

NEW Domestic Worker Protections Under the DC Human Rights Act – Enforcement Guidance 24-01

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Purpose:

This is a guidance document provided by the D.C. Office of Human Rights (“OHR”) to help the public understanding the legislative changes made to the D.C. Human Rights Act of 1977 (“DCHRA”) and the Office of Human Rights Establishment Act of 1999 (“HREA”) by the newly enacted **Domestic Workers Employment Rights Amendment Act of 2022** (“the Act”).¹ This document may be used for educational purposes only and not as legal advice to apply to a particular situation. Any person or entity in need of legal advice should consult an attorney.

What does the new law do?

The Domestic Workers Employment Rights Amendment Act of 2022 (“the Act”) amends the DCHRA to include “domestic workers” as protected workers covered under the DCHRA’s anti-discrimination provisions. Additionally, the Act amends the HREA to require OHR to create written guidance for employment situations involving “domestic workers.”² This means that covered domestic workers now can file a claim of discrimination under the DC Human Rights Act. There are 18 protected traits applicable to domestic workers. See our protected traits factsheet [here](#). See below also for more information.

Background:

Historically, the DCHRA excluded employers of “domestic workers.” The Act amends the definition of employers to include those who employ domestic workers in their household, thus ensuring that domestic workers are protected from discrimination based on their protected traits.

Note that being a domestic worker is not itself a protected trait. Rather, the Act prohibits an employer from discriminating against a domestic worker on the basis of a protected trait. The **18** protected traits for employees, now including domestic workers, under the DCHRA are:

- Age
- Color
- Credit Information
- Disability
- Family responsibilities
- Gender Identity and Expression
- Genetic Information
- Homeless Status
- Marital Status
- Matriculation
- National Origin
- Personal Appearance
- Political Affiliation
- Race
- Religion
- Sex
- Sexual Orientation
- Status as a Victim or Family Member of a Victim or Domestic Violence, a Sexual Offense, or Stalking (“DVSOS”)³

¹ D.C. Law 24-305.

² The full text of the Act is available here: <https://code.dccouncil.gov/us/dc/council/laws/24-305>

³ D.C. Code § 2-1402.11. See note below regarding this protection.

The Act therefore prohibits an employer from discriminating against their domestic worker on the basis of any of these traits. Discrimination includes failing to hire someone, subjecting an employee to a hostile work environment, or retaliating against an employee for filing a complaint with OHR.

What Is a “Domestic Worker” and How Does the Act Protect Them?

Domestic workers⁴ are employees who provide services for compensation in private residences. Domestic workers may include those regularly providing in-home childcare such as nannying; elder care such as nursing or other assistance; cleaning services; cooking or food preparation; and other related household services.⁵ Domestic workers *do not* include family members of the employer; those performing household repairs such as construction or plumbing; those providing pet-care; or individuals who only perform paid work on an irregular or as-needed basis.⁶

The following scenarios provide information on how the new law protects domestic workers from discrimination.

Scenario 1:

Parents who occasionally go out together in the evenings have a babysitter they call occasionally. The babysitter is likely not considered a domestic worker because they provide services on a “casual basis,” meaning irregularly or at incidental times. The babysitter is therefore not covered by the DCHRA.

Scenario 2:

An employer wishes to hire a domestic worker for a live-in position, which will require the employee to live in the employer’s home. Marital status and family responsibilities are protected traits under the DCHRA.⁷ The employer may *not* refuse to hire someone because they have a spouse or children; however, nothing in the DCHRA requires the employer to provide lodging for their employee’s spouse or children.

Exemptions:

For the most part, the Act ensures that domestic workers enjoy the same protections as any other employee. However, because the domestic worker employment situation differs from the other employment situation in key ways, there are some exceptions or differences in how the DCHRA applies to domestic workers and their employers.

⁴ Formerly referred to as “domestic servants” in the Human Rights Act.

⁵ See D.C. Code § 32-107.01

⁶ *Id.*

⁷ D.C. Code § 2-1402.11(a).

Sex as a bona fide occupational qualification.⁸

In some situations, domestic workers will work with individuals who need assistance with dressing, bathing, toileting, or other activities that implicate the individual's privacy rights. Where this is the case, an employer may wish to hire someone of a preferential sex (including female, intersex, and male) due to privacy concerns. Accordingly, the Act provides that it shall **NOT** be an unlawful discriminatory practice for an employer to hire on the basis of sex provided that sex is a bona fide occupational qualification ("BFOQ"). Sex is a BFOQ where:

- A. The employer has a factual basis for believing that hiring an individual of a particular sex would undermine the privacy interests of the individual receiving services in the private residence;
- B. The individual receiving services has a privacy interest entitled to protection under the law; and
- C. No reasonable alternative exists to protect the individual's privacy interest.

A "factual basis" means a reason based on facts, such as the particular job duties involved, that supports the belief that sex is a BFOQ. A factual basis does *not* include beliefs based on stereotypes or subjective opinion. In addition, "sex" does not include sexual orientation or gender expression. In fact, the Act specifically provides that there is no BFOQ exemption for sex if the employment decision is based on:

- A. The stereotyped characterization of one group as opposed to another;
- B. Actual or perceived sexual orientation of a prospective employee; or
- C. The prospective employee's preferred name or personal pronouns.

Scenario 3:

An employer wishes to hire someone to care for their elderly mother. The job will entail assisting their mother with bathing, changing, and toileting. The employer advertises the job as available to women only. This situation likely does not violate the DCHRA – as long as the employer has a factual basis to believe that being a woman is a bona fide occupational qualification of providing intimate services for their mother, who is also a woman, in order to protect their mother's privacy rights and no other reasonable alternative exists to protect their mother's privacy interests.

Scenario 4:

An employer wishes to hire a nanny for their young children. The employer believes that women are natural caregivers, so they advertise the job as available to women only. This situation likely *does* violate the DCHRA because the employer does not have a *factual basis* to believe that being a woman is necessary to perform the job. Instead, the belief is based on a stereotype about men and women generally and is not a permissible reason to discriminate on the basis of sex.

⁸ D.C. Code § 2-1402.12(c)

Status as a Victim of (or Family Member of a Victim of) Domestic Violence, a Sexual Offense, or Stalking.⁹

The DCHRA prohibits discrimination in employment against those who are, or whose family members are, victims of domestic violence, a sexual offense, or stalking (“DVSOS” status). In addition, the DCHRA requires employers to provide certain accommodations for employees with DVSOS status, such as allowing them to take time off to attend court hearings. The Act does not exclude domestic workers from these protections, and employers of domestic workers may not discriminate against their employees based on their DVSOS status. However, because there could be safety implications, the Act permits employers of domestic workers to disclose an employee's status to others if the information is necessary to protect the residents of the workplace from harm. For example, if someone is a stalking victim, and the perpetrator of the stalking is still at large and likely to follow that individual to work, an employer may disclose information about an employee's DVSOS status to others in the residence in order to protect themselves and their family.

Notice of a Worker’s Rights Under the DCHRA.¹⁰

The DCHRA requires employers to post a notice regarding their employee’s rights under the DCHRA. Because posting may not be feasible or desirable in a private residence, employers of domestic workers may give their domestic employee a copy of this guidance rather than posting the notice.

I am a Domestic Worker. What Do I Do if I Believe I have Been Discriminated Against based on my Protected Trait(s)?

You can submit an Intake Questionnaire to OHR if you believe your rights under the DCHRA have been violated. The Intake Questionnaire must be filed within one year of the alleged discriminatory conduct or discovery thereof. Intake Questionnaires can be filed:

- Online: ohr.dc.gov
- In-Person/Mail: 441 4th Street NW, Suite 570N, Washington, DC 20010
- Email: intake@ohr.dc.gov
- Fax: (202) 727-9589

⁹ D.C. Code § 2-1402.11(c-1).

¹⁰ D.C. Code § 2-1402.52.