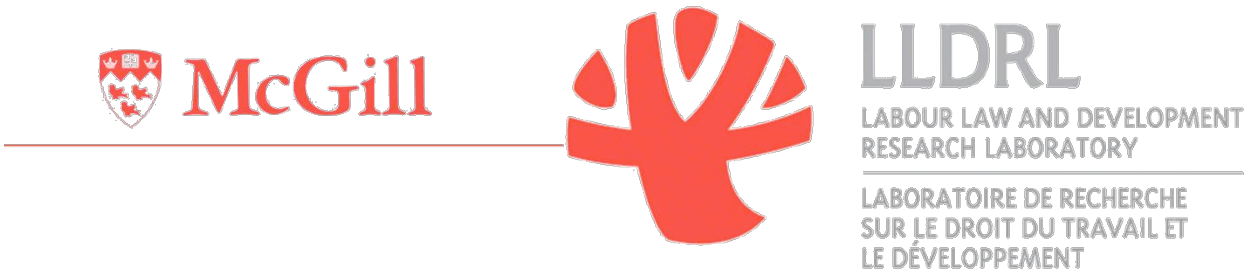

NEW RIGHTS, OLD PROTECTIONS:

THE NEW REGULATION FOR DOMESTIC WORKERS IN ARGENTINA

LORENA POBLETE

Working Paper Series

LLDRL Working Paper Series, WP #5

Labor Law & Development Research Laboratory

McGill University

May 20, 2015

New Rights, Old Social Protections…

The New Regulation for Domestic Workers in Argentina

Lorena Poblete

Introduction

1. The New Law: Protecting Every Domestic Worker

2. The Development of the Social Security Special Regime for Domestic Workers

3. Awarding the Same Protections for all Domestic Workers

Conclusion

---

00 Researcher at Argentina's National Research Council (CIS-CONICET/IDES) and Associate Professor at the National University of San Martín (IDAES-UNSAM). Currently, Visiting Research Scholar at Princeton Institute for International and Regional Studies (PIIRS, Princeton University), in the Fung Global Fellow Program.

Introduction

Domestic work in Argentina constitutes a significant portion of female work, namely, 17% of all working women and 23% of wage-earners. In most cases, domestic workers are over 40 years old (56.6%) with 33.4% between 25 and 39 years old (Pereyra, 2012: 182). These workers have received deficient educations: 80% have not completed high school studies (MTEySS, 2006). Most of them are Argentinean, 31% have migrated from the provinces to the metropolitan area of Buenos Aires, but 14% are migrants from other countries. Though 35% are secondary workers, 39% are heads of households (Álvarez & Beccaria, 2013), so the household's income depends on their insertion in the labor market.

Domestic work is characterized by precarity. Most female workers cannot complete the work day. Only 19.6% work over 40 hours per week, 39.6% work between 16 and 39 hours per week, 32.4% work between 6 and 15 hours, and 9.3% work fewer than 6 hours (Pereyra, 2012: 180). There is high rotation level. In 2010, 28.7% had worked for less than a year, 47.9% had worked between one and five years, and only 23.3% had remained in the same position for over five years (Pereyra, 2012: 181). Regarding hiring terms, most workers perform activities for a single employer and, within this group, very few work and reside in the employer's household (around 2%). However, the number of workers employed by a single employer decreased between 2004 and 2013, and the number of workers with two or more employers has increased accordingly. In 2004, workers with a single employer accounted for 79.2% of total domestic work (MTEySS, 2006), and in 2013, they accounted for 70.5%. Workers employed by two employers increased from 12 to 17%, and those with three or more employers increased from 8.5 to 12.4% in the same term (Pereyra, 2013).

Registration level in this sector is very low. Despite the fact that the registration rate has increased during the last years (from 5% in 2003 to 16% in 2013), 84% of domestic workers still remain unregistered (Álvarez & Beccaria, 2013). That means unregistered workers do not have access to the social security system and their wages are not aligned with the levels prescribed by the State. In fact, the average monthly wage of unregistered workers is 48% less than the average monthly wage of registered workers (Pereyra, 2012: 177).

Informality is somehow related to hiring terms, because a great number of workers were

not protected by any regulation until 2013. The "Special Statute on Domestic Work" (Executive Order 326/56), the only regulation in force between 1956 and 2000, allowed exclusively for the registration of workers who resided in the employer's household and workers who performed activities in the same household for at least 4 hours per day and 4 days per week. According to data from the Ministry of Work (2006), in 2004, 52.8% of all domestic workers were excluded from the special regulation mentioned above because, first, half of workers with a single employer worked less than 16 weekly hours, and second, most workers employed by different employers did not work 16 hours for any one employer.

Aiming to prevent this legal exclusion, in 2000, Law 25.239 established a new special regime that allowed domestic workers performing activities for a single employer for at least 6 hours per week to be included in the "Special Social Security Regime for Domestic Workers". With these two coexisting regimes, 90.6% of workers have the possibility to be formalized (MTEySS, 2006). In 2006, the remaining 9.4% are included as single-tax payers[1]. That is to say, from 2006, all domestic workers could be registered according to any of the three existing regimes. However, only 9% were actually formalized workers in 2012 (Álvarez & Beccaria, 2013).

Though informality significantly decreased during the first decade of the 21st century, it still remained very high. The challenge for the legislator was to produce a specific regulation capable of achieve domestic work formalization. For that reason, after a three-year debate during which different bills were scrutinized, law 26.844 was passed in 2013. This law constitutes a legal advancement, compared to the preexisting regulation. Thus, labor and social rights are awarded to all domestic workers regardless of the amount of hours worked. By working for an hour (minimum), they are entitled to be protected by the law. After the new law on "Personal Household Staff" was passed, domestic work began to be governed by a new special regime, but rights are equal to those conferred by the "Labor Contract Law" that regulates the activity of employees from the private sector. Nevertheless, the implementation of labor and social rights recognized at the level of regulation has proven puzzling. A gap between the law's intention and the real acknowledgement of labor and social rights may be clearly observed.

[1] In 1998, the Regime for Single-Tax Payers is created in the context of a significant tax reform. Law24.977allows low-income workers, mainly self-employed, to be included in the tax and social security regime by means of the payment of a simplified tax.

Using—as methodology—the analysis of regulations (executive orders, resolutions and laws) and parliamentary debates, the aim of this paper is to understand the effects of the social protection regime prescribed by the new law. For that purpose, this paper is divided into three parts. The first part presents an analysis of the new rights granted to domestic workers by law 26.844. The second part analyses the evolution of social protection regime for domestic workers to show the ambiguities inherent in this system. Finally, in the third section, through analysis of the application of this special social protection regime, the paper seeks to understand the consequences of this regime for domestic workers.

1. The New Law: Protecting Every Domestic Worker

The law on "Personal Household Staff" (Law 26.844) is regarded as an improvement on legislation because it repeals the restricted statute on domestic work in force since 1956 while also enablig the inclusion of all domestic workers in the social security system. Because Argentina was engaged in the process of ratification of the ILO's Domestic Workers Convention, during the legislative sessions it is explicitly stated that one of the aims of the law is to achieve the standards proposed by the International Labor Organization. Even if the legislator's choice was to design a special regime instead of including domestic workers in the "Labor Contract Law", the new regulation recognizes the same rights for domestic workers as those granted by that law to the rest of the wage-employees. By taking such an approach, the legislator emphasizes that domestic work is a "work like no other" (Blackett, 2004, 2011; Mundlak & Shamir, 2011). However, workers must be treated just like every other worker. In contrast to what can be found in the literature, according to the legislator, what renders this work special in some way is not the characteristics of the workplace or the features of the relationship between the employer and the employee (Blackett, 2011; Chen, 2011; Vega Ruiz, 2011; Calleman, 2011; Rodgers, 2009; Loyo & Velásquez, 2009), but the attributes of the employer (Pereyra & Poblete, 2015). The latter is defined as a worker "who does not obtain a direct economic profit or benefit" from the activity performed by the domestic worker. For that reason, the employer can only partially comply with the obligations arising from the labor relationship.

Regarding hiring conditions, the law on "Personal Household Staff" acknowledges certain rights already present in Executive Order 326/56 ("Special Statute on Domestic Work" of 1956). These include the obligation to award weekly rest (especially on behalf of workers who live and

work in the employer's household), work attire, work tools, and a healthy diet. The new law represents a step forward in clearly defining limits on work (8 daily hours and 48 weekly hours). According to the law, weekly rest is increased in accordance with the terms of the "Labor Contract Law" (35 consecutive hours starting at 13:00 on Saturdays). A new element is also present in the Law: protection against work risks. During legislative sessions, the legislator highlighted that domestic workers are exposed to a multiplicity of risks due to the nature of their work, quite apart from the risks they might incur while travelling to work. Thus, domestic workers are included in the "Work Risk Insurance System"[2].

In relation to the type of labor contract, the new law prescribes that the parties are free to choose whatever contract type they wish. Despite the contractual freedom, there is a legal presumption that the type chosen a contract for an indeterminate term. A trial period shorter than the one acknowledged by the repealed decree law is established: 30 days in the case of live-in workers and 15 days for live-out workers when such period does not exceed, in either case, 3 calendar months (sec 7). The Executive Order of 1956 established a 90-day period equal to the period currently established for all private sector wage-earners. Law 26.844 expressly regulates termination conditions for labor contracts and prescribes that compensation in the case of unjustified dismissals is mandatory. The type of dismissal compensation to which domestic workers are entitled depends on the calendar length of service. The amounts set by the new regulation are equal to those prescribed by the "Labor Contract Law" (1 month per year of service, or by quarter).

Regarding wages, the 1956 Executive Order prescribed that a state authority must determine a minimum wage for each workers' category. According to the new law, wages are not set by the Executive but by a tripartite commission, National Commission of Employment of Households Staff. This commission will be composed of representatives from three ministries (Labor, Social Development, and Economy), as well as by employers and workers' representatives. According to the new regulation, overtime shall also be paid. The percentages corresponding to the amounts set are identical to those established by the "Labor Contract Law" (50% during the week and 100% during weekends). The new law also establishes the payment of the annual mandatory bonus (call the thirteenth month). Even if many domestic workers already received

[2] Even if the 2013 Law prescribed the incorporation of domestic workers in the "Work Risk Insurance System", the law was enacted in October.

such benefit despite their not being registered (Pereyra, 2010), when the new law became effective, the employers were then obligated to pay the annual bonus twice a year (50% of the monthly wage in each case).

Possibly the new law's greatest innovation is the regulation of different types of leave. By conforming to the provisions of the "Labor Contract Law", the new regulation increases paid holidays according to the calendar length of service. Also, sick leave receives the same treatment as other leave awarded to private sector wage-employees. 1956 Executive Order awarded a 30-day maximum sick leave. According to the new regulation, domestic workers are entitled to a 3-month (maximum) annual sick leave when they have worked for less than 5 years, and a 6-month (maximum) for over 5 years. For the first time, domestic workers are granted special leave: marriage, for death of a relative, study, etc. But, by including maternity leave, according to the legislator, the new law especially acknowledges the right "to have a family".

However, regarding social protection, the new law simply established minor adjustments in the "Special Social Security Regime for Domestic Workers" in force since 2000. The few changes introduced contribute to including domestic workers who were registered by virtue of the 1956 Executive Order, as well as who were registered as single-tax payers according to General Resolution 2055/2006 by the Federal Tax Agency.

2. The Development of the Social Security Special Regime for Domestic Workers

The "Social Security Special Regime for Domestic Workers" was created in 2000, in the context of a tax reform for the purpose of regulating the situation of more than 50% domestic workers who were excluded from the regime established in 1956 by the "Special Statute on Domestic Work" because they worked for a single employer less than 4 hours a day, 4 times a week. This regime is a contributory system financed by mandatory contributions made by the "employment provider" and "voluntary contributions" made by the worker.

The amount the employer must pay covers the total amount of compulsory contributions that entitle the worker to access the social benefits only when the domestic worker works at least 16 hours per week. Therefore, when workers work less than that, they "may" fulfill the amount paid by the employer. Law 25.239 clearly prescribes that the nature of these contributions is "voluntary". Nevertheless, there are two kinds of "voluntary" contributions: "supplementary" and

"additional" contributions. In the first case, workers need to pay "voluntary" contributions in order to reach the minimum that give access to social benefits. Amount assessment results from the difference between the sum established by the law as minimum contribution, and the sum mandatorily paid by the employer according to hours worked. That is to say, the domestic worker must complete the social contributions made by the employer when she works less than 16 hours in the same household. However, when she works for different employers less than 16 hours, the partial contributions made by each one of the employers are combined. Thus, the amount of "supplementary" contributions that domestic workers need to pay depends on the number of employers they have.

In the second case, domestic workers can make "additional" contributions to extend health benefits to their family or to increase pension benefits. If she also wishes to include her family group in the health insurance system, she must make contributions for each member (sec. 5). Since by 2000 the capitalization retirement system was still in force, the law contemplates that the workers are entitled to make voluntary contributions to this system in order to broaden their pension benefits (sec. 7).

Law 25.239 establishes that the Federal Tax Agency shall be responsible for defining the application of this new regime by simplifying and controlling the contributions made by both employment providers and workers (sec. 8). For that reason, by virtue of Resolution 841/2000, the Federal Tax Agency defines workers' categories and amounts corresponding to all mandatory contributions. Two criteria are used for workers' classification: nature of the activity (currently working or passive workers, i.e. retired), and the number of hours worked. Workers who already receive some sort of pension are exempt from making contributions to the retirement system. Regarding the amount of hours worked, the new regime establishes three categories of domestic workers, namely: 1) those who work 16 hours or more; 2) those who work between 12 and 15 hours; and 3) those who work between 6 and 11 hours.

Though the legislator expressed at that time that the "Special Social Security Regime for Domestic Workers" complements the "Special Statute on Domestic Work" (Executive Order 326/56) still in force, the new regime overlaps with the latter regarding domestic workers who work 16 hours or more. The latter regime regulates the activity of domestic workers who work for a single employer for a minimum of 4 hours per day, 4 days a week. The foregoing implies the inclusion of workers working part-time but with certain continuity. By contrast, the new "Special Social Security Regime for Domestic Workers" does not specify the way in which weekly hours are distributed.

Thus, a domestic worker who works for a single employer for 8 hours, twice a week, would be excluded from the "Special Statute on Domestic Work", but could be included in the "Special Social Security Regime for Domestic Workers".

The above imprecise limits gave rise to a complaint by the Health Insurance of Particular Household Auxiliary Staff, which is the health insurance established for domestic workers registered under the Statute created by Executive Order 326/56. As per the complaint and the opinion of the Legal Affairs Office, the new regime does not give a specific labor statute to domestic worker.

According to the Legal Affairs Office, the new special regime does not repeal the "Special Statute on Domestic Work", since the latter applies to "wage-employees", while part XVIII of Law 25.329 "only refers to 'personnel' or 'workers', and not to 'wage-employees'. Consequently, "the new law only refers to self-employed workers, whereas wage-employees are governed by the Special Statute on Domestic Work" (Federal Tax Agency Resolution 266/2000). Thus, the Legal Affairs Office determines that wage-employees must still be governed by the general health insurances regime, while "not salary workers" must be mandatorily governed by the new regime.

The opinion by the Legal Affairs Office is not only restricted to terminology issues where the absence of the word "wage-employee" or the presence of the phrase "employment providers" (instead of "employers") would be decisive, but also considers the structure of the contributory regime that gives rise to the two regimes. In the case of the "Special Statute on Domestic Work", the employer makes all contributions on behalf of the domestic worker who is considered as a wage-employee even when she works under a part-time scheme. In the case of the "Special Social Security Regime for Domestic Workers", the contributions to the social security system paid by the employer are proportional to the number of hours worked. As was previously mentioned, only when domestic workers work over 16 hours per week, the mandatory contribution made by the employer covers the total amount of the minimum contributions required. In all other cases, domestic workers must supplement the mandatory contributions in order to receive social benefits. Though this contributory regime is not identical to the social security regime for self-employed workers, the former is based upon the latter. Law 25.329 treats specifications concerning voluntary contributions in almost the same way as Law 24.241 (Pensions Regimes) treats provisions related to the category called "voluntary" contributor. This law established, within self-employed workers regime, a new category of beneficiaries who are neither wage-employees nor self-employed workers, but persons (especially women) who work at home, and because of her particular position—non-paid self-employed worker—cannot contribute to any of two general

regimes[3].

After a six-year pendency of the "Special Social Security Regime for Domestic Workers", and due to the fact that there had not been a significant increase in the number of registered domestic workers, Congress introduced certain changes in the context of a new tax reform, within a significant employment formalization policy. Notwithstanding the foregoing, part VI of Law 26.063 (apparently overlooking the opinion by the Legal Affairs Office) re-establishes that the system created by Law 25.239 is mandatory in respect of:

> "individuals rendering a service within the domestic life and who do not represent a benefit or profit for the employer according to the terms of the law mentioned, whether such individuals be considered as wage-employees- according to the provisions of the Domestic Work Statute (Executive Order 326/56)- or as self-employed worker" (sec.15).

Once more, terminology proper to the lease of services rather than that of employment relations is present. The worker is not an "employee" but an "individual" who "renders a service", and the "employer" is an "employment provider" who does not receive an economic profit or benefit by the service performed by the worker. However, Law 26.063 explicitly includes domestic workers considered therein as "wage-earners" because of the number of hours worked and the continuity of the activities performed. This law also includes domestic workers considered therein as "self-employed workers" because of the multiplicity of customers inferred from the number of hours worked.

For the purpose of promoting the registration of domestic workers, Law 26.063 establishes a tax exemption for employment providers. Subject to the limit prescribed by the Federal Tax Agency (sec.16), employers hiring a domestic worker may be able to deduct the total amount of pension and health contributions and the amounts paid by virtue of the services rendered from their income tax returns. Aware of the benefit that the reduction in income tax represents to "employment providers" and aiming at extending social benefices to children, the legislator encourages the employer to make a supplementary contribution to include domestic workers' children (sec. 17 of the Law 26.063). Despite the fact that the way in which employer's contributions are made remains identical to what is expressed in Law 25.239, the legislator adds:

[3] This new sub-regime was popularized as "housewife" pension regime.

> "in case the worker wished to include her children in the Health Insurance System, and upon lack of a Health Insurance Provider by the worker's spouse, the supplementary amounts, (…) shall be borne by the employment provider".

This version of the section that relates to contributions of the "Special Social Security Regime for Domestic Workers" caused an immediate reaction on the Executive. The law—passed on November 9th 2005—is questioned by the Executive by means of Executive Order PEN 1515/2005 on December 6th. The main question concerns how the third paragraph of section 17 is written. In that paragraph, it is clear that the employer shall be responsible for the payment of contributions in the health insurance system on behalf of the domestic worker's children. The arguments of the Executive against this mandatory contribution refer to different aspects. In the first place, the contradiction with an existing law (Decree-Law 2284/91) is highlighted. In the second place, the unconstitutionality of the section in question is argued. And finally, the third argument is based on the principle of "primacy of reality" that would be defining the labor status according to which domestic workers should be classified.

From a technical standpoint, the argument against is that "said disposition would change the criterion established for the quotation of the Unified Social Security Contribution [*USSC*], whose mandatory effect over employers and workers does not vary according to the family responsibilities of the latter". The creation of this USSC is established by Executive Order 2284/91, sec. 87 from October 31st 1991. The USSC merges contributions concerning health insurance, pension system, unemployment fund, and family allowance funds. The USSC appertains to employees and their employers.

From the perspective of the Argentinean Constitution, the Executive argues that this regulation:

> "causes an inverse selection against married domestic workers with/without children, since hiring such a worker would become more expensive for the employment provider, and this negatively affects the freedom of work and agreements guaranteed by the Argentinean Constitution".

The last argument by the Executive is based on the "principle of primacy of reality", according to which it would be impossible to accept that the employer should make contributions on behalf of the worker´s children because the employer should not bear any such

responsibility, given that we are in presence of a lease of service. The Executive further emphasizes:

> "at the same time, in most cases, we are in presence of true lease of services, and there are no precedents in social security matters that any such burden should be imposed upon the customer".

In fact, when facing a service agreement, the service provider has the burden of making all social contributions. Though the three arguments by the Executive are very different in nature, it is stressed that domestic workers registered under this regime can be either employee or self-employed workers. However, there is no explanation as to the characteristics of each status.

The ambivalence over which statute should apply to domestic workers, especially those workers who are registered under the "Special Social Security Regime for Domestic Workers", seems permanent from the moment such regime was approved. In the end, they can be either treated as wage-earners or self-employed workers, because the difference between those two status does not alter the structure of the mixed contributory regime based on categories defined according to the number of hours worked for a single employer.

Each of these adjustments made during the last fifteen years seems to address a specific problem: the limited capacities of contribution of both employers and domestic workers. However, the structure of mixed contributions was never questioned. Such fragmented structure is exactly the cause of strongly unequal positions regarding contribution levels and real possibilities to have access to social protections.

In 2013, the new law on "Personal Household Staff" seems to overlook the practical consequences of keeping the "Special Social Security Regime for Domestic Workers" (created by Law 25.639) in force and unchanged. During legislative sessions, this matter does not arise. The legislator seems more concerned about equaling the labor rights of domestic workers to those enjoyed by the private sector wage-employees, than matching the social rights within the same domestic worker category. That is why the inequalities introduced by this special regime remain invisible during the parliament debate.

3. Awarding the Same Protections for all Domestic Workers

In 2006, Federal Tax Agency General Resolution 2055/06 published the first document that shows explicitly the disparities created by the "Special Social Security Regime for Domestic

Workers" in terms of contributions. For the purpose of clarifying the amounts corresponding to mandatory contributions of the employment providers and the voluntary (supplementary) contributions of the workers, the Federal Tax Agency published charts that show contribution differences by using certain hypothetical cases as starting point.

The first case taken as an example relates to domestic workers who work for a single employer for 16 hours or more, and who do not need to make supplementary contributions in order to access health insurance protection and retirement benefits. Other cases in which contributions are fully paid by the employer involve domestic workers who are engaged by two or three employers and work between 12 and 15 hours for each, or domestic workers who work to three employers between 6 and 11 hours for each.

Among workers who need to make supplementary contributions to have access to the social protection system are those who work between 12 and 15 hours a week for a single employer, and those who work between 6 and 11 hours. For the first group voluntary contributions represent 34.3% of the total contribution amount that allows workers to access the social benefits, whereas for the second group they represent 66.3%.

Table 1: Contributions according to Federal Tax Agency, General Resolution 2055/06 (2006)

Type of contribution	Hours worked/number of employers	Hours per week	voluntary contribution/total contribution
Employer contribution	More than 16/ 1 employer	16 hours	/
	12 to 15 hours / 2 o 3 employers	From 24 to 45 h	/
	6 to 11 hours / 2 o 3 employers	From18 to 33 h	/
Voluntary worker contribution	12 to 15 hours / 1 employer	From 12 to 15 h	34%
	6 to 11 hours / 1 employer	From 6 to 11 h	66,3%

In this document, such differences are not justified. It could be presumed that, at that time, according to available statistics, the percentage of workers who should (or could) make voluntary contributions was relatively low: only 20.8% of the total of domestic workers work for two or more employment providers (MTEySS, 2006: 181). However, when analyzing the number of days worked per week, it may be inferred that those workers who may need to supplement the employment provider's contributions reach 47.7%, since they do not work more than 3 days a week (MTEySS, 2006: 182). Therefore, the high percentage that voluntary contributions represent regarding the total amount of mandatory social contributions may imply the impossibility by a great number of domestic workers to access social benefits.

In 2008, Federal Tax Agency General Resolution 2431/08 (which increases mandatory

contribution amounts), shows new hypothetical cases where workers need to make voluntary contributions in order to access the social security system. According to this new model, only workers performing activities for a single employer for 16 hours or more, and workers performing activities for three employers between 12 and 15 hours in each case, are exempted from making voluntary contributions. For workers performing activities for two employers between 12 and 15 hours in each case, the supplementary contribution represents 10% of the total amount established as a basis to access benefits. For workers performing activities in two households between 6 and 11 hours, the amount to be paid corresponds to 30% of the total, and if they work in three households, the amount corresponds to 18%. Workers who need to make greater voluntary contributions are those performing activities for a single employer for the minimun number of hours, since they must pay 72%.

Table 2: Contributions according to Federal Tax Agency, General Resolution 2431/08 (2008)

Type of contribution	Hours worked/number of employers	Hours per week	voluntary contribution/total contribution
Employer contribution	More than 16/ 1 employer	16 hours	/
	12 to 15 hours / 3 employers	From 36 to 45 h	/
Voluntary worker contribution	12 to 15 hours / 2 employers	From 24 to 30 h	10%
	6 to 11 hours / 3 employers	From 18 to 33 h	18%
	6 to 11 hours / 2 employers	From 12 to 22 h	30%
	12 to 15 hours / 1 employer	From 12 to 15 h	45%
	6 to 11 hours / 1 employer	From 6 to 11 h	72%

The aforementioned data shows also the difference in hours that workers need to work in order to access the benefits of the social protection system without making voluntary contributions. While workers working for a single employer can only work for 16 hours per week, those working for three employers need to work between 36 and 45 hours. According to the foregoing, it becomes clear that the "Special Social Security Regime for Domestic Workers" is mainly structured around the model of a part-time contract with one employer. In other words, even if all domestic workers working at least 6 hours for one employer are included in this regime, the contributive structure of the system provides full protections for domestic workers in the most standard position.

Another datum that reinforces the affirmation above is that inflation adjustments only apply to the amounts paid by the employers when they hire a domestic worker for more than 16 weekly hours. Between 2006 and 2011, the amount of these contributions increased by 60%, while

the contributions concerning workers working less than 16 weekly hours remain unchanged. Between 2011 and 2014, all mandatory contributions increased, but employer contributions in the case of domestic workers working more than 16 weekly hours increase 182%, when for the other categories mandatory contributions increase only around 50%. Since 2006, minimum contributions multiplied by 4.5. That means, every year, voluntary (supplementary) contributions represent a larger percentage of the total amount required to have access to social security benefits.

Regarding the two social protection sub-regimes included in Law 25.239, the State has different positions. During the last years, only the health system contributions have increased while the retirement system contributions remain stable. This may be explained by the fact that, in practice, it is likely that domestic workers be included in the old-age assistance pension scheme. Thus, though the "Special Social Security Regime for Domestic Workers" is introduced as a contributory system, in practice, only health insurance follows that scheme.

Table 3: Contributions according to Federal Tax Agency, General Resolution 3653/14 (2014)

Type of contribution	Hours worked/number of employers	Hours per week	voluntary contribution/total contribution
Employer contribution	More than 16/ 1 employer	16 hours	/
Voluntary worker contribution	12 to 15 hours / **3** employers	From 36 to **45** h	34%
	1 to 11 hours / **5** employers	From 5 to **55** h	42,2%
	1 to 11 hours / **4** employers	From 4 to **44** h	53,8%
	12 to 15 hours / 2 employers	From 24 to 30 h	56%
	1 to 11 hours / 3 employers	From 3 to 33 h	65,3%
	1 to 11 hours / 2 employers	From 2 to 22 h	76,9%
	12 to 15 hours / 1 employer	From 12 to 15 h	78%
	1 to 11 hours / 1 employer	From 1 to 11 h	88,5%

In 2014, as part of the implementation of law on "Personal Household Staff", the Federal Tax Agency published a new scale of contributions without specifying the hypothetical cases in which workers don't need to supplement employers' contributions. Again, the mandatory contribution related to health insurance increase more for workers working more than 16 hours for one employer than for temporary workers' categories. The distance between workers in a standard part-time position and workers working less than 16 weekly hours for multiple employers seems lengthened. For those who work almost full-time (that is 44 hours per week) for different employers, mandatory contributions represent less than half of the minimum contribution. And for those who work less than 30 hours per week for two or tree employers, the voluntary contributions represent 56% or 76% of the total required. The foregoing means that, in order to cover the basic

contributions with mandatory contributions, these domestic workers must multiply the number of employers and the number of hours worked. However, given that the number cannot be multiplied infinitely for organizational reasons, in practice, access to social benefits depends on the worker's capacity to pay voluntary contributions.

The structure of the "Special Social Security Regime for Domestic Workers"—where the contributory structure of a regime for wage-employees coexists with the contributory structure similar to self-employed—causes a strong fragmentation within the domestic worker's group. While some workers have access to social protection by virtue of mandatory contributions paid by employers, other workers find it very difficult to supplement the minimum contributions and, therefore, to actually access social protections.

Conclusion

The key discussion during the legislative session focuses on the dichotomy about creating a new special labor statute or placing domestic workers under the scope of the law that governs the activities of private sector wage-employees. Among the bills presented, there is one that aims at modifying Executive Order 326/56 in order to include certain rights such as maternity leave. In five of the bills, the solution proposed is to place domestic workers under the scope of the Labor Contract Law, and two other bills propose the creation of a Special Regime. The final result, captured in the new regulation, represents a commitment between the various standpoints: a special regime where the rights of domestic workers are equalized to those of wage-employees.

Law 26.844 does not explicitly establish a classification of domestic workers. The foregoing then allows the preservation of the regime prescribed by Law 25.239 as a social protection system, where the ambivalence of status allows the coexistence of two different types of contributory regimes. The overlapping of the two regimes mentioned produces strong inequalities among domestic workers in terms of access to social protection. Yet such inequities seem imperceptible for a legislator who prioritizes the protections accorded to domestic workers who work in a regular and continuous way, namely those whose activity is focused on services rendered for a single employer. Workers who, for personal reasons, or due to the structure of the labor market cannot access such jobs, are left at the very edge of the social protection system. Failure to actually access social benefits leads these workers to depend either on universal protections or non-

contributory protections.

The question about equal access to rights is overshadowed by the question concerning rights equality. During the legislative session, the discussion about the third pillar of the social protection system—the family allowances—is presented in the same terms, though the solution differs. Many legislators expressly manifest their disagreement with the exclusion of domestic workers from the family allowance regime. Many of them consider that such allowance is a right the workers still need to reach in the process of equalizing rights with respect to the remaining workers from the private sector.

The exclusion of such workers is precisely connected to the contributory logic on which the general family allowance regime of wage-earners is based. Despite the foregoing, what is questioned is the contributory capacity of employers, rather than that of domestic workers. According to the legislator, the obligation of the employer to make further contributions to the social security system constitutes a hurdle to domestic workers' registration.

For this reason, the legislator decided that, especially in the case of domestic workers, the protection intended for the family is subjected to the non-contributory regime. Such a decision is made in a context where the need to formalize the labor relations and the intention of effectively extending social protection collide. Thus, Law 26.844 allows domestic workers to access the Universal Child Allowance even when they are registered or if their income exceeds the minimum wage[4].

In the above-mentioned case, as well as when drafting the "Special Social Security Regime for Domestic Workers", the concern of the legislator was that contributions made by the employment provider did not prevent the domestic worker from being registered. According to the legislator, the employer—defined as "another worker" —cannot bear all social charges of the "employer" in the terms of the Labor Contract Law. For that reason, the law establishes several mechanisms aiming at enabling the following: the socialization of risks with diverse employers, or with state agencies; the direct transfer of risk to the State; or even the transfer of responsibilities to the domestic workers themselves. In this last case, the legislator seems not to notice that workers are unable to bear the social risk transferred to them.

This new law—despite constituting a huge step forward regarding the regulation of domestic service—aiming to equalize the rights of such workers to those of wage-earners from the

[4] These are the two principles for exclusion of this non-contributive regime of family allowance.

private sector, creates a regime that seems to prioritize the rights of employment providers over those of domestic workers.

Bibliography

ÁLVAREZ, Mariana & Alejandra, BECCARIA (2013), "Las trabajadoras domesticas en la Argentina actual. Límites y avances en torno a su sindicalización", X Jornadas de sociología de la UBA, Buenos Aires.

BLACKETT, A. (2004), "Promoting Domestic Workers' Human Dignity through Specific Regulation", in FAUVE-CHAMOUX, A (ed.) *Domestic Service and the Formation of European Identity. Understanding the Globalization of Domestic Work*, 16th – 21th Centuries, Bern, Peter Lang AG, European Academic Publishers, p. 247-273.

BLACKETT, A. (2011), "Introduction: Regulating Decent Work for Domestic Workers", *Canadian Journal of Women and the Law*, 23 (1), p. 1-45

CALLEMAN, C. (2011), "Domestic Services in a 'Land of Equality': The Case of Sweden", *Canadian Journal of Women and the Law*, 23 (1), p. 121-139

CHEN, M. A. (2011), "Recognizing Domestic Workers, Regulating Domestic Work: Conceptual, Measurement, and Regulatory Challenges", *Canadian Journal of Women and the Law*, 23 (1), p. 167-184.

LOYO, M-G. & VELÁSQUEZ, M.D. (2009), « Aspectos jurídicos y económicos del trabajo doméstico remunerado en América Latina » *in* VALENZUELA, M.E. & C. MORA, *Trabajo doméstico : un largo camino hacia el trabajo decente,* Santiago de Chile, Oficina Internacional del Trabajo, p. 21-70.

MUNDLAK, G. & H. SHAMIR, (2011), "Bringing Together or Drifting Apart?: Targeting Care Work as "Work Like No Other", *Canadian Journal of Wormen and the Law,* 23 (1), p.289-308.

MTEySS (Ministerio de Trabajo, Empleo y Seguridad Social), (2006), *Situación laboral del servicio doméstico en Argentina.*

PEREYRA, F. (2012), "La regulación laboral de las trabajadoras domésticas en Argentina. Situación actual y perspectivas", *in* ESQUIVEL, V.; FAUR, E & JELIN, E., *Las lógicas del cuidado infantil. Entre las familias, el Estado y el mercado,* Buenos Aires, IDES, p. 165-199.

PEREYRA, F. (2013), "Estadísticas sobre servicio doméstico", *mimeo.*

PEREYRA, F. & L. POBLETE (2015), "¿Qué derechos? ¿Qué obligaciones? La construcción discursiva de la noción de empleadas y empleadores en el debate de la Ley del Personal de Casas Particulares (2010-2013)", *Cuadernos del IDES,* no. 30, CIS-CONICET/IDES. http://ides.org.ar/publicaciones/cuadernos-del-ides

RODGERS, J. (2009), "Cambios en el servicio doméstico en América Latina", *in* VALENZUELA, M-E & C. MORA, *Trabajo doméstico: un largo camino hacia el trabajo decente*, Santiago de Chile, Oficina Internacional del Trabajo, p. 71-113.