

1 AN ACT relating to an exemption for wage and hours.

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

3 ➔Section 1. KRS 337.285 is amended to read as follows:

- 4 (1) No employer shall employ any of his employees for a work week longer than forty
5 (40) hours, unless such employee receives compensation for his employment in
6 excess of forty (40) hours in a work week at a rate of not less than one and one-half
7 (1-1/2) times the hourly wage rate at which he is employed.
- 8 (2) This provision shall not apply to the following:
- 9 (a) Employees of retail stores engaged in work connected with selling,
10 purchasing, and distributing merchandise, wares, goods, articles, or
11 commodities;
- 12 (b) Employees of restaurant, hotel, and motel operations;
- 13 (c) Employees as defined and exempted from the overtime provision of the Fair
14 Labor Standards Act in Sections 213(b)(1), 213(b)(6), 213(b)(10), and
15 213(b)(17) of Title 29, U.S.C.;
- 16 (d) Employees whose function is to provide twenty-four (24) hour residential care
17 on the employer's premises in a parental role to children who are primarily
18 dependent, neglected, and abused and who are in the care of private nonprofit
19 childcaring facilities licensed by the Cabinet for Health and Family Services
20 under KRS 199.640 to 199.670;~~[or]~~
- 21 (e) Any individual who is employed by a third-party employer or agency other
22 than the family or household using his or her services to provide in-home
23 companionship services for a sick, convalescing, or elderly person; **or**
- 24 **(f) Employees employed by amusement or recreational facilities, if:**
- 25 **1. The facility does not operate for more than seven (7) months in a**
26 **calendar year; or**
- 27 **2. During the preceding year, the facility's average receipts for any six**

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

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

15 (4) Notwithstanding the provisions of subsection (1) of this section or any other chapter
16 of the KRS to the contrary, upon written request by a county or city employee, made
17 freely and without coercion, pressure, or suggestion by the employer, and upon a
18 written agreement reached between the employer and the county or city employee
19 before the performance of the work, a county or city employee who is authorized to
20 work one (1) or more hours in excess of the prescribed hours per week may be
21 granted compensatory leave on an hour-for-hour basis. Upon the written request by
22 a county or city employee, made freely and without coercion, pressure, or
23 suggestion by the employer, and upon a written agreement reached between the
24 employer and the county or city employee before the performance of the work, a
25 county or city employee who is not exempt from the provisions of the Federal Fair
26 Labor Standards Act of 1938, as amended, 29 U.S.C. secs. 201 et seq., may be
27 granted compensatory time in lieu of overtime pay, at the rate of not less than one

1 and one-half (1-1/2) hours for each hour the county or city employee is authorized
2 to work in excess of forty (40) hours in a work week.

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

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

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

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

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

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

27 (8) Upon a county or city employee's termination of employment, all unused accrued

1 compensatory time shall be paid at a rate of compensation not less than:

2 (a) The average regular rate received by the county or city employee during the
3 last three (3) years of the county or city employee's employment; or

4 (b) The final regular rate received by the county or city employee, whichever is
5 higher.

6 (9) Compensatory time shall not be used as a means to avoid statutory overtime
7 compensation. A county or city employee shall have the right to use compensatory
8 time earned and shall not be coerced to accept more compensatory time than an
9 employer can realistically and in good faith expect to be able to grant within a
10 reasonable period upon the county or city employee making the request for
11 compensatory time off.

12 (10) Nothing in subsections (4) to (9) of this section shall be construed to supersede any
13 collective bargaining agreement, memorandum of understanding, or any other
14 agreement between the employer and representative of the county or city
15 employees.

16 (11) As used in subsections (4) to (9) of this section, "county or city employee" means an
17 employee of any county, city, charter county, consolidated local government,
18 unified local government, or urban-county government, including an employee of a
19 county or city elected official.

20 (12) In addition to the designation of a work week under subsection (1) of this section,
21 local governments, as defined in KRS 95A.210(3), may designate a work period for
22 professional firefighter employees as defined in KRS 95A.210. The designated
23 work period shall be not less than one (1) work week of seven (7) consecutive days
24 and not more than four (4) work weeks of twenty-eight (28) consecutive days for
25 purposes of complying with the requirements of the Federal Labor Standards Act of
26 1938, as amended, 29 U.S.C. secs. 201 et seq. This subsection shall not exempt
27 local governments from complying with the overtime requirements set forth in

1 subsection (1) of this section and is intended to:

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

5 (b) Allow for the application of the partial exemption set forth in 29 U.S.C. sec.
6 207(k) in determining overtime pay under the Fair Labor Standards Act of
7 1938, as amended, 29 U.S.C. secs. 201 et seq., only.

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

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

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

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

21 ➔Section 2. KRS 337.385 is amended to read as follows:

22 (1) Except as provided in subsection (3) of this section, any employer who pays any
23 employee less than wages and overtime compensation to which such employee is
24 entitled under or by virtue of KRS 337.020 to 337.285 shall be liable to such
25 employee affected for the full amount of such wages and overtime compensation,
26 less any amount actually paid to such employee by the employer, for an additional
27 equal amount as liquidated damages, and for costs and such reasonable attorney's

1 fees as may be allowed by the court.

2 (2) If, in any action commenced to recover such unpaid wages or liquidated damages,
3 the employer shows to the satisfaction of the court that the act or omission giving
4 rise to such action was in good faith and that he or she had reasonable grounds for
5 believing that his or her act or omission was not a violation of KRS 337.020 to
6 337.285, the court may, in its sound discretion, award no liquidated damages, or
7 award any amount thereof not to exceed the amount specified in this section. Any
8 agreement between such employee and the employer to work for less than the
9 applicable wage rate shall be no defense to such action. Such action may be
10 maintained in any court of competent jurisdiction by any one (1) or more employees
11 for and in behalf of himself, herself, or themselves.

12 (3) If the court finds that the employer has subjected the employee to forced labor or
13 services as defined in KRS 529.010, the court shall award the employee punitive
14 damages not less than three (3) times the full amount of the wages and overtime
15 compensation due, less any amount actually paid to such employee by the employer,
16 and for costs and such reasonable attorney's fees as may be allowed by the court,
17 including interest thereon.

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

25 **(5) Any findings of fact by the commissioner or any court action arising under any**
26 **provision of this chapter, not otherwise subject to an express period of limitations**
27 **in this chapter, shall be issued or commenced no later than two (2) years after the**

1 cause of action accrues, except that an action arising out of a willful violation
2 shall be commenced no later than three (3) years after the cause of action
3 accrues.

4 (6) The secretary or his designee shall have no jurisdiction to investigate or
5 prosecute a claim arising under this chapter if the employee has elected to file
6 with the federal government or in a court of competent jurisdiction a claim
7 alleging a violation of a similar or comparable right under federal law.