

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, June 18, 2015

