confront date back over one hundred years. During the Reconstruction era, while black men secured employment in various fields (such as the Treasury Department or the Post Office), domestic work was

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<sup>16</sup> *Ibid*

<sup>17</sup> *Ibid*

<sup>18</sup> Interviewed at her home on April 5, 2012.

<sup>19</sup> Unified response in a letter to the mayor by members of washerwoman's organizations in the face of fines and arrests for disorderly conduct. “*The Washerwomen's Strike - Black Women Advance Labor's Cause in an Unlikely Setting: 1881*” Available at: <https://www.apwu.org/join/women/lbportraits/portraits-labor-atlanta.html>

the only avenue for black women. In Atlanta in 1880, 98 percent of black working class women cooked, cleaned, or cared for children, mostly for white households, according to Drew Gilpin Faust, historian and author of *Mothers of Invention: Women of the Slaveholding South in the American Civil War*.<sup>20</sup> The workweek usual started early Monday morning and ended on Saturday, for wages as low as \$4 per month.<sup>21</sup> It was not long before laundresses began organizing to improve their lives despite the fact they did not have a common job site or employer.

In July 1881, “20 laundresses formed the Washing Society and announced that their membership would strike unless they were given a raise to a uniform rate of \$1 for each dozen pounds of wash”, writes historian Tera W. Hunter in *To Joy My Freedom: Southern Black Women’s Lives and Labor After the Civil War*.<sup>22</sup> The laundresses went door-to-door to recruit new members and availed themselves of church meetings to disseminate information. Three weeks after its inception - with membership in excess of 3,000, including some white women - the Washing Society held a mass meeting and called a strike.<sup>23</sup> An AFL-CIO tribute notes, “the strike not only raised wages, it established laundresses - and black women workers - as instrumental to the New South’s economy.”<sup>24</sup>

By the 1930s, the struggle has been taken up by a different generation. The discrimination faced by black domestic workers was addressed by two young activists - Marvel Cooke and Esther Cooper Jackson. Ms. Cooke and the activist Ella Baker co-authored, *The Bronx Slave Market*, an expose of the exploitation of black women domestics, and published in 1935 in *The Crisis*, the NAACP’s magazine.<sup>25</sup>

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Mary Ellen Washington, *Feminist Roots*, WRB Sept-Oct 2011 <http://www.wcwonline.org/WRB-Sept-Oct-2011/feminist-roots> (Book review: *Radicalism at the Crossroads: African-American Women Activists in the Cold War* by Dayo Gore. 2011 New York: NYU Press; and *Sojourning for Freedom: Black Women, American Communism and the Making of Black Left Feminism* by Erik Mc Duffie. 2011 Durham, NC: Duke U Press).

Cooke persisted with her investigation into the treatment of black domestics, writing headlines like “Modern Slaves,” reporting for *the New York Amsterdam*, a black weekly.<sup>26</sup> In 1950, Cooke published a five-part series for *The Daily Compass*, describing “the vicious, sexualized, indignity of being made to stand on a spot where white women would come to look over the potential domestic help.”<sup>27</sup>

Organizing efforts continued in fits and spurts over the next several decades. According to history professor Premilla Nadasen, ‘the marginalization of domestic workers was due in large part to the fact it as performed by African American women ... the work took place in the privacy of the home ... and domestic work is the one domain where race and gender converge.’<sup>28</sup>

In 2000, Domestic Workers United was born out of organizing efforts of Women Workers Project of the Committee Against Anti-Asian Women (CAAV) and the Andolan Organizing South Asian Workers (AOSAW). Approximately 70 percent of membership at DWU is composed primarily of childcare workers - approximately 50 percent Caribbean born, 20 percent Latina, 10 percent Asian and the rest African immigrants or other.<sup>29</sup> As a whole, DWU membership is 80 percent Caribbean born, 15 percent Latina and 5 percent African immigrant.<sup>30</sup>

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Gotham Center History Forums, *Domestic Workers in NYC - Yesterday and Today* (April 02, 2012) [http://www.gc.cuny.edu/events/public\\_programs](http://www.gc.cuny.edu/events/public_programs)

<sup>29</sup> Official website of Domestic Workers United <http://www.domesticworkersunited.org>

<sup>30</sup> *Id.*

## **A DAY IN THE LIFE OF A DOMESTIC WORKER**

One Saturday afternoon this spring, I stopped by the office of Domestic Workers United (DWU) to interview several Caribbean members. My spring visit to DWU occurred three years after I wrote my opinion piece, *The Nanny Diaries: A Caribbean Version*. In the intervening time period, significant legislation has been enacted. On August 31, 2010, then New York Governor David Paterson signed a law [A.1470B (Wright)/S.2311-E (Savino)] which extended labor protections to domestic workers. The law, otherwise known as the Domestic Workers Bill of Rights, went into effect on November 29, 2010 and gives domestic workers, among other provisions:

- The right to overtime pay at time-and-a-half after 40 hours of work, or 44 hours for workers who live in their employer's home;
- A day of rest (24 hours) every seven days, or overtime pay if they agree to work on that day;
- Three paid days of rest each year after one year of work for the same employer;
- Protection under New York State Human Rights Law, and the creation of a special cause of action for domestic workers who suffer sexual or racial harassment.

Most importantly, the Domestic Workers Bill of Rights protects all workers, whether they are a citizen of the United States, a Legal Permanent Resident (LPR); an immigrant worker with other lawful status; or an undocumented worker.

In the fall of 2011, the Obama administration issued a notice of Proposed Rulemaking to extend overtime and minimum wage protection to home care workers currently excluded under the federal Fair Labor Standards Act (FLSA). In 1974, Congress extended FLSA protections to domestic workers but excluded two categories – workers providing companionship services and casual babysitters. The intent of Congress was to exempt the ‘elder sitters, but subsequent regulations by the Department of Labor (DOL) extended exclusion to the home care workers.

## A. Is That on my Job Description?

Nannies, housekeepers and elder caregivers often work without a contract, referred to a prospective employer by word of mouth. Discussions related to job function are generally informal; negotiations take place at a kitchen table or in a living room, with the nanny setting the boundaries or parameters about what she is willing to do. However, occasionally, an employer will take it upon herself to enumerate the tasks. According to nanny-activist Christine Yvette Lewis<sup>31</sup>, several months after the Domestic Workers Bill of Rights was passed in New York State, an employer presented an employee with the following:

### THE LIST<sup>32</sup>

- Each week beds are to be made and blinds (in the bedroom) opened each morning.
- Each evening blinds (in the bedroom) are to be closed.
- Before you go down for the first night, please be sure the kitchen and eating areas are cleaned, dishes cleaned and kitchen floor mopped.
- The bathrooms should be cleaned 3 times a week on Monday, Wednesdays and Fridays.
- Sheets (on all upstairs bedrooms) should be changed and washed 1 time per week unless otherwise needed sooner.
- If there are guests on a weekend, on Monday the room they were in should be cleaned.
- Shower towels and hand towels should be changed and washed 2 times per week.
- The rooms should be fully dusted and vacuumed 1-2 times a week to clean the baseboards, around the lights and the ceiling molding, under the bed and in the corners.
- Ceiling fans in the bedrooms should be cleaned once a week or more if you notice they are dusty.
- The kitchen should be kept clean but 1-2 times a week should be thoroughly cleaned. The oven should be cleaned once a week and the stovetop as needed.
- The fridge (upstairs and downstairs) should be cleaned out once a week, rotting food thrown out and shelves and drawers wiped out.
- Before the end of the week, all the laundry should be done and left in the bedrooms before you leave for the weekend (before any anticipated days off).
- Anything else around the house that you notice needs straightening or cleaning, please take it upon yourself to do it.

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<sup>31</sup> Interviewed at her home on April 5, 2010

<sup>32</sup> Not mentioned is the fact that the nanny was expected to perform these tasks in addition to caring for four children at the rate/wages of \$400 per week. The Caribbean nannies are planning to produce a skit/theatrical performance, "The List", inspired by this incident.



## **B. How Am I Supposed to Get By on Unpaid Wages?**

On November 1, 2009 Phoebe<sup>33</sup> began working as a personal care aide to an elderly woman residing in an assisted-living facility in Great Neck, Long Island. The employer - the elderly woman's daughter - stipulated the wages would be a flat rate of \$100/day, although Phoebe and her co-aide were obligated to live-in at the facility and, as such, be on call 24-hours, for seven consecutive days.

By the seventh day, Phoebe did not get paid as agreed but continued working. On November 11, 2009 the elderly woman had a medical appointment and was then admitted to a hospital. Phoebe was provisionally relieved of her duties, still not paid despite assurances to the contrary. The co-aide, who was current with her wages, was retained to be of assistance to the elderly lady for an initial period at the hospital.

Months went by but neither Phoebe nor her co-aide heard from the employer about resuming duties, so they returned to the work site/assisted living facility to retrieve the personal effects they had left behind, only to be informed by the manager that the elderly woman had passed away at the hospital. As Phoebe aired her grievances about her nine days' unpaid wages, the manager urged her to pursue her claim against the employer, since this was not the employer's first offense. A previous employee worked for six months without pay.

Phoebe launched her unpaid wages campaign - calling her employer's home and leaving voicemail messages; mailing correspondence to both her residence and workplace via certified return receipt, but to no avail. The employer was unresponsive. Phoebe declined to pursue the matter in Small Claims Court in Great Neck, Long Island since the commuting costs/transportation expenses alone in getting to/from the venue would not make it cost-effective.

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<sup>33</sup> Interviewed in person in Brooklyn, NY on April 15, 2012

Phoebe befriended a Caribbean nanny who is active in DWU. The staff at DWU referred the matter to the Urban Justice Center where a lawyer took Phoebe's case to the Labor Board. The case worked its way through the system. When contacted, the employer denied knowing Phoebe or anything about the case. Finally, in 2011, more than eighteen months after her initial work period, Phoebe received a check in the mail for \$1,200.00 - principal plus interest.

### **C. The Hazards of Being a Nanny**

Safety remains one of the key concerns of any nanny, given the work takes place in the intimacy and privacy of an employer's home. Headline news often highlighted incidents of abuse nannies have endured at the hands of an employer. According to Reuters review of U.S. federal court records, foreign diplomats have been the subject of at least 11 civil lawsuits and one criminal prosecution related to abuse of domestic work in recent years.<sup>34</sup> The allegations range from slave-like work conditions to rape, and the vast majority of the diplomats in these cases avoided prison terms and financial penalties. But princes and diplomats with immunity do not have the monopoly on abuse, and loyalty or length of service does not shield a nanny against the wrath of an employer.

Patricia<sup>35</sup>, a nanny from Trinidad, went to work for a high-powered Manhattan couple on the recommendation of a baby nurse, and cared for their daughter from the time she was just a toddler. Patricia remained in the couple's employ for a period of six-and-a-half years. One evening the husband was berating the child for failing to memorize her lines for an upcoming school play. Patricia intervened, rushing to the child's defense.

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<sup>34</sup> *Strauss-Kahn Case Raises Issue of Diplomat Abuse in U.S.*  
[http://newsandinsight.thomsonreuters.com/Legal/News/2011/05\\_-\\_May/Strauss-Khan\\_case\\_raises\\_issue\\_of\\_diplomat\\_abuse\\_in\\_U\\_S](http://newsandinsight.thomsonreuters.com/Legal/News/2011/05_-_May/Strauss-Khan_case_raises_issue_of_diplomat_abuse_in_U_S)

<sup>35</sup> Interviewed in person at her home on April 5, 2012.

The altercation between Patricia and the husband started as a verbal exchange but quickly progressed. According to Patricia, the husband called her a “stupid black bitch”, and told her he hopes she dies “a horrible death”. She shouted back, telling him she was going to call 911, and things escalated. When Patricia tried to call 911, the husband grabbed her hand and twisted it causing her to lose her balance and fall. He then punched her in the face and torso.<sup>36</sup> The police arrived at the scene, filled out an incident report and noted the physical injuries she had sustained.

That evening Patricia declined to press charges against the husband out of concern that the child could be placed in protective custody since his wife was away on business. However, Patricia has since filed a lawsuit against the Manhattan couple.

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<sup>36</sup> <http://www.youtube.com/watch?v=nSg-ZjI38uU>

## **POLICY RECOMMENDATIONS**

### **A. Revise the Fair Labor Standards Act**

Ever since the federal Fair Labor Standards Act (FLSA) was enacted in 1974, home care workers have been excluded from basic minimum wage and overtime protections.<sup>37</sup> At the end of the rulemaking period, the Obama administration should revise the definition of “companionship” should encompass just “fellowship and protection”.<sup>38</sup>

“Fellowship” includes providing camaraderie, entertainment, or company, to prevent the person from becoming bored or unconnected. “Protection” means being there to respond to accidents or other dangers. These terms are consistent with the 1974 legislative history references to this work as the adult version of “babysitting.”

Any companion also providing general “care” for the same individual would also be exempt provided it is limited to less than 20 percent of work time.

### **B. Ratify the ILO Convention Concerning Decent Work for Domestic Workers**

Absent a federal Bill of Rights, the U.S. should ratify the Convention Concerning Decent Work for Domestic Workers<sup>39</sup> adopted in June, 2001 at the International Labour Conference in Geneva. The goal of the Convention and its Recommendation is to improve the living and working conditions of domestic workers across the globe.

The Convention establishes the right of domestic workers to be informed of the terms and conditions of their employment (hours, wages/rate of pay, and duties/job

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<sup>37</sup> For more background see National Employment Law Project (NELP), “Fair Pay for Home Care Workers,” August 2011 available at <http://www.nelp.org/page/-/Justice/2011/FairPayforHomeCareWorkers.pdf?nocdn=1>

<sup>38</sup> See statement issued by National Employment Law Project.

<sup>39</sup> See [http://www.ilo.org/ilc/ILCSessions/100thSession/media-centre/articles/WCMS\\_158371/lang--en/index.htm](http://www.ilo.org/ilc/ILCSessions/100thSession/media-centre/articles/WCMS_158371/lang--en/index.htm)

function); limits the percentage of remuneration that can be paid in kind, and mandates one day off per week, at a minimum. In addition, the Convention makes specific provisions for three categories of domestic workers: young domestic workers (under the age of 18 years but above minimum age of employment); live-in domestic workers; and migrant domestic workers.

By ratifying the Convention, a country subjects itself to international scrutiny thereby putting pressure on member states to ensure that their laws and policies comply with the Convention.<sup>40</sup> Although the accompanying Recommendation is a non-binding instrument, it can serve as a prototype or model to realize obligation outlined in the Convention.

### **C. Adopt Bill of Rights similar to those in other countries such as South Africa**

The U.S. government should adopt a federal Bill of Rights similar to those in South Africa and other countries. The Domestic Workers' Act establishes minimum wages for domestic workers and sets guidelines for working conditions – hours of work, overtime pay, salary increases, deductions, annual and sick leave.<sup>41</sup>

Pursuant to the legislation, domestic workers should work no more than 45 hours per week, and should not work more than nine hours a day if they work a five-day week, or more than eight hours a day if they work for more than five days per week.

Domestic work should log a maximum of 15 hours overtime per week, and no more than three hours per day. Double time should be paid on Sundays or public holidays. An employer must give one week's notice when terminating an employee. A domestic worker can claim severance pay equal to one week for each year of service, as well as maternity leave.

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<sup>40</sup> Note, to date the U.S. has ratified 14 conventions.

<sup>41</sup> See <http://www.mywage.co.za/main/decent-work/domesticworkersrights>

**Women born in the ten Caribbean countries by occupation (regardless of the industry of employment)**

	Jamaica	Antigua- Barbuda	Bahamas	Barbados	Dominica	Grenada	St. Kitts- Nevis	St. Lucia	St. Vincent	Trinidad and Tobago	Total
<b>All employed women</b>	<b>239,800</b>	<b>6,800</b>	<b>11,200</b>	<b>17,600</b>	<b>10,700</b>	<b>11,900</b>	<b>4,100</b>	<b>6,700</b>	<b>6,800</b>	<b>77,900</b>	<b>393,600</b>
<b>Employed in the below six occupations</b>	<b>93,300</b>	<b>1,500</b>	<b>1,900</b>	<b>5,300</b>	<b>3,100</b>	<b>5,700</b>	<b>1,100</b>	<b>2,900</b>	<b>3,400</b>	<b>24,500</b>	<b>142,600</b>
Nursing, Psychiatric, and Home Health Aides	44,900	-	-	-	-	-	-	-	-	8,700	63,000
Registered Nurses*	19,500	-	-	-	-	-	-	-	-	4,200	27,800
Childcare Workers	6,200	-	-	-	-	-	-	-	-	6,000	17,500
Maids and Housekeeping Cleaners	7,200	-	-	-	-	-	-	-	-	2,500	12,300
Personal Care Aides	7,800	-	-	-	-	-	-	-	-	1,700	11,100
Licensed Practical and Licensed Vocational Nurses	7,700	-	-	-	-	-	-	-	-	1,500	10,800

\* including Nurse Practitioners, Nurse Midwives, Nurse Anesthetists

"-" Estimates are not displayed due to a small sample size

Source: Migration Policy Institute tabulations of the US Census Bureau's pooled 2008-2010 American Community Survey data.

**Women born in the ten Caribbean countries employed in the top ten industries (regardless of their occupation)**

	Jamaica	Antigua- Barbuda	Bahamas	Barbados	Dominica	Grenada	St. Kitts- Nevis	St. Lucia	St. Vincent	Trinidad and Tobago	Total
<b>All employed women</b>	<b>239,800</b>	<b>6,800</b>	<b>11,200</b>	<b>17,600</b>	<b>10,700</b>	<b>11,900</b>	<b>4,100</b>	<b>6,700</b>	<b>6,800</b>	<b>77,900</b>	<b>393,600</b>
<b>Employed in the below ten occupations</b>	<b>131,700</b>	<b>3,200</b>	<b>4,700</b>	<b>8,900</b>	<b>4,900</b>	<b>7,400</b>	<b>1,900</b>	<b>4,100</b>	<b>4,100</b>	<b>37,600</b>	<b>208,400</b>
Hospitals	38,400	-	-	-	-	-	-	-	-	8,600	56,400
Nursing care facilities	23,400	-	-	-	-	-	-	-	-	3,800	31,700
Home health care services	15,100	-	-	-	-	-	-	-	-	4,300	23,600
Elementary and secondary schools	14,100	-	-	-	-	-	-	-	-	3,900	23,100
Child day care services	6,000	-	-	-	-	-	-	-	-	4,700	14,600
Other health care services	9,500	-	-	-	-	-	-	-	-	2,100	13,400
Individual and family services	8,600	-	-	-	-	-	-	-	-	1,700	13,000
Private households	5,400	-	-	-	-	-	-	-	-	3,600	12,600
Banking and related activities	6,200	-	-	-	-	-	-	-	-	2,800	10,800
Restaurants and other food services	5,100	-	-	-	-	-	-	-	-	2,000	9,300

"-" Estimates are not displayed due to a small sample size

Source: Migration Policy Institute tabulations of the US Census Bureau's pooled 2008-2010 American Community Survey data.