

HEALTH LAW: PEER-REVIEWED ARTICLE

A Case for Federal Labor Legislation to Protect Underpaid Home Care Workers

Amanda Gray Rendón, PhD

Abstract

The National Domestic Worker’s Bill of Rights Act aimed to remedy nearly a century of labor and health inequities facing a majority of the home health workforce—including home health workers, personal care aides, and professional caregivers—who are women of color and immigrants. Although the bill did not pass, the National Domestic Workers Alliance and its affiliates continue to organize a new labor movement inclusive of home care workers that supports federal legislation and adequate labor protections for their members, particularly in right-to-work states like Texas and in municipalities where hazardous working conditions and low wages contribute to the perceived disposability and devaluation of care labor. Home care workers require federal labor protections that will hold states accountable for the health and well-being of this essential workforce.

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Workers Who “Make All Other Work Possible”

On July 15, 2019, Vice President Kamala Harris, then senator of California, introduced the Domestic Workers Bill of Rights Act (DWBRA). Although the bill did not pass into law, it highlighted that domestic workers are essential to the functioning of existing US economic structures, stating: “Domestic work makes all other work possible.... Without the millions of domestic workers caring for children, seniors, and individuals with disabilities, and cleaning homes, much of the economy would come to a standstill.”¹ This quotation underscores the centrality of domestic work to the US economy. Simultaneously, it conflates domestic work and care work. Labor advocacy organizations, such as the National Domestic Workers Alliance (NDWA), use the term *domestic worker* to refer to any individual who provides care labor in the home, such as nannies, housecleaners, or home care workers.² Labor historians Eileen Boris and Jennifer Klein explain that this conflation historically led to the exclusion of women and racialized care laborers from protections provided to skilled workers outside the home.³ The history of labor organizing suggests the need to acknowledge home care workers as a skilled labor force distinct from domestic workers who were left out of New Deal labor

protections, such as “old age insurance, unemployment benefits, collective bargaining, minimum wages, maximum hours, and other labor laws.”⁴ For the purposes of this article, I consider domestic workers to be care laborers—all of whom should benefit from federal labor protections—and I will refer to home care workers broadly when discussing home health workers, personal care aides, and professional caregivers.

Texas serves as an example of a state with a critical need for home care workers that fails to provide adequate labor protections and living wages to this vulnerable class of workers. With a focus on Texas, I argue that Congress’ failure to pass the DWBRA reinforces our nation’s and individual states’ devaluation of home care, along with the women who provide their labor to care for others. As a nation fully dependent upon various forms of domestic care labor, we owe the millions of home care workers federal legislation that provides adequate labor protections and a living wage for urgently needed care labor and services in right-to-work states like Texas that undervalue this essential workforce.

Texas

Without home care laborers, many US workers could not meaningfully participate in the capitalist economy. In recognition of the value that in-home care labor offers, the DWBRA stipulated a temporary increase in federal medical assistance for Medicaid-funded services that home care workers provide.⁵ The bill defined medical assistance as home or community-based services through federal or state programs, self-directed personal assistance, home health care, rehabilitative services, personal care services, and care services for functionally disabled elderly individuals.⁶

In states like Texas that rejected federal funds to expand Medicaid through the Patient Protection and Affordable Care Act of 2010,⁷ the passage of the DWBRA would have expanded access to quality home and community-based services (HCS) for individuals currently on years-long waitlists. To put the magnitude of waitlists in perspective, the Texas legislature added 542 new HCS enrollment slots in the 2022-2023 legislative biennium for 108 838 waitlisted residents as of March 2022, with nearly 1 in 3 people waiting 10 or more years for services.⁸ Many families who need HCS cannot afford to pay the cost out of pocket and resort to hiring home care from a “shadow economy” of mostly women of color and immigrants who may be undocumented.⁴

In states such as Texas, where right-to-work laws undermine labor unionizing and fair wages and where home care labor is significantly undervalued, a state-by-state approach to care labor protections can lead to lower wages and fewer protections for an already vulnerable class of workers. An investment in HCS for low-income and working poor families who need quality care in the home would also be an investment in the workforce of professional caregivers and home care aides historically excluded from labor protections that other US workers receive.

Protections of a New Labor Movement

Wage protections. Labor activists and lawmakers intended for the DWBRA to bridge the gender and racial equity gaps for domestic workers that the Fair Labor Standards Act (FLSA) of 1938 and its amendments created. The FLSA as originally passed excluded domestic workers from federal labor protections, such as a minimum wage and overtime pay afforded other US workers.⁹ New Deal Era legislation thus denied home care workers protections when lawmakers identified them as domestic workers, citing the intimate nature of work carried out within the home that could not easily be regulated.³

A significant number of domestic workers in the South were Black women, adding a gendered and racial component to the exclusion of this group of workers.³ A later amendment (1974) provided coverage for “domestic service” while still explicitly excluding some home health aides and professional caregivers deemed companionship service providers.^{9,10} Thus federal legislation, such as the DWBRA, is needed to address historical exclusions that continue to affect mostly women of color and immigrant workers today.

Worker safety. The DWBRA also specifically addressed the health and safety of domestic and home care workers. The bill would have mandated that employers make educational materials on safety requirements available to individuals using toxic cleaning products.¹¹ The safety measures recommended the use of nontoxic cleaning products for daily use in order to avoid adverse health effects.¹¹ Long-term health consequences and injury on the job are major concerns for the NDWA, the leading labor advocacy organization for home health workers and professional caregivers in the United States, including the right-to-work state of Texas.

Collective bargaining. Care labor organizers continue to face barriers when advocating for home care workers on a state-by-state basis. Right-to-work laws limit workers’ potential collective bargaining with the state that could lead to greater labor protections and safety regulations for home care workers hired through Medicare- and Medicaid-funded home care agencies. Moreover, the US Supreme Court decision in *Harris v Quinn* (2014) diminished the power of collective bargaining for state-funded workers—defined as “quasi-public employees”—who provide home care services by effectively rendering all states a right-to-work state for the home care workforce.¹² Due to government pay structures that fund home care services, home care workers’ ability to collectively bargain directly with state governments remains critical to their labor organizing success.⁴

Political motivation could be one reason the NDWA and other labor advocacy organizations employ the umbrella term *domestic worker* in their literature to avoid the federal limitations of union organizing placed on home care workers at the state level. Domésticas Unidas (DU), a San Antonio-based NDWA affiliate, translates its name in English as “Domestic Workers United.”¹³ The organization offers trainings for home care workers who **provide eldercare**, child care, and home cleaning services. DU’s labor organizers teach proper techniques for avoiding workplace injury, cleaning with nontoxic chemicals, and employing overall workplace safety.¹³ DU also provides workshops that teach labor rights and how to negotiate contracts with employers to include a living wage,¹³ a crucial skill for vulnerable home care workers in need of federal labor protections.

Why Home Care Workers Need Federal Labor Protections

The NDWA contributed many of the protections included in the DWBRA meant to end the devaluation and perceived disposability of its members who provide in-home care labor. For nearly 2.5 million domestic workers in the United States,¹⁴ 90% of whom are women,¹⁵ the DWBRA aimed to rectify unevenly applied labor laws by state for the country’s fastest growing workforce.¹⁵ Estimates projected that nearly 1.2 million home health aide and personal care aide jobs would be added between 2016 and 2026,¹⁵ leading to growth rates of 47.3% and 38.6%, respectively.¹⁶ The bill emphasized the disproportionate number of women of color and immigrants in these positions who faced added barriers,¹⁷ making them a particularly vulnerable class of workers. The

NDWA and its affiliates serve as champions for our nation's essential home care workforce, highlighting the need for federal labor protections that prioritize the health of workers, safety regulations, and living wages.

In 2012, the NDWA published the report of a survey, "Home Economics: The Invisible and Unregulated World of Domestic Work," which examined poor working conditions and health hazards that domestic workers, including home care workers, experience on the job.¹⁸ The respondents consisted of 2086 domestic workers surveyed in 14 metropolitan areas, including Houston and San Antonio, Texas. Analysts found that 50% of domestic workers surveyed reported the use of toxic cleaning supplies as a requirement of their position. Few employers provided protective gear, with respondents indicating that employers viewed such requests as "unreasonable" or "silly." Yet nearly one-third of workers who used toxic cleaners regularly reported skin irritation, and 1 in 5 indicated difficulty breathing. Additionally, 29% of caregivers reported work-related back injuries, and 38% of all domestic workers surveyed reported suffering from job-related wrist, shoulder, elbow, or hip pain within the previous 12 months. These staggering figures provide a glimpse into the rates of exposure to hazardous working conditions and injuries that result from a lack of protections for devalued domestic and home care workers viewed as part of a disposable workforce.

A state-by-state comparison of hourly wages for professional caregivers reveals that some states **fail to financially invest** in their home care workforces, with Texas being one of the worst offenders. Nationwide, the average wage of home health and personal care workers was \$13.49 per hour, with an average annual income of \$28 060 as of May 2020.¹⁹ The average hourly wage increased 78 cents from the previous year's average of \$12.71.²⁰ The 3 largest employers of home health and personal care aides in the country include California, New York, and Texas, respectively.¹⁹ These 3 states are also the wealthiest according to state gross domestic product (GDP), with Texas having the second-highest GDP behind California, the most populous state in the nation.²¹ Of the top 5 employers of home health and personal care aides, which also include Pennsylvania and Massachusetts, Texas has the lowest average hourly wage.¹⁹ As the country's average home health and personal care aide wage rose in 2020, Texas's hourly wage decreased to \$10.45 per hour from just \$10.53 per hour in 2018, although it was up from \$10.07 in 2019.^{19,20,22} The state's 2020 average annual income for home health and personal care aides—\$21 750—was also the lowest of the top 5 employers.¹⁹ The next lowest average—\$26 510—was Pennsylvania, which on average paid \$1550 less than the national mean.¹⁹ Of the top 10 metropolitan areas with the highest employment levels of home health and personal care aides in the country, the Houston-The Woodlands-Sugar Land area of Texas ranked eighth but had the lowest average wage of \$10.15, down from \$11 in 2018, although it was up from \$9.81 in 2019.^{19,20,22} This metropolitan area's average hourly wage was 30 cents lower than the state's already low average hourly wage in 2020 and \$2.81 lower than Philadelphia-Camden-Wilmington, PA-NJ-DE-MD, the next lowest paying metropolitan area in the top 10.¹⁹

In sum, Texas, the second-wealthiest state in the country, greatly undervalues home care workers compared to peer states that employ similar numbers of workers. A comparative analysis of hourly wage trends from 2018 to 2020 shows a divestment in Texas home care workers rather than an increased valuation of their essential services, as over 100 000 eligible Texans wait for HCS.⁸ Additional research is necessary to identify what factors may be driving down wages in the state, particularly in the Houston

metropolitan area. Regardless, the evidence clearly points to a devaluation of the home care workforce in Texas prior to the COVID-19 global pandemic. Additional research will also be necessary to understand how the pandemic affected home care worker and professional caregiver wages by state and nationally in order to bolster the case for federal legislation. We owe domestic and home care workers sweeping federal labor protections that hold states like Texas accountable for the safety of and living wages for its essential home care workforce.

Conclusion

I have argued in favor of federal labor protections for our nation's essential, yet underpaid, home care workforce. The DWBRA aimed to fill the historical gaps of the FLSA, but Congress' refusal to pass the crucial labor legislation has meant a lack of accountability in some states. Federal protections are paramount to ensuring home care workers' health, safety, and living wages in contrast to the devaluation and perceived disposability of their labor in a state like Texas, which pays some of the worst wages in the country compared to peer states. The NDWA and its affiliates, such as DU, work to fill the gaps in state-allocated labor protections as part of a new labor movement comprising domestic and home care workers across the country. The correlation between low-wage work and workplace injury²³ suggests that increased valuation of home care labor with adequate regulation and labor protections could lead to a reduction in home care work-related injuries. Future federal legislation must address the health, safety, and wage inequities facing home care workers nationally in order to hold states like Texas accountable for the protection of this essential workforce.

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Amanda Gray Rendón, PhD is a 2021-2022 George E. Burch Postdoctoral Fellow in Theoretical Medicine and Affiliated Science at the Smithsonian National Museum of

American History in Washington, DC. She is a former medical humanities teaching fellow in the Women's, Gender and Sexuality Studies Program at Earlham College. Her research examines Texas Latina home health care workers and family caregivers who form community care networks in the absence of state-allocated resources and health and labor protections.

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