

1 AN ACT relating to paid sick leave and declaring an emergency.

2 WHEREAS, COVID-19, a novel coronavirus, was first detected in Wuhan City,
3 Hubei Province, China, in December of 2019; and

4 WHEREAS, over 100 cases of COVID-19, including 9 deaths as a result, have been
5 reported in the United States as of March 3, 2020; and

6 WHEREAS, COVID-19 is spread person-to-person, and according to the Center for
7 Disease Control, seems to be spreading easily and sustainably in communities; and

8 WHEREAS, symptoms reported for patients with COVID-19 have included mild to
9 severe respiratory illness with fever, cough, and difficulty breathing; and

10 WHEREAS, the Center for Disease Control recommends that, to avoid spreading
11 the illness to others, patients suffering from COVID-19 be isolated either in the hospital
12 or at home until they are better and no longer pose a risk of infecting others; and

13 WHEREAS, 13 states and the District of Columbia require employers to provide
14 paid sick leave for employees by law; and

15 WHEREAS, Kentucky law does not require employers to provide employees with
16 paid sick leave; and

17 WHEREAS, the outbreak of COVID-19 poses an immediate threat to the health of
18 those living in the Commonwealth;

19 NOW, THEREFORE,

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

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

23 **(1) An employee who, upon the effective date of this Act, works in Kentucky for the**
24 **same employer for thirty (30) or more days within a year from the**
25 **commencement of employment is entitled to paid sick days as specified in this**
26 **section.**

27 **(2) (a) An employee shall be entitled to eight (8) hours of paid sick leave after**

1 completing one hundred twenty (120) hours of employment with the same
2 employer or thirty (30) days employment, whichever last occurs. An
3 employee shall then accrue paid sick days at the rate of not less than one
4 and one-half (1½) hours per every thirty (30) hours worked, beginning at
5 the commencement of employment with the employer or the effective date of
6 this Act, whichever is later, subject to the use and accrual limitations set
7 forth in this section.

8 (b) An employer may use an accrual method other than providing one and one-
9 half (1½) hours per every thirty (30) hours worked provided that the accrual
10 is on a regular basis so that an employee has no less than twenty-four (24)
11 hours of accrued sick leave or paid time off by the one hundred twentieth
12 calendar day of employment or each calendar year, or in each twelve (12)
13 month period.

14 (c) An employer may satisfy the accrual requirements of this subsection by
15 providing not less than twenty-four (24) hours or three (3) days of paid sick
16 leave that is available to the employee to use by the completion of his or her
17 one hundred twentieth calendar day of employment.

18 (d) This section does not apply to an employee covered by a collective
19 bargaining agreement during the period between the effective date of this
20 Act and the expiration of the agreement.

21 (3) An employer may satisfy the accrual requirements of this section by providing not
22 less than twenty-four (24) hours or three (3) days of paid sick leave that is
23 available to the employee to use by the completion of his or her one hundred
24 twentieth calendar day of employment.

25 (4) (a) Accrued paid sick days shall carry over to the following year of employment.
26 However, an employer may limit an employee's use of accrued paid sick
27 days to twenty-four (24) hours or three (3) days in each year of employment,

1 calendar year, or twelve (12) month period. This subsection shall be
2 satisfied and no accrual or carryover is required if the full amount of leave
3 is received at the beginning of each year of employment, calendar year, or
4 twelve (12) month period.

5 (b) As used in this section, "full amount of leave" shall mean three (3) days or
6 twenty-four (24) hours.

7 (5) An employer is not required to provide additional paid sick days pursuant to this
8 section if the employer has a paid leave policy or paid time off policy, the
9 employer makes available an amount of leave applicable to employees that may
10 be used for the same purposes and under the same conditions as specified in this
11 section, and the policy:

12 (a) Meets the accrual, carryover, and use requirements of this section; or

13 (b) Provided paid sick leave or paid time off to a class of employees before the
14 effective date of this Act, pursuant to a sick leave policy or paid time off
15 policy that used an accrual method different than providing one and one
16 half (1½) hours per thirty (30) hours worked, so long as the accrual is on a
17 regular basis so that an employee, including an employee hired into that
18 class after effective date of this Act, has no less than one (1) day or eight (8)
19 hours of accrued sick leave or paid time off within three (3) months of
20 employment of each calendar year, or each twelve (12) month period, and
21 the employee was eligible to earn at least three (3) days or twenty-four (24)
22 hours of sick leave or paid time off within nine (9) months of employment.
23 If an employer modifies the accrual method used in the policy it had in
24 place prior to the effective date of this Act, the employer shall comply with
25 any accrual method set forth in subsection (2) of this section or provide the
26 full amount of leave at the beginning of each year of employment, calendar
27 year, or twelve (12) month period. This section does not prohibit the

1 employer from increasing the accrual amount or rate for a class of
2 employees covered by this paragraph.

3 (6) (a) Except as specified in paragraph (b) of this subsection, an employer is not
4 required to provide compensation to an employee for accrued, unused paid
5 sick days upon termination, resignation, retirement, or other separation
6 from employment.

7 (b) If an employee separates from an employer and is rehired by the employer
8 within one (1) year from the date of separation, previously accrued and
9 unused paid sick days shall be reinstated. The employee shall be entitled to
10 use those previously accrued and unused paid sick days and to accrue
11 additional paid sick days upon rehiring, subject to the use and accrual
12 limitations set forth in this section. An employer is not required to reinstate
13 accrued paid time off to an employee that was paid out at the time of
14 termination, resignation, or separation of employment.

15 (7) An employer may lend paid sick days to an employee in advance of accrual, at the
16 employer's discretion and with proper documentation.

17 (8) An employer shall provide an employee with written notice that sets forth the
18 amount of paid sick leave available, or paid time off leave an employer provides
19 in lieu of sick leave, for use on either the employee's itemized wage statement or
20 in a separate writing provided on the designated pay date with the employee's
21 payment of wages. If an employer provides unlimited paid sick leave or unlimited
22 paid time off to an employee, the employer may satisfy this section by indicating
23 on the notice or the employee's itemized wage statement that paid sick leave is
24 unlimited.

25 (9) An employer has no obligation under this section to allow an employee's total
26 accrual of paid sick leave to exceed forty-eight (48) hours or six (6) days, provided
27 that an employee's rights to accrue and use paid sick leave are not limited other

1 than as allowed under this section.

2 (10) An employee may determine how much paid sick leave he or she needs to use,
3 provided that an employer may set a reasonable minimum increment, not to
4 exceed two (2) hours, for the use of paid sick leave.

5 (11) For purposes of this section, an employer shall calculate paid sick leave using
6 any of the following methods:

7 (a) Calculating paid sick time for nonexempt employees in the same manner as
8 the regular rate of pay for the workweek in which the employee uses paid
9 sick time, whether or not the employee actually works overtime in that
10 workweek;

11 (b) Calculating paid sick time for nonexempt employees by dividing the
12 employee's total wages, not including overtime premium pay, by the
13 employee's total hours worked in the full pay periods of the prior ninety (90)
14 days of employment; or

15 (c) Calculating paid sick time for exempt employees in the same manner as the
16 employer calculates wages for other forms of paid leave time.

17 (12) If the need for paid sick leave is foreseeable, the employee shall provide
18 reasonable advance notification. If the need for paid sick leave is unforeseeable,
19 the employee shall provide notice of the need for the leave as soon as practicable.

20 (13) An employer shall provide payment for sick leave taken by an employee no later
21 than the payday for the next regular payroll period after the sick leave was taken.

22 (14) The taking of earned leave under this section shall not result in the loss of any
23 employee benefits accrued before the date on which the leave commenced and
24 shall not affect the employee's right to health insurance benefits on the same
25 terms and conditions as applicable to similarly situated employees. Nothing in this
26 section prevents an employer from providing a benefit greater than that provided
27 by this section.

1 *(15) The commissioner has the exclusive authority to enforce this section.*

2 *(16) This section shall apply only to employers who employ ten (10) or more*
3 *employees.*

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

5 The following civil penalties shall be imposed, in accordance with the provisions in KRS
6 336.985, for violations of the provisions of this chapter:

7 (1) Any firm, individual, partnership, or corporation that violates KRS 337.020 shall be
8 assessed a civil penalty of not less than one hundred dollars (\$100) nor more than
9 one thousand dollars (\$1,000) for each offense. Each failure to pay an employee the
10 wages when due him under KRS 337.020 shall constitute a separate offense.

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

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

18 (4) Any employer who violates KRS 337.060 shall be assessed a civil penalty of not
19 less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000)
20 and shall also be liable to the affected employee for the amount withheld, plus
21 interest at the rate of ten percent (10%) per annum.

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

26 (6) Any person who fails to comply with KRS 337.070 shall be assessed a civil penalty
27 of not less than one hundred dollars (\$100) nor more than one thousand dollars

1 (\$1,000) for each offense and each day that the failure continues shall be deemed a
2 separate offense.

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

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

18 (9) Any employer who discharges or in any other manner discriminates against any
19 employee because the employee has made any complaint to his or her employer, to
20 the commissioner, or to the commissioner's authorized representative that he or she
21 has not been paid wages in accordance with KRS 337.275 and 337.285 or
22 regulations issued thereunder, or because the employee has caused to be instituted
23 or is about to cause to be instituted any proceeding under or related to KRS
24 337.385, or because the employee has testified or is about to testify in any such
25 proceeding, shall be deemed in violation of KRS 337.275 to 337.325, KRS 337.345,
26 and KRS 337.385 to 337.405 and shall be assessed a civil penalty of not less than
27 one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

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

3 (11) A person shall be assessed a civil penalty of not less than one hundred dollars
4 (\$100) nor more than one thousand dollars (\$1,000) when that person discharges or
5 in any other manner discriminates against an employee because the employee has:

6 (a) Made any complaint to his or her employer, the commissioner, or any other
7 person; or

8 (b) Instituted, or caused to be instituted, any proceeding under or related to KRS
9 337.420 to 337.433; or

10 (c) Testified, or is about to testify, in any such proceedings.

11 **(12) An employer who violates the provisions of Section 1 of this Act shall be assessed**
12 **a civil penalty of not less than one hundred dollars (\$100) nor more than one**
13 **thousand dollars (\$1,000) for each offense. Each day of violation shall constitute**
14 **a separate offense and the violation as it affects each individual employee shall**
15 **constitute a separate offense.**

16 ➔Section 3. As the outbreak of COVID-19 poses an immediate threat to the
17 health of those living in the Commonwealth, an emergency is declared to exist, and this
18 Act takes effect upon its passage and approval by the Governor or upon its otherwise
19 becoming a law.