

LABOR CABINET
Department of Workplace Standards
(Amendment)

803 KAR 1:066. Recordkeeping requirements.

RELATES TO: KRS 337.275, 337.285

STATUTORY AUTHORITY: KRS 337.295

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.320 requires employers to keep records of hours of work and wages paid to employees subject to the provisions of the law. The statute provides that the commissioner~~[executive director]~~ determine what information is needed. The function of this administrative regulation is to set forth the recordkeeping requirements for employers subject to the law.

Section 1. No particular order or form of records is prescribed by this administrative regulation. However, every employer who is subject to any of the relevant provisions of the statute~~[Act]~~ ~~shall~~~~[is required to]~~ maintain records for at least one (1) year after entry. Each employer shall keep the records required by ~~this~~~~[these]~~ administrative regulation safe and accessible at the place or places of employment, or at one or more established central recordkeeping offices where such records are customarily maintained. Where the records are maintained at a central recordkeeping office, other than in the place or places of employment, such records shall be made available within seventy-two (72) hours following notice from the commissioner~~[executive director]~~ or the commissioner's~~[his]~~ authorized representative.

Section 2. Every employer shall maintain and preserve payroll or other records containing the following information and data with respect to each and every employee subject to the statute~~[Act]~~:

(1) Name in full, and on the same record, the employee's identifying symbol or number if ~~[such is]~~ used in place of name on any time, work, or payroll records;

(2) Social Security number;

(3) Home address, including zip code;

(4) Date of birth, if under eighteen (18);

(5) Sex and occupation in which employed;

(6) Time of day and day of week on which the employee's workweek begins. If the employee is part of a work force or employed in or by an employer all of whose workers have a workweek beginning at the same time on the same day, a single notation of the time ~~of~~~~[eff]~~ the day and beginning day of the workweek for the whole work force ~~shall~~~~[will]~~ suffice. If, however, any employee or group of employees has a workweek beginning and ending at a different time, a separate notation shall ~~[then]~~ be kept for that employee or group of employees;

(7) Hours worked each workday and each workweek (for purposes of this section, a "workday" shall be any consecutive twenty-four (24) hours);

(8) Regular rate of pay and total straight-time earnings or wages for all hours worked during the workweek;

(9) Total overtime excess compensation for the workweek; that is, the excess compensation for overtime worked which amount is over and above all straight-time earnings and wages for the workweek;

(10) Total additions to or deductions from wages paid each pay period. Every employer making additions to or deductions from wages shall also maintain, in individual employee ac-

counts, a record of the dates, amounts, and nature of the items which make up the total addition and deductions;

(11) Total wages paid each pay period and date of payment.

Section 3. Every employer who makes retroactive payment of wages or compensation due under KRS 337.275 and 337.285 shall:

(1) Prepare a report of each ~~[such]~~ payment showing the amount of ~~[such]~~ payment to each employee, the period covered by ~~the~~~~[such]~~ payment, and the date of payment.

(2) The employer shall:

(a) File the original, which shall evidence payment by the employer and receipt by the employee, with the commissioner~~[executive director]~~ or the commissioner's~~[his]~~ authorized representative within ten (10) days after payment is made;

(b) Deliver a copy to the employee; and

(c) Preserve a copy as part of the employee's records.[]

~~Section 4. With respect to employees working on fixed schedules, an employer may maintain records showing instead of the hours worked each day and each week, the schedule of daily and weekly hours the employee normally works; and~~

~~(1) In weeks in which an employee adheres to this schedule, indicate by checkmark, statement, or other method that such hours were in fact actually worked by him; and~~

~~(2) In weeks in which more and less than the scheduled hours are worked, shows the exact number of hours worked each day and each week.]~~

KIMBERLEE C. PERRY, Commissioner

LARRY L. ROBERTS, Secretary

APPROVED BY AGENCY: June 14, 2021

FILED WITH LRC: June 14, 2021 at 2:11 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2021 at 2:00 p.m. (ET). This hearing will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph 8(b) (R.S. 2020) and the continuing state of emergency due to the novel coronavirus pandemic. Public access to the meeting will be available at <https://us02web.zoom.us/j/83102207739?pwd=dUFjQzE0ZnJjdkpwME51ZWtQdUlydz09>, password 265686 or by telephone at (713) 353-0212 or 888-822-7517 (toll free), conference code 278497. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2021. Send notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Erin Bravo, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, KY 40601; phone (502) 564-1554; fax (502) 564-5484, email erin.bravo@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Erin Bravo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the recordkeeping requirements for employers subject to KRS 337.320 in order to provide evidence that records are maintained.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish recordkeeping requirements for employers subject to KRS 337.320 in order for employers keep proper records which helps ensure proper pay to employees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 337.295 authorizes the commissioner to promulgate administrative regulations under KRS 337.275 to 337.325, 337.345, and 337.385 to 337.405.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation clarifies what the requirements are for recordkeeping pursuant to KRS 337.320.

(2) If this is an amendment to an existing regulation, provide a brief summary of:

(a) How this amendment will change this existing administrative regulation: The amendment updates the administrative regulation to match the current language that is utilized. It removes Section 4 which provided an alternative recordkeeping method for employees who worked fix schedules.

(b) The necessity of the amendment to this administrative regulation: This amendment updates language to ensure compliance with KRS Chapter 13A and ensures effective guidance for the statutory provisions under KRS Chapter 337. The amendment removes Section 4 to avoid confusion and keep consistency in recordkeeping requirements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 337.295 authorizes the commissioner to promulgate administrative regulations under KRS 337.275 to 337.325, 337.345, and 337.385 to 337.405. This amendment updates the administrative regulation to match current language and practices utilized by the department.

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates language to clarify the requirements for employers subject to KRS 337.320 and removes provisions that have previously caused confusion.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all subject employers who employ employees in the Commonwealth subject to KRS Chapter 337, as well as, their employees.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are required by this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection and guidance for employers on requirements for compliance of KRS 337.320.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: This administrative regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This administrative regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: This administrative regulation, as amended, is not anticipated to generate any increase in fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers and employees covered by KRS Chapter 337 are treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Most state and local governmental entities are subject to KRS Chapter 337.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 337.295.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will the administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue.

(b) How much revenue will the administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue.

(c) How much will it cost to administer this program for the first year? There is no cost to this amendment.

(d) How much will it cost to administer this program for subsequent years? There is no cost to this amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Unknown

Expenditures (+/-): Unknown

Other explanations: This amendment does not impose any additional requirements or expenditures.