



Ohio Legislative Service Commission

Bill Analysis

Kelly Bomba

S.B. 87

131st General Assembly
(As Introduced)

Sens. Tavares, Skindell

BILL SUMMARY

- Requires a weekly "day of rest" for domestic workers, during which a domestic worker may not be required to work.
- Requires an eight hour workday for a domestic worker, unless a longer day is agreed to by the domestic worker and the domestic worker is paid at an agreed-to increased rate for any additional hours.
- Requires that domestic workers be paid the higher of the minimum wage rate calculated pursuant to the Ohio Constitution and the federal minimum wage rate.
- Requires that a domestic worker who resides with the domestic worker's employer to be paid an overtime rate for hours worked in excess of 44 hours in a week and that other domestic workers be paid an overtime rate for hours worked in excess of 40 hours in a week.
- Makes it an unlawful discriminatory practice for an employer to engage in certain types of harassment directed toward a domestic worker.
- Requires the Director of Commerce to prepare a report on the feasibility and practicality of allowing domestic workers to organize for purposes of collective bargaining.

CONTENT AND OPERATION

Domestic worker

The bill creates several employment standards for domestic workers. For purposes of the bill, a "domestic worker" is a person 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, but does not include any of the following:

- A person who is working on a casual basis, which is employment that is irregular or intermittent and that is not performed by a person whose vocation is to be employed in or about the property of the employer or person's residence;
- A person who is engaged in providing companionship services as defined in federal law (services that provide fellowship, care, and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for the person's own needs) and who is employed by an employer or agency other than the family or household for which the individual is providing services;
- A person who is related by blood, marriage, or adoption to the employer or the person to whom the person is providing services under a federal, state, or local government funded program.

Any person employing a domestic worker is an "employer" under the bill's provisions.¹

Weekly day of rest

The bill requires that every domestic worker to be allowed at least 24 consecutive hours of rest every calendar week. During a period of rest, a domestic worker cannot be required to work for the domestic worker's employer. The bill also requires the rest period to coincide with the traditional day reserved by the employee for religious worship, whenever possible. An employer is not required to pay a domestic worker for these weekly periods of rest. A domestic worker may agree to work during the worker's period of rest as long as the worker is paid 1½ times the worker's normal wage rate for hours worked during the worker's period of rest.

In addition to the weekly periods of rest, a domestic worker who has worked for the domestic worker's employer for more than a year must be given at least three paid days of rest each year. An employer must pay a domestic worker for these days of rest at the domestic worker's normal wage rate.²

¹ R.C. 4111.031(A) and 4112.01(A)(2), (3), and (24), by reference to R.C. 4111.14 and 29 Code of Federal Regulations 552.6.

² R.C. 4111.031(D), (E), and (F).



Overtime

The bill prohibits a domestic worker from being required to work more than eight hours in a day for an employer unless the domestic worker agrees to work the additional time and is paid for the additional time at an increased rate agreed on by the employer and the domestic worker. Similarly, the bill requires that a domestic worker who resides in the home of the worker's employer must be paid at a rate of at least 1½ times the worker's normal wage rate for hours worked in excess of 44 hours in a week. A domestic worker who does not reside in the home of the worker's employer must be paid at a rate of at least 1½ times the worker's normal wage rate for hours of work in excess of 40 hours in a week.³

Recordkeeping

The bill also requires employers to make and keep a record of all of the following for at least three years:

- The name, address, and occupation of each of the employer's domestic workers;
- The rate of pay and amount paid each pay period to each domestic worker;
- The hours worked each day and each work week by the domestic worker;
- Other information as the Director of Commerce, who administers and enforces the bill's wage and overtime requirements, prescribes by rule as necessary or appropriate for the enforcement of the domestic worker overtime and hours of rest requirements in the bill.

An employer must provide this information on request to an employee or person acting on behalf of an employee. Current law already requires employers subject to Ohio's overtime and minimum wage laws to keep and provide these records for their employees.⁴

Civil remedies

If an employer pays a domestic worker less than the wages to which the domestic worker is entitled under the bill's overtime and day of rest provisions, the employer is liable to the domestic worker for the full amount of the overtime wage rate,

³ R.C. 4111.031(B) and (C).

⁴ R.C. 4111.08 and 4111.14(F) and (G).



less any amount actually paid to the domestic worker by the employer, and for any costs or reasonable attorney's fees allowed by the court. An agreement between a domestic worker and an employer to work for less than the overtime wage is not a defense to this type of action. The bill also allows for a domestic worker who is paid less than the wages to which the worker is entitled to assign, in writing, the worker's wage claim to the Director, who may bring a legal action necessary to collect the claim on the domestic worker's behalf. These remedies are the same as the remedies available to employees who are paid less than the wages to which they are entitled under the current overtime law.⁵

Minimum wage

Article II, Section 34a of the Ohio Constitution requires each employer in Ohio to pay the employer's employees either the minimum wage rate calculated under that section or the minimum wage rate determined in the federal Fair Labor Standards Act⁶ (FLSA), depending on the size of the employer's business and the age of the employee. The FLSA requires that domestic workers be paid the current federal minimum wage of \$7.25 per hour.⁷ Current Ohio law does not set a specific minimum wage for domestic workers. The bill requires every domestic worker to be paid the higher of the state and federal minimum wage rates.⁸ Currently, the minimum wage rate calculated pursuant to the Ohio Constitution is the higher of the two rates at \$8.10 per hour in 2016 and \$8.15 per hour in 2017.⁹

Criminal penalties

Continuing law prohibits an employer from taking various actions regarding administering and enforcing continuing law governing minimum wage and overtime requirements for employees. Under continuing law, an employer who violates those prohibitions is subject to a criminal penalty. The bill expands those prohibitions, as described below, to include the bill's provisions governing domestic worker wage, overtime, and period of rest requirements:

⁵ R.C. 4111.10 and R.C. 4111.031, and R.C. 4111.03, not in the bill.

⁶ 29 United States Code (U.S.C.) 206.

⁷ 29 U.S.C. 206(f).

⁸ R.C. 4111.02.

⁹ See Ohio Department of Commerce, 2016 *Minimum Wage*, http://www.com.ohio.gov/documents/dico_2016MinimumWageposter.pdf (accessed October 6, 2016) and Ohio Department of Commerce, 2017 *Minimum Wage*, http://www.com.ohio.gov/documents/dico_2017MinimumWageposter.pdf (accessed October 6, 2016).



- Hinder or delay the Director from enforcing the law;
- Refuse to admit the Director to any place of employment;
- Fail to make, keep, and preserve any records as required under the law or falsify any of those records;
- Refuse to make any required records accessible to the Director upon demand, or refuse to furnish them or any other information required for the proper enforcement of the law to the Director upon demand;
- Fail to post a summary of the law or a copy of any applicable rules as required under continuing law;
- Discharge or in any other manner discriminate against any employee because the employee has made any complaint to the employer, or to the Director, that the employee has not been paid the required wages, or because the employee has made any complaint or is about to cause to be instituted any proceeding under or related to the law, or because the employee has testified or is about to testify in any proceeding;
- Pay or agree to pay wages at a rate less than the rate applicable under the law;
- Otherwise violate the law, or any rule adopted under it.

The bill specifies that the culpability sufficient to commit a violation of those criminal prohibitions is negligence if the violation involves a domestic worker. Under continuing law, if the violation involves any employee who is not a domestic worker, the culpability sufficient to commit a violation of those criminal prohibitions is recklessness.¹⁰

Unlawful discriminatory practice

The bill makes it an unlawful discriminatory practice under Ohio's Civil Rights Law¹¹ for an employer to make unwelcome sexual advances or requests for sexual favors, or to engage in other verbal or physical conduct of a sexual nature toward a domestic worker in any of the following situations:

¹⁰ R.C. 4111.13, with conforming changes in R.C. 4111.99.

¹¹ R.C. Chapter 4112.



- When the domestic worker's submission to the conduct is made a term or condition of the domestic worker's employment;
- When the domestic worker's submission to or rejection of the conduct is used as the basis for employment decisions affecting the domestic worker;
- When the conduct is intended to unreasonably interfere, or has the effect of unreasonably interfering, with the domestic worker's performance by creating an intimidating, hostile, or offensive work environment.

The bill also makes it an unlawful discriminatory practice for an employer to subject a domestic worker to unwelcome harassment based on race, religion, sex, or national origin if the harassment is intended to unreasonably interfere, or has the effect of unreasonably interfering, with the domestic worker's work performance by creating an intimidating, hostile, or offensive working environment. Under current Ohio Civil Rights Law, an individual employed in the domestic service of another is not an "employee"; the general provisions of this Law currently do not apply to domestic workers.¹²

Remedies for an unlawful discriminatory practice

Under continuing law, any person may file a charge with Ohio's Civil Rights Commission alleging that another person has engaged or is engaging in an unlawful discriminatory practice. In the case of charges under continuing law that allege unlawful discriminatory practices not related to housing or a charge of an unlawful discriminatory practice under the bill, the charge must be in writing and under oath and must be filed with the Commission within six months after the alleged unlawful discriminatory practice was committed. The Commission may investigate the charge and may initiate further action in accordance with procedures specified in continuing law. Although the Commission must first attempt to induce compliance with Ohio's Civil Rights Law through informal methods, if, after a hearing, the Commission ultimately determines that an unlawful discriminatory practice has occurred, the Commission is required to issue a cease and desist order to remedy the situation and order any further action necessary to effectuate the purpose of Ohio's Civil Rights Law, which may include requiring back pay, reinstatement, or hiring.¹³

Additionally, continuing law allows a person subject to an unlawful discriminatory practice to sue for damages, injunctive relief, or any other appropriate

¹² R.C. 4112.01(A)(2), (3), and (8) and 4112.024.

¹³ R.C. 4112.05.



relief. Thus, under the bill, an employer who engages in harassment directed toward a domestic worker also may be subject to a lawsuit.¹⁴

Collective bargaining report

The bill requires the Director to prepare a report on the feasibility and practicality of allowing domestic workers to organize for purposes of collective bargaining. In preparing the report, the Director must consult with representatives of domestic workers, persons and agencies that employ domestic workers, and relevant state agencies, including the State Employment Relations Board (the agency that administers and enforces Ohio's Public Employees' Collective Bargaining Law). The Director must submit the report to the Governor, the Speaker of the House of Representatives, and the President of the Senate by December 1, 2016.¹⁵

HISTORY

ACTION	DATE
Introduced	02-26-15

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¹⁴ R.C. 4112.99, not in the bill.

¹⁵ Section 3.

