

921 KAR 2:370. Technical requirements for Kentucky Works Program (KWP).

RELATES TO: KRS 205.200(7), 205.2003, 45 C.F.R. 98.2, 260-265, 29 U.S.C. 651-678, 42 U.S.C. 601-619, 12101-12213

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2), 205.200(7), 205.2003, 42 U.S.C. 601-619

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. The Cabinet for Health and Family Services has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program for the Kentucky Transitional Assistance Program, the block grant program funded pursuant to 42 U.S.C. 601 to 619. KRS 205.200(2) and (7) require the secretary to promulgate administrative regulations prescribing the conditions of eligibility for public assistance, in conformity with the Social Security Act, 42 U.S.C. 601 to 619, and federal regulations. KRS 205.2003 requires that a work program for a recipient of Kentucky Transitional Assistance Program (K-TAP) be prescribed by administrative regulations. This administrative regulation sets forth the technical requirements of the Kentucky Works Program (KWP).

Section 1. Definitions.

- (1) "Affordable child care arrangements" means appropriate child care at a reasonable distance that is suitable and with a charge at or below the maximum provider payment rate pursuant to the Child Care and Development Fund plan.
- (2) "Appropriate child care" means eligible child care as provided by an "eligible child care provider", pursuant to 45 C.F.R. Part 98.2.
- (3) "Assessment" means the ongoing evaluation of an individual's strengths and needs relative to achieving self-sufficiency.
- (4) "Assistance" is defined by 45 C.F.R. 260.31.
- (5) "Barriers" means a limitation in an individual's ability to become employed and self-sufficient or to comply with K-TAP requirements.
- (6) "Community service activities" means "community service programs", as defined by 45 C.F.R. 261.2(h).
- (7) "Conciliation" means a process in which a participation problem in the Kentucky Works Program can be resolved.
- (8) "Employed" means a person performs a physical or mental activity in exchange for direct monetary compensation.
- (9) "Family member" means an individual:
 - (a) Related by blood, marriage, or adoption to a child or a work-eligible individual, as defined by 45 C.F.R. 261.2(n), in the benefit group; or
 - (b) Who is a member of an unmarried couple and has a child in the benefit group in common with the work-eligible individual, as defined by 45 C.F.R. 261.2(n).
- (10) "Full-time school attendance" means a workload of at least:
 - (a) The number of hours required by the individual program for participation in:
 1. An adult basic education program;
 2. A general educational development (GED) program; or
 3. A literacy program;
 - (b) The number of hours required by the individual program for participation in a college or university; or
 - (c) The equivalent of paragraph (b) of this subsection in a college or university if other than a semester system is used; or

- (d) The number of hours required by the individual high school or vocational school to fulfill the high school or vocational school's definition of full time.
- (11) "Job search and job readiness assistance" is defined by 45 C.F.R. 261.2(g).
- (12) "Job skills training directly related to employment" is defined by 45 C.F.R. 261.2(j).
- (13) "Kentucky Transitional Assistance Program" or "K-TAP" means a money payment program for a child pursuant to 921 KAR 2:006, Section 1.
- (14) "Kentucky Works Program" or "KWP" means a program that assists a recipient of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance.
- (15) "On-the-job training" is defined by 45 C.F.R. 261.2(f).
- (16) "Part-time enrollment" means enrollment with a postsecondary institution at a minimum of half of full-time enrollment as defined by subsection (12)(b) or (c) of this section.
- (17) "Qualifying Parent" means a parent who meets prior labor market attachment in accordance with 921 KAR 2:006, Section 1.
- (18) "Reasonable distance" means the distance customarily available within a locality.
- (19) "Subsidized employment" is defined by 45 C.F.R. 261.2(c) and (d).
- (20) "Unsubsidized employment" is defined by 45 C.F.R. 261.2(b).
- (21) "Unsuitability of informal child care" means care not regulated pursuant to Kentucky law that does not meet the quality child care need as defined by the parent or the health and safety requirements applicable to unregulated child care in the commonwealth.
- (22) "Vocational education" means "vocational educational training" as defined by 45 C.F.R. 261.2(i).
- (23) "Work-eligible individual" is defined by 45 C.F.R. 261.2(n).
- (24) "Work Experience Program" or "WEP" means the definition of "work experience if sufficient private sector employment is not available" pursuant to 45 C.F.R. 261.2(e).

Section 2. Program Participation.

- (1) Unless the K-TAP recipient meets the exception criteria in Section 3 of this administrative regulation, the cabinet shall determine a work-eligible individual as follows:
- (a)
1. A one (1) parent household shall be required to participate in a specific activity pursuant to paragraph (c) of this subsection no less than the number of hours per week required in the activity, pursuant to subparagraph 2 of this paragraph.
 2. The activity shall be required to have at least a minimum of thirty (30) hours per week, ten (10) hours of which may be satisfied through participation in an education or training activity pursuant to paragraph (c) 8, 9, and 11 of this subsection or in literacy or adult education.
- (b) A two (2) parent household shall participate in a specific activity no less than the number of hours per week required in the activity, pursuant to this paragraph. The activity shall be required to meet the following requirements:
1. If the family receives federally funded child care assistance, the activity shall be required to have at least a minimum of fifty-five (55) hours combined from both parents, five (5) of which may be satisfied through participation in an education activity pursuant to paragraph (c)8, 9, and 11 of this subsection or in literacy or adult education.
 2. If the family does not receive federally-funded child care, a two (2) parent household shall participate thirty-five (35) hours per week combined, five (5) of which may be satisfied through participation in an education activity pursuant to paragraph (c)8, 9, and 11 of this subsection or in literacy or adult education.

3. If an adult is needed to care for a child in the home with a severe disability pursuant to 921 KAR 2:006, a two (2) parent household shall participate pursuant to paragraph 2 of this paragraph.
 4. A two (2) parent household eligible for K-TAP based on the deprivation of incapacity, pursuant to 921 KAR 2:006, shall meet the number of hours of participation in a work activity listed in paragraph (a) of this subsection.
- (c) In accordance with 45 C.F.R. 261.2, to be in compliance with the participation requirement in KWP, a countable activity may include:
1. Unsubsidized employment;
 2. Subsidized employment;
 3. Work experience training;
 4. On-the-job training;
 5. Job search and job readiness assistance;
 6. Community service activities;
 7. Full-time enrollment, as defined by the educational institution or program, in post-secondary or vocational education not to exceed twelve (12) cumulative months;
 8. Full or part-time enrollment, as defined by the educational institution or program, in postsecondary or vocational education at any time if combined with an activity pursuant to subparagraph 1 through 4 and 6 of this paragraph;
 9. Attendance at secondary school or equivalent if the recipient:
 - a. Has not completed secondary school or equivalent; or
 - b. Couples the attendance with work or work activity in the amount of hours per week pursuant to paragraphs (a) and (b) of this subsection;
 10. Provision of child care services to an individual participating in community service activities;
 11. Job skills training directly related to employment; and
 12. Based on the findings of the assessment, an allowable activity that includes:
 - a. Domestic violence counseling;
 - b. Life skills training;
 - c. A substance abuse program;
 - d. Mental health counseling;
 - e. Vocational rehabilitation;
 - f. Literacy;
 - g. Adult education; or
 - h. Another preparation or service:
 - (i) To address an individual's barriers; and
 - (ii) Approved in advance by the cabinet.
- (2) Excused absences shall:
- (a) Include:
 1. Scheduled hours missed due to holidays; and
 2. A maximum of ten (10) additional days or eighty (80) hours of excused absences in any twelve (12) month period with no more than two (2) days or sixteen (16) hours occurring in a month; and
 - (b) Count as actual hours of participation.
- (3) To verify the actual number of hours of participation in approved activities, the K-TAP recipient shall provide the following:
- (a) A KW-33, Verification of Kentucky Works Program Participation; or
 - (b) A monthly calendar sheet or log that requires the signature of the person supervising the work-eligible individual.

Section 3. Exceptions to Program Participation.

(1) A work-eligible individual shall be considered to be engaged in work for a month in a fiscal year if the individual:

- (a) Is a head of household;
- (b) Has not obtained a high school diploma or a GED;
- (c) Has not attained twenty (20) years of age; and
- (d)
 - 1. Maintains regular attendance and satisfactory progress at a secondary school or the equivalent during the month; or
 - 2. Participates in education that is directly related to employment for at least twenty (20) hours a week while maintaining regular attendance and satisfactory progress.

(2)

- (a) A work-eligible individual shall not be required to comply with a program participation requirement for up to twelve (12) months if the individual is:
 - 1. A single custodial parent; and
 - 2. Caring for a child who has not attained twelve (12) months of age.
- (b) The twelve (12) months of exemption from a work participation requirement shall be limited to a total of twelve (12) months in a lifetime for the adult and may be:
 - 1. Consecutive; or
 - 2. Cumulative.

(3)

- (a) For a work-eligible individual whose compliance with program participation would make it difficult to escape domestic violence or unfairly penalize the individual who is or has been victimized by domestic violence, compliance shall not be mandated.
- (b) If a K-TAP applicant or work-eligible individual is identified as a victim of domestic violence or with a history of domestic violence, an appropriate services plan shall be required for the individual pursuant to 921 KAR 2:006, Section 25.

(4) A work-eligible individual shall be considered to be engaged in work for a month if the individual is:

- (a) A single custodial parent or caretaker relative in the family with a child who has not attained six (6) years in age; and
- (b) Engaged in work for an average of at least twenty (20) hours per week during the month pursuant to Section 2(1)(c) 1, 2, 3, 4, 5, 6, or 7 of this administrative regulation.

(5) In accordance with 45 C.F.R. 261.2(n)(2)(i), the cabinet shall exclude from program participation a parent providing care to a disabled family member as verified by the completion of the PA-4, Statement of Required Caretaker Services.

(6) In accordance with 45 C.F.R. 261.2(n)(2), the cabinet shall exclude from program participation a parent who is a recipient of Social Security Disability Insurance (SSDI) benefits.

(7)

- (a) If an individual with an ADA disability cannot participate in a countable work activity as specified in Section 2 of this administrative regulation.
- (b) A reasonable accommodation or program modification may include:
 - 1. Excused participation from an activity;
 - 2. Participation for a reduced number of hours;
 - 3. Participation in an activity for a longer period of time than is countable; or
 - 4. Participation in an activity that is not countable in accordance with Section 2(1)(c)12 of this administrative regulation.
- (c)12 of this administrative regulation.

(8) An applicant of K-TAP shall be informed in writing of the availability of the exceptions to KWP participation pursuant to this section.

Section 4. Program Participation Requirements.

(1) Assessment.

- (a) The cabinet or its designee shall make an assessment of the work-eligible individual's employability on KW-200, Kentucky Works Assessment Form.
- (b) The cabinet shall request another agency to assist in the assessment process if the need for a diagnostic assessment or an additional professional skill set is indicated.
- (c) The assessment shall include consideration of:
 - 1. Basic skills;
 - 2. Occupational skills;
 - 3. Barriers and other relevant factors;
 - 4. An ADA disability; and
 - 5. A reasonable accommodation or program modification needed for an individual with an ADA disability.
- (2) The self-sufficiency plan. Based on the findings of the assessment, the cabinet or its designee and work-eligible individual shall jointly develop a self-sufficiency plan by completing the KW-202, K-TAP Transitional Assistance Agreement. This plan shall contain:
 - (a) An employment goal for the individual;
 - (b) A service to be provided by the cabinet including child care;
 - (c) An activity to be undertaken by the individual to achieve the employment goal;
 - (d) A reasonable accommodation or program modification needed due to an ADA disability; and
 - (e) Other needs of the family.
- (3) In accordance with KRS 205.200(7)(a), an adult applicant or recipient of the K-TAP benefit group shall register for work except for a member who is:
 - (a) Under age eighteen (18);
 - (b) Age sixty (60) or over;
 - (c) Age eighteen (18) or nineteen (19) years old in full-time school attendance pursuant to 921 KAR 2:006, Section 3;
 - (d) Receiving benefits based on 100 percent disability;
 - (e) An individual who has received benefits based on 100 percent disability within the past twelve (12) months but lost the benefits due to income or resources and not an improvement in the disability; or
 - (f) Employed thirty (30) hours or more per week at minimum wage or more.

Section 5. Conciliation.

- (1) Conciliation shall be conducted:
 - (a) At the request of a work-eligible individual or a KWP participant;
 - (b) At the request of a service provider; or
 - (c) If a situation is identified that could result in a penalty pursuant to Section 7 of this administrative regulation.
- (2) The conciliation shall be conducted by the cabinet or its designee.
- (3) During conciliation, the cabinet or its designee shall determine if an additional service is needed to assist with KWP participation.
- (4)
 - (a) During conciliation, participation shall be monitored for up to fifteen (15) days following the issuance of form KW-204, Conciliation Notice.
 - (b) The fifteen (15) day period may be extended for an additional fifteen (15) days, if necessary, to determine if participation is in compliance with the terms of the conciliation.
- (5) At the conclusion of the conciliation period, the participant shall be notified in writing of an adverse action in accordance with 921 KAR 2:046.

Section 6. Excused from Penalties.

(1) A work-eligible individual shall be excused from a penalty for failure to comply with KWP, pursuant to Section 7 of this administrative regulation, if one (1) of the following good cause criteria is met:

(a) The individual is a single custodial parent who has a demonstrated inability to obtain needed child care for a child under six (6) years of age. A demonstrated inability to obtain needed child care for a child under six (6) years of age shall be met if the single custodial parent:

1. Cannot locate appropriate child care;
2. Cannot locate child care at a reasonable distance from home;
3. Determines the unsuitability of informal child care; or
4. Cannot locate affordable child care arrangements;

(b) Dependent care is not available for an incapacitated individual living in the same household as a dependent child;

(c) Child care is terminated through no fault of the individual;

(d) Child care does not meet the needs of the child, for example, a child with a disability;

(e)

1. The individual is unable to engage in employment or training for a mental or physical reason as verified by the cabinet; and
2. No reasonable accommodation or program modification exists;

(f) The individual is temporarily incarcerated or institutionalized for thirty (30) days or less;

(g) The cabinet determines there is discrimination by an employer and a formal complaint has been filed based on:

1. Age;
2. Race;
3. Sex;
4. Color;
5. Disability;
6. Religious belief;
7. National origin; or
8. Political belief;

(h) Work demand or condition renders continued employment unreasonable including:

1. Consistently not being paid on schedule; or
2. The presence of a risk to the individual's health or safety;

(i) Wage rate is decreased subsequent to acceptance of employment;

(j) The individual accepts a better job that, because of a circumstance beyond the control of the individual, does not materialize; or

(k) The work activity site is so far removed from the home that commuting time would exceed three (3) hours per day.

(2) The duration of good cause criteria may vary according to the individual's circumstance.

Section 7. Penalties.

(1) If a work-eligible individual fails to comply with a requirement of the KWP, the recipient shall be subject to a KWP and K-TAP penalty. Failure to comply shall be found if the work-eligible individual:

(a) Fails without good cause, pursuant to Section 6 of this administrative regulation, to participate in a required activity, including:

1. An assessment interview;
2. An assessment; or
3. Self-sufficiency plan development including completion of KW-202;

- (b) Fails without good cause, pursuant to Section 6 of this administrative regulation, to participate in a program activity in accordance with form KW-202;
- (c) Refuses without good cause, pursuant to Section 6 of this administrative regulation, to accept employment;
- (d) Terminates employment or reduces earnings without good cause, pursuant to Section 6 of this administrative regulation; or
- (e) Fails to register for work unless an exception in Section 4(3) of this administrative regulation applies.

(2)

- (a) Except for a requirement listed in paragraph (b) of this subsection:
 - 1. A work-eligible individual who has failed to comply with a KWP requirement without good cause, pursuant to Section 6 of this administrative regulation, shall be penalized by reducing the amount of the assistance otherwise payable to the benefit group on a pro rata basis; or
 - 2. Assistance otherwise payable to a benefit group consisting of a two (2) parent household shall be discontinued if neither the work-eligible individual who is a qualifying parent nor the other parent complies with a KWP requirement without good cause, pursuant to Section 6 of this administrative regulation.
 - (b) Assistance to the benefit group shall be denied if the work-eligible individual, fails, without good cause pursuant to Section 6 of this administrative regulation, to:
 - 1. Keep an appointment for an assessment interview; or
 - 2. Pursuant to Section 4 of this administrative regulation:
 - a. Complete an assessment; or
 - b. Register for work.
 - (c) The penalties in subsection (2)(a) of this section shall continue to be applied until the work-eligible individual complies with a program requirement.
- (3) The penalties in subsection (2) of this section shall not be applied until after a conciliation procedure is conducted pursuant to Section 5 of this administrative regulation.

Section 8. Hearings and Appeals. An applicant or recipient of benefits pursuant to a program described herein who is dissatisfied with an action or inaction on the part of the cabinet shall have the right to a hearing pursuant to 921 KAR 2:055.

Section 9. Work Experience Program Training Site Agreement.

- (1) A cost incurred by a training site agency because of participation in a WEP shall not be reimbursed.
- (2) A WEP participant shall not be removed from training without prior notice to the Department for Community Based Services.
- (3) A WEP participant shall not infringe upon the promotional opportunity of a currently employed individual.
- (4) An individual shall not be subjected to discrimination, or denied training or employment or benefits, in the administration of, or in connection with, the training program because of:
 - (a) Race;
 - (b) Color;
 - (c) Religion;
 - (d) Sex;
 - (e) National origin;
 - (f) Age;
 - (g) Disability; or
 - (h) Political belief or affiliation.

(5) Prior to placement in a WEP activity, a WEP participant shall sign form KWET 241, WEP Training Site Agreement.

(6) A training site agency shall:

(a) Complete surveying or reporting relating to the operation of the training site agreement upon the request of the cabinet;

(b) Not displace a currently employed worker by a WEP participant, including a partial displacement including a reduction of the:

1. Hours of non-overtime work;

2. Wages; or

3. Employment benefits;

(c) Comply with 42 U.S.C. 12101 to 12213;

(d) Report a personnel problem to the departmental representative designated by the cabinet;

(e) Maintain accurate time and attendance records daily for a WEP participant;

(f) Verify time and attendance records for a WEP participant pursuant to Section 2(3) of this administrative regulation to ensure the WEP participant's compliance with subsection (7) of this section;

(g) Grant access for the Department for Community Based Services to the training site during working hours to counsel a participant and to monitor the site;

(h) Immediately report an injury to the designated representative;

(i) Conduct an investigation and submit a report upon the request of the Department for Community Based Services;

(j) Not encourage or require a WEP participant to take part in partisan political activity, or involve a WEP participant in partisan political activity;

(k) Maintain the confidentiality of information provided by or about a WEP participant who seeks or receives a service pursuant to form KWET-241, except as authorized by law or in writing by a WEP participant;

(l) Hold the cabinet harmless from a loss, claim, expense, action, cause of action, cost, damage, and obligation arising from a negligent act or omission of the training site agency, its agent, employee, licensee, invitee, or WEP participant that results in injury to a person, or damage or loss relative to a person, corporation, partnership, or other entity;

(m) Provide:

1. Sufficient training to ensure development of appropriate skills;

2. New task after mastery of a skill; and

3. Adequate participation instruction and supervision at all times;

(n) Provide the participant a safe training place;

(o) Assure a participant, engaged in an activity not covered pursuant to 29 U.S.C. 651 to 678, is not required or permitted to receive training or a service in a building or surrounding, or under a training condition that is unsanitary, hazardous, or dangerous to the health and safety of the participant;

(p) Provide adequate material to complete a training activity in a safe environment; and

(q) Sign form KWET-241 with the cabinet and the participant containing a statement of:

1. The conditions established by subsections (1) through (10) of this section; and

2. The period covered by the agreement, including the required weekly number of hours of participation.

(7) The WEP participant shall submit verification pursuant to Section 2(3) of this administrative regulation completed monthly in accordance with subsection (6)(e) and (f) of this section.

(8) If an amendment is made to the agreement, a new form KWET-241 shall be issued.

(9) A WEP participant or WEP provider shall be notified in writing of discontinuance of a WEP placement on form KWET-241.

(10) A WEP participant shall have the right to request an administrative hearing, in accordance with Section 8 of this administrative regulation, relating to a grievance or complaint.

Section 10. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "KW-33, Verification of Kentucky Works Program Participation", 12/15;
- (b) "KW-200, Kentucky Works Assessment Form", 2/09;
- (c) "KW-202, K-TAP Transitional Assistance Agreement", 12/15;
- (d) "KW-204, Conciliation Notice", 12/15;
- (e) "KWET-241, WEP Training Site Agreement", 4/11; and
- (f) "PA-4, Statement of Required Caretaker Services", 12/15.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

(19 Ky.R. 2208; eff. 4-21-1993; Am. 20 Ky.R. 2916; 3199; eff. 6-2-1994; 21 Ky.R. 2315; 2711; eff. 4-19-1995; 24 Ky.R. 1175; 1742; 1892; eff. 3-16-1998; 25 Ky.R. 2013; 2625; eff. 6-16-1999; Recodified from 904 KAR 2:370, 7-8-1999; 26 Ky.R. 1728; 1982; eff. 6-12-2000; TAm eff. 10-27-2004; 32 Ky.R. 779; 1303; 1431; eff. 3-2-2006; 33 Ky.R. 1455; 1831; eff. 2-2-2007; 35 Ky.R. 1345; 1805; 2070; eff. 3-11-2009; 37 Ky.R. 1904; 2208; eff. 4-1-2011; TAm eff. 7-5-2012; 42 Ky.R. 602; eff. 11-18-2015.)