The Secretary of State presents her compliments to Their Excellencies and Messieurs and Mesdames the Chiefs of Mission and has the honor to refer to the standards applicable to the employment of personal workers, attendants, and any other domestic workers of mission personnel who are in the United States in nonimmigrant A-3 or G-5 visa status. The Secretary wishes to emphasize the importance the United States Government attaches to providing fair treatment to domestic workers who come to the United States to work for members of the diplomatic community and to remind the Chiefs of Mission 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 to domestic workers. This note supersedes any previous notes on this subject.

New Domestic Worker Visa Eligibility Requirements

The Secretary wishes to inform all missions of two new requirements the Department of State is implementing in connection with the employment of domestic workers by foreign missions personnel that pertain to the visa eligibility of prospective domestic workers. The Department of State currently requires that

the Office of the Chief of Protocol be notified at the time of the arrival and departure of all domestic workers in the United States.

Effective October 15, 2009, the Department of State will also require that foreign missions notify the Department of any prospective domestic worker 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, a sample of which is enclosed, can be found on the Office of Protocol website under the Diplomatic Affairs section at www.state.gov/s/cpr. The Office of Protocol must receive this notification before a domestic worker submits an application for an A-3 or G-5 visa and before a visa interview can be scheduled; such visas will not be issued unless the Pre-Notification Form has been submitted. 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 Chief of Mission has reviewed and authorized any such proposed employment by a mission member of a domestic worker.

In addition to requiring a Pre-Notification Form before a domestic worker may apply for an A-3 or G-5 visa, the Department has determined that such visas will 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). Under 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 not having the rank of Minister or above would have to demonstrate to the consular officer reviewing the A-3 or 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 A-3 or G-5 visa may be denied if the Department has credible evidence that the mission member failed to fulfill his/her obligations to a former or current employee, such as to abide by the contract terms generally, and specifically, to pay a fair wage.

Terms of Employment of Domestic Workers by Mission Members

The Chiefs of Mission are reminded that mission members who employ domestic workers must have a written employment contract. The employment contract is necessary and required to assist both the employer and the employee in establishing a good-faith employment relationship in which each 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, the contract must also be in a language understood by the domestic worker. Two copies of the contract must be signed by both parties, 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 Department of State is introducing one new requirement to the terms of employment of domestic workers by mission members, which must be included in employment contracts. In the past, the Department has required mission members to retain records of the number of hours worked and the payments made in connection with that work. Effective October 15, 2009, the Department will require within 90 days of commencement of employment that wage payments to domestic workers must be made by either check or electronic fund transfer to a bank account in the domestic worker's name only (cash payments will not be permissible). Chiefs of Mission are encouraged to implement internal mission

policies to ensure adherence to this obligation so that in the event of a dispute, the mission will have ready access to payment records.

Mission members' employment contracts with domestic workers must 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 employee shall work only for the employer who signed the contract.

- **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 35-40 hours per week. It must also state that the domestic employee will be provided a minimum of one full day off each week. The contract must indicate whether the domestic employee will be provided paid holidays, sick days and vacation days.

- **Minimum Wage.** The contract must state the hourly wage to be paid the domestic employee. 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. The contract must state that wages will be paid to the domestic employee either weekly or biweekly and state also 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 and must be documented.

- **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, and that hours in which the employee is "on call" count as work hours. It must also state that such work must be paid as required by U.S. local laws.

- **Payment.** The contract must state that after the first 90 days of employment, all wage payments must be made by check or by electronic transfer to the domestic worker's bank account. 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 domestic employee 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 employee will not be withheld by the diplomatic or consular employer for any reason.

- **Other recommended terms of employment.** The contract must 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 U.S. federal, state and local laws. Any modification to the contract must be in writing.

To avoid possible misunderstanding, all mission members employing domestic workers must 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 after the first 90 days are not permissible); and a record of daily and weekly hours worked, including any overtime, and a record of any deductions made.

Treatment of Domestic Workers: Role of the Chief of Mission

The Department looks to the Chiefs of Mission to be responsible for the conduct of mission members and for ensuring that the treatment of domestic workers in their employ respects all relevant U.S. laws. In this regard, the

Department of State recommends that the mission maintain copies of the signed domestic-worker contracts and be able to review such contracts, as well as records of payments made to the domestic worker, in the event that the Department receives credible allegations of a mission member's mistreatment of a domestic worker and seeks mission assistance in gathering further information.

The recently enacted William Wilberforce Trafficking Victims 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 nonimmigrants holding an A-3 or G-5 visa, and that the diplomatic mission or international organization tolerated such actions." Should the Department have to make such an assessment, mission policies and record-keeping regarding the employment of domestic workers may be relevant to this assessment.

Finally, the Department of State forwards to the Department of Justice all credible allegations of abuse of domestic workers by mission members which may constitute criminal conduct. In that context, the Department of State may take other appropriate action, including a request for a waiver of any applicable

immunity, based on a determination by an appropriate prosecuting authority. Mission members are expected to pay the legal minimum wage and abide by other contract terms and must also be made 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. Consistent with the general expectation that mission members pay their just debts, they are expected to pay any award of damages in cases brought against them by their former domestic workers.

Documentation Requirements Upon Arrival and Departure

The Chiefs of Mission 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 Office of the Chief of Protocol through the e-Gov system upon the worker's entry into the United States: (1) the form DS-2004 (Notification of Appointment); (2) a copy of the domestic worker's visa; (3) a copy of Form I-94 ("Departure Record"); and (4) a copy written in English of the signed contract between the employer and the domestic worker. This official registration must be completed within 90 days of the date of the original pre-notification request.

The Secretary of State wishes to remind the Chiefs of Mission that it is the responsibility of mission members employing domestic workers to retransfer

abroad all domestic workers at the time of termination, unless the domestic worker has changed employers, or at the conclusion of the mission member's assignment in the United States. However, the Department does not object to the employee's changing employers provided that the new employer is in a legal status to offer such employment, offers fair and reasonable employment conditions, and assumes the responsibility to transfer the employee abroad at the conclusion of the employment. The Secretary of State also wishes to remind the missions that the Office of Protocol must be notified when domestic employees arrive in the United States, and upon their termination, whether they have departed the United States or transferred to a new employer. Notification to the Office of Protocol of the termination of a domestic worker who has left the employment of mission members will relieve mission members of responsibility for such workers.

The Government of the United States places 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.

Department of State,

Washington, September 16, 2009.

OFFICE OF THE CHIEF OF PROTOCOL
U.S. DEPARTMENT OF STATE
PRE-NOTIFICATION OF A DOMESTIC WORKER
(A-3 or G-5 Visa Applicants)

From: *(Name of Embassy/Mission)* _____
(Contact Name) _____
(Telephone Number) _____

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:
☐ Diplomatic ☐ Official ☐ Regular ☐ Other: _____

Passport Number: _____

Type of VISA Applicant is Seeking:
☐ A-3 ☐ G-5

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 Name: _____

Employer I.D. Number*: _____
*If employer has not yet arrived in country, please provide employer's passport number: _____

Employer's Office: *(Name of Office)* _____
(Office Address) _____
(Telephone Number) _____

Duty Office/Residence: (where duties will be performed by domestic worker)
(Address) _____
(Telephone Number) _____

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