

## Checklist of New Requirements for Massachusetts Host Families

- Provide your au pair with the notice "[Legal Rights of Domestic Workers](#)" published by the MA Attorney General, a copy of which is included with the written agreement template below.
- Sign a written agreement with your au pair if s/he will provide 16 hours or more of childcare services per week.
  - a. The specific categories of information required to be in the agreement are set forth in the MA DWBOR regulations and include but are not limited to: (i) regular and overtime rate of pay; (ii) working schedule and duties; (iii) applicable rest days, sick days, vacation days, or other time off; (iv) charges or pay deductions; (v) process for raising and addressing concerns; and (vi) eligibility for workers' compensation (see additional information in the FAQ section). The Massachusetts Attorney General's office provides a sample written agreement for domestic workers that includes this required information [here](#).
  - b. Given that these state requirements must be reconciled with the U.S. Department of State federal requirements, the following [template agreement](#) may be more useful to hosting families on the au pair program.
  - c. We recommend that you provide a copy of the agreement you plan to use with your au pair for him/her to review and then discuss and mutually agree to the terms.
  - d. Both you and your au pair need to sign the agreement, and the host family should retain a copy for at least 3 years following the end of the au pair's program.
- Define and discuss a weekly schedule with your au pair to set clear expectations on what is compensable on-duty time and what is off-duty time.
  - a. This schedule should be included in the written agreement with your au pair.
  - b. If changes or revisions need to be made, you should provide an updated schedule to your au pair in writing.
- Use a weekly timesheet to track the actual hours of childcare provided by your au pair each day and each week.
  - a. You should provide your au pair a completed timesheet each week for her/him to review. Both you and your au pair should sign the completed timesheet.
  - b. The MA Attorney General's office provides a [sample timesheet here](#).
  - c. You should retain copies of signed timesheets for at least 3 years after your au pair's program ends.
- Pay your au pair each week in accordance with the greater of: 1) the federal stipend requirements in the U.S. State Department regulations; or 2) Massachusetts minimum wage and overtime rules based on actual hours worked and less permissible state deductions.
  - a. The U.S. State Department federal regulations require host families to provide their au pairs a weekly stipend of at least \$195.75 regardless of how many hours of childcare the au pair provides (up to the regulatory maximum of 10 hours per day and 45 hours per week).
  - b. Massachusetts minimum wage is currently \$12/hour, but will increase to \$12.75 on January 1, 2020.
  - c. Overtime is paid at time and a half (i.e., 1.5 times the agreed upon hourly rate of pay) and applies to hours the au pair provides childcare that exceed 40 in a workweek (up to the 45-hour limit in the federal regulations).
  - d. Permissible deductions from your au pair's weekly pay and associated requirements are set forth in the MA Attorney General's resources available [here](#). They include but are not limited to:
    - i. Meal Deduction: MA law recognizes a food and drink deduction that is provided and voluntarily accepted by your au pair; not to exceed the actual cost or up to a maximum of \$1.50 for breakfast and \$2.25 for lunch and dinner (i.e., maximum of \$42/week).

- ii. Lodging Deduction: MA law recognizes a lodging deduction that is provided and voluntarily accepted by your au pair; not to exceed \$35/week.
- iii. Any applicable state/federal taxes, social security, unemployment, or wage garnishments. See below for further information on applicable taxes.
- iv. Note—if host families and au pairs agree to share costs for other items not required to be provided under any applicable law (e.g., family car for personal use), those charges should not be deducted from the au pair’s pay. The host family should make the weekly payment to the au pair as required, and then work out a separate, mutually agreeable process to address those costs/charges.

e. See the chart below that demonstrates what a host family can pay an au pair while considering the interplay between the federal regulations and the MA state labor laws.

Count on-duty hours per week	Calculate minimum total due per MA State Minimum Wage (\$12.75/hr in 2020)	Maximum deduction for weekly meals per MA law if all requirements are met	Maximum deduction for weekly lodging per MA law if all requirements are met	Confirm total is at least at the State Dept. minimum au pair stipend requirement (>\$195.75)	Pay your au pair at least this amount per week
10	\$127.50	-\$42	-\$35	No	\$195.75
20	\$255	-\$42	-\$35	No	\$195.75
30	\$382.50	-\$42	-\$35	Yes	\$305.50
40	\$510	-\$42	-\$35	Yes	\$433.00
45	\$510 + \$95.65 (overtime)	-\$42	-\$35	Yes	\$528.65

Provide to your au pair and retain for your records a paper or electronic record of the weekly payment along with the signed weekly timesheet.

a. Host families should retain these payment records for at least 3 years following the end of the au pair’s program.

Determine whether your family has any tax obligations related to the hosting of an au pair in Massachusetts. Cultural Care cannot provide tax advice and encourages you to speak to a tax advisor for guidance on potentially applicable taxes, especially as applied to your family’s specific circumstances. The following information may, however, be helpful to you and/or your tax advisor to consider:

a. The IRS provides specific guidance applicable to au pairs in the U.S. on a J-1 cultural exchange visa, available at: [irs.gov/individuals/international-taxpayers/au-pairs](https://www.irs.gov/individuals/international-taxpayers/au-pairs). The IRS publication states:

- i. *Social Security and Medicare*: “Au pair wages are not usually subject to social security and Medicare taxes because of the au pair’s status as a J-1 nonimmigrant and as a nonresident alien.”
- ii. *Federal Income Tax*: “Since au pair wages are paid for domestic service in a private home, they are not subject to mandatory U.S. income tax withholding and reporting on Forms 941 and W-2.”
- iii. *Federal Unemployment Tax*: “Most au pairs are nonresident aliens, and therefore their host families would be exempt from paying federal unemployment taxes on their au pair wages.”

b. Massachusetts does not maintain specific guidance applicable to au pairs temporarily in the U.S. as nonresident aliens on a J-1 cultural exchange visa.

- i. MA State Income Tax. Host families should confirm with their tax advisor, but Cultural Care’s understanding is that no withholding of MA state income tax is required for au pairs.
- ii. State Unemployment Tax (SUTA) through MA Department of Unemployment Assistance (DUA). Au pairs must remain a participant in the federal au pair program to satisfy the conditions of the J-1 visa and must receive the federal stipend in accordance with the U.S. State Department regulations for each week of their program participation. Despite these circumstances unique to the federal au pair program, au pairs are likely eligible for state unemployment absent further clarification from the DUA. Cultural Care encourages host families to

contact the MA Department of Unemployment Assistance at 617-626-6800 ([mass.gov/dua](http://mass.gov/dua)) to determine whether they need to register with DUA and pay any state unemployment tax due to the hosting of an au pair.

iii. Workers' Compensation. Similar to SUTA, au pairs have a unique status as temporary nonresident aliens, the conditions of their J-1 visa, and the protections afforded by the federal stipend requirement. Despite these circumstances unique to the federal au pair program, au pairs are likely eligible for workers' compensation absent further clarification from the MA Department of Industrial Accidents. Cultural Care encourages host families to contact the MA Department of Industrial Accidents at 617-727-4900 ([mass.gov/dia](http://mass.gov/dia)) to determine whether au pairs would be eligible for state workers' compensation benefits and, if so, to contact their homeowner insurer or other licensed workers' compensation insurance company.

c. Note that the IRS publication states for au pairs that "Most au pairs are nonresident aliens, and therefore will be required to file Form 1040NR or Form 1040NR-EZ to report their au pair wages."

- Review the resources provided in the additional resources section below regarding other legal rights and duties related to employment of domestic workers in MA, which include but are not limited to: (i) the right of a domestic worker to request and receive a job evaluation; (ii) domestic worker privacy rights; (iii) non-discrimination; and (iv) prohibitions against retaliation.**

MA Attorney General Office's Notice of Rights of Domestic Workers, available at:

[www.mass.gov/doc/notice-of-rights-for-domestic-workers/download](http://www.mass.gov/doc/notice-of-rights-for-domestic-workers/download)

MA Attorney General Office's Information Page on Domestic Workers Rights, available at:

[www.mass.gov/service-details/domestic-workers](http://www.mass.gov/service-details/domestic-workers)

MA Attorney General's Regulations Implementing the Domestic Workers' Bill of Rights Law (940 CMR 32.00), available at:

[www.mass.gov/doc/940-cmr-32-domestic-workers/download](http://www.mass.gov/doc/940-cmr-32-domestic-workers/download)