

DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Occupational Safety and Health
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SB 321 - Employment Safety Standards Advisory Committee:
Household Domestic Services
Minutes of Meeting
Thursday, May 26, 2022

Attendees

Suzanne Teran, *facilitator*

Laura Stock, *facilitator*

Erika Alonso

Eileen Boris

Nicole Brown-Booker

Socorro Diaz

Eduardo Garcia

Martha Herrera

Lian Mann

Martha Marquez

Anna Pisarello

Kevin Riley

Megan Whelan

Nancy Zuniga

Julietta Hua

Jessica Lehman (*via Zoom*)

Nicanora Montenegro (*via Zoom*) (half-day)

Theresa Peterson (*via Zoom*)

Hina Shah (*via Zoom*) (logged off at 2pm)

Sulma Guzman, *Deputy Director of Policy, Legislation and Regulatory Affairs*

Carl Paganelli, *Deputy Chief of Cal/OSHA*

Carmen Cisneros, *Cal/OSHA Area Manager of Consultation*

Deanna Ping, *Chief Deputy Director*

Kumani Armstrong, *Attorney, DIR*

Absent

Jose Mercado

Welcome and Introductions

Quick Recap from April 29, 2022, Meeting

- Vision – what the committee members would like domestic workers to know or do in order to prevent work-related injuries/ what can employers do
 - Workers receiving information about hazards and their rights
 - Getting the training tools and equipment and how to work safely
 - Being able to speak out without retaliation
 - Being respected for the experience they bring to the work site, and having work that's a dignified job
 - Workers being involved in identifying hazards and employers knowing which tasks are most dangerous or having an understanding of the risks that are involved with the job
 - Written information about work task expectations
 - Employers providing PPE and other necessary equipment and tools that can be used to identify hazards
 - Workers are able to assess their abilities, what jobs they're able to do and have the training to do
 - Understand what experience and knowledge is needed to match workers accordingly to jobs
 - Access workers' compensation if injured and having information about when you have the right to workers' compensation

Goals

- Developing a shared understanding of the common hazards that day laborers and domestic workers face will help focus the development of the voluntary guidelines
- Talk about regulation and enforcement approaches
- Need to brainstorm approaches and models

Approval of Minutes

- Motion: Approval of April 29, 2022, Meeting Minutes as distributed.
Vote: The committee members in attendance all voted in favor.

Bagley-Keene Review

Kumani Armstrong, Attorney

- What is a Meeting? When a quorum convenes to address issues under this body's jurisdiction.
- What is quorum? 10 is the magic number for this advisory committee. This committee is composed of 18 members. Must be at the physical meeting location. A/C members participating remotely do not count towards establishing that quorum. Physical location is Oakland.
- If in event quorum not at physical location, the meeting will be canceled. Meeting cannot go forward without the proper number of members at the physical location.
- Can committee members communicate with DIR/LOHP staff? All communication should go through SB321@dir.ca.gov

Common Hazards & Challenges for Domestic Workers and Day Laborers: Employer and Employee Perspectives

Megan Whelan, Associate Director, California Domestic Workers Coalition

- Background on California Domestic Worker Coalition --- voice for more than 300,000 domestic workers in CA
- What is a listening session?
 - Guided discussion to record experiences of domestic workers, day laborers, and employers
 - Goals: learn from domestic workers, day laborers, and employers; capture trends and challenges; synthesize findings
 - 17 organizations participating across CA (ranging from domestic worker organizations, day laborer organizations, and employers of senior and disability organizations); more than 600 participants
 - First Question Asked: What are the Hazards Identified?
 - Exercise: Where are the risks in the home? Where are the moments of dangers? Common slips and falls, ergonomic movements, organizational hazards
 - Each sector has its own hazards. We also want feedback from people in the room about your experience. 5 categories of hazards reviewed.
 - Housecleaners Sector
 - Physical: dehydration, heat exhaustion, lack of ventilation in the home
 - Ergonomic: moving/lifting furniture, lifting objects, repetitive movements, vacuuming, crouching, hard to reach areas, cleaning objects up high or low, working without shoes (asked to kick off shoes at doorway)
 - Chemical/Biological: toxic chemicals, exposure to COVID and other transmissible diseases, wildfire smoke, pet allergies
 - Organizational: verbal/sexual abuse, change in job tasks, no written agreements, heavy workload under time pressure, wage theft, working alone/isolation.
 - Stories from workers during the listening sessions
 - Examples/Additions from the Committee Present Today?
 - *Martha*: I was working at our house as live-in employee. I was 13 years old. The kids go to school, and the parents go to work. The husband started to come into house when I was alone during lunchtime and harassed me sexually. It happened over several weeks. I was afraid to say anything to my mom because I didn't want her to be worried.
 - *Martha*: I was the caregiver for a man who was 79 years old. He was wearing diapers, and needed assistance. I went to get a clean one, and when I came back, he was sitting on edge of bed. He pulled his t-shirt up, exposing his private parts. He said he wanted oral sex. The fact that we are in the house alone makes it a big risk for us workers.

With this person, he was weak, so I knew he wasn't going to jump on me or hurt me, but it was very offensive and humiliating.

- Childcare
 - Physical: None mentioned
 - Ergonomic: lifting and caring for small kids
 - Chemical & Biological: COVID, infectious illnesses, toxic cleaning products
 - Organizational: additional/changing tasks, emotional toll/attachment to family, emotional toll of leaving their family behind, lack of access to paid sick leave, being locked in the home (unable to leave)
 - Safety: misplaced toys, misbehaving kids, windows, stairs
- Homecare
 - Physical: Wildfire, lack of adequate sleeping quarters (or lack of sleep)
 - Ergonomic: transfers of persons with disabilities, hard to reach objects, lifting, pushing wheelchairs, lack of equipment
 - Chemical/Biological: COVID, infectious disease, pathogens, handling biological waste, blood, urine bags, feces, etc.
 - Organizational: emotional toll, sexual/verbal abuse, wage theft, violent/aggressive behavior, lack of sleep
 - Safety: leaving stove on, electric plugs, tripping
- Day Laborers
 - Physical: Climate – heat stroke/exhaustion
 - Ergonomic: Demolition, heavy lifting – moving, landscaping
 - Chemical/Biological: contaminated water, poison oak, ticks, chemical cleaning products, asbestos, fiberglass, insulation, exposure to mold or dust, bio-waste (human/animal excrement & blood)
 - Organizational: employer pressure to keep working, wage theft
 - Safety: falling from higher places (ladders, roofs), use of heavy machinery
- Questions/Comments from Committee
 - Modes of Transportation for Nannies/Childcare Providers
 - Stroller – taking kids to park down the street. Equipment needs to function well. Strollers without brakes. Employer is providing the equipment (needs to function well).
 - Large hills near residence can make work more difficult for a nanny who is not physically able to do so.
 - Employers not allowing workers to have the house key. The door could close and worker was locked out.
 - Workers being locked in the home and unable to leave
 - An emotional issue as well as a power/safety issue. In the event of an earthquake or fire, people would be locked in the home.
 - Who else has access to the home when the employer is not there? Example of a housecleaner being assaulted by a son of the owners when the owners were not home.

- Some employers were asking the domestic workers in their house to pay for Uber/Lyft during COVID to mitigate COVID risk, instead of taking the bus. Some employers paid for the uber/lyft, but some asked the worker to pay.
- Harassment doesn't just happen between employer and worker. This also happens between other members of the family or other people who enter the home, when the employer is not there.
- Day laborers are being harassed on their way to work when they get picked up to go do certain jobs in a private home
- Employer smoking and burning incense caused an asthma attack for a domestic worker.
- Employers using security cameras in their home.
- Some workers do not know their rights. Employers will take advantage of workers because they don't have proper legal documents.

Cal/OSHA Standards & Enforcement – An Overview

Carl Paganelli, Deputy Chief of Cal/OSHA

Carmen Cisneros, Cal/OSHA Area Manager of Consultation

- Cal/OSHA has two main branches, consultation and enforcement
 - Consultation: Provides free services to employers, give information to help employers (mostly small employers) about how to identify health/safety hazards in the workplace, and to find ways of protecting their workers on the job
 - Enforcement: Inspections of workplaces, find violations, issue citations and monetary penalties, require employers to fix the violations
- Cal/OSHA covers almost every employee in CA, with the following exceptions:
 - Federal employees
 - People working on Native American reservations
 - People in household domestic service employment
 - Self-employed/ independent contractors
- Household Domestic Service Exception from Coverage by Cal/OSHA
 - Fernandez vs. Lawson (2003): CA Supreme Court explained that household domestic service is caring for people in the home, caring for the home, and taking care of the premises
 - Question for the Court: Was trimming a 50-foot palm tree considered household domestic service or not? The Court said this was considered household domestic service.
 - 2011 case: Is extensive construction and remodeling work on a private home considered household domestic service? In this case, a mother and a son bought a house and they did a lot of work to add rooms, put new foundation for the rooms, added walls, and replaced the roof. The Court said no, and this was beyond household domestic service. This is not caring for the home, but a major construction project.
- First, Cal/OSHA needs to determine if it fits within the household domestic service exception.
 - Cal/OSHA needs a lot of information to figure it out

- Is it a private residence? Or is it a business?
 - Why is the worker at the home?
 - Who hired the person? Is there an agency or company sending the worker?
 - Cal/OSHA does not cover self-employed people
 - Cal/OSHA does not have a blanket rule for household domestic worker
- Enforcement: What Happens with Inspections
 - Inspections are without notice
 - Cal/OSHA needs consent to begin inspection. If don't get consent, then they can go to court to get a warrant.
 - Once Cal/OSHA receives consent, they open the inspection and put the employer's name and address into a database. Within 30 days, that will show up on the Federal OSHA's website. Anyone can run a search and will see there is an open inspection.
 - If they have employees who work outside, inspector will ask for IIPP, heat illness program, training records, accident records, etc.
 - If inspector sees an imminent hazard, they will issue order prohibiting use. Have power to stop things immediately.
 - If Cal/OSHA receives complaint, can send letter to employer about how they are handling.
 - Once inspection begins, Cal/OSHA has 6 months to issue citation. Citation explains what regulation was violated. Also, it specifies monetary penalty.
 - Employers are forbidden from retaliating.
 - Names of complainants are kept confidential.
- What happens after a citation
 - Abatement --- require employer to fix the hazard.
 - Appeal --- Employer can file an appeal with the Occupational Safety & Health Appeals Board
 - Most appeals are resolved. If no settlement, right to hearing before an Administrative Law Judge. Can have witnesses testify under oath, evidence (documents, videos).
- Questions for Cal/OSHA
 - Eduardo (day laborer) – If waiting on a corner for a truck to arrive that needs work. We make verbal agreement on type of work, pay, hours, etc. When get to job and turns out is company that does roofing, which involves different safety protocols. The company is in rush and needs workers. No helmets, no harness, they are using ladders. The day laborer is taking on all of the risk. If we are doing same job, why don't we have the same level of protection?
 - How do we come up with the same type/level of protection?
 - Eileen – mixed employment relationships in the same space --- homecare worker
 - Response: If it is taking place inside private residence and fits within household domestic services, then we look at all of the factors.
 - Hina – During COVID, how did the agency conduct investigations?
 - Response: In-person and via letter, depending on the situation

- Hina – When an employer appeals a citation, what happens to the hazard? Are they required in the interim to abate or they can wait until the appeal is final?
 - Response: Cal/OSHA encourages them to abate, but legally will wait until the appeal is decided by the OSHAB.
- Lian – If a complaint that occurs at a private home, what happens when the worker tries to get Cal/OSHA to investigate? It seems like the dominant discourse is to how to qualify for the exceptions. The focus should be about prevention.
 - Response: Cal/OSHA will look into it to see whether the exception applies. If it doesn't, will have jurisdiction and go out to investigate, issue citations if violations and penalties found. At times, the homeowner will continue to claim the whole way through that it was household domestic work.
- Julie – Regardless of determination on jurisdiction, do you know how often Cal/OSHA gets complaints on households per year?
 - Response: Does not have statistics, just personal experience with questions at time with Cal/OSHA
- Kevin – If we close the gap around household domestic service, will that gap around self-employment still create a barrier?
 - Response: There is a lot of overlap between self-employment and household domestic service.
- Laura – What circumstances would you find domestic worker to be covered?
 - Example: Trimming a palm tree in someone's home. He was hired by utility company to trim palm trees because too close to utility lines. Was not household domestic service. He was there to protect power lines.
- Jessica Lehman - Many independent contractors are misclassified. Does Cal/OSHA work with EDD on that issue? I have been an employer of attendants and it takes a long time to classify workers properly.
 - Whether someone is an independent contractor or employee for our purposes, we look at that closely. It comes up all the time. If they are an independent contractor, then Cal/OSHA would not have jurisdiction.
- Industries with similar tasks

Cal/OSHA Part 2 --- Cal/OSHA Standards

Carmen Cisneros, Cal/OSHA Area Manager of Consultation

- Topic: Requirements in Industries with Similar Tasks to domestic workers and Day Laborers
- Industries: Janitorial, Landscaping Services, Tree Trimming, Childcare Daycare Services, Hotel Housekeeping
- Standards
 - Poster --- posting standards, rights, etc. Failure to post notice can result in fine for each violation
- Penalties
 - Regulatory: permit, posting, reporting, recordkeeping requirement
 - General: not of a serious nature
 - Serious: realistic possibility of death or serious physical harm could result

- Modifiers: Willful, Repeat, Failure to Abate
- Some Title 8 Requirements
 - Injury & Illness Prevention Program --- has 8 elements title eight sections 3203 and 3395
 - Covid-19 Prevention title eight section 3205
 - Hazard Communication title eight section 5194
 - Blood borne pathogens --- all occupational exposure title eight section 5193
- Fall Protection --- ladder safety title eight section 3276
- Questions / Comments
 - Kevin – Hazardous Chemical --- Does not apply to household chemicals?
 - Response: We would need to look at the standard.
 - Laura Stock --- General Standard (I.e. IIPP) v. Specific Hazard Standard (I.e. Blood borne pathogens)
 - Nicanora Montenegro – Two types of in-home caregivers. Some caregivers are hired directly by the family in the home. Some caregivers are hired through an agency and identified as an independent contractor. We also have caregivers that are undocumented and those are the workers that are most abused. What policies can we implement to protect those workers?
 - At some point will we talk about mental health?
 - Yes
 - There are some regulations, but that is a gap for all workers.

Protecting Workers Health & Safety: Models for Committee to Explore

- Questions?
 - What are the challenges?
 - What are the models the Committee should explore?
- What would work in this Industry?
 - Best practices for nanny hiring. We distribute packets to people who are new employers. Provide posters. We do outreach to new families. We ask employers to have a plan for illness, certain hazards. We have communication upfront and it does not have a large cost. What is the mechanism to distribute that information to employers?
 - Eileen – Employers come in different sizes and shapes. How can someone with limited resources provide equipment to make it safe? A state fund to apply for loans or borrowing
 - Eileen – Is an employer of a housecleaner going to have an incentive to do a plan for best practices.
 - Ability to look up violations that employers have committed. That creates transparency.
 - Eduardo – We should make a risk profile. They can send the recommendations regarding that particular location. It cannot be a homogenous profile for each location. There needs to be specific risks identified. Need to identify the risk profile that helps identify employers on what tasks are more risky.

- We need training on how to identify the hazards as employees. We also need training for employers.
 - Employers need training on the basic standards for them.
 - Employers also need to provide training to their employees on hazards.
 - Are all household employers suited to provide that training to employees? Where should the training come from?
 - Could a certificate be developed for workers for completing certain training? Could there be a known training certificate?
- Nancy
 - Hazard Identification is important. Housekeepers typically do a quick run through of a home. There is a possibility for a hazard ID and assessment in the hiring process. Providing employers with tools. The Hazard Map is a helpful tool that was used in the listening sessions
 - IDPESCA is working with the Department of Public Health to create guidelines for domestic work and COVID. There are certain hazards that are not just to the employee. There are also hazards to the employer (children, pets, and others in home). Think about the public health approach too.
- Kevin
 - Hazard identification is an important piece. Have employers be responsible to identify the hazards. Also responsibility for hazard control (providing and using tools)
 - Two Points: What are the common hazards? What happens in the case of an emergency?
- Eduardo
 - If the employer does not have awareness of risk, we should be able to request training from Cal/OSHA.
- Nicanora
 - Can we provide a checklist to the employer before employing an individual? This will help employers understand that they are part of educating their workers on hazards in the home.
- Megan
 - It is the employer's responsibility to comply with the law. If the employer cannot provide the training, they should be working with others (i.e. Cal/OSHA) to get that training. The burden should not fall on the worker.
- Leann – Would like to see on the agenda discussion on “voluntary”
 - Entire state legislature did vote to end exclusion in the prior year.
 - We need a carrot and a stick
 - Susan: Policy recommendations can include more than just voluntary standards. We should think about what the policy recommendations should include at next meeting.
- Julie
 - Would like to learn about harassment protections, just as a potential model and information for our advisory committee group
- Eileen

- Models included: Uruguay was mentioned. We need to look at universal models for health and safety.
 - We should look at trade union programs to see if that model would work for workers that are not in traditional trade unions.
 - Hiring Hall model. Employers had to sign off that they knew about health & safety rules and wage and hour rules in order to hire someone from Hiring Hall in the past.
 - Eduardo
 - (1) Would like one place I can get training as a day laborer that would be helpful. Would also help employers.
 - (2) There are a certain number of workers affiliated with an organization. However, that is not the entire amount of workers. Some percent might be protected, but 90% might not be protected. We need more resources to reach those other day laborers.
 - Megan
 - Partnership with Labor Commissioner's Office to raise compliance on other basic protections. It is a pilot program. Doing education and outreach. Supporting workers through empowerment. Maybe we can share more about that model for health & safety purposes. Partnership with LCO has been great.
 - Kevin
 - There are several models in California in strategic enforcement. We could look at some of the other models developed in recent years. We need a way for guidelines to actually be followed. Maybe engage with work organizations that can play a watchdog role.
 - Nancy
 - At our organization, Megan Ortiz, been involved in these strategic models. Maybe there is an opportunity for her to present.
- Any documents to be shared as part of public record
 - Megan's documents that were shared.
 - Contact through email address that has been shared
- Any other future agenda items?
 - Nancy: Issues of misclassification. If we could have a deep dive into misclassification that would be helpful for our committee. What is misclassification? What are the laws on classification? What are some of the labor laws pertaining to who is an employer and who isn't an employer? Even if it's voluntary, we know who this applies to.
- Sulma – Logistical Items
 - What dates work and what dates do not work. We need a quorum in person. If we don't have a quorum, we cannot hold the meeting.
 - Meetings will be held in Oakland for logistical reasons. Please email us if you have issues.
 - Confirmed Next Meeting dates: Friday, June 24th. Thursday, July 28th.
 - TBD: August 19th, September 22

- SB321@dir.ca.gov --- if you want to share an article.
- Cal/OSHA Guides
- We will send email with the information that was sent today.

PUBLIC COMMENT

- No in-person public comments
- Evelin Alfaro (*via Zoom*)
 - Homeworker in San Francisco, also member of Muja and DWC.
 - I used toxic products provided by my employer. The employer asked me to mix Clorox and Ajax to clean the bathroom in his home. I became intoxicated, my nose was irritated, I could not breathe, and I cried. It was a very difficult situation.
 - Some voluntary guidelines could prove difficult to enforce because many of us work alone in home.
 - Another dangerous situation was standing on a toilet without a ladder to clean. The employer told me to use the toilet to reach up.
 - Education and information for all of us is important.
- Kristy Madden (*via Zoom*)
 - Employed two domestic workers in home. Also a member of Hand in Hand.
 - My caregivers help me to do daily tasks during the day. Having access to guidelines would help ensure that our homes are a safe place to work. Examples: personal protective equipment and safety precautions.
- Aminta Morales (*via Zoom*)
 - Homeworker for more than 8 years. Member of Collective.
 - Currently we experience many challenges. Also, have chronic illness from chemicals and falls resulting from cleaning bathrooms. We kept working during covid-19 without basic protections for our health & safety. Currently we have no protection. We need workshops, large outreach to the workers and need the workers to have trust to speak up.
- Gabriela (*via Zoom*)
 - Member of ALMAS. Part of Coalition.
 - Risks in cleaning home was cleaning with toxic chemicals with no gloves or coverings. They would give me dangerous ladders. Inhaled mold. I had to reach. No ladders provided. Allergies. The workers work in isolated conditions. DW have a lot of fear of losing job. I never complained about dangerous conditions for fear of losing job.
- Jeanne Imi (*via Zoom*)
 - Ross, CA --- member of Hand-in-Hand.
 - Important to avoid household hazards. Participated in training for employers of domestic workers. After this training, I reviewed the Cal/OSHA guidelines to see what structure they have for non-Domestic workers. Need safety guidelines for employers and employees. I lack a lot of knowledge of potential risks. I try to use non-toxic cleaning products. I need proper information on ergo, personal protective equipment, vaccines, testing protocol, etc. Domestic workers face these hazards every day. House cleaner is visiting multiple houses each week. Knowledge

in all of these areas would give me more confidence in ensuring health and safety in my home. Would welcome clear voluntary guidelines.

- Nancy Saragosa (*via Zoom*)
 - Caretaker for older adults. We confront risks daily. One example is lack of communication with employer. Client will call and be very late or early. She has a problem with balance. I have to go after hours of employment. There is no way that owner of the home is safe. Domestic workers work in isolated conditions. I have asked for support. If the situation does not improve, I would need to leave the job.
- Mary Grace Diaz (*via Zoom*)
 - Caregiver, member of Pilipino Worker Center and California Domestic Workers Coalition
 - Injured at workplace with frozen shoulder because my patient is very heavy. This is repetitive motion injury. Domestic workers work in isolated conditions. When lifting a patient, one needs proper equipment, but employers do not provide it or it take too long to fix the issue. We need proper education and equipment to prevent accidents and serve as protection to domestic workers.
- Roxana Sanchez (*via Zoom*)
 - IDEPSCA, Cleans homes in Los Angeles
 - Dangers I face: slip in bathrooms, corners of beds cause bruising, never state vaccination status or use masks, I have two discs coming out of my back, arthritis in my back. Would be great challenge because employers could deny to accept the guidelines. The guidelines would have to be a law. Implementation is a challenge when workers do not know rights and obligations. We would need mass education. We would feel safer if guidelines on safety would become a law.
- Aletha Brown (*via Zoom*)
 - Caregiver in Bay Area, member of PAWIS and California Domestic Workers Coalition
 - As a caregiver, I work one-on-one with elderly person who needs help with daily activities. Also, I had a client with a deadly disease but I was not informed about it. In my experience, making voluntary guidelines can be a challenge because domestic workers work in isolated conditions. Most employers do not know enough info about situations. Education is important. Workers need the info so they can protect themselves at work place. Seminars or educational materials.
- Anabel Garcia (*via Zoom*)
 - Member of a Work Center, domestic worker.
 - Also worked for companies. Implementing health and safety guidelines is challenge because of isolated conditions. Workers know they can be fired. Sometimes we are running from one house to another. Eating in between travels.
- Rosalinda Martinez (*via Zoom*)
 - Member of IDEPSCA.
 - Right now I am cleaning.
 - Concerned about 2 things:
 - Air conditioning not always allowed.

- Sometimes we have to iron sheets that go on huge beds. That needs to be prohibited by law. It is bad for your health.
- We are working as domestic workers, taking care of pets, getting the UPS boxes, etc.
- What about workers who do not have papers, do not speak English, or do not know how to read?
- There is also an issue with worker fatigue.
- Workers also live in horrible conditions.

Feedback on Future Agenda topics & Shared Resources

- Start to think about some of the topics mentioned today and what kind of recommendations you want in the policy report