

Case Number:

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## U.S. CONSULATE GENERAL SÃO PAULO

<https://br.usembassy.gov/visas/domestic-employees/saopaulovisa@state.gov>

### **DOMESTIC/PERSONAL EMPLOYEES AND TAX GUIDE**

Under certain circumstances, U.S. citizens and nonimmigrant visa holders may take their domestic employees to the United States to work during a temporary stay:

- Employers who are seeking admission into, or are already in, the United States in B1/B2, E, F, H, I, J, L, M, O, P, Q, R, or TN nonimmigrant status.
- American citizens who reside permanently outside of the United States and who are visiting the country temporarily.
- Americans who normally reside outside of the United States for business, will return to the United States on a temporary transfer, and who expect to be transferred overseas again within six years.

Note that legal permanent residents (“green card” holders) are not entitled to bring or to employ non-immigrant alien domestic employees in the U.S.

Each non-immigrant visa applicant, including household employees, may qualify for a non-immigrant visa as long as they demonstrate that they do not plan to abandon their country of residence. For more information regarding visa procedures visit the website <https://br.usembassy.gov/visas/domestic-employees/>.

#### **Specific requirements for household employees**

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Upon applying for a non-immigrant visa to accompany or follow to join a household employer in the United States, each household employee should:

1. Prove at least one year of work experience as a household employee by showing legal documentation (labor card and pay receipts).
2. Either: (a) Provide proof of length of employment with the employer; or (b) If the employee-employer relationship started immediately prior to the time of visa application, the employer must demonstrate that he or she has regularly employed (either year-round or seasonally) personal or domestic employees over a period of several years preceding this non-immigrant visa application.
3. Show a contract signed and dated by both parties (household employer and domestic employee), which reflects that: a minimum hourly wage or prevailing wage (whichever is higher) of the area in which he/she will be working will be paid in the United States for the services rendered; they will receive all of the standard benefits given to household employees who work eight hours daily in the United States; the employee will only have one employer; and the employee will leave the United States when the employer does.
4. If issued, the non-immigrant visa will reflect the name of the employer.
5. All applicants for domestic employee visas must be interviewed in person by a consular officer. Employers are not required to attend the visa interview with their employee though it may help with any issues that

need clarifying. Employers must have the economic solvency to pay both for the trip and the salary of the domestic employee.

### ***Additional requirements***

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1. Pay close attention to the length of stay granted to the employee upon entering the U.S. If necessary, employers can request an extension of this period prior to the expiration date from USCIS. To apply for an extension of this period, the I-539 form can be downloaded from <http://www.uscis.gov/files/form/i-539.pdf> and should be submitted along with the employment contract and a copy of the EAD (see below).
2. Apply for an employment authorization document (EAD). For more information please visit the link below: <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=820a0a5659083210VgnVCM100000082ca60aRCRD&vgnnextchannel=820a0a5659083210VgnVCM100000082ca60aRCRD>.
3. Apply for a social security number at the local Social Security Administration office. More information can be found at the website: <http://www.ssa.gov>.
4. Provide the employee with “W-2, Wage and Tax Statement” at the end of each tax year and submit a copy to the Social Security Administration. For further information on tax issues for domestic employees refer to the IRS website: <http://www.irs.gov/pub/irs-pdf/p926.pdf>.

### ***Workers’ rights***

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Workers in the U.S. have the right to be treated and paid fairly; not to be held in a job against their will; be able to maintain possession of their passport and identification documents; report abuse without retaliation; request help from unions, immigrant, and labor rights groups; and seek justice in U.S. courts. Please see <https://travel.state.gov/content/visas/en/general/rights-protections-temporary-workers.html> for more information about workers' rights and how to report violations.

### ***Guidelines for preparing employment contracts for domestic employees in the U.S.***

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Applications for domestic workers, attendants, and/or personal employees must present, in duplicate, a typewritten employment contract, dated and signed by the employer and the employee. At a minimum, the contract must include the following specific items:

1. An agreement by the employer to abide by all federal, state, and local laws in the United States.
2. A guarantee that the employee will be compensated at the federal, state, or local minimum wage or “prevailing wage,” whichever is higher. The state minimum wage can be found at <https://www.dol.gov/whd/minwage/america.htm>. The table below has prevailing wages for some cities effective July 1, 2017. Prevailing wages for other locations can be found at <http://www.flcdatacenter.com/oeswizardstart.aspx> (Level 2 wages should be used).

<b>B1 Visa for</b>	<b>Orlando, FL (US\$/hr)</b>	<b>Miami, FL (US\$/ hr )</b>	<b>New York City, NY (US\$/ hr )</b>	<b>Washington, DC (US\$/ hr )</b>	<b>Boston, MA (US\$/ hr )</b>
Nannies 39-9011	9.49	9.75	11.78	12.50*	12.21
Maids 37-2012	9.81	9.75	13.71	12.50*	13.79
Caregivers 39-9021	9.58	10.89	11.15	12.50*	12.96
Cooks 35-2013	15.42	15.42	15.42	16.27	15.42
Gardeners 37-3011	10.87	10.50	13.47	12.73	14.33
Drivers 53-3041	10.16	9.81	13.32	12.80	12.34

\* Please note that the prevailing wage for these categories is *below* the minimum wage of the District of Columbia as of July 1, 2017, which is \$12.50.

3. Details of the frequency and form of payment, the employee's work duties, the weekly work hours, holidays, sick days, and vacation days.
4. A statement by the employee that he or she will not accept any other employment while working for the employer under this contract.
5. A statement by the employer that he or she will not withhold the passport, employment contract, or other personal property of the employee.
6. A statement indicating that both the employer and employee understand that the employee cannot be required to remain on the work premises after working hours without compensation.
7. The employer's agreement to provide medical insurance for the employee.
8. The employer's agreement to provide free room and board and a round trip airfare.
9. A statement as to the length of the contract and the conditions for terminating the contract.

Any other items mentioned in the contract are a private matter between the contracting parties as long as they do not conflict in any way with the required terms of the contract indicated above.

Unless the employee is a native speaker of the English language, the contract must be prepared and submitted in the employee's native language, as well as in English.

# Contrato Particular de Prestação de Serviços [Work Agreement]

Pelo presente instrumento, celebram entre si o(a) *Contratante* Sr(a). [Through the present instrument **Contracting party** Mr.(s)] \_\_\_\_\_, brasileiro(a) [Brazilian], \_\_\_\_\_ (estado civil) [marital status], portador(a) do RG nº [and bearer of ID number] \_\_\_\_\_, e do CPF nº [and of CPF number] \_\_\_\_\_, doravante designado(a) *contratante* [from now on designated **contracting party**] e Sr(a). [**and contracted party** Mr.(s)] \_\_\_\_\_, Brasileiro(a) **Brazilian**, \_\_\_\_\_ (estado civil) [marital status], portador(a) do RG nº [bearer of ID number] \_\_\_\_\_, e da carteira de trabalho nº [and Work Permit number] \_\_\_\_\_, série [of series] \_\_\_\_\_, doravante designado(a) *contratado(a)* o referido contrato de trabalho: [from now on designated **contracted party**, agree to observe the following contract]:

## Cláusula Primeira [First Clause]

As tarefas do(a) contratado(a) durante a permanência nos Estados Unidos serão: [The contracted party's work duties while in the United States are the following]: \_\_\_\_\_; o(a) contratado(a) trabalhará durante o período de [the contracted party will work from] \_\_\_\_ : \_\_\_\_ (am/pm) às [to] \_\_\_\_ : \_\_\_\_ (am/pm) nos seguintes dias da semana: [on the following days of the week]: \_\_\_\_\_; O(A) contratado(a) usufruirá de folgas, feriados, licença por atestado médico e férias de acordo com a seguinte programação: [the contracted party will receive days off, holidays, sick days, and vacation days according to the following schedule]: \_\_\_\_\_.

## Cláusula Segunda [Second Clause]

O(A) contratante concorda em cumprir todas as leis federais, estaduais e locais dos Estados Unidos. [The contracting party agrees to abide by all federal, state, and local laws in the United States].

## Cláusula Terceira [Third clause]

O(A) contratante concorda em pagar ao(à) contratado(a) o salário mínimo federal, estadual ou local por hora ou o salário predominante (prevailing wage) - o que for mais alto - observando a legislação de trabalho de todas as localidades. [The contracting party agrees to pay to the contracted party the federal, state, or local minimum wage per hour or the prevailing wage per hour - whichever is higher - observing the labor regulations of all locations of employment].

Valor a ser pago em dólares por hora [Wage per hour] US\$ \_\_\_\_\_.

O(A) contratante concorda em prover o pagamento ao(à) contratado(a) no seguinte intervalo de tempo (ex.: uma vez por semana): [The contracting party agrees to provide payment to the contracted party regularly according to the following schedule (e.g. once per week)]: \_\_\_\_\_; o pagamento será feito da seguinte forma (ex.: dinheiro, cheque, etc.): [the payment will be made in the following form (e.g. cash, check, etc.)]: \_\_\_\_\_.

## Cláusula Quarta [Fourth clause]

Por todo o período do presente contrato, o(a) contratante garante ao(à) contratado(a) moradia e alimentação, sem nenhum ônus ao(à) contratado(a). [The contracting party will provide, at no expense to the contracted party, room and board during the entire period of the trip].

### **Cláusula Quinta [Fifth clause]**

Por todo o período do presente contrato, garante o(a) contratante total assistência médica ao(à) contratado(a), no(s) país(es) e cidade(s) visitado(s). **[The contracting party agrees to provide medical insurance, as part of the employee's compensation package, to cover the contracted party at all times while present in the United States].**

### **Cláusula Sexta [Sixth clause]**

As despesas de transporte do(a) contratado(a), tanto de ida quanto de volta dos Estados Unidos, bem como os traslados locais correrão por conta do(a) contratante. **[The contracting party agrees to provide to the contracted party all necessary transportation expenses, including air travel to and from the United States].**

### **Cláusula Sétima [Seventh clause]**

O(A) contratado(a) concorda em não aceitar nenhum outro tipo de trabalho durante a duração da validade deste contrato. **[The contracted party agrees not to accept any other employment for the duration of the validity of this contract].**

### **Cláusula Oitava [Eighth Clause]**

O(A) contratante e o(a) contratado(a) reconhecem e concordam que o(a) contratado(a) não poderá permanecer no local de trabalho além do horário de trabalho sem ser devidamente remunerado para tanto. **[The contracting party and the contracted party acknowledge that they understand that the contracted party cannot be required to remain on work premises after work hours without compensation].**

### **Cláusula Nona [Ninth clause]**

O(A) contratante garante que não reterá, em nenhuma circunstância, o passaporte, o contrato de trabalho, ou qualquer outra propriedade pessoal do(a) contratado(a). **[The contracting party guarantees that he or she will not, under any circumstances, withhold the passport, employment contract, or other personal property of the contracted party].**

### **Cláusula Décima [Tenth clause]**

Este contrato estará válido de **[This contract will be valid from]** \_\_\_\_\_ (data) **[(date)]** à **[to]** \_\_\_\_\_ (data) **[(date)]**.

### **Cláusula Décima Primeira [Eleventh clause]**

Fica eleito o foro de **[The city of]** \_\_\_\_\_ para fins de toda e qualquer ação referente ao presente contrato. **[is designated as the site for any future complaints regarding the present contract].**

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Cidade ou país **[city or country]**

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Data **[date]**

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Contratante-empregador(a) **[Contracting Party–Employer]**

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Contratado(a)–empregado(a) **[Contracted Party–Employee]**