EDUCATION AND LABOR CABINET
Department of Workplace Standards
(Amended at ARRS Committee)

803 KAR 1:081. Board, lodging, gratuities, and other allowances.

RELATES TO: KRS 337.275, 337.285, 29 C.F.R. 531.31 – 531.58, 29 C.F.R. 10.28(b)(3)(iii)-(iv)(A), 29 C.F.R. 516.28(a), 803 KAR 1:071 Sec. 2-Sec. 3, 803 KAR 1:071 Sec. 5.

STATUTORY AUTHORITY: KRS 337.295

CERTIFICATION STATEMENT:

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.295 authorizes the commissioner to promulgate administrative regulations permitting allowances as part of the wage rates applicable under the statutes for board, lodging, gratuities, and other facilities. This administrative regulation establishes what allowances may be credited toward the payment of wages as required KRS Chapter 337.

Section 1. Definitions.

(1) "~~*[Direct support" is defined by 29 C.F.R. 10.28(b)(3)(iii)-(iv)(A).]*~~

~~*[(2)] ["Managers" and "supervisors" are defined by 803 KAR 1:071 Sec.2- Sec, 3 and 803 KAR 1:071 Sec. 5.]*~~

~~*[(3)] ["Salaried employee" is defined by 803 KAR 1:071 Sec. 10(1).]*~~

~~*[(4)] ["-]*~~Tip" means a sum presented by a customer as a gift or gratuity in recognition of some service performed. A tip is distinguished from a payment of a charge made for the service.

(2) ~~*[(5)]*~~ ~~[(2)]~~ "Tipped employees" is defined by KRS 337.010(2)(d).

(3) ~~*[(6)]*~~ ~~[(3)]~~ "Wages" is defined by KRS 337.010(1)(c).

Section 2. Board, Lodging, and Other Facilities.

(1) In accordance with KRS 337.275 and 337.285, an employer may ~~*[be permitted to]*~~include as wages paid to an employee, the reasonable cost of providing an employee with board, lodging, or other facilities if they are customarily provided by the employer to employees.

(a) Reasonable cost shall not include a profit to the employer or to any affiliated person.

(b) This section shall not prohibit payment of wages in facilities provided either as additions to a stipulated wage or as items for which deductions from the stipulated wage will be made. The reasonable cost of board, lodging, or other facilities may be considered as part of the wage paid an employee only if customarily provided to the employee. Not only shall the employee receive the benefits of the facility for which the employee is charged, but acceptance of the facility shall be voluntary and uncoerced.

(2) The criteria for board, lodging, or other facilities being customarily provided as applicable to KRS 337.275 and 337.285 shall be as established in 29 C.F.R. 531.31.

(3) Other facilities.

(a) The criteria for "other facilities", as applicable to KRS 337.275 and 337.285, shall be as established in 29 C.F.R. 531.32(a).

(b) The cost of providing facilities that are primarily for the benefit or convenience of the employer shall not be recognized as reasonable and shall not be included in computing wages. Facilities primarily for the benefit or convenience of the employer shall include, for example:

1. Tools of the trade and other materials and services incidental to carrying on the employer's business;

2. The cost of any construction by or for the employer; and

3. The cost of uniforms and of their laundering, if the nature of the business requires the employees to wear a uniform.

(4) The prohibition of kickbacks, as applicable to KRS 337.275 and 337.285, shall be as established in 29 C.F.R. 531.35.

(5) The criteria for payment if additions or deductions are involved in nonovertime workweeks, as applicable to KRS 337.375 and 337.285, shall be as established in 29 C.F.R. 531.36(a).

(6) Overtime workweeks.

(a) Pursuant to KRS 337.285, an employee shall receive compensation for overtime hours at a rate of not less than one and one-half (1 1/2) times the rate at which the employee is employed. If overtime is worked by an employee who receives the whole or part of his or her wage in facilities and it becomes necessary to determine the portion of wages represented by facilities, all of the facilities shall be measured by the requirements of this administrative regulation.

(b) Deductions may be made on the same basis in an overtime workweek as in non-overtime workweeks, if their purpose and effect are not to evade the overtime requirements of KRS 337.285.

1. The amount deducted shall not exceed the amount that could be deducted if the employee had only worked the maximum number of straight-time hours during the workweek.

2. Deductions in excess of this amount for the items shall be prohibited in overtime workweeks as well as in non-overtime workweeks.

3. There shall not be a limit on the amount that may be deducted for board, lodging, or other facilities in overtime workweeks if these deductions are made only for the reasonable cost of the items provided.

(c) If deductions are made from the stipulated wage of an employee, the regular rate of pay shall be based on the stipulated wage before any deductions have been made. If board, lodging, or other facilities are customarily provided as addition to a cash wage, the reasonable cost of the facilities to the employer shall be considered as part of the employee's regular rate of pay.

Section 3. Payment Made to Person Other than Employee.

(1) Amounts deducted for taxes. Taxes assessed against the employee and collected by the employer and forwarded to the appropriate governmental agency shall be included as wages. This ***standard*~~[principle]~~** shall be applicable to the employee's share of Social Security, as well as other federal, state, or local taxes. A deduction shall not be made for any tax or share of a tax that the law requires to be borne by the employer.

(2) The criteria for payments to third persons pursuant to a court order, as applicable to KRS 337.275 and 337.285, shall be as established in 29 C.F.R. 531.39(a).

(3) The criteria for payments to an employee's assignee, as applicable to KRS 337.275 and 337.285, shall be as established in 29 C.F.R. 531.40.

Section 4. Payment of Wages to Tipped Employees.

(1) Conditions for taking tip credits in making wage payments.

(a) The wage credit ***allowed*~~[permitted]~~** on account of tips under KRS 337.275(2) shall be taken only with respect to wage payments made under KRS Chapter 337 to those employees whose occupations in the workweeks for which the payments are made are those of "tipped employees."

(b) To determine if a tip credit may be taken in paying wages to a particular employee, it is necessary to know:

1. What payments constitute tips;

2. If the employee receives more than thirty (30) dollars a month in payments in the occupation in which the employee is engaged; and

3. If in the occupation the employee receives these payments in that amount customarily and regularly.

(2) General characteristics of tips.

(a) To qualify as a tip, the customer shall determine:

1. If a tip is given;

2. The amount of the tip; and

3. Who shall be the recipient of the tip, except where a tip pool is used.

(b) Only tips actually received by an employee as money shall be counted in determining if the employee is a tipped employee within the meaning of the KRS Chapter 337 and in applying the provisions of KRS 337.275(2).

(3) The following shall not be considered tips:

(a) Criteria established in 29 C.F.R. 531.55(a);

(b) If the employment agreement includes that amounts presented by customers as tips belong to the employer and shall be credited or turned over to the employer, the employee is in effect collecting for his or her employer additional income from the operations of the employer's establishment. Even ***if[though]*** the amounts are not collected by imposition of any compulsory charge on the customer, the employee is not receiving tips within the meaning of KRS Chapter 337.

(4) More than thirty (30) dollars a month in tips. If an employee employed is not a tipped employee, the employee shall receive the full compensation required by KRS Chapter 337 in cash or allowable facilities without any credit for tips received.

(a) Pursuant to KRS 337.010(2)(d), tipped employee does not require that the calendar month be used in determining if more than thirty (30) dollars a month is customarily and regularly received as tips. A recurring monthly period beginning on the same day of the calendar month may be used.

(b) The fact that an employee is part of a group that has a record of receiving more than thirty (30) dollars a month in tips shall not qualify the employee as a tipped employee.

(5) The criteria for "customarily and regularly", as applicable to KRS 337.010(2)(d), shall be as established in 29 C.F.R. 531.57.

(6) Criteria for the exception of initial and terminal months of employment from the requirement that a tipped employee receive more than thirty (30) dollars a month in tips shall be as established in 29 C.F.R. 531.58.

(7) The tip wage credit. In determining compliance with the wage payment requirements of KRS 337.275(2), the amount paid to a tipped employee by an employer shall be deemed to be increased on account of tips by an amount equal to the formula established in KRS 337.275(2) if the employer satisfies all the requirements in the workweek for which the wage payment is made.

(a) This credit shall be in addition to any credit for board, lodging, or other facilities that may be allowable under this administrative regulation. The actual amount shall be ***pursuant to[left]*** by KRS 337.275(2) to determination by the employer on the basis of the employer's information taken from his or her records concerning the tipping practices and receipts in the establishment. In order for an employer to take the maximum credit allowed by this special provision, the tipped employee shall receive the maximum in tips.

(b) If the employee is receiving less than the amount credited, the employer shall be required to pay the balance so that the employee receives at least the minimum wage with the combination of wages and tips.

1. The tip credit shall be taken only for hours worked by the employee in an occupation in which the employee qualifies as a tipped employee.

2. An employer shall not use any part of an employee's tips to pay the minimum wage to any employee ***and[; but]*** may only apply credit toward the payment of the

minimum wage to the employee who actually received the tip.

3. Under employment agreements requiring tips to be turned over or credited to the employer to be treated as part of the employer's gross receipts, the employer shall pay the employee the full minimum hourly wage.

(8) Overtime payments. If overtime is worked by a tipped employee who is subject to the overtime pay provisions of KRS 337.285, the regular rate of pay shall be determined by dividing the employee's total remuneration for employment in any workweek by the total number of hours actually worked in that workweek for which the compensation was paid. A tipped employee's regular rate of pay includes the amount of tip credit taken by the employer (not in excess of the formula established in KRS 337.275(2)), the reasonable cost of any facilities provided the employee by the employer, and the cash wages including commissions and bonuses paid by the employer. Any tips received by the employee in excess of the tip credit need not be included in the regular rate. The tips shall not constitute payments made by the employer to the employee as remuneration for employment.

(9) Tip pooling.

(a) Tip pooling voluntarily entered into by employees. Pursuant to KRS 337.275(2), employees may enter into an agreement to divide tips among themselves. If employees enter into this type of agreement, the amounts retained by the employees shall be considered tips of the individuals who retain them.

(b) Tip pooling mandated by employer. Pursuant to KRS 337.065(3), an employer may mandate its employees participate in a tip pool. If the employer mandates the employees participate in a tip pool, the employer shall maintain and preserve payroll records as established in 29 C.F.R. 516.28(a).

Section 5. Records. If an employer uses the reasonable cost of providing an employee with board, lodging, or other facilities in meeting the requirements of KRS 337.275 and 337.285, it shall be necessary to keep the following records, in addition to those required by KRS 337.320:

(1) The facility being provided by the employer to the employee; and

(2) The cost being charged for the facility by the employer.

COMPILER'S NOTE: 2025 RS HB 6, enacted by the General Assembly on March 27, 2025, altered the information to be provided at the time an administrative regulation is filed. Aside from formatting changes necessary to upload the regulation into the LRC's publication application, this regulation has been published as submitted by the agency.

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