

MAR 8, 2016

SUBJECT: 9 FAM Update: Change in Wage Requirement in Contracts for A-3, G-5, and NATO-7 Domestic Workers

1. The [9 FAM 402.3-9\(B\)\(4\)](#) notes have been updated to reflect a change in wage requirements for A-3, G-5, and NATO-7 domestic workers. **Effective immediately, all contracts for domestic workers must state an hourly wage to be paid to the domestic worker, and the rate must be the greater of the minimum wage under U.S. federal, state, or local law.** Consular officers will no longer be required to compare prevailing wage and minimum wage to determine the appropriate wage in contracts for these domestic workers. Instead, officers will determine whether the wage to be paid to the domestic worker as stated in the contract is at least the greater of the federal minimum wage and the state or local minimum wage where the applicant will work.
2. To assist consular officers in determining the appropriate wage, 9 FAM 402.3-9(B)(4), paragraph b(4) has been updated to include a chart of federal, state, and selected local minimum wages. Although this chart can be used as a guide, because minimum wage rates may change throughout the year, all rates should be verified at the Department of Labor link in the FAM at the time the visa is issued. If a particular state or locality is not listed in the FAM and an applicant will work in that state or locality, posts may verify the minimum wage requirement with their VO/F desk officers.
3. The previous requirement in 9 FAM 402.3-9(B)(4) that the wage must be the greater of the minimum wage under U.S. federal and state law, or the prevailing wage, was initially instituted when lodging and meal deductions were permissible. These deductions, which could lead to a significant offset to salary, are no longer permissible. When reviewing contracts for A-3, G-5,

and NATO-7 domestic workers, consular officers must ensure that no deductions are allowed for meals, lodging, medical care, medical insurance, or travel.

4. The updated FAM notes, provided in paragraph 5 of this message, are effective immediately.

5. Begin text of FAM notes:

9 FAM 402.3-9(B)(4) Salary, Contracts and Employer Obligations

a. A-3, G-5, and NATO-7 employees are covered by the Fair Labor Standards Act (FLSA). In each case, an employee applying for an A-3, G-5, or NATO-7 visa must present a copy of the employment contract, in both English and (if the applicant does not understand English) a language understood by the applicant, that has been signed by both the applicant and the employer to demonstrate that the employee will receive a fair wage, and that the employee understands his or her duties and rights regarding salary and working conditions. Post must scan the employment contract and attach the scanned document to the application record in NIV.

b. **Contract Requirements:** The contract must contain the following provisions:

- (1) **Description of Duties:** The contract must describe the work to be performed (e.g., housekeeping, gardening, child care), and must include a statement that the domestic employee shall work only for the employer who signed the contract and will not accept any other employment while working for the employer.
- (2) **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. The contract must also state that the domestic employee will be provided a minimum of one full day off each week. The contract must indicate the number of paid holidays, sick days, and vacation days the domestic employee will be provided.
- (3) **Minimum Wage:** The contract must state the hourly wage to be paid to the domestic employee. The rate must be the greater of the minimum wage under U.S. Federal, state, or local law. The contract must state that wages will be paid to the domestic employee either weekly or biweekly, and also state what deductions are to be taken from the wages. No deductions are allowed for meals, lodging, medical care, medical insurance, or travel.

Updated As of February 2016*
This chart is provided as a guide. Minimum wage rates may change throughout the year, all rates should be verified at the time the visa issued.
U.S. Federal Minimum Wage: \$7.25
District of Columbia Minimum Wage: \$10.50
New York State Minimum Wage: \$9.00
Maryland State Minimum Wage: \$8.25

Baltimore County: \$8.25
Montgomery County: \$9.55
Prince George's County: \$9.55
Virginia State Minimum Wage: \$7.25
Illinois State Minimum Wage: \$8.25
Chicago: \$10.00
California State Minimum Wage: \$10.00
San Francisco: \$12.25
<i>(Los Angeles follows CA state minimum wage.)</i>
Texas State Minimum Wage: \$7.25
<i>(Houston follows TX state minimum wage.)</i>
Florida State Minimum Wage: \$8.05
<i>(Miami follows FL state minimum wage.)</i>

*Note: The above chart only includes state and local areas where domestic workers registered with the Department most commonly reside. State minimum wages can be found on the Department of Labor's website (<http://www.dol.gov/whd/minwage/america.htm>) or you can check with your VO/F desk officer.

- (4) **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 also must state that such work must be paid as required by U.S. local laws.

NOTE: Under Federal law, the rate of overtime pay need not exceed the regular hourly rate if the employee resides in the home of the employer, but State law governing overtime rates also applies and must be checked. If the employee does not reside with the employer, overtime for hours in excess of 40 hours per week must be paid at the rate of time and a half.

- (5) **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. The bank account must be in the United States so that domestic workers may readily access and utilize their wages. Neither Mission members, nor their family members, should have access to domestic workers' bank accounts.

In addition, the Department requires that the employer retain records of employment and payment for three years after the termination of the employment in order to address any complaints that may subsequently arise.

- (6) **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.
- (7) **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 also must 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 employer for any reason.

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.

- (8) **Other Recommended Terms of Employment:** The contract may include additional 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.

End text of FAM notes.

6. Minimize Considered.