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Democracy Dies in Darkness

Au pairs provide cheap childcare. Maybe illegally cheap.

A class action lawsuit alleges that au pair agencies failed to obey state minimum wage laws, keeping their pay at \$4.35 an hour.

By **Lydia DePillis**

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When Johana Paola Beltran graduated from high school in Bogota, Colombia, she learned about a program that would send her to the United States to become an au pair — a live-in nanny. An au pair sponsor agency, InterExchange, sold her on the idea that she would be learning about a new culture and matched her with a family in Highlands Ranch, a posh suburb of Denver. She was excited: The host family's house had a gym; she would have access to a car; and she planned to take classes and improve her English. It even seemed worth paying out of pocket for the whole process: a \$2,500 fee.

But the experience was not what she expected. When she flew to New York City for orientation, Beltran wasn't paid for the days she spent in training. And after arriving in Colorado, Beltran says, she cooked dinner for the family every night (but was not permitted to eat with them), cleaned, did laundry, gardened and cared for the family's eight chickens. Sometimes, she didn't have enough food to eat herself.

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“When I was in Colombia, InterExchange told me that being an au pair would be wonderful and that I would explore another life, language, family, culture and that if anything bad happened to me they would be there to help,” Beltran said. “Instead, my host family treated me like a maid.”

Now, Beltran has joined four other au pairs in a lawsuit alleging InterExchange and other sponsor agencies are keeping wages artificially low -- and are failing to comply with state laws that require employers to pay higher minimum wages.

The attorneys who filed the lawsuit say the sponsor agencies have turned the au pair program into a source for the cheapest child care in America, a far cry from its roots as a cultural exchange program. Pay for au pairs has remained extraordinarily low, even as salaries for traditional nannies and the cost of day care have soared in recent years. The suit, which was filed in Colorado District Court in November and substantially amended last week, demands punitive damages and back pay for as many as 20,000 current and former au pairs.

week, demands punitive damages and back pay for as many as 30,000 current and former au pairs.

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The 15 sponsor agencies that place au pairs in the United States deny they have been holding pay down. They say that the pay rate is set by the State Department, which oversees the program, and that the federal government has never explicitly told them they needed to follow state and local minimum wage laws.

“There’s always been one nationwide stipend,” says Michael McCarry, director of the Alliance for International Cultural and Educational Exchange, an industry group that represents many of the sponsors. “State has never raised the issue with us about state minimum wage laws.”

State Department officials disagree. In a statement to The Washington Post, the agency says that sponsors “must also comply with all other applicable federal, state, and local laws, including any state minimum wage requirements.”

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When asked how federal officials have been communicating this requirement to au pair sponsor agencies, State Department spokesman Nathan Arnold replied: “The Department has been communicating with au pair sponsors to confirm that they are aware of their obligations under the regulations – including with respect to host family requirements – and will continue to do so.”

So far, that has not translated into higher pay for au pairs. And for Beltran, it was untenable. InterExchange called once to check on her, but her host family didn’t want to take her to the required monthly meetings with the sponsor and other au pairs. So in November 2012, she left. InterExchange declined to comment on the pending litigation.

“When I asked InterExchange for help, they did nothing,” Beltran says. “It was all a lie.”

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The au pair system — which means “on par with” in French — was created to solve a problem. After World War II in Europe, many young women were traveling abroad for work. Concerned for their moral development, church groups encouraged the girls to live with and serve families, which would teach them the domestic arts and keep them out of trouble. The practice was entrenched by the 1960s, and international agreements were put in place to regulate it.

The United States got into the game in 1986, with a pilot program of 3,000 young people from Western Europe under the auspices of a 1961 law that governs cultural and educational exchange visitors, who receive J-1 visas. As more and more American women entered the workforce, leaving nobody at home to care for the children, the au pairs proved popular.

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Perhaps too popular — a 1990 Government Accountability Office report found that the program was essentially work-centered, without enough cultural and educational content to satisfy the law's intent, and ought to be transferred to the Department of Labor.

But that never happened, partly because the sponsors rallied to protect the program's cultural exchange status. Department of Labor oversight would require a determination that no American worker was available to do the job, which might make it more difficult to justify bringing young people over from abroad.

"This is a genuine cultural exchange. It's not just a labor program," says McCarry. "The whole vision was to get large numbers of young people to have an experience, without taxpayer money, and allow them to work to defray the cost. Over time, it's worked exceptionally well."

In fact, the sponsor agencies helped fend off provisions in the comprehensive immigration reform bill in 2013 that would have prevented them from charging fees to au pairs and made the companies liable for violations committed by foreign contractors who recruit au pairs. In 2012, the State Department's inspector general said it "questions the appropriateness of allowing what are essentially work programs to masquerade as cultural exchange activities," and recommended that the agency look into relinquishing control over the approximately 13,000 au pairs who enter the program each year. Again, State wasn't interested.

"We continue to believe that the Au Pair program is best served within Educational and Cultural Affairs, given it is a cultural exchange," the agency said, in response to questions from The Post.

Over the years, the au pair program has been sharply criticized by think tanks and academics — even by some previous defenders, such as Edina Stone, who used to work for a sponsor agency and now runs a site for parents called Au Pair Clearinghouse. Concerned about reports of au pair abuse by host family members, she also started an advocacy group for au pairs, who she says sometimes have nowhere to turn if something happens. Every year, she says she calls the sponsor agencies to ask them to endorse the effort, and almost none have done so.

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“It makes you a little suspicious of the agencies, in terms of how they feel about it,” Stone says. Instead of protecting au pairs, she says the sponsors try to sweep problems under the rug. “They pretend to be sympathetic. But then they send you home, because they know it’s very difficult for an au pair to initiate a legal action in their own country.”

The State Department says it “closely monitors these sponsor organizations regarding their compliance with regulations,” which include making sure that au pairs work only 45 hours a week, with at least 1.5 days off a week and two paid weeks off per year. But inspections come in response to complaints, and frustrated au pairs often feel they can't ask for help, without running the risk of being sent home.

Perhaps for that reason, whatever exploitation that might go on hasn’t received the same attention as other parts of the J-1 visa program. The Summer Work Travel program, which places 79,000 young people on job sites per year, earned national headlines in 2011 for a walkout by exchange students who had been assigned to a Hershey plant in Pennsylvania and forced to work long hours for low pay. The GAO released a report a couple weeks ago that found progress with that program, after substantial examination and reforms.

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Take Beaudette Deetlefs, another plaintiff in the au pair lawsuit, who was placed with a family in Salt Lake City. Traveling around was difficult on the \$195.75 stipend; she spent much of it on public transportation and toiletries, and has tried to send a little money home to her single mother in the suburb of Cape Town, South Africa, where she grew up. Even on her two weeks of vacation, she hasn't been able to afford to leave her host family's house.

"I spend a lot of time in my room," Deetlefs says. "It's not a very pleasant feeling in the home, because I feel like I'm in the way all of the time when I'm not working."

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— Beaudette Deetlefs

While many have criticized the au pair program since it was established, few have tried to change it through the courts. The lawsuit was launched after Beltran, the au pair from Bogota, contacted attorneys from Towards Justice, which provides legal aid to low-wage workers in Colorado.

As the staff from Towards Justice learned more, they discovered something strange about how the sponsor agencies operated. The State Department has told them that the minimum stipend is \$195.75 per week, even though other J-1 visa holders -- the Summer Work Travel participants -- receive higher pay in states with higher minimum wages.

Au pair sponsor agencies, though, treat the \$195.75 number as a flat rate. In their literature, some call it “pocket money,” as if it were a bonus to receive \$10,000 a year on top of room and board. To host families, they advertise the au pair program as a cheaper alternative to nannies — who can charge between \$15 and \$25 an hour — and one that wouldn’t charge more for additional children. The lawsuit recounts conversations with agency officials in which they allegedly said that the industry had decided keep it that way, making sure that “the stipend is identical across all companies.”

That’s why the suit also includes charges of antitrust violations along with noncompliance with state minimum wage laws: If sponsors hadn’t colluded with each other to stick to one rate, it might have naturally risen, just as many low-wage employers offer slightly more than the minimum in order to attract better workers.

The sponsors have vehemently disputed those allegations, and ultimately, the case may be decided on very technical grounds. In a motion to dismiss, several of the sponsor agencies argue that the program is inherently federal, and therefore shouldn’t be subject to minimum wage laws. Additionally, they say that the sponsor

agency isn't the employer anyway — if anyone is at fault for not paying proper minimum wages, it's the host family.

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But Nina DiSalvo, executive director of Towards Justice, says there's a larger point here: The whole idea that au pairs are getting a cultural experience that should substitute for proper payment is a sham.

"There is no question that American families need affordable child care," says DiSalvo. "But if that is the au pair program's purpose, then we as a country should be honest about it and regulate it like other migrant domestic worker programs: Through the U.S. Department of Labor."

According to Arnold, the State Department spokesman, the program is undergoing a review, which will be complete in early summer. They're taking comments from au pairs and may expand the range of educational experiences they're allowed to undertake.

Relinquishing control of the program altogether, however, is not on the table.

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