

337.010 Definitions for chapter.

- (1) As used in this chapter, unless the context requires otherwise:
- (a) "Commissioner" means the commissioner of the Department of Workplace Standards under the direction and supervision of the secretary of the Education and Labor Cabinet;
 - (b) "Department" means the Department of Workplace Standards in the Education and Labor Cabinet;
 - (c)
 - 1. "Wages" includes any compensation due to an employee by reason of his or her employment, including salaries, commissions, vested vacation pay, overtime pay, severance or dismissal pay, earned bonuses, and any other similar advantages agreed upon by the employer and the employee or provided to employees as an established policy. The wages shall be payable in legal tender of the United States, checks on banks, direct deposits, or payroll card accounts convertible into cash on demand at full face value, subject to the allowances made in this chapter. However, an employee may not be charged an activation fee and the payroll card account shall provide the employee with the ability, without charge, to make at least one (1) withdrawal per pay period for any amount up to and including the full account balance.
 - 2. For the purposes of calculating hourly wage rates for scheduled overtime for professional firefighters, as defined in KRS 95A.210(8), "wages" shall not include the distribution to qualified professional firefighters by local governments of supplements received from the Firefighters Foundation Program Fund. For the purposes of calculating hourly wage rates for unscheduled overtime for professional firefighters, as defined in KRS 95A.210(9), "wages" shall include the distribution to qualified professional firefighters by local governments of supplements received from the Firefighters Foundation Program Fund;
 - (d) "Employer" is any person, either individual, corporation, partnership, agency, or firm who employs an employee and includes any person, either individual, corporation, partnership, agency, or firm acting directly or indirectly in the interest of an employer in relation to an employee; and
 - (e) "Employee" is any person employed by or suffered or permitted to work for an employer, except that:
 - 1. Notwithstanding any voluntary agreement entered into between the United States Department of Labor and a franchisee, neither a franchisee nor a franchisee's employee shall be deemed to be an employee of the franchisor for any purpose under this chapter; and
 - 2. Notwithstanding any voluntary agreement entered into between the United States Department of Labor and a franchisor, neither a franchisor nor a franchisor's employee shall be deemed to be an employee of the franchisee for any purpose under this chapter.

For purposes of this paragraph, "franchisee" and "franchisor" have the same meanings as in 16 C.F.R. sec. 436.1.

(2) As used in KRS 337.275 to 337.325, 337.345, and 337.385 to 337.405, unless the context requires otherwise:

(a) "Employee" is any person employed by or suffered or permitted to work for an employer, but shall not include:

1. Any individual employed in agriculture;
2. Any individual employed in a bona fide executive, administrative, supervisory, or professional capacity, or in the capacity of outside salesman, or as an outside collector as the terms are defined by administrative regulations of the commissioner;
3. Any individual employed by the United States;
4. Any individual employed in domestic service in or about a private home. The provisions of this section shall include individuals employed in domestic service in or about the home of an employer where there is more than one (1) domestic servant regularly employed;
5. Any individual classified and given a certificate by the commissioner showing a status of learner, apprentice, worker with a disability, sheltered workshop employee, and student under administrative procedures and administrative regulations prescribed and promulgated by the commissioner. This certificate shall authorize employment at the wages, less than the established fixed minimum fair wage rates, and for the period of time fixed by the commissioner and stated in the certificate issued to the person;
6. Employees of retail stores, service industries, hotels, motels, and restaurant operations whose average annual gross volume of sales made for business done is less than ninety-five thousand dollars (\$95,000) for the five (5) preceding years exclusive of excise taxes at the retail level or if the employee is the parent, spouse, child, or other member of his or her employer's immediate family;
7. Any individual employed as a baby-sitter in an employer's home, or an individual employed as a companion by a sick, convalescing, or elderly person or by the person's immediate family, to care for that sick, convalescing, or elderly person and whose principal duties do not include housekeeping;
8. Any individual engaged in the delivery of newspapers to the consumer;
9. Any individual subject to the provisions of KRS Chapters 7, 16, 27A, 30A, and 18A provided that the secretary of the Personnel Cabinet shall have the authority to prescribe by administrative regulation those emergency employees, or others, who shall receive overtime pay rates necessary for the efficient operation of government and the protection of affected employees;
10. Any employee employed by an establishment which is an organized nonprofit camp, religious, or nonprofit educational conference center, if it does not operate for more than two hundred ten (210) days in any calendar year;

11. Any employee whose function is to provide twenty-four (24) hour residential care on the employer's premises in a parental role to children who are primarily dependent, neglected, and abused and who are in the care of private, nonprofit childcaring facilities licensed by the Cabinet for Health and Family Services under KRS 199.640 to 199.670;
 12. Any individual whose function is to provide twenty-four (24) hour residential care in his or her own home as a family caregiver, family home provider, or adult foster care provider and who is approved to provide family caregiver services to an adult with a disability through a contractual relationship with a community board for mental health or individuals with an intellectual disability established under KRS 210.370 to 210.460 or through a contractual relationship with a certified waiver provider as defined in 907 KAR 7:005 sec. 1(5), or is certified or licensed by the Cabinet for Health and Family Services to provide adult foster care;
 13. A direct seller as defined in Section 3508(b)(2) of the Internal Revenue Code of 1986; or
 14. Any individual whose function is to provide behavior support services, behavior programming services, case management services, community living support services, positive behavior support services, or respite services through a contractual relationship with a certified waiver provider, as defined in 907 KAR 7:005 sec. 1(5), pursuant to a 1915(c) home and community based services waiver program, as defined in 907 KAR 7:005 sec. 1(2);
- (b) "Agriculture" means farming in all its branches, including cultivation and tillage of the soil; dairying; production, cultivation, growing, and harvesting of any agricultural or horticultural commodity; raising of livestock, bees, furbearing animals, or poultry; and any practice, including any forestry or lumbering operations, performed on a farm in conjunction with farming operations, including preparation and delivery of produce to storage, to market, or to carriers for transportation to market;
- (c) "Gratuity" means voluntary monetary contribution received by an employee from a guest, patron, or customer for services rendered;
- (d) "Tipped employee" means any employee engaged in an occupation in which he or she customarily and regularly receives more than thirty dollars (\$30) per month in tips; and
- (e) "U.S.C." means the United States Code.

Effective: July 1, 2022

History: Amended 2022 Ky. Acts ch. 236, sec. 115, effective July 1, 2022. -- Amended 2021 Ky. Acts ch. 153, sec. 1, effective June 29, 2021. -- Amended 2020 Ky. Acts ch. 2, sec. 1, effective July 15, 2020. -- Amended 2017 Ky. Acts ch. 3, sec. 5, effective January 9, 2017; ch. 24, sec. 1, effective June 29, 2017; ch. 96, sec. 1, effective June 29, 2017; and ch. 134, sec. 3, effective June 29, 2017. -- Amended 2012 Ky. Acts ch. 146, sec. 113, effective July 12, 2012. -- Amended 2010 Ky. Acts ch. 24, sec. 1727, effective July 15, 2010. -- Amended 2009 Ky. Acts ch. 33, sec. 4, effective March 20, 2009. -- Amended 2005 Ky. Acts ch. 99, sec. 67, effective June 20, 2005. -- Amended 2003 Ky. Acts ch.

166, sec. 3, effective June 24, 2003. -- Amended 1998 Ky. Acts ch. 154, sec. 92, effective July 15, 1998; ch. 426, sec. 558, effective July 15, 1998; and ch. 606, sec. 113, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 48, sec. 1, effective July 15, 1996; ch. 100, sec. 1, effective July 15, 1996; and ch. 115, sec. 1, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 405, sec. 85, effective July 15, 1994; and ch. 492, sec. 1, effective July 15, 1994. -- Amended 1986 Ky. Acts ch. 208, sec. 2, effective July 15, 1986. -- Amended 1984 Ky. Acts ch. 414, sec. 12, effective July 13, 1984. -- Amended 1982 Ky. Acts ch. 54, sec. 1, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 141, sec. 1, effective June 17, 1978; and ch. 340, sec. 1, effective June 17, 1978. -- Amended 1976 Ky. Acts ch. 223, sec. 1. -- Amended 1974 Ky. Acts ch. 341, sec. 1; and ch. 391, sec. 1. -- Amended 1970 Ky. Acts ch. 33, sec. 1. -- Amended 1968 Ky. Acts ch. 100, sec. 6. -- Amended 1966 Ky. Acts ch. 158, sec. 1. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 1599c-4, 1599c-39, 2290c-1, 2290c-2, 4767a-1, 4767a-17.

Legislative Research Commission Note (3/25/19). 2019 Ky. Acts ch. 67, sec. 1, amended KRS 95A.210 to add new subsections and to change the internal numbering of others. KRS 337.010(1) cites KRS 95A.210(5) and 95A.210(6). It is clear from the context that in this section KRS 95A.210(5) should have been changed to KRS 95A.210(8) to conform, and that KRS 95A.210(6) should have been changed to KRS 95A.210(9) to conform. These errors have been corrected in codification under the authority of KRS 7.136.