

Labor Protection Parity for Au Pairs

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Janie A. Chuang, *The U.S. Au Pair Program: Labor Exploitation and the Myth of Cultural Exchange*, 36 *Harv. J.L.*

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What comes to mind when you hear the term “au pair”? If you’re like me, you may imagine a young adult from an upper-middle class family going abroad for a year to help care for another family’s children—a kind of student exchange program with some child care duties included as part of the bargain. But as [Janie A. Chuang](#) shows in her recent article, *The U.S. Au Pair Program: Labor Exploitation and the Myth of Cultural Exchange*, the au pair program that the U.S. government currently offers is not uncommonly a site of disturbing and exploitative labor practices that look much more like an abusive guest worker program than a cultural exchange. In fact, according to Chuang, the framing of the au pair program as a cultural exchange may actually contribute to the vulnerability of its foreign participants.

As Chuang notes in her article, the au pair concept was initially one of cultural exchange: *au pair* is a French term meaning “on par with,” and refers to “a European practice of having a young person come to a foreign country to learn the language and experience the culture through immersion in the home life of a host family while assisting with childcare and light housework.” Under the U.S. program, au pairs must be between the ages of 18 and 26. For one to two years, they live with “host families” and provide childcare in exchange for room, board, and a small stipend. Despite the labor provided by au pairs, however, the program is not run under the auspices of the Department of Labor, as are other employment-based visa programs. Instead, they are run under the State Department’s J-1 Exchange Visitor Program, a program that facilitates cultural exchange by providing temporary visits by people such as camp counselors, interns, and academic researchers. Categorizing the work as involving cultural exchange rather than labor allows employers to bypass the step of showing that they could not find a qualified American worker to perform

the job.

Although I was well aware of the au pair program before reading Chuang's article and have known many families who have employed au pairs, I had not realized what a significant role it plays in the provision of child care in the U.S., providing ten percent of all childcare workers annually. I also was surprised to learn that the typical au pair profile has changed: although half of the au pairs who participated in the program are from Western Europe, three of the top five countries represented are Brazil, Colombia, and Mexico. Chuang argues that these demographic changes have "increased the apparent 'otherness' of the au pair population through increased racial and cultural differences." Most importantly, I did not realize how often au pair host families violate the regulations intended to protect au pairs from unfair labor practices and the structural reasons why au pairs have little recourse when these violations occur.

Chuang persuasively argues that it is the "cultural exchange" rhetoric of the program that makes au pairs so vulnerable. By living with a host family and being treated as "just like one of the family," au pairs may be expected to work around the clock, not just the 45-hour-per-week limit imposed by the regulations. They are often asked to get up multiple times in the night to feed a baby, asked to do additional child-care and cleaning during their off times, and sometimes end up putting in 100-hour weeks. Because they are "one of the family," these additional tasks are frequently understood as stemming from loyalty or love, not coercion. Were they paid for this additional work, many au pairs would be owed thousands of dollars of overtime wages. They are unable to claim these wages, however, because by working over the 45-hour-per-week limit, they have violated the terms of their visas.

Perhaps the most disturbing observation Chuang makes is that, by outsourcing the au pair program's implementation to "sponsor" agencies, the State Department exacerbates the power asymmetry between au pairs and their employers. If an au pair or a host family complains to the sponsoring agency and requests a "rematch," the agency has complete discretion to decide whether to rematch the au pair with a new employer or "terminate" the au pair's employment instead, which will also terminate his or her visa status. The sponsoring agency also has the discretion to refuse to rematch the host family, but powerful market forces discourage agencies from terminating the employer. Agencies' main revenue streams derive from the placement fees paid by host families, and host families, unlike au pairs, are likely to be repeat customers. The aligned interests of agencies and employers, coupled with the structure of the visa program, create a vast power differential that often makes it difficult for au pairs to challenge exploitative practices. These power asymmetries are disturbingly clear in Chuang's account of cases in which au pairs who sued their sponsoring agencies after being sexually assaulted by their "host fathers" discovered that several previous au pairs had complained to the agencies, which simply "rematched" the host families with new, unwitting victims.

Chuang's article offers a devastating critique of a practice that has been largely absent from the literature on labor exploitation. She shows that the notion of "cultural exchange," used to exempt the au pair program from compliance with labor law, functions not to au pairs' advantage but instead puts them in danger of exploitation and abuse. Chuang's article is not an indictment of hiring in-home domestic care. Indeed, her article is quite sympathetic to the plight of working families who need cost-effective, quality childcare. She shows, however, that the au pair program—as currently run—avoids the dicey problems of administering a guest worker program by giving it a name that obscures its true purpose. This obfuscation, she argues, harms not only au pairs, but domestic workers in general, whose market value is undercut by the existence of a program that provides childcare at low cost with virtually no oversight.

The issue of how to provide quality, low-cost childcare to middle class families without exploiting childcare workers is sensitive and politically fraught. Professor Chuang's article takes on one piece of the puzzle, showing that calling a guest worker program a "cultural exchange" does not inoculate its participants from exploitation but, in fact, has institutional consequences that cause harm to domestic workers as a group.

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