

## **Executive Summary**

Employed domestic workers must now be paid the minimum wage in Virginia, a significant protection for these workers. When Senate Bill 804 (SB804) passed during the 2020 Session of the General Assembly, the minimum wage exemption for domestic service workers was removed for the first time. Several other provisions of the introduced bill did not advance, and the Secretary of Commerce and Trade was directed to convene a work group to review these items.

SB804 directed the Secretary of Commerce and Trade to convene a work group to make recommendations, including any necessary statutory and regulatory changes, with regard to protecting domestic service employees from workplace harassment and discrimination, providing remedies for such employees for the nonpayment of wages, ensuring their safety and health in the workplace, and protecting them from loss of income as a result of unemployment or employment-related injury by including coverage in the Virginia Unemployment Compensation Act and the Virginia Workers' Compensation Act.

Work group members consisted of representatives from the Department of Labor and Industry (DOLI), the Virginia Employment Commission (VEC), the Workers' Compensation Commission, as well as domestic service workers and employers of domestic service workers.

The work group met three times and all three work group meetings were conducted virtually due to the COVID-19 pandemic.

## **Key Observations**

- Domestic service is an incredibly valuable industry.
  - Fastest-growing occupations are personal care and home health aides
  - There are approximately 60,000 domestic workers in Virginia
  - Over 90 percent are female, and more than half are people of color
- Many domestic service workers feel undervalued and invisible and often feel they are not given the dignity and respect they deserve from employers.
- Many domestic service workers are confused about their rights, and for those workers who are undocumented, they are too afraid to speak up and talk to government or law enforcement officials for fear of employers retaliating and/or deportation.
- Domestic service “employee” can mean many different things, and definitions vary in the Virginia Code. SB804 defines “domestic service” as “services related to the care of an individual in a private home or the maintenance of a private home or its premises, on a permanent or temporary basis, including services performed by individuals such as companions, cooks, waiters, butlers, maids, valets, and chauffeurs.”
- Domestic service is diverse, with three primary types of employment (along with au pairs): agency employees, household employees, and the self-employed. Each face their own unique challenges.

- The unique nature of domestic service employment (individual family employers, work in private homes, staffing companies, and domestic service employers etc.) poses significant challenges for both workers and employers.
  - Behind closed doors, workers can be more vulnerable to sexual harassment, labor exploitation, and unsafe working conditions.
  - On their own in the labor market, it can be challenging for workers to get all the information on the protections and resources available to them, and they often suffer from a lack of support systems.
  - The cost and recordkeeping required to provide unemployment and workers' compensation benefits to employees is complex and challenging for domestic service employers, particularly individual and family employers. Exposing individuals and families to civil and criminal penalties for non-compliance is controversial.
- Two work group participants, Ingrid Vaca and Marta Sanchez, each domestic service workers, discussed incidents with mixing chemicals that led to injuries while working. DOLI does have the authority to investigate claims regarding occupational safety, though neither woman contacted DOLI. Many domestic service workers, particularly those who are not proficient in English, may not understand their rights, and they may also be afraid to talk to a state agency official if they are undocumented. DOLI does not ask people who send complaints about their citizenship, but this is likely not widely known.
- Securing a workers' compensation policy for domestic service workers would be complicated. Workers' compensation benefits are not publicly funded or paid, and the Workers' Compensation Commission does not pay benefits, as it is a private insurance system. Employers are required by law to obtain workers' compensation insurance to cover their employees. SB804 does not address insurance coverage, so it is likely that employers, such as households of domestic service workers, would be required to purchase workers' compensation insurance for their domestic service employees and would be subject to the same civil and criminal penalties for failure to insure as businesses.
- Domestic service workers who receive at least \$1,000 per quarter from a single employer are currently eligible for unemployment benefits. However, many domestic service workers may not be aware of their rights.

The following is a list of work group members:

**Secretary of Commerce and Trade Brian Ball**, Office of Governor Ralph Northam

**Chief Workforce Advisor Megan Healy**, Office of Governor Ralph Northam

**Valerie Braxton-Williams**, Virginia Employment Commission

**Robert Feild**, Department of Labor and Industry

**Jim Szablewicz**, Workers' Compensation Commission

**Ingrid Vaca**, Domestic Worker

**Marta Sanchez**, Domestic Worker

**Jen Jackson**, River City Cleaning  
**Michelle Lane**, Middleburg Homecare  
**Jason El Koubi**, Au Pair Employer

The Work Group met on three separate occasions virtually due to the COVID-19 pandemic, and the agenda for each meeting and the minutes of each meeting are attached as Appendices A, B, and C.

- Meeting dates:
  - August 31, 2020
  - September 24, 2020
  - October 6, 2020

## **Summary of General Considerations**

Over the course of three work group meetings, testimony was received from both work group members and several subject matter experts, including state agency professionals and industry associations. If the General Assembly wants to take action, the following considerations are offered:

- Examine ways to increase funding for the State Trafficking Response Coordinator at the Virginia Department of Criminal Justice Services so that additional staff can be hired. The goal of the State Trafficking Response Coordinator—to create a consistent, collaborative, multi-disciplinary response system to how human trafficking cases are handled in Virginia—is immense. Currently, there is only one person focused on human trafficking at Virginia Department of Criminal Justice Services, and in order for this goal to be met efficiently and successfully, more staff and resources are needed. Human trafficking includes labor exploitation and sex trafficking.
- Develop and distribute an accessible, multilingual resource guide that includes a hotline number and information for domestic service employees and their employers on workplace rights. While not all topics would relate to DOLI’s purview, it would be appropriate for the guide to be housed on the DOLI website since many workplace protections (e.g. wage theft, workplace safety, etc.) are investigated by DOLI. The resource guide should include templates for contracts between domestic service worker and employer or household.
- Request that the Department of Social Services’ Office of New Americans (ONA) develop a plan for helping undocumented workers to access their workplace rights. ONA was established in 2020 to promote the economic and civic success of Virginia’s diverse immigrant communities. The office’s Immigrant Services unit could serve as a trusted resource for undocumented domestic service workers who may be unaware of the existing protections and support services available to them.

- During the work group presentations and discussion, several issues were raised with regard to unemployment compensation and workers' compensation. These should be considered if there is a desire for legislation in the future. (See presentations from Valerie Braxton-Williams, Robert Feild, and Jim Szablewicz). Greater awareness of the thresholds that trigger an obligation to pay into the unemployment insurance system if the quarterly threshold for wages is reached needs to be increased among households that engage actual employees.
- Explore the feasibility of voluntary third-party portable benefit systems for domestic service workers, whether actually employed or providing services as independent contractors..
- The General Assembly addressed workplace protections relating to wage theft and worker misclassification during the 2020 regular session, and no further recommendation is provided. DOLI confirmed it can investigate wage theft and worker misclassification for claims from domestic service workers in a private home.

Workplace safety is important for domestic service workers. DOLI has confirmed the agency has the authority to investigate complaints related to worker safety, including domestic service workers, so no further recommendation is provided.

- Explore the development of a uniform definition for domestic service worker that is consistent throughout the Code of Virginia.

## **Background of SB804**

When SB804 was introduced, it stated that individuals who are engaged in providing domestic service are not excluded from employee protection laws, laws regarding payment of wages, the Virginia Minimum Wage Act, the Virginia Unemployment Compensation Act, and the Virginia Workers' Compensation Act. The measure removed the exemption in the Virginia Minimum Wage Act for individuals employed by an employer with fewer than four employees. The measure also authorized an employee who is discharged in violation of the Virginia Human Rights Act to bring an action against the employer without regard to the number of persons it employs.

When SB804 passed, it eliminated the exclusion in the Virginia Minimum Wage Act for persons employed in domestic service. The bill then required the Secretary of Commerce and Trade to convene a work group to make recommendations, including any necessary statutory and regulatory changes, with regard to protecting domestic service employees from workplace harassment and discrimination, providing remedies for such employees for the nonpayment of wages, ensuring the safety and health of such employees in the workplace, and protecting such employees from loss of income as a result of unemployment or employment-related injury by including coverage of such employees in the Virginia Unemployment Compensation Act and the Virginia Workers' Compensation Act.

## **2020 General Assembly**

In addition to the passage of SB804 during the 2020 regular session, the General Assembly passed several other measures that will provide additional protections to domestic service workers, including protections against wage theft, discrimination on the basis of pregnancy, discrimination on the basis of gender identity and sexual orientation, and misclassification as independent contractors. See the chart below for specific policy changes related to domestic service workers from the 2020 Session.

<b>LEGISLATION</b>	<b>POLICY CHANGE</b>	<b>DOMESTIC SERVICE WORKERS (DSWs)</b>
HB395/SB7: Minimum wage increase	Raises the minimum wage beginning in May 2021 and to \$12/hour by 2023.	The exemption for DSWs was removed from the Virginia Minimum Wage Act, as well as the exemption for employees of employers with fewer than four workers. The increase in the minimum wage applies to domestic service workers classified as employees, not the self-employed.
HB1407/SB744, HB984/SB894, HB1119/SB662, and HB1646: Misclassification legislation	Authorizes the Department of Taxation to conduct investigations into suspected cases of worker misclassification, establishes a private cause of action for misclassified employees, protects employees that have reported misclassification from retaliation from their employer, and allows the Board for Contractors to sanction employers who do not comply.	This legislation protects domestic service workers working as employees from being misclassified as independent contractors.
HB827/SB712: Discrimination on the basis of pregnancy	Protects workers from discrimination and discharge on the basis of pregnancy, childbirth, or related medical conditions. Also requires employers to provide reasonable accommodations and creates a private cause of action for discrimination.	This legislation protects domestic service workers that are employed by employers with more than five but less than 15 workers.
HB1049: Discrimination on the basis of sexual orientation or gender identity	Prohibits discrimination on the basis of sexual orientation or gender identity in multiple areas of the law.	This legislation protects domestic service workers that are employed by employers with more than five but less than 15 workers.
HB123: Private cause of action for wage theft	Establishes a private cause of action for wage theft.	This legislation protects certain domestic service workers classified as employees from wage theft.
SB838: Private cause of action to recover unpaid wages	Creates a private cause of action for workers to recover unpaid wages and makes general contractors liable and subject to a penalty for wage theft by their subcontractors.	This legislation protects certain domestic service workers classified as employees from wage theft.

HB337/SB48: Retaliation protection for wage theft	Protects employees who report wage theft by their employer from retaliation.	This legislation protects certain domestic service workers classified as employees from wage theft.
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## Summarized Testimonies from Work Group Members

### Valerie Braxton-Williams, Virginia Employment Commission (VEC)

Valerie Braxton-Williams is a Confidential Assistant for Policy and Legislation with the Virginia Employment Commission. Ms. Braxton-Williams briefly explained unemployment compensation as temporary, partial wage replacement for workers who have lost their jobs through no fault of their own and that it is an eligibility-based program, not an entitlement program. Claimants must meet various monetary and non-monetary eligibility requirements to be found qualified to receive unemployment compensation benefits.

Ms. Braxton-Williams continued her presentation by discussing the introduced version of SB804 and the proposed amendment to Section 60.2-215, where the definition of “domestic service” is re-defined. Currently, if you look at Section 60.2-215, and you look at the amendments, you see that many people who are exempt are being included under domestic service, that exemption is being removed with the amendment, and the definition becomes broader. Ms. Braxton-Williams pointed out that domestic service—meaning service related to the care of an individual in a private home or the maintenance of a private home, local college club, or local chapter of a college fraternity or sorority— can be taken to include not only those individuals caring for a family member but also those that provide services at the home, such as gardeners and maintenance workers.

In Section 60.2-215, the amendment removes the \$1,000 threshold. Currently, employers report wages that they pay their employees to VEC every quarter. If a person pays an employee a minimum of \$1,500 in any calendar quarter, they must establish an account with VEC to report the wages they paid and pay taxes on those wages. However, Publication 926 of the Federal Unemployment Tax Act allows VEC to set that minimum at \$1,000 for household employees. If the amendment in 215 were to stand and the \$1,000 wage requirement was removed, it would raise the threshold to \$1,500 in a calendar year.

Secretary Ball interjected to seek clarification; he said to Ms. Braxton-Williams, you have been referring to Section 60.2-215; SB804 defines domestic service in Section 40.1-28.9. Secretary Ball asked Ms. Braxton-Williams if the definition in Section 40.1-28.9, the current definition, is what she is referring to, as that would expand eligible employees to receive the minimum wage to gardeners and maintenance workers, people not necessarily working inside the home. Ms. Braxton-Williams responded, saying that she is looking at the coverage under Title 60.2, and the changes in subsection 215 and how they relate to 60.2. She stated that there is another definition in SB804 that is proposed under 65.2-101 that says domestic service means services related to the care of an individual in a private home or the maintenance of a private home or its premises on a permanent or temporary basis, including services performed by individuals such as companions, cooks, waiters, butlers, maids, valets, and chauffeurs. So again, you are expanding

the definition in more than one place in the amendments to SB804. Ms. Braxton-Williams said she wanted everyone to understand that removing the \$1,000 threshold for employers to report to VEC if they pay domestic service workers \$1,000 in a quarter, if you remove the \$1,000, it means they will not have to report until they have paid \$1,500 in a quarter. She commented that this is one of the issues that she shared with the patron of the bill during the 2020 session is the collateral impact of removing the \$1,000 threshold.

Ms. Braxton-Williams continued by stating that in order for VEC to determine eligibility for unemployment benefits, there is a benefit table in the Code under 60.2-602, and VEC uses that benefit table to determine the benefit range that is currently \$60 minimum to \$378 maximum. In order to be eligible for unemployment insurance, the worker must have at least \$3,000 in wages in his base period. VEC cannot go below the \$3,000 to determine benefits. Ms. Braxton-Williams commented that in conversation with some of the advocates during the 2020 session, they wanted to lower the benefit amount that domestic service workers would need to have, but VEC cannot hold the domestic service worker to a different standard and have a lower base period wage for them than they do for all other classes of workers.

In summary, Ms. Braxton-Williams stated that removing the provision paid of \$1,000 in a calendar quarter would raise the earning threshold to \$1,500 for a calendar quarter. She continued by stating that domestic service workers are subject to the same base period wage requirement as all other workers. She believes one of the bigger concerns is that those exemptions that are removed in 60.2-215 in SB804 would impact 60.2-219, and cover people who are hired by human service agencies. Those workers would now be classified as domestic service workers, and that is a major concern. The definition being so broad of what a domestic service worker is would include your gardeners and other people who perform services on the premises of your house. For example, you hire someone to come in once a month to clean your house; you hire someone to cut your grass; you hire someone to wash your windows; all of those are now included under this expanded definition of domestic service. If a person hires those three people, and they come once every quarter, and they paid those people \$1,500 minimum, they would now have to establish an account with the VEC, and they would have to pay taxes on the wages that they paid those three people.

**Robert Feild, Virginia Department of Labor and Industry (DOLI)**

*See Appendix D for presentation*

Robert Feild is a Hearing and Legal Services Officer at the Virginia Department of Labor and Industry. Mr. Feild explained that the occupational safety and health side of DOLI is to protect employees from injury, such as the mixing of chemicals that was described at the first work group meeting and to provide protection from falls and other hazards that might exist in a workplace. He pointed out that there are anti-retaliation provisions if someone is discriminated against or fired for bringing up a safety and health complaint. Mr. Feild noted that the only programs that would be affected under the new definition of domestic service worker under SB804 would be payment of wages and occupational safety and health; as to the payment of wage, DOLI has a new anti-retaliation provision.

Mr. Feild stated that current law requires there be an employer-employee relationship in order for DOLI to have enforcement authority and be able to investigate a complaint. The current definition of employer in §40.1-2 includes doing business in the Commonwealth, and there are arguments to be made that hiring someone to work in a home does not make it a business. The objective of Virginia Occupational Safety and Health Program (VOSH) is to protect employees, and so they tend to define things broadly. Mr. Feild posed the question, if an individual hires a home healthcare worker or cook, is that person a business? If it is a business, he pointed out that VOSH has limited resources to inspect a homeowner or individual; most likely then, the only way for a home situation to come under VOSH enforcement would be through a complaint. Mr. Feild stated that some potential issues with the complaint process and investigation may be the employer named in a complaint will say it is not a business, and the other issue is that a complaint must show employee exposure and employer knowledge. VOSH does not have on record any complaints or inspections in a private home related to home healthcare or personal services. They have done inspections of the home healthcare companies.

Mr. Feild pointed out that the anti-retaliation statute states that no person can discharge or discriminate against an employee for making a safety or health complaint, or for exercising rights under VOSH. For example, in a situation where an individual is working for an individual, is injured by the chemicals, as we heard before from Ms. Vaca, the worker may make a complaint to VOSH. It does not matter in this situation that the employer is not a business.

Mr. Feild stated that when the definition includes, ‘engages an individual to perform domestic service,’ it will be clear that VOSH can respond to all complaints from domestic service workers. Mr. Feild made one last comment that the main issue for VOSH is going to be looking at a joint employer situation. He stated that they will need to understand whether “engage” means that both the homeowner who hires a service worker and the service-agency that provides the service worker are joint employers.

### **Jim Szablewicz, Workers’ Compensation Commission**

*See Appendix E for presentation*

Jim Szablewicz is a Chief Deputy Commissioner with the Virginia Worker’s Compensation Commission (the Commission). Mr. Szablewicz stated that “domestic servant” is not defined in the Virginia Workers’ Compensation Act (the “Act”). As Mr. Szablewicz explained to the work group in our first meeting, in 1980 in the case of *Hux v. Trust for Roche*, the Commission adopted the definition of domestic servant as: “a person hired or employed primarily for the performance of household duties and chores, the maintenance of the home, the care, comfort and convenience of members of the household.”

Mr. Szablewicz stated that Va. Code Section 65.2-101 specifically excludes by name “domestic servants” from the definition of employees covered by the Act. He added that even if this specific exclusion was not included in the Act, there are two other broad exclusions that would exclude most domestic servants under current law: (i) persons whose employment is not in the usual course of the trade, business, occupation or profession of the employer and (ii) employees of any person, firm or corporation that regularly employs less than three employees in the same business. Section (ii) is essentially a small business exclusion, meaning even if the domestic



servant's employer is engaged in the domestic service business, the domestic servant would not be covered unless that employer had three or more domestic servants regularly employed.

Mr. Szablewicz said that SB804 as originally drafted would not remove the exclusion of persons whose employment is not in the usual course of the trade, business, occupation or profession of the employer. He believes the failure to take away that exclusion would, as a practical matter, exclude most domestic servants from coverage under the Act even with the bill's adoption because most employers of domestic servants are homeowners, and very few of them are in the business of domestic service.

Mr. Szablewicz stated that a big challenge for him is who pays because workers' compensation benefits are not state benefits; the funds are not publicly funded or paid, and the Commission does not pay benefits—this is a private insurance system. Employers are required by law to obtain workers' compensation insurance to cover their employees. He pointed out that SB804 does not address insurance coverage, so he believes that employers of domestic servants would be required to purchase workers' compensation insurance for their domestic service employees and would be subject to the same civil and criminal penalties for failure to insure as other larger employers.

Mr. Szablewicz continued by pointing out that most employers of domestic servants are individual households, not businesses. Would they be required to purchase workers' compensation insurance for their domestic servants? Would that include teenagers hired once a week to cut grass and babysit children? He does not know the cost but wonders if most households could afford to purchase workers' compensation insurance. Mr. Szablewicz posed that even if they could afford it, how would homeowner-employers be made aware of the requirement to purchase insurance? The Commission has the enforcement responsibility, but how do they identify the homeowners who should be purchasing insurance? The Commission does sweeps of businesses, and he wonders if the Commission would need to do sweeps of neighborhoods, going door to door to identify households that employ domestic servants.

Mr. Szablewicz also commented that if the homeowner does not know to purchase insurance or chooses to not purchase insurance, there could be an impact on the Uninsured Employer's Fund (UEF), which pays benefits to qualified workers of employers who fail to obtain insurance coverage. The UEF is funded by a tax on premiums received by insurers for workers' compensation coverage, and has a right of subrogation and recoupment against the uninsured employer for any benefits paid; the Office of the Attorney General is responsible for pursuing the uninsured employer to recoup those payments. Mr. Szablewicz stated this leads to the question, will the tax on insurance premiums need to increase and will the OAG bring action against the homeowner-employer for compensable claims?

Mr. Szablewicz said that the state could establish a special fund to cover domestic service workers' compensation benefits; at this time, the state has no other special funds for any other category of employee, and he's not sure what the funding source would be since the Commission works solely off the tax of the premiums for workers' compensation insurance. Mr. Szablewicz pointed out another option could be to expand coverage by the UEF but without a right of

recoupment. This would likely require an increase in the UEF tax and increase the cost to all other employers who purchase workers' compensation insurance.

Mr. Szablewicz concluded by stating that the Commission could adjudicate any claims if this category of employee is covered but the real question is how does that work with our system of private insurance in Virginia? There are a few states that are monopolistic that provide all the benefits but very few do it that way; most states use a private insurance system.

### **Ingrid Vaca, Domestic Service Worker**

Ingrid Vaca has been a domestic service worker for 20 years and has worked as a house cleaner, home care worker, and nanny. She stated she has encountered many experiences of not being treated with respect and being denied basic rights as a worker. Ms. Vaca shared that she experienced wage theft while working for a cleaning company, in which she was picked up at 6 a.m. by the employer and had to clean houses from 7 a.m. to 7 p.m. without any breaks. She was paid \$40 per day or \$200 per week for five days of work and, once she did the math, realized that she was only being paid \$3.33 per hour. Ms. Vaca also had to use ammonia to clean, which still causes her to experience pain in her bones today. She also fell and twisted her ankle while on the job and was told to keep working even though she had trouble walking; she did not receive sick time or workers' compensation. Ms. Vaca left the cleaning company after two months because of the poor working conditions and felt that there was nothing she could do about how she had been treated since she didn't know her rights as a worker; she felt there was no place to go to complain, and there was no government agency that could support her. She was not yet aware of the National Domestic Workers Alliance.

Ms. Vaca shared that while cleaning an apartment one day, two liquids came together during the cleaning process and the resulting mixture was harmful to her eyes; she had to drive herself to the hospital, pay all her own expenses, and the homeowner did not offer to help. Ms. Vaca also said that she had faced discrimination from an elderly man, whose house she had cleaned for 14 years, after asking to be paid \$20 more per cleaning. She had previously told him that she did not have immigration papers and that her children were DREAMers. After thinking about whether to give her the additional \$20 more per cleaning, he told her that she was fired and he was going to hire a company that is "legal" and also mentioned going to court.

She noted that au pairs are still excluded from the Virginia Minimum Wage Act and that they deserve to be paid the minimum wage like other domestic service workers.

Ms. Vaca was unable to participate in third work group meeting.

### **Marta Sanchez, Domestic Service Worker**

Marta Sanchez has been a domestic service worker for 21 years and has worked as a house cleaner, home care worker, and nanny. She had a very similar situation to Ms. Vaca's with a reaction to the mixture of two liquids and said she had no insurance to cover medications. Ms. Sanchez noted that domestic service workers are also exposed to not only cleaning agents but other articles in the kitchen that can be harmful.

She also advocated for au pairs and said when they are excluded [from receiving minimum wage], it reinforces the idea that domestic work is not real work and that the work that immigrant women do isn't important.

Ms. Sanchez said that the most important thing domestic service workers need is a place in government where they can speak up about their experiences—somewhere to file complaints. “Even when we experience these abuses, we don't know what to do. We don't know where to file a complaint, what the process is, what the risks are, and how our employers might retaliate. We need to share information about our rights in a way that is accessible to workers,” she said.

### **Jen Jackson, River City Cleaning**

Jen Jackson is the owner of River City Cleaning, an ecofriendly cleaning company working in residential homes, which has been in business for 12 years and employs 12-14 people. River City Cleaning provides workers' compensation and liability insurance and offers a 401(k) with a company match. Ms. Jackson said the company cannot afford to provide health insurance to employees since they would need to increase the rates charged to clients, though she stated she wished she could. She believes that the better her staff is cared for, the more it creates a family atmosphere that flows into the services River City Cleaning provides to its clients. Ms. Jackson stated that an employer should offer continuous appreciation and acknowledgment to its employees for the services they perform. As to the issue of workers feeling unsafe in a client's home, Ms. Jackson commented that fortunately that has not been an issue in her experience, but the company's policy is that if an employee feels unsafe, the employee should contact the office, and a supervisor would immediately come to the client's home.

### **Michelle Lane, Middleburg Homecare**

Michelle Lane is a registered nurse and owner of Middleburg Homecare, which employs approximately 30 employees, including registered nurses, license practical nurses, one physical therapist, one masters prepared social worker, and one occupational therapist. Ms. Lane credits the success of her business to the fact that she has great employees who are consistent and do not miss work, which is critically important when providing personal care services. She also commented that since Middleburg Homecare pays employees well, personal care assistants can make up to \$20 an hour, which puts the worker in a better position to purchase her own health insurance. Ms. Lane said that this model proves that her company can use the market, provide a great service, and pay above scale, and it should show other companies they too can provide excellent care, have their company sought after, and allow their employees to have extra money and freedom to make their own choices, such as purchasing health insurance. Middleburg Homecare pays workers' compensation and liability insurance for its employees.

### **Jason El Koubi, Au Pair Employer**

Jason El Koubi is an au pair employer in Richmond; while he is technically an employer, he considers himself part of a host family. Mr. El Koubi's family has hosted four au pairs over the past five years and stated that the au pair program has been a wonderful experience for his family. He explained how the au pair program works in the U.S.: the au pair program is implemented through au pair organizations that follow the guidelines of the U. S. Department of State; the host family must meet certain requirements to host an au pair and must provide a bedroom, meals, a phone, and transportation as it relates to the care of the children; au pairs

share in the housework of the family, cooking and cleaning for the children; cultural exchange is encouraged through language and food customs; au pairs receive a monetary allowance for personal use, but the host family covers many of the basic needs. As a host family, Mr. El Koubi pays the agency a fee of approximately \$9,500 a year to be in the program, and the host family is required to pay the au pair a weekly stipend of at least \$195.75 and contribute at least \$500 towards the educational allowance. The direct cash cost to the host family is approximately \$20,000 with approximately half of that amount going to the au pair organization-agency. He pointed out that successful implementation of the program, especially the protections, seems to depend significantly on the local childcare consultant that represents the agency. Mr. El Koubi stated that this program is a great experience for his family because the federal framework and agency capabilities allows the family to focus on the personal relationship and not so much on the employer-employee relationship.

## **Testimonies from Meeting Presenters**

### **Alexsis Rodgers, National Domestic Workers Alliance**

*See Appendix F for presentation*

Alexsis Rodgers is the Virginia State Director at the National Domestic Workers Alliance (NDWA), a national, non-profit organization with a mission to advance domestic workers rights throughout the U.S. At the time of these interviews, Ms. Rodgers was also a candidate for Mayor of the City of Richmond. Ms. Rodgers stated that domestic workers are hard to count because of the nature of the work and so many contractual relationships are verbal and not written agreements. NDWA's research shows that this market and this workforce is growing rapidly as folks delay having children while also having their parents or elderly ones to care for as well. Because of the increased demand for this care, Ms. Rodgers stated the jobs available to domestic workers need to be good jobs so that these workers can also provide for their own families while caring for others.

Ms. Rodgers said that much of the workforce is immigrant and/or undocumented women and/or in a mixed immigration status family. She noted that in U.S., there have not been great protections for people based on their immigration status. She reminded the work group that domestic workers are excluded from many basic rights under federal labor protections, such as basic labor and safety net protections. As for contractual agreements, many domestic workers only have a verbal agreement. She noted that the basics of retirement and health care insurance and the right to unionize are still carved out from the federal labor standard.

Ms. Rodgers discussed priorities for a domestic workers' bill of rights. The key areas fall into basically two categories—protect all workers, and extend basis protection to everyone. This includes eliminating historic exclusions from state labor and employment laws, whether that be minimum wage, overtime, workers comp, while also introducing a new model and creating new standards for the unique nature of domestic work. She said that we know that because of the job that domestic workers are doing, they may often be working in vulnerable situations and may need unique protections to ensure that they are safe on the job.

The NDWA has advanced a state domestic workers' bill of rights in multiple states. The first state campaign for a domestic workers' bill of rights began in New York in 2003 and was led by Domestic Workers United and a number of other worker organizations. The original bill was designed for full inclusion of all domestic workers in New York, including minimum wage, overtime protection as well as anti-discrimination protections and to win a number of additional protections that are not normally guaranteed to workers, whether that be health insurance, sick leave, vacation time, and other important protections. Many of these more expansive provisions were cut from the bill during negotiations, but over time and by 2010, NDWA helped create a stronger bill in New York. There are a number of other states where NDWA has advanced a state domestic workers' bill of rights, such as the bill of rights passed in Hawaii, which advanced the definition of domestic workers, minimum wage, and overtime protection. This was possible through the efforts of organizing domestic workers and partnering with the legislature to pass an expansive bill, and it helped create more momentum for similar policies in municipal and state governments across the country.

Ms. Rodgers stated that the first step is striking some of the legal exemptions that have existed historically. In every state, it is important to look at where in the statute, code, or regulation domestic workers are explicitly excluded; some of those were addressed in the 2020 legislative session when it came to minimum wage in Virginia. She pointed out that there are many instances where domestic workers are named expressly as excluded from a protection, and there are other areas where, based on the size of the workplace, domestic workers are excluded, for example, a workplace needs to be five or more workers. Additionally, she said we need to look at how the state and local law intersects with federal policies that also oversee workers' rights.

Ms. Rodgers noted that NDWA advocates for the most expansive definition of domestic workers. Many state laws track the Federal Labor and Fairness Act, which usually excludes domestic workers who are live-in domestic workers, companions, or casual workers, such as the person who may do maintenance at a home. NDWA wants to ensure that they are creating the most expansive definition as possible so that the most domestic workers can be included. NDWA's preferred definition Ms. Rodgers is in the Seattle domestic workers' bill of rights. That bill had the broadest definition thus far; it included live-in domestic workers, as well as independent contractors and temporary workers, among some others.

Ms. Rodgers pointed out the unique protections that domestic workers need. Many of their domestic workers' bill of rights have included an industry standard provision, such as paid time off and requiring notice for termination of work if you are a live-in employee. There is also the need to create a standard employment agreement. Many people who are live-in care workers may be called upon to do more than what is in a job description; Ms. Rodgers stated that this can lead to exploitation on the job, such as no standard scheduling or the ability to take time off. She said that having the requirement that live-in care workers be entitled to time off and, specifically 24 hours off in a seven-day period, is an important protection to advance. She noted that ensuring there are clear standards for privacy in the home where you are working and the ability to cook and use the kitchen facility is important. Ms. Rodgers said that by advancing some of these provisions, we are making sure that we are highlighting issues that may lead to exploitation and trafficking in other ways, so if we are able to report complaints about issues of exploitation it could help prevent larger issues of labor trafficking in Virginia and across the country. It is also

important to look at whether these protections are feasible when it comes to enforcement and how they intersect with federal policy.

Ms. Rodgers said that enforcement of workplace standards can be very challenging when the workplace is a private home. It is important for domestic workers to be able to register complaints and track them in an accessible way so that if there are issues of harassment, discrimination, safety, or other issues on the job, that they have the same protections as the worker in a restaurant or office. There are examples in other states where partnerships were created to help co-enforce the policies by working with local governments and nonprofit organizations that serve either domestic workers or families who employ domestic workers. She emphasized the importance of partnering with companies and agencies that employ domestic workers to ensure that everyone is as educated as possible about changes, whether it's workers' compensation or other standards that regulate the industry.

Ms. Rodgers said that to expand health, safety, and workers' compensation coverage, we need to look at closing the legal loophole where domestic workers are excluded. She stated that making workers' compensation mandatory for all workers regardless of employment classification is important as many domestic workers are often misclassified as independent contractors. Ms. Rodgers stated that it is important that domestic workers are able to seek out compensation for injuries when they do occur. She commented that this is an area where it is very important for state and local governments to partner with other domestic worker collectives or domestic worker companies to make sure there is a broad awareness of what is required from homeowners or employers of domestic workers.

Ms. Rodgers commented that she appreciated Dr. Healy sharing a little about the work on portable benefits and the future of work. Senator Warner has been working on this at the federal level. She believes it is good to hear the plight of gig workers in our economy, and she often shares that the domestic worker is the original gig worker when it comes to the fact that so many domestic workers are managing multiple clients and jobs and do not have access to the safety net that other workers enjoy. NDWA has advocated for policies that require the state or local government to develop a way to have portable benefits for domestic workers; she believes this would be a model that benefits all workers. The Seattle bill of rights did require its wage and standard board to develop a system, and that is an important tool to make sure workers have access to benefits but also so that clients can easily make contributions to that system. Ms. Rodgers believes there are many families of domestic workers who would love to be able to provide those benefits to the women they employ, but it can be difficult for the employer if there is not a handy tool or system in place. In 2018, NDWA launched an app called Alia, an online platform that allows clients of house cleaners to make contributions to the app, and cleaners can then use the contributions to purchase benefits such as paid time off, insurance, life insurance, etc. She shared a quick video about the Alia app.

Ms. Rodgers commented on the explicit impact of the coronavirus on domestic workers. She believes that of everyone impacted by this pandemic, domestic workers are among the hardest hit. In order to stay safe, many families immediately asked their care workers not to come to take care of their children or elderly family member; to limit interaction with people, families chose

not to have someone clean their homes. Unlike many employees given paid time off or furloughed with some kind of pay or notice, many domestic workers were immediately without a paycheck, without clients, and as many were women of color, at a higher risk of contracting the virus. Ms. Rodgers commented that she appreciates the state's work on adopting temporary standards for employees.

**Nicole Riley, National Federation of Independent Businesses**

*See Appendix G for presentation*

Nicole Riley is the Virginia State Director for the National Federation of Independent Business (NFIB), which represents approximately 6,000 small businesses in the Commonwealth. NFIB represents a wide range of employers, including those who work in the domestic service industry.

Ms. Riley pointed out that the federal definition of domestic service work is somewhat broad, and asked if one definition is appropriate for all industries since domestic service covers a wide range of services—home care, healthcare, companion care, and childcare, and each of those has its own set of standards and challenges. Ms. Riley added that business owners become confused with the layering of state and federal rules and how to know which rules to play by. Most of Ms. Riley's members operating in the domestic service space are third party employers, such as Molly Maids. Most of these businesses treat their workers as employees as defined by federal and state laws; they pay overtime and minimum wage and often offer benefit packages, including health insurance and paid time off, and follow the laws regarding worker's compensation, withholding taxes, and paying unemployment taxes.

The other employer in the domestic service space is the individual consumer-client, which is where a lot of the market operates. This employer is the individual who hires a nanny, a home care companion, or a housekeeper. Typically, this domestic service worker is self-employed and may have set up a business, has a license, is paying income taxes, purchasing her own health insurance, and following all the laws. Ms. Riley stated the common practice in this setting is that the consumer-client does not provide benefits as they assume this domestic service worker has other clients, this is the worker's business, and it is the worker's responsibility to provide her own benefits and conduct the business in accordance to the law. She pointed out this is not always the case as much of the payment for this work is done "under the table." There is confusion and as well as precedent in the market that makes applying protections for these workers difficult, especially as the vast majority of domestic service workers are self-employed.

Ms. Riley noted some concerns small businesses would have with the possible implementation of a domestic service workers' bill of rights, which was discussed in the first work group meeting by Alexis Rodgers. The first concern of small businesses is the cost that additional regulations will bring; new regulations will require them to spend more time on recordkeeping, and requiring small businesses to provide paid time off, health insurance, worker's comp, etc. is costly and may not be sustainable for the business or the market. A business may have the flexibility to put together a package that attracts good, dependable, trustworthy employees using those benefits as an incentive. She believes employers worry that if there is a mandate that includes additional

regulations, it will become a cost issue, and increased costs decreases profit, forcing them to pass that cost on to customers.

She touched on the need to educate employers and employees on current best practices, and there needs to be a mechanism to educate them. Domestic service workers should know how to run a business, how the rules and regulations apply to them, and how to implement them.

Ms. Riley touched briefly on protections such as insurance. Virginia recently allowed a self-employed person to be a business in order to qualify for the small group health insurance market. She mentioned there could be a way for self-employed persons to pay into a “system” like worker’s compensation or unemployment, so that if something happens, they are in the system, and then can get benefits. The self-employed worker then incorporates those costs into their business plan and recovers the costs from the customer-client.

**Seyoum Behr, Virginia Department of Social Services’ Office of New Americans**  
*See Appendix H for presentation*

Seyoum Behr is the Virginia Refugee State Coordinator and Director of the Office of New Americans. Mr. Behr gave an overview of the Office of New Americans, previously called the Office of Newcomer Services, which is just getting up and running and now focuses on immigrants from all walks of life, not just refugees. The office is 100 percent funded by the federal government, and the mission is to assist refugees with integrating into existing communities in Virginia. Mr. Behr spoke of the numerous challenges faced by immigrants and refugees alike, which includes something called ‘triple trauma’—the country an immigrant leaves, the country(ies) the immigrant passes through, and finally this country. Other challenges include tradition, orientation, language, education, and lack of resources. Mr. Behr shared the Office of New Americans Immigrant Services Plan, which focuses on organizing resources so they can best serve immigrants. Mr. Behr stated that discussions with stakeholders have included looking into the unmet needs of immigrants. An example is Virginia 211, which is a phone number people in Virginia can dial that will connect them to health and human services in Virginia; there is only one Spanish speaker answering calls, and Mr. Behr estimates there are 600,000 people who speak Spanish in Virginia.

The office is working with stakeholders, service providers, law enforcement, and immigration providers on matters related to employment because the best way to integrate into American society is to become self-sufficient. Mr. Behr shared that over 80 percent of his refugees become self-sufficient within a year or so, and he hopes to bring those same results to our immigrant population. Mr. Behr understands that those who do not have legal papers have additional challenges, and there is a need to see what can be done, within the law, to make sure all available services and information is shared with the immigrant population.

He reiterated the need for providing English language education and providing information on immigration laws. Mr. Behr stated that the U.S. is different from most because even if you do not have legal papers, you have certain basic human rights that are protected. He wants to make sure that we stay within the principle of an individual having rights and that the immigrant population knows their rights and responsibilities.



**Angella Alvernaz, State Trafficking Response Coordinator, Virginia Department of Criminal Justice Services**

*See Appendix I for presentation*

Angella Alvernaz is the State Trafficking Response Coordinator for the Commonwealth of Virginia and is based within the Virginia Department of Criminal Justice Services (DCJS). The human trafficking response in Virginia started in stages in 2010-2012, some at the state level and some at the local level. The most recent large body of legislation was during the 2019 legislative session and that included the establishment of her position. The overall goal of her position is to bring a consistent, collaborative, multi-disciplinary response to how we work with human trafficking cases throughout the entire Commonwealth. This includes stopping the supply, stopping the demand, and working with the victims who are exploited.

Ms. Alvernaz explained that DCJS supports trafficking victims by creating a consistent response protocol for human trafficking. Currently, the focus is on sex trafficking because when this position was established, it was written to begin with sex trafficking. Ms. Alvernaz made it clear that she will work toward labor trafficking as well. She shared some of the other ways she and DCJS are supporting trafficking victims, including training providers and other professionals to assist those who have been exploited, creating standards and protocols for treatment facilities, working with State Advisory Groups and task forces throughout the state, developing resources, and maintaining a resource guide of providers serving trafficking victims. She also shared information about the two state advisory groups, the Anti-Human Trafficking Coordinating Committee and the State Child Trafficking Work Group, which will be realigned this year to work in a more integrated fashion. Additionally, there is a human trafficking task force in every area of the State.

Ms. Alvernaz advised the group that there are not many existing services to assist domestic service workers, only a couple of legal services in Virginia and the Human Trafficking Legal Center in Washington, D.C. Currently, there are no other service providers or NGOs working specifically on workers' rights within the domestic services field; there are NGOs working on labor trafficking for undocumented or under documented immigrants.

Ms. Alvernaz gave some brief recommendations. She stated that DOLI should be the key agency to work on some sort of bill of rights for the domestic service workers and labor standards for the workers and the organizations that employ them. She plans to add a subcommittee to the State Trafficking Advisory Group that will work on labor exploitation and labor trafficking. This subcommittee would work on all forms of labor trafficking, not just domestic service, and work with all individuals regardless of their documentation status. Her framework for domestic workers would include (i) creation of a workers' bill of rights, (ii) specific labor standards for domestic service workers, (iii) training for domestic service companies and placement agencies, (iv) create required courses for families who will be directly hiring nannies, au pairs, maids, cooks, etc., and (v) establish a hotline for workers to report abuses. For families hiring domestic service workers, Ms. Alvernaz suggested contacting existing organizations (such as Care.com) that might be willing to offer information as to Virginia's rules and regulations for employing a domestic service worker.

## **Appendix A: First Meeting Minutes**

### **Domestic Service Employees Work Group August 31, 2020, 3:00pm**

The first meeting of the Domestic Service Employees Work Group was held via Google Meet/Conference Call on Monday, August 31, 2020 at 3:00pm. All members of the work group were present as follows: Brian Ball, Megan Healy, Valerie Braxton-Williams, Stacy Maher, Robert Field, Jim Szablewicz, Ingrid Vaca, Marta Sanchez, Jen Jackson, Michelle Lane and Jason El Koubi. Staff members present included Turner Widgen, Meaghan Green, Cathy Stephens, and Connor Andrews. Also present by invitation were Senator Jennifer McClellan and Alexis Rodgers with the National Domestic Workers Alliance.

Additional persons present included Annette Phaeffle and Lizbeth Rodriguez (translators), Antonia Pena and Alexa Malishchak with the National Domestic Workers Alliance, and Maryn Wood, Legislative Aide to Senator Jennifer McClellan. Also participating with Michelle Lane of Middleburg Homecare was Amanda, one of her personal care assistants.

Secretary Brian Ball welcomed the group and thanked everyone for attending. Secretary Ball thanked Senator Jennifer McClellan, the bill patron on Senate Bill No. 804, for attending. Secretary Ball pointed out that SB 804 was a great achievement after many years of work to address the exception of domestic service workers from receiving the minimum wage. There were other aspects of Senator McClellan's bill that did not get addressed and the purpose of this work group is to look at some of those other aspects. The Administration is to file a report in early November.

Secretary Ball asked Senator McClellan to give her thoughts on some of the remaining unaddressed items that the work group will be looking at.

Senator McClellan welcomed and thanked everyone for participating. She offered a high-level perspective of why this bill was introduced and why this work group is so important. It has been a 401-year journey to value the role of the domestic service worker which historically was performed without pay by enslaved women, for the most part but not exclusively. After emancipation, for many woman of color, domestic work was the only work available. When the worker rights movement of the progressive era put many of the laws we are addressing today in place, those Jim Crow jobs were excluded. Many of those jobs have been removed, but domestic work has not. Domestic service workers are the fastest growing workforce in the country. In Virginia, there are over 60,000 domestic service workers, over 90% are women and over half are women of color. Senate Bill No. 804 was the first bill anywhere in the South that passed extending any worker protections to domestic service workers. Senator McClellan pointed out that giving domestic service workers the ability to earn minimum wage is important but there are other worker protections that should be addressed, specifically discrimination, loss of a job, and getting hurt on the job. What complicates this issue is that most of the domestic service workers work in the home. She shared with the group that there was just not enough time during the 2020 Session to work through all the unintended consequences or addresses some of the differences between domestic work in the home and elsewhere. Senator McClellan stated that domestic service workers allow other workers to leave the home knowing that someone is caring for their children, elderly family members, cleaning, and cooking. She emphasized the need to ensure that these workers should be extended worker protection so that they can take care of their own families.

Following, Secretary Ball asked the work group members to introduce themselves. After quick introductions by the staff and each work group member, Secretary Ball reminded everyone that SB 804 took out the exception for minimum wages for domestic service workers, and as Senator McClellan said, is something to be quite proud of for all involved in the passing of this legislation.

A component of the bill requires the Secretary of Commerce and Trade to convene this work group. Secretary Ball told the group that he and Dr. Healy work together on all labor-related issues. This group is being asked to consider whether other workplace protections should be in place, such as harassment, discrimination, non-payment of wages or not receiving the proper wages, health, and safety. Secretary Ball mentioned other issues to consider such as, if there are injuries in the workplace whether worker's compensation should be available and if there is job loss whether unemployment compensation should be available.

Secretary Ball stated that this work group is composed of people who work in the industry, people who have employees or have employed independent contractors in the industry, as well as representatives from several agencies. The plan is to get as much input from this group in a series of meetings, and then the Executive Branch will write a report and have that ready by November 1. Secretary Ball commented on the current situation with COVID-19 and that we will not allow that to deter the group from its work.

Secretary Ball asked Dr. Megan Healy, Chief Workforce Development Advisor, to introduce the definition of "Domestic Service Employee." Dr. Healy thanked the group and reiterated the importance of this topic. Virginia defines "domestic service" as "services related to the care of

an individual in a private home or the maintenance of a private home or its premises, on a permanent or temporary basis, including services performed by individuals such as companions, cooks, waiters, butlers, maids, valets, and chauffeurs.” Dr. Healy cited additional examples (see attached slide deck) and pointed out that the home health care and personal care aides do not provide full skilled nursing but are workers who support our loved ones who may have disabilities or are elderly. She also pointed out that the definition does not include domestic service workers who are self-employed or operating as independent contractors and this will come up in this group’s discussions. Dr. Healy stated that we are seeing a shift with more people being independent contractors and that means not having the benefits that other workers have.

Dr. Healy asked the group: Do you think this is a good definition, or how would you expand this definition? Is there anything additional that should be added to the definition? She stated that we have to agree on what domestic service is and what to include in our report to support this work group.

Valerie Braxton-Williams with the Virginia Employment Commission commented on whether the definition of domestic service worker passed in SB 804 encompasses all that is included in Section 60.2-219(19) of the Unemployment Compensation Act:

Services provided by an individual pursuant to an agreement among the service recipient, a public human services agency as defined in § [15.2-2811](#), and such individual to an eligible service recipient in his own home or the home of the service provider, unless coverage of such services is required by the provisions of § 3304(a)(6)(A) of the Federal Unemployment Tax Act;

Ms. Braxton-Williams stated that she does not believe the people hired by a services agency to perform some of the same services are included in the definition this work group is considering.

Jim Szablewicz with the Workers’ Compensation Commission stated that by statute domestic servants are excluded from coverage under the Virginia Workers’ Compensation Act. He advised that the Commission’s definition is actually a little broader than the definition this group is considering. The full definition from the Workers’ Compensation Commission, and this goes back to a case from 1980, is frequently cited, “a person hired or employed primarily for the performance of household duties and chores, the maintenance of the home and the care, comfort and convenience of the members of the household.” Mr. Szablewicz points that this is a bit broader than the care of an individual. Secretary Ball asked Mr. Szablewicz for the case citation which is *Hux v. Trust for the Benefit of Jean Roche*, 59 O.I.C. [Opinions of the Industrial Commission] 143 (1980). Mr. Szablewicz will send a copy to Secretary Ball.

Ms. Braxton-Williams made a further comment that during the General Assembly Session, a question came up frequently that as the definition of domestic service includes the care of individual in a private home or the maintenance of a private home, does that include the person who comes by twice a month to cut your grass? Secretary Ball commented that some of this may be ground covered at the General Assembly level but that does not foreclose this group from looking at this question.

Dr. Healy pointed out Mr. El Koubi's chat comment, that the definition should be modified so that "individual" is "individual(s)". Such as in a nanny or au pair situation, there may be multiple children in the care of a domestic service worker.

As there was no additional discussion on the definition of domestic service, Secretary Ball welcomed Alexis Rodgers, State Director of the National Domestic Workers Alliance (NDWA), to make a presentation.

Ms. Rodgers thanked the group and said she would share some of the national framework that NDWA is advancing for domestic workers rights throughout the country. Ms. Rodgers thanked Ingrid Vaca and Marta Sanchez for their participation.

NDWA is a national, non-profit organization and is the leading voice for dignity and fairness for millions of domestic workers in the United States. Ms. Rodgers pointed out that domestic workers are nannies, cleaners and homecare workers who are overwhelmingly women, and a majority of which are women of color and immigrant women. She stated that this workforce has largely been invisible and excluded from labor protection from the very foundation of this country, and even as protections for other workers were established, there has been intentional effort to exclude care workers. The work of NDWA is to bring visibility and recognition to the value of care work and to the folks who are caring for our loved ones in our home.

Ms. Rodgers stated that domestic workers are hard to count because of the nature of the work and so many contractual relationships are verbal and not written agreements. NDWA estimates that 2.5 million domestic workers are here working in the United States and 60,000 in Virginia. Their research shows that this market and this workforce is growing rapidly as folks delay having children while also having their parents or elderly ones to care for as well. Ms. Rodgers stated that there is increasing demand for working people to have access to affordable care. Because of the increased demand for this care, Ms. Rodgers stated the jobs available to domestic workers need to be good jobs so that these workers can also provide for their own families while caring for others.

Ms. Rodgers continued stating that so many of the workforce are immigrant woman and undocumented or in a mixed immigration status family. She commented that unfortunately in this country, there have not been great protections for folks based on their immigration status. It is her hope that Virginia can make sure to extend good worker protection to everyone regardless of immigration status. Just for background purposes, Ms. Rodgers stated that the population of domestic service workers is made up of all kinds of folks. There might be people who have come from a different profession, and they move to the United States and their credentials are not recognized. There are many of these folks who find themselves in positions providing incredible care for people in Virginia and across the country.

Ms. Rodgers reminded the work group that domestic workers are excluded from many basic rights under federal labor protections, such as basic labor and safety net protections that many workers enjoy. She stated that as to contractual agreements, so many domestic workers may only have a verbal agreement, not a written agreement. She stated that the basics of retirement and health care insurance and the right to unionize are still carved out from the federal labor

standard. It was just this year we were able to address minimum wage pay. That has been an historic wrong for this important workforce.

Ms. Rodgers continued by outlining the priorities for a domestic workers bill of rights across the country and the key areas that her national campaign tries to address. The key areas fall into basically two categories—protect all workers and extend basis protection to everyone. This includes eliminating those historic exclusions from our state labor and employment laws whether that be minimum wage, overtime, workers comp, while also introducing a new model and creating new standards for the unique nature of domestic work. She stated that we know that because of the job that care workers are doing, they may often be working in vulnerable situations and have unique protections that are needed to ensure that they are safe on the job. She asked that the work group keep that background in mind as she continues.

The NDWA has advanced a state domestic workers bill of rights in a number of states across the country. The first state campaign for a domestic workers bill of rights began in New York in 2003. It was led by Domestic Workers United and a number of other worker organizations. The original bill was designed for full inclusion of all domestic workers in New York, including minimum wage, overtime protection as well as anti-discrimination protections and to win a number of additional protections that are not normally guaranteed to workers, whether that be health insurance, sick leave, vacation time and other important protections. Many of these more expansive provisions were cut from the bill during negotiations, but over time and by 2010, NDWA helped create a stronger bill in New York. There are a number of other states where NDWA has advanced a state domestic workers bill of rights, such as the bill of rights passed in Hawaii that included privately paid nannies, house cleaners, it advanced the definition of domestic workers, minimum wage and overtime protection. This was possible through the efforts of organizing domestic workers and partnering with the legislature, like we are doing here today, to pass an expansive bill and it helped create more momentum for similar policies in both municipal and state government across the country.

Ms. Rodgers stated the first step is striking some of the legal exemptions that have existed historically. In every state, it is important to look at where in the statute, code or regulation domestic workers are explicitly excluded, and some of those were addressed in this last legislative session when it came to minimum wage. She pointed out there are many instances where domestic workers are named expressly as excluded from a protection, and there are other areas where based on the size of the workplace domestic workers are excluded, for example, a workplace needs to be five or more workers. Ms. Rodgers stated it is important that as we are looking for ways to provide more domestic workers with worker protection, we need to understand the various ways that domestic workers can be and have been excluded from protection. Additionally, we need to look at how the state and local law intersects with federal policies that also oversee workers' rights.

Ms. Rodgers commented that NDWA advocates for the most expansive definition of domestic workers as they campaign for those rights across the country. Many state laws track the federal labor and fairness act, which usually excludes domestic workers who are live-in domestic workers or companions or casual workers, such as the person who may do maintenance at a home. NDWA wants to make sure that they are creating the most expansive definition as

possible so that the most domestic workers can be included. Ms. Rodgers stated that a definition her organization particular likes is in the Seattle domestic workers bill of rights. That bill had the broadest definition thus far; it included live-in domestic workers, as well as independent contractors and temporary workers, among some others.

Ms. Rodgers pointed out there are unique protections that domestic workers need. Many of their domestic workers bill of rights have included an industry standard provision such as paid time off and requiring notice for termination of work if you are a live-in employee. There is also the need to create a standard employment agreement. Many people who are live-in care workers may be called upon to do more than what is in a job description. Ms. Rodgers stated that this can lead to exploitation on the job, such as no standard scheduling or the ability to take time off. She stated that having the requirement that live-in care workers be entitled to time off and, specifically 24 hours off in a 7-day period, is an important protection to advance. Even making sure there are clear standards for privacy in the home where you are working and the ability to cook and use the kitchen facility. Again, these are protections that other workers do not need, but due to the unique nature of domestic workers and their work, it is very important that they have access to prepare their own meals and have privacy at their workplace. Ms. Rodgers stated that by advancing some of these provisions, we are making sure that we are highlighting issues that may lead to exploitation and trafficking in other ways, so if we are able to report complaints about issues of exploitation it could be preventative of larger issues of trafficking, labor trafficking here in Virginia and across the country. It is also important to look at whether these protections are feasible as to enforcement and how they intersect with federal policy.

Ms. Rodgers continued by stating that enforcement of workplace standards can be very challenging when the workplace is a private home. It is important for domestic workers to be able to register complaints and track them in an easily accessible way so that if there are issues of harassment, discrimination, safety or other issues on the job that they have the same protections as the worker in a restaurant or office or anywhere else. She commented there are examples in other states where partnerships were created to help co-enforce the policies, by working with local governments as well as non-profit organizations that serve either domestic workers or families who employ domestic workers. She emphasized the importance of partnering with companies and agencies that employ domestic workers to ensure that everyone is as educated as possible about changes, whether its workers compensation, or other standards that regulate the industry.

Ms. Rodgers commented that to expand health and safety and workers compensation coverage, we are really looking at closing the legal loophole where domestic workers are excluded and make sure that all domestic workers are covered by these very important protections. She stated that making workers compensation mandatory for all workers regardless of employment classification is important for her organization as many domestic workers are often misclassified as independent contractors. She stated that Ingrid and Marta would be able to share some of their own experiences where workers injured on the job, and they do not have access to the same protections that other workers injured at work have. Ms. Rodgers stated that it is important that domestic workers, nannies, cleaners, are able to seek out compensation for those injuries when they do occur. She commented this is an area where it is very important for state and local governments to partner with other domestic worker collectives or domestic worker companies to

make sure there is a broad awareness of what is required from homeowners or employers of domestic workers.

Ms. Rodgers commented that she appreciated Dr. Healy sharing a little about the work on portable benefits and the future of work. Senator Warner has been working on this for a while at the federal level and this is important for domestic workers. She believes it is good to hear the plight of gig workers in our economy and she often shares that the domestic worker is the original gig worker when it comes to the fact that so many domestic workers are managing multiple clients, managing multiple jobs and do not have access to the safety net that other workers enjoy. NDWA has advocated across the country for policies that require the state or local government to develop a way to have portable benefits for domestic workers. She believes this would be a model that benefits all workers. The Seattle bill of rights did require their wage and standard board to develop a system, and that is an important tool to make sure that workers have access to benefits but also so that clients can easily make contributions to that system. Ms. Rodgers believes there are many families of domestic workers who would love to be able to provide those benefits to the women they employ but it can be difficult for the employer if there is not a handy tool or system in place.

In 2018, NDWA launched an app called Alia. This is an online platform that allows clients of house cleaners to make contributions to the app and cleaners can then use the contributions to purchase benefits such as paid time off, insurance, life insurance, etc. It is important that the state and local governments explore the models can be created to navigate what is an important benefit for workers while also sometimes a challenging system for employers, even employers in good faith, to figure out on their own. Ms. Rodgers shared a quick video about the Alia app.

Ms. Rodgers commented about the explicit impact of the coronavirus on domestic workers. She believes that of all workers and everyone negatively impacted by this terrible pandemic, domestic workers are among the hardest hit. In order to stay safe, many families immediately asked their care workers not to come to take care for their children or their elderly family member. To limit interaction with other folks, families chose not to have someone clean their homes. Unlike many employees who were given paid time off or furloughed with some kind of pay or notice, many domestic workers were immediately without a paycheck, without clients, and as many were women of color, at a higher risk of contracting the virus. Ms. Rodgers commented that she appreciates the state's work on adopting temporary standards for employees. Because during this critical time domestic workers are still on the front-line providing care and making sure that as folks are returning to work, and also domestic workers are returning to work, that they are able to do so in a safe way.

“The same workers who have been in the shades really could be the key to extending the spread of the virus but we need to make sure that domestic workers have a chance to be a part of the solution.” Ms. Rodgers feels this quote is fitting as this work group is studying how to bring more domestic workers into the fold when it comes to state policies, and those voices should be heard when making important policy changes.

Ms. Rodgers completed her presentation (see complete presentation attached) and asked Marta and Ingrid to share their thoughts and reflections as domestic workers in Virginia for many years.



Ingrid Vaca shared her thoughts with the group. Domestic workers have been invisible for much of their lives. The pandemic has shown to all the world that domestic workers are essential and indispensable workers, and it has shown their humanity. Ingrid stated that domestic workers are at risk because they do not have the right tools to take care of themselves. Domestic workers contribute to this country, paying taxes and buying supplies. There are bad situations. Ingrid shared an experience when she was working in an apartment, and the owner left her supplies to clean a bathroom. In the process of cleaning, two liquids came together and the resulting mixture was harmful to Ingrid's eyes. Ingrid was forced to drive herself to the hospital, pay all her own expenses, and the homeowner did not offer to help. Also with the pandemic, many domestic workers have not gone back to work. They are scared. It is important to the domestic worker that other people see their humanity. Ingrid emphasized the domestic service worker is not just the person taking care of the baby, not just the person cleaning the house, but is a human being who needs respect and dignity.

Marta Sanchez (through a translator) also shared the importance of protection for the workers. She, like Ingrid, had a very similar situation with a reaction to the mixture of two liquids. Marta said there was no one to attend her and take care of her, and she had no insurance to cover medications. The only thing they did for her was to put cold water on my head. Domestic workers are also exposed to, not only cleaning agents, but other articles in the kitchen that can be harmful. Marta stated that domestic workers are often in harmful situations.

Secretary Ball reminded the work group members that we will have other meetings with plenty of opportunity for all members to offer input and comments in order to complete our report. Secretary Ball thanked Ms. Rodgers for her presentation and Ms. Vaca and Ms. Sanchez for sharing their experiences.

Dr. Healy gave an overview of the 2020 legislative wins, including minimum wage, wage theft, and misclassification. Dr. Healy pointed out additional pieces of the original SB 804 legislation including, among other things, discrimination, worker's compensation, and unemployment insurance. She advised the group that these are some of the issues that will guide this work group moving forward.

Dr. Healy continued by inquiring of the work group, what should our priorities be? She stated that she heard worker's comp from our two workers (Ingrid and Marta). She asked the group to be thinking about our priorities moving into the next meeting at which time we will have more detail from subject matter experts on the pieces and parts. Secretary Ball reiterated that today we heard from the parties who want to expand these protections. We will hear from the employers of the domestic service workers to understand what they are currently providing these workers and how their businesses might be impacted were these benefits to be required. Secretary Ball assured the work group we will not hear just one perspective, but that we are going to be hearing from a breadth of perspectives and then we will do our work following all of those inputs. Dr. Healy added that sometimes it is not the extra expenses to the employer for the benefits, but also whether the agencies are set up to provide benefits or pay into benefits. She advised that can be tricky on a state agency level.

Ms. Braxton-Williams commented that she would like to see the work group look deeper into whether the definition of domestic service is so broad in SB 804 as to include those persons who have a family relationship, for example a sister occasionally taking care of an elderly sister. She pointed the group back to Section 60.2-219(19), those persons are excluded from the definition of employment. Ms. Braxton-Williams asked that during the next meeting we should address how to deal with that issue and not include persons who should not be included in this definition of domestic service worker for remuneration. Dr. Healy agreed this is an issue to discuss further.

Secretary Ball asked if there were any additional items to discuss in the remaining time.

Michelle Lane with Middleburg Homecare mentioned that she has a fairly large personal care assistant division in her home healthcare organization. Her organization pays above scale, and Amanda actually makes \$20.00 an hour as a personal care assistant. Ms. Lane is concerned that if there are more regulations, it will change how she pays her employees. She uses a creative model and is able to pay at a higher rate and that allows her employees to buy their own insurance. Ms. Lane offered to expand on this today or wait for the next meeting. Secretary Ball reiterated that we are running out of time and advised Ms. Lane that she will have an opportunity to explain this next time. He confirmed that we need more time to flesh out that issue.

Secretary Ball continued the meeting by offering the group some of his expectations for our next meeting. He believes the work group needs to understand from our agencies, such things as: (i) why we have been doing things the way we do, (ii) do we need to be looking at the definitions in a certain way, and (iii) if we are going to move toward some sort of benefits in the worker's comp and unemployment benefits areas, how that would look for the agencies. Secretary Ball said that we will have ample time to raise concerns like those mentioned today by Ms. Lane. Secretary Ball shared with the group one of his concerns. Where does a domestic worker go if she is mistreated, either physically or emotionally (in Virginia, not on a national level)? He wants to understand the remedies. There is an ETS on the books for workers, but what about the undocumented worker who is not going to call the police? Where does she go to get some relief? Secretary Ball believes this issue needs to be part of the work of this group. So apart from benefits and wages, we should consider basic issues of what happens when somebody is mistreated.

In closing, Secretary Ball asked if there were additional items the group wanted to include on the agenda for the next meeting. Hearing none, Secretary Ball thanked everyone for attending and participating, and the meeting concluded at 4:29 p.m.

## **Appendix B: Second Meeting Minutes**

### **Domestic Service Workers Work Group**

**September 24, 2020**

#### **MINUTES**

The second meeting of the Domestic Service Workers Work Group was held via Zoom/Conference Call on Thursday, September 24, 2020 at 10:00am. All members of the work group were present as follows: Brian Ball, Megan Healy, Valerie Braxton-Williams, Stacy

Maher, Robert Field, Jim Szablewicz, Ingrid Vaca, Marta Sanchez, Jen Jackson, Michelle Lane and Jason El Koubi. Staff members present were Turner Widgen and Meaghan Green. Also present by invitation was Nicole Riley, NFIB.

Additional persons present included Annette Phaeffle and Lizbeth Rodriguez (translators), Antonia Pena with the National Domestic Workers, Marcia Tetterton with Virginia Association of Home Care and Hospice, and Abbey Philip with Senator McClellan's office.

Secretary Brian Ball welcomed the group and thanked everyone for attending. He reintroduced himself and Dr. Megan Healy and quickly recapped the first meeting of the work group. Secretary Ball gave an outline of today's meeting and dispensed with any further introductions. Dr. Healy thanked everyone for participating today. She specifically thanked Turner Widgen from Secretary Ball's staff as well as Meaghan Green, her Special Assistant, for their background work, research and planning for today's meeting. Dr. Healy also thanked the presenters for today who will talk about the employer's side and our agency subject-matter experts who are digging into the Code to support the work of this group. She explained we have two Spanish-speaking members of the work group and when they speak, there will be a simultaneous translation.

Secretary Ball then introduced our presenter, Nicole Riley, Virginia State Director for NFIB (National Federation of Independent Business). NFIB represents small business, advocating on behalf of America's small and independent business owners in all 50 states and Washington, D.C. NFIB Virginia represents approximately 6,000 small businesses. These small businesses represent numerous industries, including retail, restaurants, construction, manufacturing, professional services, etc. NFIB represents a wide range of employers, including those who work in the domestic service industry. Most of the NFIB member businesses that operate in the domestic service worker space are third party employers.

Ms. Riley acknowledged the importance as well as the difficulty the work group will have in formulating the definition of "domestic worker." The few states that have a domestic worker bill of rights do not all use the same definition, and she pointed out that the federal definition is somewhat broad. She posed the question, is one definition appropriate for all industries? Domestic service covers such a wide range of services, home care, healthcare, companion care, childcare, each having its own set of standards and challenges. Another issue to consider are the services that require certifications and licenses, such as the healthcare services providers. Many businesses owners currently rely on the federal definition and the requirements under that definition.

Ms. Riley mentioned that the Fair Labor Standards Act was amended to include domestic workers, and then in 2015 it was even more narrowly drawn so that those in the home care arena were specifically addressed and were basically taken out of the definition of domestic worker. In a sense putting it more under the Fair Labor Standards Act, so that they are held to minimum wage requirements and overtime pay. Ms. Riley added that business owners become confused with the layering of state and federal rules and how to know which rules to play by.

Ms. Riley continued her presentation talking about the employer. Most of Ms. Riley's members operating in the domestic service space are third party employers, such as domestic service agencies like Merry Maids or Molly Maids. Most of these businesses treat their workers as employees as defined by federal and state laws. They pay overtime and minimum wage and often offer benefit packages, including health insurance and paid time off. They follow the laws regarding worker's compensation, withholding taxes and paying unemployment taxes.

The other employer in the domestic service space is the individual consumer-client, and this is where a lot of the market operates. This employer is the individual who hires a nanny, a home care companion or a housekeeper. Typically, this domestic service worker is self-employed who may have set up a business, has a license, is paying income taxes, purchasing her own health insurance, and following all the laws. The consumer-client probably assumes the domestic service worker is taking care of all these items for herself. Ms. Riley stated the common practice in this setting is that the consumer-client does not provide benefits as they assume this domestic worker has other clients, this is the worker's business, and it is the worker's responsibility to provide her own benefits and conduct the business in accordance to the law. She pointed out this is not always the case as much of this work is done "under the table." There is confusion and as well as precedent in the market that makes applying protections for these workers difficult, especially as the vast majority of domestic workers are self-employed.

Ms. Riley stated that the third category of worker is the independent contractor. Most third-party employers do not use independent contractors. They treat their workers as employees as defined by state and federal law. She pointed out that most franchise agreements will not allow workers to be classified as independent contractors; they must be employees.

Ms. Riley pointed out some of the concerns that small businesses would have with the possible implementation of a domestic workers bill of rights. Additional regulations may contradict current requirements that employers must meet or even duplicate requirements. The first concern of small businesses is the cost that additional regulations will bring. New regulations will require them to spend more time on recordkeeping, and most small business owners do their own recordkeeping. She stated that requiring small businesses to provide paid time off, health insurance, worker's comp, etc., is costly and may not be sustainable for the small business, or the market. Ms. Riley reminded the work group that we heard from an employer on the work group whose business has found creative ways to provide higher pay and benefits. A business may have the flexibility to put together a package that attracts good, dependable, trustworthy employees using those benefits as an incentive. She believes that these same employers worry that if there is a mandate that includes additional regulations, it will become a cost issue. Increased costs decreases any profit the small business may have forcing them to pass that cost on to their customers.

Ms. Riley continued by wondering how additional regulations will be enforceable. State agencies may need additional resources to enforce new regulations and that requires additional funding. Another concern is enforcement in a market where the large majority of the work is conducted on an individual-to-individual platform.

Ms. Riley also pointed out the need to educate employers and employees on current best practices. Since most of the domestic service workers are self-employed, there needs to be a mechanism to educate them. There should be resources to help them to put together a business plan and learn how to negotiate with clients. The workers should know how to run a business, how the rules and regulations apply to them and how to implement them.

Ms. Riley touched briefly on protections such as insurance. Virginia has recently allowed a self-employed person to be a business in order to qualify for the small group health insurance market. She mentioned there could be a way for self-employed persons to pay into a “system” like worker’s compensation or unemployment, so that if something happens, they are in the system and then can get benefits. The self-employed worker then incorporates those costs into their business plan and recovers the costs from the customer-client.

Ms. Riley stated that with the exemption for domestic service workers for minimum wage, there will need to be time for implementation. We need to see what the challenges for employees and clients will look like. Will there be a lack of enforcement at the state level? For instance, will the department of labor start to get complaints that employers are not paying minimum wage.

Ms. Riley concluded her presentation (complete presentation attached) and asked for questions. Secretary Ball thanked Ms. Riley for her overview and stated in the interest of time we should keep moving along with our other speakers and take questions at the end if there is time.

Secretary Ball introduced the next presenter, Jen Jackson, owner of River City Cleaning, and thanked her for her time.

Ms. Jackson began by stating that her business, River City Cleaning, is an ecofriendly cleaning company working in the residential space. Her customers are mostly regular clients that the company services every couple of weeks. She has been in business for 12 years and employs about 12-14 people. Ms. Jackson stated that they offer a safe working environment by using nontoxic, ecofriendly products. Her company provides workers compensation and liability insurance, and offers a 401(k) with a company match. Unfortunately, her company cannot afford to provide health insurance to her employees. She stated that her company does health mentoring. In the beginning, River City Cleaning was a bicycle run company with emphasis on staying physically active. As they have moved away from the bicycles, the company continues to educate its employees on self-care and wellness. Ms. Jackson stated the company offers frequent advancement opportunities by having quarterly evaluations and rewarding the staff with pay increases for meeting performance requirements.

Ms. Jackson continued by stating that she would like very much to do more for her employees such as providing health insurance. She believes that the better her staff is cared for, creates a family atmosphere that flows into the services River City Cleaning provides to its clients. The challenge for the company would be the need to increase their rates to clients, in order to pay minimum wage and offer additional benefits. Ms. Jackson stated that an employer should offer continuous appreciation and acknowledgement to its employees for the services they perform. Additionally, she appreciates when her clients express that appreciation as well.

As to the issue of workers feeling unsafe in a client's home, Ms. Jackson commented that fortunately that has not been an issue in her experience. Her policy is that if an employee feels unsafe, the employee would contact the office and a supervisor would immediately come to the client's home.

Secretary Ball asked Ms. Jackson to clarify her market area. River City Cleaning works mostly in Richmond City, as far as Churchill the west end, and not much farther north than Ashland and south to about Midlothian and Chester. Secretary Ball thanked Ms. Jackson and continued the meeting by welcoming Michelle Lane.

Michelle Lane is a masters-prepared, registered nurse and owner of Middleburg Homecare. Ms. Lane began by telling the work group that she had worked all night because her company has many new referrals. She credits the amount of work they receive to the fact that she pays her employees above scale. Her company has great employees who are consistent and do not miss work which is so important when providing personal care services. Ms. Lane stated that she makes sure that all her employees feel safe in the homes they service.

Ms. Lane also commented that since Middleburg Homecare pays their employees well, personal care assistants can make up to \$20 an hour, the worker is then in a better position to purchase her own health insurance. This model proves that her company can use the market, provide a great service and pay above scale, and it should show other companies they too can provide excellent care, have their company sought after and allow their employees to have extra money and freedom to make their own choices such as purchasing health insurance. Ms. Lane stated that Middleburg Homecare pays workers compensation and liability insurance for its employees.

Answering Secretary Ball's question, Ms. Lane stated that her company employs approximately 30 people, including registered nurses, license practical nurses, one physical therapist, one masters prepared social worker and one occupational therapist. Secretary Ball thanked Ms. Lane and continued the meeting by welcoming Jason El Koubi.

Jason El Koubi is an au pair employer but considers himself part of a host family. Mr. El Koubi stated that the au pair program has been a wonderful experience for his family as they have hosted four au pairs over the past five years. Mr. El Koubi explained the au pair program in the United States. An au pair lives with and is an equal part of the family, not just an employee. The au pair shares in the housework of the family, caring for the children, cooking, cleaning for the children, and teaching good habits. Cultural exchange is encouraged through language and food customs. An au pair receives a monetary allowance for personal use, but the host family covers many of the basic needs. Au pair arrangements are subject to federal regulations and the program was enacted in the United States in 1989. Mr. El Koubi estimates there is likely between 500-1,000 au pairs living in Virginia. The program is implemented through au pair organizations that follow the guidelines of the U. S. Department of State. Mr. El Koubi shared some of the rules and requirements of the program.

Mr. El Koubi continued by outlining the many requirements that a host family must meet. Secretary Ball interjected and asked Mr. El Koubi to offer information as to who is the employer, how the au pair is compensated and are benefits provided. Mr. El Koubi stated that he thinks of

himself as the host family but technically, he is the employer. As a host family, Mr. El Koubi pays the agency a fee of approximately \$9,500 a year to be in the program. Additionally, the host family is required to pay the au pair a weekly stipend of at least \$195.75 and contribute at least \$500 towards the educational allowance. The direct cash cost to the host family is approximately \$20,000 with approximately half of that amount going to the au pair organization-agency. He stated that in addition to the direct cash costs, there is also the cost of supplying a bedroom, at least three meals a day, a telephone and transportation as it relates to care of the children. The \$9,500 agency fee is used, in part, in the selection process, for administrative support from the agency, roundtrip transportation for the au pair between their home and the host family, orientation and training for the au pair in advance of a placement, a special au pair visa, basic medical insurance and personal liability coverage, as well as cultural workshops and online resources.

Mr. El Koubi stated that this program is such a great experience for his family because the federal framework and agency capabilities allows the family to focus on the personal relationship and not so much on the employer-employee relationship.

In conclusion, Mr. El Koubi stated that there are many resources, benefits and protections provided for the au pairs by the federal framework and the agency. He pointed out that successful implementation of the program, especially the protections, seems to depend significantly on the local childcare consultant that represents the agency. Mr. El Koubi stated that to the extent changes are considered to the employment side of the program, he would recommend the handling of any changes be through the agency. This would allow the host family to maintain the family relationship, cultural exchange and personal side of the program while ensuring that resources and protection are delivered through the agency.

Secretary Ball thanked Mr. El Koubi for his presentation and asked for any questions.

Ingrid Vaca commented that while the au pair program can be an enriching experience for some, it can be dangerous and abusive for others. She expressed concerns that au pairs can be exploited as slave labor and do not have adequate protections. Mr. El Koubi said that understood that she highlighted some of the abuses that occur in the au pair program. He acknowledged that he had read reports similar to those mentioned--where au pairs are in situations where the families abuse the program and do not comply with the weekly hour limit, require au pairs to buy their own food, and generally put the au pairs in situations akin to slavery. He acknowledged there are problems and abuses as reported in the media. He recognized there are opportunities to improve what has happened in certain circumstances.

Secretary Ball thanked Mr. El Koubi for his comments and stated that at a later meeting the work group will address the issue of how to deal with workplace abusive situations for domestic service workers, including au pairs. Marta Sanchez echoed Ingrid's concerns about the au pair program and the abuses that some participants face when not adequately protected.

Dr. Megan Healy continued the meeting asking Ms. Lane as related to personal care attendants and Medicare and Medicaid reimbursement rates that you must deal with, how can you pay your people so well? Ms. Lane declined to respond to the question not wanting to get into her

business accounting. Ms. Lane did request that an item be placed on the agenda for the next work group meeting. She would like to discuss some kind of protection for companies, like home healthcare companies such as her company. Her company is required to make sure the people have legal status in the U.S., and she has faced retaliation from some who were angry when she tried to comply with this requirement.

Secretary Ball continued the meeting by welcoming Valerie Braxton-Williams and thanking her for her hard work during the COVID-19 crisis and for being a part of the work group.

Ms. Braxton-Williams is a Confidential Assistant for Policy and Legislation with the Virginia Employment Commission. She worked in policy for several years for a former member of the General Assembly. Ms. Braxton-Williams briefly explained unemployment compensation as temporary, partial wage replacement for workers who have lost their jobs through no fault of their own. It is an eligibility-based program, not an entitlement program. Claimants must meet various monetary and non-monetary eligibility requirements in order to be found qualified to receive unemployment compensation benefits.

Ms. Braxton-Williams continued her presentation discussing Senate Bill No. 804 and the proposed amendment to Section 60.2-215 where the definition of “domestic service” is re-defined. Currently if you look at Section 60.2-215 and you look at the amendments, you see that many people who are now exempt as being included under domestic service, that exemption is being removed with the amendment, and the definition becomes broader. Continuing Ms. Braxton-Williams stated that when talking about domestic service meaning service related to the care of an individual in a private home or the maintenance of a private home, local college club or local chapter of a college fraternity or sorority, if you look at those two categories of the care of an individual and maintenance of a private home, then you are not just talking about the people who actually provide care for a family member, you are getting into people who provide services such as gardeners, maintenance workers around your home, and other people who may not necessarily work in the home but do provide some type of service outside the home. Also, in Section 60.2-215 the amendment removes the \$1,000 threshold. Currently, employers report wages to VEC every quarter that they pay their employees, and if a person pays an employee a minimum of \$1,500 in any calendar quarter, they must establish an account with VEC to report the wages that they paid and pay taxes on those wages. That is how unemployment insurance benefits are paid. However, Publication 926 of the Federal Unemployment Tax Act allows VEC to set that minimum at \$1,000 for household employees. If the amendment in 215 were to stand and you remove that \$1,000 wage requirement, you are actually raising the threshold which means that now household workers or domestic workers would have to meet the standard that is set in 60.2-210 that says that employers must report wages to VEC if they pay \$1,500 in a calendar quarter.

Secretary Ball interjected to seek clarification. He said to Ms. Braxton-Williams, you have been referring to Section 60.2-215, Senate Bill 804 defines domestic service in Section 40.1-28.9. Secretary Ball asked Ms. Braxton-Williams if the definition in Section 40.1-28.9, the current definition, is that what she is referring to that would expand eligible employees to receive the minimum wage to gardeners and maintenance workers, people not necessarily working inside the home. Ms. Braxton-Williams responded, basically, she is looking at the coverage under



Title 60.2, and the changes in subsection 215 and how they relate to 60.2. She stated that there is another definition in Senate Bill 804 that is proposed under 65.2-101 that says domestic service means services related to the care of an individual in a private home or the maintenance of a private home or its premises on a permanent or temporary basis, including services performed by individuals such as companions, cooks, waiters, butlers, maids, valets and chauffeurs. So again, you are expanding the definition in more than one place in the amendments to Senate Bill 804. Secretary Ball replied, thank you for that. Ms. Braxton-Williams continued, but I want you to understand that removing the \$1,000 threshold for employers to report to VEC if they pay domestic service workers \$1,000 in a quarter, if you remove the \$1,000, it means they will not have to report until they have paid \$1,500 in a quarter. She commented that this is one of the issues that she shared with the patron of the bill during the past session is the collateral impact of removing the \$1,000 threshold.

Ms. Braxton-Williams continued by stating that in order for VEC to determine eligibility for unemployment benefits, there is a benefit table in the Code under 60.2-602 and VEC uses that benefit table to determine the benefit range that is currently \$60 at the minimum to \$378 maximum. In order to be eligible for unemployment insurance, the worker must have at least \$3,000 in wages in their base period. VEC cannot go below the \$3,000 to determine benefits. Ms. Braxton-Williams commented that in conversation with some of the advocates during the session they wanted to lower the benefit amount that domestic service workers would need to have, but VEC cannot hold the domestic service worker to a different standard and have a lower base period wage for them than they do for all other classes of workers.

In summary, Ms. Braxton-Williams stated that removing the provision paid of \$1,000 in a calendar quarter would raise the earning threshold to \$1,500 for a calendar quarter. She continued by stating that domestic service workers are subject to the same base period wage requirement as all other workers. She believes one of the bigger concerns is that those exemptions that are removed in 60.2-215 in Senate Bill 804 would impact 60.2-219 and cover people who are hired by the human service agencies. Those workers would now be classified as domestic service workers and that is a big concern. The definition being so broad of what a domestic service worker is would include your gardeners and other people who perform services just on the premises of your house. For example, you hire someone to come in once a month to clean your house; you hire someone to cut your grass; you hire someone to come over and wash your windows; all of those are now included under this expanded definition of domestic service. If a person hires those three people and they come once every quarter, but what they paid those people equals that \$1,500 minimum, they would now have to establish an account with the VEC and they would have to pay taxes on the wages that they paid those three people. Secretary Ball commented that these were very helpful examples and thanked Ms. Braxton-Williams. This concluded Ms. Braxton-Williams' presentation (complete presentation attached).

Secretary Ball thanked Ms. Braxton-Williams and then welcomed Mr. Robert Feild. Mr. Feild explained that the occupational safety and health side of DOLI is to protect employees from injury such as the mixing of chemicals that was described at the last work group meeting, and to provide protection from falls and other hazards that might be in a workplace. He pointed out there are anti-retaliation provisions if someone is discriminated against or fired for bringing up a safety and health complaint. Mr. Field continued by describing some of the DOLI programs.

The only programs that would have implications under the new definition under SB 804 would be payment of wage and occupational safety and health. As to the payment of wage, DOLI has a new anti-retaliation provision.

Mr. Feild stated that in order to have occupational health and safety enforcement there must be an employer-employee relationship. The current definition is, one engaged in business, and there are arguments to be made that hiring someone to work in a home does not make it a business. The objective of VOSH is to protect employees, so they tend to define things broadly. Mr. Feild posed the question, if an individual hires a home healthcare worker or cook, is that person a business. If it is a business, he pointed out that VOSH has limited resources to inspect a homeowner or individual. Most likely then, the only way for a home situation to come under VOSH enforcement would be through a complaint. There are several ways to make a complaint and a number of ways for the complaint to be investigated and resolved.

Mr. Feild stated that some potential issues with the complaint process and investigation may be the employer named in a complaint will say it is not a business. The other problem is that a complaint must show employee exposure and employer knowledge. VOSH has had some experience with opening investigations involving a private individual-employer, but they do not have on record any complaints or inspections in a private home related to home healthcare or personal services. They have done inspections of the home healthcare companies.

Mr. Feild pointed out that the anti-retaliation statute states that no person can discharge or discriminate against an employee for making a safety or health complaint or exercising rights under VOSH. For example, in a situation where an individual is working for an individual, and as we heard before the worker is injured by the chemicals, the worker may make a complaint to VOSH. It does not matter in this situation that the employer is not a business.

Mr. Feild stated that when the definition includes, engages an individual to perform domestic service, it will be clear that VOSH can respond to all complaints from domestic service workers. Some of the impacts from this would be an employer may be required to train, supervise and provide PPE to an employee.

At this point in Mr. Feild's presentation, Secretary Ball interrupted and thanked him and asked if we could hear the remainder of his presentation at the next meeting. Mr. Feild made one last comment that the main issue for VOSH is going to be looking at a joint employer situation. We will need to understand whether "engage" means that both the homeowner who hires a service worker and the service-agency that provides the service worker are joint employers. Mr. Feild concluded his presentation at this time having reached page 10 (complete presentation attached).

Secretary Ball then asked Mr. Jim Szablewicz to speak to the group. Mr. Szablewicz is with the Virginia Worker's Compensation Commission. As a judicial officer for the Commission, he began his presentation with a legal disclaimer (complete presentation attached).

Mr. Szablewicz stated that currently "domestic servant" is not defined in the Virginia Workers' Compensation Act (the "Act"). As Mr. Szablewicz explained to the work group in our first meeting, in 1980 in the case of *Hux v. Trust for Roche*, the Commission adopted the definition of

domestic servant as: “a person hired or employed primarily for the performance of household duties and chores, the maintenance of the home, the care, comfort and convenience of members of the household.”

Mr. Szablewicz stated that Va. Code Section 65.2-101 specifically excludes by name “domestic servants” from the definition of employees covered by the Act. He added that even if this specific exclusion was not included in the Act, there are two other broad exclusions that would exclude most domestic servants under current law. These two broad exclusions are (i) persons whose employment is not in the usual course of the trade, business, occupation or profession of the employer and (ii) employees of any person, firm or corporation that regularly employs less than three employees in the same business. Section (ii) is essentially a small business exclusion, meaning even if the domestic servant’s employer is engaged in the domestic service business, the domestic servant would not be covered unless that employer had three or more domestic servants regularly employed.

Mr. Szablewicz continued by stating that SB 804 as originally proposed would amend Section 65.2-101 to remove the specific exclusion of domestic servants from the coverage of the Act. SB 804 would also establish a statutory definition of domestic servant that Mr. Szablewicz believes is a bit narrower than the Commission’s definition as the Commission’s definition includes convenience, comfort and care.

Mr. Szablewicz stated that SB8 804 would remove the general exclusion of employees of employers who regularly have in service less than three employees. Mr. Szablewicz points out that takes away another exclusion.

Mr. Szablewicz stated that SB 804 as originally drafted would not remove the exclusion of persons whose employment is not in the usual course of the trade, business, occupation or profession of the employer. Unless a domestic servant’s employer is engaged in that business, domestic servants still would not be covered. Mr. Szablewicz believes the failure to take away that exclusion would, as a practical matter, exclude most domestic servants from coverage under the Act even with that bill’s adoption because most employers of domestic servants are homeowners and very few of them are in the business of domestic service.

Mr. Szablewicz stated that a big challenge for him is who pays. Mr. Szablewicz explained that workers compensation benefits are not State benefits. The funds are not publicly funded or paid and the Commission does not pay benefits. This is a private insurance system. Employers are required by law to obtain workers compensation insurance to cover their employees. Mr. Szablewicz continued by explaining several aspects of the workers compensation system, options for coverage and penalties (see presentation). He pointed out that SB 804 does not address insurance coverage, so he believes that employers of domestic servants would be required to purchase workers compensation insurance for their domestic servant employees and would be subject to the same penalties for failure to insure just like any other employer.

Mr. Szablewicz continued by pointing out that most employers of domestic servants are individual households, and not businesses. With SB 804 they would be required to purchase workers compensation insurance for their domestic servants. As written, that would include the

teenagers you hire once a week to cut your grass and babysit your children. He does not know the cost but wonders if most households could afford to purchase workers compensation insurance. Mr. Szablewicz pointed out that even if they could afford it, how would homeowner-employers be made aware of the requirement to purchase insurance. As the bill is currently written, the homeowner would also be subject to the penalties and enforcement actions imposed by the Code. The Commission has the enforcement responsibility, but how do they identify the homeowners who should be purchasing insurance. In the normal course, the Commission does sweeps of businesses. He wonders if the Commission would need to do sweeps of neighborhoods, going door to door to identify households that employ domestic servants.

Mr. Szablewicz also commented that if the homeowner does not know to purchase insurance or chooses not purchase insurance, there could be an impact on the Uninsured Employer's Fund. The UEF pays benefits to qualified workers of employers who fail to obtain insurance coverage. The UEF is funded by a tax on premiums received by insurers for workers compensation coverage. The UEF has a right of subrogation and recoupment against the uninsured employer for any benefits paid and the Office of the Attorney General is responsible for pursuing the uninsured employer to recoup those payments. Mr. Szablewicz stated this leads to the question, will the tax on insurance premiums need to increase and will the OAG bring action against the homeowner-employer for compensable claims.

Mr. Szablewicz offered some alternatives. The State could establish a special fund to cover domestic servant workers compensation benefits. At this time, the State has no other special funds for any other category of employee. He questions, what is the funding source? The Commission works solely off the tax of the premiums for workers compensation insurance. Mr. Szablewicz pointed out another option could be to expand coverage by the UEF but without a right of recoupment. This would likely require an increase in the UEF tax and increase the cost to all other employers who purchase workers compensation insurance.

Mr. Szablewicz concluded by stating that the Commission could adjudicate any claims if this category of employee is covered but the real question is how does that work with our system of private insurance in Virginia. There are a few states that are monopolistic that provide all the benefits but very few do it that way. Most states use a private insurance system.

Secretary Ball thanked Mr. Szablewicz for his presentation and commented that Mr. Szablewicz has raised many questions that will need consideration.

With the short time remaining, Secretary Ball asked Dr. Healy to lead a discussion of today's presentation and what was presented at the first meeting. Dr. Healy stated that after listening to our employers and agency representatives, what are the potential challenges for implementing changes to workers compensation and what are some things that we actually can fix? She stated that we had a Medicaid question earlier that was not answered.

Ms. Braxton-Williams pointed out that she was asked to make comments on SB 804 as it was introduced, not the bill that passed, because that is what impacted the Unemployment Compensation Act. Secretary Ball thanked her for that clarification and stated that from what we have heard there are enough agency interpretations of the definition that we have got quite a bit

of work ahead. Dr. Healy also commented that the original intent of the bill was to have all these additional supports for this workforce, and it would be good to look at policy and legislation around supporting domestic workers.

Dr. Healy asked for any additional comments, feelings, anything the group heard today that are good ideas or potential roadblocks. She also pointed out we want to figure out for the next meeting what our priorities should be. What we can tackle, what we might not be able to, what we need to dig deeper into, and look at creative solutions.

Ms. Lane stated that her previous question may not have been understood. She does understand we are talking about worker protection, but is it possible for us to discuss small businesses having protection, especially those in the home health care industry. Her company must do background checks and establish legal status of workers. In the current climate, she is often afraid to call the police for fear of retaliation and threats against the business.

Secretary Ball told Ms. Lane he appreciated her comments. SB 804 gave the work group very precise language to review. He continued saying that the things he has learned thus far make him uncomfortable that workers who are being mistreated do not have an adequate remedy. He understands there are lots a little bits of help in several agencies and we are going to explore that. He advised Ms. Lane that she may comment on threats to employers, but that is not within the confines of this work group. Ms. Lane said she understood. Dr. Healy added that as to background checks, it is required especially for any kind of Medicaid reimbursement. She told Ms. Lane we could help her offline. Secretary Ball added that we do not want to leave Ms. Lane's concerns unaddressed and her workplace should be as safe as anybody else's workplace. He told Ms. Lane that if her company is threatened with harm, we should make sure there are remedies, but that is not part of what we are doing here.

Ingrid Vaca asked that the work group address the issue of sexual harassment of domestic service workers, who are particularly vulnerable to this type of mistreatment because they work in private homes.

Secretary Ball stated that is exactly what we are going to be talking about at our next meeting. He commented that is an issue he has been concerned about and probably all of us have been concerned about from the beginning. We want to make sure there is a safe place workers can go, particularly undocumented workers. If a domestic service worker is unsafe in a household there needs to be a solution to that. Dr. Healy added this is something dear to her heart and she had a sexual harassment bill in the General Assembly this year that unfortunately died. This is an issue of discrimination in general and that in the Code, if a business has less than five employees, they can be discriminated against. Gender is sexual harassment. Dr. Healy acknowledged that we appreciate the comment and need to figure out what to do. Under federal law the number is fifteen employees and above, in Virginia it is five and above.

Secretary Ball added that his concern is where does the worker go who is not being treated properly or exposed to something dangerous. Where does the worker go now? What can we do to make sure there is such a place to go and that law enforcement can get involved? Dr. Healy stated there are multiple ways, and we are working with the Attorney General's Office on this

and specifically the division of human rights that oversee a lot of discrimination. There are administrative processes, more through civil action than to circuit court. She stated there is still the issue of the small employer with under five employees.

Secretary Ball concluded the meeting and advised the group that the next meeting is scheduled for Tuesday, October 6. Secretary Ball thanked everyone for attending and encouraged the group to email any additional information or comments prior to the next meeting. The meeting concluded at 12:00 p.m.

Note: Following the meeting, Ms. Lane sent an email apologizing for not responding during the meeting to what was an excellent question about her company's accounting practices and how she can pay her people at a higher rate. Ms. Lane's answer is: As a RN, I know that we are only as good as the person providing care. So, I sacrifice in many other areas, have office with lower rent, never waste money, less frills, we do not advertise, etc., and I put the money the organization makes in revenue back into my staff's hands.

**Appendix C: Third Meeting Minutes**  
**Domestic Service Workers Work Group**  
**October 6, 2020**  
**MINUTES**

The third meeting of the Domestic Service Workers Work Group was held via Zoom/Conference Call on Tuesday, October 6, 2020 at 10:00am. The members of the work group were present as follows: Brian Ball, Megan Healy, Valerie Braxton-Williams, Stacy Maher, Robert Field, Jim Szablewicz, Marta Sanchez, Jen Jackson, Michelle Lane and Jason El Koubi. Work group member, Ingrid Vaca, was not present as she has contracted COVID-19. Staff members present were Turner Widgen and Meaghan Green.

Present by invitation were Seyoum Behr with the Office of New Americans and Angella Alvernaz, State Trafficking Response Coordinator with the Virginia Department of Criminal Justice Services.

Additional persons present included Jacqueline Duenas and Lizbeth Rodriguez (translators), Antonia Pena and Miranda Mammen with the National Domestic Workers, Marcia Tetterton with Virginia Association of Home Care and Hospice, Abbey Philip with Senator McClellan's office, and Gabriela Ortiz, an au pair and member of the Alliance of Domestic Workers.

Secretary Brian Ball welcomed the group and thanked everyone for attending. He stated this is the third and final meeting of the work group. He advised the group that they should review the minutes and presentations from previous meetings. Secretary Ball outlined today's meeting. He introduced Mr. Seyoum Behr, Virginia Refugee State Coordinator and Director of the Office of New Americans.

Mr. Behr began by giving a brief overview of the Office of New Americans (previously called the Office of Newcomer Services). This office now focuses on immigrants from all walks of life, not just refugees. His office is 100% funded by the federal government. Their job has been

to assist refugees to integrate into existing communities in the Commonwealth of Virginia. Mr. Behr believes his office has done well with the refugee program and is excited to say that they intend to do as well with the immigrant population. Mr. Behr offered some information as to Virginia's population relative to number of foreign-born persons and unauthorized persons (people without proper paperwork). Mr. Behr pointed out the numerous non-English languages spoken in Virginia. There is an overwhelming number (almost 600,000) of Spanish speaking people in Virginia. Mr. Behr believes this number implies what we need to do in Virginia.

Mr. Behr continued by pointing out the numerous challenges faced by immigrants and refugees alike. These challenges include what Mr. Behr calls triple trauma – the country an immigrant leaves, the country(ies) the immigrant passes through, and finally this country. Other challenges include tradition, orientation, language, education and lack of resources.

Mr. Behr shared the Office of New Americans Immigrant Services Plan:

- Create a profile of Virginia immigrants;
- Conduct dialogue with Virginia stakeholders to identify unmet needs of immigrants;
- Compile a list of all Virginia service providers;
- Work with Public Affairs to post all relevant information on our website;
- Work with VDSS Finance Unit to separate Federal and State funding;
- Working with VDHS and DBHDS to compile a list of health and mental health providers in Virginia;
- Work with OD (Office of Human Services) to post two positions to be hired.

Mr. Behr stated that discussions with his stakeholders have included looking into the unmet needs of immigrants. An example is Virginia 211, there is only one Spanish speaker at 211. Language is an immediate need. His office is working with stakeholders, service providers, law enforcement and immigration providers, specifically related to employment. Mr. Behr pointed out that the best way to integrate into the American society is to be able to become self-sufficient. A person has to work and the best way to assist immigrants is to help them in the employment arena. The Office of New Americans has the expertise. Mr. Behr shared that over 80% of his refugees become self-sufficient within a year or so. He hopes to bring those same results to our immigrant population. Mr. Behr understands that those who do not have legal papers have additional challenges. There is a need to talk with the community, the stakeholders, to see what can be done (within the law of course) to make sure all the available services and information is shared with the immigrant population.

Mr. Behr stated that for the immigrant population to integrate into the American society and our communities there needs to be self-sufficiency and that means working. His hope at the Office of New Americans is to provide all the information about employment and employability and connect immigrants to agencies and individuals who are able and willing to help. He believes if an immigrant becomes self-sufficient the integration process goes faster. He reiterated the need for providing English language education and providing information on immigration laws. Mr. Behr stated that this county is different from most. Even if you do not have legal papers, you have certain basic human rights that are protected. He wants to make sure that we stay within the principle of an individual having rights and that the immigrant population knows their rights and responsibilities. Mr. Behr wants to communicate to all stakeholders within the state

government and non-government agencies how to assist immigrants in all areas, but most importantly, to communicate to the immigrant population how to become independent, self-sufficient, productive members of the community.

Mr. Behr concluded his presentation (see complete presentation attached) and apologized for the interpretation problems. Secretary Ball stated that we would continue with the next presentation and take questions later. He asked Ms. Alvernaz to speak to the group.

Angella Alvernaz began by introducing herself. She is the State Trafficking Response Coordinator for the Commonwealth of Virginia and is based within the Virginia Department of Criminal Justice Services.

Ms. Alvernaz stated that human trafficking response in Virginia started in stages in 2010-2012, some at the state level and some at the local level. The most recent large body of legislation was during the 2019 legislative session and that included the establishment of her position. The overall goal of her position is to bring a consistent, collaborative, multi-disciplinary response to how we work with human trafficking cases throughout the entire Commonwealth. This includes stopping the supply, stopping the demand and working with the victims who are exploited.

Ms. Alvernaz explained that DCJS supports trafficking victims by creating a consistent response protocol for human trafficking. Currently, the focus is on sex trafficking because when this position was established last year, it was written to begin with sex trafficking. Ms. Alvernaz made it clear that she will work toward labor trafficking as well. She shared some of the other ways she and DCJS are supporting trafficking victims, including training providers and other professionals to assist those who have been exploited, creating standards and protocols for treatment facilities, working with State Advisory Groups and task forces throughout the state, developing resources and maintaining a resource guide of providers serving trafficking victims.

Ms. Alvernaz introduced the new logo for Human Trafficking in Virginia that she believes shows hope and perseverance, teamwork and collaboration, not fear and darkness. She also shared information about the two State Advisory Groups, the Anti-Human Trafficking Coordinating Committee and the State Child Trafficking Workgroup. These groups will be realigned this year to work in a more integrated fashion. Additionally, there is a human trafficking task force in every area of the State.

Ms. Alvernaz advised the group that there are not very many existing services to assist domestic service workers. There are a couple of legal services in Virginia and the Human Trafficking Legal Center in Washington, DC. Currently, there are no other service providers or NGOs working specifically on workers rights within the domestic services field. There are NGOs working on labor trafficking for undocumented or under documented immigrants.

Ms. Alvernaz continued by giving some brief recommendations. She stated that DOLI should be the key agency to work on some sort of bill of rights for the domestic service workers and labor standards for the workers and the organizations that employ them. She plans to add a subcommittee to the State Trafficking Advisory Group that will work on labor exploitation and labor trafficking. This subcommittee would work on all forms of labor trafficking, not just



domestic service, and work with all individuals regardless of their documentation status. Her framework for domestic workers would include (i) creation of a workers bill of rights, (ii) specific labor standards for domestic service workers, (iii) training for domestic service companies and placement agencies, (iv) create required courses for families who will be directly hiring nannies, au pairs, maids, cooks, etc., and (v) establish a hotline for workers to report abuses. Also for families hiring domestic service workers, Ms. Alvernaz suggested contacting existing organizations (such as Care.com) that might be willing to offer information as to Virginia's rules and regulations for employing a domestic service worker.

Ms. Alvernaz concluded her presentation (see complete presentation attached) with her contact information and thanked the group.

Secretary Ball continued the meeting by asking if anyone had any questions. Abbey Philip from Senator Jennifer McClellan's office asked Ms. Alvernaz if there are survivors of human trafficking that are part of the regional work groups or the State Advisory Group. Ms. Alvernaz responded that there are survivors integrated within the task forces. She plans to add a survivor panel to the State Advisory Group. She is also working on a speaker's bureau to assist with more community-based presentations and develop a model presentation to ensure consistent information is being shared throughout the state.

Dr. Healy asked if there is data on the prevalence of this issue as it relates to domestics, understanding, of course, this population is hard to track and record. Ms. Alvernaz stated that for trafficking they do not have comprehensive data. She admitted this is a large project that she is working on, and it will take a long time to compile. Ms. Alvernaz would only be able to offer an estimate using data from some localities and from national sources. Dr. Healy thanked her for the information.

Secretary Ball commented that it appears Ms. Alvernaz is a one-person band at DCJS. She responded affirmatively to being a one-woman show but that she gets a lot of support statewide. She shared that they just received a \$1.6 million grant and her hope is to build out the western region and hire a position for that area.

Secretary Ball continued recalling that Ms. Alvernaz's primary focus has been sex trafficking, but will also be labor trafficking. He wanted to know how interactive she is with local and federal law enforcement. What does she do when she hears about abusive situations? How does she currently deal with situations where the complainant would be reluctant to go to law enforcement for fear of being referred to ICE or being deported or being taken into custody? What are you doing with law enforcement and what are you doing with persons afraid to go to law enforcement? Ms. Alvernaz responded that her prior experience is very useful in her current position. She lives in Northern Virginia and previously worked for Prince William County Public Schools as the Human Trafficking Prevention Specialist. This is an educational program but also identifies persons who have been exploited and they case managed those persons until graduation. Through this experience, she built strong relationships with local law enforcement and federal partners throughout the Commonwealth. Now, in her current position, if called about a situation, she has the resources to assist and coordinate. Virginia does have a very large population of undocumented individuals, especially in Northern Virginia. Ms. Alvernaz

commented that it is tricky to work with that population in terms of services. She described her relationship with several resources and because of this unique connection she can usually and successfully align an individual with the resource that will offer the most effective assistance.

Secretary Ball commented that it sounds like Ms. Alvernaz is able to interface, at least in Northern Virginia, with law enforcement. He asked her if she gets referrals or complaints in jurisdictions that do not have a police department but only a sheriff and deputies in other parts of the state? Ms. Alvernaz responded that she does, but some of those areas in the state need assistance. She replied that is the reason she is using the grant to focus on the western region. That region has been collaborative and she stated they are excited to work together. Ms. Alvernaz added that they will be working on some models in the western region that she has used in Northern Virginia. She wants to test these models in the west, and improve and expand them throughout the state as the standard.

By way of a question posed to Ms. Alvernaz, Abbey Philips commented that people who are experiencing trafficking might not always be willing to self-identify, and she noticed in Ms. Alvernaz's recommendations training for the families. Ms. Philips asked Ms. Alvernaz for her thoughts on training or outreach for individual workers so they also have information and resources they can contact if they feel they are being mistreated or there is some kind of discrimination happening. Ms. Alvernaz responded that training could be integrated into the placement agency process if a worker uses an agency and the agency is aware of available training and resources. Additionally, Ms. Alvernaz commented that Mr. Behr's office could assist by informing people that there are resources available. The challenge is getting to the workers who do not go through an agency or Mr. Behr's office. Ms. Alvernaz reiterated, this would be when we could approach the websites that might be willing to offer popups with valuable information as to training and resources. She has not contacted any website about this; it is just an idea.

Dr. Healy commented that one of the work group's recommendations will be how best to communicate with the different stakeholder groups or workers, especially if they are non-English speakers. Dr. Healy speculated, do we communicate through ambassadors out in the field, through websites, handouts, posting messages around places of employment? Mr. Behr responded, all of the above. He added there are many multilingual radio stations, and non-English speakers listen to the radio. Mr. Behr recommended using the radio, websites, posters on buses. He commented that his office has used these forms of communication in working with refugees. Mr. Behr reminded the group that within many of these families there are citizens, green card holders and non-documented persons. This makes it a little easier because the citizen or green card holder will share important information with the family member who does not have proper papers. Mr. Behr reiterated that every possible venue, including radio, is how to share information. Abbey Philip asked whether they had looked at communicating through the school systems, sending information home with children living in multilingual homes. Mr. Behr stated that he has done that with refugee families but not with the immigrant population.

Secretary Ball asked for any additional questions or comments. Hearing none, he continued by thanking Mr. Behr and Ms. Alvernaz for speaking to the group and invited them to stay for the remainder of the meeting. Secretary Ball acknowledged that Abbey Philips, representing Senator

McClellan's office, was with us today. He continued that when we get to the recommendation stage and begin writing our report, we are going to be looking at a greater level of communication and coordination to address these issues. Secretary Ball recalled as a one-woman show Ms. Alvernaz's office is resource constrained. He commented that if we do a good job of communicating where you can safely go if you are being abused or are a victim of labor trafficking, he believes just managing the number of inquiries her office may get over a period of time is going to require some additional resources in the criminal justice area. With that said, Secretary Ball asked Mr. Rob Feild to tell us what is going on at DOLI, another area of great importance, and that the General Assembly did a nice job in 2020 by addressing non-payment of wages.

As Mr. Feild was cut short during our second meeting, he resumed his presentation at page 11 (see complete presentation attached). He pointed out that the issue of joint employer translates to both occupation itself and payment of wages. With the new language, there is a possibility that a person who engages a home healthcare worker from a home healthcare services provider, that both the service provider and the person who engages the worker would be the joint employer. Mr. Feild pointed out this could present difficulty with defenses to citations arising in this area. The joint employer could point at the other as the true employer under the statute, and DOLI would have to sort that out. DOLI's preference would be to cite the home healthcare services provider, but they may present a defense that it is the other person under this statute. Mr. Feild pointed out there are issues dealing with compliance. The penalty amount can be up to \$13,000 for one serious violation. Even with the reductions given for smaller employers, the penalty can be up to \$5,000 for one citation. There are also potential citations for failing to meet some of the other obligations and these carry penalties of \$1,000. Another concern is the things an employer must do including displaying posters, offering training and identifying hazards in the workplace. Mr. Feild said these requirements could be difficult for an elderly employer to fulfill.

Mr. Field continued by stating that the only people they collect wages for are employers operating a business under the current definition. DOLI has limited resources to investigate and sometimes people have tried to use DOLI to address interpersonal disputes. Mr. Feild stated that the only thing they collect is wages, salaries and commission. They do not collect overtime or fringe benefits or for independent agents or subcontractors. Additionally, they do not pursue wage claims when there is a written employment agreement in place (this may be the case in any home health care situation if funds are from Medicare).

Mr. Feild briefly explained the enforcement process. DOLI only accepts written complaints by mail. The forms are available on the website (including Spanish). Once the complaint is received, they contact the claimant to confirm all the information and then DOLI contacts the employer in an attempt to resolve the complaint. If there is not a resolution, DOLI makes a decision as to whether the funds are owed and issues a determination letter. He pointed out that only the employer may appeal the determination, not the employee. As to the collection of wages, the employee gets unpaid wages plus liquidated damages in the amount of the unpaid wages and 8% interest on the past due wages, and the Commonwealth gets civil monetary penalty.

Mr. Feild stated that during the last General Assembly session a bill was passed that he believes should be helpful to DOLI relating to labor law and anti-retaliation. Workers were reluctant to come to DOLI for fear of being fired for filing a labor law complaint for payment of wages. Now, if an employee makes a complaint to his employer about his wages and the employee is fired on that basis, the employee is protected. DOLI will investigate and if there is another reason the employee was fired, for example if he has not been showing up for work, he will not receive anti-retaliation protection. If the complaint is legitimate, the remedies for the employee include reinstatement, back pay and benefits.

Mr. Feild stated that the effect of the new language to include all employers operating a business or engaging an individual to perform domestic service will give DOLI the opportunity to respond to complaints from domestic service workers. Currently, they do respond to some complaints by domestic service workers where there is a business involved. The new language would allow DOLI to respond even in a situation where there is not a business involved. Additionally, the new language will require employers to provide paystubs to their employees. Mr. Feild pointed out some questions may arise from the new language in the joint employer situation and when home health care is provided under Medicare. He reiterated another issue for elderly employers may be the cost of a violation and the need to verify hours worked.

Mr. Feild concluded his program and asked for questions. Secretary Ball thanked Mr. Feild and again asked for questions. Dr. Healy offered two questions: (1) as to wage theft and the appeals process in that an employer can appeal but not an employee, is this common practice in other states and how did that practice come about and (2) with the new legislation around hours worked on a pay stub, how is that verified if an employer pays in cash? Mr. Feild offered an answer to the second question first by stating that even if you are paying in cash, the employer should provide a pay stub. Once there is an employee/employer relationship under the statute, there should be a pay stub provided, unless the employment situation is in forestry or agriculture where not as much detail is required on the pay stub. As to where the practice came about in the appeals process, Mr. Feild said that has been part of the statute for a very long time and has never been changed or addressed. The employee who does not collect wages in a complaint process does have the right to challenge that in court but that can be costly. He stated that they are trying to get out of that system to avoid employees having to go to court.

Secretary Ball asked for any additional questions. Hearing no further questions, Secretary Ball thanked the three presenters.

Marta Sanchez Translation: regarding talking about the victims that are exploited within the home. Thank you for touching on the subject. Secretary Ball thanked her for this comment as this issue is very important to us.

Marta Sanchez Translation: One small question, if I could. Is anything being done about trafficking. Secretary Ball replied that is what we are working on with this group and will bring recommendations back to the General Assembly on this issue. It was very helpful for us today to hear from Mr. Behr, Ms. Alvernaz and Mr. Feild, and with appropriate resources, we can provide more help and support.

Again, Secretary Ball asked for other questions or comments. Hearing none, he again thanked our presenters for today. Secretary Ball, and on behalf of Dr. Healy, he thanked Turner Widgeon and Meaghan Green for their great work so far with the work group.

Secretary Ball continued the meeting sharing an overview of the work group observations. He commented that we have learned how many domestic service workers we have in Virginia, and with an aging population we know this is an area that will have continued growth. We know most of the workers in this space are female and more than half are people of color. Secretary Ball continued stating that we do not know exactly how many domestic service workers are undocumented or do not have papers but we will all agree it is a significant number. He commented that this is more pronounced in areas of the state where there is a higher percentage of the population with foreign-born residents, like Northern Virginia. We have learned that the definition of domestic service employee can vary with the agency we are dealing with. It means different things to different people. He commented that we have more work to do to rationalize definitions. We do know the business is incredibly diverse with employees working for agencies, many employees working directly with households and many self-employed persons.

Secretary Ball paused in the work group observations to talk about SB 804 and the legal right it created for domestic service workers to receive minimum wage. He reminded the group of what Senator McClellan said in our first meeting that in the case of African American domestic service workers, it has taken 400 years to get to this point. The work is not complete, but this bill is a huge step forward and Senator McClellan, as well as all of the General Assembly members, are to be congratulated for bringing this legislation to the Governor and he was very happy to sign the bill. Secretary Ball continued by stating that SB 804 asked us to look at other things that did not pass in the General Assembly, through Caucus or Committee meetings, and these are included and articulated in SB 804. These include looking at whether there should be workers compensation, unemployment insurance, protections against harassment and abuse, non-payment of wages and workplace safety. Secretary Ball stated that the first two items, workers compensation and unemployment are complex, and to the degree you are creating obligations on families, it becomes very controversial very quickly. He continued by stating that when you get to some of the other items that we were asked to look at, we should all agree that non-payment of wages is something that is intolerable. Secretary Ball again applauded the 2020 General Assembly for bringing legislation that deals with that issue and gives the Department of Labor and Industry the tools to deal with it. He also stated that workplace safety is also something we can all agree on, and Mr. Feild laid out some tools that DOLI has to deal with complaints.

Secretary Ball pointed out that harassment, abuse, trafficking both sex and labor, are areas where there are abusive situations that need remedies. He stated he is sad today that Ms. Vaca has taken ill with COVID and could not be with us. He listened to Ms. Vaca and Ms. Sanchez very carefully at our meetings and will take away two very important points from the concerns they shared with us: The right to dignity and the right to safety. He feels like we have some work to do to bring some recommendations to make sure that workers in these bad situations can find remedies. Secretary Ball felt it was helpful for the work group to hear from Ms. Alvernaz. She and DCJS have identified problems and concerns with trafficking and undocumented workers and they are interfacing with local and federal law enforcement, and this will help as we take

steps to create a place where people can go safely to make their complaint without fear of deportation or retaliation.

Secretary Ball continued by stating that we still have work to do to complete our report. He again thanked everyone for their participation on the work group. Dr. Healy also thanked everyone for contributing to the work group. Dr. Healy continued by asking the group whether there is anything we are missing or are there people we have not spoken to.

Ms. Philip asked whether we would have any answers around the impact to State agencies. She commented that is why some of these issues were placed into study groups because they were so difficult to identify during the session. If there is legislation introduction in 2021, understanding the impact on State agencies is a critical part of this. For example, with unemployment insurance, knowing in advance what impact it would have and also even if it would be allowed under federal guidelines. This information would be helpful. Ms. Philips continued, as to the State agencies that are impacted by this bill, will they have some sort of direct follow up on what they perceive to be the impact and will that be part of the recommendations. Dr. Healy responded by asking whether Ms. Philip was looking for specific fiscal impacts or whether additional staff would be needed for oversight, or is she looking at current staff that could be used or if current responsibilities would change, or both? Ms. Philips responded, yes, a bit of both. Secretary Ball stated it is more complicated than just fiscal impact. He stated there are some hard questions that the General Assembly will ultimately need to re-wrestle with in terms of how far reaching they want to be. For example, when you have workers in family situations, will you enforce against the family for not paying into the workers compensation fund, there are criminal and civil penalties involved. Those are very hard questions.

Ms. Philips asked, is there a scenario where, if we cannot create a system where we are holding families accountable to paying into the unemployment insurance system, should the General Assembly be looking into putting money in the State budget to create some sort of buffer for unemployment insurance for these workers if families are not able to do it themselves? Secretary Ball responded that if there are State funds to provide the things you think you want then that is good, but there are huge budgetary impacts to that. He stated that he did not think he or Dr. Healy could speak to where the Administration would be on that. This would involve a great deal of discussion involving the Secretary of Finance and the Department of Planning and Budget. Dr. Healy stated these may be valid points and we can circle back with our agency representatives in the work group to understand the full fiscal impact as well as look for different options. As to unemployment insurance, because the thresholds are lower for domestic workers not required to have the higher quarterly wages, she believe there could be communication and education. Dr. Healy commented that we heard other options during our meetings, such as portable benefits, and we will look at these other options as we make our recommendations and whether to include those in our report.

Valerie Braxton-Williams interjected that the reason that the wage requirement is lower for domestic workers currently is because VEC has authority to do so in the Federal Unemployment Tax Provisions in Publication 926, the household employment guide, this sets the threshold for wages for domestic workers. Again, if we do not use the threshold that is allowed of \$1,000 then under the currently bill you would actually be raising that threshold to \$1,500 before an

employer or someone who hires a domestic worker would have to report those wages to the Virginia Employment Commission. Dr. Healy thanked Ms. Braxton-Williams for the clarification.

Dr. Healy asked for any additional observations or anything we have missed. Mr. El Koubi shared that the summary laid out was very helpful. We have covered a lot of ground in our three meetings. He wants to emphasize the importance of sharing information with employees and employers and the importance of having a place for employees to go in case of abusive situations.

Dr. Healy thanked Mr. El Koubi. Dr. Healy responded to a comment made by Marcia Tetterton in the chat box stating that home care aides or personal care aides are not categorized as domestic workers by the U. S. Department of Labor. Dr. Healy stated there are different levels of home healthcare workers, such as personal care attendants, registered nurses, higher levels of medical care, so this is something we can consider. Should they be classified as a domestic worker? She asked the group to email any comments or feedback on this issue.

Ms. Sanchez asked if we could submit our recommendations in written form. Secretary Ball responded yes.

Ms. Gabriella Ortiz Translation: My name is Gabriella Ortiz. I am a member and volunteer of the Alliance of Domestic Workers. I just wanted to comment and thank you for the information you have provided. I think it is important to recognize the work of domestic workers, and at the same time I also would like to comment on my behalf. I am currently in Northern Virginia. It is additionally important to address that there should be an interchange, could be considered a job, I say that because in almost the \_\_\_ years that I have been here with a \_\_\_ visa, I have be able to hear a lot of testimony from different girls that they have felt it not as an interchange but more as a job. It would be good in the future that the name they place on the program should be evaluated because a lot of girls come with the opportunity to get to know a new country and also join in the childcare needs, they also end up doing more than what the responsibilities that the program states. Just like one of the speakers was saying that the definition of a domestic worker is not very clear and I think there can be some abuse as well as exploitation because it is not very clear of what a domestic worker should do. I think anyone can interpret it differently. Anyone can say, a domestic worker does this, takes care of the kids, and other work, possibly anything. I think it would be good to evaluate that because as a part of the program, we also have to pay taxes with the little that we earn. Thank you so much for allowing me to participate in this and good afternoon.

Dr. Healy thanked Ms. Ortiz, as we had wanted to hear from her as an au pair. If there is any additional written testimony anyone would like to share, we are open to that as well. Secretary Ball commented that we would like to hear if any work group members have any additional comments now, or they can be submitted in writing.

Secretary Ball concluded by stating this is our last meeting. We will be working on a report to provide to certain members of the General Assembly. He thanked everyone for their service, for the folks who presented and participated, for all the comments and questions. Secretary Ball

commented that we all have learned a lot in a very short time. Dr. Healy also commented that it has been good to learn more about this workforce as well as the issues to be addressed. Dr. Healy also thanked Turner Widgen and Meaghan Green for their hard work. They did background research, looked at other states and different stakeholder groups, called experts and examined legislation from other states. This research will be some of the foundation for the report as well as everything we have learned listening to this work group. All that will be part of the report that will come out November 1. There will not be another meeting. Dr. Healy stated that if we have questions or concerns, we might reach out to get clarification. She also commented that there is a gray area between state law and federal law and we hope to clarify that. Dr. Healy again mentioned that the report will go out on November 1, and we will appreciate any feedback after that as well. She again thanked everyone for their time and work and for sharing their stories and ideas.

Secretary Ball concluded the meeting at 11:30am.



## **Appendix D**

# Department of Labor and Industry Presentation

Domestic Service Employees Work Group

September 24, 2020

# DOLI Programs

- Occupational Safety and Health
  - Anti-retaliation provisions
- Labor Law
  - Payment of Wages
  - Child Labor
- Boiler and Pressure Vessel
- Registered Apprenticeship

# DOLI Programs

- Occupational Safety and Health
  - Enforcement
  - Anti-retaliation
- Labor Law Payment of Wage

# Virginia Occupational Safety and Health

VOSH

# VOSH Enforcement

- Employer-Employee Relationship
  - "Employer" means any person or entity engaged in business who has employees, but does not include the United States
  - Broadly defined to protect employees
- Person Engaged In Business
  - Is person hiring home health care, a cook, etc. a business
  - VOSH interprets its law broadly to protect employees
  - Rare to inspect home owner or individual

# Enforcement Procedures

- Complaint Required
  - Receive Complaint
  - Analyze Complaint for Serious Hazard
  - Complaint Investigation
    - Letter to Employer
    - Employer Response
    - Letter to Complainant
  - Complaint Inspection
    - On Site Investigation

# Issues with Complaint by Domestic Worker

- Not a Business
- Prima Facie Case
  - Standard that applies
  - Violation of the standard
  - Employee exposure
  - Employer knowledge



# Actual Experience

- Some Circumstances a Private Individual has Been Considered Employer
  - Supervising work on own home
  - Providing dangerous materials to person working at the person's home
- No home healthcare or personal service examples

# VOSH Anti-Retaliation

- No person can discharge or discriminate against an employee for making a safety or health complaint or exercising rights under VOSH
  - Complaint to VOSH
  - Complaint to employer
- VOSH Investigation
  - Discharge or discrimination related to complaint
  - No superseding reason for discharge
- Remedies
  - Reinstatement
  - Back pay and benefits

# Effect of New Language

- "Employer" means any person or entity that (i) is engaged in business or **engages an individual to perform domestic service** and (ii) has employees . . .
- VOSH will respond to complaint
- Such an Employer May be Required to Train, Supervise and Provide Personal Protective Equipment to Employees.
  - Employer with no knowledge
  - Employees hired for their knowledge and abilities. i.e. health care, cooking.
- Clear Application of Anti-Discrimination Provisions

# Questions Arising From New Language

- Is home health care provider 'engaged' through home health care service employee of person or health care service – Joint Employer
- Penalty amounts may or may not be significant for the person who is considered an employer under this language, depending on the fact situation
- Independent contractor test
  - Own tools and equipment
  - Specialized knowledge
  - Multiple employers
- Compliance by elderly employers

# Labor Law – Payment of Wage

# Payment of Wage Enforcement for Individuals

- All employers operating a business shall pay wages . . . §40.1-2
- Limited resources to investigate
- Avoid involvement in interpersonal disputes

# Payment of Wage Enforcement for Businesses

- Currently investigate claims against businesses
  - Only collect wages, salaries and commissions
  - Do not collect overtime or fringe benefits
  - Do not collect for independent agent or subcontractor
  - Do not pursue claims over \$15,000
  - Do not pursue cases in litigation already
  - Do not collect for officers, partners or directors
  - Do not pursue wage claims when there is a written employment agreement in place (this may be the case in any home health care situation if funds are from Medicare)

# Payment of Wage – Enforcement Process

- Written Complaint by Mail
- Contact Claimant for Additional Documentation
- Contact Employer to Resolve Complaint
- Issue Determination Letter
- Employer Can Appeal (Employee Cannot Appeal)
- Collection of Wages
  - Employee gets unpaid wages plus liquidated damages in the amount of the unpaid wages and 8% interest on the past due wages
  - Commonwealth gets civil monetary penalty



# Labor Law Anti-Retaliation

- No person can discharge or discriminate against an employee for making a complaint about payment of wages
  - Complaint to Labor Law
  - Complaint to employer
- Labor Law Investigation
  - Discharge or discrimination related to complaint
  - No superseding reason for discharge
- Remedies
  - Reinstatement
  - Back pay and benefits

# Effect of New Language

- All employers operating a business or **engaging an individual to perform domestic service** shall . . .
- The Department will respond to complaints from domestic service workers
- Procedures followed as above
- Employers under new language will have to provide paystubs

# Questions Arising From New Language

- Is home health care provider 'engaged' through home health care service employee of person or health care service – Joint Employer
- Home health care provided under Medicare
  - Paid through DMAS by third party contractor
  - Is person care provided for an employer under this language
  - Independent contractor under Medicare
- Compliance by elderly employers
  - Verifying hours worked
  - Cost of violation

# Robert B. Feild Department of Labor and Industry

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## **Appendix E**

# DOMESTIC SERVANTS AND WORKERS' COMPENSATION IN VIRGINIA

Jim Szablewicz


Chief Deputy Commissioner

Virginia Workers Compensation Commission

September 24, 2020

## Legal disclaimer:

The comments and views in the presentation are those of the author and are not an official statement of the Virginia Workers' Compensation Commission. Nothing in this presentation should be construed to be an advisory opinion by either the author or the Commission with respect to any particular case or controversy.



## **CURRENT LAW**

**The Virginia Workers' Compensation Act  
Title 65.2 of the Code of Virginia**

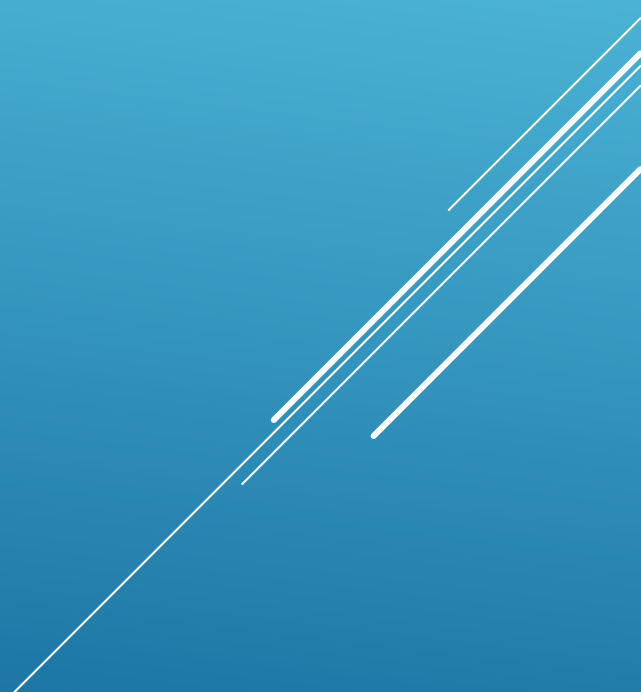




The term “domestic servant” is not defined in the Virginia Workers’ Compensation Act (Title 65.2 of the Code of Virginia).

In the case of *Hux v. Trust for Roche*, 59 O.W.C. 143 (Nov. 5, 1980), the Virginia Workers’ Compensation Commission adopted the following definition of domestic servant:

**“A person hired or employed primarily for the performance of household duties and chores, the maintenance of the home, and the care, comfort and convenience of members of the household.”**



SB 804, as originally proposed, would establish a statutory definition which is arguably a bit narrower than the Commission's definition in the *Hux* case:

***"Domestic service" means services related to the care of an individual in a private home or the maintenance of a private home or its premises, on a permanent or temporary basis, including services performed by individuals such as companions, cooks, waiters, butlers, maids, valets, and chauffeurs."***

Va. Code Sec. 65.2-101 specifically excludes domestic servants from the definition of employees who are covered by the Workers' Comp Act.

Even if there was not a specific exclusion, most domestic servants would not be covered as employees under the Workers' Comp Act because of two other broad exclusions.



1. Persons whose employment is not in the usual course of the trade, business, occupation or profession of the employer are not covered under the Act.

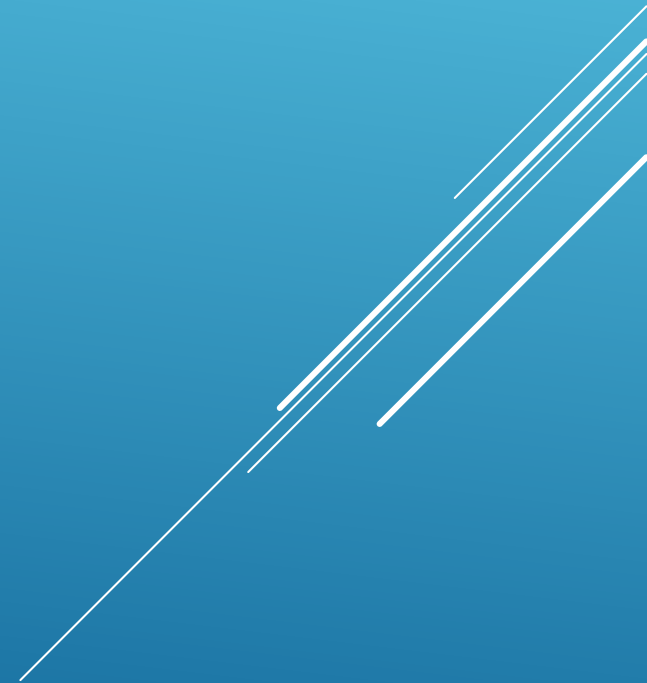
- ▶ Example: A law firm hires someone to paint the interior of its offices. The painter is not the law firm's employee because painting is not the usual course of the trade, business, occupation or profession of the law firm.

So unless a domestic servant's employer was engaged in the domestic service or a substantially similar business, the domestic servant would not be covered.

2. Employees of any person, firm or corporation what had regularly in service less than three employees in the same business in the Commonwealth are also excluded from coverage under the Act.

This is essentially a small business exclusion.

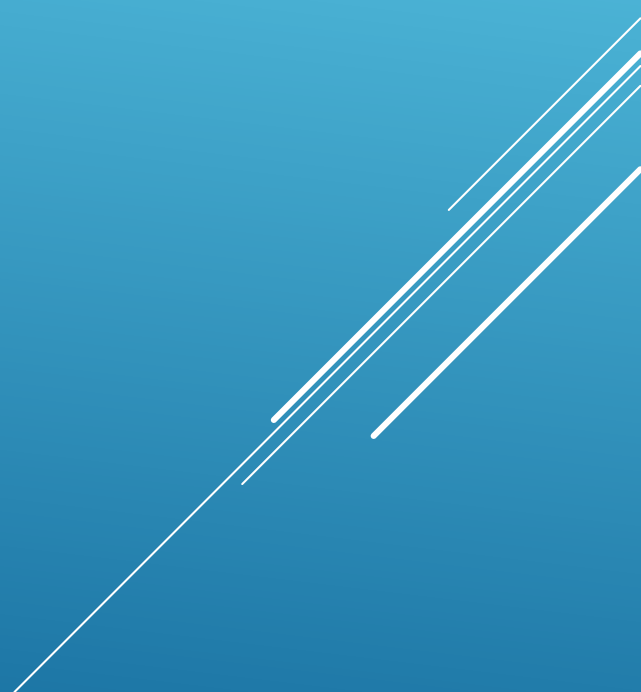
So even if the domestic servant's employer was engaged in the domestic service business, the domestic servant would not be covered unless that employer had three or more domestic servants regularly employed.



# Senate Bill 804



SB 804 as originally proposed would amend Code Section 65.2-101 to remove the specific exclusion of domestic servants from the coverage of the Act.




SB 804, also would establish a statutory definition of domestic servant which is arguably a bit narrower than the Commission's definition in the *Hux* case:

***"Domestic service" means services related to the care of an individual in a private home or the maintenance of a private home or its premises, on a permanent or temporary basis, including services performed by individuals such as companions, cooks, waiters, butlers, maids, valets, and chauffeurs."***

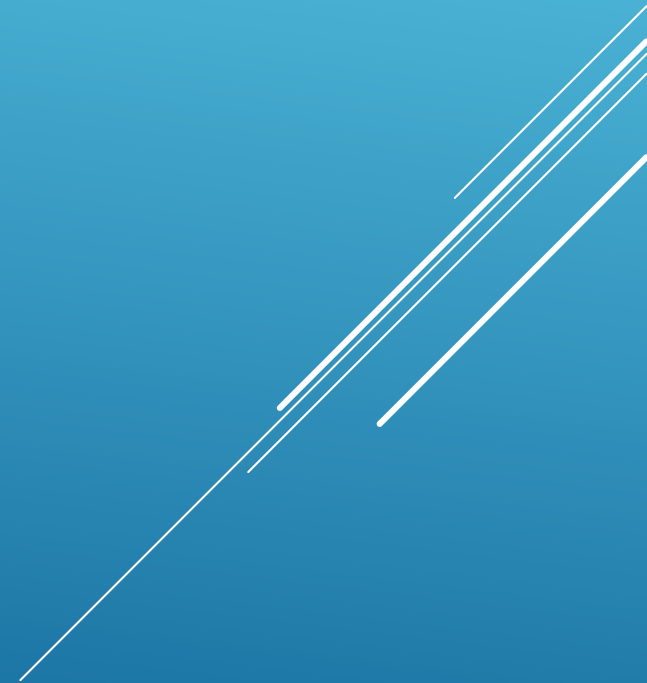


SB 804 also would remove the general exclusion of employees of employers who regularly have in service less than three employees for ***“employers of those engaged to provide domestic service or their employees.”***

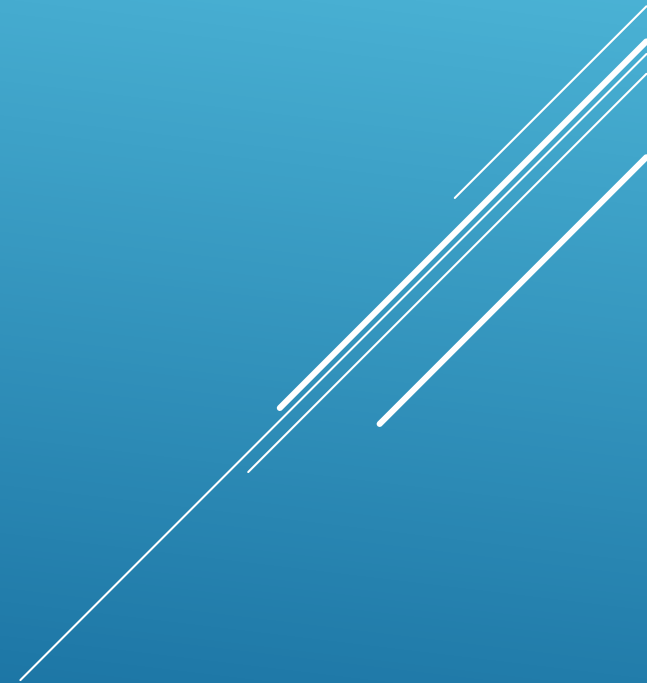


SB 804 would not remove the exclusion of persons whose employment is not in the usual course of the trade, business, occupation or profession of the employer

So unless a domestic servant's employer was engaged in the domestic service or a substantially similar business, the domestic servant still would not be covered.




**THE BIG CHALLENGE:  
WHO PAYS?**



Workers' Compensation benefits in Virginia are not publicly funded or paid and the Virginia Workers' Compensation Commission does not pay benefits.

Rather, workers' compensation benefits are paid by workers compensation insurance procured by the employer or directly by employers who have qualified to be self-insured under the Commission's Self-Insurance Regulations (16 VAC 30-80-10 et seq.).

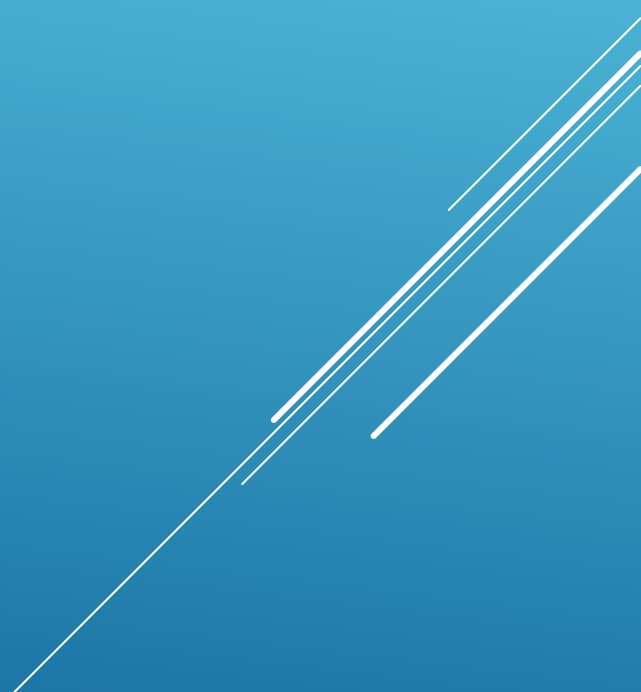
All employers who are subject to the Act are required to obtain such insurance or self-insured status. (Va. Code Sec. 65.2-801)



The Uninsured Employer's Fund ("UEF") pays benefits to qualified workers of employers who fail to obtain insurance coverage.

The UEF is funded by a tax on premiums received by insurers for workers' compensation coverage. (Va. Code Sec. 65.2-1201).

The UEF has a right of subrogation and recoupment against the uninsured employer for any benefits paid and the Office of the Attorney General is responsible for pursuing the uninsured employer to recoup those payments. (Va. Code Sec. 65.2-1204).



## **PENALTIES FOR FAILURE TO INSURE**

Employers who fail to obtain required workers' compensation insurance are subject to a penalty of up to \$250 per day for each day it fails to be insured up a maximum of \$50,000. (Va. Code Sec. 65.2-805(A)).


The Commission has a vigorous enforcement program designed to identify uninsured employers and to penalize them where appropriate.

The Commission may order any employer who fails to obtain required coverage to cease and desist all business operations in the Commonwealth until in full compliance with the insurance coverage requirements. (Va. Code Sec. 65.2-805(C)).


Any employer who knowingly and intentionally fails to comply with the insurance coverage requirements is guilty of a Class 2 misdemeanor. (Va. Code Sec. 65.2-806).

- ▶ SB 804 does not address insurance coverage, so employers of covered domestic servants would be required to purchase workers' compensation insurance for their domestic servant employees and would be subject to the same penalties for failure to insure as are other employers.


Most employers of domestic servants are individual households, not businesses. Requiring them as employers to purchase workers compensation insurance raises a number of practical concerns:

- ▶ What is the cost of insurance coverage and will most households that employ domestic servants be able to afford it?
  - ▶ Assuming they can afford it, how do they become aware of the requirement to purchase insurance?
  - ▶ If they fail to insure, will they be subject to the same penalties and enforcement actions as other employers? (They would be as SB 804 originally was written). How can the Commission identify such employers for enforcement purposes?
- 
- A decorative graphic consisting of several parallel white lines of varying lengths and thicknesses, arranged in a diagonal pattern from the bottom right towards the top right of the slide.



- ▶ What will be the impact on the Uninsured Employer's Fund? Will the tax on insurance premiums need to increase to cover the additional exposure?
  - ▶ Will the OAG pursue benefit recoupment against uninsured households that have had domestic servants with compensable claims?
- 

## Alternatives:

- Special Fund to cover domestic servants. But what is the funding source?
  - Expanded coverage by the UEF but without a right of recoupment. This likely would require an increase in the UEF tax, which essentially places the cost on all other employers in Virginia who purchase workers' compensation insurance.
- 

**QUESTIONS???**



## **Appendix F**

**NATIONAL DOMESTIC  
WORKERS ALLIANCE**

# Policy Landscape for Domestic Workers' Rights

---

Panorama político para los derechos  
de los trabajadores de hogar

NDWA is the nation's leading voice for dignity and fairness for the millions of domestic workers in the United States.

NDWA es la voz principal en el país que es dedicado a luchar por la dignidad y la justicia para los millones de trabajadoras de hogar en los Estados Unidos.





2,500,000

Domestic Workers in the US  
Trabajadores de Hogar en los EU

60,000

Domestic Workers in VA  
Trabajadores de Hogar en VA

90%

Women  
Mujeres



~~Contract~~

~~Retirement~~

~~Healthcare~~

~~Right to Unionize~~

~~Minimum Wage~~

~~Overtime Pay~~

~~Los contratos~~

~~La jubilación~~

~~Seguro de salud~~

~~El derecho organizarse~~

~~El salario mínimo~~

~~El pago por tiempo~~

~~extra~~



# WHAT WE BELIEVE

## Protect All Workers

## Proteja a Todos Los Trabajadores

No matter how you work, you should get basic benefits, protections and representation.

Debe obtener beneficios básicos, protecciones y representación en cualquier tipo del trabajo.

# LO QUE CREEMOS

## Invent New Models

## Invente nuevos modelos

We need to preserve what workers have and we need to invent new models to build more power for more workers.

Necesitamos preservar lo que tienen los trabajadores e inventar nuevos modelos para generar más poder para más trabajadores.

# State Domestic Worker Bills of Rights

## Cartas Estatales de Derechos de las Trabajadoras de Hogar

- ▷ New York
- ▷ Hawaii
- ▷ California
- ▷ Massachusetts
- ▷ Connecticut
- ▷ Oregon
- ▷ Illinois
- ▷ Nevada
- ▷ New Mexico

State Policy  
Priorities

Las prioridades de  
política estatal



## Strike Legal Exemptions

- ▷ Legal and Regulatory Exclusions
- ▷ Explicit Exclusions of Domestic Workers
- ▷ Exclusion of Domestic Workers based on Workplace Size

## Eliminar exenciones legales

- ▷ Exenciones legales y regulatorios
- ▷ Exclusiones explícitas de trabajadoras de hogar
- ▷ Exclusión de trabajadoras de hogar según el tamaño del lugar de trabajo

## Expand Definition of Domestic Workers

- ▷ Live-in domestic workers
- ▷ “Companions”
- ▷ Casual workers

## Expandir definición de trabajadoras de hogar

- ▷ Las trabajadoras que viven en la casa de su cliente
- ▷ “Ayudantes”
- ▷ Trabajadoras ocasionales

## Industry Standards

- ▷ Paid Time Off
- ▷ Termination Notice for Live-in workers
- ▷ Employment Agreements
- ▷ 24hrs off
- ▷ Right to Cook
- ▷ Privacy & Anti-Trafficking Rights

## Estándares de la industria

- ▷ Tiempo de vacaciones
- ▷ Aviso de terminación para trabajadoras residentes
- ▷ Acuerdos laborales
- ▷ 24 horas de descanso
- ▷ El derecho cocinar
- ▷ Privacidad y derechos contra la trata de personas

## Enforcement & Implementation

- ▷ File & Track Complaints
- ▷ Private Right of Action
- ▷ Partnerships to Enforce

## Cumplimiento e implementación

- ▷ Presentar y rastrear quejas
- ▷ El derecho privado de acción legal
- ▷ Asociaciones para hacer cumplir

## Expand Health and Safety and Workers' Compensation Coverage

- ▷ All workers regardless of classification
- ▷ Retaliation protections
- ▷ Domestic worker collectives
- ▷ Educate employers

## Ampliar las provisiones de salud y seguridad e indemnización por accidente laboral

- ▷ Todas las trabajadoras independientemente de la clasificación
- ▷ Protecciones contra represalias
- ▷ Colectivas de trabajadoras de hogar
- ▷ Educar a los empleadores



# Portable Benefits

- ▷ Workers access benefits
- ▷ Clients can make contributions

# Beneficios portátiles

- ▷ Los trabajadores acceden a los beneficios
- ▷ Los clientes hacen contribuciones



VA Domestic Workers  
Bill of Rights

La carta de Derechos  
de las Trabajadoras  
de Hogar de VA



# SB 804 - Sen. McClellan

<b>Workplace Discrimination</b>	Employers with 5 to 20 employees are excluded. Extend protections to all.
<b>Discriminación en el lugar de trabajo</b>	Se excluyen los empleadores con 5 a 20 empleados. Extienda las protecciones a todos.
<b>Wage &amp; Hour</b>	Domestic Workers are excluded. Remove exemption.
<b>Salarios y horarios</b>	Las trabajadoras domésticas están excluidas. Eliminar la exención.
<b>Nonpayment</b>	Domestic Workers are not clearly protected. Include domestic work explicitly.
<b>Impago de sueldos</b>	No está claro que las trabajadoras domésticas estén protegidas. Incluya explícitamente el trabajo doméstico.



# SB 804 – Sen. McClellan

<b>Safety &amp; Health</b>	A home where domestic service is performed is not clearly included as a workplace subject to safety standards.
<b>Seguridad y salud</b>	Un hogar donde se realiza el servicio doméstico no se incluye claramente como lugar de trabajo sujeto a normas de seguridad.
<b>Workers Compensation</b>	Domestic Workers are excluded. Remove exemption.
<b>Indemnización por accidente laboral</b>	Las trabajadoras domésticas están excluidas. Eliminar la exención.



COVID-19



“The same workers who have been in the shadows could be key to stemming the spread of the virus ... They just need the chance to be a part of the solution.”

“Los mismos trabajadores que han estado en las sombras podrían ser clave para detener la propagación del virus ... Solo necesitan la oportunidad de ser parte de la solución.”



Ai-jen Poo

THANK YOU!





## **Appendix G**

# DOMESTIC WORKERS BILL OF RIGHTS - *THE BUSINESS PERSPECTIVE*

September 24, 2020

Nicole Riley, Virginia State Director



# WHO IS NFIB

- NFIB (National Federation of Independent Business) is the voice of small business, advocating on behalf of America's small and independent business owners, both in Washington, D.C., and in all 50 state capitals.
- NFIB Virginia represents approximately 6000 small businesses throughout the Commonwealth.

# Definitions Matter

- What is the appropriate definition of “domestic worker”?
- Is one definition appropriate for all industries?
- How does definition interact with Federal definitions?
- How do certifications, licenses, etc. play into definition?

## Who is the Employer?

- 3<sup>rd</sup> Party Employers
- Individual Consumers/Clients
- Self Employed

## Independent Contractors

- How do Independent Contractors operate in this area?

# Concerns from Small Businesses

- Will additional regulations contradict current requirements employers are expected to meet?
- Will additional regulations be enforceable?
- Will additional regulations increase costs and recordkeeping for employers?
- Will state agencies need additional resources to enforce and who pays for those additional costs?

# Food for Thought

- What protections in the way of insurance are already available?
- Is there a way to educate those who are the employers and employees on what are best practices, what is available to them and how to implement them?

# Questions and Contact Info

**Nicole Riley**

**Virginia State Director**

804.377.3661

[Nicole.Riley@nfib.org](mailto:Nicole.Riley@nfib.org)





## **Appendix H**

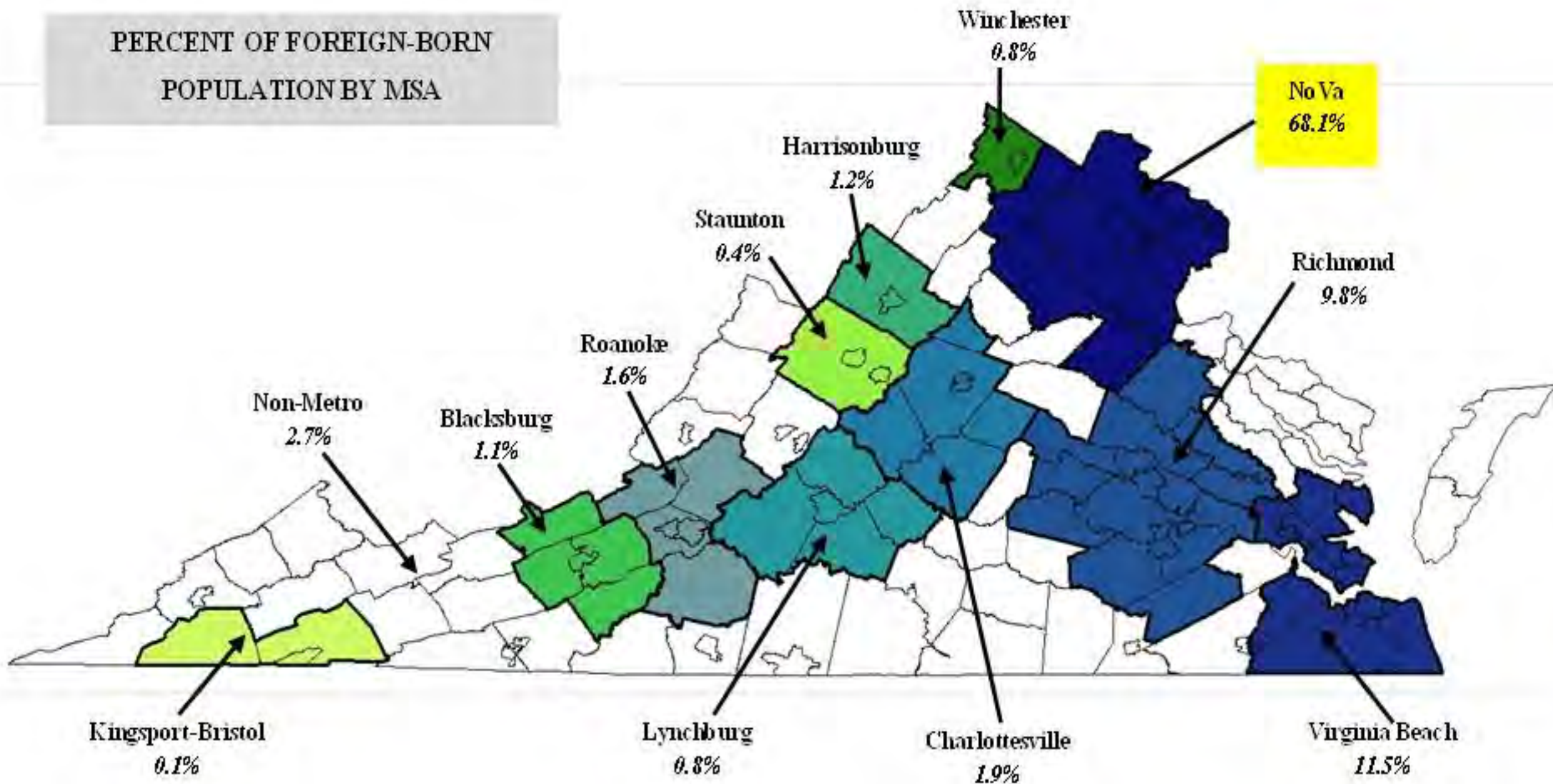


# Third Domestic Service Workers Work Group meeting 10/6/2020

**Seyoum Berhe, Virginia Refugee State Coordinator  
Director of the Office of New Americans**

**[Seyoum.Berhe@dss.Virginia.gov](mailto:Seyoum.Berhe@dss.Virginia.gov)**

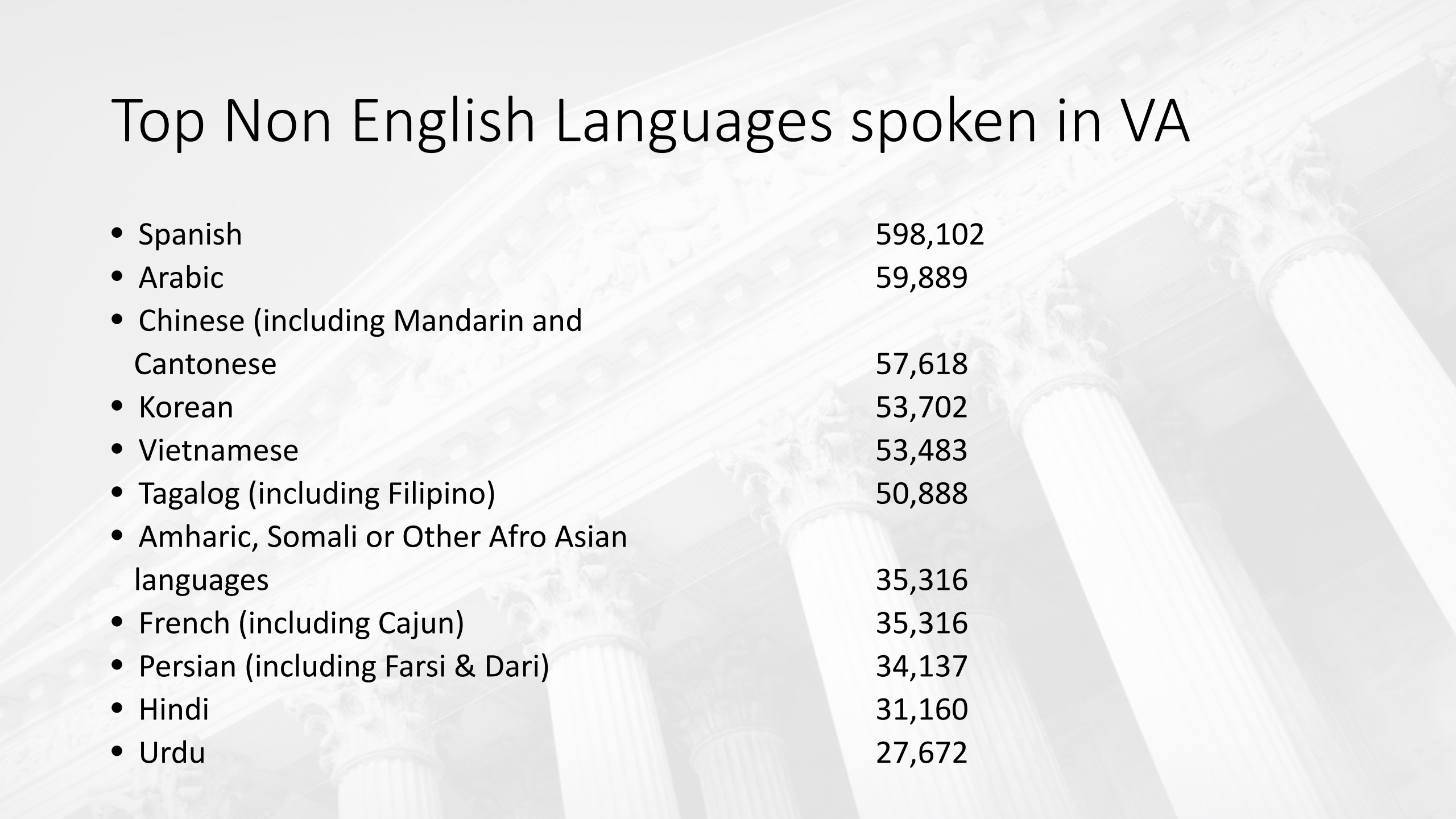
PERCENT OF FOREIGN-BORN  
POPULATION BY MSA



# Profile of the Unauthorized Population in VA

The background of the slide features a grayscale image of several classical columns, likely from a government building, receding into the distance. The columns are fluted and have ornate capitals. The perspective is from a low angle, looking up and down the length of the colonnade.

# Top Non English Languages spoken in VA

The background of the slide features a series of classical columns, likely from a government building, receding into the distance. The columns are light-colored and have ornate capitals. The overall tone is light and professional.

# CREATION OF Office of New Americans

- An Act to amend the Code of Virginia by adding in Chapter 24 of Title 2.2 an article numbered 28, consisting of sections numbered 2.2-2496 through 2.2-2499, and by adding a section numbered 63.2-209.1, relating to Department of Social Services; Office of New Americans created; Office of New Americans Advisory Board created.”



Triple Trauma  
Tradition  
Orientation  
Language  
Education  
Lack of Resources

UNEXPECTED TRIP INTO THE UNKNOWN FUTURE

# ONA-Immigrant Services Plan

- Create a Profile of VA Immigrants
- Conduct dialogue with VA Stakeholders to identify unmet needs of Immigrants
- Compile a list of all VA service providers
- Work with Public Affairs to post all relevant information on our website
- Work with VDSS Finance Unit to separate Federal and State funding
- Working with VDHS and DBHDS to compile a list of health and mental health providers in VA
- Work with OD to post two positions to be hired



## **Appendix I**

# **Domestic Service Employee Workgroup**


**Governor's Office**

**October 6, 2020**



**DCJS**

Virginia Department of Criminal Justice Services



# Human Trafficking Response in Virginia

# State Trafficking Response Coordinator

*The Code of Virginia § 9.1-116.5*

The **overall goal** of this position is to create a **consistent, collaborative, multi-disciplinary response system** to how human trafficking cases are handled.

This must include **stopping the supply, stopping the demand, and serving those who are exploited.**

# How Does DCJS Support Trafficking Victims

- Create a consistent response protocol for human trafficking (currently focused on sex trafficking);
- Training for providers and other professionals;
- Standards for treatment facilities;
- Chair the State Advisory Groups;
- Participate in task forces and workgroups throughout the Commonwealth;
- Develop resources throughout the Commonwealth;
- Maintain resource guide of providers serving trafficking victims throughout the Commonwealth.



A Collaboration to Help Reduce  
Human Trafficking in Virginia



# State Advisory Groups & Task Forces

# State Advisory Groups

- State Advisory Groups
  - Anti-Human Trafficking Coordinating Committee
    - Originally established in 2013 through Executive Directive 7 by former Governor Robert F. McDonnell
    - Chaired by the Virginia Department of Criminal Justice Services
    - Comprised of representatives from each state agency
    - Did not meet regularly this year due to the challenges in 2020
  - State Child Trafficking Workgroup

These groups are being realigned this year to work in a more integrated way.



# Human Trafficking Task Forces

- Hampton Roads Human Trafficking Task Force;
- I-81 Corridor Human Trafficking Task Force;
- Northern Virginia Human Trafficking Task Force;
- Richmond Regional Human Trafficking Collaborative;
- Roanoke Valley Human Trafficking Task Force.



# Existing Services & Recommendations

# Existing Services: Domestic Services

- Ayuda Legal Services (<https://www.ayuda.com>)
- Human Trafficking Legal Center in Washington D.C. (<https://www.htlegalcenter.org>)
- Legal Aid Justice Center (<https://www.justice4all.org>)
- Currently, there are no other known service providers or NGOs working specifically on workers rights within the domestic services field.
- There are NGOs working on labor trafficking for undocumented or under documented immigrants.

# Recommendations

- Virginia Department of Labor Representation
- State Trafficking Advisory Groups:
  - As these groups are reorganized this year add a sub-committee that will work on labor exploitation and labor trafficking (inclusive of all individuals and for all labor exploitation)
- Create a legal framework for domestic workers to include:
  - Workers Bill of Rights ([California](#) and [New York State](#))
  - Labor Standards for Domestic Services ([Seattle](#))
  - Training for domestic service companies and placement agencies
  - Required course for families who will be directly hiring nannies, au pairs, maids, cooks, etc.
  - Hotline for workers to report abuses

## **Angella Alvernaz**

State Trafficking Response Coordinator

Virginia Department of Criminal Justice Services (DCJS)

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