



AU PAIRS FACE TRAFFICKING AND LABOR EXPLOITATION IN THE UNITED STATES

Au Pairs in the United States

Approximately 21,450 young adults, many of them women, come to the United States on J-1 visas every year to work as au pairs providing childcare and household help to American families. Many come in the hopes of immersing themselves in American culture, improving their English language skills and gaining work experience. While some au pairs are treated as part of the host family, others are exploited, in part because of the power host families have: the J-1 visa program charges host parents with setting au pairs' work expectations, schedules, job duties and payroll. This dynamic can be difficult for au pairs to navigate and can make it difficult for them to assert their rights, making them vulnerable to labor exploitation and trafficking. Labor trafficking occurs when force, fraud or coercion are used to compel a person to provide labor services against their will. Numerous news reports and online reviews of au pair jobs indicate that au pairs experience various forms of force, fraud and coercion to attract them to the United States and keep them working, denying them their freedoms and the cultural exchange experience they were promised.

The Business of Trafficking Au Pairs in the United States: Au Pair Agencies

In 2016, an au pair from France reported that her movements were restricted and she was unable to come and go as she pleased. Her host family controlled her ability to leave the house, as well as what she could eat. When she tried to leave, they threatened her with physical abuse unless she continued working. Her hosts said they would hold her passport hostage unless she reimbursed them for a portion of the family's program fees. Threats, physical abuse, and withholding identification documents are common methods traffickers use to control their victims and compel them to continue working.

In addition to force and coercion, some au pairs have reported that the agency through which they were hired had engaged in fraudulent recruitment practices that misled au pairs about the nature of the position or benefits. In some cases, once au pairs have arrived in the United States they find that they work long hours, beyond what is legally allowed, and do not earn sufficient money to experience American life as they were promised by sponsor companies.

AU PAIRS

According to au pairs, some sponsoring agencies promise fully-paid vacation getaways from the hosting families, gifts, their own cars or food prepared for them daily. On the other side, host families are promised trained nannies who will also be able to help with light housekeeping and cooking. U.S. au pair agencies are supposed to act as intermediaries between au pairs and host families, but the reality is that many of them are motivated by profit and their financial incentive is to side with host families. In the 2016 case of the French au pair, she documented and reported the abuse to the agency responsible for overseeing her employment conditions but they did not intervene. Others allege that some au pair agencies similarly refuse to support au pairs when they report issues, leaving them to their own devices. Recruiting workers with false promises about job benefits or perks is a common tactic traffickers use to lure a potential victim to accept a job, knowing that employees will not receive those benefits and may experience exploitation once arriving to the job site.

Au pair agencies generally employ Local Coordinators to serve as contacts to au pairs and their host family. While au pairs believe these individuals function as allies, they instead have warned au pairs not to complain about their work conditions or else face deportation or police action. For example, one au pair who complained to their Local Coordinator about their poor work conditions was told to stay quiet and was threatened with deportation. Another au pair was threatened by the program's employee with "harm to her family abroad" and deportation because she refused to work for a host family who disclosed that their child was likely to abuse her. Threats related to immigration status and deportation, and harm to a victim's family members are common ploys traffickers use in labor trafficking situations.

Fixing the Problem

The “cultural exchange” component of the program allows the U.S. government to classify the program under the U.S. Department of State rather than the U.S. Department of Labor. The oversight of this government program is then delegated to private recruitment agencies, which have financial incentives to hide or overlook worker exploitation. As the sole point of contact, au pair agencies are tasked with receiving reports of abuse or mistreatment. Relying on such agencies to, in turn, self-report complaints of au pair mistreatment, exploitation or abuse is problematic. By outsourcing all responsibility for administration and oversight of the U.S. au pair program to au pair agencies, the U.S. Department of State abdicates responsibility for the welfare of visiting au pairs.

Since the establishment of the Au Pair Program in the late 1980s, the State Department has insisted that it is a cultural exchange program, so it operates through the exchange visitor or J-1 visa. Only several years after the Au Pair Program’s creation, in the early 1990s, the Government Accountability Office, in auditing the J-visa programs, determined that “au pair programs are essentially child care work programs that do not correlate with the qualifying categories mentioned in the J-visa statute.” In spite of this, the program still operates through J-1 visa, and it is the only J-1 visa program not overseen by the Department of Labor.

According to Janie A. Chuang, Associate Professor of Law at American University, the legal categorization of au pairs as cultural exchange workers is used to camouflage and maintain a government established domestic worker program to provide in-home childcare for middle-class families at below-market prices. It has created an institutional structure that obstructs access to remedies for labor violations. By describing au pairing as something other than work, the program conveys the message that accessing justice for labor violations is inappropriate. These dynamics, coupled with lack of federal oversight, render au pairs vulnerable to various forms of abuse and exploitation from both private recruitment agencies and host families.

Acknowledging concerns raised by workers' rights advocates, the U.S. Department of State recently proposed a new regulation which would change the way au pairs are compensated. These proposed new Au Pair Program Regulations were published in the Federal Register on October 30, 2023. The proposed changes would increase au pairs' weekly stipend, which would vary based on the cost of living and minimum wage requirements in the host family's state; reduce au pairs' work hours; and mandate more reporting by host families. Au pair agencies and host families have pushed back against these proposed changes. Some host families have argued that the proposed changes will alter the dynamic from a family-like structure to an employer-employee relationship. Some also criticize proposed higher costs saying it will eventually lead to either closing the program or reducing the number of au pairs in the United States, as only affluent families will be able to afford to participate. However, the au pair program was not meant to be an inexpensive child care program, but a cultural exchange program to increase au pairs' awareness of American culture and values, and help American families learn about foreign customs and cultures. When au pairs are overworked and have meager resources, or do not even receive the wages they are promised, they can not truly immerse themselves in American culture nor leave an exploitative situation.