



KNOW YOUR RIGHTS

DOMESTIC WORK AND THE LAW
IN ESWATINI



My Body My Rights



#RIGHTS4ALL

Who is a domestic worker?

A domestic worker is any person who is employed in a private household, as a cook, house attendant, waiter, butler, children's nurse, valet, groom, gardener, herdsman, laundress, or watchman.

The country has not yet ratified the ILO Convention on Domestic Workers on decent work. Eswatini domestic workers are not covered under the workmen's compensation laws and are not contributing to any National Social Security Scheme. Domestic workers experience abuse, fear and victimization by employers and dismissal.

Situation of domestic workers in Eswatini

WHAT ARE MY RIGHTS AS A DOMESTIC WORKER IN ESWATINI?

The Constitution guarantees you a number of rights and freedoms that apply to all people, regardless of gender, race, place of origin, political opinion, religion, age or disability. These rights include the rights to:

- » Personal liberty (s16)
- » Dignity (s18)
- » Freedom from torture, inhuman or degrading treatment (s18)
- » Equality (s20)
- » Fair hearing (s21)
- » Protection from arbitrary search (s22)
- » Freedom of expression (s24)
- » Freedom of association (s25)
- » Privacy (s22)
- » Freedom of movement (s26)

What rights do I have as a domestic worker?

THIS MEANS THAT:



- » You may not be enslaved or to be forced to perform work by your employer.
- » Your employer cannot treat you in an inhuman or degrading way, and must always treat you with dignity and respect.
- » Your employer cannot exploit you in any way, including by physically or sexually abusing you.
- » Your employer cannot take any of your property, including your passport, from you.
- » Your employer cannot limit your movement.

How do I know my rights as an employee?

Within 2 months of employment, you must be provided with an employment form/contract, which sets out the conditions of your employment.

Yes, all domestic workers are entitled to a minimum wage.

For cooks, the minimum wage for each month is E859.20 (E58 a day or E9.20 an hour). Watchmen are to be paid as provided under the Regulation of Wages (Security Services Industry) Order. For all other domestic workers (house attendant, waiter, butler, children's nurse, valet, groom, gardener, herdsman, laundress), the minimum wage for each month is E838.20 (E51.20 a day or E8.20 a month). Where your work involves more than one of these jobs, your minimum wage increases by 25% [s4 of Regulation of Wages (Domestic Employees) Order, 2018]. It is an offence for an employer to fail to pay wages (s64 of Employment Act, 1980).

Am I entitled to a minimum wage?



The employer must provide an attendance register which documents the time you have spent working overtime, on Sundays and on public holidays. You must also be provided with a pay slip which sets out how your wages were calculated. Inspectors can at any time demand to see these records (s21 of Wages Act, 1964).

How many hours a week must I work?

The normal working week is 48 hours, this does not include meal breaks. These 48 hours can be spread over 6 days, meaning domestic workers may work up to 8 hours a day.

If you work more than these hours, then you are entitled to overtime pay which is one and a half times the basic hourly rate.

If you have to work on a public holiday or a rest day, then you shall be paid twice the amount of the standard hourly rate [s7 of Regulation of Wages (Domestic Employees) Order, 2018].

Am I entitled
to time off?

YES, THERE ARE MANY DIFFERENT WAYS THAT YOU CAN BE GIVEN TIME OFF.

Each week you are entitled to one **rest day**.

This day is to be agreed upon between you
and your employer [s15 of Regulation of Wages
(Domestic Employees) Order, 2018].



You are entitled to at least 13 days of **annual leave** (1 day of leave accrues
per month). Your employer must pay you for these days of annual leave
and this leave is to be taken when it is convenient for both you and your
employer [s8 of Regulation of Wages (Domestic Employees) Order, 2018].



If you fall sick, you are entitled to take **sick leave**. You must provide your
employer with a medical certificate in order to be granted sick leave.

You may take 14 days of sick leave on full wages, and a further 14 days
within a twelve month period on half wages [s9 of Regulation of Wages
(Domestic Employees) Order, 2018].



You are allowed to take **public holidays** off and receive a full day of pay
from your employer.



All female employees who have been employed for a year or more, may
take up to 12 weeks of **maternity leave** (or 84 calendar days). 30 of these
days will be at full pay [s12 of Regulation of Wages (Domestic Employees)
Order, 2018]. You are entitled to an hour nursing break per day for 3
months after your maternity leave (s103 of Employment Act, 1980).



After 3 months of employment, you are entitled to **compassionate leave**
with full pay. For a widow, this period will be 37 days and in all other
circumstances this period will be 7 days (for example, death of wife, child,
relative) [s14 of Regulation of Wages (Domestic Employees) Order, 2018].



Regulation of Wages (Domestic
Employees) 2018

Employers must provide all domestic workers with 2 pairs of suitable and reasonable quality protective clothing every 2 years [s13 of Regulation of Wages (Domestic Employees) Order, 2018]. The protective clothing remains the property of the employer.

All employers must ensure the health and safety of employees and provide them with protective clothing and equipment, and first aid equipment (s9 of Occupational Health and Safety Act, 2001, s150 of Employment Act, 1980). Inspectors may inspect any workplace to see if this provision is complied with.

The maximum permitted weight that a male employee is allowed to carry is 50kg. Young persons and female employees may not carry over 35kg (s24 of Employment Regulations, 1980).

Domestic employees are not currently covered by the Workmen's Compensation Act, 1983.

Am I entitled to protective clothing?

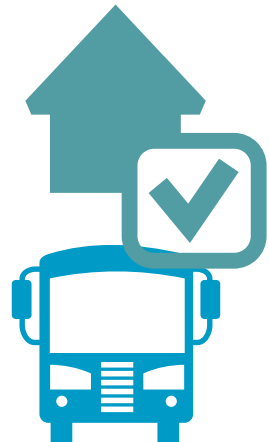


What are my rights relating to accommodation and transport?

Any accommodation provided by an employer must be free [s16 of Regulation of Wages (Domestic Employees) Order, 2018].

The accommodation provided must include access to a functioning latrine, ablution facilities and cooking facilities (s22 of Employment Regulations, 1980). The accommodation must be well ventilated and give you enough space (s7 of Employment Regulations, 1980).

If you do not stay on the premises, and are required to arrive at work before 7am and leave after 5:30pm, your employer must provide you with free transport or give you extra money for public transport [s11 of Regulation of Wages (Domestic Employees) Order, 2018].



Can my employer discriminate against me for any reason?

No. It is an offence for employers to discriminate against their employees on the basis of race, religion, marital status, sex, national origin, tribal or clan extraction, political affiliation or social status (s29 of Employment Act, 1980). The employer can also not discriminate against you on other grounds, such as HIV status or disability (*Swaziland Government v National Association of Civil Servants & Others* (84/2015) [2016] SZSC 17).



For employees above the age of 18, an employer cannot force an employee to undergo a medical examination, including an HIV test. However, for employees under the age of 18, the law requires an employer to have that employee medically examined at the start of their employment, and once every 12 months after that.

Can my employer force me to take a medical examination?



If you get seriously ill as a result of the work, the employer must arrange for your transport and medical care (s150 of Employment Act, 1980).

Can my employer force me to complete work for them?

No, if your employer threatens you with any penalty then this is forced labor. Your employer cannot force you to complete any work for them that you have not voluntarily agreed to. It is also a crime to recruit, traffic or employ any person for the purpose of exploitation, or to profit from the exploitation of a trafficked person [s12 of People Trafficking (Prohibition) Act, 2009].



Number to call

Children over the age of 15 years are allowed to work but may not be subjected to exploitative labour (s233 of Children's Protection and Welfare Act, 2012).

Are children allowed to work?

No child may be employed during school hours; at night; for more than 6 hours a day and 33 hours a week; or for more than 4 hours without a break (s97 of Employment Act, 1980).



Both the Employment Act and the Industrial Relations Act were enacted to improve the status of employees in the country.

All employees, including domestic workers, are protected under these laws and are entitled to be treated with decency (*Shongwe v Scott-Long* (40/07) [2013] SZIC 36). Employers may not expose employees to unfair labour practices.

What if my employer abuses me?

You have the right not to be **unfairly dismissed** (s35 of Employment Act, 1980). It is automatically an unfair dismissal if you are dismissed for the following reasons:

- » Your membership of an organisation or participation in an organisation's activities outside working hours;
- » You filed in good faith a complaint against an employer;
- » Based on your race, colour, religion, marital status, sex, national origin, tribal or clan extraction, political affiliation or social status;
- » Where you are unable to work based on a medical condition resulting from your work.

If the employer wants to dismiss you, you have to be given 1 months' notice if you have worked there for more than a year (s33 of Employment Act, 1980). If you are forced to resign because you are being treated badly by the employer, this is an unfair dismissal (s37 of Employment Act, 1980). The employer may not dismiss you without following the requirements of procedural and substantive fairness. This means that the employer must first conduct a disciplinary hearing, and must have a good reason for the dismissal. If you are dismissed, you are entitled to get a certificate of employment (s38 of Employment Act, 1980).

If you have been unfairly dismissed or discriminated against, you can lodge a dispute with the Conciliation, Mediation and Arbitration Commission (s76 of the Industrial Relations Act, 2000). You must lodge the dispute within 18 months.

An employer may not rape or sexually assault you. This is a criminal offence and you can lay a criminal charge at the police station. It is an offence for an employer to abuse his authority to force you to have sex with him (s3 of Sexual Offences and Domestic Violence Act, 2018).

Domestic violence is a criminal offence, and includes physical, verbal, sexual, psychological, and economic abuse and controlling behavior. If you live/lived on the same property as your employer, you can get a protection order against the employer/former employer (s77 of Sexual Offences and Domestic Violence Act, 2018).



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This publication was produced with the financial support of the European Union in the framework of the Rights4All project. Its contents are the sole responsibility of SALC, COSPE and FSEJ and do not necessarily reflect the views of the European Union.