

Lifting up Paid Care Work

YEAR ONE of New York City's
Paid Care Division



NYC

Bill de Blasio
Mayor

**Consumer
Affairs**

Lorelei Salas
Commissioner

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*1199SEIU United Healthcare Workers East

*Adhikaar

Bedford Stuyvesant Restoration Corporation

*Carroll Gardens Association

*Center for Family Life Cooperative Development Program

*Cooperative Home Care Associates

*Damayan Migrant Workers Association

Domestic Workers United

El Centro del Inmigrante

Golden Steps Elder Care Cooperative

*Hand in Hand: The Domestic Employers Network

*Jews for Racial & Economic Justice

*National Domestic Workers Alliance

*National Employment Law Project

New Immigrant Community Empowerment

NMIC (Northern Manhattan Improvement Corporation)

*NYC Commission on Human Rights

*NYC Mayor's Community Affairs Unit

*NYC Mayor's Office of Immigrant Affairs

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*Worker's Justice Project

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Acronyms

DCA	Department of Consumer Affairs
DFTA	Department for the Aging
DWBOR	Domestic Workers' Bill of Rights (New York State)
FLSA	Fair Labor Standards Act
HRA	Human Resources Administration
LHCSA	Licensed Home Care Services Agency
MOIA	Mayor's Office of Immigrant Affairs
NDWA	National Domestic Workers Alliance
NLRB	National Labor Relations Board
NYSDOL	New York State Department of Labor
OLPS	Office of Labor Policy & Standards
PHI	Paraprofessional Healthcare Institute
PSL	Paid Sick Leave Law
SEIU	Service Employees International Union
The Commission	NYC Commission on Human Rights

Definitions

Home care aides assist seniors and people with disabilities in performing routine tasks, including activities of daily living (e.g., eating, bathing, dressing, toileting, and moving) and instrumental activities of daily living (e.g., meal preparation, shopping, operating household devices, handling personal finances, and housecleaning). In most cases, home care aides have completed between 40 and 75 hours of training to obtain certification as Home Health Aides (HHAs) or Personal Care Aides (PCAs), though the two certifications encompass different permitted tasks, with the HHA certification being the more experienced.¹ HHAs assist with health-related tasks, such as measuring and recording temperature and blood pressure or assisting with the use and maintenance of medical equipment. Home care aides (HHAs, PCAs, and the less common uncertified aides) are sometimes also described as “elderly caregivers,” “caregivers,” or by their certifications: “home health aide” or “personal care aide.”

House cleaners clean and maintain their clients' homes. Responsibilities typically include sweeping, mopping, vacuuming, wiping down surfaces, doing dishes and laundry, putting belongings away, and making beds.

Nannies provide care and supervision for children, primarily in the child's home. Responsibilities often include feeding, transporting, supervising, playing with children, preparing meals, disciplining and providing moral guidance, helping with homework, and housecleaning.

Domestic worker is a term used to describe a person employed in a home or residence to care for a child, serve as a companion for a sick or elderly person, or perform other domestic services. The title is typically applied to house cleaners and nannies, though home care workers are also sometimes called domestic workers.

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Message from Commissioner Lorelei Salas

This report carries a special significance for me. The paid care workers' vivid accounts of the struggles they face in order to have their work receive the recognition that it deserves touches me in a very personal way.

I spent close to five years working as a nanny when I first moved to the United States. During that time I worked with three different families, taking care of their children and doing housekeeping. I was very fortunate to find employment with people who cared about me and valued my work, but I knew many other nannies who did not have the same experience. The stories you will read in this report are also the stories of my mother and my sister—who worked as nannies for many years—and my grandmother who worked as a home health aide until she retired just a few years ago.

Years after being a nanny and graduating from law school, I went on to oversee the enforcement of labor laws at the New York State Department of Labor. In that role I was charged with implementing the Domestic Workers' Bill of Rights. At that time, we had established an expedited process so that these complaints would be prioritized and carefully handled as we knew that enforcement would present several challenges. The relationship between employer and employee is often complicated by the deep attachment that paid care workers develop for those they care for every day. I did not just take care of other people's kids for a living—I grew to love them and would miss them when they were no longer a part of my life. The intimacy that arises from this type of employment relationship blurs the fact that the family is your employer and their home is your workplace, and that you have rights and they have obligations to you.

With the creation of the City's Paid Care Division, we have a unique opportunity to lead the country in establishing model standards that will return dignity to a workforce that has traditionally been left out of labor protections. Housed within the Department of Consumer Affairs (DCA) and its Office of Labor Policy & Standards, the Division has already touched thousands of paid care workers via outreach and events, investigations of paid sick leave complaints, and targeted investigations into home care agencies. This important work furthers DCA's mission: to protect and enhance the daily economic lives of New Yorkers to create thriving communities. In the coming months we will be looking more deeply into policy proposals that will further improve working conditions for paid care workers and address their financial health.

Paid care workers have had many victories over the last few years, but even existing legal protections are not guaranteed in practice. We cannot rest until all those who care for us, our children, and our parents are cared for themselves. That will require critical interventions and this report's recommendations, developed in partnership with members of the Paid Care Working Group, are just the beginning.



Lorelei Salas
Commissioner
Department of Consumer Affairs

Executive Summary

Primarily women of color and immigrants, home care aides, house cleaners, and nannies are the paid care workers who play an essential role in New York City's dynamic economy. New Yorkers entrust these workers to care for their loved ones when they cannot. Care workers are there when children muster the courage to take their first steps; care workers feed parents who once prepared family dinners; and care workers make sure people who need assistance to leave their homes get fresh air and sunlight.

Despite the vital importance of paid care workers to the daily functioning of the city and its economy, the working conditions of care workers often make them unable to care for their own loved ones the way they care for others'. Care workers are rarely paid a sustainable living wage and suffer from insecure and temporary employment. Their contributions are frequently unappreciated by the public, their employers, and even their clients. Hidden in private homes out of public view and working alone, care workers are especially vulnerable to long and emotionally trying days, compensation that pales in comparison to the worth of their work, and denial of the most basic workplace rights and protections.

In an effort to better address care workers' distinct needs, in February 2017, the City of New York opened a first-of-its-kind Paid Care Division within the Department of Consumer Affairs (DCA). DCA's Office of Labor Policy & Standards (OLPS) houses the Paid Care Division, the only governmental office in the United States charged with raising job standards in care industries. To meet this challenging but critical mandate, the Division works in partnership with paid care worker organizations, employers, and other stakeholders. The Division's approach is interdisciplinary: it engages in policy development, outreach and education for workers and employers, intake and referral to outside resources for paid care workers, and original research. The Division also draws on DCA resources and enforcement authority, including its enforcement of NYC's Paid Sick Leave Law (PSL), to meet care workers' needs and elevate their important work.

As the Division concludes its first year, this report provides an analysis of what it has learned, an overview of its accomplishments, and a roadmap for action it plans to take in the years to come. Specifically, the report elaborates on the close partnerships the Division has fostered with City agencies, academic institutions, and organizing and advocacy groups. These partnerships have culminated in the adoption of model standards for paid care jobs.

The Division's work also includes proactive investigations into possible violations of PSL at several dozen home care agencies, covering approximately 30,000 workers. Additionally, in collaboration with Professor Ruth Milkman of The City University of New York (CUNY), DCA is releasing the results of a year's worth of focus group research through a companion publication, *Making Paid Care Work Visible: Findings from Focus Groups with New York City Home Care Aides, Nannies, and House Cleaners*. *Making Paid Care Work Visible* draws insights from discussions with 115 care workers about their work.

The report also relays stakeholders' recommendations for future City action on behalf of paid care workers and identifies the Division's priority work areas going forward. In 2018, the Division will continue its outreach and education activities in partnership with groups organizing and serving paid care workers, assess the ways in which its legal services program might better respond to and address the unique enforcement challenges in care workplace settings, vigorously enforce PSL in care industries, and work with stakeholders to identify new policies the City could adopt to raise the prevailing standards in paid care jobs.

I'm very proud of the work that I do... I made someone comfortable, they're clean or they're pain-free or they feel cared for ... It's hard work; it's difficult. And whoever is in charge of putting a price on what this job is worth needs to understand that what we do encapsulates so much... This is not for everybody. You really have to have a passion for this.

— Home care aide

I like my job—it gives me satisfaction to arrive at that house and put it in order, and leave it clean, and my client is satisfied. It satisfies two needs: the need of the person who requested the service, because she gets her home cleaned, and my need for money. It relieves stress for the client and also for me.

— House cleaner

Watching those girls grow, teaching them new things, like reading and writing, that was so exciting for me, and it showed me that I was doing a good job. It also gives me pride to leave the houses clean, and yes, I like it. I'm the owner of my time, I make my schedule.

— Nanny

Introduction

“Paid care worker” and “care worker” refer to workers who provide services that meet daily needs for the health, welfare, maintenance, and protection of someone else. Workers more frequently refer to themselves with the sector-specific term that those for whom they provide care also commonly use: home health aides, house cleaners, and nannies. Their work requires close physical and emotional interaction with the care recipient, as well as the care recipient’s family. Care workers often derive tremendous satisfaction from their jobs, a theme that came through powerfully in focus groups conducted by DCA over the past year.

Though each sector of care work is unique, the intimate nature of care work and where it is performed mean that care workers face common challenges and rewards distinct from other kinds of work. Paid care workers are similar to one another in another respect: they ensure that all New Yorkers meet essential obligations to their loved ones, enable those New Yorkers to get to work, and keep the economy running. Nineteen (19) percent of households in New York City rely on paid care workers to meet their family’s needs, most commonly house cleaning (10%), followed by home care (5%), and nanny (4%).²

This report, the first issued by the Paid Care Division, includes an overview of paid care work in New York City; Division operations and accomplishments in 2017, including model standards for paid care jobs, adopted in collaboration with the Division’s Paid Care Working Group; and action plans for 2018 and beyond.

Source: Milkman R, New York City Department of Consumer Affairs. *Making Paid Care Work Visible: Findings from Focus Groups with New York City Home Care Aides, Nannies, and House Cleaners*. New York City Department of Consumer Affairs. 2018 Mar 27.

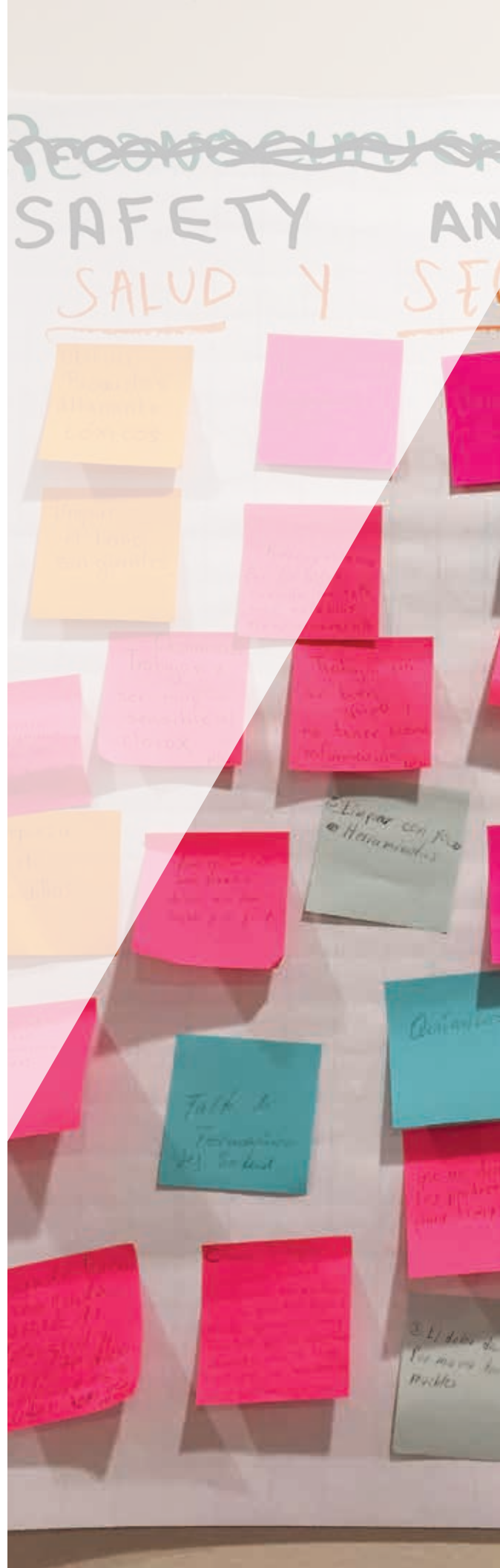
Data Sources for Report

This report draws on two pieces of original research.

In order to gather care workers' perspectives on their lives and work, DCA conducted 12 focus group discussions with a total of 115 home care aides, nannies, and house cleaners in collaboration with Professor Ruth Milkman of CUNY. DCA partnered with a variety of organizations to recruit participants, including worker centers, cooperatives, labor unions, and social service organizations. The focus groups ranged in size from two (2) to 15 participants and were conducted in all five boroughs. Findings from this research are referenced in this report but explored in greater depth in the companion publication, *Making Paid Care Work Visible: Findings from Focus Groups with New York City Home Care Aides, Nannies, and House Cleaners*.³

DCA also collaborated with The Worker Institute at Cornell, National Domestic Workers Alliance (NDWA), NYC Commission on Human Rights (The Commission), and the NYC Mayor's Office of Immigrant Affairs (MOIA) to design a survey of paid care workers.⁴ Professor Milkman also contributed to a revision to the survey. Together with these partners, DCA administered the survey at three large-scale convenings of care workers and also at the focus group discussions. Though the focus group transcripts and survey data provide useful information about the population participating in Division research and events, these sources are not necessarily representative of the larger population of care workers in New York City.

This report also draws heavily from the U.S. Census Bureau's American Community Survey.⁵ Further detail is provided in Appendix C.





I. Care workers' importance to society is growing, yet they remain some of its most vulnerable members

Care workers are a large and growing segment of the New York City workforce

New York City's paid care workforce is large and growing. Over the past decade, the number of New Yorkers reporting a paid care occupation as their primary work grew from 176,000 to 202,000, an increase of 26,000 (15%).⁶ This is compared to a growth of 10 percent in the overall workforce.⁷

Table 1. Paid care occupations in New York City

	Number	Percent
Home Care Aides	166,840	82.4%
House Cleaners	21,470	10.6%
Nannies	14,173	7%
Total	202,483	100%

Source: Authors' analysis of the 2016 American Community Survey, obtained from IPUMS-USA, University of Minnesota, www.ipums.org.

Growth in the paid care industry has been concentrated in the home care sector. This trend is projected to continue. According to New York State's most recent long-range projections, home health and personal care aides are the two occupations in New York City anticipated to add the greatest number of new jobs.⁸ The projected increase in the number of workers in the home care sector will be driven by demand. Analysts predict that by 2040, New York City will be home to 1.4 million seniors, with 70 percent of this population requiring long-term care (i.e., nursing home or home care) at some point in their lives.⁹ Additionally, there is a long-standing movement away from institutional care in favor of home-based care.¹⁰

In contrast, there have been modest decreases in the numbers of nannies and house cleaners.¹¹ Still, house cleaner and nanny jobs are by their nature both essential and difficult to automate, ensuring their continued importance within the city's employment landscape for the foreseeable future.

Care workers are overwhelmingly low-income immigrant women of color

Historically, society's view of women as "natural care-givers" has enabled it to devolve all responsibility for care within the home to women, including housekeeping, caring for children, and caring for elderly or disabled family members.¹² Additionally, societal

views of men as “breadwinners” and women as “homemakers” has led to this care work, often characterized as “women’s” work, being seen as necessary but devoid of economic value.¹³ Thus, women’s unpaid labor inside of the home has come to be seen as both a “natural” function of a female worker’s gender and a care laborer’s duty to the family (and, by extension, society). These assumptions exacerbate—and were exacerbated by—women’s historically limited access to employment opportunities outside of their own home. Combined with women’s limited access to outside employment, the perception of care work as women’s “natural” responsibility has resulted in a paid care workforce that has remained overwhelmingly female, underpaid, and undervalued throughout U.S. history.¹⁴

Further, given the racialization of care work throughout history, from slaves caring for the home and children to women of color performing low-wage domestic work in service of white women,¹⁵ the linkage between the devaluation of women of color with the devaluation of care work comes as no surprise.

The physical, emotional, and psychological impact of care work means that paid care work is often a “last resort” for many without access to other job opportunities. As a result, the paid care workforce continues to be disproportionately comprised of women, women of color, and immigrant women.¹⁶

In the last census, women represented 90 percent of the paid care workforce nationally and 94 percent in New York City, similar to the levels observed for the past 80 years.¹⁷ By contrast, care work as a share of women’s employment in New York City has ebbed and flowed, dropping from 15 percent of women’s labor force participation in 1930 to a low of 2 percent in 1990 and then up to 8 percent today (see Figure 1, page 13, and Table 3, page 18). This trend can be explained by two key factors:

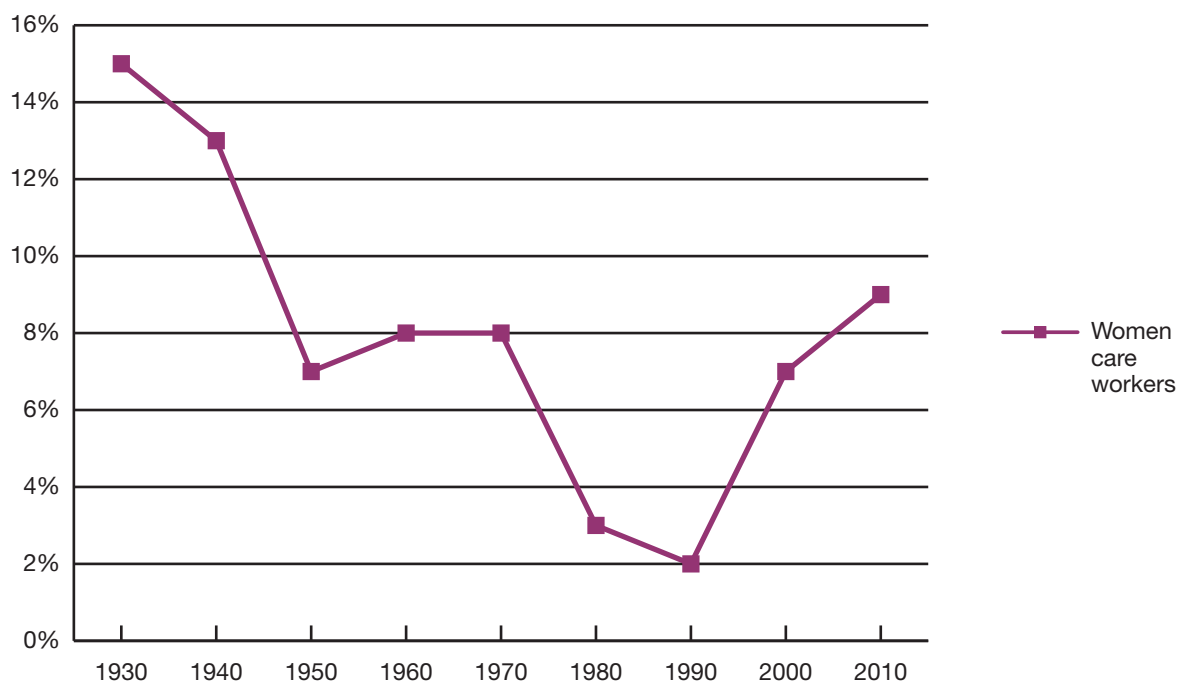
1. The decline of the portion of paid care jobs comprising women’s overall employment between 1930 and 1990 was driven in large part by women’s entrance into a wider range of occupations.
2. The reversal since 1990 is most likely a result of increasing demand for home care (itself a consequence of population aging and increased public financing for paid care labor, mainly via Medicaid).

While the paid care workforce has always been predominantly comprised of women, there have been significant racial and ethnic variations over time. As white women born in the United States began transitioning into other forms of labor, their representation in the paid care workforce declined significantly. In 1930, white women accounted for 66.5 percent of the paid care workforce in New York City, declining to just 10.2 percent by 2010. The demand for domestic work was increasingly filled by recent immigrants and members from racial and ethnic groups with limited access to other employment opportunities, causing the racial and ethnic composition of the paid care workforce to shift considerably (see Figure 2, page 13).

Of these racial and ethnic groups, African-Americans represented the majority of women paid care workers. In New York City, African-American women first surpassed white women as the largest group of care workers in the 1940s. Since then, African-American women’s representation in the paid care workforce in New York City has never dropped below 30 percent, reaching a peak of 60 percent in 1970 and declining to 38 percent in 2010. African-American women remained predominant in the paid care workforce until 2010 when Hispanic women became the majority group within the paid care workforce in New York City, a trend that solidified during the 2000s. In the most recent data, Hispanic workers comprised 37 percent of New York City’s paid care workforce, and African-Americans comprised 34 percent (see Table 2, page 15).

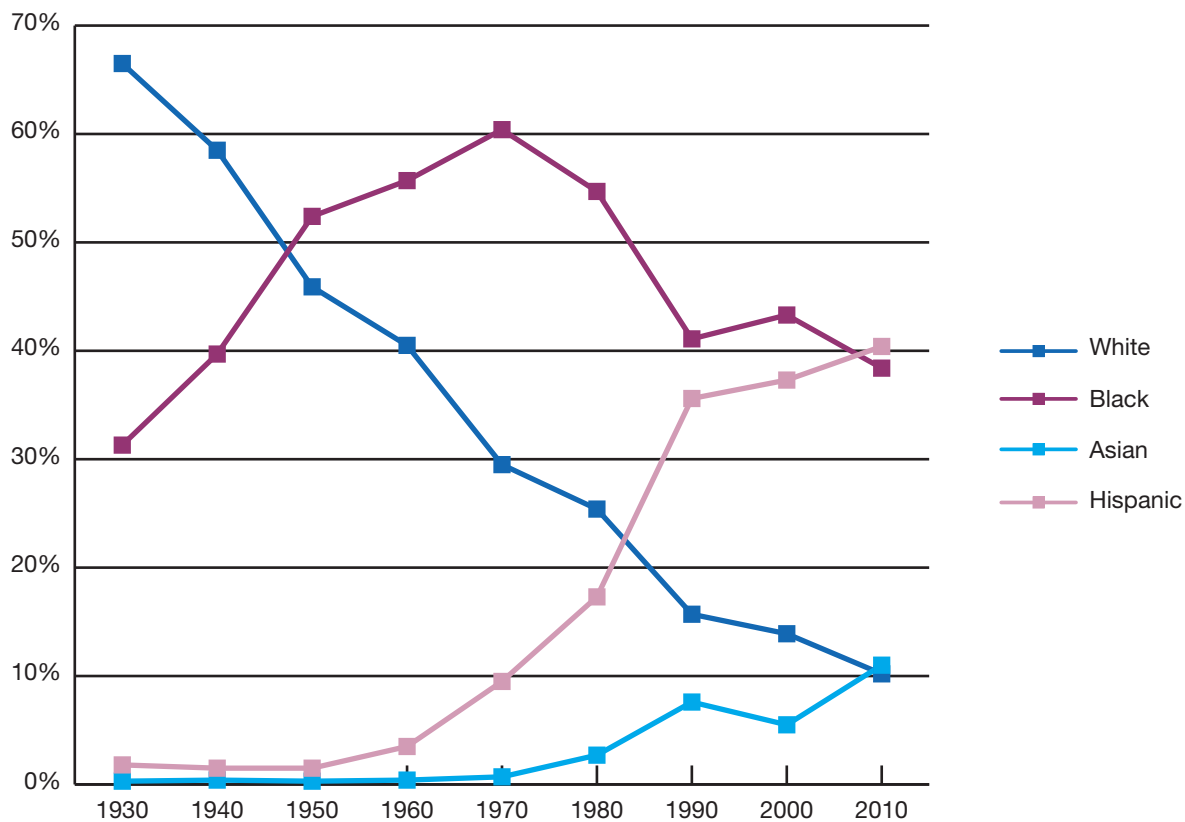
Additionally, Asian representation within the paid care workforce has seen steady increases. By 2010, Asian representation in the paid care workforce was 11 percent, which represented slow but steady growth from 1.8 percent in 1930.

Figure 1. Women care workers as a percentage of all women workers in New York City, 1930-2010



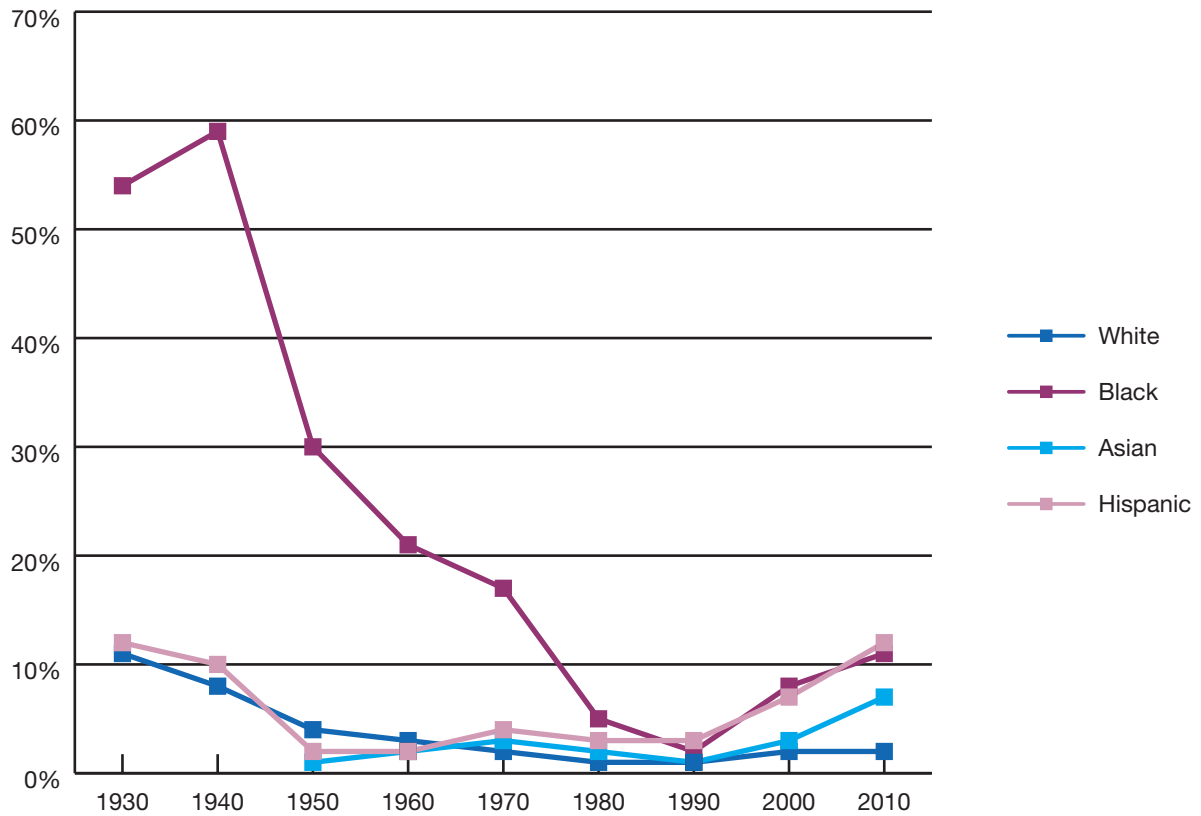
Source: Authors' analysis of the Decennial Census, obtained from IPUMS-USA, University of Minnesota, www.ipums.org.

Figure 2. Racial and ethnic composition of women care workers in New York City, 1930-2010



Source: Authors' analysis of the Decennial Census, obtained from IPUMS-USA, University of Minnesota, www.ipums.org.

Figure 3. Women care workers as a percentage of all women workers in New York City within selected racial and ethnic groups, 1930-2010



Source: Authors' analysis of the Decennial Census, obtained from IPUMS-USA, University of Minnesota, www.ipums.org.

Notes: Asian care worker series begins 1950 due to limitations in the 1930 and 1940 census.

Table 2. Demographic and social characteristics of care workers and all workers in New York City, 2016

	Home Care Aides	House Cleaners	Nannies	Care Worker Total	All Worker Total
Workers	166,840	21,470	14,173	202,483	4,385,056
Annual Earnings (\$, mean)	19,574	20,454	16,981	19,003	64,200
Household Income					
Less than \$25K	25%	25.6%	22%	24.9%	9.7%
\$25-\$50K	30.4%	23.3%	25.8%	29.4%	17.8%
>\$50-\$100K	28.3%	32.1%	30.3%	28.9%	30.1%
>\$100-\$150K	10.5%	10.3%	9.2%	10.4%	18.4%
>\$150-\$200K	3%	4.8%	3%	3.2%	10%
More than \$200K	2.7%	3.8%	9.8%	3.3%	13.9%
Female (%)	93.1%	97.3%	98.1%	93.9%	48.7%
Nativity					
Foreign-Born	79.1%	88.9%	67.4%	79.3%	45.2%
Naturalized Citizen (Foreign-Born)	42.2%	23.6%	26.5%	39.2%	54.5%
Not a Citizen (Foreign-Born)	36.9%	65.3%	40.9%	40.2%	45.5%
Age Distribution					
18-29	9.2%	10.7%	28.3%	10.7%	24.9%
30-39	15.4%	22.4%	10%	15.8%	25.9%
40-49	23.6%	31%	20.2%	24.1%	20.6%
50-59	28.4%	20%	34.9%	28%	17.7%
60-69	20%	11.7%	6.7%	18.2%	9.1%
70+	3.4%	4.3%	0%	3.3%	1.9%

Table 2. continued

	Home Care Aides	House Cleaners	Nannies	Care Worker Total	All Worker Total
Language					
Spanish	32.4%	68.9%	28.5%	37.2%	23.8%
English	34.8%	18.2%	50.5%	33.7%	51.7%
Chinese	8.8%	2.1%	3.1%	7.4%	5.7%
French	7.1%	1.6%	2.5%	5.9%	2.8%
Russian	6.9%	1.1%	1.6%	5.6%	2.6%
Sub-Saharan Africa	4.8%	0%	2%	3.9%	1.1%
Race and Ethnicity					
Hispanic of Any Race	34%	67.7%	31.6%	37.4%	27.1%
Black non-Hispanic	37.2%	8.3%	35%	34%	21%
Asian non-Hispanic	14%	6.8%	19.9%	13.6%	14.4%
White non-Hispanic	11.7%	13.7%	11.6%	11.9%	34.7%
Other Race non-Hispanic	1.5%	2.1%	1.9%	1.6%	1%
Mixed Race non-Hispanic	1.5%	1.4%	0%	1.4%	1.7%
Household Composition					
Single Earner Household	34.7%	39.4%	34.9%	35.2%	32.7%
More than One Family Household	11.2%	19.6%	13.7%	12.2%	14.4%
Multigenerational Household					
One Generation	27.5%	27.3%	22.3%	27.1%	40.5%
Two Generations	53.2%	54.6%	56.1%	53.5%	48.2%
Three or More Generations	18.9%	17.7%	18%	18.7%	10.7%

Table 2. continued

	Home Care Aides	House Cleaners	Nannies	Care Worker Total	All Worker Total
Dependents					
Own Children in Household	56.9%	61.5%	39.3%	56.2%	37.9%
Own Children under 5 in Household	8.5%	13.9%	7.3%	9%	11.1%
Health Insurance					
Private Health Insurance	45%	28.9%	39%	42.8%	69.6%
Public Health Insurance	54.1%	44.4%	45.8%	52.5%	24.7%
Health Insurance Enrollment	90.4%	63.3%	82.8%	87%	89.6%
Financial Status					
Below NYC Poverty Threshold	26.1%	35.4%	29.2%	27.6%	17.9%
Public Assistance (SSI, AFDC, GA)	5.1%	4%	1.5%	4.7%	1.4%
SNAP	37.1%	33.6%	22.7%	35.7%	15.5%

Source: Authors' analysis of the 2016 American Community Survey, obtained from IPUMS-USA, University of Minnesota, www.ipums.org and the 2015 American Community Survey Public Use Micro Sample as augmented by NYC Opportunity.

Notes: Numbers reflect rounding. French includes Patois and French Creole. Sample restricted to the population 18 and over reporting an occupation.

Definitions: SSI is Supplemental Security Income. AFDC is Aid to Families with Dependent Children. GA is General Assistance. SNAP is Supplemental Nutrition Assistance Program.

Table 3. Care workers as a percentage of all workers in New York City within selected social and demographic categories, 2016

	N	Home Care Aides	House Cleaners	Nannies	Total
Female	2,136,754	6.4%	0.8%	0.6%	7.8%
Foreign-Born	1,981,055	6%	0.8%	0.4%	7.2%
Household Income					
Less than \$25K	426,428	7.9%	1.1%	0.5%	9.5%
>\$25-\$50K	782,439	5.8%	0.5%	0.4%	6.7%
>\$50-100K	1,321,342	3.3%	0.4%	0.3%	4%
>\$100-150K	807,610	1.9%	0.3%	0.2%	2.4%
>\$150-200K	440,083	1%	0.2%	0.1%	1.3%
More than \$200K	607,154	0.6%	0.1%	0.2%	0.9%
Age Distribution					
18-29	1,091,011	1.2%	0.1%	0.3%	1.6%
30-39	1,135,219	2%	0.4%	0.1%	2.5%
40-49	903,853	4%	0.7%	0.3%	5%
50-59	775,917	5.6%	0.5%	0.6%	6.7%
60-69	396,998	6.4%	0.5%	0.2%	7.1%
70+	82,058	4.5%	0.5%	0%	5%
Race and Ethnicity					
White non-Hispanic	1,523,209	1.1%	0.1%	0.1%	1.3%
Black non-Hispanic	922,340	5.8%	0.2%	0.5%	6.5%
Asian non-Hispanic	630,134	3.2%	0.2%	0.3%	3.7%
Other Race non-Hispanic	45,375	5.6%	1%	0.6%	7.2%
Mixed Race non-Hispanic	75,027	3.4%	0.4%	0%	3.8%
Hispanic of Any Race	1,188,971	4.1%	1%	0.4%	5.5%

Source: Authors' analysis of the 2016 American Community Survey, obtained from IPUMS-USA, University of Minnesota, www.ipums.org.

Notes: Sample restricted to the population 18 and over reporting an occupation (N = 4,396,470).

Table 4. Characteristics of households receiving paid care services in New York City

	Home Care	Childcare	Housecleaning	Total
Service Used by Household	26.9%	18.9%	54.3%	--
Respondent Knows about Domestic Workers' Bill of Rights	33%	36%	30%	31.7%
Respondent Race and Ethnicity				
White non-Hispanic	47.6%	37.5%	65.1%	54.8%
Black non-Hispanic	28.6%	18.8%	8.4%	15.9%
Asian non-Hispanic	7.1%	3.1%	7.2%	6.4%
Other Race non-Hispanic	2.4%	6.3%	1.2%	2.6%
Mixed Race non-Hispanic	3.6%	9.4%	1.5%	4.5%
Hispanic of Any Race	11.9%	26%	14.5%	15.9%
Household Income				
\$0-\$50K	43%	39%	26%	34%
>\$50-\$150K	46%	32%	46%	43%
More than \$150K	11%	29%	28%	23%
Respondent or Family Member Plays Role in Setting Pay, Hours, or Time Off	53.3%	84.9%	67.7%	67.3%
Sources Respondent Consulted in Setting Employment Terms				
Personal Networks	54.2%	75%	42.9%	53%
Government Agency	25%	21.4%	4.8%	13%
Worker	16.7%	35.7%	58.7%	44.4%
Online Sources	12.5%	28.6%	1.6%	10.4%

Source: Authors' analysis of the New York Domestic Employment Survey; for further background, see Pinto S, Wernick L, Jacobson A, Sunshine N. *My Home is Someone's Workplace: Re-envisioning Domestic Employment in New York State* [Internet]. 2017 Jun [cited 2018 Mar 1]. Available from: http://domesticemployers.org/wp-content/uploads/2017/06/Hand_in_Hand_Report_061217_web.pdf

Notes: Respondents consist of persons 18 or older who arrange for paid care for their own household or that of a family member or other close connection: http://domesticemployers.org/wp-content/uploads/2017/06/Hand_in_Hand_Report_061217_web.pdf

These shifts in the racial and ethnic composition of the paid care workforce have been driven by the gradual opening of more professional opportunities outside of the home for white women, and later women of color, in addition to changes in the racial and ethnic composition of the city's population.

New York City's workforce has a high percentage of foreign-born workers (45%), and paid care workers comprise 7.2 percent of that group; the vast majority of care workers in the city today are foreign-born (79%) (see Tables 2 and 3, pages 15 and 18). White U.S.-born workers comprise only 2.7 percent of paid care workers, though they make up 26 percent of all New York City workers.¹⁸ Like many foreign-born workers across professions, foreign-born care workers often encounter barriers, such as discrimination, in hiring and promotion. Additionally, being foreign-born makes it more likely that care workers are supporting family abroad. Sixty percent (60%) of respondents in DCA's survey reported sending money to children or other family members outside of the United States.¹⁹


For many of the 40 percent of New York City paid care workers who are not U.S. citizens, immigration status is an ever-present concern. Those who lack federal work authorization are often shut out of employment opportunities, have compromised access to the social safety net, and are channeled toward off-the-books employment as the only option for making a living that does not involve reporting personal information to the federal government. Organizers and workers have reported that, similar to other industries heavily comprised of undocumented workers, the threat of deportation is a common form of retaliation, causing widespread fear of coming forward with rights violations.

“We have to kill ourselves providing a much-needed service ... What I make, honestly, can't even pay my rent ... You will not survive without assistance.”²¹

Due to low wages, care workers face severe financial challenges, including an inability to provide for their own and their families' basic needs. Of those New York City workers who are members of households with less than \$25,000 in annual income, 9.5 percent are care workers. Fifty-nine percent (59%) of care workers who participated in DCA's survey reported struggling to cover expenses; 22 percent reported having to borrow or going into debt in the past year in order to cover their expenses.²⁰ In focus group discussions, home care aides, nannies, and house cleaners reported coping with low incomes by borrowing, relying on charity and government programs, and overcrowding shared living spaces.

In short, paid care workers are some of the city's most vulnerable workers. They are poor women of color—most often immigrants, many undocumented. They may have access to limited employment opportunities outside of paid care work and, in turn, have the least bargaining power with employers. Their demographic profiles contrast sharply with those who are receiving their care, exacerbating the power imbalance between worker and employer. Fifty-five percent (55%) of care recipients identify as non-Hispanic Whites, 16 percent as Hispanic, 16 percent as non-Hispanic Blacks, 6 percent as non-Hispanic Asian, and 7 percent as non-Hispanic Mixed or Other Race (see Table 4, page 19).

The population of New Yorkers receiving care is diverse in terms of income, though this varies by paid care sector. Recent survey data suggests that New York City households receiving home care tend to have lower incomes than households receiving housecleaning or nanny care, a reflection of the wider availability of public financing for home care (see Table 4).



II. Care work is a calling for some, a job for all

The physical and emotional labor that care work entails is difficult

The combination of physical and emotional labor involved in care work, and the fact that it takes place inside private homes, is perhaps the distinguishing characteristic that sets care work apart from other forms of labor. The personal connection between care worker and care recipient forged through this labor is also unique and fundamental to the meaning many workers derive from this work. Yet, these very characteristics unique to care work—its physical and emotional intimacy, along with the historical trivialization of the work as unpaid “women’s work”—contribute to the perception that care work is not a profession or “real” job.²² In reality, however, many care workers consider themselves professionals. And many care workers continue in care occupations for years, some for their entire working lives.

Moreover, though intimacy was generally reported by focus group participants to be a positive aspect of the work, it is not without challenges—physical and emotional. The work is physically demanding, whether it be lifting an elderly person into a bath, pushing a 30-pound child in a stroller, or scrubbing floors on hands and knees. And emotional intimacy is laborious. Scholars and organizers have noted that the demand for “emotional labor” can be experienced as an extra burden, pressuring workers to feel certain ways or manage difficult emotional

attachments in addition to completion of specific tasks.²³ Babies cared for by nannies go off to school; the elderly pass away. Care workers can experience the loss of a care recipient as tantamount to a loss in their own family.

“A friend of mine had a dementia patient ... Every time it was bath time or she wanted to take her medicine, the woman would physically attack her. And she would call the agency and they were like, ‘Oh she’s an old lady, she has dementia ...’ And my friend is getting beat up!”²⁹

In New York City, the physical toll taken by this work starts with where it takes place: the private home. Because clients often live far from public transportation hubs, care workers tend to experience unusually long commutes.²⁴ Further, care workers may encounter chemical hazards at work, primarily in the form of toxic cleaning supplies.²⁵ And home care aides suffer elevated rates of workplace injury,²⁶ especially from lifting and moving clients.²⁷

Care workers also sometimes suffer physical abuse by their care recipients. For example, a senior suffering from dementia might direct the aggression that can be symptomatic of this disease²⁸ toward their home care aide in the form of physical attacks. When confronted with such abuse, care workers, including those employed by agencies rather than individual households, have limited options.

The emotional labor of care work is equally trying. And care workers generally do not have co-workers in their physical workplace, contributing to an experience of social isolation for much of the working time. The emotional labor of care work can also include enduring behavior that is disrespectful or psychologically abusive.

For example, though there might be moments of autonomy throughout a single day, the words of one house cleaner reveal the micromanagement and second-guessing some employers exhibit:

*A lot of times the person [client] is in the house and asking, ‘What are you doing, why are you doing it that way?’ ... I don’t like it when they follow me around. And I don’t like it when they don’t recognize my work.*³⁰

In sum, the physical and emotional labor that characterizes care work—and the intimacy the work involves—can be rewarding, but it is not without costs. Further, the lack of sufficient support from agencies when a worker is physically or emotionally abused renders paid care workers susceptible to being taken advantage of at work, putting them in catch-22 positions with respect to care for their charges versus their own protection.

Low pay, unpredictable hours, and labor law violations are commonplace for care workers

The difficult physical and emotional labor that paid care work entails is rarely acknowledged in the terms and conditions of workers’ employment. Care workers suffer from low compensation and uncertain and unpredictable hours and employment terms. They also are frequently victims of labor and employment law violations.

Care jobs pay at or close to the minimum wage; some provide benefits

Low wages are the norm for care workers. Sixty-five percent (65%) of survey respondents reported earning less than \$2,000 monthly, which is consistent with Census Bureau estimates (see Table 2, page 15).

Among survey respondents, home care aides typically reported earning the legal minimum, which was \$11 per hour at the time of the surveys. Wages of \$13 to \$15 per hour were common for nannies and house cleaners.³¹ Evincing the dire employment prospects to which these employees have access, several house cleaner and nanny focus group participants described their pay as favorable to that of the other opportunities available to them and as one of the most desirable aspects of their job, despite wages for these jobs being empirically low.³²

Compared to nannies and house cleaners, home care aides tend to have better access to benefits. This difference is partly explained by the fact that agency employment is typical for home care workers (as opposed to direct household employment, which is more common for nannies and house cleaners). However, the high level of union membership among home care aides, especially within 1199SEIU, is principally responsible for this difference. Under 1199SEIU's contracts with home care agencies, which cover tens of thousands of New York City agency home care aides, aides earn the minimum wage (currently \$13 per hour) and receive a package of paid time off; shift differentials; and health, retirement, and education benefits valued at \$4.09 per hour.³³ Under a State law lobbied for by 1199SEIU and others, most agency home care aides who care for Medicaid enrollees are entitled to a package of wages and benefits of similar value to that provided by 1199SEIU contracts,³⁴ though violations of this requirement among non-union agencies are suspected to be widespread (see sections III and IV). Benefit packages for house cleaners and nannies, who are typically direct household employees, are exceedingly rare.

“We end up doing work beyond our responsibilities ... If you don't do these things, they ask to replace you with someone else.”³⁷

Duties and hours worked are at the whim of employers

Focus group discussions with New York City home care aides, house cleaners, and nannies revealed a lack of respect from employers and feelings of frustration that their labor is not better appreciated or recognized.

Many paid care workers are altogether excluded from setting the terms of their employment. Of households in New York City that receive paid care, 66 percent both pay the care worker directly and play a role in setting terms, such as pay, hours worked, and time off. Of these, 56 percent did not consult the worker when doing so.³⁵ And whether or not the care recipients themselves set the terms of employment, they have tremendous power to direct the work and control the work environment.

Too often, this power manifests in employers' disregard for initial agreements made between them and care workers limiting the scope of work and in long and unpredictable hours. Care workers are frequently asked to perform tasks that they did not agree would be part of their duties at the start of employment. Care workers feel as if they must be at the employer's beck and call. In the words of one nanny:

*They will tell you when you go on the interview, 'You're only here to take care of my child.' But as time goes on ... (t)hey will be like, 'Can you do me a favor?' ... I have lived this, every day. It's happening on the current job.*³⁶

Care workers' sense of professionalism, dedication, and emotional attachment to their clients can also hinder workers' ability to assert their rights. In the words of one home care aide:

*I'm not going to just up and leave, even though I'm approaching that four-hour mark and I'm still cooking and cleaning behind the toilet, or at a doctor's appointment where you sit for ten hours. I don't like that it doesn't matter, that I will not get an extra quarter. But I'm going to do it regardless.*³⁸

Additionally, care workers reported that they are expected to be flexible about their employers' schedules, but are not afforded the same flexibility. The number of hours paid care workers work varies widely and, along with last-minute schedule changes, is often a source of frustration. Among survey respondents, 46 percent said they were satisfied with the number of hours they work in a week, with 38 percent wanting to work more hours and 16 percent wanting to work fewer hours. Fifty-eight percent (58%) said they are asked to come in early or leave late to accommodate their client's schedules.³⁹

Shifts can also be long. Some home care aides work 24-hour shifts, often for days at a time. The prevailing practice—currently being challenged in court by workers—is to pay employees for only 13 out of 24 hours.

Violations of workplace laws are commonplace

The power imbalance between workers and clients or employers culminates in employer violations of labor and employment laws. The most comprehensive study of workplace violations in New York City to date found that 50 percent of nannies and 26 percent of housekeepers interviewed had experienced a minimum wage violation in the prior week. Though home care aides were less likely to receive subminimum wages (8.4%), they experienced overtime violations in the prior week at a rate (84%) nearly identical to that of nannies and house cleaners (83%). Findings regarding the prevalence of off-the-clock work were similar to those for overtime violations.⁴⁰

“There is danger if we speak up. They will kick us out of the job the next day, they will say, ‘Someone else will come,’ because there is a lot of competition.”⁴⁴

Survey respondents reported experiences consistent with these earlier findings. When asked about sick time violations, wage theft, harassment and discrimination, and fear of retaliation, 50 percent reported experiencing one or more of these abuses.⁴¹

DCA's survey indicated pervasive abuses, but likely underestimated true violation rates, due to methodological differences between this survey and the earlier research. Further, in DCA's survey, 48 percent of nannies and house cleaners reported receiving cash payment with no tax documentation.⁴² This form of payment makes care workers susceptible to minimum wage, overtime, and other violations.⁴³

Employers' power to reduce work hours, terminate employment with little or no notice, or change work hours at the last minute without compensation are characteristic of paid care jobs. This insecurity is exacerbated by the fact that violations of basic labor and employment laws are rampant within care industries. That said, important gains have been made in working conditions over the last decade, due in large part to organizing and policy successes by care workers who have won significant victories in legal protections in their fight to raise standards in the industry.

III. Care workers have won landmark victories in recent years to establish new legal rights

The difficult labor that care work entails, the low economic value society assigns to that labor, and challenging working conditions all send care workers the message that they are viewed as “servants” and “at the bottom rung of the society.”

In their struggle to have their work regarded with dignity, care workers seek to push back on this perception. And their desire for a more respected social role extends beyond the setting of the client’s home into the social life of communities and nations.

Over the past decade, paid care workers have secured a number of landmark policy victories in their different sectors, amounting to significant changes in the industry as a whole. Collectively, these successful initiatives have expanded the set of workplace rights and protections available to care workers, reduced the disadvantages they face relative to workers in other occupations, and improved the quality of many care jobs.

Important milestones include:

- 2010 enactment of the Domestic Workers’ Bill of Rights (DWBOR) in New York State
- 2011 enactment of the New York State Home Care Worker Wage Parity Law (Wage Parity Law)
- Coverage under the New York City Earned Sick Time Act (Paid Sick Leave Law or PSL) of 2014
- 2015 extension of federal overtime protections to home care aides
- Achievement of sharply higher State minimum wages, the implementation of which began in 2016
- Court decisions requiring the payment of wages on 24-hour shifts in 2017

As paid care workers build momentum for change in the industry, and seek to make their vital role in society more visible to the public, even employers have begun to organize in support of workers’ fight for higher workplace standards that are commensurate with the real value of paid care work.



The Domestic Workers' Bill of Rights extended New York State wage and hour protections to direct household employees

Enacted in 2010, the DWBOR represents the culmination of years of sustained organizing by domestic workers and the New York Domestic Workers Justice Coalition, anchored by Domestic Workers United, in particular. The first law of its kind in the nation, this legislation guaranteed domestic workers:

- Overtime pay (time-and-a-half for working more than 40 hours per week, or 44 hours for live-ins)
- A day of rest every seven days (or overtime pay, if workers agree to work on the rest day)
- Three paid rest days per year after one year of work with the same employer
- Coverage under the New York State Human Rights Law in cases of discrimination and harassment

Before the DWBOR, certain domestic workers could only receive overtime payment at a rate of one-and-a-half times the minimum wage instead of one-and-a-half-times their regular hourly rate of pay. Because the State Human Rights Law only applied to employers of four or more workers, these domestic workers were not protected against discrimination or harassment. They were also not covered under the Workers' Compensation Law.

The DWBOR win is particularly meaningful in light of domestic workers' exclusion from many laws governing labor and employment (see Section IV). Enactment in New York spurred several other states to enact similar measures, such as California, Connecticut, Hawaii, Illinois, Massachusetts, and Oregon; brought the working conditions of domestic workers to more widespread public attention; and contributed to the development of the National Domestic Workers Alliance (NDWA), a national formation that amplified local efforts and created larger-scale campaigns.⁴⁵

The Wage Parity Law substantially raised home care aides' wages and benefits

Prior to 2012, Medicaid home care in New York City was split into two principal sectors with starkly different labor standards.

1. *Workers caring for clients enrolled in a home care program administered by the NYC Human Resources Administration (HRA)* received regular wages of \$10 per hour, along with a package of benefits and paid time off worth approximately \$4 per hour worked (further background on City-administered home care programs is provided in Section IV). This standard was maintained by the high level of unionization among HRA contractors, the minimum wage and benefit requirements under the New York City Living Wage Law, and the HRA policy of reimbursing home care agencies at cost, removing their incentive to drive down aides' compensation.
2. *Workers caring for clients in home care programs that operated without City oversight* lacked these protections, earning \$8 per hour or less and with little or no paid time off or benefits.

The Home Care Worker Wage Parity Law (Wage Parity Law), included as a provision within the 2011-2012 New York State Budget, was designed to raise compensation levels for workers within these less-regulated programs so that they equaled compensation levels in the City-administered programs. Specifically, the Wage Parity Law gave most workers caring for Medicaid clients in New York City the right to a minimum rate of total compensation, inclusive of wages, benefits, and paid time off, regardless of which home care program their client was enrolled.

In 2016, the State amended the Wage Parity Law to ensure that workers' benefits and paid time off would not be eroded to pay for increases to the minimum wage. On December 31, 2018, when the hourly

minimum wage first reaches \$15, most home care aides in New York City will be entitled to \$19.09 per hour in total compensation.⁴⁶

The New York City Earned Sick Time Act provides paid sick leave for domestic workers

On April 1, 2014, the Earned Sick Time Act (Paid Sick Leave Law or PSL) went into effect in New York City. The law requires employers of five or more employees to provide up to 40 hours of paid sick leave per calendar year, and employers with fewer than five employees must provide up to 40 hours of unpaid leave. Domestic workers receive special protection under the law: they are entitled to two days of paid sick leave per calendar year regardless of whether or not their employer employs other workers.⁴⁷ Between PSL and the DWBOR amendments to the New York State Labor Law, after one year of employment, domestic workers should now receive up to five days of paid leave per calendar year: two days of paid sick leave in addition to three days of paid rest.⁴⁸

The elimination of the “companionship exemption” extended federal overtime protections to home care aides⁴⁹

Until 1974, care workers were excluded from the federal Fair Labor Standards Act’s (FLSA) protections in what has long been recognized as a racially motivated policy. In response to campaigns led by domestic workers, who had joined together through organizations such as the Household Technicians of America and the National Domestic Workers Union, the United States enacted an amendment to the FLSA in 1974.⁵⁰ The amendment expanded the FLSA’s protections to care workers, with the exception of those workers providing “companionship” to the aged or infirm. Until 2013, the U.S. Department of Labor broadly interpreted this exemption, classifying most home care aides as falling outside the FLSA. In 2013, the Obama administration issued rules that significantly narrowed the exemption definition of “companionship.” Now, workers would be covered by the FLSA if they spent more than 20 percent of their time providing personal care services to individuals. The final rules, which went into effect in 2015, also prohibited third-party employers, such as home care agencies, from claiming the companionship exemption. In 2015, the rule withstood a legal challenge in court, capping workers’ 80-year struggle for wage and hour protection on par with other workers.⁵¹ The new rules now extend FLSA coverage to virtually all home care workers.

The phase-in of the \$15 minimum wage is driving an unprecedented increase in care workers’ earnings

Wages for care jobs in New York City are on the rise due to sharp increases in the State minimum wage. This is especially true of home care aides, most of whom were entitled under the Wage Parity Law to \$10 per hour prior to these minimum wage increases. Currently at \$13 per hour, and scheduled to rise to \$15 at the end of 2018, the minimum wage increases effectively deliver a 50 percent raise over two years. Analysts estimate that workers in the home-based and residential care, social assistance, and child care industries—which include most care workers—comprise 14 percent of the workers in New York City benefiting from the ongoing minimum wage increases.⁵² These additional earnings will be most pronounced for home care aides, because employers in that sector already generally track the legal minimum wage. Though the impact on nannies and house cleaners, who tend to have more informal employment arrangements,⁵³ is less certain, evidence suggests that their wages will also increase as effects of minimum wage increases tend to ripple throughout the low-wage labor market.⁵⁴

Care workers benefit from this victory, and have been integrally involved in supporting progress at every step of the way. Through their local’s affiliation with the Service Employees International Union (SEIU), the New York City home care aide members of 1199SEIU were pivotal in supporting the national Fight for \$15 from its earliest stages⁵⁵ and campaigned successfully for enactment at the State level.⁵⁶ Recognizing the need to raise wages across industries, the NDWA supported the effort, as well, bringing together unionized and non-unionized care workers.⁵⁷

Recent court rulings have upheld home care aides' rights to payment for all hours they are required to be in the home, though litigation continues

The struggle for home care aides to receive payment for all hours worked represents the most contentious current battle in the struggle to expand care workers' rights under the law.

In 1960, the New York State Department of Labor (NYSDOL) issued rules regarding residential employees, defined as "those who lived on the premises of the employer." The rules excluded employees' regular sleep hours from the definition of "hours worked," even if the employee was required to be on call at the employer's residence.⁵⁸ Over time, through opinion letters and interoffice memoranda, NYSDOL expanded the rule to include nonresidential employees working shifts of 24 hours or more and excluded three hours of meal periods, in addition to eight sleeping hours, from the computation of "hours worked" by those employees.⁵⁹ As a result of NYSDOL's position, nonresidential home care employees are paid for only 13 out of 24 hours worked as a standard practice.

In 2017, in response to lawsuits brought by employees of home care agencies, the New York State Appellate Divisions for the First and Second Departments issued three decisions rejecting NYSDOL's interpretation of this rule. The courts found that NYSDOL's position contradicted the plain language of the 1960 Wage Order because it did not distinguish between residential employees, who lived on the employer's premises, and nonresidential employees working shifts of 24 hours or more.⁶⁰ All three court decisions required that the home care aides be paid for all 24 hours of work because they did not qualify for the residential employee exemption and were "required to be available for work" while eating and sleeping.⁶¹ NYSDOL immediately issued an emergency rule that codified the exclusion of up to 11 hours of meal and sleep breaks when calculating "hours worked" by nonresidential employees.⁶² As of March 2018, at least two of the appellate court decisions have been certified for appeal to the Court of Appeals, the State's highest court, and NYSDOL's emergency wage order is being challenged in the courts by the Chinese Staff and Workers' Association and the National Mobilization Against Sweatshops, both worker organizations, and Ignacia Reyes, a home care aide.⁶³ The fate of the rule, and whether home care employees will ultimately be paid for all 24 hours, is unclear.

Employers are standing up in support of care workers and their fight for better jobs

Several organizations have begun targeting employers for education and outreach as a strategy for raising standards and pursuing policy campaigns centered on raising the quality of care jobs.

In 2010, the domestic employers who had participated in the DWBOR Campaign, with the help of Jews for Racial & Economic Justice and the NDWA, launched Hand in Hand, a national organization of household employers dedicated to making improvements in employment practices in the care industry. Within home care, the New York City-based PHI (Paraprofessional Healthcare Institute) advocates for the link between quality jobs and quality care. PHI works closely with employers to provide training and related services to enhance the roles played by home care and other workers within the health care system.

At the neighborhood level, community groups like Park Slope Parents provide a range of tools and information to parents designed to help them understand and implement employer best practices. More recently, employer stakeholders have formed the New York Caring Majority, a coalition to advocate for expansion of public coverage for home care together with workforce investments to create quality home care jobs across New York State.



IV. Frequent violation of care workers' rights remains a pressing challenge in raising standards for care work

Though legislative victories established new legal rights and protections for care workers (with the question of payment for 24-hour shifts still pending), frequent violations of these rights, and challenges to effective enforcement by government and private actors alike, have prevented workers from fully benefiting from these laws. With wage and hour violations among low-wage workers already rampant, the unique nature of paid care work—in private homes, generally without any direct oversight, and with workers laboring in isolation from others—exacerbates an underlying problem.

Paid care workers' access to their hard-won rights is largely shaped by their employment arrangements: whether they are employed by an agency, which is common for home care aides, or directly by individual households, typical for nannies and house cleaners. Public financing for home care has encouraged agency employment for most home care aides. Individual households, which employ most nannies and house cleaners, rely on private financing. While litigation against home care agencies is all too common, suggesting high rates of violations in the industry, nannies and house cleaners employed directly by a family are often reluctant to bring a legal challenge in the first place and, when they do, they may have trouble finding legal representation due to the relative low dollar value of their claims.

Although the ways in which workers experience violations and their options for redress may be unique to the employment arrangement, the too-frequent nature of those violations, and the difficulties government and the private sector have experienced in trying to change this culture of noncompliance, are common across different kinds of care work.

Agency employment provides important protections and opportunities that have made access to rights within reach, but not always within grasp

Employment, Financing, and Regulation

Home care aides comprise the largest contingent of paid care workers in the city. The high demand for home care is driven by the growing population of seniors and people with disabilities who require extensive care. And the prevalence of agency employment is, in large part, a result of the long-standing preference for agency-delivered home care within New York's Medicaid program, typically the only source of funds available to households in need of ongoing care.

Home care agencies play crucial administrative and quality assurance functions. The delegation of these functions to agencies is particularly important to clients who are unable or unwilling to take on the responsibilities of an employer. Though private agencies are also present in the house cleaning and child care markets, agency employers are less common outside of the home care industry.

In agency home care, workers are hired directly by Licensed Home Care Services Agencies (LHCSAs), which obtain their licenses from the State Department of Health. There are approximately 700 LHCSAs approved to serve clients in New York City.⁶⁴ LHCSAs typically receive payment from the client's Medicaid-managed long-term care plan, which operates under contract with the State to manage the set of medical and supportive services covered by Medicaid. LHCSAs also receive payment from:

- Medicare, which covers short-term skilled home care following hospitalizations
- HRA, which contracts with LHCSAs for the care of approximately 5,000 Medicaid home care clients who are exempt from the requirement to enroll in managed care⁶⁵
- NYC Department for the Aging (DFTA), which contracts with home care agencies to provide home care to low-income New Yorkers who are not Medicaid-eligible, including 3,000 clients in New York City⁶⁶

Private households also pay for agency home care out of their own resources and sometimes have coverage under private insurance products, though this is uncommon.

Implications for Job Quality

Agency home care provides workers with a set of protections and potential tools distinct from those available to most other care workers in the city. In particular, the high level of government regulation, together with dependence on public financing, mean that most employment is administered by Human Resources departments. Agencies report their payroll to the government. Documentation of wage rates, hours worked, social insurance contributions, and tax withholding are all commonplace, and workers must clear a State-administered criminal background check to be hired.⁶⁷ Though these practices provide important protections for workers, consumers, and help safeguard against misuse of public funds, they also mean that certain prospective workers do not have access to agency jobs. In particular, immigrants who are not authorized to work in the United States and people with certain types of criminal histories are legally prevented from obtaining these jobs.

Critically, government financing gives policymakers important tools to improve job quality and monitor compliance with laws. As mentioned, recent increases in the minimum wage are raising earnings. New York

Spotlight: Lisa, Home Care Worker

My name is Lisa. I am originally from Costa Rica but now live in Queens, NY. I am a single mom of six and just recently became a grandmother while I also care for my mother.

I currently work in Nassau, NY and am a proud member of 1199SEIU.

I am a hospice home attendant with over 30 years of work experience.

I find my job very rewarding and am happy that I bring smiles to the faces of my clients, and help make their lives easier. I try to bring dignity to my clients' lives. However, sometimes people degrade me, my work and other colleagues as though we're somehow beneath others in our industry.⁶⁸

Note: This report spotlights three worker-leaders. Their experiences are shared by many throughout their industries.



State further requires that agencies compensate workers at levels above the legal minimum wage when caring for Medicaid clients (see “Wage Parity Law” in Section III).⁶⁹ Relative to direct household employment, agency employment facilitates greater collective action and qualifies workers for protection under the National Labor Relations Act.

Yet, despite these potentially useful tools that accompany agency employment, violations of workers’ rights are still common within much of the industry.

The Wage Parity Law took effect in 2012, and there have been substantial increases in State appropriations to enable agencies to cover the associated costs.⁷⁰ But, due to the law’s complexity and the lack of notice and disclosure requirements, workers have little ability to discern whether or not their employer is in compliance with the law’s benefit and paid time off provisions, posing a substantial challenge to both complaint-based and private enforcement. There is a broadly shared concern within the industry that many agencies, particularly those that are not governed by a collective bargaining agreement, are paying home care aides at rates below the required minimums. In fact, numerous private lawsuits have been filed against agencies by employees seeking the wages and benefits due to them under the Wage Parity Law.⁷¹ To date, New York State has not announced having taken any action to remedy noncompliance with the law.

Violation and compliance rates are also influenced by whether the workforce is unionized, since unionization often means a more expeditious means of dispute resolution.⁷²

Too often, agencies violate their workers’ right to join the union of their choice free from coercion and retaliation. Though unions frequently file charges with the National Labor Relations Board (NLRB) alleging that home care employers engage in illegal conduct, the consequences to agencies for violating workers’ right to organize are ultimately too weak to deter violations. Among other problems, the NLRB does not have the authority to issue traditional fines or penalties for violations.⁷³

A 2016 court order against one of the city's largest home care agencies illustrates the range of tactics employers pursue. Among its unlawful practices, the employer in the case was charged with telling employees they had to join a particular union; threatening to withhold health insurance or raises if employees refused; giving the impression of surveillance by posting guards outside the agency's offices; encouraging membership in a particular union through telephone calls and home visits.⁷⁴

Finally, it is the prevailing practice in the home care sector to pay workers assigned to 24-hour shifts for only 13 hours of work, relying on guidance from the State⁷⁵ to discount workers' sleep and meal breaks even though, during such "breaks," the worker is required to remain at the client's residence, ready to tend to the client's needs at any moment. Though the State's guidance directs agencies to pay workers when the workers provide active care to clients during meal or rest periods or are not provided with adequate sleeping facilities,⁷⁶ these worker protections are infrequently honored, with workers receiving 13 hours of pay as a matter of course. As described by one focus group participant:

My cousin does live-in, and this woman [the client] does not sleep. Does not sleep at all. She is up all day, all night. She'll take a little catnap, an hour here, an hour there. She is up all night long. When my cousin works for her, she is there for three days and she does not sleep for three days. And she gets paid \$13 an hour. But she only gets paid for 13 hours out of the 24. If you're leaving your home, your house, your family to be with someone for 24 hours, pay them for 24 hours! If they go to sleep, so what? They're still there, they're still on call. If something happens while they're asleep, they're still responsible.⁷⁷

Direct household employment is often invisible to the government, denying workers important protections

Employment, Financing, and Regulation

Of the households in New York City that receive paid care, 66 percent both pay the care worker directly and play a role in setting terms, such as pay, hours worked, and time off. These households are required to register as employers with New York State if they pay at least \$500 in wages per quarter.⁷⁸ But, more commonly, individual households pay workers "off the books," meaning that payment is in cash without the employer sharing with the worker any official records of the transaction and likely not reporting the transaction to the government.

Among nanny and house cleaner survey respondents, 48 percent reported receiving payment in cash with no tax documentation.⁷⁹ Direct household employment is typical for nannies and house cleaners, a large portion of whom are undocumented immigrants and lack federal work authorization. Workers lacking federal authorization commonly do not have access to agency employment opportunities and, by extension, jobs in the home care industry. For similar reasons, they may not have access to other "on the books" employment.

Implications for Job Quality

Employees employed directly by households are excluded from coverage under a number of workplace protection laws, including:

- Family and Medical Leave Act, which provides workers with the right to unpaid leave due to chronic illness or the need to provide caregiving responsibilities⁸⁰
- National Labor Relations Act, which provides workers with the right to unionize and engage in collective action⁸¹
- Regulations of the Office of Safety and Health Administration (OSHA), the agency which sets and enforces occupational health and safety standards⁸²
- The employer mandate to provide health insurance under the Affordable Care Act⁸³



Spotlight: Adela, Nanny

My name is Adela, and I am from St. Lucia. I live in the Bronx and work in New Rochelle. I am a professional nanny providing quality care and support to advance children's development. I have seven children, ranging from ages 9 to 24. My older children often look out for my younger ones when I am working full time. I have taken quite a few trainings and classes over the years to grow as a professional worker and also as a mom. Some training that has been very useful to me over time include: child development, working through sibling rivalry, and self-care. I am a member leader of the National Domestic Workers Alliance and their We Dream in Black New York Chapter.

I like being able to shape a child's social and emotional skills, and help them

discover the world in a safe environment. Seeing a child do something for the first time and knowing I was responsible for getting them to that milestone is so meaningful—from reading to talking to playing ... The way a child's face lights up, that self-awareness when they have learned and accomplished something new, gives me joy.

I think it's important to have good communication with employers, and in everyone's best interest to have a shared work agreement. Working together can ensure there is consistency in the children's lives. For nannies it's very important for employers to be home on time, and respect our time off the clock.⁸⁴

Although workers are protected against workplace discrimination and harassment under the New York State Human Rights Law, the more expansive City protections against workplace discrimination and harassment do not cover this workforce due to the exclusion of small employers from coverage.⁸⁵

Off-the-books employment makes it easier for employers to evade their obligations under the laws that protect care workers, including DWBOR and PSL. Direct household employees also are covered under the State's unemployment, disability, and workers' compensation insurance programs.⁸⁶ Like other employees, direct household employees should earn credits toward their retirement benefits by paying into the federal Social Security and Medicare systems through employer-administered deductions on their wages.⁸⁷

Paying off-the-books allows employers to avoid the expense of contributing to unemployment, disability, and workers' compensation insurance, as well as Social Security and Medicare on behalf of their employees. And violations of State overtime pay and PSL are difficult to identify without records of hours worked and amounts paid. More mundanely, paying off-the-books allows employers to avoid the administrative work required to comply with employment laws. Yet, despite workers reporting frequent violations of their rights

under DWBOR (including that they and their employers are not familiar with these important protections), there does not appear to be any significant volume of government agency enforcement or private civil litigation to redress violations of the rights afforded by DWBOR. And a recent survey of New Yorkers arranging for paid care for themselves or a loved one found that only 32 percent were aware of DWBOR.⁸⁸ Accordingly, it is not clear that DWBOR has meaningfully changed prevailing practices among households directly employing and paying care workers. This important question requires close study.

While care workers receiving off-the-books payment might seem to receive higher take-home pay than their on-the-books counterparts, it is not without cost. Many focus group participants who were paid off-the-books described being vulnerable to being fired on short notice without access to the social safety net—first and foremost, unemployment benefits while searching for a new job. Off-the-books payment leaves workers with less leverage to insist on respectful treatment, the honoring of employment agreements, or even basic compliance with wage and hour and paid sick leave laws. Workers' inability to earn credit toward Medicare and Social Security for work performed off-the-books may also lead to hardship in retirement. Separate and apart from the economic hardships and legal violations, workers in off-the-books or less formal employment arrangements particularly resented the absence of well-defined job responsibilities and the feeling that the care they provide is insufficiently appreciated.⁸⁹

The Paid Care Division is dedicated to defending the rights of paid care workers, improving the quality of paid care jobs, and strengthening the paid care system.

We support paid care workers in New York through:

■ Public outreach and education

NYC's Resource for Workers:
The Office
of Labor
Policy &
Standards

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V. The establishment of the Paid Care Division is care workers' latest achievement toward realizing higher standards in their industries

The momentum paid care workers have gained over the last decade in realizing legislative changes continues to build and has culminated most recently in the establishment of a Paid Care Division within OLPS. The bill creating the Paid Care Division, the result of sustained efforts by workers and advocates at the City, State, and federal levels to raise standards for care workers, passed the New York City Council in August 2016. The law went into effect in February 2017.

OLPS hired a Paid Care Advocate to lead a multidisciplinary effort, consisting of outreach and education, legal services, enforcement, research, and policy development. In its first year, the Paid Care Division has laid a strong foundation upon which it will continue to strengthen partnerships and to support care workers in building a care industry that recognizes the difficult, invaluable work that care workers perform.

The Paid Care Division established and convened a working group of key stakeholders

In 2017, the Division established and twice convened a standing working group of key stakeholders from paid care industries. Members include domestic worker leaders and advocates, employers, City agencies, unions, and policy think tanks, all of whom have an interest in building and maintaining an interdependent paid care system that provides access to quality, affordable care along with good paid care jobs. (See Appendix B for the membership listing.) Members worked strategically and collaboratively to develop a set of model standards for paid care jobs, listing 14 requirements in six broad categories:

1. Fair Compensation
2. Security and Opportunity
3. Health and Safety
4. Dignified Work Environment
5. Right to Organize
6. No Limitations on Workers' Rights under the Law

These standards are both statements of principal for all to use in their campaigns and negotiations with employers and guidelines for the Division in pursuing its work. Many of the specific requirements are already required by law but often not realized in practice in many care jobs. Other standards go beyond existing legal minimum requirements, affirming that the current framework does not go far enough. These model standards are presented in Appendix A.

The Division has also solicited feedback from the working group on its early performance and recommendations for new initiatives the Division can pursue to make care jobs more closely adhere to the principles outlined in the model standards. The following sections reflect their insights and consultation.

The Division spreads awareness of rights through outreach and education and supports the development of care worker organizations through shared events

In recognition of the reach and authority workers' own organizations have within their communities, in the past year, the Division has prioritized building strong partnerships with worker centers and unions to collaboratively reach workers and inform them of their rights. In its first nine months, the Division engaged with workers and community organizations across all five boroughs at 247 separate events and distributed 120,000 informational worker materials.

Table 5. Paid Care Division outreach, intake, and referral activities, 2017

Outreach Events	247
Participants in Outreach Events	7,589
Informational Materials Distributed	
Paid Care Materials	70,000
OLPS Materials that Include Information on Paid Care	50,000
Total	120,000
Workers assessed by OLPS staff for workplace violations and social service needs	440
Workers referred by OLPS to government agencies, legal service providers, or community organizations for State or federal workplace violations or social services access	20

Notes: Paid care outreach events consist of occasions in which OLPS staff provides information on workplace rights tailored specifically to care workers, including distribution of literature, flyering, rights trainings, workshops, stakeholder meetings, and convenings. The count of participants in paid care outreach events excludes tabling and flyering events.

The Division has also collaborated with over 20 community partners, worker organizations, and City agencies to successfully host three large-scale convenings of care workers. At these convenings, the Division, together with these partners, was able to gather 500 nannies, house cleaners, and home care aides to receive information about available services and resources, participate in know-your-rights programs, practice interview skills, receive negotiation trainings, and discuss shared experiences, challenges, and strategies for how they can raise standards across their sectors.

With the goal of ensuring workers know their rights, and have access to tools to exercise them, the primary focus of the Division's outreach and education efforts going forward will be further development of partnerships with groups organizing and serving paid care workers. The Division will seek to deepen these partnerships through jointly hosted events to engage both workers and employers, identify opportunities to sponsor or support partner organizations' policy and organizing campaigns, and pursue other creative strategies to reach a broad base of paid care workers. In addition, the Division will create multimedia and other communications tools incorporating rights-based messaging crafted with working group members. The Division will also consider recommendations from working group members to:

- Develop a neighborhood-level pilot project that brings together worker centers and private household employers to establish community-level standards of practice

- Conduct public information campaigns centered on the NDWA's and Hand in Hand's "Fair Care Pledge," which concerns minimum job standards for household employees
- Highlight home care agencies that model best practices
- Develop and disseminate worker-focused messaging on protection from retaliation
- Devote City funding to partner organizations to support work that enables workers' full participation in organizing activities in their primary languages, as well as programs that promote racial justice and equity

The Division ensures that DCA devotes resources to enforcement within paid care industries

In 2017, DCA focused its enforcement of PSL on industries that tend to have high rates of labor and employment law violations. OLPS identified the home care industry as its first priority, and launched 40 directed investigations of agencies collectively employing upwards of 33,000 workers. These investigations are ongoing, and investigative findings are anticipated in 2018.

In addition, OLPS pursued an additional 33 workplacewide investigations of home care agencies in 2017 in response to worker complaints. Since PSL went into effect in 2014, home care investigations have made up 10 percent of penalties, 9 percent of total restitution, and 27 percent of the total number of employees receiving restitution under the law.

Separately, OLPS successfully secured \$10,500 in restitution for care workers in three separate PSL cases concerning household employees directly employed by individual households, obtaining restitution under the special provisions within PSL for domestic workers.⁹⁰

Table 6. OLPS Paid Sick Leave enforcement in home care, 2014-2017

Investigations opened	
2017	73
2016	13
2015	26
2014	33
Total	145
Workers awarded restitution	6,183
Total restitution amount	\$477,963
Total employer penalties assessed	\$198,643

Notes: 2017 includes complaint-based and directed (i.e., OLPS-initiated) investigations. Investigations 2014-2016 were all pursuant to complaints filed by employees.



Spotlight: Maria Esther, House Cleaner

My name is Maria Esther. I am originally from Mexico City. I live in Staten Island, NY, and I work as a worker-owner of the Brightly Cleaning Cooperative in Brooklyn, Manhattan and Staten Island. I am also a member of La Colmena Staten Island Community Job Center. I have worked for five years in the cleaning industry.

I like to see the transformation of the house or office where I work, how I receive it and how it is at the end of my work. I like that now in my cooperative business I have control of my schedule and the days I work. I also like the recognition and value that customers give me for my work.

What I do not like about my work is that clients sometimes abuse us workers. Sometimes a client asks us to clean their house and in the end they do not pay us. Often clients do not raise our wage, and at the same time they ask us to do more work for the same pay. Sometimes

they threaten us to intimidate us, to maintain control over the worker. They even threaten to deport us. I have also seen sexual assault against us while we do the work. Customer dishonesty is very common in the industry.

Through my cooperative I have gained more knowledge of workers' rights. Now I know how a business functions and I am learning to manage it. I have more support from organizations that protect workers and help us to open the door to clients that respect the labor of domestic workers. Now I work more confidently in myself, without the fear that the client will take advantage of me and not pay me. Now I am empowered to exercise my rights as a worker in the city. Now I not only help my family with my work, but I also create opportunities for other people in my community by generating jobs and professional and personal development opportunities for other people.⁹¹

In 2018, OLPS will continue its proactive investigation into the paid care industry, which began in the second half of 2017, and prioritize investigation of complaints of PSL violations within home care agencies. DCA will also continue to respond to and investigate complaints from workers in the paid care industry for violations of the City's workplace laws.

The Division ensures that OLPS's legal and referral services meet the unique needs of care workers

In 2017, the Division developed a comprehensive intake and referral system, nested within OLPS's broader program, for connecting paid care workers with the help they need, even in instances when the suspected violation falls outside of OLPS's jurisdiction. OLPS staff has conducted intake and assessment (via phone, in person at OLPS's office, online, and in the field) of 440 care workers for possible violations, resulting in OLPS making 20 formal referrals to government agencies and legal service providers, including 15 for wage and hour violations and two for discrimination violations. The Division also referred care workers to available education and training programs, immigration assistance, free financial counseling and tax preparation, and to worker centers that provide a range of services and support to care workers.

As OLPS's legal services program continues to develop, the Division will assess ways in which this program can best respond to and address the unique challenges that paid care workers face asserting their rights by directly empowering workers with additional tools to realize workplace rights. Such tools may include development of sample demand letters and assistance navigating adjudication processes.

The Division will also look for opportunities to act on working group members' recommendations to strengthen partnerships with other City, State, and federal agencies, ensuring that the full range of employment violations can be countered effectively, even within private households.

The Division conducts research to raise awareness about dynamics in paid care industries and to help tailor the Division's work to the unique needs and circumstances of the city's paid care workers.

The Division places a high value on learning from workers and the organizations they choose to join. In 2017, the Division, in collaboration with several partners, administered surveys of care workers at three large-scale convenings and 12 focus group sessions in order to better understand care work from workers' perspectives. (See Data Sources for Report in Introduction for further detail.)

The data collected indicates that the workers who have engaged directly with the Division in its first year are representative of the city's paid care population in a number of important respects:

1. Overwhelmingly women of color (95%) and foreign-born (93%), survey respondents' most common language was Spanish (47%), followed by English (31%) and Nepali (13%).
2. Like the general population of care workers in the city, a majority were in the 40-60 age range, though survey respondents were somewhat more concentrated in this age range than their peers throughout the city (63% vs. 51%).²²

One notable demographic difference is the overrepresentation of Asian workers in the survey (22%) and underrepresentation of white workers (1%).²³ This discrepancy is largely a result of the ethnic makeup of the existing network of worker and community-based organizations active in care industries in the city with whom the Division partnered on outreach. This finding underscores the importance of shared language and cultural affinity in many workers' approach to organizing and the uneven presence and reach of care worker organizations across communities. Like care workers citywide, those who participated in Division events reported struggling financially and encountering high rates of employment and labor law violations.

Internally, this research provides an important knowledge base to inform the Division's operational and policy priorities and to ensure its efforts are targeted at the issues workers identify as most pressing. Externally, the Division is sharing publicly this report and its companion publication, which focuses exclusively on findings from focus group research.⁹⁴ In the future, the Division will continue to investigate critical dynamics in care industries to inform both the Division's work and the public.

The Division has begun a policy development process, in collaboration with stakeholders, to explore new opportunities for City government to better protect and enhance care workers' rights at work.

In 2017, the Division began engaging stakeholders, primarily through the working group, to develop new ideas for how the City can do more to help care workers enhance and assert their rights. In 2018 and beyond, the Division is committed to continuing its work with stakeholders to prioritize initiatives for further development among the several that were suggested by working group members or others that may arise. Specific suggestions from working group members included:

- Expansion of the New York City Human Rights Law to cover domestic workers
- Exploration of new tactics to address the unique challenges that come with enforcement and ensuring compliance in private households
- Removal of barriers that worker-owned cooperatives and agencies with high labor standards face in competing for City contracts
- Development of new measures to ensure that workforce development programs support fair labor practices

In addition, the Division is monitoring new developments in care industries, including renewed interest in worker cooperatives, the development of portable benefits options for care workers, and the introduction of platform-based housecleaning services that allow consumers to purchase services via a software application, for consideration in future work.





VI. Conclusion

A building movement in New York City and nationwide seeks to bring paid care workers out of the shadows and make them visible to the society that increasingly depends on them, demanding that society recognize their value and translate that recognition into fair working conditions. Recent policy victories now give way to a need for evaluation of how effectively those wins translate into real gains for workers. And stakeholders are working to elaborate the path of these efforts going forward.

In its inaugural year, OLPS's Paid Care Division has undertaken work that underscores much of what stakeholders, workers, and consumers already know: paid care work is vital to the functioning of individual households and the economy; it is performed largely by low-income women of color who are frequently immigrants supporting families abroad; and it is sometimes rewarding, and always difficult and undervalued, as evinced in how it is compensated.

By convening care workers throughout the city and connecting with stakeholders in the industry, the Division has learned a great deal in the past year about the role it can play in supporting workers as they fight to improve working conditions. In 2018, the Division will build on this solid foundation by strengthening partnerships and supporting care workers to shape a care industry that recognizes the difficult, invaluable work that care workers perform. To do this, the Division will bring the specific initiatives highlighted in this report to fruition, creating an anchor for the Division's role—and that of government more broadly—in the fight for higher standards in the paid care industry. Most of all, the Division will seek to deploy the expertise it has built, the relationships it has developed, and its unique role as a government office to contribute in the coming years to a broader societal shift in how New York City and our society at large value care work.

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- ⁴⁷ See N.Y.C. Admin. Code § 20-911-913.
- ⁴⁸ See N.Y. Lab. Law § 161(1) (McKinney).
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- ⁵¹ See *Home Care Ass'n of Am. v. Weil*, 799 F.3d 1084 (D.C. Cir. 2015); National Employment Law Project. Federal minimum wage & overtime protections for home care workers [Internet]. National Employment Law Project; 2015 Sep [cited 2018 Mar 1]. Available from: <http://www.nelp.org/content/uploads/NELP-Fact-Sheet-Companionship-Rules-Reform.pdf>
- ⁵² Cooper D. Raising the New York state minimum wage to \$15 by July 2021 would lift wages for 3.2 million workers [Internet]. Economic Policy Institute; 2016 Jan [cited 2018 Mar 1] p. 39. Available from: <http://www.epi.org/publication/raising-new-york-state-minimum-wage-to-15/>
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- ⁵⁷ Timm J. A Labor Movement That's More About Women. The Atlantic [Internet]. 2016 Aug 25; Available from: <https://www.theatlantic.com/business/archive/2016/08/the-womens-labor-movement/497294/>
- ⁵⁸ 1960 Wage Order, N.Y. Comp. Codes R. & Regs. tit. 12, § 142-2.1(b).
- ⁵⁹ See N.Y. Dept. of Lab. Inter-Office Memorandum (Feb. 1, 1984) (excluding sleeping hours from hours worked by employees working shifts of 24 hours or more); see also, N.Y. Dept. of Lab. Opinion Letter (Oct. 27, 1998) (stating that home health aides must be paid for at least 13 out of 24 hours worked, provided that they receive at least five hours of uninterrupted sleep and three hours for meals); N.Y. Dept. of Lab. Opinion Letter re: Hours Worked by Sleep-In Home Health Care Attendant (June 25, 2002) (allowing exclusion of up to eight hours of sleep, provided that “the employer furnishes adequate sleeping facilities and the employee can usually enjoy an uninterrupted night’s sleep” and “if sleeping time is interrupted by a call to duty, the interruption must be counted as hours worked, and...if the employee cannot get a reasonable night’s sleep (*i.e.*, five hours), all hours are counted as hours worked.”)
- ⁶⁰ See *Tokhtaman v. Human Care, LLC*, 52 N.Y.S.3d 89 (N.Y. App. Div. 2017)) (finding that the NY “DOL opinion conflicts with [the 1960 Wage Order] insofar as the opinion fails to distinguish between ‘residential’ and ‘nonresidential’ employees, and should thus not be followed in this respect”); *Andreyeyeva v. New York Health Care, Inc.*, 61 N.Y.S.3d 280, 280 (N.Y. App. Div. 2017) (finding the DOL’s policy as to nonresidential employees neither “rational nor reasonable” because the nonresidential employees remained “available,” per the plain meaning of that word in the 1960 Wage Order, during sleep and meal times); *Moreno v. Future Care Health Servs., Inc.*, 61 N.Y.S.3d 589 (N.Y. App. Div. 2017) (“To the extent that the DOL’s opinion letter fails to distinguish between ‘residential’ and nonresidential employees, it conflicts with the plain meaning of [the 1960 Wage Order], and should not be followed”)
- ⁶¹ See *Tokhtaman*, 52 N.Y.S.3d at 89 (holding that “if plaintiff can demonstrate that she is a nonresidential employee, she may recover unpaid wages for the hours worked in excess of 13 hours a day”); *Andreyeyeva*, 61 N.Y.S.3d 280 (holding that the proposed class members, “to the extent [they] were not ‘residential’ employees...were entitled to be paid the minimum wage for all 24 hours of their shifts, regardless of whether they were afforded opportunities for sleep and meals”); *Moreno v. Future Care Health Servs., Inc.*, 61 N.Y.S.3d at 590-91 (same).

- ⁶² N.Y. Comp. Codes R. & Regs. tit. 12, § 142-2.1(b) (2018) states, in relevant part, “[t]he minimum wage shall be paid for the time an employee is permitted to work, or is required to be available for work at a place prescribed by the employer However, a residential employee – one who lives on the premises of the employer – shall not be deemed to be permitted to work or required to be available for work: (1) during his or her normal sleeping hours solely because he is required to be on call during such hours; or (2) at any other time when he or she is free to leave the place of employment. *Notwithstanding the above, this subdivision shall not be construed to require that the minimum wage be paid for meal periods and sleep times that are excluded from hours worked under the Fair Labor Standards Act of 1938, as amended, in accordance with sections 785.19 and 785.22 of 29 C.F.R. for a home care aide who works a shift of 24 hours or more.*” (emphasis added to indicate added text).
- ⁶³ Petition, *Chinese Staff & Workers’ Ass’n vs. NY Comm’r of Labor*, WB 17-002 (N.Y. Indus. Bd. of Appeals 2017).
- ⁶⁴ New York State Department of Health. NYS Home Care Agency Profiles. New York State Department of Health; [cited 2017 Jul]. Available from: https://profiles.health.ny.gov/home_care/index
- ⁶⁵ Personal communication with Arnold Ng of the New York City Human Resources Administration, 2018 Feb 14.
- ⁶⁶ Email communication with Fran Winter of the New York City Department for the Aging, 2018 Mar 22.
- ⁶⁷ New York State Office of the State Comptroller. Criminal History Background Checks of Unlicensed Health Care Employees [Internet]. 2017 Jun [cited 2018 Mar 1]. Available from: <https://osc.state.ny.us/audits/allaudits/093017/16s65.pdf>
- ⁶⁸ Adapted from email communication with Mark Riley of 1199SEIU, 2018 Feb 9.
- ⁶⁹ The New York City Living Wage Law imposes parallel requirements on cases contracted to LHCSAs by the HRA or DFTA (*see* New York City Office of the Comptroller. §6-134 Living Wage Schedule [Internet]. 2018 [cited 2018 Mar 1]. Available from: <https://comptroller.nyc.gov/wp-content/uploads/documents/6-134-schedule2017-2018.pdf>). However, the compensation levels required by the Living Wage Law have been superseded by recent increases in the minimum wage (*see* Wage and Hour Law [Internet]. [cited 2018 Mar 1]. Available from: <https://www.labor.ny.gov/workerprotection/laborstandards/workprot/lshmpg.shtm>)
- ⁷⁰ Hammond B. Minimum Wage Cost Hits Medicaid [Internet]. Empire Center for Public Policy; 2016 Nov 15 [cited 2018 Mar 1]. Available from: <https://www.empirecenter.org/publications/minimum-wage-cost-hits-medicaid/>
- ⁷¹ *See, e.g., Tokhtaman v. Human Care, LLC*, 52 N.Y.S.3d 89 (N.Y. App. Div. 2017) (finding that workers have standing to sue as a third-party beneficiary of the contracts requiring certain wages under the Wage Parity Law); *Lai Chan v. Chinese-Am. Planning Council Home Attendant Program, Inc.* 180 F.Supp.3d 236 (S.D.N.Y. 2016) (mandating arbitration upon finding that employees’ wage parity and other claims were covered by a valid arbitration agreement); *Konstantynovska v. 1st Aide Home Care Inc., et al.*, 2017 WL 7370966 (N.Y.Sup.) (No. -5-1818-2018) (alleging breach of contract as third-party benefit of Wage Parity Law.)
- ⁷² Weil D. Regulating the Workplace: The Vexing Problem of Implementation. *Adv Ind Labor Relat.* 1996;7:247–286.
- ⁷³ See National Labor Relations Board, *Basic Guide to the National Labor Relations Act* (1997) available at <https://www.nlr.gov/sites/default/files/attachments/basic-page/node-3024/basicguide.pdf> (“The National Labor Relations Act is not a criminal statute. It is entirely remedial. It is intended to prevent and remedy unfair labor practices, not to punish the person responsible for them.”)
- ⁷⁴ *NLRB vs. Home Health Care Servs. Of New York Inc.*, No. 16-2866 (2d Cir. Sep. 29, 2016).
- ⁷⁵ *See* N.Y. Comp. Codes R. & Regs. tit. 12, § 142-2.1(b) (2018).

- ⁷⁶ See N.Y. Comp. Codes R. & Regs. tit. 12, § 142-2.1(b)) (2018) (citing 29 C.F.R. § 785.22 (2018)).
- ⁷⁷ Milkman R, New York City Department of Consumer Affairs. *Making Paid Care Work Visible: Findings from Focus Groups with New York City Home Care Aides, Nannies, and House Cleaners*. New York City Department of Consumer Affairs; 2018 Mar 27.
- ⁷⁸ New York State Department of Taxation and Finance. Hiring Household Help [Internet]. [cited 2018 Mar 1]. Available from: https://www.tax.ny.gov/pubs_and_bulls/tg_bulletins/mu/hiring_household_help.htm
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- ⁸⁰ See 29 U.S.C. § 2611(2) (2016) (excluding employees who work for employers with fewer than 50 employees.)
- ⁸¹ See 29 U.S.C. § 152(3) (2016) (excluding from coverage any individual employed "in the domestic service of any family or person at his home.")
- ⁸² See 29 C.F.R. § 1975.6 (2017) ("As a matter of policy, individuals who, in their own residences, privately employ persons for the purpose of performing for the benefit of such individuals what are commonly regarded as ordinary domestic household tasks, such as house cleaning, cooking, and caring for children, shall not be subject to the requirements of the Act with respect to such employment.")
- ⁸³ See 26 U.S.C. § 4980H (2016) (defining "applicable large employers" required to provide coverage as employers with 50 or more full-time employees.)
- ⁸⁴ Email communication with Irene Jor of the National Domestic Workers Alliance, 2018 Jan 31.
- ⁸⁵ See N.Y.C. Admin. Code § 8-102(5)(coverage only applies to employers with four or more employees.)
- ⁸⁶ The Domestic Workers' Bill of Rights also amended the New York Workers' Compensation law. See N.Y. Workers' Comp. Law § 2.
- ⁸⁷ Social Security Administration. Benefits Planner: Social Security Credits [Internet]. Social Security Administration [cited 2018 Mar 1]. Available from: <https://www.ssa.gov/planners/credits.html>
- ⁸⁸ Fordham Graduate School of Social Service, Hand in Hand: The Domestic Employers Network, The Worker Institute at Cornell. New York State Domestic Employment Survey [unpublished dataset]. 2017.
- ⁸⁹ Milkman R, New York City Department of Consumer Affairs. *Making Paid Care Work Visible: Findings from Focus Groups with New York City Home Care Aides, Nannies, and House Cleaners*. New York City Department of Consumer Affairs; 2018 Mar 27.
- ⁹⁰ Department of Consumer Affairs. Paid Sick Leave Case Management Database [unpublished dataset].
- ⁹¹ Email communication with Rachel Isreeli of Center for Family Life Cooperative Development Program, 2018 Jan 26.
- ⁹² The Worker Institute at Cornell, National Domestic Workers Alliance, New York City Commission on Human Rights, New York City Mayor's Office of Immigrant Affairs, New York City Department of Consumer Affairs. Paid Care Worker Survey [unpublished dataset]. 2018; Ruggles S, Genadek K, Grover J, Sobek M. Integrated Public Use Microdata Series: Version 7.0 [dataset] [Internet]. University of Minnesota; 2017. Available from: <https://doi.org/10.18128/D010.V7.0>
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⁹⁵ In 2015, the NYCgov poverty and near poverty rates for care workers with pre-tax earnings between \$25,000 and \$30,000 were 4 percent and 60 percent, respectively. For care workers with pre-tax earnings between \$40,000 and \$45,000, the NYCgov poverty and near poverty rates were 3 percent and 25 percent. Near poverty is defined as 150 percent of poverty. New Yorkers living between 100 percent and 150 percent of poverty are at heightened risk for cycling in and out of poverty, leaving needs for food, shelter, clothing, utilities, and other necessities unmet. The NYCgov poverty rate accounts for all cash and near-cash forms of public assistance, housing programs, medical out-of-pocket spending, and work-related costs, such as payroll taxes, commuting, and childcare. For further detail on the NYCgov poverty thresholds, see Office of the Mayor, *New York City Government Poverty Measures, 2005-2015*, May 2017. Poverty and near poverty rates for care workers were calculated by OLPS, based on the American Community Survey Public Use Microdata Sample as augmented by NYC Opportunity.

Appendix A:

Model Standards for Paid Care Jobs in New York City

The following model standards represent one of the first initiatives of the Paid Care Division within DCA's Office of Labor Policy & Standards (OLPS). Developed in consultation with a working group composed of key stakeholders among workers, employers, and City government, these standards are intended to be a broad statement of principle describing the essential aspects of quality paid care jobs. Many of the standards are already required by law but are often not realized in practice. Other standards go beyond existing legal minimums, affirming that current regulations do not go far enough to protect these vulnerable and often isolated workers.

Model Standards for Paid Care Jobs in New York City

Fair Compensation

1 A Fair Wage: Paid care workers should, at a minimum, enjoy sufficient income to meet their families' basic needs. This must include an adequate regular wage, but may also include additional supports, such as tax credits, food stamps, or access to subsidized or rent-regulated housing.

Data, provided by NYC Opportunity's Poverty Research Unit and analyzed by the Department of Consumer Affairs Office of Labor Policy & Standards, suggests that most care workers require at least \$25,000 per year in pre-tax earnings to clear New York City's poverty threshold, and \$40,000 to clear its near poverty threshold. If workers cannot access health insurance through their job or a public program, they require additional income above these amounts.⁹⁵

2 Paid Time Off: Paid care workers should receive sufficient paid time off to ensure they are rested, healthy, and that they have sufficient time to spend with family and take care of personal matters. Paid time off includes paid sick leave for workers to care for themselves and family members, parental leave, paid holidays, and annual leave for vacation, personal days, and travel.

3 Payment for All Hours Worked: Paid care workers should receive payment for all hours worked, including the entire time a worker is required to be at a care recipient's residence during a 24-hour shift.

Ensuring payment for all hours worked increases financial security for care workers and properly compensates them for time spent tending to the needs of their clients or being available to do so at a moment's notice. Policymakers, together with other stakeholders, must rise to the challenge of providing sufficient funding to ensure that families can meet their needs without having to rely on the unpaid work of agency or household employees.

4 Health Insurance: Paid care workers should have access to quality, affordable health care to help safeguard their own health, their family's health, and that of the families in their care.

Security and Opportunity

5 Training and Career Advancement: Paid care workers should have access to free or low-cost training and education, which will improve job quality, the quality of care provided, and workers' opportunities for career advancement. Workers with advanced qualifications in paid care fields should receive elevated compensation in return.

6 Consistent Schedules: Paid care workers should have consistent, dependable schedules. Predictability helps workers stay out of debt, meet the child and elder care needs of their own families, further their educations, pursue additional jobs, and make the most of their time away from work.

7 Financial Protection for Job Loss: Paid care workers should receive advance notice of dismissal, severance pay, and unemployment insurance that covers job loss as well as income changes from reduced hours.

These protections are essential for sustaining families through periods of reduced income. They also provide the security workers need to assert their rights at work and pursue future opportunities.

Health and Safety

8 Right to a Safe and Healthy Workplace: Paid care workers should enjoy health and safety protections in the workplace. This means that paid care workers have a right to a workplace free from known hazards, health and safety training in a language workers can understand, and access to appropriate protective and assistive equipment free of charge.

9 Workers' Compensation: Paid care workers should receive coverage under workers' compensation insurance on par with other workers, regardless of their weekly work hours.

Dignified Work Environment

10 Protection from Discrimination and Harassment: Paid care workers should be protected from harassment, discrimination, and retaliation during hiring and on the job.

11 Defined Responsibilities: Written work agreements, whether collectively bargained or individually negotiated, allow paid care workers, clients, and employers to be on the same page about their expectations, create and sustain a professional working relationship, and build trust between all parties.

12 Recognition for the Emotional Demands of Paid Care Work: Paid care workers should receive recognition for the unique emotional demands of their work, including appropriate accommodations around the end of a relationship with an employer or client.

Right to Organize

13 Legal Protection for Workers Engaging in Collective Action: All workers should have a voice in the terms and conditions of their employment—and the right to demand changes through collective action.

Existing laws either outright exclude or significantly limit many workers' ability to exercise these rights in a

meaningful way. Through support for direct organizing, issue campaigns, and the development of new policies, employers, clients, and government should acknowledge and support workers' collective action to make change in their workplaces and industries, free from coercion, harassment, or retaliation.

No Limitations on Workers' Rights under the Law

14 Individually negotiated work agreements should never restrict or waive a paid care worker's legal rights or protections.

Unless collectively bargained, mandatory arbitration clauses, class-action waivers, non-compete agreements, and similar restrictions on workers' rights are by their nature coercive, stifling both individual and collective

efforts to improve job conditions. Similarly, work agreements should never provide for independent contractor classification for paid care workers except in the limited circumstances permitted by law.



Bill de Blasio
Mayor

Consumer Affairs

Lorelei Salas
Commissioner

The NYC Department of Consumer Affairs (DCA) protects and enhances the daily economic lives of New Yorkers to create thriving communities. Through the work of our Office of Labor Policy & Standards, DCA empowers working families by providing the tools and resources they need to achieve financial health and work-life balance.

Appendix B:

Paid Care Working Group Membership List

Comprised of domestic worker leaders and advocates, City agencies, unions, and policy think tanks, the Paid Care Working Group consists of the following members (in alphabetical order):

Allison Cook, PHI (Paraprofessional Healthcare Institute)
Ben Fuller-Googins, Carroll Gardens Association
Ceilidh Gao and Caitlin Connolly, National Employment Law Project
Julia Gruberg, NYC Mayor's Community Affairs Unit Center for Faith and Community Partnerships
Rachel Isreeli and Maru Bautista, Center for Family Life Cooperative Development Program
Irene Jor and MARRISA Senteno, National Domestic Workers Alliance
Allison Julien, We Dream in Black New York Chapter
Gayle Kirshenbaum and Illana Berger, Hand in Hand: The Domestic Employers Network
Tsering Lama, Adhikaar
Sara Martin, NYC Mayor's Office of Immigrant Affairs
Rachel McCullough, Jews for Racial & Economic Justice
Linda Oalican and Riya Ortiz, Damayan Migrant Workers Association
Marien Casillas Pabellon, Worker's Justice Project
Adria Powell, Cooperative Home Care Associates
Helen Schaub, 1199SEIU United Healthcare Workers East
Dana Sussman, NYC Commission on Human Rights
K.C. Wagner and Sanjay Pinto, The Worker Institute at Cornell

Appendix C:

Methods Used to Identify Paid Care Workers within the American Community Survey

Table 1 in the report presents estimates for the number of home care workers, house cleaners, and nannies in New York City. Using data drawn from the IPUMS-USA database, these estimates were tabulated from American Community Survey (ACS) Public Use Microdata Sample and based on the ACS occupational and industry classification system recorded in the IPUMS variables “OCC” and “IND.” The Division generated its estimates of the paid care workforce using combinations of these occupation and industry codes. This appendix describes the specific codes the Division selected as corresponding most closely to the categories home care aide, house cleaner, and nanny, and the rationale for these selections.

“OCC” reports the person’s primary occupation, coded into a contemporary census classification scheme. Generally, the primary occupation is the one from which the person earns the most money, or the occupation in which respondents spent the most time. If respondents reported more than one occupation, the samples used the first occupation listed. Unemployed persons in the labor force were classified based on their most recent occupation.

“IND” reports the type of industry (work setting and economic sector) in which the respondent performed their primary occupation. “IND” records the industry in which the respondent earned the most money; if the person was unsure of the former, the industry within which the respondent spent the most time was recorded. Respondents listing more than one industry were classified within the first industry listed. Unemployed persons were recorded in their most recent industry.

Nannies

In order to estimate the number of individuals providing childcare in private homes (“nannies”), the Division counted ACS respondents as belonging to this category if their main occupation was coded as “childcare workers” (OCC 4600) and their industry was coded as “private household” (IND 9290) or “employment services” (IND 7580).

Home Care Workers

The Division identified ACS respondents as home care workers if their occupation was coded as “home health, nursing or psychiatric aide” (OCC 3600) or “personal care aide” (OCC 4610) and their industry was coded as “home health services” (IND 8170), “private household” (IND 9290), “employment services” (IND 7580), or “individual and family services” (IND 8370). Though it would have been preferable to count only respondents coded as “home health aides” for respondents within OCC 3600, the available public-use data only includes a shared code for “home health, nursing, and psychiatric aides.” However, application of the industry criteria described above largely solves this problem, as there are only a small number of nursing or psychiatric aides employed in these four industries.

House Cleaners

In order to estimate the number of individuals providing housecleaning services in private homes (“housecleaners”), the Division counted ACS respondents as belonging to this category if their main occupation was coded as “maids and housekeeping cleaners” (OCC 4230) and their industry was coded as “private household” (IND 9290) or “employment services” (IND 7580).

