



## Department of Labor

### Domestic Workers Legislation: Frequently Asked Questions (FAQs)

#### Days of rest and paid time off:

A law that went into effect on November 29, 2010 (Chapter 481 of the Laws of 2010) provides that domestic workers are entitled to three paid days of rest each calendar year once they have worked for their employer for at least a year. The following Frequently Asked Questions will provide you with some details as to how this part of the law works:

#### **Q1. As of November 29, 2010, I have worked for the same employer for a year or more. Am I entitled to paid time off in 2010?**

- A. The bill that created the entitlement to three days of paid leave for domestic workers each calendar year was signed into law at the end of August, 2010, two-thirds into the calendar year. Although the legislation was silent on this point, in that only one-third of the calendar year remained at the time the law was enacted, the Department has determined that it is reasonable to require that all domestic workers be provided with one paid day of rest during the remainder of this calendar year. Therefore, if you had been working for your employer for a year on November 29, 2010, you are immediately entitled to one day's paid time off for 2010. Your employer must give you this time off before the year ends. If it is not possible for your employer to give you the day off before year's end, he/she must give you an extra day's pay in lieu of the leave time or, **for your 2010 day of paid leave only**, your employer can carry your one day of paid leave over and add it to your three days of leave for 2011. After that you will receive three days of leave on January 1<sup>st</sup> and will have to use your leave or receive pay for unused leave days in the calendar year in which it is earned.

If your employer has already given you one day of paid leave in 2010, you are not entitled to any other time off under this new law unless you have a contract or other agreement with your employer that requires additional time off. Your employer can voluntarily give you additional leave if he or she chooses to do so, however.

**Q2. If my one year anniversary of working for my employer falls between November 30 and December 31, 2010, am I entitled to any paid time off in 2010?**

- A. The bill that created the entitlement to three days of paid leave for domestic workers each calendar year was signed into law at the end of August 2010, two-thirds into the calendar year. Although the legislation was silent on this point, in that only one-third of the calendar year remained at the time the law was enacted, the Department has determined that it is reasonable to require that all domestic workers be provided with one paid day of rest during the remainder of this calendar year. Therefore, if the one year anniversary of working for your employer falls between November 30, 2010 and December 31, 2010, you are entitled to one day's paid time off for 2010 *as of that anniversary date*. If it is not possible for your employer to give you the day off before year's end, he or she must give you an extra day's pay in lieu of the leave time or, **for your 2010 day of paid leave only**, your employer can carry your one day of leave over and add it to your three days of leave for 2011. After that you will receive three days of leave on January 1<sup>st</sup> and will have to use your leave or receive pay for unused leave days in the calendar year in which it is earned.

Again, if your employer has already given you one day of paid leave in 2010, you are not entitled to any other time off under this new law unless you have a contract or other agreement with your employer that requires additional time off. Your employer can voluntarily give you additional leave if he or she chooses to do so, however.

**Q3. I began work with my employer before January 1, 2010. Am I entitled to paid time off after 2010?**

- A. If you have worked more than one year with your employer by the end of 2010, on January 1, 2011 and every January 1<sup>st</sup> thereafter, you will earn three paid days of rest for the calendar year. You become entitled to such leave as soon as the new year begins. As soon as your employer has given you three paid days off in a calendar year, he or she has met the obligation under the law.

**Q4. I began work with my employer on or after January 1, 2010. Am I entitled to paid time off after 2010?**

- A. If you began work with your employer on or after January 1, 2010, you will earn three paid days off for 2011 on the anniversary of the date you started work with your employer. For example, if you began work on March 16, 2010, you will be entitled to three days paid time off effective March 16, 2011 for the calendar year 2011. Beginning on January 1, 2012, and every January 1<sup>st</sup> thereafter, you will earn three paid days of rest for the calendar year.

If you don't already receive paid leave from your employer and your one-year anniversary date of working for your employer falls between November 1, 2011 and December 31, 2011, it may be difficult for your employer to give you three days of paid leave in the time remaining between your anniversary date and the end of the calendar year. Under these circumstances, your employer must give

you an extra day's pay in lieu of the leave time or, **for the year in which your first anniversary of employment occurs only**, your employer can carry your unused days of leave over and add them to the three days of leave for the following year which you will receive on January 1<sup>st</sup>. After that you will have to use all your leave or receive pay for unused leave days in the calendar year in which the time is earned.

Regardless of the date of your first anniversary, as soon as your employer has given you three paid days off in that calendar year, he or she has met the obligation under the law.

**Q5. My employer already provides me with sick leave and vacation leave. Am I entitled to additional time off under this law?**

- A. Once your employer has given you three days of paid leave, regardless of the type of leave it is, your employer's obligation under the law is met. However, this law cannot take away rights you already have under the contract or agreement with your employer. For example, if your employer gives you five days of paid leave each year under your employment agreement or your employer's personnel policies, you are still entitled to the full five days of leave. Until the agreement you have with your employer is changed, your employer must still give you all the days of paid leave which you had agreed upon when you became employed.

**Q6. How many hours of pay do I receive for each paid day of rest?**

- A. For each day of paid rest you must be paid at your regular rate of pay for the average number of hours you work on a normal workday. If you usually work 60 hours per week over five days ( $60 \div 5 = 12$ ), you should receive twelve hours pay for each of your three days off, or 36 hours of paid leave in total. If you work 30 hours a week over five days, you should receive six hours of pay at your regular rate of pay ( $30 \div 5 = 6$ ) for each of your three paid days off. If you work 30 hours a week over three days, you should receive 10 hours of pay at your regular rate of pay ( $30 \div 3$ ) for each of your three paid days off, and so forth.

**Q7. I work part-time. Am I still entitled to three days of paid rest a year?**

- A. If you worked, on average, fewer than 20 hours per week for an employer over the last year, no matter how many days a week you worked, you are entitled to one day of paid rest from that employer for the calendar year under this law, as long as you are not employed on a casual basis. If you worked an average of 20 but fewer than 30 hours per week for an employer over the last year, no matter how many days a week you work, you are entitled to two days of paid rest from that employer for the calendar year under this law. If you worked 30 or more hours per week for an employer, no matter how many days a week you worked, you are entitled to three days of paid rest for the calendar year from that employer under this law.

**Q8. What if my employer tells me he/she can't give me the time off when I want to take it?**

- A. Hopefully, you and your employer will be able to agree on time that you can take off from work. However, it is ultimately your employer's decision whether he or she will permit you to take leave time when you request it. Your employer may also give you specific days or periods of time when you should plan to schedule your leave time. For example, if you are providing child care services, your employers may wish you to take leave during holiday weeks when they plan to be home with their children or during family vacations when they will be taking their children somewhere and will not need your services.

While your employer may have the final say in determining when you can take time off, he or she may not be unreasonable about denying your request for time off. He or she must give you your three days of rest before the calendar year ends, or you must receive an extra day of pay instead of the time off for each day of rest you did not receive.

**Q9. If I leave my job before I take all the paid days off I have earned, do I lose them?**

- A. No. Once you have earned these days they are yours. If you have any unused days when you leave this employer you must be paid for them. If you don't use your time during the year in which it is earned, your employer must give you an extra day of pay for each day of rest you did not receive.

**Q10. Can I take my time off in less than one day units?**

- A. You and your employer can agree to you taking time off in periods of less than one day. Any agreement should be spelled out in writing. However, your employer cannot force you to take days of rest in periods of less than one day.

**What does "employed on a casual basis" mean?**

**Q11. I work, on average, fewer than 20 hours a week. How do I know if I am employed on a casual basis?**

- B. Being employed on a casual basis generally means the work is intermittent or irregular; not performed on a regular basis. Therefore, if you work for the same employer each week, even if it is only for one or two days, your employment is neither intermittent nor irregular and you are not employed on a casual basis by that employer.

## **Family caregiving and coverage under the new law:**

**Q12. My parents pay me to take care of my father, who is not well. Am I a domestic worker covered by this law?**

- A. No. If you are a relative by blood, marriage, or adoption of the person to whom you are providing services, you are not considered a “domestic worker” covered by this law.

## **Required postings:**

**Q13. The State requires other employers to post information about workers’ rights under the law. Is this required of employers of domestic workers as well?**

- A. Yes. However, the Department of Labor recognizes that the workplace for domestic workers is a home. Therefore, the required posting is a small card that can be posted on a home bulletin board or refrigerator. It includes the required information and will not intrude upon a home setting. The notice is available on our web site in both English and Spanish.

## **Caregivers for the elderly:**

**Q14. I have a home health care aide that comes in to help me for a few hours per day. Does this law apply to me?**

- A. If you hire your aide directly, the law applies to you. As the employer you are required to pay the aide at least the minimum wage required by law and overtime pay after 40 hours of work, or after 44 hours of work if the aide resides in your home.

## **Information for employers:**

**Q15. How do I carry out this law in my own household?**

- A. There is detailed information on this web site about how to carry out this law. In particular, see:
- “Facts for Employers” at <http://labor.ny.gov/legal/laws/pdf/domestic-workers/facts-for-employers.pdf>
  - The required posting at <http://www.labor.ny.gov/formsdocs/factsheets/pdfs/p713.pdf>
  - A fact sheet at <http://www.labor.ny.gov/formsdocs/factsheets/pdfs/p712.pdf>

## Questions about wages:

### **Q16. Can an employer give a worker free housing in lieu of wages?**

- A. No, it is not legal to provide housing in lieu of wages. The employer may be able to claim a housing allowance against the hourly wage, but providing housing alone does not remove the obligation to pay minimum wage. For more information about claiming a housing allowance for an employee, please contact the Department of Labor's Division of Labor Standards at 1-888-52-LABOR.

### **Q17. Can an employer give a worker free meals in lieu of wages?**

- A. No, it is not legal to provide free meals in lieu of wages. The employer may be able to claim a meal allowance against the hourly wage, but providing meals alone does not remove the obligation to pay minimum wage. For more information about claiming a meals allowance for an employee, please contact the Department of Labor's Division of Labor Standards at 1-888-52-LABOR.

### **Q18. Why does the law mandate a specific minimum wage for domestic workers?**

- A. The new law does not mandate a minimum wage for domestic workers. They were already entitled to the same minimum wage as most other workers. However, this fact was not widely known, so we are featuring this information prominently in our outreach efforts.

### **Q19. If I work more than 40 hours per week, can my employer give me compensatory time off in lieu of overtime pay?**

- A. No. Your employer must pay you overtime wages at 1 ½ times your regular rate for hours over 40. If you reside in the home of your employer, you are due overtime wages after 44 hours of work.

## Questions about the law:

### **Q20. What if I have questions or think my employer is not obeying the law? What should I do?**

- A. You should contact the Department of Labor's Division of Labor Standards by writing to us at [DomesticWorker@labor.ny.gov](mailto:DomesticWorker@labor.ny.gov) with your question or your complaint.