



International  
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Office



## DOMESTIC WORK POLICY BRIEF

# 2

# Working hours in domestic work

Working hours of domestic workers around the world are among the longest and most unpredictable. But regulating their working time is a contentious issue in current policy debates. Although the eight-hour working day is now an internationally accepted legal norm, domestic workers are most often exempted from this standard. Their exclusion exists even in countries where domestic workers are covered by other labour standards. The main argument given for excluding domestic workers from the coverage of general working time regulations is that their tasks are different from standard office and factory jobs because the needs of household members are not always predictable, have no defined limits or, in some cases, demand “round-the-clock” service.

However, long and unpredictable working hours impose a high cost on workers’ health and well-being and, in turn, erode their efficiency and the quality of service they provide to their employers’ households. The principal challenge therefore to policy-makers is formulating working time measures that protect domestic workers’ interests while taking into account the needs of the households that employ them.

In order to stimulate and inform policy debates on how to advance decent working hours among domestic workers, this Policy Brief:

- describes the nature of problems that domestic workers face with respect to working time;
- presents research evidence that regulating working hours is not only just but also wise, benefitting both domestic workers and their employers;
- explores some key policy issues – the extent to which domestic workers have been excluded from working

time regulations, and the different sides and views of working time in domestic work;

- provides examples of measures that some countries have adopted to protect domestic workers from excessive working hours, insufficient rest and inadequate payment for actual hours worked, which demonstrate that there are varied and innovative ways of extending protection to domestic workers; and
- proposes a number of considerations as a starting point for formulating working time regimes in domestic work, which balance the need of households for flexibility with the right of domestic workers to decent working hours.

### 1. Working time in domestic work: What are the problems?

Working hours of domestic workers are closely associated with their employment arrangements. Workers who reside in their employer’s home (live-in workers) tend to work full time, most probably long hours. Live-out workers may work full time for one household, reporting for work in the morning and returning to their home in the evening, or may work for different households for two, three or more hours each time per day, per week or per month.

Migrant domestic workers, either from rural village to urban centre or from one country to another, are frequently employed in live-in arrangements for many reasons, such as the exigencies of the employer, regulations governing foreign workers, absence of alternative housing arrangements, and distance between home and workplace.



**Table 1: Chile and Peru: Difference in hours worked and average earnings between live-in and live-out domestic workers**

	Domestic workers (live in)	
	Peru 2001	Chile 2000
Average weekly hours	62.1	67.6
Average earnings, 40 hours (US\$)	124.7	187.0
Hourly pay rate equivalent	3.1	4.7
Monthly earnings for hours worked	193.6	316.0
	Domestic workers (live out)	
	Peru 2001	Chile 2000
Average weekly hours	49.0	40.0
Average earnings, 40 hours (US\$)	101.6	193.9
Hourly rate equivalent	2.5	4.8
Monthly earnings for hours worked	124.5	193.9

Note: CEPAL data from national household surveys.

Source: C.E. Stefoni: "Migración, género y servicio doméstico: Mujeres peruanas en Chile", in Valenzuela and Mora (eds.): *Trabajo doméstico: Un largo camino hacia el trabajo decente* (Santiago, ILO, 2009), p. 201, Table 7.

### Long hours, unlimited working days

For live-in workers, the division between work and home, between work and rest, may be a grey, fuzzy line. It is not unusual for domestic workers to work beyond eight hours daily. Their workweek could be open-ended; rest days are at risk of being scrapped or postponed. The standard practice is for employers to pay domestic workers a flat weekly or monthly rate, but this is for an undefined number of hours of work. Because daily hours have no set limits, the notion of overtime work does not exist.

On-call (or stand-by) time may be a more frequent experience among live-in workers than among live-out workers. On-call duty occurs when a worker is required to be available to the employer to attend to needs of family members if necessary, even if it might be her rest day or even if she is allowed to remain in her private quarters. If

she does not have the liberty to dispose of her time as she pleases or if she cannot leave her employer's residence, this is stand-by duty. This can happen, for example, when a worker is responsible for children during the absence of their parents, or is taking care of a sick member of the family. On-call hours are rarely compensated, but a few countries (e.g. *Finland, France, South Africa*) have prescribed a rate of payment for on-call duty.

### Or, intermittent and excessively short working hours

Live-out domestic workers have relatively more control over their working time arrangements than live-in workers. Nevertheless, they may be working long daily and weekly hours, either for the same employer or for multiple households. For instance, live-out workers might augment weekly earnings by working more hours. Travel time from one's home to the employer's residence could also lengthen the working day. Work schedules might be unpredictable, closely dependent on the day-to-day demands of employer-households. For part-time or casual domestic workers, actual hours worked per day could vary from zero hours, thus zero income, to long hours.

### A global picture: Average weekly hours

Table 2 presents the average weekly hours of workers employed in private households in countries for which labour force survey data were available for 2002 and 2007. The lowest average hours worked can be found in Australia, New Zealand and industrialized countries in Europe, while the highest averages, of more than 48 hours, are in Asia. Some show a decrease in average hours between 2002 and 2007; others show an increase. Bear in mind that these statistics do not say anything about the distribution of workers who work above or below the average. Nonetheless, available country-specific studies on live-in and migrant workers paint a general picture of long working hours (Box 1).

**Table 2: Average weekly hours worked\* by workers in private households with employed persons\*\***

	2002	2007
<b>Industrialized countries</b>		
Australia (TE)	18.1	24.0
Finland (EMP)	26.0	27.5
France (EMP)	37.5	36.8
Greece (TE)	38.0	38.7
Ireland (TE)	24.8	30.9
New Zealand (TE)	16.5	21.8
Norway (EMP)	24.3	14.0
Portugal (EMP)	27.3	25.9
Spain (TE)	27.3	25.9
Sweden (EMP)	29.6	31.5
Switzerland (EMP)	17.2	17.6
<b>Americas</b>		
Bolivia (TE)	53.1	47.2
Brazil (EMP)	39.0	36.8
Costa Rica (TE)	38.0	34.6
Panama (TE)	41.4	38.4
Uruguay (EMP)	31.3	29.5
<b>Transition countries</b>		
Latvia (TE)	30.3	33.0
Lithuania (EMP)**	29.9	39.4
Poland (EMP)	26.6	29.7
<b>Asia</b>		
Indonesia (TE)	44.5	50.9
Israel (TE)	31.6	30.8
Macau, China (TE)	55.2	48.7
Philippines (EMP)	55.2	53.3
Thailand (EMP)	49.8	
Turkey (TE)	43.2	
Viet Nam (TE)	49.1	
<b>Africa</b>		
Ethiopia (TE)		38.0
Mauritius (TE)		27.0
Namibia (TE)		62.0
Zambia (TE)	49.1	

\* Data from labour force surveys. All except Lithuania (hours paid) give actual hours worked. TE means total employment coverage; EMP means employees only.

\*\* International Standard for Industry Classification Rev. 3. The sub-sector "Private households with employed persons" fits the definition of domestic work adopted by the International Labour Conference 2010 for the draft Convention on domestic workers.

Source: LABORSTA, the ILO's database on labour statistics.

## 2. Regulating hours is not only just; it is also wise

### 40- to 48-hour workweek: The 20<sup>th</sup> century vision of decent working hours

The first international labour standard adopted by the International Labour Organization (ILO) soon after World War I was the Hours of Work (Industry) Convention, 1919 (No. 1), which set 48 hours as the acceptable limit for a normal working week. During the Depression of the 1930s, the Forty-Hour Convention, 1935 (No. 47), introduced a new limit, which has since become the Organization's vision of acceptable working hours. Article 24 of the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations in 1948, recognizes that everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

During those critical moments of world history, limiting working hours and providing for adequate rest periods were among the global leaders' instruments for fighting poverty and social injustice. It was perceived as a way of rebuilding social cohesion, and regenerating growth and development. Restricting working time to humane levels was judged to be essential in preserving workers' health and safety, and in enabling them to devote sufficient time to their own families and other responsibilities and interests. Since then, many ILO Conventions provide for working time regulation.

### Box 1: Findings on working time from some country studies

In the **Netherlands**, many live-in migrant domestic workers reported being expected to work at any time and having been asked frequently by their employer to cancel or change their day-off (Galotti, 2009).

In **Spain**, a study found that a number of employers considered live-in workers to be available at all hours (Rodriguez, 2007).

In the **United Kingdom**, research on migrant care workers providing care to elderly persons in private households found that excessive hours with no breaks and/or pressure to work overtime were a problem (Kalayaan and Oxfam, 2009; Gordolan and Lalani, 2009). Live-in care workers highlighted the employer's expectation that the carer should be available to work at all times, often without extra pay.

In the **State of New York, United States**, the survey conducted by the Domestic Workers' United in 2003-2004 (before the Domestic Workers' Bill of Rights was passed into law in 2010) found that 43 per cent of domestic workers interviewed (of whom 76 per cent were foreigners) worked 50 hours or more per week, and 35 per cent worked 60 hours or more per week (Domestic Workers' United and DataCenter, 2006).

In **Kuwait**, a survey of migrant domestic workers in 2001 reported average working hours ranging from 78 to 100 hours a week (Esim and Smith, 2004).

Housemaids and guards had the longest average workweek – around 100 hours. But only less than 2 per cent of those interviewed received overtime pay.

In **Kolkata, India**, a survey during the period December 2006-March 2007 observed that 69 per cent of full-time workers put in eight to nine hours daily and 31 per cent worked nine to 12 hours. Part-time workers who were employed by one or multiple households put in relatively less hours per day, although not much less: 32 per cent put in one to five hours; 52 per cent, five to seven hours; 17 per cent, seven to nine hours (Kundu, 2008).

In **Cambodia**, a study of 500 women and men employed as domestic workers in the cities of Phnom Penh and Siem Reap showed that 60 per cent worked between nine and 16 hours per day (Tous et al., 2010). Some 80 per cent of them were women who had migrated from rural areas.

In the Kampala, Lira, Iganga and Mbarara districts of **Uganda**, a survey of adult domestic workers in 2005 showed: average daily hours between 12 to 14 hours; two out of ten workers did not get any rest break during the day, while 40 per cent had less than one hour; and 64 per cent had no days off at all (Platform for Labour Action, 2007). More than two-thirds began their duties at 6:00 to 7:00 and some 60 per cent stopped working between 20:00 and midnight.

### Working time, workers' health and work performance are interconnected

The number of hours of work and the way these hours are organized can affect the quality of work and quality of life in general. For this reason, governments, the International Labour Organization and supranational organizations, such as the European Union, have introduced minimum working time standards.<sup>1</sup> Based on studies reviewed by the ILO, the most crucial factors negatively affecting employees' health are long working hours and patterns of shift work that involve an irregular distribution of working

hours and night work. These carry especially important risks for women during and after pregnancy, and for young workers. In addition, workers who work under pressure and who lack control over working hours are more likely to think that their working time has a negative impact on their health (ILO, 2004).

A comprehensive review of research by the Health and Safety Laboratory from a variety of countries on the relationship between long working hours (i.e. more than 48 hours a week) and fatigue, health and safety, work-family balance and work performance, identified the most robust conclusions from empirical evidence (White and

<sup>1</sup> The European Union Working Time Directive, which covers all EU Member States, emphasizes that "the improvement of workers' safety, hygiene and health at work is an objective which should not be subordinated to purely economic considerations". See [http://www.hse.gov.uk/research/hsl\\_pdf/2003/hsl03-02.pdf](http://www.hse.gov.uk/research/hsl_pdf/2003/hsl03-02.pdf) for a copy of the EU Working Time Directive.

**Box 2: Working time, health and safety, work-family and work performance:  
Research review by the Health and Safety Laboratory**

**Fatigue.** For both subjective and objective measures of fatigue (e.g. muscular, sensory and cognitive fatigue), there is a link between fatigue and long daily and weekly hours, due to lack of sleep and insufficient breaks.

**Psychological health and stress.** Covering various measures of stress and mental health outcomes, there is an association between working long hours and stress and other poor psychological health outcomes, including depression, anxiety and confusion. Several factors, such as low job satisfaction, poor job rewards or low satisfaction with the salary, low control over work, and individual choice and preferences, are likely to influence the degree to which long hours lead to stress and mental health problems. In some cases, it is loss or poor quality of sleep, rather than long working hours **per se**, that contribute to mental stress and depression.

**Physical health.** Due to insufficient studies, there is a lack of unequivocal evidence on the effects of long working hours on physical health outcomes. However, there is enough evidence to be concerned about the potential harmful effects of excessively long hours (more than 48-50 hours per week). Factors such as existing medical conditions and insufficient sleep, may mediate this connection.

**Safety and accidents.** Although most research on safety concentrated on driving and medical professions, there is reason to be concerned about the connection between working long hours and work-related accidents. Fatigue, lack of sleep as well as age, amount of experience and lack of training influence the negative effects.

**Work-family balance.** Irregular hours, night work and absence of weekly rest periods cause problems for individuals with children and family care responsibilities. Predictable working hours and weekly rest days are necessary for anyone to be able to organize and attend to one's private and family concerns.

**Quality of service and performance.** Employers, not only their workers, benefit in terms of receiving better quality of service when reasonable working time arrangements are followed. The above-mentioned review done by the Health and Safety Laboratory concluded that most of available evidence confirmed the relationship between longer working hours and lower work performance, measured directly and indirectly. However, the relationship is complex. Sleep loss, fatigue, motivation and work effort may influence the connection between long hours and poor performance. Having rest breaks may enhance productivity and performance.

*Source: White and Beswick, 2003.*

Beswick, 2003).<sup>2</sup> Although none of the research that was reviewed focused on domestic workers, a variety of jobs were covered including manual and non-manual workers, factory, construction, transport and sales workers, and medical professions. In many cases, working time that resulted in loss of sleep, poor quality of sleep and insufficient rest was linked to poor psychological and physical health outcomes (Box 2).

One may add that by reducing potential sources of tensions, misunderstandings and dissatisfaction, predictable and fair working time arrangements favour harmonious employer-employee relations.

Finally, working time affects workers' remuneration. Unrecorded, undefined working time may be a barrier to workers' access to basic entitlements that are based on working time, such as paid leaves and pension schemes. This also implies hours of unpaid work. For workers who are employed intermittently or for short hours by one or more employers, such irregular and short working hours mean an uneven and precarious flow of earnings.

<sup>2</sup> The reader might also want to see J. Kodz, S. Davis, D. Lain, M. Strebler, J. Rick, P. Bates, J. Cummings and N. Meager: *Working long hours: A review of evidence. Volume I – Main Report. A summary of this is cited on the website of the Institute for Employment Studies, www.employment-studies.co.uk.*

### 3. Key policy issues

#### Exclusion from working time regulation

Out of 71 countries whose national laws were surveyed by the Conditions of Work and Employment Programme of the ILO in 2009, about half did not impose a mandatory limit on normal hours of work for domestic workers (ILO, 2009).

Where such a limit had been specified, the most common limit was 40 hours per week, which was found in just over 20 per cent of the countries. Around 15 per cent had set an intermediate limit of 41 to 47 hours per week; four cases stipulated a 48-hour limit; and five cases, above 48 hours.

Comparing the working time standards that were generally applicable to wage employees and the working time limits for domestic workers, the data from the countries surveyed show that domestic workers were usually covered by less protective limits.

#### Needs and expectations of employer-households for flexibility

The principal argument against regulating domestic workers' working time is that domestic work is different from the standard concept of a job. Domestic work takes place in a private house and services household needs. Although some household needs can be predicted and scheduled, such as preparing meals, cleaning the house and doing the laundry, other needs and emergencies, such as those involving young children, the sick and elderly, are variable and unpredictable.

For example, the UK Home Care Association's position statement on how working time should be managed in live-in care services emphasized the advantage offered by the flexibility of working hours in the live-in model of care: "A key benefit of live-in care is the capacity to be flexible over activities and is a more responsive service compared to those commissioned on a routine, preplanned basis, where careworkers are contracted to visit the service user's home periodically" (UKHCA, 2007). The UKHCA thus argued that the nature of live-

in care work exempted it from limits on working hours and minimum amounts of rest periods under the United Kingdom's Working Time Regulations 1998.<sup>3</sup>

Another example is the deliberations in 2009-2010 of the Bills Committee on the Minimum Wage Bill in the Hong Kong Special Administrative Region, which considered whether or not live-in domestic workers should be covered by the statutory minimum wage. One reason for finally deciding to exempt live-in domestic workers from the minimum wage was their "distinctive work pattern". This was described as "round-the-clock presence and provision of service-on-demand expected of live-in domestic workers ... It is common knowledge that domestic duties are multifarious and can vary day in and day out, depending on the prevailing needs of the employer and his/her family members. Since the proposed SMW would be calculated on an hourly basis, it would be impossible to ascertain the actual hours worked so as to determine the wages paid".<sup>4</sup>

Nonetheless, there are many domestic workers who perform jobs that involve a few hours a day or week, consist of defined tasks or follow fixed work schedules. This implies that flexibility in working time is not an inherent characteristic of domestic work. Some functions and situations demand flexibility while others do not.

#### Concern over higher cost of hiring domestic workers

If actual hours worked were fully accounted for and fully compensated, where otherwise a flat rate would have been paid for an undefined number of hours, hiring domestic workers may become unaffordable to households that depend on them, resulting in negative consequences for employers and workers. For example, single mothers or adult workers in low-to-middle income households might withdraw from the paid labour market in order to perform caring and household tasks. This, in turn, may lead to a lower demand (i.e. less job opportunities) for domestic workers.

This proposition seems reasonable and is worthwhile examining more closely. The labour cost at which households would stop hiring domestic workers may depend on several factors, including the income level,

<sup>3</sup> Refers to Regulation 20, at <http://www.legislation.gov.uk/ukxi/1998/1833/contents/made>

<sup>4</sup> Legislative Council Brief. *Minimum Wage Bill*, at [http://www.legco.gov.hk/yr08-09/english/bills/brief/b24\\_brf.pdf](http://www.legco.gov.hk/yr08-09/english/bills/brief/b24_brf.pdf), p. 5.

age of children and dependency ratio of employing households. It is also possible that employers would re-organize tasks of domestic workers more efficiently if domestic work cost more. Data from South Africa, where working time and minimum wage regulations were introduced in 2002, show that the number of domestic workers did not decrease and the incidence of long hours declined (Box 3).

### **Box 3: Patterns of working hours in South Africa before and after Sectoral Determination 7**

Garlick and Woolard's analysis of labour force survey data on domestic workers and cleaners over the period 2000-2007 shows that the proportion of domestic workers and cleaners remained fairly constant at about 3 per cent of the labour force during the period; numbers declined between 2000 and 2005, but increased in 2006 and 2007. However, the incidence of long hours declined. The percentage of domestic workers who reported "usually" working more than 45 hours a week (the legal maximum of normal hours under South Africa's Sectoral Determination 7) decreased from 35 per cent in 2000 to 19 per cent in 2007. Budlender's analysis of labour force surveys of February 2002 and September 2004 shows that a bigger proportion of domestic workers employed in private households reported working 27 hours or less on a regular basis in 2004 than in 2002, i.e. 21 per cent compared to 17 per cent, even though a higher hourly minimum wage rate had been set for regular work of less than 27 hours than for work of more hours.

*Source: These studies were cited by Budlender (2010): (1) J. Garlick and I. Woolard: "Some notes on what the LFS tells us about domestic worker employment and wages", unpublished manuscript, September 2008. Garlick and Woolard looked only at domestic workers and cleaners, i.e. occupation code 9131 of ISCO 88, which is a narrower category than the ILO definition, as it does not include gardeners for example. (2) D. Budlender: "The impact of the sectoral determination for the domestic worker sector: Evidence from the labour force survey and other sources", prepared for the Department of Labour, July 2005.*

### **Protecting the rights of the subordinate party**

From the point of view of social justice, the needs and interests of domestic workers demand equal attention. Legal standards, thus State protection, are most critical and important for workers who wield limited bargaining power, are least able to negotiate better terms and conditions of employment, and are vulnerable to intense pressure to work with no or little rest (Blackett, 1998).

Undoubtedly, there are many employers who treat their domestic workers fairly and humanely. However, the absence of legal standards makes working conditions of domestic workers dependent on the goodwill of household members. Personal relationships that develop between employers and domestic workers within the intimate family context reinforce a relationship of dependency and gratuitousness.

Domestic workers are the weaker party in an employment relationship for several reasons (Domestic Work Policy Brief no. 1, 2011). First of all, the nature of their workplace places them in a vulnerable situation vis-à-vis their employer: they are generally isolated from other workers and in close physical and emotional proximity to their employers. In some countries, foreign workers are restricted from leaving the home of their employers. The level of organization among domestic workers is also very low. Secondly, domestic work often has a low social status, given its historical link to slavery and servitude, given that it is generally performed by rural and overseas migrants from a poorer region/country or lower social class, and given that it may involve tasks regarded by employers as "dirty", manual labour and unskilled. Social stratification and discrimination based on gender, race, ethnicity, indigenous status, caste and nationality place domestic workers at a disadvantage in a contractual relationship. Thirdly, in the case of migrant domestic workers, a temporary employment and residence status, restrictions on changing job and employer, unfamiliarity with local legislation, and limited resources limit their fall-back options.

## 4. National regulatory approaches: Indicating possible ways forward

Regulating working time in domestic work is truly complex because of the heterogeneity of domestic work, the requirements of households, and the fact that it may involve tasks outside standard “normal hours” of work. In spite of the complexities involved, there are States that regulate working time arrangements in domestic work. The examples of regulatory measures presented below demonstrate that extending working time protection to domestic workers often involves creative and innovative combinations of measures and standards.

### Setting normal hours of work: Weekly limit and/or daily limit

One approach is establishing only the total number of hours worked per week:

- France’s *Convention collective nationale des salariés du particulier employeur*, (*Etendue par arrêté du 2 mars 2000, JO 11 mars 2000*), Article 15(a): sets normal weekly hours for domestic workers at 40 per week at full time.
- Portugal’s *Contrato de Trabalho Doméstico*, DL 235/92, DE 24-10, Article 13(1) and (3): sets total weekly hours for domestic workers at 44 hours per week and in addition, permits compliance to the limit to be achieved through an average calculated over different weeks.

Other countries set limits for both daily and weekly hours:

- Uruguay’s *Ley No. 18.065*, Article 2: establishes the daily limit to eight hours and the weekly limit at 44 hours.
- South Africa’s *Sectoral Determination 7*: prohibits employers from requiring or permitting their domestic workers to work more than 45 hours per week; and, if the worker works five days or less in a week, not more than nine hours a day, or if worker works more than five days in any week, not more than eight hours a day.<sup>5</sup>

### Exceptions for specific types of domestic work

There are countries that allow derogation of prescribed normal hours for particular types of domestic work, often on the condition that this is based on an agreement between the parties and that there is still a limit to the number of excess hours.

- Austria’s *Federal Act Governing Domestic Help and Domestic Employees*: Section 7 provides for limited deviation from normal hours, if this is agreed in writing in the parties’ contract, in specific kinds of domestic work: when the employer’s household includes infants, i.e. children up to completion of their third year of age, or when the employer himself/herself or other members of the household are disabled to an extent that they need constant care which is not otherwise ensured. However, the law limits excessive hours, providing that this deviation from the normal hours should not cause working hours to exceed within a period of two consecutive weeks by more than 18 hours. Section 5(5) of the law further provides that, if no compensatory rest is granted for such excess hours within the next two calendar weeks, a special payment should be paid for additional hours, which would consist of remuneration of these hours plus a surcharge amounting to the applicable minimum rates.
- Finland’s *Act on the Employment of Household Workers (951/1977)*: Section 8 permits departure from the ordinary hours of work only in cases of emergency and within precisely defined limits: when an accident, sudden case of illness or other similar, unforeseeable event in the employer’s household has put or seriously threaten to put life, health or property at risk, workers could be required to carry out emergency work outside the regular working hours. On any one occasion, emergency work not exceeding 20 hours is allowed during a period not exceeding two weeks. The law also requires employers to immediately notify the competent occupational safety and health authority in writing of the extension of working hours and its case, scale and probably duration, and the authority has the right to limit or discontinue the emergency work after investigation.

### Limiting overtime and compensating it

Setting limits to daily and/or weekly hours would be less meaningful if overtime work were not regulated and compensated. One aspect of overtime regulation is a maximum limit to permissible overtime hours. The second aspect is the method of compensation which could be in the form of payment of normal wages with a premium, of additional rest or time-off, or a combination of pay and time-off.

<sup>5</sup> South Africa’s *Basic Conditions of Employment Act (BCEA)*, enacted in 1993, provides basic protection for all employees, including domestic workers, in respect of conditions of work, such as working hours, leave and dismissal, but not minimum wage. The *Sectoral Determination 7*, published in 2002, included clauses on all issues of terms and conditions of employment, including provisions unchanged from the BCEA.



- *France's national collective agreement*: Section 15(b) (3) limits overtime to not more than ten hours in any one week and to an average of eight hours per week in any consecutive 12-week period. Compensation may be in the form of pay or of time-off at an increasing rate with hours worked, such that compensation would include a surcharge of 25 per cent for the first eight hours of overtime and a surcharge of 50 per cent for the overtime hours of more than eight hours.
- South Africa's *Sectoral Determination 7*: Section 11 states that an employer may not require or permit an employee to work overtime without the employee's agreement, and not for more than 12 hours including overtime in any day or to work in excess of 15 hours of overtime in any week. Section 22 provides for monetary compensation at the rate of 1.5 times the wage or, if agreed between the parties, for a combination of monetary compensation and time off. In the latter, an employer may pay a domestic worker not less than the worker's ordinary wage plus at least 30 minutes time-off on full pay for every hour of overtime worked, or grant the worker at least 90 minutes of paid time-off for each hour of overtime worked.

## Rest periods

As discussed above, adequate rest periods and sleep make a big difference to a worker's state of mental and physical health, and work performance. The delineation of rest periods is an important part of working time regimes.

In Ireland, the *Code of Practice for Protecting Persons Employed in Other People's Homes* adopts for domestic workers the same periodic rest requirements that are applicable to all other workers as stated in the Organisation of Working Time Act of 1997.

Countries that have special regulations governing domestic work make specific provisions on rest periods and, in some cases, allow for deviation based on agreement or differentiate between live-in and live-out workers.

- Uruguay's *Ley No. 18.065*: In addition to setting limits on normal daily hours, sets the minimum rest periods: a mid-day rest of 30 minutes for live-out workers, and two hours for live-in workers; an uninterrupted weekly rest period of 36 hours, which includes the whole day of Sunday; and for live-in workers, a minimum night's rest of nine uninterrupted hours.
- South Africa's *Sectoral Determination 7*: Provides that all domestic workers are entitled to a break of

minimum one hour during the day for workers who work continuously five hours; a daily rest period of 12 consecutive hours between ending work and starting work the next day, which by written agreement may be reduced to ten hours for live-in domestic workers whose meal break lasts at least three hours; and a weekly rest period of 36 consecutive hours, which may by agreement be converted to a minimum of 60 consecutive hours every second week.

- Austria's *Federal Act Governing Domestic Help and Domestic Employees*: Sets the minimum daily rest period at ten hours for live-in workers and at 13 hours for live-out workers, but in both cases the rest period should include the period from 21:00 to 6:00 in the morning the next day.

## On-call or stand-by duty

This is often the grey area between work and rest. Working time regulations of some countries recognize that this situation may occur and thus allow for flexibility in working hours, while also recognizing workers' right to proper compensation and to protection from unlimited hours.

- France's *Convention Collective*: Article 3 addresses this situation in the case of workers who are responsible for children, elderly person or persons with a disability. Referred to as "presence responsable", the worker concerned can utilize the time for herself/himself but must stay vigilant and ready to intervene. The number of on-call hours must be stated in the contract and must be remunerated at a rate equivalent to two-thirds of a normal working hour.
- Finland's *Act on the Employment of Household Workers, as amended*: Section 6 specifies how stand-by hours (i.e. being required to be at home in order to be available if they are called to work) should be reckoned and compensated – at least one stand-by hour should be equivalent to half a working hour.
- South Africa's *Sectoral Determination 7*: Part D defines stand-by only as work during the night, between 20:00 and 6:00 in the morning of the next day, when a worker is required to be at the workplace, may be permitted to rest or sleep but must be available to work if necessary. It nonetheless sets two limitations: an employer may not require a domestic worker to be on stand-by for more than five times per month or 50 times per year, and may do so only for work that needs to be done without delay.

#### **Box 4: Designing working time regimes: Suggested key principles**

##### **1. Legal recognition of the value of care work provided by domestic workers**

This is the starting point for the regulation of working time in domestic work. Families, communities and political leaders may recognize the value of domestic work in their discourse, but this does not bring domestic work within the realm of formal norms. The contribution of domestic work to the reproduction and well-being of workforces and families is comparable in a range of dimensions to other caring professions in the formal sector. The latter are regulated in a way that addresses similar demands for working time flexibility.

##### **2. Work-life reconciliation for domestic workers**

A central purpose of working time regulation, in addition to preserving health, safety and productivity, is to help preserve the work-life balance of all workers. In the case of domestic workers, legal intervention is necessary so as to ensure that their private lives are not undermined by the drive to sustain the family life of the employer. Although domestic workers are hired to perform tasks which are normally carried out by family members, domestic work cannot be conflated with parental care, which is based on a different set of emotional relationships and family values.

##### **3. Universality**

All workers are entitled to working time protection. The Preamble of the ILO Constitution specifically states: "... conditions of labour exist involving injustice, hardship and privation to large numbers of people ... and an improvement of their conditions is urgently required: as, for example, by the regulation of the hours of work". Everyone's right to limitation of working hours, and to rest and leisure are enshrined in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights.

##### **4. Unity of working time law**

Different working time regulatory regimes, if they exist, should be coherent and are best conceptualized as an integrated whole. Legal measures on domestic work should not undermine the standard protection available under mainstream working time laws.

##### **5. Regulated flexibility and "working time capability"**

The principal benefits of the standard model of working time (i.e. eight-hour day, 40 to 48 hours a week) are regularity, certainty, and the preservation of social and community time for the worker. To enable domestic workers to enjoy these same benefits, an approach based on "compatible flexibilities" may be adopted.

This approach takes into account the employer's need for the presence of the domestic worker in urgent circumstances and, at the same time, ensures the worker's ability to address unexpected aspects of their family lives and other responsibilities. This approach is made possible by policies that enable individual workers to influence their working hours.

##### **6. Balance of regulatory frameworks**

There are two general types of regulatory techniques that may be used for regulating working hours: statutory regulation or collectively bargained norms. Collective bargaining in domestic work is generally poorly developed because of the occupational context, including the high degree of isolation of domestic workers inside the private home of their employer and the low capacity of organized representation of the two parties. The precarious and dispersed employment situation places domestic workers in a weak position for individual bargaining with their employer. Statutory regulation thus becomes necessary.

##### **7. Subject of regulation**

As a general principle, legal standards, especially those elaborated at the international level, are expected to cover a category of workers whose bargaining power is limited. Therefore, the subject of working time regulations in domestic work should be the most vulnerable workers – those with the lowest level of bargaining power and who are most likely to be the subject of intense pressure to undertake long, unhealthy or family-jeopardizing working hours.

##### **8. Innovative regulation: Dynamic and responsive regimes**

The complexity of the real world of work suggests that regulatory frameworks for domestic workers should be dynamic and open to empirical testing and incremental reform. Standards may be periodically evaluated. Policy actors may want to encourage the systematic study of processes of implementation of any law governing domestic workers with the aim of identifying good practice.

##### **9. Working time laws in their policy environments**

Regulatory regimes on working time should be developed in a manner that is attentive to the policy contexts that shape and support them. These policy frameworks include policies on other aspects of domestic work, work-family balance, state support for childcare, aged care and health care, immigration and employment of foreign workers, and others.

*Source: McCann and Murray (2010).*

## Ensuring compliance with working time standards

The first and most basic step towards ensuring compliance with working time standards is a written contract of employment between the employer and the domestic worker. A contract defines the parameters (e.g. working hours, wages) of the job in a fully transparent manner, and formalizes the employment transaction. This can be complemented by other measures, such as the promotion of model contracts in the language that both domestic workers and employers understand. Standard written contracts are commonly required under national legislation on hiring of foreign migrant workers or under bilateral agreements and memoranda of understanding between sending and receiving countries. South Africa's Sectoral Determination 7 requires that employers of domestic workers provide the latter with detailed terms and conditions of their employment in writing. France's collective agreement requires that the contract be in writing, and provides a model contract.

Record-keeping of hours worked by worker and employer is necessary for proper computation of pay including compensation for overtime and on-call duty.

Finally, knowledge of prevailing regulations by both worker and employer is indispensable. The State of New York places huge importance on disseminating information to domestic workers and employers on their rights and obligations under the newly passed Domestic Workers' Bill of Rights (NYS Department of Labor, 2010). Their outreach strategy includes simple and clear materials, working closely with community groups and organizations, and employing varied communication vehicles.

## 5. Points for consideration in designing working time regimes

Following from the questions and issues raised in the previous sections, how should working time in domestic work be regulated? What approach takes into account the needs of employing households while extending adequate protection to domestic workers? How can domestic workers enjoy the benefits of a standard model of working time, namely certainty, regularity, and adequate rest, family and social time, in a manner compatible with the needs of the family of their employer?

McCann and Murray (2010, pp. 13-19), on the basis of their assessment of working time issues in domestic work, suggest a number of key considerations when formulating working time legal regimes (Box 4).

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The Domestic Work Policy Brief series aims to stimulate and inform policy debates on advancing decent work for domestic workers. It provides information on terms and conditions of employment in domestic work, policy issues and different views on these issues, and varied approaches to addressing them around the world.

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