

103 KAR 18:120. Security for compliance; bonds.

RELATES TO: KRS 141.310

STATUTORY AUTHORITY: KRS 131.130, 141.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations to enforce Kentucky's tax laws. This administrative regulation implements KRS 141.310(14) which authorizes the Department of Revenue to require certain employers to post withholding performance bonds.

Section 1. Enforcement of Trusteeship. Additional means of enabling the Department of Revenue to collect withholding taxes has been provided in KRS 141.310(14) which authorizes the department to fix the amount of and demand the posting of a corporate surety bond or cash not to exceed \$50,000 by any employer required under KRS Chapter 141, or the administrative regulations promulgated thereunder, to withhold Kentucky income taxes from wages of employees.

Section 2. Bond Requirements. For purposes of KRS 141.310(14), a person from whom the department may require a withholding tax security bond and those persons from whom a security bond may be required includes the following:

- (1) An employer who is delinquent in either filing withholding tax returns required by law or is delinquent in submitting to the department any tax withheld from an employee, or both; or
- (2) An employer, who for any reason, the department determines is or may become an insecure risk for which there is a need to ensure compliance with the law.

Section 3. Bond Procedures. The department, after determining that a bond is necessary to ensure compliance of reporting and paying withholding taxes, shall demand the posting of a security bond by written notice transmitted by certified mail and shall include therein instructions and forms for the convenience of the employer.

Section 4. Enforcement of Bond Requirement. Failure to post the bond in the amount the department demanded from the employer within twenty (20) days from the date of the written notification by certified mail will, by such failure, authorize the department to invoke immediately its statutory authority to seek a court order requiring cessation of all business or activities of the employer failing to post the bonds.

Section 5. Change in Amount of Bond. The department may at any time increase or decrease the amount of any bond that has been posted.

Section 6. Monthly Returns and Payment. Any out-of-state or delinquent employer may be required to file monthly withholding tax returns and to accompany the monthly returns with a complete payment of all taxes withheld during the month covered by the return.

Section 7. Court Jurisdiction. The department may initiate action seeking a court order, requiring cessation of all business operation or activity of any employer failing to comply with this administrative regulation, in the Franklin Circuit Court or in any other circuit court which may have jurisdiction over the area in which the employer resides, or in which some or all of the employer's business is conducted, or having jurisdiction of the area in which property of the employer is located. The department may institute legal action in accordance with any provision of this administrative regulation. (IW-12; 1 Ky.R. 331; eff. 2-5-1975; 20 Ky.R. 2879; 21

Ky.R. 16; eff. 6-17-1994; TAm eff. 6-22-2017; 45 Ky.R. 1074, 1518; eff. 1-4-2019.)