

US domestic workers find their voice

The achievement of decent work for domestic workers ultimately depends on their capacity to organize and engage in collective action. Ground-breaking legislation covering the rights of domestic workers is on the brink of passage in New York State. If signed into law it will be the culmination of a decade of grassroots activism supported by the American labour federations AFL-CIO and may open the door to similar legislation in other states. Gary Humphreys, a California-based journalist, reports.

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NEW YORK – According to the US census there are currently over two million people engaged in domestic service in the United States – a number that is probably a significant underestimate. Overworked, underpaid and, until fairly recently, isolated, domestic workers do not even have the right to organize, clinging to the coat tails of labour federations to see their few rights defended.

The plight of domestic workers caring for the sick and the elderly is of particular concern. According to a recent report by the Alliance for Retired Americans, the American Association for People with Disabilities, and the labour federations AFL-CIO and “Change to Win”, roughly half of all home-care workers work full time year round. They are twice as likely as other workers to receive food stamps and to lack health insurance, while one in five lives below the poverty level.

According to the Service Employees International Union (SEIU), a leading labour organization, 90 per cent of home-care workers are female, and one in four heads a household with children. “These people are engaged in essential work that enables others to go out and make a living,” says Priscilla Gonzalez, director of Domestic Workers United (DWU) a grassroots organization based in New York, “and yet they are denied a living themselves.”

The last time US labour law was changed to expand coverage for domestic workers was in 1974 with the Fair Labor Standards Act (FLSA), but employees providing “companionship services” to the aged and disabled were left out (“exempted” in the language of the document) – deemed too casual and informal for legal protection. Since 1974 the world has changed, and both the numbers of home-care workers and the services they provide have grown, but the law has failed to grow with them.

The last time the FLSA’s so-called domestic worker “exemption” was challenged was in 2007 when the Supreme Court ruled that home health-care workers were not eligible for the overtime and minimum wage protections extended to others. And the domestic worker exemption is but one of a list of similar exclusions. As already mentioned, domestic workers in the United States have no right to organize under the National Labor Relations Act (NLRA). They have no protection under the Occupational Safety and Health Act (OSHA). They have no protection under civil rights laws.

But things are beginning to change. After years of outreach and advocacy, notably from small groups like the DWU, scrapping this exemption is back on the political agenda. Last summer fifteen US senators sent an open letter to Labor Secretary Hilda Solis, calling for the repeal of the exemption, and arguing in favour of a national minimum wage and the extension of federal overtime requirements to domestic workers. Solis, the daughter of an immigrant domestic worker herself, has been supportive of the idea of scrapping the exemption, referring to it as a “loophole” which should be closed.

How soon that will happen is anyone’s guess, but domestic workers may not have to wait for Congress to get round to changing the law because change may be coming state by state, starting in New York where a comprehensive Domestic Worker Bill of Rights looks set to pass in the State Senate in the coming month or so. If passed the legislation will grant housekeepers, nannies and caregivers the same rights that the majority of US labour enjoys, notably: time-and-a-half for every hour over 40 hours per week; one day off per 7-day calendar week; a limited number of paid vacation days, holidays, and sick days; advance notice of termination or severance pay in lieu of notice. The bill will also give domestic workers the ability to sue employers where these provisions are not met. The bill has been debated within the State legislature for more than six years, and has already passed in the State Assembly. The State Governor has pledged to sign legislation once it reaches his desk.

"It's going to put domestic workers on an equal footing with everyone else," says DWU's Gonzalez, one of the activists who have been fighting for change for a number of years. "The new laws are also going to send a strong message to the work force about being recognized and protected under the law." Some domestic workers are already getting the message. "The Bill of Rights will put an end to decades and decades of exploitation," says Patricia Francois, a nanny who spent six-and-a-half years looking after the daughter of a wealthy Manhattan couple until she was fired in December of 2008 after an altercation (Francois claims that her employer punched her in the face, a claim the employer disputes). For Francois the importance of the bill goes beyond any specific rights it may include. "It will give us back our dignity and respect," she says.

And the bill's impact will not be limited to New York. Andrea Cristina Mercado, Lead Organizer of Mujeres Unidas y Activas (MUA), a group of San Francisco/Oakland-based activists – says that as a result of the New York campaign, MUA has decided to push for a legislative Bill of Rights campaign in California. "This year we are going to be introducing a resolution in support of domestic workers at the State level and we are hoping that will help us build momentum for a legislative campaign in 2011," she says. The last time groups like MUA tried to effect change in California was in January 2006 when they managed to get the so-called "Nanny Bill" introduced in the California Assembly.

The bill was passed by the Assembly and the Senate but was then vetoed by the Governor of California. This time Mercado believes things will be different: "In 2006 we were just focused on rights for overtime and fines for abusive employers," she says. "This time, we will take an approach similar to the one used in New York and will be going for a comprehensive Bill of Rights, an inspiring platform that gets people stirred up."

And it is not just the approach to campaigning that has changed. The big difference between now and 2006 is that grass-roots domestic labour movements in the United States have become organized. Domestic workers may be banned from forming a union, but there is nothing to stop cooperatives and associations coming together to exchange information and develop strategy. And this is exactly what they have been doing, beginning in June of 2007 when a small group of domestic workers came together at a National Domestic Worker Gathering in Atlanta, Georgia. On the last day of the gathering the participants took the decision to form a National Domestic Worker Alliance (NDWA) to give domestic workers a voice and to draw attention to their plight. "There were all these local campaigns and initiatives going on, but we wanted to create a coherent whole – and not to have to reinvent the wheel each time," says NDWA lead organizer Jill Shenker.

The basic idea behind the NDWA was that domestic workers in one state could learn lessons from their counterparts in another; the Domestic Worker Bill of Rights is the first indication of how powerful that approach can be. "The California coalition has been inspired by what their sisters in New York have achieved," says Shenker, reporting that a comprehensive bill called the California Domestic Worker Bill of Rights (CDWBR) has already been drawn up. The NDWA has also provided the participants with a sense of connection and of course empowerment. "We are not just about tinkering with the labour code," says Shenker. "What we're trying to do is build a social movement."

That social movement is growing. Founded by 13 organizations, the NDWA now comprises over 30, and it is only a matter of time before other states, notably Colorado, Illinois, Iowa, Maryland, New Hampshire, Oregon, Rhode Island and Washington pick up the Bill of Rights idea. "We're really excited about what's coming down the pipeline," says DWU's Gonzalez. "Everyone is watching what is happening in Albany." Soon they'll be watching what happens in California.

Organizing domestic workers worldwide: Decent work in action

In various parts of the world, domestic workers have been seeking to exercise their rights through collective action.

In Brazil, the first organization of domestic workers was formed in 1936 in São Paulo, and since 1988 Article 7 of the Constitution has provided protection for their right to do so.

In Uruguay, the establishment of the new tripartite wage board composed of government, employers' and workers' representatives also consolidated organizations representing domestic workers and their employers. The Housewives' League of Uruguay, which was originally created to revalue unpaid domestic work, agreed to act as the employers' representatives on the wage board, while the National Trade Union Confederation agreed that the National Confederation of Domestic Workers, not yet registered as a trade union, could negotiate on their behalf.

Founded in Bogota, Colombia, on what is now Domestic Workers' Day in much of the region (30 March 1988), the Latin American and Caribbean Confederation of Household Workers (CONLACTRAHO) has member organizations from 13 countries, plus Canada and an organization of migrant workers in Europe. Most of the members have been domestic workers for 15 to 20 years and are committed to promoting law reform to achieve equal rights in member States.

Associations of domestic workers in India have also lobbied for improvements in working conditions since shortly after independence in 1947. Except for the establishment of a servant's registry, attempts at legislative reform failed, however, and the Supreme Court decided in 1977 that domestic workers belonged to the category of workers that should not be recognized as "organized labour".

In Namibia, domestic workers organized even during the colonial era when trade union membership was illegal. A 1994 ILO study reported that the Namibian Domestic Workers' Union (NDWU) had recruited about one-third of the 12,000 domestic workers in the country.

Despite the obstacles facing migrant workers, the Asian Domestic Workers' Union (ADWU) has operated in Hong Kong, China, where domestic workers enjoy some trade union freedoms, since its establishment in 1988. In Sri Lanka, the National Workers' Congress (NWC) has signed a cooperation agreement with unions in receiving countries and seeks to inform domestic workers prior to departure of their rights in these countries, while the unions of the receiving countries provide them with support.