

1 AN ACT relating to wages and hours.

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

1 **1.** Any person, either individual, corporation, partnership, agency, or firm
 2 who employs an employee and includes any person, either individual,
 3 corporation, partnership, agency, or firm acting directly or indirectly in
 4 the interest of an employer in relation to an employee **and has an**
 5 **annual gross revenue of five hundred thousand dollars (\$500,000) or**
 6 **greater, exclusive of excise or sales taxes; and**

7 **2. The Commonwealth of Kentucky and its political subdivisions and any**
 8 **city, county, urban-county government, charter county government,**
 9 **consolidated local government, unified local government, or special**
 10 **purpose governmental entities; and**

11 (e) "Employee" is any person employed by or suffered or permitted to work for an
 12 employer[-

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

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

- 17 1. Any individual employed in agriculture;
- 18 2. Any individual employed in a bona fide executive, administrative,
- 19 supervisory, or professional capacity, or in the capacity of outside
- 20 salesman, or as an outside collector as the terms are defined by
- 21 administrative regulations of the commissioner **and all other**
- 22 **individuals who satisfy the exemption requirements set forth in 29**
- 23 **U.S.C. sec. 213(a);**

- 24 3. Any individual employed by the United States;
- 25 4. Any individual employed in domestic service in or about a private home.

26 The provisions of this section shall include individuals employed in
 27 domestic service in or about the home of an employer where there is

- 1 more than one (1) domestic servant regularly employed;
- 2 5. Any individual classified and given a certificate by the commissioner
3 showing a status of learner, apprentice, worker with a disability,
4 sheltered workshop employee, and student under administrative
5 procedures and administrative regulations prescribed and promulgated
6 by the commissioner. This certificate shall authorize employment at the
7 wages, less than the established fixed minimum fair wage rates, and for
8 the period of time fixed by the commissioner and stated in the certificate
9 issued to the person;
- 10 6. Any individual who ~~[Employees of retail stores, service industries,~~
11 ~~hotels, motels, and restaurant operations whose average annual gross~~
12 ~~volume of sales made for business done is less than ninety five thousand~~
13 ~~dollars (\$95,000) for the five (5) preceding years exclusive of excise~~
14 ~~taxes at the retail level or If the employee]~~ is the parent, spouse, child, or
15 other member of the~~[his or her]~~ employer's immediate family;
- 16 7. Any individual employed as a baby-sitter in an employer's home, or an
17 individual employed as a companion by a sick, convalescing, or elderly
18 person or by the person's immediate family, to care for that sick,
19 convalescing, or elderly person and whose principal duties do not
20 include housekeeping;
- 21 8. Any individual engaged in the delivery of newspapers to the consumer;
- 22 9. Any individual subject to the provisions of KRS Chapters 7, 16, 27A,
23 30A, and 18A provided that the secretary of the Personnel Cabinet shall
24 have the authority to prescribe by administrative regulation those
25 emergency employees, or others, who shall receive overtime pay rates
26 necessary for the efficient operation of government and the protection of
27 affected employees;

- 1 10. Any employee employed by an establishment which is an organized
2 nonprofit camp, religious, or nonprofit educational conference center, if
3 it does not operate for more than seven (7) months in any calendar year;
- 4 11. Any employee whose function is to provide twenty-four (24) hour
5 residential care on the employer's premises in a parental role to children
6 who are primarily dependent, neglected, and abused and who are in the
7 care of private, nonprofit childcaring facilities licensed by the Cabinet
8 for Health and Family Services under KRS 199.640 to 199.670;~~[or]~~
- 9 12. Any individual whose function is to provide twenty-four (24) hour
10 residential care in his or her own home as a family caregiver and who is
11 approved to provide family caregiver services to an adult with a
12 disability through a contractual relationship with a community board for
13 mental health or individuals with an intellectual disability established
14 under KRS 210.370 to 210.460, or is certified or licensed by the Cabinet
15 for Health and Family Services to provide adult foster care; or
- 16 **13. Any individual who volunteers by performing services for a nonprofit**
17 **entity or governmental agency for which the individual receives no**
18 **compensation other than reimbursement of expenses or a nominal fee**
19 **to perform services not of the same type for which the individual is**
20 **employed to perform for such nonprofit entity or public agency. The**
21 **individual shall provide services with no expectation of compensation,**
22 **under no express or implied contract for hire, and without any**
23 **intimidation or coercion.**
- 24 (b) "Agriculture" means farming in all its branches, including cultivation and
25 tillage of the soil; dairying; production, cultivation, growing, and harvesting of
26 any agricultural or horticultural commodity; raising of livestock, bees,
27 furbearing animals, or poultry; and any practice, including any forestry or

1 lumbering operations, performed on a farm in conjunction with farming
2 operations, including preparation and delivery of produce to storage, to
3 market, or to carriers for transportation to market;

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

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

9 (e) "U.S.C." means the United States Code; and

10 (f) "Hours worked" means the same as defined by the federal Fair Labor
11 Standards Act and other applicable federal law, including but not limited to
12 29 U.S.C. sec. 203(o) of the Fair Labor Standards Act and the Portal to
13 Portal Act at 29 U.S.C. secs. 251 et seq.

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

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

21 (b) "Contractor" and "subcontractor" include any superintendent, foreman, or
22 other authorized agent of any contractor or subcontractor who is in charge of
23 the construction of the public works or who is in charge of the employment or
24 payment of the employees of the contractor or subcontractor who are
25 employed in performing the work to be done or being done by the contractor
26 or subcontractor under the particular contract with any public authority;

27 (c) 1. "Locality" shall be determined by the commissioner. The commissioner

1 may designate more than one (1) county as a single locality, but if more
2 than one (1) county is designated, the multicounty locality shall not
3 extend beyond the boundaries of a state Senatorial district. The
4 commissioner shall not designate less than an entire county as a locality.
5 If there is not available in the locality a sufficient number of competent,
6 skilled laborers, workmen, and mechanics to efficiently and properly
7 construct the public works, "locality" shall include any other locality
8 nearest the one in which the work of construction is to be performed and
9 from which such available skilled laborers, workmen, and mechanics
10 may be obtained in sufficient number to perform the work; and

11 2. "Locality" with respect to contracts advertised or awarded by the
12 Transportation Cabinet of this state shall be determined by the secretary
13 of the Transportation Cabinet. The secretary may designate any number
14 of counties as constituting a single locality. The secretary may also
15 designate all counties of the Commonwealth as a single locality, but he
16 or she shall not designate less than an entire county as a locality;

17 (d) "Public authority" means any officer, board, or commission of this state, or
18 any political subdivision or department thereof in the state, or any institution
19 supported in whole or in part by public funds, including publicly owned or
20 controlled corporations, authorized by law to enter into any contract for the
21 construction of public works and any nonprofit corporation funded to act as an
22 agency and instrumentality of the government agency in connection with the
23 construction of public works, and any "private provider", as defined in KRS
24 197.500, which enters into any contract for the construction of an "adult
25 correctional facility", as defined in KRS 197.500; and

26 (e) "Public works" includes all buildings, roads, streets, alleys, sewers, ditches,
27 sewage disposal plants, waterworks, and all other structures or work,

1 including "adult correctional facilities", as defined in KRS 197.500,
2 constructed under contract with any public authority.

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

9 ➔Section 2. KRS 337.060 is amended to read as follows:

10 (1) No employer shall withhold from any employee any part of the wage agreed upon.
11 This section shall not make it unlawful for an employer to withhold or divert any
12 portion of an employee's wage when the employer is authorized to do so by local,
13 state, or federal law or when a deduction is~~[expressly]~~ authorized **by express or**
14 **implied agreement**~~[in writing]~~ by the employee to cover insurance premiums,
15 hospital and medical dues, **loan repayments to the employer,** or other deductions
16 not amounting to a rebate or deduction from the standard wage arrived at by
17 collective bargaining or pursuant to wage agreement or statute, nor shall it preclude
18 deductions for union dues where such deductions are authorized by joint wage
19 agreements or collective bargaining contracts negotiated between employers and
20 employees or their representative.

21 (2) Notwithstanding the provisions of subsection (1) of this section, **an employer may**
22 **deduct, without authorization, from the wages of an employee for the following:**

23 **(a) Intentional breakage attributed to an employee;**

24 **(b) Financial losses from a common money till, cash box, or cash register**
25 **where evidence establishes a specific employee is at fault or**
26 **misappropriated the funds;**

27 **(c) Losses due to an employee's intentionally defective workmanship;**

1 (d) Lost or stolen property attributed to an employee;

2 (e) Intentional damage to property attributed to an employee;

3 (f) Default of a customer's credit or nonpayment for goods or services by a
 4 customer if such losses are attributable to an employee's willful or
 5 intentional disregard of the employer's business practices and procedures;
 6 and

7 (g) Amounts to reimburse the employer for compensation advances or other
 8 loans [no employer shall deduct the following from the wages of employees:

9 (a) Fines;

10 (b) Cash shortages in a common money till, cash box or register used by two (2)
 11 or more persons;

12 (c) Breakage;

13 (d) Losses due to acceptance by an employee of checks which are subsequently
 14 dishonored if such employee is given discretion to accept or reject any check;
 15 or

16 (e) Losses due to defective or faulty workmanship, lost or stolen property,
 17 damage to property, default of customer credit, or nonpayment for goods or
 18 services received by the customer if such losses are not attributable to
 19 employee's willful or intentional disregard of employer's interest].

20 ➔ Section 3. KRS 337.275 is amended to read as follows:

- 21 (1) Except as may otherwise be provided by this chapter, every employer shall pay to
 22 each of his employees wages at a rate of not less than [five dollars and eighty-five
 23 cents (\$5.85) an hour beginning on June 26, 2007, not less than six dollars and fifty-
 24 five cents (\$6.55) an hour beginning July 1, 2008, and not less than]seven dollars
 25 and twenty-five cents (\$7.25) an hour beginning July 1, 2009. If the federal
 26 minimum hourly wage as prescribed by 29 U.S.C. sec. 206(a)(1) is increased in
 27 excess of the minimum hourly wage in effect under this subsection, the minimum

1 hourly wage under this subsection shall be increased to the same amount, effective
2 on the same date as the federal minimum hourly wage rate. If the state minimum
3 hourly wage is increased to the federal minimum hourly wage, it ~~[shall include only~~
4 ~~the federal minimum hourly rate prescribed in 29 U.S.C. sec. 206(a)(1) and shall not~~
5 ~~include other wage rates or conditions, exclusions, or exceptions to the federal~~
6 ~~minimum hourly wage rate. In addition, the increase to the federal minimum hourly~~
7 ~~wage rate]~~ does not extend or modify the scope, ~~[or]~~ coverage, **, or exemptions from**
8 ~~[of]~~ the minimum wage rate required under this chapter.

9 (2) Notwithstanding the provisions of subsection (1) of this section, for any employee
10 engaged in an occupation in which he customarily and regularly receives more than
11 thirty dollars (\$30) per month in tips from patrons or others, the employer may pay
12 as a minimum not less than the hourly wage rate required to be paid a tipped
13 employee under the federal minimum hourly wage law as prescribed by 29 U.S.C.
14 sec. 203. **Payment of wages to tipped employees shall be pursuant to the**
15 **provisions set forth in 29 U.S.C. sec. 203.**~~[The employer shall establish by his~~
16 ~~records that for each week where credit is taken, when adding tips received to~~
17 ~~wages paid, not less than the minimum rate prescribed in 29 U.S.C. sec. 203 was~~
18 ~~received by the employee. No employer shall use all or part of any tips or gratuities~~
19 ~~received by employees toward the payment of the statutory minimum hourly wage~~
20 ~~as required by 29 U.S.C. sec. 203. Nothing, however, shall prevent employees from~~
21 ~~entering into an agreement to divide tips or gratuities among themselves.]~~

22 **(3) In addition to the other exemptions set forth in this chapter, the following**
23 **employees shall not be subject to being paid the minimum wage:**

24 **(a) Newly hired employees who are less than twenty (20) years old pursuant to**
25 **the requirements set forth in 29 U.S.C. sec. 206(g);**

26 **(b) An employee employed by an establishment which is an amusement or**
27 **recreational establishment which does not operate for more than seven (7)**

1 months in any calendar year, or during the preceding calendar year, its
 2 average receipts for any six (6) months of the year were not more than
 3 thirty-three and one-third percent (33 1/3%) of its average receipts for the
 4 other six (6) months of the year as set forth in 29 U.S.C. sec. 213(a)(3);

5 (c) An employee employed in the catching, taking, propagating, harvesting,
 6 cultivating, or farming of any kind of fish, shellfish, crustacea, sponges,
 7 seaweeds, or other aquatic forms of animal and vegetable life, or in the first
 8 processing, canning, or packing of marine products at sea as an incident to,
 9 or in conjunction with, such fishing operations, including the going to and
 10 returning from work and loading and unloading when performed by any
 11 employee;

12 (d) An employee employed in connection with the publication of any weekly,
 13 semiweekly, or daily newspaper with a circulation of less than four
 14 thousand (4,000) the major part of which circulation is within the county
 15 where it is published or contiguous counties; and

16 (e) An employee employed as a seaman on a vessel other than an American
 17 vessel.

18 ➔Section 4. KRS 337.285 is amended to read as follows:

19 (1) No employer shall employ any of his employees for a work week longer than forty
 20 (40) hours, unless such employee receives compensation for his employment in
 21 excess of forty (40) hours in a work week at a rate of not less than one and one-half
 22 (1-1/2) times the regular~~hourly wage~~ rate at which he is employed. Regular rate
 23 and piece rate shall be defined and administered consistent with 29 U.S.C. sec.
 24 207(e), (g), and (h).

25 (2) This provision shall not apply to the following:

26 (a) Employees of retail stores engaged in work connected with selling,
 27 purchasing, and distributing merchandise, wares, goods, articles, or

1 commodities;

2 (b) Employees of restaurant, hotel, and motel operations;

3 (c) **In addition to the other exemptions set forth in this chapter,** employees as
4 defined and **partially or wholly** exempted from the overtime provision of the
5 Fair Labor Standards Act **as follows:**~~[in Sections 213(b)(1), 213(b)(6),~~
6 ~~213(b)(10), and 213(b)(17) of Title 29, U.S.C.]~~

7 **1. An employee employed in petroleum distribution, or with bona fide**
8 **individual guarantee contracts as set forth in 29 U.S.C. sec. 207(b)**
9 **and (f);**

10 **2. An employee of retail or service establishments as set forth in 29**
11 **U.S.C. sec. 207(i);**

12 **3. An employee of hospitals or establishments or an establishment**
13 **primarily engaged in the care of the sick, aged, or mentally ill who**
14 **reside on the premises as set forth in 29 U.S.C. sec. 207(j);**

15 **4. An employee in domestic service as set forth in 209 U.S.C. sec.**
16 **213(b)(21);**

17 **5. An employee employed in the tobacco industry as set forth in 29**
18 **U.S.C. sec. 207(m);**

19 **6. An employee of an employer engaged in the operation of electric**
20 **railway, local trolley, or motorbus carrier as set forth in 29 U.S.C. sec.**
21 **207(n);**

22 **7. An employee receiving remedial education as set forth in 29 U.S.C.**
23 **sec. 207(q);**

24 **8. An employee for which the U.S. Secretary of Transportation has the**
25 **power to establish maximum hours of service as set forth in 29 U.S.C.**
26 **sec. 213(b)(1);**

27 **9. An employee engaged in operation of a rail carrier as set forth in 29**

- 1 U.S.C. sec. 213(b)(2);
- 2 10. An employee of a carrier by air as set forth in 29 U.S.C. sec. 213(b)(3);
- 3 11. An employee employed as an outside buyer of poultry, eggs, cream, or
- 4 milk as set forth in 29 U.S.C. sec. 213(b)(5);
- 5 12. An employee employed as a seaman as set forth in 29 U.S.C. sec.
- 6 213(b)(6);
- 7 13. An employee employed as an announcer, news editor, or chief
- 8 engineer by a radio or television studio as set forth in 29 U.S.C. sec.
- 9 213(b)(9);
- 10 14. An employee employed as a salesman or mechanic engaged in selling
- 11 or servicing automobiles, trucks, boats, or farm implements by a
- 12 nonmanufacturing establishment as set forth in 29 U.S.C. sec.
- 13 213(b)(10);
- 14 15. An employee employed as a driver or driver's helper making local
- 15 deliveries as set forth in 29 U.S.C. sec. 213(b)(11);
- 16 16. An employee employed in agriculture or in connection with the
- 17 operation or maintenance of ditches, canals, reservoirs, or waterways
- 18 as set forth in 29 U.S.C. sec. 213(b)(12);
- 19 17. An employee employed in agriculture by a farmer as set forth in 29
- 20 sec. U.S.C. 213(b)(13);
- 21 18. An employee of county elevators as set forth in 29 U.S.C. sec.
- 22 213(b)(14);
- 23 19. An employee engaged in the processing of maple sap into sugar as set
- 24 forth in 29 U.S.C. sec. 213(b)(15);
- 25 20. An employee engaged in the transportation of fruits and vegetables as
- 26 set forth in 29 U.S.C. sec. 213(b)(16);
- 27 21. An employee of employers engaged in the operation of taxicabs as set

- 1 forth in 29 U.S.C. sec. 213(b)(17);
- 2 22. An employee who is employed with his or her spouse by a nonprofit
- 3 educational institution that serve as parents to orphans who are
- 4 enrolled in the institution as set forth in 29 U.S.C. sec. 213(b)(24);
- 5 23. An employee employed at a motion picture theater as set forth in 29
- 6 U.S.C. sec. 213(b)(27);
- 7 24. An employee employed in forestry and lumbering as set forth in 29
- 8 U.S.C. sec. 213(b)(28);
- 9 25. An employee employed by an amusement or recreational
- 10 establishment located in a national park as set forth in 29 U.S.C. sec.
- 11 213(b)(29);
- 12 26. An employee employed as a criminal investigator who is paid
- 13 availability pay as set forth in 29 U.S.C. sec. 213(b)(30);
- 14 27. An employee engaged in the delivery of newspapers as set forth in 29
- 15 U.S.C. sec. 213(d);
- 16 28. An employee engaged in the making of wreaths as set forth in 29
- 17 U.S.C. sec. 213(d);
- 18 29. An employee engaged in the processing of cotton, cottonseed, sugar
- 19 cane, or sugar beets as set forth in 29 U.S.C. 213(h) and 29 U.S.C. sec.
- 20 213(i) and 29 U.S.C. sec. 213(j);
- 21 30. An employee employed as a computer systems analyst, computer
- 22 programmer, software engineer, or other similarly skilled worker, paid
- 23 on the basis set forth in 29 U.S.C. sec. 213(a)(17); and
- 24 31. An employee otherwise covered under KRS 342.275(3)(b), (c), and (d).

- 25 (d) Employees whose function is to provide twenty-four (24) hour residential care
- 26 on the employer's premises in a parental role to children who are primarily
- 27 dependent, neglected, and abused and who are in the care of private nonprofit

1 childcaring facilities licensed by the Cabinet for Health and Family Services
2 under KRS 199.640 to 199.670; or

3 (e) Any individual who is employed by a third-party employer or agency other
4 than the family or household using his or her services to provide in-home
5 companionship services for a sick, convalescing, or elderly person.

6 (3) As used in subsection (2) of this section, "companionship services" means those
7 services which provide in-home fellowship, care, and protection for a person who,
8 because of advanced age or physical or mental infirmity, cannot care for his or her
9 own needs. These services may include household work related to the care of the
10 aged or infirm person such as meal preparation, bed making, washing of clothes,
11 and other similar services. They may also include the performance of general
12 household work, provided that the household work is incidental, i.e., does not
13 exceed twenty percent (20%) of the total weekly hours worked. The term
14 "companionship services" does not include services relating to the care and
15 protection of the aged or infirm which require and are performed by trained
16 personnel, such as a registered or practical nurse.

17 (4) Notwithstanding the provisions of subsection (1) of this section or any other chapter
18 of the KRS to the contrary, upon written request by a county or city employee, made
19 freely and without coercion, pressure, or suggestion by the employer, and upon a
20 written agreement reached between the employer and the county or city employee
21 before the performance of the work, a county or city employee who is authorized to
22 work one (1) or more hours in excess of the prescribed hours per week may be
23 granted compensatory leave on an hour-for-hour basis. Upon the written request by
24 a county or city employee, made freely and without coercion, pressure, or
25 suggestion by the employer, and upon a written agreement reached between the
26 employer and the county or city employee before the performance of the work, a
27 county or city employee who is not exempt from the provisions of the Federal Fair

1 Labor Standards Act of 1938, as amended, 29 U.S.C. secs. 201 et seq., may be
2 granted compensatory time in lieu of overtime pay, at the rate of not less than one
3 and one-half (1-1/2) hours for each hour the county or city employee is authorized
4 to work in excess of forty (40) hours in a work week.

5 (5) (a) Upon the request of the county or city employee, and as provided in
6 subsection (4) of this section, compensatory time shall be awarded as follows:

7 1. A county or city employee who provided work in excess of forty (40)
8 hours in a public safety activity, an emergency response activity, or a
9 seasonal activity as described in 29 C.F.R. sec. 553.24, may accrue not
10 more than four hundred eighty (480) hours of compensatory time; or

11 2. A county or city employee engaged in other work in excess of forty (40)
12 hours, may accrue not more than two hundred forty (240) hours of
13 compensatory time.

14 (b) A county or city employee who has accrued four hundred eighty (480) hours
15 of compensatory time off pursuant to paragraph (a)1. of this subsection, or
16 two hundred forty (240) hours of compensatory time off pursuant to paragraph
17 (a)2. of this subsection, shall for additional overtime hours of work, be paid
18 overtime compensation.

19 (6) A county or city employee who has accrued compensatory time off as provided in
20 subsection (4) of this section, and who requested the use of compensatory time,
21 shall be permitted by the employer to use the compensatory time within a
22 reasonable period after making the request if the use of the compensatory time does
23 not unduly disrupt the operations of the employer. Mere inconvenience to the
24 employer shall not constitute a sufficient basis for denial of a county or city
25 employee's request for compensatory time off.

26 (7) If compensation is paid to a county or city employee for accrued compensatory time
27 off, the compensation shall be paid at the regular rate earned by the county or city

- 1 employee at the time the county or city employee receives the payment.
- 2 (8) Upon a county or city employee's termination of employment, all unused accrued
3 compensatory time shall be paid at a rate of compensation not less than:
- 4 (a) The average regular rate received by the county or city employee during the
5 last three (3) years of the county or city employee's employment; or
- 6 (b) The final regular rate received by the county or city employee, whichever is
7 higher.
- 8 (9) Compensatory time shall not be used as a means to avoid statutory overtime
9 compensation. A county or city employee shall have the right to use compensatory
10 time earned and shall not be coerced to accept more compensatory time than an
11 employer can realistically and in good faith expect to be able to grant within a
12 reasonable period upon the county or city employee making the request for
13 compensatory time off.
- 14 (10) Nothing in subsections (4) to (9) of this section shall be construed to supersede any
15 collective bargaining agreement, memorandum of understanding, or any other
16 agreement between the employer and representative of the county or city
17 employees.
- 18 (11) As used in subsections (4) to (9) of this section, "county or city employee" means an
19 employee of any county, city, charter county, consolidated local government,
20 unified local government, or urban-county government, including an employee of a
21 county or city elected official.
- 22 (12) In addition to the designation of a work week under subsection (1) of this section,
23 local governments, as defined in KRS 95A.210(3), may designate a work period for
24 professional firefighter employees as defined in KRS 95A.210. The designated
25 work period shall be not less than one (1) work week of seven (7) consecutive days
26 and not more than four (4) work weeks of twenty-eight (28) consecutive days for
27 purposes of complying with the requirements of the Federal Labor Standards Act of

1 1938, as amended, 29 U.S.C. secs. 201 et seq. This subsection shall not exempt
 2 local governments from complying with the overtime requirements set forth in
 3 subsection (1) of this section and is intended to:

4 (a) Clarify the option to designate both a work week for compliance with
 5 Kentucky law and a work period for compliance with the Fair Labor Standards
 6 Act of 1938, as amended, 29 U.S.C. secs. 201 et seq.; and

7 (b) Allow for the application of the partial exemption set forth in 29 U.S.C. sec.
 8 207(k) in determining overtime pay under the Fair Labor Standards Act of
 9 1938, as amended, 29 U.S.C. secs. 201 et seq., only.

10 (13) (a) A law enforcement department of a consolidated local government organized
 11 under KRS Chapter 67C shall not be deemed to have violated subsection (1)
 12 of this section with respect to the employment of a peace officer if:

13 1. The officer works eighty (80) hours or less in a work period of fourteen
 14 (14) consecutive days; and

15 2. The law enforcement department and a representative of a collective
 16 bargaining unit certified under KRS 67C.408 that includes the officer
 17 agree to the exception.

18 (b) It is the intent of this subsection to allow the employment of a peace officer
 19 for longer than forty (40) hours in any seven (7) consecutive days within a
 20 fourteen (14) day work period without incurring the obligation to pay a rate of
 21 not less than one and one-half (1-1/2) times the officer's hourly wage under
 22 subsection (1) of this section.

23 ➔Section 5. KRS 337.295 is amended to read as follows:

24 (1) Administrative regulations issued by the commissioner under KRS 337.275 to
 25 337.325, 337.345, and 337.385 to 337.405 may include, but are not limited to,
 26 administrative regulations defining and governing bona fide executive,
 27 administrative, or professional employees; administrative regulations governing

1 learners, apprentices, workers with disabilities, sheltered workshop employees, and
 2 students, administrative regulations governing outside salesmen; bonuses; part-time
 3 rates; special pay for special or extra work; allowances as part of the wage rates
 4 applicable under KRS 337.275 for board, lodging, and gratuities; other facilities or
 5 services furnished by employers and used by employees; and other special items
 6 usual in a particular employer-employee relationship; and

7 (2) Administrative regulations regarding exemptions and coverage shall not be more
 8 restrictive than the federal Fair Labor Standards Act or the federal regulations
 9 implementing the Fair Labor Standards Act.

10 ➔Section 6. KRS 337.355 is amended to read as follows:

11 (1) Employers, except those subject to the Federal Railway Labor Act, shall grant their
 12 employees a reasonable period for lunch, and such time shall be as close to the
 13 middle of the employee's scheduled work shift as possible. In no case shall an
 14 employee be required to take a lunch period sooner than three (3) hours after his
 15 work shift commences, nor more than five (5) hours from the time his work shift
 16 commences;[.]

17 (2) Notwithstanding the requirements in subsection (1) of this section, an employer
 18 may require a lunch period waiver, which may be authorized by implied
 19 agreement or otherwise as a condition of employment at any time prior to or
 20 during the employment relationship; and

21 (3) This section shall not be construed to negate any provision of a collective
 22 bargaining agreement or mutual agreement between the employee and employer.

23 ➔Section 7. KRS 337.365 is amended to read as follows:

24 (1) No employer shall require any employee to work without a rest period of at least ten
 25 (10) minutes during each four (4) hours worked, except those employees who are
 26 under the Federal Railway Labor Act. This shall be in addition to the regularly
 27 scheduled lunch period. No reduction in compensation shall be made for hourly or

1 salaried employees; and

2 (2) Notwithstanding the requirements in subsection (1) of this section, rest periods
3 shall not be legally mandated in the absence of a readily available co-employee
4 who may provide break coverage, where taking rest periods may jeopardize
5 business, service, safety, or property.

6 ➔Section 8. KRS 337.385 is amended to read as follows:

7 (1) Except as provided in subsection (3) of this section, any employer who pays any
8 employee less than wages and overtime compensation to which such employee is
9 entitled under or by virtue of KRS 337.020 to 337.285 shall be liable to such
10 employee affected for the full amount of such wages and overtime compensation,
11 less any amount actually paid to such employee by the employer, for an additional
12 equal amount as liquidated damages, and for costs and such reasonable attorney's
13 fees as may be allowed by the court.

14 (2) If, in any action commenced to recover such unpaid wages or liquidated damages,
15 the employer shows to the satisfaction of the court that the act or omission giving
16 rise to such action was in good faith and that he or she had reasonable grounds for
17 believing that his or her act or omission was not a violation of KRS 337.020 to
18 337.285, the court may, in its sound discretion, award no liquidated damages, or
19 award any amount thereof not to exceed the amount specified in this section. Any
20 agreement between such employee and the employer to work for less than the
21 applicable wage rate shall be no defense to such action. Such action may be
22 maintained in any court of competent jurisdiction by any one (1) or more employees
23 for and in behalf of himself, herself, or themselves.

24 (3) If the court finds that the employer has subjected the employee to forced labor or
25 services as defined in KRS 529.010, the court shall award the employee punitive
26 damages not less than three (3) times the full amount of the wages and overtime
27 compensation due, less any amount actually paid to such employee by the employer,

1 and for costs and such reasonable attorney's fees as may be allowed by the court,
2 including interest thereon.

3 (4) At the written request of any employee paid less than the amount to which he or she
4 is entitled under the provisions of KRS 337.020 to 337.285, the commissioner may
5 take an assignment of such wage claim in trust for the assigning employee and may
6 bring any legal action necessary to collect such claim, and the employer shall be
7 required to pay the costs and such reasonable attorney's fees as may be allowed by
8 the court. The commissioner in case of suit shall have power to join various
9 claimants against the same employer in one (1) action.

10 **(5) Court action under any provision of this chapter not otherwise subject to a period**
11 **of limitations, may be commenced no later than two (2) years after the cause of**
12 **action accrues, except that a cause of action arising out of a willful violation may**
13 **be commenced within three (3) years after the cause of action accrues.**

14 ➔Section 9. KRS 337.420 is amended to read as follows:

15 (1) ~~["Employee" means any individual employed by any employer, including but not~~
16 ~~limited to individuals employed by the state or any of its political subdivisions,~~
17 ~~instrumentalities, or instrumentalities of political subdivisions.~~

18 ~~(2) "Employer" means a person who has two (2) or more employees within the state in~~
19 ~~each of twenty (20) or more calendar weeks in the current or preceding calendar~~
20 ~~year and an agent of such a person.~~

21 ~~(3) "Wage rate" means all compensation for employment, including payment in kind~~
22 ~~and amounts paid by employers for employee benefits, as defined by the~~
23 ~~commissioner in regulations issued under KRS 337.420 to 337.433 and~~
24 ~~337.990(12)(14).~~

25 ~~(2)(4)~~ "Employ" includes to suffer or permit to work.

26 ~~(3)(5)~~ "Occupation" includes any industry, trade, business, or branch thereof, or any
27 employment or class of employment.

1 ~~(4)~~~~(6)~~ "Commissioner" means the commissioner of the Department of Workplace
 2 Standards under the direction and supervision of the secretary of the Labor Cabinet.

3 ~~[(7) "Person" includes one (1) or more individuals, partnerships, corporations, legal
 4 representatives, trustees, trustees in bankruptcy, or voluntary associations.]~~

5 ➔Section 10. KRS 337.423 is amended to read as follows:

6 (1) (a) No employer shall discriminate between employees in the same establishment
 7 on the basis of sex, by paying wages to any employee in any occupation in this
 8 state at a rate less than the rate at which he or she pays any employee of the
 9 opposite sex for comparable work on jobs which have comparable
 10 requirements relating to skill, effort and responsibility. Differentials which are
 11 paid pursuant to established seniority systems or merit increase systems,
 12 which do not discriminate on the basis of sex, shall not be included within this
 13 prohibition.

14 (b) Nothing in this chapter~~[KRS 337.420 to 337.433 and 337.990(14)]~~ shall
 15 apply to any employer who is subject to the federal Fair Labor Standards Act
 16 of 1938, as amended, and nothing in this chapter may be relied upon to
 17 support a cause of action or investigation when that act imposes comparable
 18 or greater requirements than contained in this chapter~~[KRS 337.420 to~~
 19 ~~337.433 and 337.990(14) and when]~~ the employer files with the commissioner
 20 of the Department of Workplace Standards a statement that the employer is
 21 covered by the federal Fair Labor Standards Act of 1938, as amended. The
 22 statement may be filed after a claim has been asserted. The potential for
 23 penalties pursuant to Section 13 of this Act or other remedial differences
 24 shall not constitute a comparable or greater requirement contained in this
 25 chapter

26 (2) An employer who is paying a wage differential in violation of KRS 337.420 to
 27 337.433 and 337.990~~(12)~~~~(14)~~ shall not, in order to comply with it, reduce the

1 wage rates of any employee.

2 (3) ~~[No person shall cause or attempt to cause an employer to discriminate against any~~
3 ~~employee in violation of KRS 337.420 to 337.433 and 337.990(14)].~~

4 ~~(4)~~ No employer may discharge or discriminate against any employee by reason of any
5 action taken by such employee to invoke or assist in any manner the enforcement of
6 **this chapter**~~[KRS 337.420 to 337.433 and 337.990(14)].~~

7 ➔ Section 11. KRS 337.430 is amended to read as follows:

8 Court action under KRS 337.420 to 337.433 and 337.990(12)~~[(14)]~~ may be commenced
9 no later than six (6) months after the cause of action **accrues**~~[occurs].~~

10 ➔ Section 12. KRS 337.990 is amended to read as follows:

11 The following civil penalties shall be imposed, in accordance with the provisions in KRS
12 336.985, for violations of the provisions of this chapter:

13 (1) Any **employer**~~[firm, individual, partnership, or corporation]~~ that violates KRS
14 337.020 shall be assessed a civil penalty of not less than one hundred dollars (\$100)
15 nor more than one thousand dollars (\$1,000) for each offense.~~[Each failure to pay~~
16 ~~an employee the wages when due him under KRS 337.020 shall constitute a~~
17 ~~separate offense.]~~

18 ~~(2)~~~~[Any employer who violates KRS 337.050 shall be assessed a civil penalty of not~~
19 ~~less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000)].~~

20 ~~(3)~~ Any employer who violates KRS 337.055 shall be assessed a civil penalty of not
21 less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000)
22 for each offense and shall make full payment to the employee by reason of the
23 violation.~~[Each failure to pay an employee the wages as required by KRS 337.055~~
24 ~~shall constitute a separate offense.]~~

25 ~~(3)~~~~[(4)]~~ Any employer who violates KRS 337.060 shall be assessed a civil penalty of
26 not less than one hundred dollars (\$100) nor more than one thousand dollars
27 (\$1,000) and shall also be liable to the affected employee for the amount withheld,

1 plus interest at the rate of ~~five~~^{ten} percent (~~5%~~^{10%}) per annum.

2 ~~(4)~~⁽⁵⁾ — Any employer who violates the provisions of KRS 337.065 shall be assessed a
3 civil penalty of not less than one hundred dollars (\$100) nor more than one
4 thousand dollars (\$1,000) for each offense and shall make full payment to the
5 employee by reason of the violation.

6 ~~(6)~~ Any employer~~[person]~~ who fails to comply with KRS 337.070 shall be assessed a
7 civil penalty of not less than one hundred dollars (\$100) nor more than one
8 thousand dollars (\$1,000) for each offense and each day that the failure continues
9 shall be deemed a separate offense.

10 ~~(5)~~⁽⁷⁾ Any employer who violates any provision of KRS 337.275 to 337.325, KRS
11 337.345, and KRS 337.385 to 337.405, or willfully hinders or delays the
12 commissioner or the commissioner's authorized representative in the performance
13 of his or her duties under KRS 337.295, or fails to keep and preserve any records as
14 required under KRS 337.320 and 337.325, or falsifies any record, or refuses to
15 make any record or transcription thereof accessible to the commissioner or the
16 commissioner's authorized representative shall be assessed a civil penalty of not less
17 than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000). A
18 civil penalty of not less than one thousand dollars (\$1,000) shall be assessed for any
19 subsequent violation of KRS 337.285(4) to (9) ~~and each day the employer violates~~
20 ~~KRS 337.285(4) to (9) shall constitute a separate offense and penalty~~.

21 ~~(6)~~⁽⁸⁾ Any employer who pays or agrees to pay wages at a rate less than the rate
22 applicable under KRS 337.275 and 337.285, or any wage order issued pursuant
23 thereto shall be assessed a civil penalty of not less than one hundred dollars (\$100)
24 nor more than one thousand dollars (\$1,000).

25 ~~(7)~~⁽⁹⁾ Any employer who discharges or in any other manner discriminates against
26 any employee because the employee has made any complaint to his or her employer,
27 to the commissioner, or to the commissioner's authorized representative that he or

1 she has not been paid wages in accordance with KRS 337.275 and 337.285 or
2 regulations issued thereunder, or because the employee has caused to be instituted
3 or is about to cause to be instituted any proceeding under or related to KRS
4 337.385, or because the employee has testified or is about to testify in any such
5 proceeding, shall be deemed in violation of KRS 337.275 to 337.325, KRS 337.345,
6 and KRS 337.385 to 337.405 and shall be assessed a civil penalty of not less than
7 one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

8 ~~(8)~~~~(10)~~ Any employer who violates KRS 337.365 shall be assessed a civil penalty of
9 not less than one hundred dollars (\$100) nor more than one thousand dollars
10 (\$1,000).

11 ~~(9)~~~~(11)~~ Any employer~~person~~ who violates KRS 337.530 shall be assessed a civil
12 penalty of not less than one hundred dollars (\$100) nor more than one thousand
13 dollars (\$1,000).

14 ~~(10)~~~~(12)~~ Any contractor or subcontractor who violates any wage or work hours
15 provision in any contract under KRS 337.505 to 337.550 shall be assessed a civil
16 penalty of not less than one hundred dollars (\$100) nor more than one thousand
17 dollars (\$1,000) for each offense, and the contractor or subcontractor shall make full
18 restitution to all employees to whom he or she is legally indebted by reason of said
19 violation. The prime contractor shall be jointly and severally liable with a
20 subcontractor for wages due an employee of the subcontractor. For a flagrant or
21 repeated violation the offending contractor or subcontractor shall be barred from
22 bidding on, or working on, any and all public works contracts, either in his or her
23 name or in the name of any other company, firm, or other entity in which he or she
24 might be interested for a period of two (2) years from the date of the last offense.~~]~~
25 ~~Each day of violation shall constitute a separate offense, and the violation as affects~~
26 ~~each individual worker shall constitute a separate offense.]~~

27 ~~(11)~~~~(13)~~ Any public authority, public official, or member of a public authority who

1 willfully fails to comply or to require compliance with KRS 337.505 to 337.550
 2 shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor
 3 more than one thousand dollars (\$1,000) for each offense. ~~Each day of violation~~
 4 ~~shall constitute a separate offense.~~ If a public authority, public official or member
 5 of a public authority willfully or negligently fails to comply with KRS 337.505 to
 6 337.550 and the failure results in damages, injury or loss to any person, the public
 7 authority, public official, or member of a public authority may be held liable in a
 8 civil action.

9 ~~(12)~~~~(14)~~ Any~~[A]~~ employer~~[person]~~ shall be assessed a civil penalty of not less than one
 10 hundred dollars (\$100) nor more than one thousand dollars (\$1,000) when that
 11 person discharges or in any other manner discriminates against an employee
 12 because the employee has:

- 13 (a) Made any complaint to his or her employer, the commissioner, or any other
 14 person; or
- 15 (b) Instituted, or caused to be instituted, any proceeding under or related to KRS
 16 337.420 to 337.433; or
- 17 (c) Testified, or is about to testify, in any such proceedings.

18 **(13) Civil penalties pursuant to this section Chapter 337 shall not be calculated on a**
 19 **per employee, per day, or per pay period basis, and each daily or pay period**
 20 **violation shall not constitute a separate offense.**

21 ➔Section 13. KRS 337.425 is amended to read as follows:

- 22 (1) For this purpose, the commissioner, or the commissioner's authorized
 23 representative, may enter the place of employment of any employer to inspect and
 24 copy payrolls and other employment records, to compare character of work and
 25 operations on which persons employed by him or her are engaged, to question such
 26 persons, and to obtain other information necessary to the administration and
 27 enforcement of KRS 337.420 to 337.433 and 337.990~~(12)~~~~(14)~~.

1 (2) The commissioner or the commissioner's authorized representative may examine
2 witnesses under oath, and require by subpoena the attendance and testimony of
3 witnesses and the production of any documentary evidence relating to the subject
4 matter of any investigation undertaken pursuant to KRS 337.420 to 337.433 and
5 337.990(12)~~((14))~~. If a person fails to attend, testify or produce documents under or
6 in response to a subpoena, the Circuit Court in the judicial circuit where the hearing
7 is being held, on application of the commissioner or the commissioner's
8 representative, may issue an order requiring the person to appear before the
9 commissioner or the commissioner's authorized representative, or to produce
10 documentary evidence, and any failure to obey the order of the court may be
11 punished by the court as contempt.

12 (3) The commissioner may endeavor to eliminate pay practices unlawful under KRS
13 337.420 to 337.433 and 337.990(12)~~((14))~~ by informal methods of conference,
14 conciliation and persuasion, and supervise the payment of wages owing to any
15 employee under KRS 337.420 to 337.433 and 337.990(12)~~((14))~~.

16 (4) The commissioner may issue regulations not inconsistent with the purpose of KRS
17 337.420 to 337.433 and 337.990(12)~~((14))~~, necessary or appropriate to carry out its
18 provisions.

19 ➔Section 14. KRS 337.427 is amended to read as follows:

20 (1) Any employer who violates the provisions of KRS 337.423 shall be liable to the
21 employee or employees affected in the amount of their unpaid wages, and in
22 instances of willful violation in employee suits under subsection (2) of this section,
23 up to an additional equal amount as liquidated damages.

24 (2) Action to recover the liability may be maintained in any court of competent
25 jurisdiction by any one (1) or more employees for and in behalf of himself, herself,
26 or themselves and other employees similarly situated. The court in the action shall,
27 in cases of violation in addition to any judgment awarded to the plaintiff or

1 plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of
2 the action.

3 (3) An agreement by any employee to work for less than the wage to which the
4 employee is entitled under KRS 337.420 to 337.433 and 337.990(12)(~~(14)~~) shall not
5 be a bar to any such action, or to a voluntary wage restitution of the full amount due
6 under KRS 337.420 to 337.433 and 337.990(12)(~~(14)~~).

7 (4) At the written request of any employee claiming to have been paid less than the
8 wage to which he may be entitled under KRS 337.420 to 337.433 and
9 337.990(12)(~~(14)~~), the commissioner may bring any legal action necessary in behalf
10 of the employee to collect the claim for unpaid wages. The commissioner shall not
11 be required to pay the filing fee, or other costs, in connection with the action. The
12 commissioner shall have power to join various claims against the employer in one
13 (1) cause of action.

14 (5) In proceedings under this section, the court may order other affirmative action as
15 appropriate, including reinstatement of employees discharged in violation of KRS
16 337.420 to 337.433 and 337.990(12)(~~(14)~~).

17 (6) The commissioner may on his or her own motion petition any court of competent
18 jurisdiction to restrain violations of KRS 337.423, and petition for such affirmative
19 relief as the court may deem appropriate, including restoration of unpaid wages and
20 reinstatement of employees, consistent with the purpose of KRS 337.420 to 337.433
21 and 337.990(12)(~~(14)~~).

22 ➔Section 15. KRS 337.433 is amended to read as follows:

23 Every person subject to KRS 337.420 to 337.433 and 337.990(12)(~~(14)~~) shall keep an
24 abstract or copy of KRS 337.420 to 337.433 and 337.990(12)(~~(14)~~) posted in a
25 conspicuous place in or about the premises where any employee is employed. Employers
26 shall be furnished copies or abstracts of KRS 337.420 to 337.433 and 337.990(12)(~~(14)~~)
27 by the state on request without charge.

- 1 ➔Section 16. The following KRS sections are repealed:
- 2 337.015 Leave of absence for employee to receive adoptive child.
- 3 337.050 Time and a half for work done on seventh day of week -- Exceptions.
- 4 337.065 Unlawful for employer to require remittance of gratuity -- Tip pooling.