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WERC Newsletter, Fall 2014

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Women's Employment Rights Clinic Newsletter



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"I would wake up at 4:00 in the morning and would work until 7:00 in the evening, 5 days every week. For our hard work we were only paid a flat rate, which equaled about \$5.00 an hour with no overtime. We felt this was not enough for the hard work we were doing."

-WERC Caregiver Client

For over twenty years, the Women's Employment Rights Clinic of Golden Gate University School of Law has advocated on behalf of society's most vulnerable women workers. Just in the last four years, WERC has recovered over \$1.3 million for low-wage workers through direct representation. In addition to individual representation, WERC does impact work through policy advocacy, amicus work and community education. This month, we are launching our e-newsletter to stay more connected to you.



Hina Shah, Co-Director

Justice for Caregivers

In 2012, WERC began representing five live-in caregivers who worked at a residential care facility in Berkeley, California. The facility provides care to elderly persons suffering from various mental and physical illnesses including dementia and Alzheimer. The workers typically worked 12-hour shifts but were paid a flat rate that fell below the minimum wage. They had already filed individual wage claims before the Labor Commissioner, the state agency for wage enforcement.



WERC negotiated settlement agreements and changes to their workplaces. Because of the large settlement amounts, the workers agreed to be paid on a payment plan. After making six payments, the individual owners of the care home filed for bankruptcy and defaulted. WERC sued the corporation, which had entered into the settlement agreements for breach of contract.

Attempting to intimidate the workers, the employer countersued on frivolous grounds. Bolstered by the support from us, the workers did not give up. WERC students geared up for trial, filing

motions to dismiss the countersuit, seeking discovery and preparing for depositions.

On the eve of trial, the corporation agreed to comply with the settlement agreements but immediately defaulted on payment. Simultaneously, we pursued the individual owners in bankruptcy. The owners objected to the workers' claims for payment. After a contested hearing, the judge ruled in favor of the caregivers, finding that the individual owners were the employers of the workers and liable for the unpaid wages. Not only did the workers recover all of their unpaid wages, they also were awarded penalties, interest and attorneys' fees.

Caregivers Sue Kindred Healthcare and Affiliates for Wage and Hour Violations

In partnership with the Legal Aid Society-Employment Law Center and Lewis, Feinberg, Lee, Renaker & Jackson, P.C., we filed a class-action against Kindred Healthcare, Inc. and its affiliated companies. This action challenges the illegal practices impacting hundreds of caregivers throughout California who are denied minimum wage and overtime and not provided their required meal and rest breaks.



While the companies advertise their commitment to the highest level care for its patients, the same level of commitment to treat their workers fairly and in compliance with the law is lacking. Direct care workers, such as the plaintiffs in this case, are the lifeline for those they serve, providing quality care. Yet these workers earn significantly less than most others. Forty-eight percent of direct-care workers nationwide earn 200 percent below the federal poverty level income and receive one or more forms of public assistance like food stamps. As our experience as shown us, this industry is replete with labor violations. We are hopeful that this lawsuit will significantly increase industry compliance with minimum labor standards.

[Click here to see our work in the news.](#)

California Supreme Court to Decide Pay for 24-Hour Workers

The California Supreme Court is poised to issue a ruling on whether 24-hour workers are entitled to payment for all hours worked and whether sleep

time can be deducted. The case, *Mendiola v. CPS Security Solutions, Inc.*, stems from a class action filed by security guards who work 24-hour shifts and are required to live at the job site. They are not paid for on-call time at night.



WERC Co-Director with Plaintiffs' Counsel

WERC weighed in on the issue by submitting an amicus brief (a friend of the court brief) on behalf of a broad coalition of non-profit organizations. The brief specifically addressed the compensability of nighttime on-call hours and whether sleep deductions are allowed for 24-hour shift workers under California wage and hour laws. Plaintiffs' counsel shared oral argument time with WERC Co-Director Hina Shah who argued on behalf of amici. We expect a decision from the Court in January 2015.

Educating the Community

Until recently, many domestic workers toiled in obscurity without legal protection or societal recognition - unseen and unprotected. In California, personal attendants, domestic workers who spend a significant amount of time caring for



children, elderly and people with disabilities, were originally excluded from all wage and hour protection. In 2001, personal attendants gained the right to minimum wage, but remained excluded from all other provisions of wage and hour protections.

Over the past eight years, the California Domestic Workers Coalition ("CDWC") built a grassroots, worker-led, statewide movement in California that includes allies from labor, faith groups and employers to change the exclusion as well as setting industry standards. WERC became the CDWC's legal counsel in late 2010 to help launch the legislative campaign to increase labor protections. Last year, Governor Brown signed AB 241, the Domestic Worker Bill of Rights, extending California overtime protections to personal attendants. In 2014, WERC focused on training and educating domestic workers, worker leaders and

organizers from the CDWC on the new bill.

Support WERC

Without your support, our ability to serve our community and make an impact would be greatly reduced. We hope that you will consider making a year-end donation to WERC. In addition, please consider designating WERC as a recipient of cy pres funds in resolving class actions.

Sincerely,

Hina Shah & Marci Seville,
Co-Directors, Women's Employment Rights Clinic
Golden Gate University School of Law

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