

1 AN ACT relating to employment.

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

3 ➔Section 1. KRS 337.010 is amended to read as follows:

4 (1) As used in this chapter, unless the context requires otherwise:

5 (a) "Commissioner" means the commissioner of the Department of Workplace
6 Standards under the direction and supervision of the secretary of the Labor
7 Cabinet;

8 (b) "Department" means the Department of Workplace Standards in the Labor
9 Cabinet;

10 (c) 1. "Wages" includes any compensation due to an employee by reason of his
11 or her employment, including salaries, commissions, vested vacation
12 pay, overtime pay, severance or dismissal pay, earned bonuses, and any
13 other similar advantages agreed upon by the employer and the employee
14 or provided to employees as an established policy. The wages shall be
15 payable in legal tender of the United States or checks on banks
16 convertible into cash on demand at full face value, subject to the
17 allowances made in this chapter;

18 2. For the purposes of calculating hourly wage rates for scheduled overtime
19 for professional firefighters, as defined in KRS 95A.210(5), "wages"
20 shall not include the distribution to qualified professional firefighters by
21 local governments of supplements received from the Firefighters
22 Foundation Program Fund. For the purposes of calculating hourly wage
23 rates for unscheduled overtime for professional firefighters, as defined in
24 KRS 95A.210(6), "wages" shall include the distribution to qualified
25 professional firefighters by local governments of supplements received
26 from the Firefighters Foundation Program Fund;

27 (d) "Employer" is any person, either individual, corporation, partnership, agency,

1 or firm who employs an employee and includes any person, either individual,
2 corporation, partnership, agency, or firm acting directly or indirectly in the
3 interest of an employer in relation to an employee; and

4 (e) "Employee" is any person employed by or suffered or permitted to work for an
5 employer.

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

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

10 1. ~~Any individual employed in agriculture;~~

11 ~~2.] Any individual employed in a bona fide executive, administrative,~~
12 ~~supervisory, or professional capacity, or in the capacity of outside~~
13 ~~salesman, or as an outside collector as the terms are defined by~~
14 ~~administrative regulations of the commissioner;~~

15 ~~2[3]. Any individual employed by the United States;~~

16 ~~4. Any individual employed in domestic service in or about a private home.~~
17 ~~The provisions of this section shall include individuals employed in~~
18 ~~domestic service in or about the home of an employer where there is~~
19 ~~more than one (1) domestic servant regularly employed;]~~

20 ~~3[5]. Any individual classified and given a certificate by the commissioner~~
21 ~~showing a status of learner, apprentice, worker with a disability,~~
22 ~~sheltered workshop employee, and student under administrative~~
23 ~~procedures and administrative regulations prescribed and promulgated~~
24 ~~by the commissioner. This certificate shall authorize employment at the~~
25 ~~wages, less than the established fixed minimum fair wage rates, and for~~
26 ~~the period of time fixed by the commissioner and stated in the certificate~~
27 ~~issued to the person;~~

- 1 ~~4[6]~~. Employees of retail stores, service industries, hotels, motels, and
2 restaurant operations whose average annual gross volume of sales made
3 for business done is less than ninety-five thousand dollars (\$95,000) for
4 the five (5) preceding years exclusive of excise taxes at the retail level or
5 if the employee is the parent, spouse, child, or other member of his or
6 her employer's immediate family;
- 7 ~~5[7]~~. Any individual employed as a baby-sitter in an employer's home, or an
8 individual employed as a companion by a sick, convalescing, or elderly
9 person or by the person's immediate family, to care for that sick,
10 convalescing, or elderly person and whose principal duties do not
11 include housekeeping;
- 12 ~~6[8]~~. Any individual engaged in the delivery of newspapers to the consumer;
- 13 ~~7[9]~~. Any individual subject to the provisions of KRS Chapters 7, 16, 27A,
14 30A, and 18A provided that the secretary of the Personnel Cabinet shall
15 have the authority to prescribe by administrative regulation those
16 emergency employees, or others, who shall receive overtime pay rates
17 necessary for the efficient operation of government and the protection of
18 affected employees;
- 19 ~~8[10]~~. Any employee employed by an establishment which is an
20 organized nonprofit camp, religious, or nonprofit educational conference
21 center, if it does not operate for more than seven (7) months in any
22 calendar year;
- 23 ~~9[11]~~. Any employee whose function is to provide twenty-four (24) hour
24 residential care on the employer's premises in a parental role to children
25 who are primarily dependent, neglected, and abused and who are in the
26 care of private, nonprofit childcaring facilities licensed by the Cabinet
27 for Health and Family Services under KRS 199.640 to 199.670; or

1 10~~12~~. Any individual whose function is to provide twenty-four (24) hour
2 residential care in his or her own home as a family caregiver and who is
3 approved to provide family caregiver services to an adult with a
4 disability through a contractual relationship with a community board for
5 mental health or individuals with an intellectual disability established
6 under KRS 210.370 to 210.460, or is certified or licensed by the Cabinet
7 for Health and Family Services to provide adult foster care;

8 (b) ~~["Agriculture" means farming in all its branches, including cultivation and
9 tillage of the soil; dairying; production, cultivation, growing, and harvesting of
10 any agricultural or horticultural commodity; raising of livestock, bees,
11 furbearing animals, or poultry; and any practice, including any forestry or
12 lumbering operations, performed on a farm in conjunction with farming
13 operations, including preparation and delivery of produce to storage, to
14 market, or to carriers for transportation to market;~~

15 ~~(c)~~ "Gratuity" means voluntary monetary contribution received by an employee
16 from a guest, patron, or customer for services rendered;

17 ~~(c)~~~~(d)~~ "Tipped employee" means any employee engaged in an occupation in
18 which he or she customarily and regularly receives more than thirty dollars
19 (\$30) per month in tips; and

20 ~~(d)~~~~(e)~~ "U.S.C." means the United States Code.

21 (3) As used in KRS 337.505 to 337.550, unless the context requires otherwise:

22 (a) "Construction" includes construction, reconstruction, improvement,
23 enlargement, alteration, or repair of any public works project by contract fairly
24 estimated to cost more than two hundred fifty thousand dollars (\$250,000). No
25 public works project, if procured under a single contract and subject to the
26 requirements of this section, may be divided into multiple contracts of lesser
27 value to avoid compliance with the provisions of this section;

- 1 (b) "Contractor" and "subcontractor" include any superintendent, foreman, or
2 other authorized agent of any contractor or subcontractor who is in charge of
3 the construction of the public works or who is in charge of the employment or
4 payment of the employees of the contractor or subcontractor who are
5 employed in performing the work to be done or being done by the contractor
6 or subcontractor under the particular contract with any public authority;
- 7 (c) 1. "Locality" shall be determined by the commissioner. The commissioner
8 may designate more than one (1) county as a single locality, but if more
9 than one (1) county is designated, the multicounty locality shall not
10 extend beyond the boundaries of a state Senatorial district. The
11 commissioner shall not designate less than an entire county as a locality.
12 If there is not available in the locality a sufficient number of competent,
13 skilled laborers, workmen, and mechanics to efficiently and properly
14 construct the public works, "locality" shall include any other locality
15 nearest the one in which the work of construction is to be performed and
16 from which such available skilled laborers, workmen, and mechanics
17 may be obtained in sufficient number to perform the work; and
- 18 2. "Locality" with respect to contracts advertised or awarded by the
19 Transportation Cabinet of this state shall be determined by the secretary
20 of the Transportation Cabinet. The secretary may designate any number
21 of counties as constituting a single locality. The secretary may also
22 designate all counties of the Commonwealth as a single locality, but he
23 or she shall not designate less than an entire county as a locality;
- 24 (d) "Public authority" means any officer, board, or commission of this state, or
25 any political subdivision or department thereof in the state, or any institution
26 supported in whole or in part by public funds, including publicly owned or
27 controlled corporations, authorized by law to enter into any contract for the

1 construction of public works and any nonprofit corporation funded to act as an
2 agency and instrumentality of the government agency in connection with the
3 construction of public works, and any "private provider", as defined in KRS
4 197.500, which enters into any contract for the construction of an "adult
5 correctional facility", as defined in KRS 197.500; and

6 (e) "Public works" includes all buildings, roads, streets, alleys, sewers, ditches,
7 sewage disposal plants, waterworks, and all other structures or work,
8 including "adult correctional facilities", as defined in KRS 197.500,
9 constructed under contract with any public authority.

10 (4) If the federal government or any of its agencies furnishes by loans or grants any part
11 of the funds used in constructing public works, and if the federal government or its
12 agencies prescribe predetermined prevailing minimum wages to be paid to
13 mechanics, workmen, and laborers employed in the construction of the public
14 works, and if KRS 337.505 to 337.550 is also applicable, those wages in each
15 classification which are higher shall prevail.

16 ➔Section 2. KRS 337.020 is amended to read as follows:

17 Every employer doing business in this state shall, as often as semimonthly, pay to each of
18 its employees all wages or salary earned to a day not more than eighteen (18) days prior to
19 the date of that payment. Any employee who is absent at the time fixed for payment, or
20 who, for any other reason, is not paid at that time, shall be paid thereafter at any time
21 upon six (6) days' demand. No employer subject to this section shall, by any means,
22 secure exemption from it. Every such employee shall have a right of action against any
23 such employer for the full amount of his wages due on each regular pay day. The
24 provisions of this section do not apply to those individuals defined in KRS
25 337.010(2)(a)~~[2]~~.

26 ➔Section 3. KRS 342.610 is amended to read as follows:

27 (1) Every employer subject to this chapter shall be liable for compensation for injury,

1 occupational disease, or death without regard to fault as a cause of the injury,
2 occupational disease, or death.

3 (2) A contractor who subcontracts all or any part of a contract and his or her carrier
4 shall be liable for the payment of compensation to the employees of the
5 subcontractor unless the subcontractor primarily liable for the payment of such
6 compensation has secured the payment of compensation as provided for in this
7 chapter. Any contractor or his or her carrier who shall become liable for such
8 compensation may recover the amount of such compensation paid and necessary
9 expenses from the subcontractor primarily liable therefor. A person who contracts
10 with another:

11 (a) To have work performed consisting of the removal, excavation, or drilling of
12 soil, rock, or mineral, or the cutting or removal of timber from land; or

13 (b) To have work performed of a kind which is a regular or recurrent part of the
14 work of the trade, business, occupation, or profession of such person

15 shall for the purposes of this section be deemed a contractor, and such other person
16 a subcontractor. This subsection shall not apply to the owner or lessee of land
17 principally used for agriculture.

18 (3) Liability for compensation shall not apply where injury, occupational disease, or
19 death to the employee was proximately caused primarily by voluntary intoxication
20 as defined in KRS 501.010, or by his or her willful intention to injure or kill
21 himself, herself, or another.

22 (4) If injury or death results to an employee through the deliberate intention of his or
23 her employer to produce such injury or death, the employee or the employee's
24 dependent as herein defined shall receive the amount provided in this chapter in a
25 lump sum to be used, if desired, to prosecute the employer. The dependents may
26 bring suit against the employer for any amount they desire. If injury or death results
27 to an employee through the deliberate intention of his or her employer to produce

1 such injury or death, the employee or the employee's dependents may take under
2 this chapter, or in lieu thereof, have a cause of action at law against the employer as
3 if this chapter had not been passed, for such damage so sustained by the employee,
4 his dependents or personal representatives as is recoverable at law. If a suit is
5 brought under this subsection, all right to compensation under this chapter shall
6 thereby be waived as to all persons. If a claim is made for the payment of
7 compensation or any other benefit provided by this chapter, all rights to sue the
8 employer for damages on account of such injury or death shall be waived as to all
9 persons.

10 (5) Prior to issuing any building permit pursuant to KRS 198B.060(10), every local
11 building official shall require proof of workers' compensation coverage from the
12 builder before a permit is issued. A person who is exempt under the exception
13 contained in KRS 342.650(~~1~~)(~~2~~), and any contractor otherwise exempt from this
14 chapter, shall so certify to the local building official, in writing and on a form
15 prescribed by the commissioner, in lieu of providing proof of workers'
16 compensation coverage.

17 (6) Every employer subject to this chapter, at its principal office and such other
18 locations where employees customarily report for payroll and personnel matters,
19 shall post a notice stating the name of its workers' compensation insurance carrier
20 and policy number, setting forth the means to access medical care for injuries, the
21 employee's obligation to give notice of accidents, and such other matters concerning
22 the employee's rights under this chapter as may be required by the commissioner so
23 as to afford every employee the opportunity to become informed about the
24 employer's workers' compensation program. The format and contents of the notice
25 shall be established by the commissioner through administrative regulation, and
26 copies shall be provided to the employer by its insurance carrier.

27 ➔Section 4. KRS 342.630 is amended to read as follows:

1 The following shall constitute employers mandatorily subject to, and required to comply
2 with, the provisions of this chapter:

3 (1) Any person~~[-, other than one engaged solely in agriculture,]~~ that has in this state one
4 (1) or more employees subject to this chapter.

5 (2) The state, any agency thereof, and each county, city of any class, school district,
6 sewer district, drainage district, tax district, public or quasipublic corporation, or
7 any other political subdivision or political entity of the state that has one (1) or more
8 employees subject to this chapter.

9 ➔Section 5. KRS 342.650 is amended to read as follows:

10 The following employees are exempt from the coverage of this chapter:

11 (1) ~~Any person employed as a domestic servant in a private home by an employer who
12 has less than two (2) employees each regularly employed forty (40) or more hours a
13 week in domestic servant employment;~~

14 ~~(2)~~ Any person employed, for not exceeding twenty (20) consecutive work days, to do
15 maintenance, repair, remodeling, or similar work in or about the private home of the
16 employer, or if the employer has no other employees subject to this chapter, in or
17 about the premises where that employer carries on his or her trade, business, or
18 profession;

19 ~~(2)~~~~(3)~~ Any person performing services in return for aid or sustenance only, received
20 from any religious or charitable organization;

21 ~~(3)~~~~(4)~~ Any person for whom a rule of liability for injury or death is provided by the
22 laws of the United States, except those persons covered under Title IV, Public Law
23 91-173, 91st Congress, commonly referred to as the Black Lung Benefits of the
24 Federal Coal Mine Health and Safety Act of 1969, or as amended;

25 ~~(5) Any person employed in agriculture;~~

26 ~~(4)~~~~(6)~~ Any person who would otherwise be covered but who elects not to be covered
27 in accordance with the administrative regulations promulgated by the

1 commissioner;

2 ~~(5)~~~~(7)~~ Any person participating as a driver or passenger in a voluntary vanpool or
 3 carpool program while that person is on the way to or from his or her place of
 4 employment. For the purposes of this subsection, carpool or vanpool means any
 5 method by which two (2) or more employees are transported from their residences
 6 to their places of employment; and

7 ~~(6)~~~~(8)~~ Members of a religious sect or division that is an adherent of established
 8 tenets or teachings by reason of which members are conscientiously opposed to
 9 acceptance of the benefits of any public or private insurance which makes payments
 10 in the event of death, disability, old age, or retirement, or makes payments toward
 11 the cost of, or provides services for, medical bills, including the benefits of any
 12 insurance system established by the Federal Social Security Act, 42 U.S.C. secs.
 13 301 et seq., and it is the practice, and has been for ten (10) or more years, for
 14 members of the sect or division to make reasonable provision for their dependent
 15 members.

16 ➔Section 6. KRS 304.12-250 is amended to read as follows:

17 (1) It shall be an unfair or deceptive trade practice for a health insurance policy to
 18 exclude coverage for a health condition based solely on the fact that the health
 19 condition is work-related, unless the claimant is eligible for benefits under any
 20 workers' compensation act or similar law.

21 (2) For purposes of this section, all employees shall be deemed to be eligible for
 22 benefits under any workers' compensation act or similar law, except for:

23 (a) Any employee exempted from workers' compensation coverage pursuant to
 24 KRS 342.650(1), (2), ~~(3)~~or, (5), ~~or (7)~~; and

25 (b) The owner or owners of a business, including qualified partners as defined in
 26 KRS 342.012(3).

27 ➔Section 7. KRS 342.690 is amended to read as follows:

- 1 (1) If an employer secures payment of compensation as required by this chapter, the
2 liability of such employer under this chapter shall be exclusive and in place of all
3 other liability of such employer to the employee, his legal representative, husband
4 or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover
5 damages from such employer at law or in admiralty on account of such injury or
6 death. For purposes of this section, the term "employer" shall include a "contractor"
7 covered by subsection (2) of KRS 342.610, whether or not the subcontractor has in
8 fact, secured the payment of compensation. The liability of an employer to another
9 person who may be liable for or who has paid damages on account of injury or
10 death of an employee of such employer arising out of and in the course of
11 employment and caused by a breach of any duty or obligation owed by such
12 employer to such other shall be limited to the amount of compensation and other
13 benefits for which such employer is liable under this chapter on account of such
14 injury or death, unless such other and the employer by written contract have agreed
15 to share liability in a different manner. The exemption from liability given an
16 employer by this section shall also extend to such employer's carrier and to all
17 employees, officers or directors of such employer or carrier, provided the exemption
18 from liability given an employee, officer or director or an employer or carrier shall
19 not apply in any case where the injury or death is proximately caused by the willful
20 and unprovoked physical aggression of such employee, officer or director.
- 21 (2) If an employer fails to secure payment of compensation as required by this chapter,
22 an injured employee, or his legal representative in case death results from the injury,
23 may claim compensation under this chapter and in addition may maintain an action
24 at law or in admiralty for damages on account of such injury or death, provided that
25 the amount of compensation shall be credited against the amount received in such
26 action, and provided that, if the amount of compensation is larger than the amount
27 of damages received, the amount of damages less the employee's legal fees and

1 expenses shall be credited against the amount of compensation. In such action the
2 defendant may not plead as a defense that the injury was caused by the negligence
3 of a fellow servant, that the employee assumed the risks of his employment, or that
4 the injury was due to the contributory negligence of the employee.

5 (3) An employer shall retain all common law defenses against any action by an
6 employee who elects not to be covered, as provided under subsection ~~(4)~~(6) of
7 KRS 342.650.