

The Secretary of State presents his compliments to their Excellencies and Messieurs and Mesdames the Chiefs of Mission and has the honor to inform of the requirements regarding the employment of foreign domestic workers by mission members. This note updates and supersedes the Department's circular diplomatic note dated May 16, 2014.

The Department asks that all mission staff be apprised of the comprehensive requirements relating to the employment of domestic workers (enclosed) and the importance of all mission personnel abiding by the requirements.

The Department has over the years informed Chiefs of Mission of the priority it places on the fair and equitable treatment of domestic workers and has advised Chiefs of Mission to take any and all measures necessary to ensure that members of their mission employing domestic workers respect the laws that relate to the employment of these workers. It is essential that mission members who employ domestic workers comply with their contractual obligations and otherwise treat their workers in a fair and equitable manner. The Department has also advised that it looks to Chiefs of Mission to be responsible for the conduct of mission members in this regard.

Additionally, a provision of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 requires the Secretary of State to "suspend for such period as the Secretary determines necessary, the issuance of A-3 visas or G-5 visas to applicants seeking to work for officials of a diplomatic mission or an international organization, if the Secretary determines that there is credible evidence that one or more employees of such mission or international organization have abused or exploited one or more nonimmigrants holding an A-3 visa or a G-5 visa, and that the diplomatic mission or international organization tolerated such actions." A review by the Secretary of evidence of abuse or exploitation, and mission toleration of such abuse or exploitation, would take many factors into account, including whether, in the event allegations of abuse or mistreatment are made, the mission was able to provide the Department with records that demonstrate, for example, that a worker alleging underpayment of wages was in fact paid the contractually required salary by direct deposit or check. Further, the failure to provide requested records regarding a mission member's employment of a domestic worker would likely result in a denial of a request by the mission member to bring a new domestic worker into the household.

Mission members should be advised that, in the United States, withholding a person's passport may be evidence of the crime of trafficking in persons or constitute a separate crime of unlawful conduct with respect to immigration documents. Under U.S. law, trafficking in persons includes the crime of subjecting someone to forced labor through restraint, force, threats of force, or legal coercion (such as a threat to send a person to jail or to be deported), in order to obtain that person's labor.

The Department wishes to remind Chiefs of Mission of its policy regarding allegations involving serious crimes. If a prosecuting authority in the United States advises the Department of State that, but for a mission member's immunity, it would prosecute the mission member for a serious crime, including a crime relating to the abuse or exploitation of a domestic worker, Department policy is to request a waiver of any applicable immunity or in the absence of a waiver, to require the departure of a mission member and dependents.

Consistent with the expectation that mission members pay their just debts, mission members are expected to pay any judgment awarding damages by a court with jurisdiction over a case brought against them by their former domestic workers. In 2010, a United States appellate court determined that former mission members who enjoy immunity while accredited are not immune from jurisdiction for matters relating to their employment of domestic workers after mission members are terminated, because the acts comprising the employment of a domestic worker are not acts performed as a mission member and, thus, are not within the scope of residual immunity under Article 39(2) of the Vienna Convention on Diplomatic Relations. The Department appreciates the ongoing partnership with the foreign diplomatic community in our joint efforts to ensure that all domestic workers understand their rights and protections and those employing them understand their contract obligations and their responsibilities.

Enclosure: As stated

Department of State
Washington, DC
June 18, 2015



**Employment of Domestic Workers:
Requirements and Procedures**

Point of Contact

In an effort to strengthen communication on matters relating to the employment of domestic workers, embassies will need to designate a point of contact with whom the Office of the Chief of Protocol can engage on matters relating to their accreditation process. Please provide the name, phone, and email address of the point of contact via email to DomesticWorkers@state.gov.

Visa Eligibility Requirements

Pre-Notification:

Any prospective domestic worker must be notified to the Department before the worker applies for a visa. This “pre-notification” requires foreign missions to submit a “Pre-Notification of a Domestic Worker” form (“pre-notification form”) addressed to DomesticWorkers@state.gov. The pre-notification form can be found on the Office of the Chief of Protocol’s website under the Diplomatic Affairs section at www.state.gov/s/cpr. The Office of the Chief of Protocol must receive this form prior to a U.S. consular officer making a final determination related to issuance of an A-3 or G-5 visa. Foreign missions should note that this pre-notification process does not guarantee the issuance of an A-3 or G-5 visa, nor does it change other nonimmigrant visa eligibility requirements relating to such visas. The Secretary of State wishes to advise that the Department of State accepts pre-notification forms with the understanding that the Head of Mission has reviewed and authorized any such proposed employment by a mission member of a domestic worker.

Ability to Pay:

The Department requires that A-3 or G-5 visas not be issued unless the U.S. consular officer responsible for reviewing the visa application reasonably concludes that the mission member will be able to provide the required wages and working conditions (addressed below). Consular officers will presume that a prospective domestic worker will not be provided the legally required wages and working conditions if the foreign mission employer does not carry the diplomatic rank of Minister or above, or an equivalent position. To overcome this presumption, a prospective mission member not having the rank of Minister or above must demonstrate to the consular officer that he or she has the financial ability to pay the salary and related travel expenses of the domestic worker as specified in the contract. Consideration is also given to the number of domestic workers a foreign mission member may reasonably be able to pay.

Consular officers will also presume that a prospective domestic worker is not eligible for an A-3 or G-5 visa if the foreign mission employer has had previous instances of noncompliance of contracts with A-3 or G-5 employees, has had a pattern of employee disappearance, or if the Department has received reliable allegations of mistreatment or abuse by that employer. To overcome this presumption, a mission member must demonstrate to the consular officer that such outcome is not likely to reoccur.

Contract:

The terms of domestic worker employment must be included in a written employment contract between a mission member and a domestic worker. The contract must be in English, and if the domestic worker does not understand English, the contract must also be in a language understood by the domestic worker. Two copies of the contract(s) must be signed by both

parties. A copy of the signed contract in English, and in a language understood by the domestic worker if the domestic worker does not understand English, must be provided to the consular officer when a domestic worker applies for a visa. All contracts must include the following provisions:

- **Description of duties.** The contract must describe the work to be performed, e.g., housekeeping (light or heavy), cooking, gardening, child care (how many children), and must also include a statement that the domestic worker shall work only for the employer who signed the contract and will not accept any other employment while working for the employer.
- **Hours of work.** The contract must state the time of the normal working hours and the number of hours per week. It is generally expected that domestic workers will be required to work 35 to 40 hours per week. It must also state that the domestic worker will be provided a minimum of one full day off each week. The contract must indicate the number of paid national holidays, sick days, and vacation days the domestic worker will be provided.
- **Wage rate.** The contract must state the hourly wage to be paid to the domestic worker. The rate must be the greater of the minimum wage under U.S. federal and state law or the prevailing wage for all working hours. Prevailing wage rates can be found using the Foreign Labor Certification (FLC) Data Center's FLC Wage Search Wizard at: <http://www.flcdatacenter.com/OesWizardStart.aspx> . While conducting the search, please take care to search the prevailing wage for the location where the domestic worker will be employed. For example, the prevailing wage in Montgomery County Maryland (Chevy Chase, Bethesda, Silver Spring, etc.) is higher than that of Washington, D.C. and Northern Virginia. The contract must state that wages will be paid to the domestic employee either weekly or biweekly. No deductions may be taken from wages for lodging, medical care, medical insurance, travel, or food. Changes to the prevailing wage rate will be notified to the missions in the form of a circular diplomatic note; upon receipt, all contracts must be amended to reflect the new prevailing wage rate.
- **Overtime work.** The contract must state that any hours worked in excess of the normal number of hours worked per week (35-40 hours) are considered overtime hours, and that hours in which the employee is "on call" count as work hours. It must also state that such overtime work must be compensated as required by U.S. local laws.
- **Method of Payment.** The contract must state that after the first 30 days of employment, all wage payments must be made by check or by electronic fund transfer to a bank account in the United States in the domestic worker's name only. Neither mission members nor their family members should have access to domestic worker bank accounts.

- **Transportation to and from the United States.** The contract must state that the employer will pay for all travel costs related to the employment of the domestic worker, which includes transportation to the United States to begin employment, transportation from the United States when employment has concluded, and travel expenses related to any trips where the domestic worker has been asked to accompany the employer's family.
- **Other required terms of employment.** The contract must state that the employer agrees to abide by all federal, state, and local laws in the United States, including with respect to taxes and Social Security as applicable. (Please refer to the Department's recent circular note No. 15-77, dated February 2, 2015, for more detailed background on U.S. laws that are applicable to certain foreign domestic workers on A-3 visas employed by mission members and to their employers with respect to income tax, employment taxes, including Social Security/Medicare, and health insurance.) The contract must also include a statement that the domestic worker's passport, visa, and any I-94 card will be in the sole possession of the domestic worker and that a copy of the employment contract and other personal property of the domestic worker will not be withheld by the employer for any reason. Such personal property may include, but is not limited to, bank cards or statements, computers, and cell phones. The contract should also include a statement that the domestic worker's presence in the employer's residence will not be mandated except during working hours. Any modification to the contract must be in writing.
- **Other recommended terms of employment.** The contract may also include additional agreed-upon terms of employment, if any, provided they are fully consistent with all applicable U.S. federal, state, local laws and Department of State policies.

Domestic Worker Arrival to the United States

Once a domestic worker has arrived in the United States and begun their employment, the mission must notify the Office of the Chief of Protocol of the domestic worker's arrival by sending an email to DomesticWorkers@state.gov within 5 days of entry into the United States. A signed copy of the employment contract in English must also be submitted to the Office of the Chief of Protocol at the time of the domestic worker's in-person registration appointment.

Annual In-Person Registration of Domestic Workers

Beginning fall of 2015, annual in person registration for private foreign domestic workers employed by staff of foreign missions in the Washington, D.C. area will be required. Domestic workers will be issued registration cards, which will be renewed annually.

Domestic Worker Wage Payments

In compliance with the contractual terms above, mission members employing domestic workers are required to make wage payments to domestic workers via check or electronic fund transfer to the domestic worker's bank account in the United States within 30 days of commencement of employment (cash payments with a receipt are only permissible within the first 30 days of employment).

Mission members are required to provide domestic workers with records of employment, to include a copy of the signed contract, and, on a weekly or biweekly basis, records of the number of hours worked, any overtime hours worked, and any deductions made from pay relating to Social Security/Medicare or other tax requirements, where applicable; employers should maintain similar records, as well as proof of the payments made to household employees (e.g., cancelled checks or electronic fund transfers, or signed receipts of cash payments during the first 30 days of employment). To avoid possible misunderstanding, all employers must also maintain these records for the duration of the domestic worker's employment plus three years after.

Updating Written Contracts

Mission members employing domestic workers are required to update contracts, in writing, to reflect any changes to previously agreed information between the employee and employer to ensure that the contract is fully consistent with U.S. government requirements and all current U.S. federal, state, and local laws.

Notification of Termination

Missions must promptly notify the Office of the Chief of Protocol when domestic workers have ended their term of employment and submit a Notification of Termination.