

## CHAPTER 33

## (SB 46)

AN ACT relating to supplemental payments to local governments for qualified professional firefighters and declaring an emergency.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔Section 1. KRS 95A.210 is amended to read as follows:

As used in KRS 95A.200 to 95A.300, unless the context otherwise requires:

- (1) "Commission" means the Commission on Fire Protection Personnel Standards and Education established pursuant to KRS 95A.020.
- (2) "Fund" means Firefighters Foundation Program Fund.
- (3) "Local government" means any city, ~~or~~ county, **urban-county government, charter county government, unified local government, consolidated local government**, or any combination thereof ~~for urban-county government~~ of the Commonwealth.
- (4) "Professional firefighter" means any member of a paid municipal fire department organized under KRS Chapter 95, **67A, or 67C**, ~~or~~ a fire protection district organized under KRS Chapter 75, or a county fire department created pursuant to KRS Chapter 67.
- (5) **"Scheduled overtime" means work by a professional firefighter in excess of forty (40) hours per week which regularly recurs as part of an established work schedule.**
- (6) **"Unscheduled overtime" means work by a professional firefighter in excess of forty (40) hours per week which does not regularly recur as part of an established work schedule.**
- (7) **"Established work schedule" means a work schedule adopted by or required of a local government setting a recurring pattern for time on and off duty for professional firefighters employed by the local government. An established work schedule includes but is not limited to a schedule of twenty-four (24) consecutive hours on duty, followed by forty-eight (48) consecutive hours off duty.**

➔Section 2. KRS 95A.250 is amended to read as follows:

- (1) (a) Beginning July 1, 1982, an eligible local government shall be entitled to receive annually a supplement of two thousand seven hundred fifty dollars (\$2,750) for each qualified professional firefighter it employs, and beginning on July 1, 1999, an annual supplement of three thousand dollars (\$3,000) for each qualified professional firefighter it employs, plus an amount equal to the required employer's contribution on the supplement to the defined benefit pension plan, or to a plan qualified under Section 401(a) or Section 457 of the Internal Revenue Code of 1954 as amended.~~;~~
- (b) ~~provided that~~ The employer's contribution ~~on the supplement~~ to any of these plans **on the supplement** shall not exceed ~~that amount which is required of employers under the County Employees Retirement System pursuant to KRS Chapter 78, to which the officer belongs, but no more than~~ the required employer's contribution to the County Employees Retirement System **pursuant to KRS Chapter 78 for the** hazardous duty category. ~~In the case of County Employees Retirement System membership,~~ The pension contribution on the supplement shall be paid whether the **professional firefighter entered** ~~officer enters~~ the system under hazardous duty coverage or nonhazardous coverage.
- (c) The local unit of government shall pay the amount received for retirement coverage to the appropriate retirement system to cover the required employer contribution on the ~~pay~~ supplement.
- (d) Should the foundation program funds be insufficient to pay employer contributions to the system, then the total amount available for pension payments shall be prorated to each eligible government so that each receives the same percentage of required pension costs attributable to the ~~cash salary~~ supplement.
- (2) (a) Each qualified professional firefighter, whose local government receives a supplement pursuant to subsection (1)(a) of this section, shall **receive distribution of the supplement from** ~~be paid by~~ that local government **in twelve (12) equal monthly installments with his or her pay for the last pay period**

*of each month. The monthly distribution shall be calculated by dividing the supplement amount set forth in subsection (1)(a) of this section by twelve (12)*~~[the supplement which his qualifications brought to the local government. The supplement paid each qualified firefighter shall be in addition to his regular salary].~~

- (b) *The supplement disbursed to a qualified professional firefighter pursuant to this section shall not be considered "wages" as defined by subsection (1)(c)1. of Section 4 of this Act and shall not be included in the hourly wage rate for calculation of overtime pursuant to Section 5 of this Act for scheduled overtime. The supplement shall be included in the hourly wage rates for calculation of overtime for unscheduled overtime pursuant to Section 5 of this Act.*
- (c) *To determine the addition to the hourly wage rate for calculation of overtime on unscheduled overtime, the annual supplement shall be divided by two thousand eighty (2,080). The overtime rate for unscheduled overtime shall be calculated by adding the quotient, which is the amount of the annual supplement divided by two thousand eighty (2,080), to the hourly wage rate and multiplying the total by one and one-half (1.5). The enhanced overtime rate shall be paid only for unscheduled overtime. Scheduled overtime shall be paid at one and one-half (1.5) times the regular hourly wage rate, excluding the supplement.*

(3) Beginning July 1, 2006:

- (a) The Kentucky Community and Technical College System shall be entitled to receive annually a supplement equal to the amount determined in subsection (1) of this section for each Kentucky fire and rescue training coordinator employed by the Kentucky Community and Technical College System who meets the qualifications for individual firefighters required in KRS 95A.230, plus an amount equal to the required employer's contribution on the supplement to the defined benefit pension plan; and
- (b) The Department of Military Affairs shall be entitled to receive annually a supplement equal to the amount determined in subsection (1) of this section for each civilian firefighter employed by the Department of Military Affairs who meets the qualifications for individual firefighters required in KRS 95A.230, plus an amount equal to the required employer's contribution on the supplement to the defined benefit pension plan.

Each fire and rescue training coordinator employed by the Kentucky Community and Technical College System and each civilian firefighter employed by the Department of Military Affairs, whose employer receives a supplement pursuant to this subsection, shall **receive distribution from**~~be paid by~~ that employer **of** the supplement which his or her qualifications brought to the employer. The **supplement distributed**~~supplement~~~~paid~~ shall be in addition to his or her regular salary.

➔Section 3. KRS 95A.260 is amended to read as follows:

- (1) Funds made available to local governments shall be received, held and expended in accordance with the provisions of KRS 95A.200 to 95A.300, any rules and regulations issued by the commission, and the following specific restrictions:
  - (a) Funds provided shall be used only as a **supplemental distribution**~~cash salary supplement~~ to firefighters, and for payments to the defined benefit pension plan to which the firefighter belongs to cover retirement costs on the **supplemental distribution**~~cash salary supplement~~.
  - (b) Funds provided shall be **distributed**~~used~~ only to ~~compensate~~ firefighters who have complied with subsections (3) and (4) of KRS 95A.230.
  - (c) Each firefighter shall ~~be entitled to~~ receive **distribution of** the state supplement which his **or her** qualifications brought to the local government.
  - (d) Funds shall not be used to supplement existing salaries or as a substitute for normal salary increases periodically due to firefighters.
- (2) This section shall not apply to funds expended pursuant to KRS 95A.240(3).

➔Section 4. KRS 337.010 is amended to read as follows:

- (1) As used in this chapter, unless the context requires otherwise:

- (a) "Executive director" means the executive director of the Office of Workplace Standards under the direction and supervision of the commissioner of the Department of Labor;
  - (b) "Office" means the Office of Workplace Standards in the Department of Labor;
  - (c)
    1. "Wages" includes any compensation due to an employee by reason of his employment, including salaries, commissions, vested vacation pay, overtime pay, severance or dismissal pay, earned bonuses, and any other similar advantages agreed upon by the employer and the employee or provided to employees as an established policy. The wages shall be payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to the allowances made in this chapter;
    2. *For the purposes of calculating hourly wage rates for scheduled overtime for professional firefighters, as defined in subsection (5) of Section 1 of this Act, "wages" shall not include the distribution to qualified professional firefighters by local governments of supplements received from the Firefighters Foundation Program Fund. For the purposes of calculating hourly wage rates for unscheduled overtime for professional firefighters, as defined in subsection (6) of Section 1 of this Act, "wages" shall include the distribution to qualified professional firefighters by local governments of supplements received from the Firefighters Foundation Program Fund;*
  - (d) "Employer" is any person, either individual, corporation, partnership, agency, or firm who employs an employee and includes any person, either individual, corporation, partnership, agency, or firm acting directly or indirectly in the interest of an employer in relation to an employee; and
  - (e) "Employee" is any person employed by or suffered or permitted to work for an employer.
- (2) As used in KRS 337.275 to 337.325, 337.345, and KRS 337.385 to 337.405, unless the context requires otherwise:
- (a) "Employee" is any person employed by or suffered or permitted to work for an employer, but shall not include:
    1. Any individual employed in agriculture;
    2. Any individual employed in a bona fide executive, administrative, supervisory, or professional capacity, or in the capacity of outside salesman, or as an outside collector as the terms are defined by administrative regulations of the executive director;
    3. Any individual employed by the United States;
    4. Any individual employed in domestic service in or about a private home. The provisions of this section shall include individuals employed in domestic service in or about the home of an employer where there is more than one (1) domestic servant regularly employed;
    5. Any individual classified and given a certificate by the executive director showing a status of learner, apprentice, worker with a disability, sheltered workshop employee, and student under administrative procedures and administrative regulations prescribed and promulgated by the executive director. This certificate shall authorize employment at the wages, less than the established fixed minimum fair wage rates, and for the period of time fixed by the executive director and stated in the certificate issued to the person;
    6. Employees of retail stores, service industries, hotels, motels, and restaurant operations whose average annual gross volume of sales made for business done is less than ninety-five thousand dollars (\$95,000) for the five (5) preceding years exclusive of excise taxes at the retail level or if the employee is the parent, spouse, child, or other member of his employer's immediate family;
    7. Any individual employed as a baby-sitter in an employer's home, or an individual employed as a companion by a sick, convalescing, or elderly person or by the person's immediate family, to care for that sick, convalescing, or elderly person and whose principal duties do not include housekeeping;
    8. Any individual engaged in the delivery of newspapers to the consumer;

9. Any individual subject to the provisions of KRS Chapters 7, 16, 27A, 30A, and 18A provided that the secretary of the Personnel Cabinet shall have the authority to prescribe by administrative regulation those emergency employees, or others, who shall receive overtime pay rates necessary for the efficient operation of government and the protection of affected employees;
  10. Any employee employed by an establishment which is an organized nonprofit camp, religious, or nonprofit educational conference center, if it does not operate for more than seven (7) months in any calendar year;
  11. Any employee whose function is to provide twenty-four (24) hour residential care on the employer's premises in a parental role to children who are primarily dependent, neglected, and abused and who are in the care of private, nonprofit childcaring facilities licensed by the Cabinet for Health and Family Services under KRS 199.640 to 199.670; or
  12. Any individual whose function is to provide twenty-four (24) hour residential care in his or her own home as a family caregiver and who is approved to provide family caregiver services to an adult with a disability through a contractual relationship with a community mental health-mental retardation board established under KRS 210.370 to 210.460, or is certified or licensed by the Cabinet for Health and Family Services to provide adult foster care.
- (b) "Agriculture" means farming in all its branches, including cultivation and tillage of the soil; dairying; production, cultivation, growing, and harvesting of any agricultural or horticultural commodity; raising of livestock, bees, furbearing animals, or poultry; and any practice, including any forestry or lumbering operations, performed on a farm in conjunction with farming operations, including preparation and delivery of produce to storage, to market, or to carriers for transportation to market;
  - (c) "Gratuity" means voluntary monetary contribution received by an employee from a guest, patron, or customer for services rendered;
  - (d) "Tipped employee" means any employee engaged in an occupation in which he customarily and regularly receives more than thirty dollars (\$30) per month in tips; and
  - (e) "U.S.C." means the United States Code.
- (3) As used in KRS 337.505 to 337.550, unless the context requires otherwise:
- (a) "Construction" includes construction, reconstruction, improvement, enlargement, alteration, or repair of any public works project by contract fairly estimated to cost more than two hundred fifty thousand dollars (\$250,000). No public works project, if procured under a single contract and subject to the requirements of this section, may be divided into multiple contracts of lesser value to avoid compliance with the provisions of this section;
  - (b) "Contractor" and "subcontractor" include any superintendent, foreman, or other authorized agent of any contractor or subcontractor who is in charge of the construction of the public works or who is in charge of the employment or payment of the employees of the contractor or subcontractor who are employed in performing the work to be done or being done by the contractor or subcontractor under the particular contract with any public authority;
  - (c)
    1. "Locality" shall be determined by the executive director. The executive director may designate more than one (1) county as a single locality, but if more than one (1) county is designated, the multicounty locality shall not extend beyond the boundaries of a state Senatorial district. The executive director shall not designate less than an entire county as a locality. If there is not available in the locality a sufficient number of competent, skilled laborers, workmen, and mechanics to efficiently and properly construct the public works, "locality" shall include any other locality nearest the one in which the work of construction is to be performed and from which such available skilled laborers, workmen, and mechanics may be obtained in sufficient number to perform the work; and
    2. "Locality" with respect to contracts advertised or awarded by the Transportation Cabinet of this state shall be determined by the secretary of the Transportation Cabinet. The secretary may designate any number of counties as constituting a single locality. The secretary may also designate all counties of the Commonwealth as a single locality, but he shall not designate less than an entire county as a locality;

- (d) "Public authority" means any officer, board, or commission of this state, or any political subdivision or department thereof in the state, or any institution supported in whole or in part by public funds, including publicly owned or controlled corporations, authorized by law to enter into any contract for the construction of public works and any nonprofit corporation funded to act as an agency and instrumentality of the government agency in connection with the construction of public works, and any "private provider", as defined in KRS 197.500, which enters into any contract for the construction of an "adult correctional facility", as defined in KRS 197.500; and
  - (e) "Public works" includes all buildings, roads, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, and all other structures or work, including "adult correctional facilities", as defined in KRS 197.500, constructed under contract with any public authority.
- (4) If the federal government or any of its agencies furnishes by loans or grants any part of the funds used in constructing public works, and if the federal government or its agencies prescribe predetermined prevailing minimum wages to be paid to mechanics, workmen, and laborers employed in the construction of the public works, and if KRS 337.505 to 337.550 is also applicable, those wages in each classification which are higher shall prevail.

➔Section 5. KRS 337.285 is amended to read as follows:

- (1) No employer shall employ any of his employees for a work week longer than forty (40) hours, unless such employee receives compensation for his employment in excess of forty (40) hours in a work week at a rate of not less than one and one-half (1-1/2) times the hourly wage rate at which he is employed.
- (2) This provision shall not apply to the following:
  - (a) Employees of retail stores engaged in work connected with selling, purchasing, and distributing merchandise, wares, goods, articles, or commodities;
  - (b) Employees of restaurant, hotel, and motel operations;
  - (c) Employees as defined and exempted from the overtime provision of the Fair Labor Standards Act in Sections 213(b)(1), 213(b)(6), 213(b)(10), and 213(b)(17) of Title 29, U.S.C.;
  - (d) Employees whose function is to provide twenty-four (24) hour residential care on the employer's premises in a parental role to children who are primarily dependent, neglected, and abused and who are in the care of private nonprofit childcaring facilities licensed by the Cabinet for Health and Family Services under KRS 199.640 to 199.670; or
  - (e) Any individual who is employed by a third-party employer or agency other than the family or household using his or her services to provide in-home companionship services for a sick, convalescing, or elderly person.
- (3) As used in subsection (2) of this section, "companionship services" means those services which provide in-home fellowship, care, and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs. These services may include household work related to the care of the aged or infirm person such as meal preparation, bed making, washing of clothes, and other similar services. They may also include the performance of general household work, provided that the household work is incidental, i.e., does not exceed twenty percent (20%) of the total weekly hours worked. The term "companionship services" does not include services relating to the care and protection of the aged or infirm which require and are performed by trained personnel, such as a registered or practical nurse.
- (4) Notwithstanding the provisions of subsection (1) of this section or any other chapter of the KRS to the contrary, upon written request by a county or city employee, made freely and without coercion, pressure, or suggestion by the employer, and upon a written agreement reached between the employer and the county or city employee before the performance of the work, a county or city employee who is authorized to work one (1) or more hours in excess of the prescribed hours per week may be granted compensatory leave on an hour-for-hour basis. Upon the written request by a county or city employee, made freely and without coercion, pressure, or suggestion by the employer, and upon a written agreement reached between the employer and the county or city employee before the performance of the work, a county or city employee who is not exempt from the provisions of the Federal Fair Labor Standards Act *of 1938, as amended*, 29 U.S.C. *sec. 201* et seq., may be granted compensatory time in lieu of overtime pay, at the rate of not less than one and one-half (1-1/2)

hours for each hour the county or city employee is authorized to work in excess of forty (40) hours in a work week.

- (5) (a) Upon the request of the county or city employee, and as provided in subsection (4) of this section, compensatory time shall be awarded as follows:
  1. A county or city employee who provided work in excess of forty (40) hours in a public safety activity, an emergency response activity, or a seasonal activity as described in 29 C.F.R. sec. 553.24, may accrue not more than four hundred eighty (480) hours of compensatory time; or
  2. A county or city employee engaged in other work in excess of forty (40) hours, may accrue not more than two hundred forty (240) hours of compensatory time.
- (b) A county or city employee who has accrued four hundred eighty (480) hours of compensatory time off pursuant to paragraph (a)1. of this subsection, or two hundred forty (240) hours of compensatory time off pursuant to paragraph (a)2. of this subsection, shall for additional overtime hours of work, be paid overtime compensation.
- (6) A county or city employee who has accrued compensatory time off as provided in subsection (4) of this section, and who requested the use of compensatory time, shall be permitted by the employer to use the compensatory time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the employer. Mere inconvenience to the employer shall not constitute a sufficient basis for denial of a county or city employee's request for compensatory time off.
- (7) If compensation is paid to a county or city employee for accrued compensatory time off, the compensation shall be paid at the regular rate earned by the county or city employee at the time the county or city employee receives the payment.
- (8) Upon a county or city employee's termination of employment, all unused accrued compensatory time shall be paid at a rate of compensation not less than:
  - (a) The average regular rate received by the county or city employee during the last three (3) years of the county or city employee's employment; or
  - (b) The final regular rate received by the county or city employee, whichever is higher.
- (9) Compensatory time shall not be used as a means to avoid statutory overtime compensation. A county or city employee shall have the right to use compensatory time earned and shall not be coerced to accept more compensatory time than an employer can realistically and in good faith expect to be able to grant within a reasonable period upon the county or city employee making the request for compensatory time off.
- (10) Nothing in subsections (4) to (9) of this section shall be construed to supersede any collective bargaining agreement, memorandum of understanding, or any other agreement between the employer and representative of the county or city employees.
- (11) As used in subsections (4) to (9) of this section, "county or city employee" means an employee of any county, city, charter county, consolidated local government, unified local government, or urban-county government, including an employee of a county or city elected official.
- (12) ***In addition to the designation of a work week under subsection (1) of this section, local governments, as defined in subsection (3) of Section 1 of this Act, may designate a work period for professional firefighter employees as defined in Section 1 of this Act. The designated work period shall be not less than one (1) work week of seven (7) consecutive days and not more than four (4) work weeks of twenty-eight (28) consecutive days for purposes of complying with the requirements of the Federal Labor Standards Act of 1938, as amended, 29 U.S.C. sec. 201 et seq. This subsection shall not exempt local governments from complying with the overtime requirements set forth in subsection (1) of this section and is intended to:***
  - (a) ***Clarify the option to designate both a work week for compliance with Kentucky law and a work period for compliance with the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. sec. 201 et seq.; and***
  - (b) ***Allow for the application of the partial exemption set forth in 29 U.S.C. sec. 207(k) in determining overtime pay under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. sec. 201 et seq., only.***

➔Section 6. Whereas it is necessary for local governments to establish budgets, including expenditures resulting from receipt of disbursements from the Firefighters Foundation Program Fund, and in the best interest of professional firefighters to continue to receive distributions from the fund, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon otherwise becoming law.

**Signed by the Governor March 20, 2009.**