

Cite as: Special Issue, NCTU L. REV., December 2020, at 133

# **The Challenges and Dilemmas on Protecting and Implementing Domestic Immigrant Worker Rights in Taiwan — A Law and Society Analysis**

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## Abstract

This article aims to focus on the challenges for domestic immigrant workers to implement their crucial employment law rights and the dilemmas they may encounter under the current workplace context. To reveal this particular issue, the author adopts the law and society method to analyze the laws that regulate immigrant worker rights and the social institutions where the laws operate. The author believes that an effective legal policy requires not only substantial texts and mechanisms as the firm foundation of implementation, but also demands sufficient incentives for regulatees to apply the law proactively. The research on immigrant domestic workers serves as a vivid example of this argument.

The domestic immigrant worker has been a significant supplementary human resource in Taiwan for decades, especially in the domestic homecare industry. In most cases, domestic immigrant workers live with and work for the employer in the

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same residence. Due to this particular characteristic, the Ministry of Labor has exempted domestic workers from the basic wage and hour standards and left their working conditions to be decided by the freedom of contract. Under the common assumption, it does not seem to be a problem since these workers may still enforce their agreement through legal channels to secure their rightful wages and payment accrue from extra working hours.

Labor statistic on legal complaint rate regards to wage and hour matters, however, indicates that the complaint rate of illegal wage deduction is substantially low if it compares to the actual violations that had occurred in reality. The puzzle of workers not willing to file legal complaints and tolerate the damage caused by the employer is still unsolved, and this lack of incentive to apply the law will cause an enforcement gap on the protective labor law policy.

To shed light on the unsolved myth, the author examines the legal ground for domestic immigrant workers' rights to gather possible impact factors that may influence their possibility to apply the law. Furthermore, this article moves to check on the social setting where these laws operate and use the law and society scholarships to analyze the interaction between the law and the worker. The analysis points out that when deciding whether to file an official complaint to remedy their rights under the contract, workers will consider more than the legal ground of the case. The social setting and pressure of their workplace may hinder their willingness to respond by law actively but lead to a somewhat mitigating non-complaint solution.

**Keywords:** Domestic Immigrant Worker, Labor and Employment Rights, Law and Society Analysis, Naming Blaming Claiming