

## **803 KAR 1:065. Hours worked.**

RELATES TO: KRS 337.275, 337.285

STATUTORY AUTHORITY: KRS 337.295

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.275 requires that each employee, not specifically exempted, to receive a specified minimum wage. KRS 337.285 provides that employees may not be employed for more than a stated number of hours a week without receiving at least one and one-half (1 1/2) times their rate of pay for the overtime hours. The amount of money an employee should receive cannot be determined without knowing the number of hours worked. The function of this administrative regulation is to discuss the principles involved in determining what constitutes working time for the purpose of applying this to KRS 337.275 and 337.285. By providing these interpretations, it will guide the office in the performance their duties under the law, unless and until they are otherwise directed by decisions of the courts, or conclude, upon reexamination of an interpretation, that it is incorrect.

Section 1. Definition of Employee. By statutory definition the term "employee" is any person employed by or suffered or permitted to work for an employer. The statute, however, contains no definition of work. The following sections are determined to give interpretations as to the meaning of "suffered or permitted to work."

Section 2. Suffered or Permitted to Work. (1) General. Work not requested but suffered or permitted to work time. For example, an employee may voluntarily continue to work at the end of the shift, he may be a pieceworker, he may desire to finish an assigned task or he may wish to correct errors, paste work tickets, prepare time reports or other records. The reason is immaterial. The employer knows or has reason to believe that he is continuing to work and the time is working time.

(2) Work performed away from premises. The rule is also applicable to work performed away from the premises or the job site, or even at home. If the employer knows or has reason to believe that the work is being performed he must count the time as hours worked.

(3) Duty of management. In all such cases it is the duty of the management to exercise its control and see that the work is not performed if it does not want it to be performed. It cannot sit back and accept the benefits without compensating for them. The mere promulgation of a rule against such work is not enough. Management has the power to enforce the rule and must make every effort to do so.

Section 3. Waiting Time. (1) General. Whether waiting time is worked under the act depends upon particular circumstances. The determination involves scrutiny and construction of the agreements between particular parties, appraisal of their practical construction of the working agreement by conduct, consideration of the nature of the service, and its relation to the waiting time, and all of the circumstances. Facts may show that the employee was engaged to wait, or they show that he waited to be engaged. Such questions must be determined in accordance with common sense and the general concept of work or employment.

(2) On duty. A stenographer who reads a book while waiting for dictation, a messenger who works a crossword puzzle while awaiting assignments, fireman who plays checkers while waiting for alarms and a factory worker who talks to his fellow employees while waiting for machinery to be repaired are all working during their period of inactivity. The rule also applies to employees who work away from the plan. For example, a repair man is working while he waits for his employer's customer to get the premises in readiness. The time is worktime even though the employee is allowed to leave the premises or the job site during such periods of inactivity. The periods during

which these occur are unpredictable. They are usually of short duration. In either event the employee is unable to use the time effectively for his own purpose. It belongs to and is controlled by the employer. In all of these cases waiting is an integral part of the job. The employee is engaged to wait.

(3) Off duty.

(a) Period during which an employee is completely relieved from duty and which are long enough to enable him to use the time effectively for his own purposes are not hours worked. He is not completely relieved from duty and cannot use the time effectively for his own purposes unless he is definitely told in advance that he may leave the job and that he will not have to commence work until a definitely specified hour has arrived. Whether the time is long enough to enable him to use the time effectively for his own purposes depends upon all of the facts and circumstances of the case.

(b) A truck driver who has to wait at or near the job site for goods to be loaded is working during the loading period. If the driver reaches his destination and while awaiting the return trip is required to take care of his employer's property, he is also working while waiting. In both cases the employee is engaged to wait. Waiting is an integral part of the job. On the other hand, for example, if the truck driver is sent from Louisville to Paducah, leaving at 9 a.m. and arriving at 2 p.m., and is completely and specifically relieved from all duty until 8 p.m. when he again goes on duty for the return trip, the idle time is not working time. He is waiting to be engaged.

(4) On-call time. An employee who is required to remain on call on the employer's premises or so close thereto that he cannot use the time effectively for his own purposes is working while on call. An employee who is not required to remain on the employer's premises but is merely required to leave word at his home or with company officials where he may be reached is not working while on call.

Section 4. Rest and Meal Periods. (1) Rest. Rest periods of short duration, running from five (5) minutes to about twenty (20) minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time.

(2) Meals. Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purpose of eating regular meals. Ordinarily, thirty (30) minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. It is not necessary that an employee be permitted to leave the premises if he is otherwise completely freed from duties during the meal period.

Section 5. Sleeping Time and Certain Other Activities. (1) Under certain conditions an employee is considered to be working even though some of his time is spent in sleeping or in certain other activities.

(2) An employee who is required to be on duty is working even though he is permitted to sleep or engage in other personal activities when not busy. A telephone operator, for example, who is required to be on duty for specified hours is working even though she is permitted to sleep when not busy answering calls. It makes no difference that she is furnished facilities for sleeping. Her time is given to her employer. She is required to be on duty and the time is worktime.

(3) Residing on employer's premises or working at home. An employee who resides on his employer's premises on a permanent basis or for extended period of time is not considered as working all the time he is on the premises. Ordinarily, he may engage in normal private pursuits and

thus have enough time for eating, sleeping, entertaining, and other periods of complete freedom from all duties when he may leave the premises for purposes of his own. It is, of course, difficult to determine the exact hours worked under these circumstances and any reasonable agreement of the parties which takes into consideration all of the pertinent facts will be accepted. This rule would apply, for example, to the pumper of a stripper well who resides on the premises of his employer and also to a telephone operator who has the switchboard in her own home.

Section 6. Lectures, Meetings and Training Programs. (1) General. Attendance at lectures, meetings, training programs and similar activities need not be counted as working time if the following criteria are met:

- (a) Attendance is outside of the employee's regular working hours;
- (b) Attendance is in fact voluntarily;
- (c) The course, lecture, or meeting is not directly related to the employee's job; and
- (d) The employee does not perform any productive work during such attendance.

(2) Involuntary attendance. Attendance is not voluntary if it is required by the employer. It is not voluntary if the employee is given to understand or led to believe that his present working conditions or the continuance of his employment would be adversely affected by nonattendance.

(3) Training directly related to employee's job. The training is directly related to the employee's job if it is designed to make the employee handle his job more effectively as distinguished from training him for another job, or to a new or additional skill. Where a training course is instituted for the bona fide purpose of preparing for advancement through upgrading the employee to a higher skill, and is not intended to make the employee more efficiently related to the employee's job, the training is not considered directly related to the employee's job even though the course incidentally improves his skill in doing his regular work. If an employee on his own initiative attends an independent school, college or independent trade school after hours, the time is not hours worked for his employer even if the courses are related to his job.

(4) Special situations. There are some special situations where the time spent in attending lectures, training sessions and courses of instruction is not regarded as hours worked. For example, an employer may establish for the benefit of his employees a program of instruction which corresponds to courses offered by independent bona fide institutions of learning. Voluntary attendance by an employee at such courses outside of working hours would not be hours worked even if they are directly related to his job, or paid for by the employer.

(5) Apprenticeship training. Time spent in an organized program of related, supplemental instruction by employees working under bona fide apprenticeship programs may be excluded from working time if the following criteria are met:

(a) The apprentice is employed under a written apprenticeship agreement or program which has been approved by the Supervisor of Apprenticeship and Training, Kentucky Department of Labor; and

(b) Such time does not involve productive work or performance of the apprentice's regular duties. If the above criteria are met, the time spent in such related supplemental training shall not be counted as hours worked unless the written agreement specifically provides that it is hours worked. The mere payment or agreement to pay for time spent in related instruction does not constitute an agreement that such time is hours worked.

Section 7. Travel Time. (1) General. The principles which apply in determining whether or not time spent in travel is working depend upon the kind of travel involved.

(2) Home to work. An employee who travels from home before his regular workday and returns to his home at the end of the workday is engaged in ordinary home-to-work travel which is a normal incident of employment. This is true whether he works at a fixed location or at different job

sites. Normal travel from home to work is not worktime.

(3) Travel that is worktime. Time spent by an employee is travel as part of his principal activity, such as travel from job site to job site during the workday, must be counted as hours worked. Where an employee is required to report at a meeting place to receive instructions or to perform other work there, the travel from the designated place to the work place is part of the day's work, and must be counted as hours worked.

(4) Travel away from home. Travel that keeps an employee away from home overnight is travel away from home. Travel away from home is worktime when it cuts across the employee's workday. The employee is simply substituting travel for other duties.

Section 8. Recording Working Time. The law does not require any special method of keeping a record of time worked by employees. In cases where time clocks are used or other methods whereby the employee records the starting and ending time, employees who voluntarily come in before their regular starting time or remain after their closing time, do not have to be paid for such periods provided, of course, that they do not engage in any work. Their early or late recording of their time may be disregarded. Minor differences between the time clock or sign-in record and actual hours worked cannot ordinarily be avoided, but major discrepancies should be discouraged since they raise a doubt as to the accuracy of the hours actually worked.

Section 9. The principles discussed in this administrative regulation are intended to guide the office in the enforcement of the statutes and to assist employees, employers, and other persons who may be concerned with the provisions of the law. Special situations not discussed in this administrative regulation may arise in determining hours worked by employees. In making a determination of these situations, the office will make the determination in accordance with common sense and the general concept of work or employment. (LAB-12; 1 Ky.R. 253; eff. 1-8-1975; TAm eff. 8-9-2007.)