Agenda Item #4.5
January 29, 2008
Introduction

MEMORANDUM

TO: County Council

FROM: Robert H. Drummer, Legislative Attorney

SUBJECT: **Introduction:** Bill 2-08, Consumer Protection – Domestic Workers – Employment Contracts

Bill 2-08, Consumer Protection – Domestic Workers – Employment Contracts, sponsored by Councilmembers Elrich and Leventhal, is scheduled to be introduced on January 29, 2008. A public hearing is tentatively scheduled for February 26 at 7:30 p.m.

The Council Committee on Health and Human Services sponsored a study in 2006 that found that many domestic workers in the County do not receive all of the legal protections they are entitled to under State employment laws. A complete copy of this report, *Working Conditions of Domestic Workers in Montgomery County, Maryland*, will be available on the Council's website. The Executive Summary and the Summary of Findings is at ©8.

Bill 2-08 would require an employer of certain domestic workers located in the County to sign a written contract specifying the terms and conditions of employment. This Bill would also require the Office of Consumer Protection to draft a model employment contract, investigate complaints, and generally enforce the law.

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Bill No. 2-08
Concerning: Consumer Protection – Domestic Workers – Employment Contracts
Revised: 1-15-08 Draft No. 14
Introduced: January 29, 2008
Expires: July 29, 2009
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Elrich and Leventhal

AN ACT to:

(1) require an employer of certain domestic workers located in the County to sign a written contract which specifies the terms and conditions of employment;
(2) authorize a domestic worker to file a complaint with the Office of Consumer Protection if an employer does not comply with this requirement; and
(3) generally amend the County law regarding consumer protection, employment, and domestic workers.

By adding
Montgomery County Code
Chapter 11, Consumer Protection
Section 11-4B

By amending
Montgomery County Code
Chapter 11, Consumer Protection
Section 11-6

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Section 11-4B is added as follows:**

2 **11-4B. Domestic Workers – Written Employment Contracts.**

3 (a) *Legislative findings.*

4 (1) Domestic workers are entitled to legal protections under State
5 employment laws including, but not limited to:

6 (A) minimum wage:

7 (B) payment for all hours worked;

8 (C) payment of wages in United States dollars twice per
9 month;

10 (D) overtime pay of 1.5 times the regular wage rate for hours
11 worked in excess of 40 hours per week; and

12 (E) worker's compensation.

13 (2) The Council Committee on Health and Human Services
14 sponsored a study of domestic workers in the County which was
15 released on May 10, 2006. The study found that:

16 (A) domestic workers in the County have limited access to
17 information concerning the legal protections available to
18 them;

19 (B) many domestic workers in the County are paid less than
20 the minimum wage;

21 (C) many domestic workers in the County do not receive
22 overtime pay for work in excess of 40 hours per week;

23 (D) few domestic workers in the County have written
24 employment contracts setting forth the terms and
25 conditions of their employment;

26 (E) domestic workers in the County who live in their
27 employer's residence are generally paid less and work

28 longer hours than domestic workers who do not live at
29 their employer's residence; and
30 (F) domestic workers in the County are often isolated and
31 unable to experience the peer to peer networking that is
32 necessary for organized labor movements.
33 (3) The Council finds that legislation is needed to ensure that
34 domestic workers in the County receive the legal protections they
35 are entitled to under State law, as well as the right to a written
36 employment contract governing the terms and conditions of
37 employment.
38 (b) *Definitions.* In this Section, the following words have the meaning
39 indicated:
40 *Domestic service* means, when performed in a home, or in connection
41 with work that is primarily performed in a home, located in the County:
42 (1) caring for a child;
43 (2) serving as a companion to a sick, convalescing, or elderly
44 individual;
45 (3) housekeeping;
46 (4) cooking;
47 (5) cleaning;
48 (6) laundry; or
49 (7) any other work which would traditionally be done by members of
50 a household without pay.
51 *Domestic worker* means an individual who performs domestic service
52 for wages in the County.

53 *Employment contract* means a written agreement signed by a domestic
54 worker and an employer which governs the terms and conditions of
55 employment.
56 *Employer* means a person who hires a domestic worker to perform at
57 least 20 hours of work each week during any period that is 30 days or
58 longer.
59 *Hours of work* means the time during any 7-day period that a domestic
60 worker is on duty.
61 *Paid time off* means time for which a domestic worker receives wages
62 without working, including any holiday, vacation, or sick leave.
63 *Unpaid time off* means time during the normal hours of work when the
64 domestic worker may be absent without receiving wages.
65 *Wages* means any compensation which a domestic worker receives,
66 including any bonus, commission, fringe benefit, or other payment.
67 (c) *Employment Contract.* Each employer must present a written
68 employment contract to a domestic worker and offer to negotiate the
69 terms and conditions of employment. Once a final contract is agreed
70 upon, the employer must sign and give the domestic worker a copy.
71 Each written employment contract must specify the following terms and
72 conditions of employment:
73 (1) days and hours of work;
74 (2) wages;
75 (3) paid time off;
76 (4) unpaid time off;
77 (5) frequency of payment of wages;
78 (6) deductions from wages;
79 (7) eligibility for and calculation of overtime wages;

80 (8) duties;

81 (9) right of the employer, if any, to require the domestic worker to
82 perform duties that are not specified in the contract;

83 (10) living accommodations provided by the employer, if any,
84 including deductions for rent;

85 (11) meals provided by the employer, if any, including deductions for
86 meals;

87 (12) time allowed for breaks and meals during work hours;

88 (13) required notice, if any, before the employer or domestic worker
89 terminates the contract;

90 (14) severance wages, if any, if the employer terminates the contract
91 before the end of the contract period;

92 (15) contract period;

93 (16) reimbursement for work-related expenses; and

94 (17) notice of employment rights under State law.

95 (d) *Living accommodation.* Any living accommodation provided for a
96 domestic worker must meet all minimum standards for a dwelling unit
97 in Chapter 26 and include:

98 (1) a private room for sleeping with a door that can be locked;

99 (2) reasonable access to a kitchen;

100 (3) reasonable access to a bathroom; and

101 (4) reasonable access to laundry facilities.

102 (e) *Model Contract.* The Director must draft and make available a model
103 employment contract which an employer may use to comply with this
104 Section.

105 (f) *Retaliation.* An employer must not retaliate against a domestic worker
106 who:

107 (1) requests a written contract required under this Section;

108 (2) seeks to enforce the terms of a written employment contract; or

109 (2) files a complaint or testifies, assists, or participates in any manner

110 in an investigation, proceeding, or hearing to enforce this Section.

111 (g) *Complaint.* If an employer does not comply with this Section, a

112 domestic worker may file a complaint under Section 11-6.

113 **Sec. 2. Section 11-6 is amended as follows:**

114 **11-6. Filing complaints.**

115 (a) *Definition.* In this section "domestic worker" has the meaning stated in

116 Section 11-4B.

117 (b) *Complaint.* Any consumer or domestic worker may file a written

118 complaint with the Director.

119 (c) *Contents.* A [The] complaint should state the name and address of the

120 person alleged to have committed [the] a violation of this Chapter,

121 describe the violation, and provide any other information that the Office

122 requires. However, the Director may act on a complaint that is not

123 complete. The Director may investigate any violation of and enforce

124 this Chapter without receiving a complaint.

125 (d) *Referral to Department of Housing and Community Affairs.* The

126 Director must refer a complaint from a domestic worker alleging living

127 accommodations that do not comply with Section 11-4B(d) to the

128 Department of Housing and Community Affairs for investigation and

129 enforcement.

130 *Approved:*

131

Michael J. Knapp, President, County Council Date

LEGISLATIVE REQUEST REPORT

Bill 2-08
Consumer Protection – Domestic Workers – Employment Contracts

DESCRIPTION: This Bill would require an employer of certain domestic workers in the County to present a written employment contract to a domestic worker and offer to negotiate the terms and conditions of employment. The Bill would not dictate the terms and conditions, but does require specific terms and conditions to be spelled out. The Bill would also require the Office of Consumer Protection to draft a model employment contract, investigate complaints, and generally enforce the law.

PROBLEM: The Council Committee on Health and Human Services sponsored a study of domestic workers in the County which was released on May 10, 2006. The study found that domestic workers in the County have limited access to information about their rights under state and county law and very few have written employment contracts. Consequently, many domestic workers in the County are paid less than the minimum wage required by state law and do not receive overtime pay for work in excess of 40 hours per week.

GOALS AND OBJECTIVES: The goal of this Bill is to ensure that domestic workers in the County understand and receive the legal protections they are entitled to. A written employment contract governing specific terms and conditions of employment would permit both parties to understand their rights and obligations and be a legally enforceable contract. In addition, the Bill would authorize the Office of Consumer Protection to enforce the rights guaranteed by this law.

COORDINATION: The Office of Consumer Protection has reviewed this Bill.

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

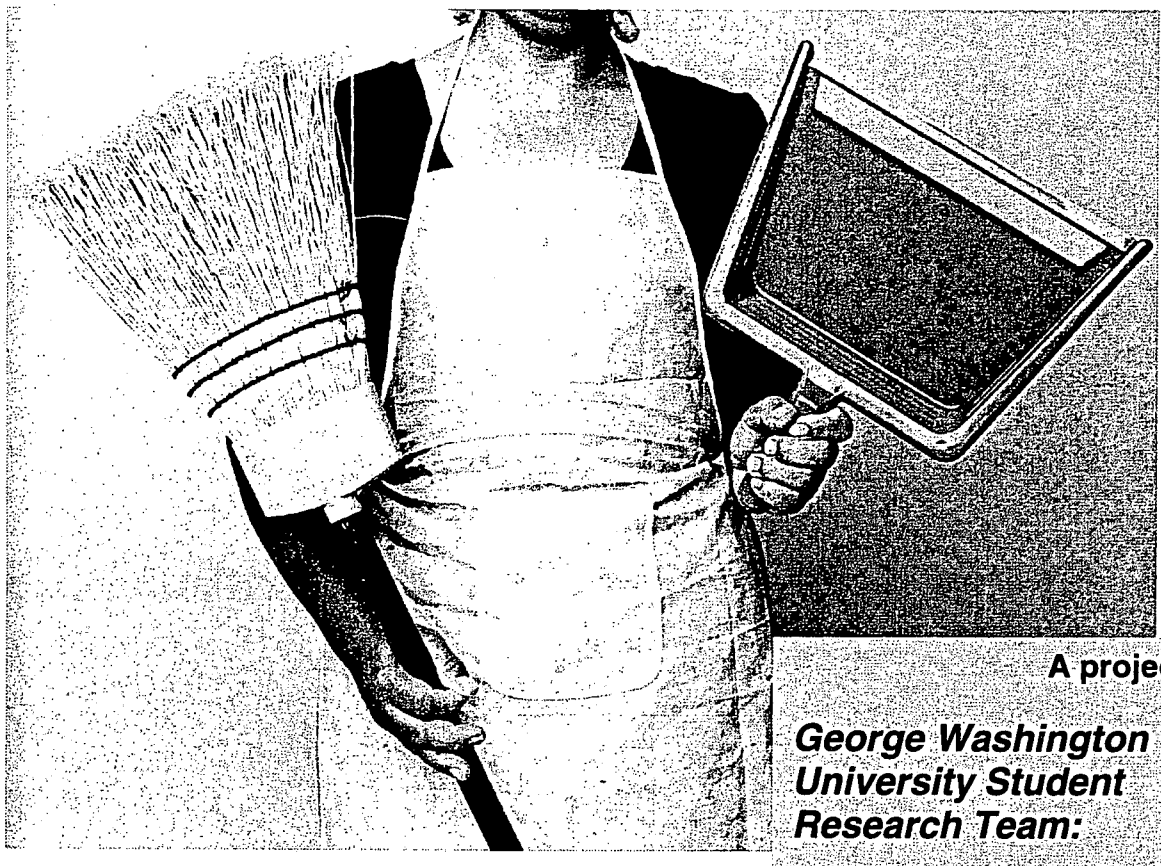
EXPERIENCE ELSEWHERE: New York City and Nassau County, New York each enacted a local law regulating employment agencies that place domestic workers.

SOURCE OF INFORMATION: Robert H. Drummer, Legislative Attorney (240-777-7895)

APPLICATION WITHIN MUNICIPALITIES: To be researched.

PENALTIES: A person who violates this law is subject to a Class A civil penalty of no more than $1000 for each violation.

Working Conditions of Domestic Workers in Montgomery County, Maryland



A project of the

George Washington University Student Research Team:

Gregory Gaines
Jordan Head
Matthew Mokey
Amy Potemski
Michael Stepansky
Amy Vance

Sponsored by

Montgomery County Council Committee on Health and Human Services

Executive Summary

This report examines the working conditions of domestic workers in Montgomery County, Maryland. It is the outcome of collaborative efforts between George Washington University Master of Public Policy candidates and Montgomery County community organizations, working under the auspices of the County Council's Health and Human Services Committee. The objective of this research was to determine whether the working conditions of domestic workers are unfair, and if so, the extent and magnitude of such problems.

Women and men, primarily immigrants, provide invaluable services to the households of Montgomery County. They clean and cook in the homes of residents; they care for the community's children, its elderly, and its sick; and they add to the overall quality of life. Their labor is indispensable to many residents who employ them. However, their working conditions are widely perceived to be unfair – their pay inadequate, their hours long, their benefits lacking, and their treatment poor. In Montgomery County, domestic workers have called on the county for redress through the voice of community organizations and advocacy groups such as CASA de Maryland and the Montgomery County Commission for Women.

The goal of this study is to move beyond anecdotal evidence and provide the Montgomery County Health and Human Services Committee with sound empirical data on domestic working conditions in order to inform public discussion of these issues and potential policy solutions. To that end, this report presents findings from the Montgomery County Domestic Worker Survey.

This profile of domestic labor in Montgomery County is based on a county-wide survey of 286 domestic workers who live and work in Montgomery County. Domestic workers were surveyed at a variety of public locales, including parks, metro stations, churches, and community outreach centers over a period of approximately three weeks spanning March and April 2006. Data was analyzed using Excel and SPSS statistical software, as well as using US Census data and pre-existing scholarly studies.

The findings of this study show that there are substantive differences both among types of domestic workers as well as between domestic workers as a class and the general population of Montgomery County. In short, domestic workers are uniformly deprived of health benefits, retirement provisions, as well as standard breaks and holidays. These conditions warrant attention from policy makers in Montgomery County but the form that these policies should take will require further research and analysis. While the data presented in this report provides a detailed picture of the domestic worker population at large, the Live-in domestic worker population is difficult to reach and is therefore underrepresented in our survey. It is imperative to the improvement of domestic worker protections, rights, and welfare that this specific population is targeted for future research. However, should the county decide to take legislative action that may create mandated work standards it will be important to consider the extent to which the informal market for domestic work is predicated upon a certain degree tolerance on the part of both domestic workers and their employers. As such a useful alternative option may be coalition building and associative employee networks.

Summary of Findings

Domestic Workforce

- The 'average' domestic worker is an unmarried, 37-year-old Hispanic female with two children and a 9th grade education level.
- Domestic workers speak Spanish as their primary language (73%), and about half of all surveyed do not speak English (56%).

Domestic Work in Montgomery County

- Domestic workers in the county primarily work as nannies (28%) and housekeepers (44%).
- The largest cohort of domestic workers surveyed lives (35%) or works (21%) in Silver Spring.

Working Conditions

Live-ins

- $6.29 / hour is the mean hourly wage reported by domestic workers who live with their employer (live-ins).
- On average, live-in domestic workers work 58 hours a week.
- Most live-in domestic workers do not receive overtime compensation (75%).
- 38% of live-in domestic workers reported having health insurance of some kind.

Live-outs

- 87% of domestic workers who do not live with their employer (live-outs) earn minimum wage or higher, 38% of which earn $10.50 or more.
- On average, live-out domestic workers work 39 hours a week.
- Most live-out domestic workers do not receive overtime compensation (82%).
- Only 16% of live-out domestic workers reported having health insurance.

Domestic Voice

- In a free response question, most domestic workers commented on a lack of healthcare. Other prominent issues of concern included the inadequacy of wages, hours, and time-off.
- In an ordinal response question, which asked workers to rank how they felt treated by their employers on a scale of 1 (very bad) to 10 (very well), 87% ranked their employers 5 or higher, including 21% of respondents who indicated that they were treated "very well" by their employer.