

**UNITED STATES MISSION TO THE UNITED NATIONS
NEW YORK**

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HC-125-09

The United States Mission to the United Nations presents its compliments to the Permanent Missions to the United Nations and has the honor to refer to the standards applicable to the employment of personal workers, attendants, and any other domestic workers employed by members of the staffs of the Permanent Missions who are in the United States in nonimmigrant G-5 visa status. The United States Mission wishes to emphasize the importance to the United States Government of providing fair treatment to domestic workers who come to the United States to work for members of the diplomatic community and to remind the Permanent Representatives to take any and all measures necessary to ensure that members of their missions employing such workers respect the laws relating to the treatment to be accorded domestic workers. This note supersedes previous notes on this subject.

New Domestic Worker Visa Eligibility Requirements

The United States Mission wishes to inform the Permanent Missions of two new requirements it is implementing in connection with the employment of domestic workers by foreign mission personnel that pertain to the visa eligibility of prospective domestic workers.

DI PLO M A T I C N O T E

The United States Mission currently requires that it be notified at the time of the arrival in and departure from the United States of all domestic workers.

Effective November 15, 2009, the United States Mission will also require that it be provided with notification of any prospective domestic worker before the worker applies for a visa. This “pre-notification” requires that the sponsoring Mission submit a “Pre-Notification of a Domestic Worker” form (“Pre-Notification Form”) addressed to UNDomesticWorkers@state.gov. The Pre-Notification Form, a sample of which is attached for reference, may also be found on the Host Country Affairs section of the United States Mission’s website at www.usun.state.gov/about/host_aff/index.htm. The United States Mission must receive this notification prior to a domestic worker’s submission of an application for a G-5 visa, as such visas will not be issued unless the Pre-Notification Form has been submitted. It should be noted that this pre-notification process does not, however, guarantee the issuance of a G-5 visa or change other nonimmigrant visa eligibility requirements relating to such visas. Finally, the United States Mission wishes to advise that it accepts the submission of Pre-Notification Forms with the understanding that any such proposed employment by a mission member of a domestic worker has been reviewed and authorized by the Permanent Representative.

In addition to requiring a Pre-Notification Form before a G-5 visa can be issued, the Department of State has determined that such visas will not be issued unless the United States 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, which are addressed below. To implement this policy, consular officers will now presume that any prospective foreign mission employer of a domestic worker who does not carry the diplomatic rank of Minister or above, or a position equivalent to Minister or above, will not be able to provide the legally required wages and working conditions. To overcome this presumption, a prospective mission member without that rank would have to demonstrate to the consular officer reviewing the G-5 visa application that he or she has the financial ability to pay the salary of the domestic worker as specified in the contract, as well as related travel expenses. The consular officer will also take into consideration the number of domestic workers that a particular mission member may reasonably have the ability to employ. If a mission member seeks to replace a domestic worker or add to his/her existing domestic staff, the G-5 visa may be denied if the United States Mission or the Department of State has credible evidence that the mission member failed to fulfill his or her obligations to a former or current domestic worker, such as to abide by the contract terms generally, and specifically, to pay a fair wage.

Terms of Employment of Domestic Workers by Members of the Permanent Missions

The Permanent Missions are reminded of the requirements placed on mission members who employ domestic workers that they are required to have a written employment contract. The employment contract is necessary and required to assist both the employer and the domestic worker in establishing a good faith employment relationship in which each of the parties is expected to carry out the terms of the contract. The contract must be in English and, if the domestic worker does not understand English, in a language understood by the domestic worker.

Two copies of the contract should be signed by both parties with one for the employer and one for the domestic worker. In addition, when a prospective domestic worker applies for a visa, the worker must provide a copy of the signed employment contract to the consular official.

The United States Mission is modifying the requirements of the terms of employment of domestic workers by mission members, which must be included in employment contracts. Most notably, in the past, the United States Mission has required mission members to retain records of the number of hours worked and of the payments made in connection with that work. As of November 15, 2009, the United States Mission will require that the payment of domestic workers be made by check or electronic funds transfer to a bank account in the domestic worker's name only. Payments in cash are no longer permissible. The Permanent Representatives are encouraged to implement internal mission policies to ensure that this obligation is adhered to such that, in the event of a dispute, the mission will have ready access to payment records.

An Employment contract with a domestic worker should include the following:

- **Description of duties.** The contract must describe the work to be performed, e.g., housekeeping, gardening, child care, and must also include a statement that the domestic worker shall work only for the employer who signed the contract.
- **Hours of work.** The contract must state the normal working hours and number of hours per week. It is generally expected that a minimum of 35-40 hours per week of paid employment will be provided. It should also state that the domestic worker will be provided a minimum of at least one full day off each week. The contract should also indicate whether the domestic worker will be provided paid holidays, sick days and vacation days.
- **Minimum Wage.** The contract must state the hourly wage to be paid the domestic worker. The rate must be the greater of the minimum wage under federal and state law or the prevailing wage for all working hours. The contract should state that wages will be

paid to the domestic worker either on a weekly or biweekly basis and state what deductions are to be taken from the wages. If any deduction is taken for meals or lodging, it must be no more than is reasonable.

- **Overtime work.** The contract must state that any hours worked in excess of the normal number of hours worked per week are considered overtime hours. It should also state that such work must be paid as required by New York State law.
- **Transportation to and from the United States.** The contract must state that the domestic worker will be provided with transportation to and from the United States.
- **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. The contract must also include a statement that the domestic worker's passport and visa will be in the sole possession of the domestic worker. In addition, the contract must state that a copy of the contract and other personal property of the domestic worker will not be withheld by the diplomatic or consular employer for any reason.
- **Other recommended terms of employment.** The contract should include a statement that the domestic worker's presence in the employer's residence will not be required except during working hours. The contract may include other agreed-upon terms of employment, if any, provided they are fully consistent with all federal, state and local laws. Any modification to the contract must be in writing.

To avoid possible misunderstanding, all members of the United Nations diplomatic community employing domestic workers should maintain for the duration of actual employment plus three years, a copy of the contract and proof of wage payments, e.g., cancelled checks or electronic fund transfers (signed receipts for cash payments are not permissible); a record of daily and weekly hours worked, including any overtime; and a record of any deductions made.

Treatment of Domestic Workers: The Role of the Chief of Mission

The United States Mission looks to the Permanent Representatives to be responsible for the conduct of the members of their missions and for ensuring that their treatment of domestic workers in their employ evidences respect for all relevant United States laws. In this regard, it is

recommended that the Permanent Mission maintain copies of the signed domestic worker contracts and be able to review such contracts, as well as records of payments made to each domestic worker, in the event that the United States Mission seeks assistance if faced with credible allegations of a mission member's mistreatment of a domestic worker. The United States Mission and/or the Department of State refer credible allegations of abuse of domestic workers by mission members which may constitute criminal conduct to the United States Department of Justice. In that context, the United States Mission and the Department of State may take other appropriate action, including, based on the determination by an appropriate prosecuting authority that prosecution is warranted, a request for a waiver of any applicable immunity. Mission members are not only expected to pay the greater of the minimum or prevailing wage and abide by other contract terms, but they should also be aware that in the United States, withholding a person's passport may be evidence of the crime of trafficking in persons if it is done with the intent of keeping that person in a state of forced labor or service.

The recently passed William Wilberforce Trafficking Victim's Protection Reauthorization Act 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 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 non-immigrants holding an A-3 or G-5 visa, and that the diplomatic mission or international organization tolerated such actions."

Documentation Requirements Upon Arrival and Departure

The Permanent Missions are reminded that, if a domestic worker is issued a visa and admitted to the United States, the Mission is required to submit the following documents to the United Nations Office of Protocol upon the worker's entry into the United States: form SG-5 ("Registration of Members of Permanent/Observer Missions"); the domestic worker's passport with the Form I-94 ("Arrival and Departure Record"); and a copy of the signed contract between the employer and the domestic worker in English. This official registration must be accomplished within 90 days of the date of the original pre-notification request.

The United States Mission wishes to remind the Permanent Missions that it is the responsibility of employers of personal domestic workers to retransfer abroad all workers upon the workers' leaving their employ or upon the transfer of the employer. This responsibility remains applicable notwithstanding the circumstances surrounding the termination of the employment. The United States Mission, however, will not object to the domestic worker's changing employers provided that the new employer is in a legal status to offer such employment, offers fair and reasonable employment conditions, and will assume the responsibility to retransfer the domestic worker abroad at the conclusion of the employment. The United States Mission also wishes to remind the missions that all domestic employees must be notified to the United Nations Office of Protocol upon their arrival in the United States, and upon their departure or transfer to a new employer.

The United States Government places a strong emphasis on its commitment to combat abuse and trafficking in persons in all forms and underscores that it takes seriously any allegations of mistreatment of domestic workers by their diplomatic employer.

The United States Mission to the United Nations avails itself of this opportunity to renew to the Permanent Missions to the United Nations the assurances of its highest consideration.

**UNITED STATES MISSION TO THE UNITED NATIONS
PRE-NOTIFICATION OF A DOMESTIC WORKER
(G-5 Visa Applicants)**

From: *(Name of Permanent Mission)* _____
(Contact Name and Title) _____,
(Telephone Number) _____

Approving Official (Permanent Representative or Head of Chancery): _____

Full Name of Applicant:

Surname: _____, Given (First): _____ Middle: _____

Male

Female

Current Citizenship: _____

Date of Birth: (mm-dd-yyyy) _____

Citizenship at Birth: _____

Place of Birth (City, Country): _____

Type of Passport:

Official

Regular

Service

Passport Number: _____

Job Title: _____

Description of Duties: _____

Please list any family members or dependents accompanying the visa applicant:

(include full names and relationship to visa applicant) _____

Employer's Name: _____

Employer P.I.D. Number: _____

*If employer has not yet arrived in country, please provide employer's passport number: _____

Duty Address/Residence: (address where duties will be performed by domestic worker)

(Address) _____

(Telephone Number) _____

Please email completed form to *UNDomesticWorkers@state.gov*