

1 AN ACT relating to state and federal wage and hour law conformity.

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, checks on banks, direct
16 deposits, or payroll card accounts convertible into cash on demand at
17 full face value, subject to the allowances made in this chapter. However,
18 an employee may not be charged an activation fee and the payroll card
19 account shall provide the employee with the ability, without charge, to
20 make at least one (1) withdrawal per pay period for any amount up to
21 and including the full account balance.

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

1 KRS 95A.210(6), "wages" shall include the distribution to qualified
2 professional firefighters by local governments of supplements received
3 from the Firefighters Foundation Program Fund;

4 (d) "Employer" is any person, either individual, corporation, partnership, agency,
5 or firm who employs an employee and includes any person, either individual,
6 corporation, partnership, agency, or firm acting directly or indirectly in the
7 interest of an employer in relation to an employee *except that nothing in this*
8 *chapter shall apply to any employer who is subject to the federal Fair Labor*
9 *Standards Act of 1938, as amended, when that act imposes comparable or*
10 *greater requirements than contained in this chapter and when the employer*
11 *files with the commissioner of the Department of Workplace Standards a*
12 *statement that the employer is covered by the Fair Labor Standards Act of*
13 *1938, as amended;* and

14 (e) "Employee" is any person employed by or suffered or permitted to work for an
15 employer, except that:

16 1. Notwithstanding any voluntary agreement entered into between the
17 United States Department of Labor and a franchisee, neither a franchisee
18 nor a franchisee's employee shall be deemed to be an employee of the
19 franchisor for any purpose under this chapter; and

20 2. Notwithstanding any voluntary agreement entered into between the
21 United States Department of Labor and a franchisor, neither a franchisor
22 nor a franchisor's employee shall be deemed to be an employee of the
23 franchisee for any purpose under this chapter.

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

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

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

- 3 1. Any individual employed in agriculture;
- 4 2. Any individual employed in a bona fide executive, administrative,
5 supervisory, or professional capacity, or in the capacity of outside
6 salesman, or as an outside collector as the terms are defined by
7 administrative regulations of the commissioner;
- 8 3. Any individual employed by the United States;
- 9 4. Any individual employed in domestic service in or about a private home.

10 The provisions of this section shall include individuals employed in
11 domestic service in or about the home of an employer where there is
12 more than one (1) domestic servant regularly employed;

- 13 5. Any individual classified and given a certificate by the commissioner
14 showing a status of learner, apprentice, worker with a disability,
15 sheltered workshop employee, and student under administrative
16 procedures and administrative regulations prescribed and promulgated
17 by the commissioner. This certificate shall authorize employment at the
18 wages, less than the established fixed minimum fair wage rates, and for
19 the period of time fixed by the commissioner and stated in the certificate
20 issued to the person;

- 21 6. Employees of retail stores, service industries, hotels, motels, and
22 restaurant operations whose average annual gross volume of sales made
23 for business done is less than ninety-five thousand dollars (\$95,000) for
24 the five (5) preceding years exclusive of excise taxes at the retail level or
25 if the employee is the parent, spouse, child, or other member of his or
26 her employer's immediate family;

- 27 7. Any individual employed as a baby-sitter in an employer's home, or an

- 1 individual employed as a companion by a sick, convalescing, or elderly
2 person or by the person's immediate family, to care for that sick,
3 convalescing, or elderly person and whose principal duties do not
4 include housekeeping;
- 5 8. Any individual engaged in the delivery of newspapers to the consumer;
- 6 9. Any individual subject to the provisions of KRS Chapters 7, 16, 27A,
7 30A, and 18A provided that the secretary of the Personnel Cabinet shall
8 have the authority to prescribe by administrative regulation those
9 emergency employees, or others, who shall receive overtime pay rates
10 necessary for the efficient operation of government and the protection of
11 affected employees;
- 12 10. Any employee employed by an establishment which is an organized
13 nonprofit camp, religious, or nonprofit educational conference center, if
14 it does not operate for more than two hundred ten (210) days in any
15 calendar year;
- 16 11. Any employee whose function is to provide twenty-four (24) hour
17 residential care on the employer's premises in a parental role to children
18 who are primarily dependent, neglected, and abused and who are in the
19 care of private, nonprofit childcaring facilities licensed by the Cabinet
20 for Health and Family Services under KRS 199.640 to 199.670; or
- 21 12. Any individual whose function is to provide twenty-four (24) hour
22 residential care in his or her own home as a family caregiver and who is
23 approved to provide family caregiver services to an adult with a
24 disability through a contractual relationship with a community board for
25 mental health or individuals with an intellectual disability established
26 under KRS 210.370 to 210.460, or is certified or licensed by the Cabinet
27 for Health and Family Services to provide adult foster care;

- 1 (b) "Agriculture" means farming in all its branches, including cultivation and
 2 tillage of the soil; dairying; production, cultivation, growing, and harvesting of
 3 any agricultural or horticultural commodity; raising of livestock, bees,
 4 furbearing animals, or poultry; and any practice, including any forestry or
 5 lumbering operations, performed on a farm in conjunction with farming
 6 operations, including preparation and delivery of produce to storage, to
 7 market, or to carriers for transportation to market;
- 8 (c) "Gratuity" means voluntary monetary contribution received by an employee
 9 from a guest, patron, or customer for services rendered;
- 10 (d) "Tipped employee" means any employee engaged in an occupation in which
 11 he or she customarily and regularly receives more than thirty dollars (\$30) per
 12 month in tips; and
- 13 (e) "U.S.C." means the United States Code.

14 ➔Section 2. KRS 337.285 is amended to read as follows:

- 15 (1) No employer shall employ any of his employees for a work week longer than forty
 16 (40) hours, unless such employee receives compensation for his employment in
 17 excess of forty (40) hours in a work week at a rate of not less than one and one-half
 18 (1-1/2) times the hourly wage rate at which he is employed.
- 19 (2) This provision shall not apply to the following:
- 20 (a) Employees of retail stores engaged in work connected with selling,
 21 purchasing, and distributing merchandise, wares, goods, articles, or
 22 commodities;
- 23 (b) Employees of restaurant, hotel, and motel operations;
- 24 (c) Employees ***employed by private sector and*** as defined and ***partially and***
 25 ***wholly*** exempted from the overtime provision of the Fair Labor Standards Act
 26 in Sections ***207 and 213 of Title 29, U.S.C.***~~[213(b)(1), 213(b)(6), 213(b)(10),~~
 27 ~~and 213(b)(17) of Title 29, U.S.C.]~~;

- 1 (d) Employees whose function is to provide twenty-four (24) hour residential care
2 on the employer's premises in a parental role to children who are primarily
3 dependent, neglected, and abused and who are in the care of private nonprofit
4 childcaring facilities licensed by the Cabinet for Health and Family Services
5 under KRS 199.640 to 199.670; or
- 6 (e) Any individual who is employed by a third-party employer or agency other
7 than the family or household using his or her services to provide in-home
8 companionship services for a sick, convalescing, or elderly person.
- 9 (3) As used in subsection (2) of this section, "companionship services" means those
10 services which provide in-home fellowship, care, and protection for a person who,
11 because of advanced age or physical or mental infirmity, cannot care for his or her
12 own needs. These services may include household work related to the care of the
13 aged or infirm person such as meal preparation, bed making, washing of clothes,
14 and other similar services. They may also include the performance of general
15 household work, provided that the household work is incidental, i.e., does not
16 exceed twenty percent (20%) of the total weekly hours worked. The term
17 "companionship services" does not include services relating to the care and
18 protection of the aged or infirm which require and are performed by trained
19 personnel, such as a registered or practical nurse.
- 20 (4) Notwithstanding the provisions of subsection (1) of this section or any other chapter
21 of the KRS to the contrary, upon written request by a county or city employee, made
22 freely and without coercion, pressure, or suggestion by the employer, and upon a
23 written agreement reached between the employer and the county or city employee
24 before the performance of the work, a county or city employee who is authorized to
25 work one (1) or more hours in excess of the prescribed hours per week may be
26 granted compensatory leave on an hour-for-hour basis. Upon the written request by
27 a county or city employee, made freely and without coercion, pressure, or

1 suggestion by the employer, and upon a written agreement reached between the
2 employer and the county or city employee before the performance of the work, a
3 county or city employee who is not exempt from the provisions of the Federal Fair
4 Labor Standards Act of 1938, as amended, 29 U.S.C. secs. 201 et seq., may be
5 granted compensatory time in lieu of overtime pay, at the rate of not less than one
6 and one-half (1-1/2) hours for each hour the county or city employee is authorized
7 to work in excess of forty (40) hours in a work week.

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

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

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

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

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

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

1 work period shall be not less than one (1) work week of seven (7) consecutive days
2 and not more than four (4) work weeks of twenty-eight (28) consecutive days for
3 purposes of complying with the requirements of the Federal Labor Standards Act of
4 1938, as amended, 29 U.S.C. secs. 201 et seq. This subsection shall not exempt
5 local governments from complying with the overtime requirements set forth in
6 subsection (1) of this section and is intended to:

- 7 (a) Clarify the option to designate both a work week for compliance with
8 Kentucky law and a work period for compliance with the Fair Labor Standards
9 Act of 1938, as amended, 29 U.S.C. secs. 201 et seq.; and
10 (b) Allow for the application of the partial exemption set forth in 29 U.S.C. sec.
11 207(k) in determining overtime pay under the Fair Labor Standards Act of
12 1938, as amended, 29 U.S.C. secs. 201 et seq., only.

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

- 16 1. The officer works eighty (80) hours or less in a work period of fourteen
17 (14) consecutive days; and
18 2. The law enforcement department and a representative of a collective
19 bargaining unit certified under KRS 67C.408 that includes the officer
20 agree to the exception.

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

26 ➔Section 3. KRS 337.385 is amended to read as follows:

27 (1) Except as provided in subsection (3) of this section, any employer who pays any

1 employee less than wages and overtime compensation to which such employee is
2 entitled under or by virtue of KRS 337.020 to 337.285 shall be liable to such
3 employee affected for the full amount of such wages and overtime compensation,
4 less any amount actually paid to such employee by the employer, for an additional
5 equal amount as liquidated damages, and for costs and such reasonable attorney's
6 fees as may be allowed by the court.

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

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

23 (4) At the written request of any employee paid less than the amount to which he or she
24 is entitled under the provisions of KRS 337.020 to 337.285, the commissioner may
25 take an assignment of such wage claim in trust for the assigning employee and may
26 bring any legal action necessary to collect such claim, and the employer shall be
27 required to pay the costs and such reasonable attorney's fees as may be allowed by

1 the court. The commissioner in case of suit shall have power to join various
2 claimants against the same employer in one (1) action.

3 **(5) Court action filed pursuant to any provision of this chapter, not otherwise subject**
4 **to an express period of limitations in this chapter, shall be commenced no later**
5 **than two (2) years after the cause of action accrues, except that a cause of action**
6 **arising out of a willful violation shall be commenced no later than three (3) years**
7 **after the cause of action accrues.**