LABOR CABINET
Department of Workplace Standards
(Amendment)

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 shall~~[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 department~~[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. Pursuant to KRS 337.010~~[By statutory definition]~~ the term "employee" is any person employed by or suffered or permitted to work for an employer as further defined in 803 KAR 1:005. 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, the employee~~[he]~~ may be a pieceworker, and~~[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 the employee~~[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 the employer shall~~[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 shall~~[must]~~ make every effort to do so.

Section 3. Waiting Time.

(1) General. Whether waiting time is worked under the statutes~~[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. The~~[Such]~~ questions shall~~[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, a firefighter[~~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 plant[~~plan~~]. For example, a repair person[~~man~~] is working while waiting for the[~~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 the[~~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 or her 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) Periods [~~Period~~] during which an employee is completely relieved from duty and which are long enough to enable the employee[~~him~~] to use the time effectively for his or her own purposes are not hours worked. The employee[~~He~~] is not completely relieved from duty and cannot use the time effectively for his or her own purposes unless the employee[~~he~~] is definitely told in advance that the employee[~~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 the employee[~~him~~] to use the time effectively for the employee's[~~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 the[~~his~~] destination and while awaiting the return trip is required to take care of the[~~his~~] employer's property, the driver[~~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 the employee[~~he~~] again goes on duty for the return trip, the idle time is not working time. The employee[~~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 the employee[~~he~~] cannot use the time effectively for the employee's[~~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 the employee[~~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 shall[~~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 shall[~~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 or she 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 or she is otherwise completed freed from duties during the meal period.

Section 5. Sleeping Time and Certain Other Activities.

(1) Under certain conditions an employee shall be~~[is]~~ considered to be working even though some of the employee's~~[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. An employee~~[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 the employee is~~[she is]~~ furnished facilities for sleeping. The~~[Her]~~ time is given to the~~[her]~~ employer. The employee~~[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 the~~[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, the employee~~[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 the employee~~[he]~~ may leave the premises for purposes of the employee's~~[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 may~~[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 the employee's~~[his]~~ present working conditions or the continuance of the employee's~~[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 the employee's~~[his]~~ job more effectively as distinguished from training the employee~~[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 the employee~~[his]~~ skill in doing the~~[his]~~ regular work. If an employee on their~~[his]~~ own initiative attends an independent school, college or independent trade school after hours, the time is not hours worked for the~~[his]~~ employer even if the courses are related to the~~[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 the~~[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 the~~[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 for the state of Kentucky[and Training, Kentucky Department of Labor]; and

(b) The [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 shall[does] not constitute an agreement that the[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 the[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 the employee[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, shall[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, or to pick up and to carry tools, materials or employees, the travel from the designated place to the work place is part of the day's work, and shall[must] be counted as hours worked. If an employee normally finishes the work on the premises at 5 p.m. and is sent to another job which is finished at 8 p.m. and is required to return to the employer's premises arriving at 9 p.m., all of the time is working time. However, if an employee goes home instead of returning to the employer's premises, the travel after 8 p.m. is home-to-work travel and is not 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. The time is not only hours worked on regular working days during the corresponding hours but also during the corresponding hours on nonworking days. Thus, if an employee regularly works from 9 a.m to 5 p.m from Monday through Friday the travel time during these hours on Saturday and Sunday is worktime as well as on the other days. Regular meal period time is not counted.

Section 8. Recording Working Time. KRS 337.320[The law] does not require any special method of keeping a record of time worked by employees and further requirements are set out in 803 KAR 1:066. 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 those[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 shall[should] be discouraged since they raise a doubt as to the accuracy of the hours actually worked. In some industries, particularly where time clocks are used, there has been the practice for many years of recording the employee's starting time and stopping time to the nearest (five) 5 minutes, or to the nearest one-tenth or quarter of an hour. Presumably, this arrangement averages out so that employees are fully compensated for all the time they actually work. For enforcement purposes, this practice of computing working

time will be accepted, provided that it is used in a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time the employee has actually worked.

Section 9. The principles discussed in this administrative regulation are intended to guide the department[~~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 department shall[~~office will~~] make the determination in accordance with common sense and the general concept of work or employment.

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 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 provides guidance for determining what constitutes working time pursuant to KRS 337.275 and 337.285.

(b) The necessity of this administrative regulation:
This administrative regulation is necessary to clarify the meaning of working time pursuant to KRS 338.275 and 337.285 in order to help determine hours worked.

(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 provides guidance that will help determine working time requirements pursuant to KRS 337.275 and 337.285. (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.

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

(a) How the amendment will change this existing administrative regulation:
No answer provided.

(b) The necessity of the amendment to this administrative regulation:
This administrative regulation has not been updated since 2007. This amendment updates language to ensure compliance with KRS Chapter 13A and ensures effective guidance for the statutory provisions under KRS Chapter 337.275 and 337.285.

(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 utilized by the department.

(d) How the amendment will assist in the effective administration of the statutes:
This amendment updates language to clarify the guidance provided in the administrative regulation.

(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 for what constitutes working time. (5) Provide an estimate of how much it will cost to implement this administrative regulation:

(5) Provide an estimate of how much it will cost the administrative body 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.

(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:

No answer provided.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

No answer provided.

(9) TIERING: Is tiering applied?

Tiering is not applied. All subject 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?

No answer provided.

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

No answer provided.

(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.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

No answer provided.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

No answer provided.

(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 Explanation:

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