

AN ACT relating to earned paid sick leave.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 337 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "Child" means a biological, adopted, or foster child, stepchild, or legal ward of an employee if the child is less than eighteen (18) years old or is over eighteen (18) but incapable of self-care due to mental or physical disability;

(b) "Earned paid sick leave" means the time off from work that is provided by an employer to an employee as computed under this section that can be used for purposes set forth in this section and is compensated at the same hourly rate as the employee earns from his or her employment at the time the employee uses the paid sick leave; however, the hourly rate shall not be less than the minimum hourly wage under KRS 337.275;

(c) "Employee" has the same meaning as in KRS 337.010(1)(e);

(d) "Employer" has the same meaning as in KRS 337.010(1)(d);

(e) "Health care provider" means any person licensed under federal or state law to provide health care services, or any other person authorized to provide health care by a licensed health care professional, including but not limited to physicians, osteopaths, nurses, advanced practice registered nurses, physician assistants, and psychologists;

(f) "Parent" means a biological, adoptive, or foster parent of an employee or an employee's spouse, or other person who assumed the responsibilities of parenthood when the employee or the employee's spouse was a child; and

(g) "Spouse" means the person to whom the employee is married.

(2) Each employer shall provide earned paid sick leave to each employee working for

the employer in the state. Employees shall begin accruing earned paid sick time beginning on his or her date of hire or on effective date of this Act, whichever is later, but employees shall not be entitled to use accrued earned sick time until the ninetieth calendar day following commencement of employment. For every thirty (30) hours worked, the employee shall accrue one (1) hour of earned paid sick leave. Employees exempt from overtime requirements under state or federal law shall be assumed to work forty (40) hours each week unless his or her normal work week is less than forty (40) hours, in which case earned paid sick time shall accrue based on that normal work week.

(3) The employer shall not be required to permit the employee to accrue at any one time, or carry forward from one (1) year to the next, more than forty (40) hours of earned paid sick leave if the employer has less than ten (10) employees or more than seventy-two (72) hours of earned paid sick leave if the employer has ten (10) or more employees.

(4) An employer is considered in compliance with this section if the employer offers any other fully paid leave that may be used for the purposes set forth in this section in the manner provided for in this section and is accrued at a rate equal to or greater than the rate described in this section. Nothing in this section shall be construed to discourage or prohibit any employer from allowing the accrual of earned paid sick leave at a faster rate, or the use of earned paid sick leave at an earlier date, than this section requires.

(5) An employer shall permit an employee to use accrued earned paid sick leave pursuant to this section for any of the following:

(a) Time needed for the diagnosis, care, or medical treatment of, or recovery from, an employee's mental or physical illness, injury, or other health condition;

(b) Time needed for the diagnosis, care, or medical treatment of, or recovery

from, a mental or physical illness, injury, or other health condition of the employee's child, parent, or spouse;

- (c) Time needed due to circumstances resulting from the employee or the employee's child, parent, or spouse being a victim of domestic violence so long as the leave is to allow the victim of the domestic abuse to obtain medical attention needed to recover from physical or mental injury or disability caused by the domestic violence, to obtain services from a victim services organization, to relocate due to domestic violence or sexual assault, to obtain a restraining or protective order, or to participate in any civil or criminal proceedings related to the domestic violence.
- (6) If the employee's need to use earned paid sick leave is foreseeable, the employer may require advance notice, not to exceed seven (7) days prior to the date such leave is to begin, of the intention to use earned paid sick leave and the expected duration of the leave. The employee shall make reasonable effort to schedule the use of earned paid sick leave in a manner that does not unduly disrupt the operations of the employer.
- (7) If the employee's need to use earned paid sick leave is not foreseeable, an employer may require an employee to give notice of the intention to use earned paid sick leave as soon as practicable. For earned paid sick leave of more than three (3) days, an employer may require reasonable documentation that the leave is being used for a purpose permitted under the section. If the leave is used pursuant to subsection (5)(a) or (b) of this section, documentation signed by a health care provider who is treating the employee or the employee's child, parent, or spouse indicating the need for the leave and the anticipated necessary number of days of leave shall be considered reasonable documentation. If the leave is used pursuant to subsection (5)(c) of this section, a court record, a law enforcement report, or documentation signed by an attorney, police officer,

counselor, or representative of a victim services organization shall be considered reasonable documentation.

(8) Unless an employee policy or collective bargaining agreement provides for the payment of unused accrued earned paid sick leave benefits upon termination, no employee shall be entitled to payment of unused accrued earned paid sick leave benefits upon termination of employment.

(9) Nothing in this section shall be deemed to require any employer to provide earned paid sick leave for an employee's leave for any purpose other than those described in this section. Nothing in this section shall be construed to prohibit an employer from taking disciplinary action against an employee who used earned paid sick leave for purposes other than those described in this section.

(10) No employer shall retaliate against an employee because the employee requests or uses earned paid sick leave in accordance with this section or the employer's own earned paid sick leave policy, or files a complaint alleging the employer's violation of the provisions of this section. No employer shall count earned paid sick leave as an absence that may result in disciplinary action against the employee.

(11) Each employer subject to the provisions of this section shall, at the time of hiring, provide notice to each employee of the entitlement to earned paid sick leave, the amount of earned paid sick leave provided, and the terms under which earned paid sick leave may be used.

(12) Nothing in this section shall be construed as prohibiting an employer from adopting a policy whereby an employee may donate unused accrued earned paid sick leave to another employee.

(13) An employee shall not be required to use earned paid sick leave for any absence during a period of time in which, by mutual consent of the employee and the employer, the employee works an equivalent number of additional hours during

the same or the next pay period as the hours not worked due to reasons permitted in this section. An employer shall not require an employee to work additional hours to make up hours in which the employee was absent or require the employee to find a replacement employee to cover hours during which the employee is using earned paid sick time.

→Section 2. KRS 337.990 is amended to read as follows:

The following civil penalties shall be imposed, in accordance with the provisions in KRS 336.985, for violations of the provisions of this chapter:

- (1) Any firm, individual, partnership, or corporation that violates KRS 337.020 shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense. Each failure to pay an employee the wages when due him under KRS 337.020 shall constitute a separate offense.
- (2) Any employer who violates KRS 337.050 shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).
- (3) Any employer who violates KRS 337.055 shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense and shall make full payment to the employee by reason of the violation. Each failure to pay an employee the wages as required by KRS 337.055 shall constitute a separate offense.
- (4) Any employer who violates KRS 337.060 shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) and shall also be liable to the affected employee for the amount withheld, plus interest at the rate of ten percent (10%) per annum.
- (5) Any employer who violates the provisions of KRS 337.065 shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense and shall make full payment to the employee by reason of the violation.

- (6) Any person who fails to comply with KRS 337.070 shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense and each day that the failure continues shall be deemed a separate offense.
- (7) Any employer who violates any provision of KRS 337.275 to 337.325, KRS 337.345, and KRS 337.385 to 337.405, or willfully hinders or delays the commissioner or the commissioner's authorized representative in the performance of his or her duties under KRS 337.295, or fails to keep and preserve any records as required under KRS 337.320 and 337.325, or falsifies any record, or refuses to make any record or transcription thereof accessible to the commissioner or the commissioner's authorized representative shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000). A civil penalty of not less than one thousand dollars (\$1,000) shall be assessed for any subsequent violation of KRS 337.285(4) to (9) and each day the employer violates KRS 337.285(4) to (9) shall constitute a separate offense and penalty.
- (8) Any employer who pays or agrees to pay wages at a rate less than the rate applicable under KRS 337.275 and 337.285, or any wage order issued pursuant thereto shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).
- (9) Any employer who discharges or in any other manner discriminates against any employee because the employee has made any complaint to his or her employer, to the commissioner, or to the commissioner's authorized representative that he or she has not been paid wages in accordance with KRS 337.275 and 337.285 or regulations issued thereunder, or because the employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to KRS 337.385, or because the employee has testified or is about to testify in any such proceeding, shall be deemed in violation of KRS 337.275 to 337.325, KRS 337.345,

and KRS 337.385 to 337.405 and shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

(10) Any employer who violates KRS 337.365 shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

(11) Any person who violates KRS 337.530 shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

(12) Any contractor or subcontractor who violates any wage or work hours provision in any contract under KRS 337.505 to 337.550 shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense, and the contractor or subcontractor shall make full restitution to all employees to whom he or she is legally indebted by reason of said violation. The prime contractor shall be jointly and severally liable with a subcontractor for wages due an employee of the subcontractor. For a flagrant or repeated violation the offending contractor or subcontractor shall be barred from bidding on, or working on, any and all public works contracts, either in his or her name or in the name of any other company, firm, or other entity in which he or she might be interested for a period of two (2) years from the date of the last offense. Each day of violation shall constitute a separate offense, and the violation as affects each individual worker shall constitute a separate offense.

(13) Any public authority, public official, or member of a public authority who willfully fails to comply or to require compliance with KRS 337.505 to 337.550 shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense. Each day of violation shall constitute a separate offense. If a public authority, public official or member of a public authority willfully or negligently fails to comply with KRS 337.505 to 337.550 and the failure results in damages, injury or loss to any person, the public authority, public official, or member of a public authority may be held liable in a

civil action.

- (14) A person shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) when that person discharges or in any other manner discriminates against an employee because the employee has:
- (a) Made any complaint to his or her employer, the commissioner, or any other person; or
 - (b) Instituted, or caused to be instituted, any proceeding under or related to KRS 337.420 to 337.433; or
 - (c) Testified, or is about to testify, in any such proceedings.

(15) Any employer who violates Section 1 of this Act shall be assessed a civil penalty of not less than five hundred dollars (\$500) for each offense. Each day of violation shall constitute a separate offense, and the violation as affects each individual worker shall constitute a separate offense. The Attorney General, or any person authorized to act on his or her behalf, shall initiate enforcement of this penalty.