Immigrant Workers' Voices as Catalysts for Reform in the Long-Term Care Industry

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> *"One of my sisters told me to have some dignity and leave [my abusive workplace]. I told her that I can't feed my kids with dignity, and that was my reality."*
>
> *–Immigrant Woman Long-Term Care Aide*

The COVID-19 pandemic exposed a long-term care crisis that has been brewing for decades. It also offered lessons for much-needed reform to the long-term care industry. One such lesson is that both older Americans and their caregivers experience unnecessary suffering and death due to entrenched industry practices that marginalize long-term care aides, a

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worker population that is increasingly made up of immigrant and migrant ("im/migrant") women. Even though im/migrant women constitute at least one-third of the long-term care workforce, their perspectives are largely absent from the legal and public health literature and national conversations around long-term care reform. Indeed, to date, no systematic and comprehensive attempt has been made to collect and publish the lived experiences of im/migrant women who work as long-term care aides in the U.S. This Article is the first to use empirical data, collected by the authors through qualitative interviews of im/migrant aides in Arizona, to explore and analyze the failures of state and federal laws and policies, including Arizona's paid sick leave law, to protect long-term care aides and the vulnerable, older, adult population that relies on their caregiving.

The Article describes the use of critical race and health law theories to inform the study's design and details the study's methodology and findings. Through the voices of im/migrant women aides, the Article demonstrates that this subset of frontline, essential workers consistently experience violations of state and federal employment and labor laws and face significant barriers to accessing their workers' rights, including paid sick time and protection from employer retaliation. The study's findings show that im/migrant aides work in conditions that are unsafe not only for them but also for their patients. Together, these failures contribute to poor quality of care, chronic labor shortages, and increased potential for harm in future public health emergencies. The Article draws on im/migrant women's voices to make recommendations for changes to laws and policies in Arizona and nationwide to help these workers and a rapidly growing, aging, American population. This research fills a critical gap in the literature regarding the shortcomings of workplace laws and healthcare policies in long-term care settings. It comes at a moment when the country's long-term care system must be changed or face a crisis of epic proportions that will leave older adults and their loved ones with few, if any, options.

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INTRODUCTION

Long-term care in the United States is in crisis. The country is simultaneously experiencing an increasingly aging population and an anticipated shortage of over half a million direct care workers within the next decade.[1] The COVID-19 pandemic exposed this bleak long-term care landscape[2] when the pandemic disproportionately harmed vulnerable and marginalized populations.[3] Specifically, older Americans and low-wage immigrant and migrant ("im/migrant") workers[4] bore much of the brunt of the pandemic.[5] Nearly one-third of all coronavirus deaths occurred in nursing homes, and included both older adults and im/migrant aides, many of whom were working while infected in multiple facilities due to economic necessity and lack of access to workplace rights such as paid sick leave.[6]

Despite these alarming figures and trends, the long-term care industry continues to propose legislative and business solutions that ignore root cause, systemic problems that drive workforce shortages, burnout, and inadequate care across the industry.[7] One significant, systemic failure is the way in which long-term care employers treat im/migrant women aides, a worker population that is instrumental to the provision of care for older adults.[8] These workers face multiple, intersectional barriers to accessing workplace rights, live largely in the shadows, and traditionally have been voiceless in scholarly legal and healthcare literature.[9] Given the dearth of information regarding

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1. NAT'L CTR. FOR HEALTH WORKFORCE ANALYSIS, HEALTH WORKFORCE PROJECTIONS 2 (2016), [https://perma.cc/9J9F-Q56H] (estimating a shortage of 650,000 workers); Abigail S. Rosenfeld, Comment, *Consider the Caregivers: Reimagining Labor and Immigration Law To Benefit Home Care Workers and Their Clients*, 62 B.C. L. REV. 315, 321 (2021).

2. NAT'L ACADS. OF SCIS., ENG'G, & MED., THE NATIONAL IMPERATIVE TO IMPROVE NURSING HOME QUALITY 2 (2022), https://doi.org/10.17226/26526 [https://perma.cc/8E63-XUWX].

3. Shefali Milczarek-Desai, *Opening the Pandemic Portal To Reimagine Paid Sick Leave for Immigrant Workers*, 111 CAL. L. REV. 1171, 1206 (2023).

4. *Id.* at 1172.

5. NAT'L ACADS. OF SCIS., ENG'G, & MED., *supra* note 2, at 2; Milczarek-Desai, *supra* note 3, at 1174.

6. Milczarek-Desai, *supra* note 3, at 1177.

7. AM. HEALTH CARE ASS'N, STATE OF THE NURSING HOME INDUSTRY: SURVEY OF 759 NURSING HOME PROVIDERS SHOW INDUSTRY STILL FACING MAJOR STAFFING AND ECONOMIC CRISIS (2022), https://www.ahcancal.org/News-and-Communications/Fact-Sheets/FactSheets/SNF-Survey-June2022.pdf [https://perma.cc/C9PX-EJBQ].

8. Rosenfeld, *supra* note 1, at 324; Leah Zallman et al., *Care for America's Elderly and Disabled People Relies on Immigrant Labor*, 38 HEALTH AFFS. 919, 924 (2019), https://doi.org/10.1377/hlthaff.2018.05514 [https://perma.cc/WZG4-AHYX].

9. Rosenfeld, *supra* note 1, at 323–24; Naomi Lightman, *Caring During the COVID-19 Crisis: Intersectional Exclusion of Immigrant Women Health Care Aides in Canadian Long-Term*

im/migrant aides' experiences in the workplace, it has been difficult to map the connections between their working conditions, quality of care for older adults, and potential law and policy solutions. The empirical research upon which this Article is based begins to fill this gap, revealing critical changes needed to transform the long-term care industry to meet the challenges facing a rapidly growing aging population. In Arizona alone, the number of adults aged 60 and older is estimated to increase by 38.5 percent from 2020 to 2040,[10] and nationally, the number is expected to increase to 94.7 million by 2060.[11] Recommendations for reform that address the concerns raised by im/migrant women aides in Arizona are critical to improving the long-term care industry's provision of care to older adults both in Arizona and throughout the country.

In 2020, the Workers' Rights Clinic at the University of Arizona College of Law ("the Law Clinic")[12] encountered a noticeable uptick in the number of im/migrant aides in need of legal assistance.[13] These women complained that they had received minimal to no training on workplace safety and health, did not know how to appropriately protect themselves and older residents from spreading COVID-19, and did not feel safe at work. The Law Clinic, which was the only organization in Arizona that provided free legal assistance, education, and outreach to im/migrant workers and their communities,[14] began working with these women, and during representation discovered that employers had repeatedly violated workplace rights related to paid sick leave, overtime, minimum wage, and occupational safety and health.

The Law Clinic's work coincided with related work underway at the University of Arizona College of Law's Health Law & Policy Program

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Care, 30 HEALTH & SOC. CARE IN THE CMTY. e1343, e1345 (2021), https://doi.org/10.1111/hsc.13541.

10. ARIZ. DEP'T OF ECON. SEC., DIV. OF AGING & ADULT SERVS., ARIZONA STATE PLAN ON AGING 2023-2026 1, 4 (2022), https://des.az.gov/sites/default/files/dl/Arizona-State-Plan-on-Aging-2023-2026.pdf?time=1687193692767 [https://perma.cc/V4JU-GQDV].

11. U.S. DEP'T OF HEALTH & HUM. SERVS., ADMIN. FOR COMM. AGING, 2020 PROFILE OLDER AMERICANS 5 (2021), https://acl.gov/sites/default/files/Profile%20of%20OA/2020ProfileOlderAmericans_RevisedFinal.pdf [https://perma.cc/QHC3-UFAE].

12. In the Clinic, JD law students closely supervised by the Clinic's director addressed low wage workers' rights to minimum wage, overtime, paid sick leave, and occupational safety and health.

13. Case Files on Im/Migrant Aides in Need of Legal Assistance, Worker's Rts. Clinic, James E. Rogers Coll. of L. (on file with the Worker's Rights Clinic), https://law.arizona.edu/clinics/workers-rights-clinic [https://perma.cc/XXZ4-EL2K].

14. The Clinic ceased operating at the end of Spring 2023 due to budgetary constraints.

(“HLPP”). The HLPP researches laws and regulations governing long-term care in both facilities and private homes to improve quality of care and legal preparedness during public health emergencies.[15] Recognizing that they were working on different pieces of the same long-term care puzzle, the co-authors of this Article, who were directors of the Law Clinic and HLPP, combined efforts in a first-of-its-kind, year-long, qualitative research study funded through a grant awarded by the University of Arizona’s Hispanic Serving Institution in 2021-2022 (“the Study”). The Study interviewed and recorded the stories of im/migrant aides in order to: 1) increase knowledge regarding these women’s lived experiences in long-term care workplaces; 2) explore barriers these workers encountered that affected their ability to provide high-quality care to older adults in their care; and 3) develop ideas for laws and policies to address systemic problems in the long-term care industry.

The Study involved JD law students and an undergraduate law student (“BA law student”) from an im/migrant background who served as the linguistic and cultural interpreter during the interviews to further the Law Clinic’s focused efforts to communicate with vulnerable workers. Through a sensitive recruitment process given this hard-to-reach population, six im/migrant women long-term care aides who met the inclusion criteria each participated in one, semi-structured, ninety-minute interview. Through a bilingual interview guide, the research team recorded im/migrant women’s reflections on how state and federal laws that were intended to protect them fell short in practice. Some questions were closed-ended, and others prompted the workers to speak freely about their experiences in different types of long-term care settings and their perspectives about their experiences. Co-authors Shefali Milczarek-Desai (“SMD”) and Tara Sklar (“TS”), as Co-Principal Investigators (“Co-PIs”), subsequently conducted thematic qualitative data analysis facilitated by NVivo software designed for qualitative researchers to organize and code data from interviews.

This Article is the first to use the data collected from the Study to explore and analyze the failure of workplace law and healthcare policies to protect im/migrant women aides and, by extension, the vulnerable, older adult population that relies on their care. The Article describes the use of critical race and health law theories to inform the study’s design and details the

15. *See generally* Tara Sklar, *Implementation and Enforcement of Quality and Safety in Long-Term Care*, *in* COVID-19 POL’Y PLAYBOOK: LEGAL RECOMMENDATIONS FOR A SAFER, MORE EQUITABLE FUTURE (Scott Burris et al. eds., 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3675866 [https://perma.cc/UE9A-A2P4]; Tara Sklar & Rachel Zuraw, *Preparing to Age in Place: The Role of Medicaid Waivers in Elder Abuse Prevention*, 28 ANN. HEALTH L. & LIFE SCI. 195 (2019).

Study's methodology and findings. Through the voices of im/migrant women aides, the Article demonstrates that this subset of frontline, essential workers consistently experience violations of employment and labor laws, lack awareness of workers' rights, and face significant barriers to accessing their rights under state and federal employment and labor laws, including Arizona's paid sick leave law. It also shows that im/migrant women aides often work in conditions that are dangerous not only for them but also for their long-term care patients. Together, these failures contribute to poor quality of care, chronic labor shortages, and increased potential for harm in future public health emergencies. The Article concludes by drawing on im/migrant women's voices to make recommendations for changes to laws and policies that can reform the long-term care industry to better protect workers and better serve older adults. It proceeds in four parts.

Part I provides an overview of the challenges facing the long-term care industry and how these issues informed the Study's design. First, this section explains that the crisis in long-term care affects two of the most vulnerable and marginalized populations in the country—im/migrant women, who face intersectional discrimination based on race, gender, and immigration status,[16] and older adults, who experience ageism and poor quality of care.[17] Next, this section sets forth the two theoretical frameworks—critical race theory and intersectional care work scholarship—that were instrumental in creating the interview questions and delivery methods used for the Study's qualitative interviews.

Part II describes the Study's design, methodology, and data collection. This section discusses the Study's approach to recruiting a hard-to-reach worker population, the use of bilingual recruitment, consent and interview tools, and participation by a bilingual BA law student from an im/migrant community. It also details the participation of JD law students, the use of mock sessions to prepare for participants' in-depth, ninety-minute qualitative interviews, and the benefits of conducting the Study in a law school clinical setting. Finally, this section describes the use of NVivo software to create a thematic coding framework tailored to embody information provided in the interviews.

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16. Lightman, *supra* note 9, at e1350; Zallman et al., *supra* note 8, at 923–24; Virginia Gunn et al., *Health Care Workers and Migrant Health: Pre- and Post-COVID-19 Considerations for Reviewing and Expanding the Research Agenda*, 4 J. MIGRATION & HEALTH 1, 3–5 (2021), https://doi.org/10.1016/j.jmh.2021.100048 [https://perma.cc/7JQC-JKD7].

17. Alexander Boni-Saenz, *The Age of Racism*, 100 WASH. U. L. REV. 1583, 1591 (forthcoming 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4349511 [https://perma.cc/C3VA-XWUZ].

Part III sets forth the Study's findings. This section begins with a taxonomy of participants' characteristics, including biographical and demographic information, and then presents data collected regarding im/migrant aides' awareness of and access to their legal rights in the workplace. It details these workers' lack of access to existing workplace laws and employers' lack of knowledge and/or willingness to ensure safe and legal workplaces. A critical theme that emerges in this section is the need to amplify im/migrant women aides' voices and share their experiences across the long-term care industry so that the gross rights violations that the Study uncovered do not continue hidden and unabated.

Part IV draws directly from the Study participants' perspectives to recommend changes to workplace and healthcare laws and policies to better safeguard im/migrant aides and the older adults in their care. These include providing mandatory, effective, and culturally appropriate training for aides and their employers as well as increased protection of workers' rights that include robust enforcement of paid sick leave and anti-retaliation laws. Finally, this section discusses the strengths and limitations of the Study and proposes ideas for future, empirical research.

The Article concludes with a warning—America's long-term care industry is doomed if im/migrant aides continue to be treated as an invisible and disposable labor force. Without addressing their workplace conditions, the quality of care will continue to deteriorate, an understaffed and demoralized workforce will lead to more dangerous disease transmission,[18] and older adults will suffer needlessly. In short, the United States will be a nation where neither long-term care workers nor aging Americans live or die with dignity.[19] This research fills a critical gap in information about the shortcomings of workplace and healthcare laws in long-term care settings. It comes at a moment when the nation's long-term care system must be changed or face a crisis of epic proportions that will leave long-term care patients with few, if any, options.

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18. Indeed, as the COVID-19 pandemic has demonstrated, many lives could have been spared if im/migrant women long-term care aides had been able to benefit from workers' rights laws such as paid sick leave. *See* Milczarek-Desai, *supra* note 3, at 1173.

19. Alexandra Moe, *The Crisis Facing Nursing Homes, Assisted Living and Home Care for America's Elderly*, POLITICO (July 28, 2022), https://www.politico.com/news/magazine/2022/07/28/elder-care-worker-shortage-immigration-crisis-00047454 [https://perma.cc/UC5X-4R2U] ("The quality of care will deteriorate: fewer baths, fewer people to prepare food or help with toileting. An understaffed, demoralized workforce leads to more disease transmission . . . More seniors will be bedridden; there will be more falls, when people do try to move about, with some discovered days later.").

I. THE INTERSECTION OF LONG-TERM CARE AND IMMIGRANT WORKERS' RIGHTS

In many parts of the world, including the United States, caring for older adults historically fell to family members, especially female relatives.[20] In his book, *Being Mortal*, surgeon and medical professor Atul Gawande nostalgically recounts the story of his grandfather, who had the good fortune to grow old in India at a time when family members provided care for older adults. He writes that his "father's father had the kind of traditional old age that, from a Western perspective, seems idyllic," and then goes on to describe how his grandfather "was surrounded and supported by family at all times," which allowed him to remain independent for as long as possible.[21] During the twilight of his grandfather's life, when he was weak and needed assistance in most aspects of daily living—he was hard of hearing, needed assistance rising from a sitting position, could not prepare his own food, or leave the house without accompaniment—he still lived a dignified life respected as an elder and cared for in a loving manner.[22]

As in India, families in America provided most of the care needed when older people could no longer perform the daily functions of living for themselves.[23] That began to change in the last century, and today, multigenerational living arrangements have become increasingly rare around the globe, especially in the modern day United States.[24] This is in part because female relatives who once cared for older adults within the family home are now often wage earners themselves and cannot devote their days to caretaking.[25] Before the advent of the long-term care industry, those who did not have family to care for them, nor the money to hire help, ended up in poorhouses, which were "grim, odious places" where "[b]asic physical care was lacking" and "[f]ilth and dilapidation were the norm."[26] Although

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20. *See* ATUL GAWANDE, BEING MORTAL: MEDICINE AND WHAT MATTERS IN THE END 16–17 (2014) (although Gawande does not identify who his grandfather's primary caregiver was, it almost certainly was a female relative since traditional Indian culture requires either an unmarried daughter or the daughter-in-law married to the son who lives in the family home, which includes older parents, to care for aging relatives).

21. *Id.* at 14.

22. *Id.* at 14–15.

23. NAT'L ACADS. OF SCIS., ENG'G, & MED., *supra* note 2, at 47.

24. *See* GAWANDE, *supra* note 20, at 17, 21.

25. RUTH MILKMAN, IMMIGRANT LABOR AND THE NEW PRECARIAT 111–13 (2020).

26. NAT'L ACADS. OF SCIS., ENG'G, & MED., *supra* note 2, at 47–48; GAWANDE, *supra* note 20, at 62–63 (quoting a report written in Illinois in 1912 that "described one county's poorhouse as 'unfit to decently house animals'" and stating that it was overrun with rats and mice, bedbugs, and flies swarming in food).

poorhouses continue to exist in many parts of the world,[27] they began disappearing in the United States with the passage of the Social Security Act in 1935 and the guarantee of a fixed income after retirement.[28] What eventually replaced them, however, did not emerge from a desire to ensure dignity and comfort in old age, but instead was based on the view that aging was a medical problem.[29]

In the 1950s, older American adults who were infirm were increasingly placed in hospitals, which were proliferating during that era.[30] As Gawande tells it, because hospitals "couldn't solve the debilities of chronic illness and advancing age . . . hospitals lobbied the government for help" and the modern day nursing home was born.[31] In the 1980s, nursing homes started to become viewed as "a place of residence," which resulted in a cultural shift that "recognize[d] the need to balance the delivery of clinical care with quality of life."[32] By 2016, there were nearly 15,600 nursing homes in the United States caring for approximately 1.3 million Americans.[33] While many older adults now seek out alternative long-term care settings such as in-home care, "the number of short stays in nursing homes has also increased significantly."[34]

The 1965 law creating Medicare required nursing homes to meet certain health and safety criteria, but the healthcare industry lobbied for exceptions that exist to this day and permit nursing homes to function even when they do not meet prescribed, minimum standards.[35] One problem is that the long-term care industry has historically defined quality of care issues through medical treatment such as ensuring proper medication, maintaining weight, and avoiding bedsores rather than through adequate staffing, ensuring a living wage for long-term care workers, and upholding workplace rights.[36] It is not

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27. *See* GAWANDE, *supra* note 20, at 63–65 (describing the dismal conditions for older adults in India who lack financial security or family to care for them).

28. *See* NAT'L ACADS. OF SCIS., ENG'G, & MED., *supra* note 2, at 48; GAWANDE, *supra* note 20, at 63.

29. GAWANDE, *supra* note 20, at 68–69.

30. *Id.* at 70–71.

31. *Id.* at 71 ("[Nursing homes] were never created to help people facing dependency in old age. They were created to clear out hospital beds—which is why they were called 'nursing' homes.").

32. NAT'L ACADS. OF SCIS., ENG'G, & MED., *supra* note 2, at 49.

33. *Id.* at 48.

34. *Id.*

35. *See* GAWANDE, *supra* note 20, at 71–72 (noting that initially "[a] significant number of hospitals . . . couldn't meet those standards" required by Medicare).

36. *See id.* at 75; NAT'L ACADS. OF SCIS., ENG'G, & MED., *supra* note 2, at 1–4.

surprising, then, that poor quality of care has plagued the long-term care industry from the very beginning.[37]

A large component of the problem is that caregiving for older people, especially in the modern era, "is an overwhelming combination of the technological and the custodial."[38] The burdens of caregiving include cleaning, shopping, cooking, feeding, bathing, diapering, dressing, transporting to medical appointments, and administering medicine on a set schedule.[39] Many older adults require what amounts to "around-the-clock" care that is both physically demanding and psychologically exhausting, and it is not unusual for long-term care aides to "work for hours on end without time for rest."[40]

In stark contrast to the enormous amount of work that long-term care aides perform is the amount of pay they receive. In 2020, the mean hourly wage for nursing home aides was $15.41 (or an annual wage of $32,050), with the lowest paid aides earning less than $22,750 per year, while the median annual earnings for all long-term care aides ranged from $16,200 to $20,200.[41] Long-term care aide pay has been characterized as "persistently and notoriously low,"[42] especially given the complexity and multidimensionality of the work they perform. Long-term workplaces also often do not provide adequate support in the form of staffing and training, which can lead to on-the-job injuries.[43] Moreover, most caregivers are not provided health insurance or retirement benefits.[44] Many have to work multiple jobs to make ends meet and even then, "34 percent . . . require some form of public assistance, and

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37. GAWANDE, *supra* note 20, at 71–72.

38. *Id.* at 85.

39. *See id.* at 86; Rosenfeld, *supra* note 1, at 320; Zallman et al., *supra* note 8, at 920–21.

40. Rosenfeld, *supra* note 1, at 315–16, 323; *see also* John D. Blum & Shawn R. Mathis, *Forgotten on the Frontlines: The Plight of Direct Care Workers During COVID-19*, 98 U. DET. MERCY L. REV. 325, 329 (2021) ("The work of a caregiver is emotionally taxing and physically demanding; the injury rates for [aides] are high due to the physical demands inherent in providing assistance with activities of daily living.").

41. NAT'L ACADS. OF SCIS., ENG'G, & MED., *supra* note 2, at 257; Blum & Mathis, *supra* note 40, at 340; *see also* Rosenfeld, *supra* note 1, at 322–23 (stating that the average hourly wage for home care aides in 2019 was $12.71 and positions frequently lack benefits such as health insurance).

42. Blum & Mathis, *supra* note 40, at 340 (quoting STEPHEN CAMPBELL ET AL., CARING FOR THE FUTURE: THE POWER AND POTENTIAL OF AMERICA'S DIRECT CARE WORKFORCE 16 (2020), https://www.phinational.org/caringforthefuture/ [https://perma.cc/T2C6-8GEE]).

43. *See* NAT'L ACADS. OF SCIS., ENG'G, & MED., *supra* note 2, at 221, 257.

44. *See id.* at 258.

many live in poverty."[45] As one article put it, long-term caregivers are "underpaid, undertrained, and undervalued."[46]

Dismal working conditions and poverty wages have led to serious staffing and labor shortages industry wide.[47] Health scholars predict that long-term care shortages will only increase as America's population ages; indeed, there will be a need for 650,000 additional long-term care workers in the next decade alone.[48] "[I]n 2015, around 14 million Americans needed long-term care."[49] "That number is expected to hit 22 million by 2030."[50] Additionally, older adults who prefer to age in place will be unable to find long-term care aides to assist them in their homes, thereby forcing them into already over-crowded long-term care facilities.[51]

The dismal state of the U.S. long-term care industry should matter to all Americans who will grow old. As one scholar puts it, "[a] consequence of greater longevity is greater infirmity later in life that could require care in a skilled nursing facility . . . [one study shows that if a person lives to sixty-one, they] are likely to spend at least one night . . . in a nursing home."[52] Similarly, Gawande writes that instead of being "struck dead out of the blue" most people "spend significant periods of [their] lives too reduced and debilitated to live independently."[53] It is often "not death that the very old . . .

45. *Id.*

46. Blum & Mathis, *supra* note 40, at 326.

47. Rosenfeld, *supra* note 1, at 319–22; *see also* Zallman et al., *supra* note 8, at 919–20; NAT'L ACADS. OF SCIS., ENG'G, & MED., *supra* note 2, at 257 ("[Nursing home aides] earn little more than cashiers ($25,020 per year), food service workers ($24,130 per year), or retail sales workers ($27,320 per year). A 2021 story found that many nursing home workers were leaving for jobs at Amazon."); Liz Donovan & Muriel Alarcón, *Long Hours, Low Pay, Loneliness and a Booming Industry*, N.Y. TIMES (Nov. 1, 2021), https://www.nytimes.com/2021/09/25/business/home-health-aides-industry.html [https://perma.cc/S4VP-D4K4].

48. Zallman et al., *supra* note 8, at 920; Rosenfeld, *supra* note 1, at 321; *see also* NAT'L ACADS. OF SCIS., ENG'G, & MED., *supra* note 2, at 257 ("As the demand for direct care workers increases [in the nursing home context], nursing homes in the United States will need to fill approximately 561,800 nursing assistant jobs between 2019 and 2029.").

49. Brendan Williams, *The Long-Term Gender and Race Issues in Long-Term Care*, 8 LINCOLN MEM'L U. L. REV. 261, 264 (2020) (quoting Paul Osterman, *Why Home Care Costs Too Much*, WALL ST. J. (Sept. 12, 2017), https://www.wsj.com/articles/why-home-care-costs-too-much-1505256809).

50. *Id.*

51. Rosenfeld, *supra* note 1, at 336 ("The impending shortage of home care workers threatens to leave elderly and disabled individuals without the services they need to remain in their communities.").

52. Williams, *supra* note 49, at 261.

53. GAWANDE, *supra* note 20, at 55.

fear," but rather "what happens short of death[,] . . . losing [one's] way of life" and becoming dependent on others.[54] Given that about half of the U.S. population will spend a year or more of their lives in a nursing home, addressing the current long-term care crisis should be of tantamount importance in order to ensure that nursing homes and other long-term care settings provide quality care to each person who has the good fortune of becoming an older adult.[55]

A. A Vulnerable Workforce Serving a Vulnerable Population

Long-term care is the site of two of America's most vulnerable populations: older adults and low-wage im/migrant workers.[56] This was on devastating display during the COVID-19 pandemic. Although problems in the long-term care industry predated COVID-19, the pandemic "lifted the veil, revealing and amplifying long-existing shortcomings in nursing home care such as inadequate staffing levels, poor infection control, failures in oversight and regulation, and deficiencies that result in actual patient harm."[57] The pandemic also "further exacerbated . . . preexisting shortcomings" in the long-term care industry that "underappreciated, undercompensated, and underprepared" direct care aides whose jobs were "deemed among the most dangerous . . . in the country" during COVID-19.[58]

For example, data now shows that the pandemic significantly impacted both older adults and aides in long-term care facilities. Older adults "suffered disproportionately high rates of [COVID-19] cases, hospitalizations, and deaths compared to the general population . . . [and] despite making up less than one-half of one percent of the U.S. population, as of October 2021, nursing home residents accounted for approximately 19 percent of all COVID-19 deaths."[59] Caregivers suffered during the pandemic as well. In addition to the "more than 149,000 nursing home residents" who died from the virus, "more than 2,200 staff members" died from COVID-19 as of February 2022.[60] These stark figures led a collective of healthcare

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54. *Id.* ("Old age is a continuous series of losses.").
55. *See id.* at 72.
56. NAT'L. ACADS. OF SCIS., ENG'G, & MED., *supra* note 2, at 2 ("The pandemic also highlighted nursing home residents' vulnerability and the pervasive ageism evident in undervaluing the lives of older adults.").
57. *Id.*
58. *Id.* at 27.
59. *Id.* at 2.
60. *Id.*

professionals to observe that "[t]he ubiquity of COVID-19 cases and deaths in nursing homes of all types . . . is indicative of a more systemic problem, one that will require systemic solutions."[61] Systemic solutions are especially important in this moment when extreme "[b]urnout and turnover" among the long-term care workforce from the pandemic is expected to further increase nationwide shortages in long-term caregiving.[62]

One systemic solution is to focus on improving working conditions for long-term caregivers, which in turn will improve older adults' quality of life in long-term care settings. Before proposing specific reforms, however, it is necessary to understand the predicament of workers who provide elder care in America. This Article and the Study on which it was based focuses on a growing subset of the long-term care worker population—im/migrant women.

Today, America's long-term care industry relies heavily on the labor of im/migrant women.[63] Over the past half-century, all manner of domestic jobs, including direct caregiving, have become im/migrant, female-dominated occupations.[64] This is partly due to the steady, willing, and sometimes desperate labor force from the southern border, many of whom are women who were caretakers in their respective countries of origin before coming to the United States.[65] It is also a consequence of native-born Americans' reluctance to engage in certain types of undesirable work, including the tiresome, tedious, and sometimes dangerous work of long-term caregiving.[66]

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61. *Id.*

62. *Id.* at 27; *see also* Ruqaiijah Yearby & Seema Mohapatra, *Structural Discrimination in COVID-19 Workplace Protections*, HEALTH AFFS. FOREFRONT (May 29, 2020), https://www.healthaffairs.org/content/forefront/structural-discrimination-covid-19-workplace-protections (discussing structural and systemic discrimination impacting women of color working in the home healthcare industry).

63. *See* Rosenfeld, *supra* note 1, at 324 (stating that "women and individuals from Black and Latinx communities dominate home care occupations" with "[n]early ninety percent" being female, two-thirds being people of color, ten and a half percent being noncitizens with work authorization, and approximately four percent being non-work authorized individuals); MILKMAN, *supra* note 25, at 113 (stating that in 2012 there were approximately two million undocumented in-home workers in the United States including direct-care aides); *see also* Lightman, *supra* note 9, at e1343 (stating that Canada's long-term care workforce is similarly made up of "[i]mmigrant and racialized women").

64. MILKMAN, *supra* note 25, at 114 (stating that in New York City "81 percent of domestic workers [including home-care aides] were foreign-born in 2016, while the nationwide figure that year was 34 percent"); Zallman et al., *supra* note 8, at 919 ("[Based on] nationally representative data, we found that in 2017 immigrants accounted for . . . 23.5 percent of formal and nonformal long-term care sector workers.").

65. MILKMAN, *supra* note 25, at 113–14; *see* Milczarek-Desai, *supra* note 3, at 1191–92.

66. MILKMAN, *supra* note 25, at 113.

Yet a third reason is that long-term care work is "socially and economically devalued" and "3D: dirty, difficult and . . . highly dangerous."[67] In other words, long-term care work has become stigmatized as "immigrant's work" or performed by "undesirable foreigners,"[68] and is associated with low pay and low social standing[69] despite its high demand.[70]

As a result, the current, long-term care workforce is made up of "low-paid, racially diverse, primarily female workers"—in other words, poor women of color, many of whom are im/migrants who "fill critical gaps in the direct-care workforce."[71] Studies show that 92% of long-term care aides in nursing homes are women, and "[o]f the over 2.1 million workers providing in-home care, 87% are women."[72] Additionally, data from 2017 shows that at that time, "[m]ore than one-quarter (27.5 percent) of direct care workers and 30.3 percent of nursing home housekeeping and maintenance workers" were im/migrants, and another study estimates "that one in four [direct care workers] was born outside" of the United States.[73] "Over one million workers, or 23.5 percent, in the formal and nonformal long-term care sector" many of whom were im/migrants were Latinx, Asian or Black.[74] This is significant because "when entering the workforce, [im/migrant] workers face additional barriers, such as barriers in language, health literacy, and [lack of insurance] compared with native-born individuals."[75] In short, America's long-term care system is dependent on the work of im/migrants, many of whom are women, "who rank among the most disadvantaged of essential workers."[76]

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67. Lightman, *supra* note 9, at e1350; *see also* Rosenfeld, *supra* note 1, at 323–24 (discussing the low wages of long-term care aides).

68. Lightman, *supra* note 9, at e1349; MILKMAN, *supra* note 25, at 113.

69. Rosenfeld, *supra* note 1, at 323 (explaining im/migrant women aides' low pay and status "reflects deeply rooted racism and sexism" because "[n]egative attitudes toward work performed in the home stem from slavery, when white slave holders forced Black women to serve as caregivers").

70. MILKMAN, *supra* note 25, at 108 ("[B]y 2012, direct-care aides for the elderly and disabled made up about half of all in-home workers."); Rosenfeld, *supra* note 1, at 315 ("[A] looming shortage of over half a million direct care workers within the next decade threatens to leave elderly and disabled individuals without much-needed care.").

71. NAT'L ACADS. OF SCIS., ENG'G, & MED., *supra* note 2, at 63, 257.

72. Williams, *supra* note 49, at 262–63.

73. Zallman et al., *supra* note 8, at 919; *see also* Blum & Mathis, *supra* note 40, at 329.

74. Zallman et al., *supra* note 8, at 923.

75. NAT'L ACADS. OF SCIS., ENG'G, & MED., *supra* note 2, at 257.

76. Blum & Mathis, *supra* note 40, at 326. This also includes housekeeping and maintenance jobs in which im/migrants also make up a disproportionate share of workers. Zallman et al., *supra* note 8, at 924.

The low pay and stigma associated with caregiving, however, are not the only reasons that im/migrant women aides occupy a marginalized and vulnerable position within the long-term care industry. Im/migrant aides also are more likely to experience violations of their employment and labor rights in the workplace.[77] Data shows that the long-term care industry "has high rates of on-the-job injuries (higher than mining and oil and gas extraction) and there is a high risk of sexual harassment and assault for its primarily female workforce."[78] No research predating the Study that is the subject of this Article, however, has interviewed im/migrant women aides to determine the extent of the workers' rights violations they have experienced in their long-term care workplaces.

Most long-term caregivers enjoy the same employment and labor rights as all other workers, but this was not always the case. Historically "tied to . . . slavery and economic exploitation of African American women," most caregiving work "was deliberately excluded from federal workforce protections."[79] From its inception until very recently, the Fair Labor Standards Act's minimum wage and overtime requirements did not apply to employers of long-term aides who provided caregiving services in private homes.[80] This changed in 2015 when the Obama Administration extended these labor protections to most home health and personal service aides.[81] Nevertheless, even after the law's minimum wage and overtime requirements were extended, im/migrant women have continued to experience significant violations of their workers' rights.[82]

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77. MILKMAN, *supra* note 25, at 115; Rosenfeld, *supra* note 1, at 315 ("Existing U.S. labor and immigration laws render long-term care work undesirable and providers prone to exploitation.").

78. Williams, *supra* note 49, at 264 (quoting Chris Farrell, *The Shortage of Home Care Workers: Worse than You Think*, FORBES (Apr. 18, 2018), https://www.forbes.com/sites/nextavenue/2018/04/18/the-shortage-of-home-care-workers-worse-than-you-think/#7e1a500023ddd [https://perma.cc/W6H4-6LW5]); *see also* Blum & Mathis, *supra* note 40, at 329 (stating that im/migrant aides also must deal with "aggression . . . and discrimination" from the older population they care for and their employers).

79. Williams, *supra* note 49, at 263 (quoting Premilla Nadasen, *Perspectives: Activists Have a Stake in How History Is Told: Case of African American Household Workers*, L. AT THE MARGINS (Mar. 4, 2019), http://lawatthemargins.com/african-american-household-workers/ [https://perma.cc/BU8D-9U7G]).

80. Rosenfeld, *supra* note 1, at 324–30; Williams, *supra* note 49, at 266.

81. Williams, *supra* note 49, at 266.

82. Rosenfeld, *supra* note 1, at 324–30; GRACE CHANG, DISPOSABLE DOMESTICS: IMMIGRANT WOMEN WORKERS IN THE GLOBAL ECONOMY 56–58 (2000) (giving examples of workers' rights violations faced by im/migrant women).

When they experience workplace rights violations, im/migrant women aides, like other low-wage, im/migrant workers in America, often cannot access workers' rights for several interconnected reasons. First, many of these workers lack knowledge of their workers' rights due to linguistic and cultural barriers as well as lack of access to free legal information and assistance.[83] Second, and more perniciously, they fear that they will be subjected to employment retaliation, including loss of work and, if they lack work authorization, the threat of immigration enforcement, if they dare speak out about or file agency complaints regarding violations of their workplace rights.[84] Finally, numerous empirical studies have shown that state and federal employment and labor agencies are unlikely to enforce workers' rights absent complaints by employees due to a lack of resources.[85]

Because im/migrant workers are unlikely to file agency complaints, their workers' rights violations often go unnoticed and unremedied.[86] Due to the severe shortage of long-term care workers in the U.S., individual and institutional employers are increasingly likely to hire unauthorized workers to perform direct care work for older Americans.[87] These workers, in turn, are the least likely to complain about violations of their workers' rights due to their fear of deportation.[88]

Another barrier faced by im/migrant women long-term aides is misclassification by employers who treat them as independent contractors, even when they are properly employees, because employers do not want to run afoul of immigration laws and pay employment taxes.[89] When employers

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83. *See* MILKMAN, *supra* note 25, at 115 (explaining that many of these workers are unaware of their legal rights); Milczarek-Desai, *supra* note 3, at 1214.

84. MILKMAN, *supra* note 25, at 115 (stating that domestic workers, which include long-term care aides, "are unaware of their legal rights, and those who are aware often fear retaliation and therefore fail to complain about violations, especially if they are unauthorized immigrants"); Milczarek-Desai, *supra* note 3, at 1189–94.

85. Milczarek-Desai, *supra* note 3, at 1189–94.

86. *Id.*

87. Rosenfeld, *supra* note 1, at 321–22 (demonstrating that the growing elderly population and increased interest in home healthcare are leading to a marked rise in demand for direct care); Paula Span, *If Immigrants Are Pushed Out, Who Will Care for the Elderly?*, N.Y. TIMES (Feb. 2, 2018), https://www.nytimes.com/2018/02/02/health/illegal-immigrants-caregivers.html [https://perma.cc/8L22-FHMW] (describing the shadow long-term care market that employs workers outside of the formal employment system).

88. Milczarek-Desai, *supra* note 3, at 1187–89.

89. *See, e.g.*, Rosenfeld, *supra* note 1, at 330–31 (explaining that many employers of long-term aides misclassify employees as independent contractors, allowing employers to save on taxes and avoid liability for discrimination); Rebecca Smith & Catherine Ruckelshaus, *Solutions, Not Scapegoats: Abating Sweatshop Conditions for All Low-Wage Workers*, 10 N.Y.U. J. LEGIS. &

misclassify aides, they also succeed in evading workers' rights laws because, unlike employees, independent contractors do not benefit from overtime, minimum wage, paid sick leave, occupational safety and health, and anti-discrimination laws.[90]

Taken together, the obstacles outlined above result in im/migrant women long-term care aides being among the most vulnerable workers in the country. Yet, the long-term care industry has paid scant attention to these workers even though they increasingly form the backbone of care provision for older Americans. In light of this glaring omission, experts who study long-term care have called for the industry to address the workplace problems that plague the long-term care workforce.[91] This Study and Article responds by eliciting the voices of im/migrant women long-term care aides in order to uncover their experiences and, based on their narratives, make recommendations for reforms.

B. Amplifying Im/migrant Women Aides' Voices Through Critical Legal Theory and Intersectional Care Work Scholarship

Before turning to the Study's findings in Parts II and III, it is important to understand the theoretical framework that informs the Study's design. Because im/migrant women long-term care aides and their labor are "almost defined by invisibility,"[92] and often work in a shadow workforce that is by design difficult to locate,[93] finding workers to participate in a study of this nature is challenging. Moreover, even once located, these workers' precarious economic positions and often uncertain immigration status can make them reluctant to talk about their experiences for fear of employer retaliation and/or immigration enforcement.[94] For these reasons, the Study upon which this Article is based was designed specifically with im/migrant women aides' precarity in mind through the use of two theoretical

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PUB. POL'Y 555, 562 (2007) (demonstrating that enterprises can avoid certain taxes by classifying employees as independent contractors).

90. Milczarek-Desai, *supra* note 3, at 1176, 1188.

91. *See* NAT'L ACADS. OF SCIS., ENG'G, & MED., *supra* note 2, at 508–10 (recommending, among other things, addressing low wages and a lack of benefits).

92. Williams, *supra* note 49, at 272 (quoting Ivette Feliciano & Corinne Segal, *'You're Mostly Isolated and Alone.' Why Some Domestic Workers Are Vulnerable to Exploitation*, PBS (Aug. 12, 2018), https://www.pbs.org/newshour/nation/ai-jen-poo-domestic-workers-exploitation [https://perma.cc/ERG5-7MKD]).

93. *See* Span, *supra* note 87 (explaining that many long-term care aides work in a "gray market," where workers are often paid "under the table").

94. Lightman, *supra* note 9, at e1350.

frameworks—Critical Race Theory ("CRT"), which comes from the legal field, and Intersectional Care Work Scholarship ("ICWS"), which is based in healthcare and the social sciences. These theories help to explain why im/migrant women's voices have heretofore been ignored by the long-term care industry and point towards avenues for amplifying them in a manner that can result in much-needed reform.[95]

Both CRT and ICWS theorize that the confluence of multiple identities creates unique challenges for individuals who fit into more than one identity category.[96] This concept, dubbed "intersectionality" by leading CRT scholar Kimberlé Crenshaw, "refers to 'the interaction between gender, race, and other categories of difference in individual lives, social practices, institutional arrangements, and cultural ideologies and the outcomes of these interactions in terms of power.'"[97] For women of color, intersectionality often results in multiple oppressions that are largely hidden from view.[98] Similarly, ICWS provides "the critical insight that race, class, gender, sexuality, ethnicity, nation, ability, and age operate not as unitary, mutually exclusive entities, but as reciprocally constructing phenomena that in turn shape complex social realities."[99] It then applies the idea of intersectionality to im/migrant women aides to show how these caregivers are negatively influenced by their gender and race within the larger socio-economic and political context in which they labor.[100]

Within the healthcare industry, ICWS "highlights how gendering [and] racializing . . . are associated with paid caring jobs."[101] First, ICWS argues that im/migrant women aides are subject to "gendered understandings of care

95. *See id.* at e1348 (stating that despite being essential frontline workers, healthcare aides or "HCAs," many of whom are im/migrant women, have not had input into how to reform or improve the long-term care industry).

96. KHIARA M. BRIDGES, CRITICAL RACE THEORY: A PRIMER 233 (2018); Lightman, *supra* note 9, at e1344 (demonstrating how intersectionality relates to im/migrant long-term care workers).

97. BRIDGES, *supra* note 96, at 233 (quoting Kathy Davis, *Intersectionality as Buzzword: A Sociology of Science Perspective on What Makes a Feminist Theory Successful*, 9 FEMINIST THEORY 67, 68 (2008)).

98. *Id.* at 233–35.

99. Lightman, *supra* note 9, at e1344 (quoting Patricia Hill Collins, *Intersectionality's Definitional Dilemmas*, 41 ANN. REV. SOCIO. 1, 2 (2015), https://www.annualreviews.org/doi/pdf/10.1146/annurev-soc-073014-112142 [https://perma.cc/2SVP-LNU2]).

100. *Id.* at e1344–50.

101. *Id.* at e1344.

work as essentially a feminine undertaking."[102] Second, ICWS reveals that even though im/migrant women aides fill a critical labor shortage in the long-term care industry, many lack documentation and therefore reflect "the undesirability of non-white individuals as (future) permanent members of society."[103] Even though "America's care economy has a long, global, and racialized ecology, from the sale of imported slaves as wet nurses to more recent migrations of healthcare professionals from the Global South to the Global North,"[104] im/migrant women aides' lack of permanent status results in the devaluation of their work.[105] Third, ICWS demonstrates that this confluence of gender, race, and immigration status, when situated within a capitalist system that "take[s] care work for granted,"[106] produces labor that is cheap even when it is essential.[107] In other words, im/migrant women's caregiving work is viewed as "one of Nature's 'free gifts' [even though it is] . . . neither free nor gifted."[108]

Taken together, CRT and ICWS frameworks posit that intersectionality renders im/migrant women aides' labor invisible while simultaneously delegitimizing their voices. This hypothesis is supported by the only other published study to have interviewed im/migrant women long-term care aides. That research, which involved Canadian im/migrant aides working during COVID-19, found that its participants believed that they were underpaid because they were immigrants, their work was invisible, and they were unheard even when they dared to speak up about issues in long-term care, like the fact that profits were prioritized over quality care for older adults.[109] The study also found that im/migrant women aides in Canada experienced social exclusion because their input was not "actively solicited . . . on how best to respond to the COVID-19 outbreaks" and that their "voices were and are often dismissed or made marginal" due to the fact that long-term care aides are "overwhelmingly immigrant, racialized women."[110]

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102. *Id.*; *see also* RAJ PATEL & JASON W. MOORE, A HISTORY OF THE WORLD IN SEVEN CHEAP THINGS: A GUIDE TO CAPITALISM, NATURE, AND THE FUTURE OF THE PLANET 133 (2017) (arguing that female caregivers are "expected to have certain skills *because they are women*").

103. Lightman, *supra* note 9, at e1344.

104. PATEL & MOORE, *supra* note 102, at 134.

105. Lightman, *supra* note 9, at e1345–48.

106. PATEL & MOORE, *supra* note 102, at 133.

107. Lightman, *supra* note 9, at e1344; *see also* PATEL & MOORE, *supra* note 102, at 133–37 (asserting that the challenges faced by direct care workers stem in large part from the racialized, gendered, and cultural assumptions around women who provide caregiving labor).

108. PATEL & MOORE, *supra* note 102, at 133.

109. Lightman, *supra* note 9, at 7.

110. *Id.* at 6.

CRT and ICWS framings reveal a dearth of im/migrant women's voices in conversations around long-term care reform, especially regarding these caregivers' perspectives on their working conditions and workplace rights. This has led to calls for research that focuses on "the unique vulnerabilities experienced by different subgroups of [direct care] workers, based on unique identifiers such as age, gender, race, education, class, citizenship, disability, and migration status."[111] This Article and the Study on which it is based answer that call by focusing on and elevating the voices of the fast-growing caregiver population of im/migrant women who face intersectional identity challenges within the long-term care industry.[112] The next section describes the Study's design, which is informed by CRT and ICWS frameworks' understanding of why workers in this population may be difficult to locate and reluctant to share their experiences.

II. METHODOLOGY AND DATA COLLECTION

A. Study Design for a Participant Sample of a Hard-To-Reach Population

As set forth above, the core motivation for this Study and Article is to amplify the voices and narratives of im/migrant women aides to recommend reforms that could make meaningful improvements in Arizona's long-term care workforce with implications for the rest of the country. Im/migrant women aides in Arizona are often monolingual Spanish speakers without legal immigration status, and as a result, are a hard-to-reach population and significantly difficult to recruit as study participants.[113] Generally, hard-to-reach populations have limited English proficiency, are low-income, low-literacy, disadvantaged, underserved, in temporary employment, and

111. Gunn et al., *supra* note 16, at 5.

112. Health Justice scholarship studying structural discrimination faced by home healthcare aides, who are disproportionately low-wage women of color, similarly advocates for the elevation of home healthcare workers' voices and points to local government-instituted truth and reconciliation commissions as a way to accomplish this goal. Raqaiijah Yearby, *The Social Determinants of Health, Health Disparities, and Health Justice*, 50 J. L., MED. & ETHICS 641, 646–47 (2022), https://doi.org/10.1017/jme.2023.3 [https://perma.cc/S8D2-224J].

113. Jonathan S. Feinstein & Edward H. Kaplan, *Why Hidden Populations Are So Hard To Count*, YALE INSIGHTS (Dec. 13, 2018), https://insights.som.yale.edu/insights/why-hidden-populations-are-so-hard-to-count [https://perma.cc/6SBV-ZHW7].

minoritized.[114] Informed by CRT and ICWS frameworks, this Study was designed as a qualitative, observational study that centered around identification and recruitment of a hard-to-reach population to record their experiences and perspectives as long-term care aides, including issues surrounding their workers' rights.

Inclusion criteria required that the study participants be: (1) over eighteen years of age; (2) im/migrant women; and (3) employed as long-term care aides. Notably, study participants were not required to speak or understand English as that would undermine the ability to recruit from this hard-to-reach population. All study participants either currently reside in Southern Arizona or had residence there during their employment as long-term care aides. Arizona has a population of 7.45 million people and includes both the major metropolitan areas of Tucson and Phoenix, several smaller cities and towns, and rural areas.[115] A third of Arizona's population (30.7%) report Latino origin.[116] Prior to conducting study participant recruitment, this study received approval by the University of Arizona Human Subjects Institutional Review Board (IRB# 2107021917).

Recruitment primarily occurred through identification of former clients of the Law Clinic who met the inclusion criteria. Additionally, former clients who were enrolled in the Study suggested names of other im/migrant women aides who met the inclusion criteria. Individuals were screened and enrolled if they met the inclusion criteria and volunteered as participants. Potential participants were initially screened via phone in their preferred language, which was Spanish for all suggested participants, to determine eligibility and obtain oral informed consent.

B. Eliciting the Narratives

Individuals who met the inclusion criteria were invited to attend a one-time, in-person visit at the study site for ninety minutes, which consisted of the research team: Co-PIs SMD and TS, a BA law student interpreter who is a first-generation immigrant, a media/audio specialist, and three JD students. The in-depth interviews were conducted by JD students with oversight from

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114. Billie Bonevski et al., *Reaching the Hard-To-Reach: A Systematic Review of Strategies for Improving Health and Medical Research with Socially Disadvantaged Groups*, BMC MED. RSCH. METHODOLOGY 14, 42 (2014), https://doi.org/10.1186/1471-2288-14-42 [https://perma.cc/45K5-9E2L].

115. *Arizona Population 2023*, WORLD POPULATION REV., https://worldpopulationreview.com/states/arizona-population [https://perma.cc/Q9TB-B9J9].

116. *Id.*

Co-PIs and digitally recorded by the media-audio specialist. Each interview followed a semi-structured, bilingual interview guide[117] in English and Spanish where the questions were initially jointly developed by Co-PIs and piloted, then refined in an iterative process with the research team. The interviews occurred between October 2021 and March 2022 at the Law Clinic. Co-PI TS used Zoom video conferencing to join most interview sessions.

Most study participants spoke only Spanish, so in order to obtain meaningful consent it was critically important to provide Spanish translations in the initial screening, the interview guide, and by an interpreter during the entire ninety-minute interview session. In the initial screening, this included a process whereby the BA law student interpreter translated the consent form and read the form to participants in Spanish. If a participant had questions regarding the content of the consent form, the BA law student interpreter would interpret the participant's questions to Co-PI SMD, who would respond to the question, which would then be interpreted back into Spanish for the participant's benefit and understanding. The BA law student interpreter also engaged in the Spanish translation of the bilingual interview guide, which is detailed below. Finally, the BA law student interpreter provided interpretation throughout the interview sessions.

Interview sessions were intentionally scheduled for ninety minutes, as opposed to one-hour sessions, to facilitate the extra time involved when interpreting the interviewers' questions and participants' responses. This extra time was essential for both the practicalities involved in interpreting from English to Spanish and Spanish to English, as well as to build a rapport given the sensitive nature of questions concerning immigration status and employment.

1. Development and Delivery of a Bilingual Interview Guide[118]

The semi-structured interview guide helped ensure that individual interviews had focused discussions around the aides' perceptions around awareness of and access to workers' rights. The interview guide was based on previous research and adhered to the Consolidated Criteria for Reporting

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117. *See infra* Appendix A for the complete interview guide in English and Spanish.
118. *See infra* Appendix A.

Qualitative Research,[119] which offers a thirty-two-item checklist to facilitate in-depth interviews. The criteria and checklist informed how the Co-PIs formed the research team and designated roles, designed the study, and conducted analysis and interpretations based on the findings.

The resulting interview guide included a total of eighteen questions that were grouped into three major content areas: (1) characteristics and experiences of the im/migrant woman aide in the workplace; (2) awareness and understanding of workers' rights; and (3) access to workers' rights.[120] Each interview concluded with encouraging the participant to speak openly and broadly about her experience as an aide with the question, "*Is there anything else you'd like to share with us?*"[121]

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119. Allison Tong et al., *Consolidated Criteria for Reporting Qualitative Research (COREQ): A 32-Item Checklist for Interviews and Focus Groups*, 19 INT'L J. QUALITY HEALTH CARE 349, 352 (2007), https://doi.org/10.1093/intqhc/mzm042 [https://perma.cc/R4RP-VDXY].

120. *See infra* Appendix A.

121. *See infra* Appendix A.

Table 1. Summary of Interview Guide Three Content Areas

I.	**Characteristics and experiences in the workplace**	Study participants provided sociodemographic information, including age, education level, income, and immigration status. They also described their role as a long-term care aide, noting the length of time employed, duties and responsibilities, and the conditions of the workplace.
II.	**Awareness and understanding of workers' rights**	Interview guide questions checked for understanding on whether participants are aware of workers' rights laws and policies, including for undocumented workers, and how these rights would apply to them.
III.	**Access to workers' rights**	The final section of the interview guide was composed of open-ended and clarifying questions, along with probes, to facilitate participants sharing personal experiences for when they felt their workers' rights were not upheld.

Before each interview session, a member of the research team provided an explanation of the Study, asked and allowed time for questions, and ensured informed consent from the participant. At the end of the interview session, all participants received a gift card valued at forty-nine dollars[122] to Amazon to compensate them for their time.

122. The gift cards were valued at $49 because the University of Arizona, pursuant to state requirements, conditions study participants' receipt of gift cards valued at or above $50 on provision of social security numbers. Given that some of the Study participants lacked immigration documentation and/or social security numbers, Co-PIs decided to limit the gift cards to $49 although they would have preferred to provide more compensation to participants for their time.

Following the interview guide, each session began with background questions regarding the participant's experiences in the long-term care workplace, including the size of facilities, ratio of staff to residents, training received, and expected duties.[123] The initial section of the interview guide also collected information around personal demographics, such as age, education level, income, and immigration status.[124] As part of these background questions, the research team also asked open-ended questions with prompts when needed.[125]

To help illustrate this approach, Question #5 in the interview guide asks, "*What sorts of work do you typically do as part of job?*"[126] The interviewer would ask that question and, if the participant hesitated, then would elaborate with a prompt, "*Tell us about a typical day*."[127] This flexible approach, which provided structure with standard examples, such as medication assistance and companionship, often helped the participant to describe her lived experience at the workplace in a rich, detailed, personal narrative about a world that is often hidden from view.

The next two sections of the semi-structured interview guide elicited responses about awareness and access to workers' rights.[128] The questions and related probes helped participants provide detailed descriptions about their perceptions of workers' rights in the long-term care industry, and their needs, preferences, values, and ideas to help better inform best practices going forward. If the participant indicated they were unaware of workers' rights, then interviewers would offer examples, such as whether they thought they had rights to paid sick leave, a workplace environment free from discrimination and harassment, overtime pay, and minimum wage.[129]

Study participants were asked to describe any workplace rights that they knew about and were entitled to and their experiences accessing those rights.[130] They were also asked about whether they thought those rights were important, and if so, which ones and why.[131] The interview sessions concluded with an open-ended question to solicit from participants their recommendations for reform in Arizona and in the long-term care industry in

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123. *See infra* Appendix A.
124. *See infra* Appendix A.
125. *See infra* Appendix A.
126. *See infra* Appendix A.
127. *See infra* Appendix A.
128. *See infra* Appendix A.
129. *See infra* Appendix A.
130. *See infra* Appendix A.
131. *See infra* Appendix A.

general.[132] Specifically, they were asked if there are particular interventions that could help im/migrant women aides better understand and access their workplace rights.[133] The final question in the interview guide invited the participants to share any additional information that had not been explicitly asked about their workplace experiences.[134]

2. Role of the Law Clinic and Law Students in Conducting a Research Study

An important aspect of this Study is that it drew participants who were former clients of the Law Clinic. While in operation, the Law Clinic provided much-needed services to marginalized and vulnerable worker communities and simultaneously trained the next generation of lawyers in how to provide low-wage workers with meaningful education, training, and assistance. Moreover, BA law students—many of whom came from immigrant backgrounds—interned with the Law Clinic to provide law students who are not bilingual with interpretation and translation services and to serve as welcome cultural and linguistic bridges for im/migrant workers who had experienced violations of their workers' rights. Together, JD students, BA law students, and low-wage, im/migrant workers formed a dynamic triad[135] that gained the recognition and trust of im/migrant communities and workers throughout the state.

Because im/migrant women long-term care aides are a hard-to-reach population, the trusting connections the Law Clinic built with these workers was instrumental in recruiting Study participants. Once former Law Clinic clients agreed to participate in the Study, the research team engaged in clear communication regarding the difference between legal representation and the research purpose of the Study. To this end, at the start of each interview, study participants who were also former clients were reminded of this separation with the following language: "Today, we will be conducting an interview

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132. *See infra* Appendix A.

133. *See infra* Appendix A.

134. *See infra* Appendix A.

135. The concept of the "lawyer-client-interpreter triad" was intentionally used during the Study interviews because, in the legal practice context, this equal balance of power among lawyer, client, and interpreter ensures a client-centered experience, especially for individuals from marginalized and vulnerable communities. *See* Muneer I. Ahmad, *Interpreting Communities: Lawyering Across Language Difference*, 54 UCLA L. REV. 999, 1051–52 (2007) (discussing the critical role of interpreters in the lawyer-client relationship such that together, the lawyer, client, and interpreter form a "triad" that enhances client-centered lawyering).

about your experience as an im/migrant worker in the long-term care industry. This interview is part of a qualitative research study being facilitated by the Workers' Rights Clinic and is separate from representing your legal issue against your employer."[136]

Throughout the interview process, a BA law student served as a linguistic and cultural interpreter between JD student interviewers and Study participants. Speaking with the BA law student, who shared ethnicity, language, and many life experiences with the participants, visibly put the im/migrant women who were being interviewed at ease. The comfort that the BA law student brought to participants was especially notable when interviewees were discussing difficult workplace situations, many of which elicited tears around the table. In short, the BA law student facilitated and enhanced critical connections among the researchers, JD student interviewers, and the participants.

C. Thematic Analysis Coding

In the third and final stage of this study, from March to August 2022, the interviews that had been recorded by the media-audio specialist were professionally transcribed and translated from Spanish to English through contracted services. These files were then uploaded into Clio,[137] a secure database that could only be accessed by members of the research team. In addition, all participants names were erased with only a numerical value to denote which data file belonged to which interview session.

The translated interviews were anonymized and uploaded into NVivo,[138] a program that allows researchers to code transcripts for key themes to emerge. Descriptive statistics were used to summarize the study participants' sociodemographic characteristics and workplace data. Qualitative thematic analysis of the interviews was conducted by Co-PIs, who independently reviewed transcripts to create an initial framework for identification of themes and interpretation of data.[139] Major and minor themes were generated

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136. Interview Notes, Workers' Rights Clinic Archives (on file with authors).

137. Clio is a software package that is widely used by law school clinics and legal aid agencies to conduct intake and eligibility screening, case transfer, custom reporting, and other services. CLIO, https://www.clio.com/ [https://perma.cc/ZR5Z-CVV2].

138. NVivo is a software package that assists qualitative researchers in the collection, organization, analysis, visualization, and reporting of their data. NVIVO, https://lumivero.com/products/nvivo/ [https://perma.cc/G54F-ELJU].

139. *See* Virginia Braun & Victoria Clarke, *Using Thematic Analysis in Psychology*, 3 QUALITATIVE RSCH. PSYCH. 77 (2006) (explaining the significance of thematic analysis in

and iteratively reviewed between Co-PIs, and data were collated and coded into categories. Illustrative quotes were identified and extracted from the data. Co-PIs reexamined themes and codes in order to resolve discrepancies and ensure the reliability and validity of this process.

III. RESULTS: FINDINGS AND ANALYSIS

Twelve individuals were screened in total, of whom six were enrolled in the Study and completed the ninety-minute qualitative interviews. There were six individuals who were eligible under the inclusion criteria but did not enroll because they had scheduling challenges, childcare responsibilities, or transportation difficulties. All participants were currently or previously employed by a long-term care facility in Arizona and represented a hard-to-reach population with sociodemographic characteristics of being im/migrant women workers with limited English-proficiency, including low-income, low-literacy, disadvantaged, and underserved.

While the Study ended up with a small sample given the difficulty in identifying and recruiting members of this shadow workforce, the participants were diverse. (See Table 2 below.) Participants ranged from thirty-two to seventy-two years old with a median age of 49.5. They had worked as long-term care aides for as little as six months up to twenty-five years with a median experience of 13.6 years. One hundred percent of participants were of Latino ethnicity from Mexico and 66% were undocumented. The undocumented study participants came to the United States legally through tourist visas that eventually expired. In some cases, owners of long-term care facilities promised to petition for work permits as part of the hiring agreement but did not follow through. Most participants (83%) had a high school education, and two had college degrees from Mexico—one in business and the other in teaching and law.

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qualitative analytics); *see also* Amanda Owen-Smith & Joanna Coast, *Understanding Data Collection: Interviews, Focus Groups, and Observation*, *in* QUALITATIVE METHODS FOR HEALTH ECONOMICS (Joanna Coast ed., 2017) (discussing qualitative research design).

Table 2. Sociodemographic Characteristics of Study Participants

Interview	Age	Time as Aide	Education	Immigration Status
1	60	17 years	A law degree and teaching degree (from Mexico)	Undocumented for years, then gained resident status
2	72	25 years	High school; Certificate in Caregiving from Community College	Work authorization
3	32	6 months	Business degree (from Mexico)	Undocumented
4	43	17 years	High school and technical trainings for patients with Alzheimer's Disease	Undocumented
5	48	20 years	High school	Undocumented
6	42	2 years	Middle school and three years of technical school	Undocumented

Characteristics of the long-term care workplaces were generally similar in that they were all small employers where the aides worked in isolation caring for large resident caseloads, with ten or more residents as typical. The hours worked varied from eight hours per day to 24/7 on call if they lived on the premises, and the salary ranged from $2.30 per hour to $14 per hour. The majority of participants were paid below minimum wage, which in Arizona is $13.85 in 2023,[140] and there were other workers rights' violations in term of compensation, including no overtime or paid sick leave. None of the

140. INDUS. COMM'N OF ARIZ., NEW 2023 MINIMUM WAGE – EFFECTIVE (Jan. 1, 2023), https://www.azica.gov/sites/default/files/Minimum%20Wage%202023.pdf [https://perma.cc/5RFE-7W42].

employers provided benefits, such as health insurance or contributed to the aide's retirement. (See summary of long-term care workplace characteristics in Table 3.)

Table 3. Characteristics of Long-Term Care Workplaces

Interview	Hours	Income	Benefits	Staff to Resident Ratio
1	Minimum 8 hours per day to 10-14 hours per day	$7.50/hour	No benefits	One aide for 10-13 residents
2	9-5 Monday-Friday at one nursing home and night shift for 8 hours at another nursing home	$7.50/hour for years, but currently $14 for the past year	No benefits	One aide for 8-11 residents
3	12 to 14 hours per day for 7 days per week	$11 per hour	No benefits No days off	One aide for 8 residents
4	Worked continuously 24 hours a day for 15 days, then would have 15 days to rest	N/A	No benefits	One aide for 10-12 residents
5	10 hours per day 7 days a week	$9/hour, then increased to $11	No benefits	Only aide for older couple
6	Worked from 5:30am to 9:30pm and on-call 24/7	$2.30 per hour	No benefits	One aide for 6-9 residents

A. Lived Experiences in Arizona's Long-Term Care Workplaces

Three major themes related to the lived experiences of the participants were derived: (1) Routine and persistent employer violations of workers' rights; (2) Inadequate education and training for both owners and workers; and (3) Poor quality care for older adult residents. Eleven minor themes also emerged with three to four for each major theme that further elucidate the realities of these im/migrant women aides and consequences for quality care, especially during an infectious disease pandemic for long-term facilities' residents. Results are presented in Table 4 with selected quotations from the participants.

The participants reported a wide range of responsibilities and roles from support with Activities of Daily Living (dressing, feeding, toileting, bathing) to cooking, cleaning, and gardening. Across the sample, participants reported limited cleaning supplies and personal protective equipment ("PPE"), as well as little to no training on how to care for residents and precautions to take for infectious disease control even when COVID-19 was actively spreading in their workplaces.

Table 4. Major and Minor Themes with Participant Quotations

Major Themes	Minor Themes	Quotes
Violations of workers' rights	No compensation for paid sick leave, overtime, minimum wage	*"Was only paid $2.30 per hour. No overtime, no paid time off. No time off for injuries. Was not paid regularly. Took a three to four hour 'break' for a foot injury one day, but supervisors still required me to help them take care of their baby during that time."* [Interview #6]
	Threats to report to immigration authorities	*"[The owner was] always saying, 'I'm the one at risk since you're not documented—I only want to help you,' but that's not true. She doesn't like to pay for what's fair . . . After resident status [and new employer], earn $14.50, work a 40-hour work week with vacation days, and have health insurance."* [Interview #1]

	Harassment and discrimination	*"He offended me a lot. I was giving it my all. He grabbed the money that he owed me for overtime, and he threw it at me . . . He told me, 'This will be the last time that I pay you for over-time. I'm never paying that again.'"* [Interview #2]
	Employer retaliation	*"I'm afraid of what would happen if I complained. That's why I'd remind myself that I have a son. What if he [the Boss] would've followed me and done something to me. I mean, you start to imagine all these things. Also worried I might be fired or reported to immigration authorities if I complained."* [Interview #3]
Inadequate education and training	Lack of awareness about workers' rights for both owners and workers	*"Outreach presentations to both business owners and workers would be helpful."* [Interview #2]
	Lack of information about how to make a complaint	*"Posting bilingual signs around the workplace would be helpful. Any setback is a result of lack of information. Sharing [information] should be a priority . . . Personally, I think it would be the best option."* [Interview #4]
	Lack of training on safe resident handling	*"Trainings would have been particularly helpful: first aid, how to accurately determine high or low blood pressure and blood sugar, how to lift patients correctly without injuring myself."* [Interview #6]

Poor quality care	Limited supplies	*"Did not have equipment for trimming or shaving beards. Hygienic supplies were scarce. At one point, the facility ran out of gloves, and it took more than a week to get new gloves. Would go two to three weeks without insulin testing strips when they ran out and two to three days without insulin. Only had face masks for when doctors, nurses, or guests of the owners visited . . . Boss would require me to dilute milk with equal parts water."* [Interview #6]
	Too many responsibilities, staff shortages, and large resident caseloads	*"They didn't have enough staff . . . And to that end, the patients were left alone, and I felt guilty about that because—Who changed them? Who cooked their breakfast? They abandoned them."* [Interview #3]
	Lack of infectious disease and pandemic preparedness policies	"*Says owner 'not medically responsible for providing [COVID-19] training.' Refused to provide caregivers with face masks and also refused to provide special protective clothing."* [Interview #4]
	Unsafe working conditions	*"This employer is a monster. If the state were to take it upon themselves to conduct a thorough investigation, I think there's a lot of ground to be covered, because regardless of all the abuse that relates to labor, a lot of abuse takes place with the residents."* [Interview # 4]

B. Awareness and Access to Legal Rights in the Workplace

The following prompts from the semi-structured interview guide are accompanied by quotations from the study participants, which reflect a pattern of wage theft, including violations of paid sick leave, minimum wage, and overtime laws, overworked caregivers, a lack of boundaries between caring and cleaning roles, no vacation or sick leave, too many residents per

aide, unsafe workplaces, a lack training and supplies, and inadequate or nonexistent oversight.

Table 5: Participant Perspectives About Workers' Rights

Prompts	Quotes
What rights do you believe you have at work?	*"Well, maybe we think that we don't have any rights because we're here undocumented. But I think that we have our rights as humans, like respect, and all of that. That's what I think. But I don't know any legal rights."* [Interview #5]
How did you learn about your workers' rights?	*"Met a Pastor who was visiting one of the residents at the facility. The pastor told me to go to the Consulate because he saw that I was struggling. The Consulate then directed me to the Workers' Rights Clinic."* [Interview #6]
Have you ever felt your workers' rights were not upheld? Why?	*"My son got really sick in the middle of the night, and I sent them a message and told them that I wasn't going to be able to help them on Sunday. And I remember they took me off the schedule for three days only because I couldn't work on Sunday . . . But I took them the doctor's note that said my son was sick. It wasn't my fault because, like, I sent them a message."* [Interview #3] *"I never had a 30-minute break. Never. I never took vacation. Never had the luxury of getting sick. I took one day off in 16 years, and they got mad at me. And that's because I was really sick, and they suspended me for a week . . . She never paid overtime, never."* [Interview #1]
Did you complain if felt workers' rights were violated?	*"I'm not the type of person to stay quiet, but I did so because of need. One of my sisters told me to have some dignity and leave. I told her that I can't feed my kids with dignity, and that was my reality."* [Interview #1]

	"Never, I was worried about what they would do and was worried they would report me to immigration authorities . . . It's horrible when they threaten and disrespect you – they walk all over you." [Interview #5]
Do you think that workers' rights are helpful to you? Which ones?	*"Observing the work schedule so that workers can rest and perform well is the most important. Paid sick leave is important for physical health reasons of workers and residents."* [Interview # 6]
Share with us your thoughts on what would make it easier to understand and access your workers' rights.	*"Transparency from the employer, being told about my rights from the boss, or someone from the government talking to her and the boss, outreach presentations, signs in the workplace."* [Interview #5]

IV. DISCUSSION

Part III, above, identified three major and eleven minor themes that emerged from the Study's interviews of im/migrant women long-term care aides (see Table 4). This section discusses those findings in more detail by drawing from the Study participants' full, and often emotionally charged, narratives.[141] It also connects im/migrant women aides' stories with the on-the-ground laws and policies in Arizona and federally that are implicated in the workers' experiences. The Study's findings also demonstrate that, consistent with the theoretical insights provided by CRT and ICWS, im/migrant women aides face significant and persistent challenges within the

141. There were many moments throughout the interviews where there were no dry eyes in the room, including Study participants, Co-Principal Investigators, and law students.

long-term care industry due to the confluence of their gender, race, and immigration status.[142]

A. Violations of Workplace Rights

Research regarding the healthcare industry has shown that im/migrant aides are highly likely to experience violations of their workplace rights under U.S. employment and labor laws.[143] The im/migrant women long-term care aides who were interviewed in this Study revealed that although they experienced rampant violations of Arizona's minimum wage law[144] and the Fair Labor Standards Act ("FLSA") overtime requirements,[145] they were most concerned with violations of their paid sick leave rights under Arizona's Fair Wages and Healthy Families Act ("paid sick time" or "paid sick leave").[146]

In Arizona, which passed a paid sick leave law through voter initiative in 2016,[147] all employers must provide employees with paid sick leave, even those with few or only one employee.[148] Moreover, Arizona employers are required to post formal notices regarding paid sick leave rights in both English and Spanish.[149] Despite the existence of this law, the im/migrant women who were interviewed reported they were routinely denied paid sick time while they labored in the long-term care industry. This subsection focuses on the denial of paid sick leave, in particular, because lack of access to paid sick leave in long-term care settings creates dangerous risk of disease transmission as evidenced during the COVID-19 pandemic.[150]

Interviewee #1 experienced violations of both her overtime and paid sick leave rights. When she began working as an aide for a small nursing home, she consistently worked over forty hours in a consecutive seven-day period.

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142. *See supra* Part I.

143. *See supra* Part I.

144. ARIZ. REV. STAT. ANN. § 23-363 (2023).

145. 29 U.S.C. §§ 201–19; 29 U.S.C. § 207 (providing that overtime equals one and one-half times a worker's regular rate of pay and that workers covered by this section of the statute must be paid overtime if they work more than forty hours in a consecutive seven-day workweek).

146. ARIZ. REV. STAT. ANN. § 23-372 (2023).

147. Milczarek-Desai, *supra* note 1, at 1210 n.264.

148. § 23-372 (A), (B) (stating that an employee accrues one hour of paid sick leave for every thirty hours worked and requiring employers with fewer than fifteen employees to provide up to twenty-four hours of accrued paid sick leave per year and employers with fifteen or more employees to provide up to forty hours of accrued paid sick leave per year).

149. ARIZ. ADMIN. CODE § R20-5-1208 (2023); INDUS. COMM'N OF ARIZ., POSTERS EMPLOYERS MUST DISPLAY (2023), https://www.azica.gov/posters-employers-must-display [https://perma.cc/2UMN-T4EG].

150. *See* Milczarek-Desai, *supra* note 3, at 1206.

She was never paid overtime. In other words, although she was paid her regular hourly rate for the hours she worked over forty, she was not paid at one and one-half times her regular rate. After fifteen years of work, this amounts to an overwhelming amount of unpaid overtime.[151] When she asked for more pay consistent with the law, her employer berated her and told her she was fortunate to even have work given her undocumented status. Similarly, when she asked to take time off due to illness, her employer threatened to terminate her. Like most long-term care aides, she could not afford to lose her job, so she continued working even while sick and even though she had a legal right to take time off and be paid for it.

Interviewee #2's employer, another small nursing home operator, also violated her paid sick leave rights, but in her case, it was during the COVID-19 pandemic. Like all the interviewed women, her employer did not provide workplace safety and health training to employees on how to limit disease spread during the coronavirus outbreak. When residents in the nursing home started to become ill, she asked her employer if she could stay home, but he denied her request thinking she just wanted time off. That week, four nursing home residents died, and she became very ill with the virus. She ended up having to stay home for one month, and she was not paid for any of that time despite Arizona's paid sick leave law and the federal temporary paid sick leave law that was then in place. She said that she felt incredibly lucky to be alive, especially since she was over seventy years old when she contracted COVID-19 from her workplace.

Interviewee #3 did not ask for paid sick leave because she was sick; rather, she asked to take time off when her son became suddenly and gravely ill in the middle of the night. Under Arizona's paid sick leave law, paid sick time is available for taking time off from work to tend to a family member's illness.[152] Her employer, however, not only denied her paid sick leave benefits but also retaliated against her for taking time off by removing her from the work schedule for several days.

Interviewee #4 experienced a severe case of COVID-19 while she was pregnant, requiring her to be hospitalized, given a tracheotomy, and placed in an induced coma to prevent her from losing her baby. She was not renumerated for any of this paid sick time. She believes she contracted

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151. The FLSA has a two-to-three-year statute of limitations depending on whether the violation was willful on the part of the employer. 29 U.S.C. § 255. Thus, even if interviewees had access to legal resources to bring an FLSA claim against their employers or former employers, their damages would be limited in scope.

152. ARIZ. REV. STAT. ANN. § 23-373(A)(2) (2023).

COVID-19 at her workplace and that her doctors told her they thought the long hours she worked ("24/7"), as she was always on call, compromised her body even before she contracted COVID-19 so that when she became ill with the coronavirus, it wreaked havoc on her body. She stated during the interview that, as a long-term care aide, she should have been provided with paid sick leave because aides' immune systems are weakened by exposure to multiple medical conditions in long-term care settings.

Interviewee #5 said she would get sick all the time and would continue working even when sick because otherwise she wouldn't get paid. As an example, she explained that she was in a bad golf cart accident where she almost lost her leg while working on the employer's premises, and another time a Pitbull attacked her while she was working with a resident. She had to go to the hospital both times. The employer did not pay for any of her medical treatment nor for the time she did not work due to these two incidents. In addition, the employer failed to pay her minimum wage and never provided overtime pay. She did not complain because she was worried the employer would report her to the immigration authorities.

Interviewee #6 described her working conditions as "24/7" as she lived in the long-term care facility where she worked and her hourly wage was an abysmal $2.30 per hour with no overtime pay, no paid time off, and no time off for injuries.[153] She elaborated that one time she requested time off for her foot injury to heal because it hurt to stand on it, but her employer still required her to care for the employer's baby during that time.

The Study participants' narratives illustrate several important points. First, even when im/migrant women aides request time off for illness in a state that requires employers to provide paid sick leave, long-term care employers consistently refuse these requests. Not only are aides denied pay for taking time off from work for sick leave purposes, but they are denied the ability to even take the time off in the first instance. In other words, long-term care employers force im/migrant women aides to continue working even when they are ill or need to care for a sick relative.

Employers also make immigration status related threats when they are asked to provide paid sick leave as happened to Interviewees #1 and #5. In addition, employers retaliate when aides end up taking time off for paid sick leave purposes, such as in the case of Interviewee #3, and they fail to pay for

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153. Arizona law forbids withholding wages for costs such as room and board without written permission of the employee. *See* ARIZ. REV. STAT. ANN. § 23-352 (2023). Interviewee #6 did not provide written permission to have her room and board withheld from her wages to result in a wage rate of $2.30 per hour.

sick leave time even when aides remain home due to having contracted a deadly, contagious virus as exemplified by the experiences of Interviewee #2 and #4. Many participants experienced scenarios similar to Interviewee #6's example of when she was injured to the point that standing was painful, yet she was still required to work.

Employers' negative reactions to requests for paid sick time are incredibly short-sighted in an industry that serves a vulnerable, older adult population, as was on devastating display during the COVID-19 pandemic.[154] Moreover, despite having rights to paid sick leave under the black letter of the law, the interviewed im/migrant women aides were helpless to actually access these rights in the face of employer refusals, threats, and retaliation. When participants could not access paid sick leave and were forced to work while injured or ill, the older adults who relied on them for daily living activities also suffered by receiving inadequate care or becoming sick themselves.

B. Inadequate Education and Training

The Study's interviews also revealed that employers completely failed to provide education and training to aides regarding their workers' rights, including occupational health and safety. While the participants were generally middle aged or older, they tended to uniformly have very large arms in relation to their smaller overall stature likely reflecting the heavy physical demands of their work. Many of the interviewed women described dangerous working conditions and at least two sustained serious injuries from laboring in hazardous workplaces. Without adequate training, the participants also described frequent strain on their bodies from lifting and moving their older adult charges.

The federal Occupational Safety and Health Act ("OSH Act") subjects all workplaces to the "general duty clause," which requires employers to provide a work environment "free from recognized hazards that are causing or are likely to cause death or serious physical harm."[155] At the height of the pandemic, the Occupational Safety and Health Administration ("OSHA") drew on the general duty clause to institute a Healthcare Emergency Temporary Standard that applied to healthcare workplaces, including the long-term care industry, in order to safeguard the health of workers and their

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154. *See* Milczarek-Desai, *supra* note 3, at 1198–99.
155. 29 U.S.C. § 654(a)(1).

patients.[156] Under that emergency standard, OSHA mandated that all long-term care workplaces follow requirements around the use of PPE, proper ventilation, use of physical barriers when appropriate, and other protections to reduce the spread of COVID-19.[157] The interviewed aides' employers, however, completely ignored all OSH Act requirements both under the general duty clause and under the emergency temporary standard.

The consequences of this employer oversight were devastating for Interviewee #4, who stated that she was four months pregnant when she began working for her employer, who ran a small nursing home. When the pandemic hit, the employer ignored legal requirements regarding occupational safety and health and failed to take any precautions to safeguard workers or residents against COVID-19. The employer directed Interviewee #4 to care for patients who the employer knew had contracted the deadly coronavirus without telling her they had the virus. The employer did not provide her with PPE or direct her to take any precautions that might safeguard her against contracting the virus. As a result, Interviewee #4 became ill with COVID-19 and was taken to the hospital where she was intubated and placed in a medically induced coma for several months to ensure she could carry her unborn child to term.

Although Interviewee #5 did not contract COVID-19 at her workplace, she also sustained injuries providing routine care to an older adult. She worked as an in-home caregiver for an older couple in their home. She was never provided with any training regarding how to properly care for or lift older adults who cannot perform the essential tasks of daily living on their own. When one of the older adults she cared for became bed-bound, she had to lift him in and out of his bed. She has permanently injured her arm as a result of this work, and she complained about her arm still hurting her.

Based on the Study interviews, it seemed that employers themselves were not aware of the need to provide training, or even basic supplies, to prevent workplace injuries or disease spread. This was especially tragic during the pandemic because long-term care aides and their patients suffered greatly as a result of lack of personal protective equipment and training around the proper procedures necessary to limit contagion of the deadly coronavirus.[158]

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156. Press Release, Occupational Safety & Health Admin., Statement on the Status of the OSHA COVID-19 Healthcare ETS (Dec. 27, 2021), https://www.osha.gov/coronavirus/ETS [https://perma.cc/KT4L-SFCD] ("[T]he danger faced by healthcare workers continues to be of the highest concern and measures to prevent the spread of COVID-19 are still needed to protect them.").

157. *See* 29 C.F.R. § 1910.502 (2021).

158. *See* NAT'L ACADS. OF SCIS., ENG'G, & MED., *supra* note 2, at 7.

C. Poor Quality Care

Given the substantial and persistent mistreatment Study participants experienced at the hands of their employers, it was striking that the interviews revealed that the aides' first and foremost concern was not for themselves, but for the well-being of the older adults in their care.

Interviewee #3 described working twelve to fourteen hours per day for a small nursing home with eight residents where she was in charge of cooking, cleaning, and caring for all of them. Her day would begin at six in the morning when she would cook breakfast. Then she would go from room to room rousing and changing every one of the eight residents in the home. After that, she fed them breakfast and doled out their medications. At some point, she changed every resident's bed sheets and laundered them. She also had to keep the entire nursing home clean—from the residents' rooms to the kitchen to the floors. She worried that residents were not getting enough attention. Sometimes, there was not sufficient food to cook for them, and she would have to bring food from her own home. In between tears she stated, "I really suffered. And the patients suffered."

Interviewee #6 also typically had to care for between seven and nine older adults in the small nursing home she worked in. She was the only person providing direct care, and she rarely slept because if a resident needed help during the night, she was the only person available to assist them. Also, she repeatedly told her employer that there were not enough supplies and medications, such as separate gloves to handle each resident and insulin for those with diabetes. She recalled her employer forcing her to help tie an older resident who was hallucinating to his chair because he was making too much of a ruckus during the night. When these incidents occurred, she said she felt "helpless, frustrated . . . I felt I had no say in [what went on] in [residents'] lives . . . [b]ut I helped [the employer]. But I [was] ashamed and hurt." She lamented that "more than anything . . . I wasn't only worried about [current residents] . . . but for future residents."

These participants' narratives are representative of all the interviewees, each of whom expressed frustration that their employers disregarded their concerns regarding the quality of care being provided to older residents. These concerns included high resident-to-staff ratios, which often left older adults without the assistance they required and resulted in aides' feelings that employers prioritized profits over the well-being of the older adults in need of care.

These im/migrant women's narratives paint a grim picture of long-term care workplaces—ones that routinely engage in rampant workplace rights violations, including refusal to provide paid sick leave or any sick leave, do not provide aides with education and training, and look the other way or

worse when their workplace violations result in poor quality of care for older adults. Their stories also reveal that Study participants' intersectional identities—as low-wage workers, im/migrants, minoritized individuals, and women—play a key role in preventing them from accessing workplace rights in the first place and from complaining to authorities when those rights are violated. Thus, the Study's data is consistent with the CRT and ICWS frameworks employed in designing the study.[159]

V. RECOMMENDATIONS

A common thread running through the Study participants' narratives is that neither healthcare nor employment and labor agencies appeared to engage in regulatory oversight or enforcement of laws and policies in the long-term care workplaces in which Study participants worked. This is not surprising given the woeful underfunding and understaffing of government agencies in general,[160] but it underscores that im/migrant women long-term care aides are very much alone in facing workplace violations of their rights and attempting to provide high quality care to older adults.

Moreover, lack of agency presence highlights a missed opportunity. Prior to this Study, no one—not employers, regulators, nor government agencies—had asked im/migrant women long-term care aides in the United States about their perspectives on how the long-term care industry might better benefit older adults. This research fills that gap by amplifying the voices of im/migrant women aides and presenting their thoughts on what might be changed to bring much-needed reforms to the long-term care industry. Specifically, interviewed aides recommended that employers be required to provide education and outreach to workers regarding their workplace rights, engage in culturally appropriate and adequate training on industry-specific

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159. The Study's findings also bolster a newly emerging theory of mutual aid in the workers' rights arena that focuses on the connections among disparate groups, such as im/migrant aides, older adults in need of long-term care, and employers, in order to fashion creative and enduring solutions to workers' rights violations. *See* Milczarek-Desai, *supra* note 3, at 1213–14.

160. *See* U.S. OFF. OF PERS. MGMT., FEDERAL WORKFORCE PRIORITIES REPORT (FWPR) 18 (2018), https://www.opm.gov/policy-data-oversight/human-capital-management/federal-workforce-priorities-report/2018-federal-workforce-priorities-report.pdf [https://perma.cc/6WGJ-9KZ6] (reporting that most federal agencies were understaffed, "hampering agency performance or placing performance at risk as well as causing stress for overworked employees"); Robert J. Lavigna, *A Road Map for Dealing with Government's Workforce Crisis*, GOVERNING (Mar. 2, 2023), https://www.governing.com/work/a-road-map-for-dealing-with-governments-workforce-crisis [https://perma.cc/ATN7-2LNW].

standards, and lower staff-to-resident ratios. Each recommendation is discussed more fully in this section.

Consistent with CRT and ICWS literature, most of the Study participants did not know what employment and labor rights—including paid sick leave and anti-retaliation protections—they had in their long-term care workplaces until they came to the Law Clinic.[161] Once they learned of their workers' rights—and especially their right to paid sick leave under Arizona law—interviewees emphasized that they would like to see their employers and/or employment and labor agencies remedy this lack of knowledge regarding workers' rights through education and outreach. The women workers stated that they should be informed of their rights, how those rights could be exercised, and what employers were required to do to ensure those rights. One aide stated that she also thought requiring employers to view rights presentations would help employers learn how to comply with the law.

Thus, one significant recommendation based on im/migrant women aides' workplace experiences is to include robust education requirements in workers' rights laws such as Arizona's paid sick leave law. These education sessions should include both long-term care employers and their employees so that there is no confusion about what the law requires and how those requirements must be met. Moreover, this type of joint session might convince employers that they, too, would benefit from providing aides with workers' rights education and training. This could be accomplished by amending existing laws, which admittedly would be difficult in states like Arizona with legislative bodies that oppose the paid sick leave law passed by voter initiative,[162] or through administrative rulemaking, which may be a more realistic option.

The Study participants made clear, however, that even if they knew about their workers' rights, they would still fear retaliation by their employers if they asserted those rights or complained about rights violations. Some women stated that even when they knew that their rights were being violated, they did not complain because they feared their employers would retaliate against them and/or call immigration enforcement. For example, Interviewee #6 stated that she did not voice concerns to her employer "because I really

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161. One interesting observation made during the course of the interviews was that aides who had been previous clients of the Law Clinic could talk about their workers' rights in a knowledgeable and sophisticated manner as opposed to those who had not received Law Clinic services.

162. *See* Howard Fischer, *AZ Legislature Would Limit City Efforts on Sick Pay*, ARIZ. DAILY STAR (June 11, 2018), https://tucson.com/news/local/az-legislature-would-limit-city-efforts-on-sick-pay/article_f0c38e79-7a48-52e5-a3e7-65e191a7dfc2.html [https://perma.cc/E26D-LDHH].

feared them because, well, they'd threaten me with [immigration authorities] and so much more." On the other hand, Interviewee #2 attempted to voice her concerns to her employer, but her concerns were often ignored, which is something she attributes to her status as an immigrant.

There is no simple answer to address Study participants' fear of employer retaliation. Some healthcare experts have posited that "[o]ne strategy to support immigrant [long-term care] workers . . . includes a pathway to citizenship."[163] This potential solution, however, is unlikely to materialize anytime soon given the congressional impasse on all immigration-related legislation.[164]

Another strategy for protecting all im/migrant workers, including aides, from employer retaliation in the form of immigration enforcement was recently introduced by the Department of Homeland Security ("DHS").[165] Working in conjunction with all three federal employment and labor agencies—the Department of Labor ("DOL"), of which OSHA is a sub-agency, the Equal Employment Opportunity Commission ("EEOC"), and the National Labor Relations Board ("NLRB")—DHS has created a program for Labor-Based Deferred Action.[166] This program permits unauthorized im/migrant workers who have experienced workplace violations and are assisting employment and labor agencies in investigating employer violations of law to file an application with DHS requesting deferred action, which is an exercise of prosecutorial discretion to preclude im/migrants from removal proceedings for a period of time.[167]

Although im/migrant groups and advocates have applauded the program's desire to protect im/migrant workers who speak up about workplace abuses, the program is quite new and federal agencies are still figuring out how best to implement it.[168] Moreover, im/migrant workers may not be able to provide the information and paperwork necessary to apply for Labor-Based Deferred Action without legal representation, which most low-wage workers cannot afford. There is also the concern that a different administration may decide to

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163. NAT'L ACADS. OF SCIS., ENG'G, & MED., *supra* note 2, at 257.

164. Milczarek-Desai, *supra* note 3, at 1200.

165. *DHS Support of the Enforcement of Labor and Employment Laws*, DEP'T OF HOMELAND SEC. (May 31, 2023), https://www.dhs.gov/enforcement-labor-and-employment-laws [https://perma.cc/F98P-562W].

166. *Id.*

167. *Id.*

168. *See* NAT'L IMMIGR. LAW CTR., PRACTICE MANUAL: LABOR-BASED DEFERRED ACTION 37, 42 (2023), https://www.nilc.org/wp-content/uploads/2023/03/2023_24March-labor-deferred-action-advisory.pdf [https://perma.cc/HP5E-D3EF]; *see* Labor-Based Deferred Action Presentation (on file in the Workers' Rights Clinic of the University of Arizona archives).

scrap the program but use the information provided by workers seeking deferred action to place those same workers in removal proceedings.[169] For now, however, this is one possible avenue for addressing im/migrant aides' fear of employer retaliation if they report violations of their workplace rights. Importantly, it will be essential for state labor agencies, such as the Industrial Commission of Arizona, to participate in DHS' Labor-Based Deferred Action program in order for long-term care workers like the Study's participants to feel secure complaining about violations of workers' rights guaranteed by state law like paid sick leave in Arizona.[170]

A final recommendation Study participants made in their interviews was repeated statements expressing the belief that they *and their employers* would greatly benefit from targeted training regarding occupational safety and health. The aides mentioned that trainings in Spanish would be useful as that is their native and preferred language. Currently, there is no program in Arizona that provides such training, and that is unfortunate since it would greatly benefit im/migrant women aides and, as a result, increase the quality of care for older adults in long-term care settings. Law and policy makers should advocate for and implement this type of training, which exemplifies the emerging theory of mutual aid in the workers' rights arena because it demonstrates that workers' rights also benefit the public, here in the form of older adults and their families.

A. *Strengths and Limitations*

A major strength of this Study is the successful recruitment of an extremely difficult-to-reach, vulnerable population. To date, legal and healthcare scholarship has failed to capture the perspectives of im/migrant women who work as aides caring for older adults and comprise a third and growing part of this industry's workforce.[171] Understanding how to improve

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169. NAT'L IMMIGR. LAW CTR., PRACTICE MANUAL: LABOR-BASED DEFERRED ACTION 17–18 (2023), https://www.nilc.org/wp-content/uploads/2023/03/2023_24March-labor-deferred-action-advisory.pdf [https://perma.cc/WMN4-6WWQ].

170. To date, Arizona's state labor agency has not participated in DHS' Labor-Based Deferred Action program despite requests from community groups that they do so. *See id.* at 12.

171. Jeanne Batalova, *Immigrant Health-Care Workers in the United States*, MIGRATION POL'Y INST. (Apr. 7, 2023), https://www.migrationpolicy.org/article/immigrant-health-care-workers-united-states [https://perma.cc/J6TE-WE54] ("Nearly 2.8 million immigrants were employed as health-care workers in 2021, accounting for more than 18 percent of the 15.2 million people in the United States in a health-care occupation. . . . [T]he foreign born were especially over-represented among certain health-care occupations such as . . . home health aides (almost 40 percent).").

these workers' experiences in the workplace—including ensuring that they receive paid sick leave and proper pay, reducing their workplace hazards and injury risk, and giving them adequate training and equipment to provide high-quality care—will greatly benefit the long-term care industry and older Americans who rely on their caregiving.

Another strength of this Study is that it demonstrates how existing state and federal laws, such as Arizona's Paid Sick Leave law,[172] fail to achieve their intended purposes. Im/migrant women aides' lack of awareness of legal rights as well as inability to access those rights due to fear of employer retaliation hamper workers' rights protections. The Study's findings provide vital, first-person narratives from im/migrant women aides to address these failures and implement meaningful reforms that may lead to reduced turnover and higher quality of care.

Lastly, the Study involved students, including a first-generation college student who came from a low-wage, immigrant background. JD and BA law students were an integral part of the research team, as they were involved in each stage of the research process from participant recruitment and interviewing to creating the final transcriptions. The students' perspectives also contributed to revisions in the interview guide, including modifying verbiage to improve cultural sensitivity.

A major limitation of the Study was its small sample size and single site at the Law Clinic. Additionally, the Study did not interview employers, long-term care business owners, or regulators, all of whom may have provided useful perspectives and is an area to explore for future research. Relatedly, other important perspectives would be to interview older adult residents and the families who rely on aides to care for their loved ones. Many of the aides reported close relationships with the older residents in their care. As an example, one of the participants shared that she got a tattoo in honor of a resident after his passing and spoke of him as a father figure. Interviewing the older adults might yield equally compelling insights as those provided by the Study participants' narratives that could further shed light on how to improve the working conditions for im/migrant long-term care aides.

Importantly, both the findings and limitations of this Study point to the need for further research that focuses on the vulnerable and marginalized workers whom the long-term care industry relies upon to provide care for older adults. To that end, future research should seek out the voices of im/migrant women long-term care aides and leverage their experiences to

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172. ARIZ. REV. STAT. ANN. § 23-372 (2023).

inform culturally appropriate and effective solutions to America's long-term care crisis.

VI. CONCLUSION

Im/migrant women play an increasingly critical role in the well-being of older American adults who require long-term care in an industry facing dramatic labor shortages now and for many years to come. These women's voices and lived realities, however, have been largely ignored, including during the COVID-19 pandemic, which proved deadly in long-term care settings. This Article and the Study on which it is based amplifies im/migrant women long-term care aides' perspectives in order to describe the problems plaguing long-term care and offer solutions for reform. Importantly, because the Study's design is informed by CRT and ICWS frameworks, the narratives presented in this Article speak to the challenges im/migrant women aides face due to their multiple, intersectional identities as marginalized and vulnerable women, im/migrants, and low-wage workers.

Based on the Study's findings, im/migrant women long-term care aides experience significant violations of their workplace rights, often cannot access remedies for workers' rights violations, and receive little to no training to ensure their or their patients' health and safety. As a result, older adults in long-term care settings do not receive the high-quality care they deserve. The im/migrant women who participated in this Study made several recommendations that would enhance their workers' rights while simultaneously providing competent care and dignity to older adults. In doing so, they tapped into an emerging theory of mutual aid in workers' rights that advocates for upholding and expanding workers' rights because in doing so, others, such as older adults, benefit as well. Their suggestions included learning about workers' rights and combatting employer retaliation, receiving industry-specific, occupational safety and health trainings with employers present, and maintaining adequate staff-to-patient ratios so that older adults could receive prompt attention for their needs.

The United States' long-term care industry has been crumbling for decades, but the im/migrant women who are its essential, frontline workers have thoughtful solutions for much-needed reform. If their voices are not heard it is not only long-term care workers and today's older adults who will suffer, but every American who has the good fortune to live to a ripe, old age.

APPENDIX A. INTERVIEW GUIDE IN ENGLISH AND SPANISH

Interview Guide in English

Script for Interpreter Introduction:

- Hello, my name is [interpreter name] and I am a translator with the Worker's Rights Clinic at the University of Arizona College of Law.
- As you know, today we will be conducting an interview about what your experience was as an immigrant worker in the nursing home care industry, are you ready to begin?
- Great, I will hand it over to [name of interviewer], to conduct the interview after I go over some brief interpreter protocols.

Interview Script:

- Hello [client name], my name is [JD candidate] and I am a law student at the University of Arizona College of Law. Thank you for taking the time to be here.
- I will be conducting your interview today about what your experience is like in the nursing home care industry and the struggles you may face.
  ****make past tense if they no longer work in the industry****
- Do you have any questions before we begin?

I. Experience as a long-term care aide

Years working as an aide

Less than 1 year, 1-3, 3-5, 5-10, more than 10

Did you receive any training for it? Did you receive any training for preventing/managing the spread of COVID-19?

Yes, no, some, describe training

If so, when?

Before started working, during, on the job training

What types of long-term care facilities have you worked in?

Skilled nursing facility, assisted living, home health care, other

How many employees worked there?

Less than 15, 15-25, 25-50, 50-100, over 100; including managers/supervisors; best estimate if don't know

What sorts of work do you typically do as part of your job?

Assistance with daily living (feeding, toileting, dressing, bathing), medication assistance, conversing with older adults, cleaning and meal preparation, driving, support to access virtual care appointments, other

What parts of your job do you most enjoy and what parts are your least favorite?

Demographic information, please share your:

Age, Ethnicity and Race, Country of Birth, Income Salary Range, Benefits (if any), Education Level, Current Immigration Status

II. Legal rights in the workplace

Do you feel that you have a good idea of your legal rights in the workplace?

Yes, No, A little, Explain

If yes, what rights do you believe you have? How did you learn about them?

For example—your workplace rights would include:

- Paid sick leave
- Health and Safety
- Overtime
- Minimum wage
- Free from discrimination and harassment

If no, what would help you to better understand your workplace rights?

Outreach presentations? Education from another source? Employer telling you? Agency telling you? Signs posted? Does language that information is presented in matter? Does it matter who is presenting the information? What/who is a trusted source you would want to learn about your workplace rights from?

What do you think is the most important workers' rights law for someone working as a nursing aide in long-term care? Why?

Is paid sick leave important to you? Why?

Explain what is encompassed by paid sick leave (i.e., when you are sick, seeking medical care, taking are of a sick family member, or taking care of a child whose school is closed due to public health emergency such as Covid-19).

III. Experience in accessing workers' rights

Have you ever felt that your rights as a worker were not being upheld in your workplace?

Could you tell us about those experiences and how they made you feel?

Have you ever used paid sick leave?

If yes, how?

If not, why not?

From your perspective, what would make paid sick leave more accessible to you?

Role of employer and manager in communicating the information? Preferred way of communication? Role of state agency in communicating and enforcing workers' rights? Access to legal help/representation?

How would you describe your employer's policies for talking about your rights?

Do you feel like your employer is responsive to workers' concerns? Who talks to you about your rights? Your manger/supervisor/boss?

Have you ever complained about your rights as a worker being violated?

How? To whom? What happened? How could this process have been improved / made easier or more accessible? Did anything in particular worry you when you complained? For example, retaliation, loss of employment, reduced hours, threat of deportation for you or a household member, other?

Do you feel that workers' rights laws are helpful to you? Why?

If not, then why not?

What would make these workers' rights more accessible to you?

IV. Additional thoughts / other

Is there anything else you'd like to share about your workplace rights as a long-term care aide that we haven't discussed?

Interview Guide in Spanish

El guion de la introducción para los intérpretes: (se llevarán a cabo estas en persona)

- Hola, me llamo [nombre del interprete] y soy un traductor con la Clínica de Derechos de los Trabajadores en la Facultad de Derecho James E Rogers de la Universidad de Arizona.
- Como ya sabe, llevaremos a cabo una entrevista acerca de su experiencia como trabajadora inmigrante en una instalación de cuidado de largo plazo, ¿está lista para empezar?
- Excelente, repasaré algunos protocolos del servicio de traducción y después la dejare en manos de [nombre del entrevistador] para que la entreviste.

El guion para la entrevista:

- Hola [nombre de la clienta], mi nombre es [candidato JD, por sus siglas en inglés] y soy un estudiante de derecho en la Facultad Derecho James E Rogers de la Universidad de Arizona.
- La entrevistaré el día de hoy acerca de su experiencia en el sector del cuidado de largo plazo y las dificultades que enfrenta
  **** si ella ya no trabaja en ese sector, usen el tiempo pasado****

- Como resumen, primero le preguntaremos acerca de su experiencia en general como trabajadora en cuidados de largo plazo, después le haremos preguntas más específicas acerca de ciertos ámbitos de la ley y su experiencia con las leyes.
- ¿Tiene alguna pregunta antes de empezar?
- [En caso de que no haya preguntas, o después de responder a las peguntas] Bueno, muy bien, si tiene alguna pregunta a lo largo de la entrevista, no dude en interrumpir y preguntar.

I. Su experiencia como ayudante en el cuidado de largo plazo

Los años trabajados como ayudante

Menos de 1 año, 1-3, 3-5, 5-10, más de 10

¿Pasó por alguna capacitación como ayudante? ¿Pasó por algún tipo de capacitación para prevenir/controlar la propagación del COVID-19?

Sí, No, Un poco, Describa la capacitación

¿En caso afirmativo, cuándo?

Antes de empezar a trabajar, durante su trabajo, o la capacitación en el lugar de empleo

¿En cuáles tipos de instalaciones de cuidados de largo plazo ha trabajado?

Un centro de enfermería especializada, una residencia asistida, los cuidados de salud en el hogar, otra instalación

¿Cuántos empleados trabajaban en esa instalación?

Menos de 15, 15-25, 25-50, 50-100, más de 100; contando a gerentes/supervisores; una estimación más probable si no lo sabe

¿Cuáles son los tipos de responsabilidades que tiene como parte de su trabajo?

La asistencia de la vida diaria (la alimentación, de servicio de aseo, de vestir, de bañar), la asistencia con los medicamentos, conversar con adultos mayores, limpiar y preparar alimentos, conducir, dar apoyo para acceder a citas de atención virtuales, otras responsabilidades

¿Cuáles son los aspectos que más disfruta de su trabajo, y cuáles son los que menos disfruta?

Recopila los datos personales:

La edad, la etnia y la raza, el país de nacimiento, el rango salarial, los beneficios, el nivel de educación, el estatus migratorio (si se siente cómoda al compartir, destaca que sus respuestas serán anónimas)

II. Los derechos legales en el lugar de trabajo

¿Usted se siente que tiene una buena idea de qué son sus derechos legales en el lugar de trabajo?

Sí, No, Un poco, Explique

En caso afirmativo, ¿qué derechos cree que tiene? ¿Cómo se enteró acerca de ellos?

Por ejemplo—sus derechos en el lugar de trabajo cuentan con:

- La licencia pagada por enfermedad
- La salud y la seguridad
- El trabajo de sobretiempo
- El salario mínimo

- Las protecciones en contra de la discriminación y el acoso

En caso negativo, ¿qué le ayudaría a comprender mejor sus derechos en su lugar de trabajo?

¿las presentaciones de divulgación?, ¿la información educativa de otra fuente?, ¿Que se lo diga el empleador?, ¿Que un organismo se lo diga?, ¿La exhibición de carteles informativos?, ¿Tiene importancia el lenguaje en el que se presenta la información?, ¿Tiene importancia quién presenta la información?, ¿Cuál /quién sería una fuente confiable de la que le gustaría aprender sobre sus derechos en el lugar de trabajo?

¿Cuál ley de los derechos de los trabajadores cree que es más importante para alguien que trabaja como ayudante en cuidados de largo plazo? ¿por qué?

- La licencia pagada por enfermedad
- La salud y la seguridad
- El trabajo de sobretiempo
- El salario mínimo
- Las protecciones en contra de la discriminación y el acoso

No hay problema si selecciona más de una.

Si no selecciona la licencia pagada por enfermedad entonces presenta la próxima pregunta:

¿Es importante la licencia pagada por enfermedad para usted? ¿Por qué?

Es posible que tengas que explicar lo que abarca la licencia pagada por enfermedad (por ejemplo, cuando se enferme, la solicitación de la atención médica, el cuidado de un familiar enfermo, o el cuidado de un niño cuya escuela está cerrada debido a una emergencia de salud pública como Covid-19)

III. La experiencia al acudir a los derechos de los trabajadores

¿Alguna vez ha sentido que no le hicieron valer sus derechos como trabajadora en su lugar de trabajo?

En caso afirmativo, entonces cuál(es):

- La licencia pagada por enfermedad
- La salud y la seguridad
- El trabajo de sobretiempo
- El salario mínimo
- Las protecciones en contra de la discriminación y el acoso

Otros tipos de licencia/ derechos incluye:

- La Ley de Ausencia Familiar y Médica
- La ley de Estadunidenses con Discapacidades
- La Ley Contra la Discriminación en el Empleo

¿Podría contarnos sobre esas experiencias y cómo la hicieron sentirse?

¿Alguna vez usó la licencia pagada por enfermedad?

En caso afirmativo, ¿Cómo?

En caso negativo, ¿por qué no?

¿Desde su perspectiva, qué necesita para que sea más accesible la licencia pagada por enfermedad para usted?

¿la función del empleador y del gerente en comunicar la información? ¿La forma en la que prefiere que se le comunique? ¿La función del organismo estatal para que le comunique y hagan valer los derechos de los trabajadores? ¿Tener acceso a la ayuda/representación legal?

¿Como describiría las políticas de su empleador en caso de que hable sobre sus derechos?

¿Se siente que su empleador responde a las inquietudes de los trabajadores? ¿Quién le habla acerca de sus derechos? ¿Su gerente/supervisor/jefe?

¿Alguna vez se quejó porque no le hicieron valer sus derechos como trabajadora?

¿Cómo? ¿Con quién se quejó? ¿Qué paso? ¿Cómo se podría haber mejorado/hecho más fácil o más accesible este proceso? ¿Tenía alguna inquietud en particular cuando se quejó? Por ejemplo, las represalias, la pérdida del empleo, la reducción de horas, la amenaza de la deportación de uste o algún miembro del hogar, ¿alguna otra inquietud?

¿Se siente que los derechos de los trabajadores son útiles para usted? ¿Por qué?

Repasa cada una.

- La licencia pagada por enfermedad
- La salud y la seguridad
- El trabajo de sobretiempo
- El salario mínimo
- Las protecciones en contra de la discriminación y el acoso

En caso negativo, ¿Por qué no?

¿Como podría acudir a estos derechos de los trabajadores con más facilidad?

Asegúrate de que expliquen esto por cada uno de los derechos ya mencionados, especialmente la licencia pagada por enfermedad.

IV. Los comentarios adicionales/ u otros apuntes

¿Hay algo más que le gustaría compartir que no mencionamos acerca de sus derechos laborales como ayudante en el cuidado de largo plazo?