

# Migrant domestic work in France and Ireland

## legal pathways, gaps and everyday lives of au pairs

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# Introduction & methodology

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What is(are) the role(s) of law<sup>[1]</sup> in shaping au pairs' experiences and perceptions<sup>[2]</sup> in France and Ireland?

- **How is au pairing regulated in France and Ireland?**

Multimethod approach

- Systematic literature review
- Systematic document analysis, including archival research
- Semi-structured interviews [Au pairs, former au pairs and stakeholders]
- Desk research on the national level, including documentary, bibliographic and doctrinal research

[1] On the role of law in creating, mediating but also challenging domestic workers' vulnerabilities to exploitation, see V. Mantouvalou. (2023) *Structural Injustice and Workers' Rights*; V. Pavlou. (2021) *Migrant Domestic Workers in Europe: Law and the Construction of Vulnerability*; C. Murphy, D. M. Doyle & S. Thompson. (2023) *Workers' Perspectives on State-Constructed Vulnerability to Labour Exploitation: Experiences of Migrant Fishers in Ireland*.

[2] On connecting macro to micro dimensions, see F. Williams. (2012) *Converging variations in migrant care work in Europe*.

# Work like no other<sup>[1]</sup> & not even work at all<sup>[2]</sup>

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Regulation of domestic workers in France: Work like no other?

It does not apply to au pairs...

Since the 1950s, France had '[...] true regulations constituting a complete statute for au pair placement'<sup>[3]</sup>

- *Arrêté* of 26 November 1952 on work permits and social security contributions
- Ratification of the European Agreement on Au Pair Placement of the Council of Europe (1969)
- *Circulaire* No. 17-76 of 22 November 1976
- *Circulaire* of 27 August 1981
- *Circulaire* No. 20 of 23 January 1990

Transposition of the EU Directive 2016/801

- Law No. 2018-778 of 10 September 2018
- Decree No. 2019-141 of 27 February 2019

[1] It summarizes the approach of labour regulatory frameworks for domestic workers, see A. Blackett (2011) *Introduction: Regulating Decent Work for Domestic Workers*.

[2] This construction was used to describe au pairs' lack of employment status in Australia, see A. Kintominas (2023) *Law and Reproductive Labour: Migrant Domestic Work From an Australian Perspective*

[3] CoE Document CE/Soc(67)22.

# Model agreements

Au pairs: *jeune au pair* & *stagiaire aide familial étranger* [foreign temporary family-helper]

Strategies to reaffirm au pairing as a *not even work at all*

- Vocabulary [eg. pocket money, host family]<sup>[1]</sup>
- Help v Work
- No contract of employment

Model agreements adopted by French authorities: one in force in 1966; 1976; the one currently in force.

- The Council of Europe adopted a model agreement in 1972, which influenced the French versions from 1976 onwards.
- Differentiation of both categories
- Labour organisation
- Rights
- Learning French?

A potholed legal framework for *not even workers at all*?

The image shows a French model agreement form titled "CONVENTION CONCLUE ENTRE LE JEUNE AU PAIR ET LA FAMILLE D'ACCUEIL". The form is divided into several sections with colored headers: yellow for "1. Le jeune au pair", red for "2. La famille d'accueil (parents et membres de la famille)", and grey for "3. Logement de la famille d'accueil", "4. Organisation des activités et des tâches effectuées par le jeune au pair", and "5. Durée de la convention et modalités de rupture anticipée". The form includes fields for personal information, family details, and agreement terms. It also features logos for the French Republic and the CERFA (Centre de Renseignements, d'Évaluation et de Formalisation Administrative) system.

[1] R. Cox. (2015) Introduction. In: *Au pairs' lives in global context: sisters or servants?* pp. 01-15.

# Work like any other<sup>[1]</sup>

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Regulation of domestic workers in Ireland: Work like any other?

- Code of Practice for Protecting Persons Employed in Other People's Homes (2017)

It currently applies to au pairs nowadays, but before that...

- Debates on the Houses of the National Parliament since the 1970s [Dáil Éireann and Seanad Éireann]
  - 'There is the au pair system, but this is not regarded as employment in our sense of the word' [Minister of Labour, 1971]
  - No ratification of the European Agreement on Au Pair Placement
  - '[...] it is important to distinguish between au pairs and nannies or child minders. An au pair is essentially a student who is treated as a family member in exchange for certain services, such as a limited amount of light housework or babysitting.' [Minister of State at the Department of Enterprise, Trade and Employment, 1997]

[1] It summarizes the approach of labour regulatory frameworks for domestic workers, see A. Blackett (2011) *Introduction: Regulating Decent Work for Domestic Workers*.

# Mobilising rights: streets & tribunals

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Cases of labour exploitation:

- MRCI report 'Part of the Family - Experiences of Au Pairs in Ireland' (2012)
- Campaigns and advocacy

The Labour Court and the Workplace Relations Commission have recognised au pairs as employees in case-law since 2012.

- Terms of Employment (Information) Act 1994; Organisation of Working Time Act 1997; National Minimum Wage Act 2000 etc.
- 'Under Irish and European law a domestic worker who works as an au pair, is an employee.'<sup>[1]</sup>
- No employment tests. Au pairs are assumed to be employees.

Ratification of ILO C189

Attempts to modify the employment status of au pairs: Au Pair Placement Bill 2016

[1] A Domestic Worker v A Couple who employed a Domestic Worker, ADJ-00004845 and ADJ-00004850, Judgment of 26 May 2017.

# Different legal frameworks, common challenges?

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## Specific challenges

- Intersections of state law, the law of the household workplace<sup>[1]</sup> and the *law of industry*
- *Too general* v *Too specific* approach?
- *De jure* v *de facto* entitlements
- Visa schemes for non-EU au pairs

## Common challenges

- Flexibility
- Poor payment
- Overwork not remunerated
- Uncertainty on one's rights
- Access to rights
- Vulnerability related to live-in arrangements

[1] A. Blackett. (2019) *Everyday Transgressions: Domestic Workers' Transnational Challenge to International Labor Law*.

# Thank you for your attention!

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