



FLO

U.S. DEPARTMENT OF STATE

Advocacy Programs Services

FAMILY MEMBER EMPLOYMENT

Understanding Bilateral Work Agreements

Summary

The Family Liaison Office (FLO) recommends that Eligible Family Members (EFMs) explore all employment options as they prepare to transition to a new post. In addition to employment possibilities inside the mission, an opportunity to work outside the embassy or consulate is often an attractive option for EFMs. Having a Bilateral Work Agreement (BWA) in place facilitates obtaining the work permit that is generally needed when working outside the embassy or consulate. This message provides general guidance for the negotiation of a BWA with the host country, identifies post's responsibilities for obtaining work authorizations for EFMs, and answers some Frequently Asked Questions (FAQs) that can be used to help EFMs understand their eligibilities and responsibilities regarding work agreements.

Bilateral Work Agreements and De Facto Work Arrangements

A BWA is a formal agreement usually established through an exchange of diplomatic notes between the United States and another country, with the purpose of facilitating an expedited work authorization process under which dependents of accredited personnel of both governments may be employed on the local economy of the host country. See the texts of existing BWAs at www.state.gov/m/dghr/flo/c24173.htm.

There are countries with which the United States does not have a BWA, but where we have a de facto work arrangement under which, if the other country provides our accredited dependents with work authorization, the United States will do so on a reciprocal basis. De facto work arrangements are ad hoc agreements which are often the precursor of a BWA. Unlike a BWA, the responsibility and cost of securing the employment authorization documents (EAD) usually rest with the employee and employer. Due to the advantages a BWA affords the individual seeking employment on the local economy, the Department would generally prefer to have a BWA than a de facto work arrangement.

There are currently 122 U.S. BWAs in place (up from 78 in 2000), and 38 de facto work arrangements. Employees and their spouses can review a list of the governments that have entered into BWAs with the United States as well as countries with which we have de facto work arrangements at www.state.gov/documents/organization/133570.pdf.

If your post is interested in approaching the Ministry of Foreign Affairs to negotiate a BWA (or update an older BWA), please review the guidelines on the Family Liaison Office intranet site or email FLOaskEmployment@state.gov.

Though it is important to note that actual signed agreements may differ, FLO's suggested BWA template includes the following benefits that the Department seeks to obtain for family members:

- A. The process for securing EAD should allow family members to bypass the administrative procedures.
- B. The EAD should be processed in a timely manner and with minimal host government bureaucracy. The USG generally processes EAD within four to six weeks.
- C. There should be no cost to family members or post in securing their EAD.
- D. The EAD should remain in effect so long as the sponsor and dependent retain their status. If the EAD must be renewed, the renewal process should be similarly timely and should not cause interruption in employment.
- E. An offer for employment should not be required before requesting EAD.

Note: While the Department's objective is to avoid restrictions to BWAs, some BWAs require a job offer, and some restrict employment to specific fields of work or limit the number of EFMs who can be employed at one time. The Department will continue to seek to avoid such restrictions in BWAs.

Once a BWA or de facto work arrangement is established, the Department manages the issuance of EAD to accredited foreign government dependents on the basis of reciprocity. FLO strongly encourages posts to email FLOAskEmployment@state.gov to inform the Department of any difficulties in the EAD or work permit issuance process, including fees, delays (especially if more than four weeks), validity restrictions, requiring a job offer in advance, or denial of privileges and immunities. Upon receipt of this information, FLO will communicate with the Office of Legal Affairs and the Office of Foreign Missions (M/OFM). M/OFM will work with post to prepare a diplomatic note that post can deliver to the host country and/or that M/OFM can deliver to the foreign embassy in Washington, and prepare to implement reciprocal restrictions.

The Vienna Convention on Diplomatic Relations provides privileges and immunities accorded to personnel and dependents accredited to a diplomatic mission. Dependents are defined as "members of the family of a diplomatic agent forming part of his household," VCDR, art 37.1, and similarly for the "administrative and technical staff of the mission, members of their families forming part of their respective households ..." Pursuant to Article 31(1)(c), individuals do not enjoy immunity from civil and administrative jurisdiction for actions relating to any professional or commercial activity. This generally means that dependents must pay income tax and social security to the host government based on their employment in the host country. However, dependents with work authorization will retain all other privileges and immunities to which they are otherwise entitled. The United States will not waive criminal immunity of dependents in exchange for work authorization or in negotiations to establish a BWA.

The Human Resources office at post (HR) facilitates the process of obtaining the EAD in accordance with the procedures in the BWA. In some circumstances, HR may assist EFMs in applying for the EAD under a de facto work arrangement.

A USG family member must notify the principal Management Officer at post before acceptance of a job on the local economy and any other work activities outside the Mission (see [3 FAM 4125](#) and reference the [Chief of Mission Approval Template](#)).

The Community Liaison Officer reports on the status of bilateral agreements and de facto work arrangements in the bi-annual Family Member Employment Report (FAMER). FLO uses this information

to monitor the status of these agreements. If you have questions about bilateral or de facto work arrangements, please contact **FLOAskEmployment@state.gov**.

Frequently Asked Questions

- Q.** What does a BWA mean for spouses of accredited U.S. government personnel assigned overseas?
- A.** BWAs permit spouses of accredited U.S. government employees serving overseas to obtain a work permit or EAD from the host country, which allows for participation in the local workforce.
- Q.** What is the difference between a BWA and a de facto work arrangement?
- A.** Under a BWA, spouses (and in some cases, children) of accredited U.S. government personnel can obtain a work permit or EAD through the host country Ministry of Foreign Affairs so that they are free to seek and accept employment on the local economy subject to Chief of Mission approval. In contrast, a de facto work arrangement is an informal arrangement established by precedent. When a foreign country issues a work permit or EAD to a dependent of accredited U.S. government personnel, then the United States will issue an EAD reciprocally to a dependent of foreign government personnel. A de facto arrangement typically requires an offer of employment prior to requesting work authorization and there may be some restrictions on the permitted fields of employment. As de facto work arrangements are not formal agreements, they are subject to greater uncertainty than BWAs.
- Q.** Do spouses working on the local economy overseas waive privileges and immunities?
- A.** The Vienna Convention on Diplomatic Relations (VCDR) provides for privileges and immunities (Ps&Is) for accredited foreign mission personnel and their accredited family members. The VCDR provides that individuals do not enjoy immunity from civil and administrative jurisdiction for an action relating any professional or commercial activity. Working dependents retain all privileges and immunities to which they are otherwise entitled.

For a working dependent, this means there is no civil or administrative immunity for matters relating to/arising out of your job. There is no possibility of a "waiver" of civil or administrative immunity with respect to your job because there is no immunity to waive.

On a day-to-day basis, this means the dependent will have to pay income and social security taxes (potentially subject to bilateral income tax treaties and bilateral social security -- "totalization" -- agreements). In addition, the dependent may have to be aware of licensing requirements and fees for certain types of work. Moreover, a dependent can be subpoenaed to testify at a trial of a co-worker on work-related matters, charged with labor law violations, or ordered to retribute funds he/she is alleged to have taken at work. A working dependent will have to answer those legal summonses and will be accountable to local authorities. However, even in relation to employment, if a dependent is accredited with criminal immunity, he or she cannot be charged with a crime.

If a host country has indicated that working dependents will lose any or all Ps&Is, particularly criminal immunity, please email **FLOAskEmployment@state.gov** immediately so that the Department can assist with this serious situation. The United States does not waive any criminal immunity when the negotiating BWAs.

- Q.** Is a non-US citizen spouse of an accredited U.S. government staff member covered by the bilateral work agreement with the host country?
- A.** This depends on the terms of the relevant BWA, but in general, BWAs do not limit their application to spouses who are citizens of the sending state.
- Q.** Is a spouse who is a citizen of an EU-member country eligible to be employed in other EU-member countries?
- A.** If the spouse is a citizen of an EU-member country, he/she does not need to obtain employment authorization to work in other EU-member countries.
- Q.** Is a Member of Household, joining the FSO at their post of assignment, able to obtain a work permit under a bilateral work agreement?
- A.** No. BWAs apply only to accredited dependents (spouses, and in some cases, children). Some BWAs also cover unmarried same-sex domestic partners.
- Q.** When operating a home-based business out of USG-leased (or -owned) quarters, is a work permit required?
- A.** If a dependent limits the scope of his or her employment to the confines of the U.S. embassy community and does not transact business with citizens of the host country, work authorization may not be required. If the home-based business includes activities that involve the local economy, a work permit is required. In any case the family member must notify post management in order to ensure that the activity is not in conflict with U.S. foreign policy or in violation of any host country or U.S. laws. See 3 FAM 4120 regulations at www.state.gov/documents/organization/85177.pdf and reference Chief of Mission Approval Template.
- Q.** If a family member is teleworking out of the USG-provided home for the USG, or for a U.S.-based or other foreign or multinational corporation that has no operations in the host country, does he/she need a work authorization?
- A.** If the teleworker has activities on the local economy, such as meetings with local officials, relationships with local business interests, and/or selling a product to a local entity, a work permit is likely required. In all other cases, family members should seek guidance from the Management Officer at post as to host-country rules and regulations pertaining to telework. Ultimately, Chief of Mission Approval is required for all work-related activities in USG-provided housing.