

The Secretary of State presents his compliments to Their Excellencies and Messieurs and Mesdames the Chiefs of Mission and has the honor to provide all missions with 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 and Medicare, and health insurance. Forms and publications referred to in this note are available on the website of the Internal Revenue Service, www.irs.gov.

This note supplements the circular diplomatic notes issued by the Department on September 24, 2013, August 12, 2013, August 1, 2012, April 20, 2012, March 22, 2011, and September 16, 2009.

Domestic workers

Tax residency. Like other “A” visa holders, domestic workers holding an “A-3” visa are non-residents for federal income tax purposes.

Income tax. Foreign domestic workers on “A-3” visas who are employed by embassy staff members in Washington are not required to pay income taxes on their salaries. Under Article 37(4) of the Vienna Convention on Diplomatic Relations (VCDR), these domestic workers are exempt from income taxes on their salary. However, absent a bilateral agreement providing for a tax exemption,

foreign domestic workers on “A-3” visas who are employed by members of consular posts generally do not benefit from an income tax exemption. As non-residents for federal income tax purposes, they must file a U.S. income tax return using Form 1040-NR or Form 1040NR-EZ. Employers are not required to withhold federal income tax from wages, so domestic workers should consider making quarterly estimated tax payments using Form 1040-ES(NR).

Domestic workers may also be subject to income tax in the state in which they reside.

Social Security/Medicare. Foreign domestic workers on “A-3” visas in the sole employ of a diplomatic mission or consular post member are generally exempt from the U.S. Social Security system pursuant to Articles 33(2) and 37 of the VCDR or Article 48(2) of the Vienna Convention on Consular Relations (VCCR), *unless* they are not covered by the social security provisions which are in force in the sending State or a third State. Such individuals will be covered by the U.S. system unless a U.S. totalization/social security agreement in force provides an exemption. A list of bilateral social security (or totalization) agreements is available at: www.ssa.gov/international.

If a domestic worker is covered by the U.S. Social Security system, he or she must apply for a Social Security Number and obtain a Social Security card from the Social Security Administration. More information about applying for a number

and card is available at: www.ssa.gov/ssnumber/. His or her employer is required to withhold and pay Social Security and Medicare taxes to the IRS, and complete and provide the worker a Form W-2 before a certain date. More information on these requirements is available in IRS Publication 926, Household Employer's Tax Guide.

Health insurance. If their employer does not provide adequate and affordable health insurance coverage, foreign domestic workers on "A-3" visas may sign up through the online marketplace/exchange during open enrollment season or contact an insurance broker. More information is available at www.healthcare.gov.

Employers

Income tax. Employers are not required to withhold federal income tax from wages paid to the domestic worker. However, employers of such domestic workers should be mindful of the possibility that the state in which the worker resides may impose requirements relating to the withholding of state income tax.

Federal Unemployment Tax (FUTA). For the most part, mission members will be exempt from FUTA and state unemployment taxes under VCDR Articles 34 or 37 or VCCR Article 49. However, certain mission member employers who are considered permanently resident in the United States under the Vienna Conventions (i.e., locally hired staff) are required to apply for an Employer

Identification Number (EIN), pay federal unemployment tax (FUTA), and file Schedule H with the IRS. More information on these requirements is available in IRS Publication 926, Household Employer's Tax Guide. Such employers should also contact the state unemployment tax agency to determine whether they need to pay state unemployment tax for their worker.

Social Security/Medicare. If the domestic worker is covered by the U.S. Social Security system (which, as explained above, is possible), employers are required to apply for an EIN, withhold and pay Social Security and Medicare taxes, complete and provide the worker with a Form W-2 before a certain date, and file Schedule H with the IRS. Mission members must observe these obligations in accordance with Article 33(3) of the VCDR and Article 48(3) of the VCCR. More information on these requirements is available in IRS Publication 926, Household Employer's Tax Guide, and www.ssa.gov/employer.

Although the Department does not allow employers to withhold any amount from a domestic worker's wages for expenses such as meals, housing, the provision of medical care, medical insurance, or travel, employers are required to withhold Social Security and Medicare taxes when applicable and in accordance with U.S. law. Employers are not permitted to withhold any amount from a domestic worker's wages to cover the FUTA or the employer's contribution to Social Security and Medicare taxes.

Foreign missions are encouraged to assist domestic workers employed by their personnel to understand the obligations as set out in this note. Foreign missions and their personnel are welcome to direct their questions to OFMTaxCustoms@state.gov.

Department of State,

Washington, February 2, 2015

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