

CHAPTER 105

(HB 398)

AN ACT relating to occupational safety and health.

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

➔Section 1. KRS 338.062 is amended to read as follows:

~~{After July 1, 2021, neither }~~The Kentucky Occupational Safety and Health Standards board,~~{nor }~~the secretary, *the secretary's designee, the commissioner, and the commissioner's authorized representative* shall *not* adopt, ~~for~~ promulgate, *or enforce* any occupational safety and health administrative regulation that *the Occupational Safety and Health Administration or the United States Department of Labor has not promulgated, or that* is more stringent than the corresponding federal provision enforced by the United States Department of Labor under the Occupational Safety and Health Act of 1970. Whereas the Occupational Safety and Health Act of 1970 does not apply to public employees, the cabinet shall retain the authority to promulgate and enforce, as necessary, administrative regulations pertaining to public employees.

➔Section 2. KRS 338.091 is amended to read as follows:

- (1) Any party adversely affected or aggrieved by a final order of the review commission may appeal within thirty (30) days to the Franklin Circuit Court on the record for a review of such order. No new evidence may be introduced in the Circuit Court. An appeal may be taken to the Court of Appeals from any decision of the Circuit Court under this section.
- (2) *On appeal, the Franklin Circuit Court may award actual expenses incurred, including court costs and attorney's fees, against the department.*
- (3) *The department shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section. The administrative regulations shall comply with the Equal Access to Justice Act, 28 U.S.C. sec. 2412.*
- (4) The commencement of *a proceeding*~~{proceedings}~~ under this section shall ~~{not, unless ordered by the court, }~~operate as a stay of an order of the review commission.

➔Section 3. KRS 338.111 is amended to read as follows:

- (1) *Representatives*~~{A representative}~~ of the employer *shall be given the opportunity to accompany the commissioner or the authorized representative of the commissioner during the physical inspection of any place of employment as authorized by KRS 338.101.*~~{and }~~
- (2) A representative authorized by the employees shall be given an opportunity to accompany the representative of the commissioner during the physical inspection of any place of employment *related to occupational safety and health* as authorized by KRS 338.101. If there is no *representative* ~~by the employees~~~~{employee representative}~~ authorized at the time of *the physical* inspection, the commissioner's representative shall consult with a reasonable number of employees concerning matters *related to*~~{of}~~ occupational safety and health in the place of employment.
- (3) The representative of the commissioner shall be *responsible for the conduct*~~{in full charge}~~ of the inspection *and may*~~{, including the right to }~~ limit the number of representatives on the inspection team.

➔Section 4. KRS 338.121 is amended to read as follows:

- (1) Any employee, or representative *authorized by the*~~{of}~~ employees, who believes that a violation of an occupational safety and health standard exists that threatens physical harm, or that an imminent danger exists *in their workplace*, may request an inspection by giving notice to the commissioner of such violation or danger. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, *including the date the violation is alleged to have occurred*, and shall be signed by the employees or *the* representative *authorized by the*~~{of}~~ employees, and a copy shall be provided *to* the employer or the employer's agent no later than at the time of inspection, except that, upon *written*~~{the}~~ request of *an employee*~~{the person}~~ giving such notice, his or her name ~~{and the names of individual employees referred to therein}~~ shall not appear in such copy.

- (2) If upon receipt of notification, reasonable grounds **evidence any**~~are believed to exist for such~~ violation or danger **in the workplace**, then a special inspection shall be made in accordance with the provisions of KRS 338.101 and 338.111. If no reasonable grounds **evidence a potential**~~are believed to exist for such~~ violation ~~or~~~~of~~ danger, then the commissioner shall notify the employee or the representative **authorized by**~~of~~ the employees in writing of such determination.
- (3) (a) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or herself or others of any right afforded by this chapter; and
- (b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person in violation of this subsection may, within **thirty (30) days**~~a reasonable time~~ after such violation occurs, file a complaint with the commissioner alleging such discrimination. Upon receipt of such complaint, the commissioner shall cause such investigation to be made as deemed appropriate. If upon such investigation, the commissioner determines that the provisions of this subsection have been violated, he or she shall issue a citation to the employer **within six (6) months of the occurrence of the violation**, which may be challenged or contested in accordance with the provisions of this chapter and the review commission may order ~~all appropriate relief including~~ **the** rehiring and reinstatement of the employee to his or her former position with back pay.~~Upon an initial determination by the commissioner that an employee has been discharged by an employer in violation of subsection (3)(a) of this section, the secretary of the Education and Labor Cabinet may order reinstatement of the employee pending a final determination and order of the review commission.~~

➔Section 5. KRS 338.141 is amended to read as follows:

- (1) If upon inspection an authorized representative of the commissioner finds that an employer has violated any requirement of this chapter, a citation shall be issued to the employer. Each citation shall describe **with particularity** the alleged violation, **including a reference to the provision of the act, standard, rule, or administrative regulation alleged to have been violated. Each citation shall**~~establish the time period permitted for correction of the alleged violation by fixing a reasonable date for elimination of~~~~by which~~ the alleged violation ~~shall be eliminated,~~ and **may** propose ~~a~~~~the~~ civil penalty to be paid. If within fifteen (15) working days from the receipt of the citation an employer, employee, or **the employees'** representative ~~of the employees~~ fails to notify the commissioner that he or she intends to contest the citation, then the citation shall be deemed a final order of the review commission and not be subject to review by any court or agency.
- (2) **Any citation or a notice of a de minimis violation shall be promptly issued after the inspection. A citation or a notice of a de minimis violation shall not be issued more than six (6) months after the occurrence of any alleged violation. As used in this subsection, a de minimis violation is a violation that has no direct or immediate relationship to safety or health. A citation that is issued under this section shall not be classified as a repeated violation when issued more than three (3) consecutive years from the final order date of the previous citation.**
- ~~(3)(2)~~ The commissioner, upon determination that an employer is acting in good faith to correct the cited violation, may grant additional time for **correction**~~compliance~~ upon application by the employer.
- ~~(4)(3)~~ If an employer, employee, or **the employees'** representative ~~of the employees~~ notifies the commissioner that he or she intends to challenge a citation issued under this section or under KRS 338.131, the commissioner shall notify the review commission of such notification and the review commission shall afford an opportunity for a hearing.
- ~~(5)(4)~~ In the case of any review proceedings initiated by an employer, employee, or **the employees'** representative ~~of the employees~~ under this chapter, the time period permitted for correction of cited violations **shall be tolled until the conclusion of the action**~~may be extended by the review commission~~.

➔Section 6. KRS 338.991 is amended to read as follows:

- (1) Any employer who willfully or repeatedly violates the requirement of any section of this chapter, including any standard, regulation, or order promulgated pursuant to this chapter, may be assessed a civil penalty of up to seventy thousand dollars (\$70,000) for each violation, but not less than five thousand dollars (\$5,000) for each willful violation.

- (2) Any employer who has received a citation for a serious violation of the requirements of any section of this chapter, including any standard, regulation, or order promulgated pursuant to this chapter, shall be assessed a civil penalty of up to seven thousand dollars (\$7,000) for each violation.
- (3) Any employer who has received a citation for a violation of the requirements of any section of this chapter, including any standard, regulation, or order promulgated pursuant to this chapter, and such violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to seven thousand dollars (\$7,000) for each violation.
- (4) ***Any employer who receives a notice of a de minimis violation of any section of this chapter, including any standard, administrative regulation, or order promulgated pursuant to this chapter, shall not be assessed a civil penalty. As used in this subsection, a de minimis violation is a violation that has no direct or immediate relationship to safety or health.***
- (5) Any employer who fails to correct a violation for which a citation has been issued within the period permitted for its correction may be assessed a civil penalty of up to seven thousand dollars (\$7,000) for each day during which such failure or violation continues.
- ~~(6)(5)~~ Any employer found to be in violation of subsection (3) of KRS 338.121 shall be assessed a civil penalty of up to ten thousand dollars (\$10,000) for each violation.
- ~~(7)(6)~~ The review commission shall have the authority to modify all civil penalties and fines provided for in this chapter. The review commission may, at its discretion, suspend the time period allotted for correction of a violation during the review of an appeal from the violation in question.
- ~~(8)(7)~~ All civil penalties and fines collected under the provision of this chapter shall be paid into the general fund.
- ~~(9)(8)~~ Any employer or individual who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000), or by imprisonment for not more than six (6) months, or by both.
- ~~(10)(9)~~ Any person who gives advance notice of any investigation or inspection to be conducted under this chapter, without authority from the commissioner, shall, upon conviction, be punished by a fine of not more than one thousand dollars (\$1,000), or by imprisonment for not more than six (6) months, or by both.
- ~~(11)(10)~~ Any employer or individual who willfully causes bodily harm to any authorized representative of the commissioner while attempting to conduct an investigation or inspection under the provisions of this chapter, shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000), or by imprisonment for not more than one (1) year, or by both.
- ~~(12)(11)~~ As used in this section, a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one (1) or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

Veto Overridden March 27, 2025.