

1 AN ACT relating to employment.

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

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

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

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

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

10 (c) 1. "Wages" includes any compensation due to an employee by reason of his
11 or her employment, including salaries, commissions, vested vacation
12 pay, overtime pay, severance or dismissal pay, earned bonuses, and any
13 other similar advantages agreed upon by the employer and the employee
14 or provided to employees as an established policy. The wages shall be
15 payable in legal tender of the United States, 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(8), "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(9), "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; and

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

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

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

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

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

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

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

25 2. ~~Any individual employed in a bona fide executive, administrative,~~
 26 supervisory, or professional capacity, or in the capacity of outside
 27 salesman, or as an outside collector as the terms are defined by

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

1 30A, and 18A provided that the secretary of the Personnel Cabinet shall
2 have the authority to prescribe by administrative regulation those
3 emergency employees, or others, who shall receive overtime pay rates
4 necessary for the efficient operation of government and the protection of
5 affected employees;

6 8[10]. Any employee employed by an establishment which is an
7 organized nonprofit camp, religious, or nonprofit educational conference
8 center, if it does not operate for more than two hundred ten (210) days in
9 any calendar year;

10 9[11]. Any employee whose function is to provide twenty-four (24) hour
11 residential care on the employer's premises in a parental role to children
12 who are primarily dependent, neglected, and abused and who are in the
13 care of private, nonprofit childcaring facilities licensed by the Cabinet
14 for Health and Family Services under KRS 199.640 to 199.670;

15 10[12]. Any individual whose function is to provide twenty-four (24) hour
16 residential care in his or her own home as a family caregiver and who is
17 approved to provide family caregiver services to an adult with a
18 disability through a contractual relationship with a community board for
19 mental health or individuals with an intellectual disability established
20 under KRS 210.370 to 210.460, or is certified or licensed by the Cabinet
21 for Health and Family Services to provide adult foster care; or

22 11[13]. A direct seller as defined in Section 3508(b)(2) of the Internal
23 Revenue Code of 1986.

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 ~~fur-bearing 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 ~~(e)}~~ "Gratuity" means voluntary monetary contribution received by an employee
5 from a guest, patron, or customer for services rendered;

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

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

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

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

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

21 (1) Every employer subject to this chapter shall be liable for compensation for injury,
22 occupational disease, or death without regard to fault as a cause of the injury,
23 occupational disease, or death.

24 (2) A contractor who subcontracts all or any part of a contract and his or her carrier
25 shall be liable for the payment of compensation to the employees of the
26 subcontractor unless the subcontractor primarily liable for the payment of such
27 compensation has secured the payment of compensation as provided for in this

1 chapter. Any contractor or his or her carrier who shall become liable for such
2 compensation may recover the amount of such compensation paid and necessary
3 expenses from the subcontractor primarily liable therefor. A person who contracts
4 with another:

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

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

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

12 (3) Liability for compensation shall not apply to injury, occupational disease, or death
13 to the employee if the employee willfully intended to injure or kill himself, herself,
14 or another.

15 (4) If an employee voluntarily introduced an illegal, nonprescribed substance or
16 substances or a prescribed substance or substances in amounts in excess of
17 prescribed amounts into his or her body detected in the blood, as measured by a
18 scientifically reliable test, that could cause a disturbance of mental or physical
19 capacities, it shall be presumed that the illegal, nonprescribed substance or
20 substances or the prescribed substance or substances in amounts in excess of
21 prescribed amounts caused the injury, occupational disease, or death of the
22 employee and liability for compensation shall not apply to the injury, occupational
23 disease, or death to the employee.

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

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

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

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

1 copies shall be provided to the employer by its insurance carrier.

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

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

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

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

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

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

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

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

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

23 ~~(3)~~⁽⁴⁾ Any person for whom a rule of liability for injury or death is provided by the
24 laws of the United States, except those persons covered under Title IV, Public Law
25 91-173, 91st Congress, commonly referred to as the Black Lung Benefits of the
26 Federal Coal Mine Health and Safety Act of 1969, or as amended;

27 ~~[(5) Any person employed in agriculture;]~~

1 ~~(4)~~~~(6)~~ Any person who would otherwise be covered but who elects not to be covered
2 in accordance with the administrative regulations promulgated by the
3 commissioner;

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

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

18 ~~(7)~~~~(9)~~ Any licensed or unlicensed, commissioned, ordained or unordained, or lay
19 minister of religion who has no set oral or written agreement with a church or
20 religious organization to receive a fixed regular payment for services provided to
21 the church or who works no more than ten (10) hours per week;

22 ~~(8)~~~~(10)~~ Any caretaker of a cemetery or property owned or operated by a church or
23 religious organization who provides general cleanup services, including but not
24 limited to mowing, raking, dusting, sweeping, and mopping which could be
25 performed for other individuals or organizations, who works no more than ten (10)
26 hours per week; and

27 ~~(9)~~~~(11)~~ A direct seller as defined in Section 3508(b)(2) of the Internal Revenue Code

1 of 1986.

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

- 3 (1) It shall be an unfair or deceptive trade practice for a health insurance policy to
4 exclude coverage for a health condition based solely on the fact that the health
5 condition is work-related, unless the claimant is eligible for benefits under any
6 workers' compensation act or similar law.
- 7 (2) For purposes of this section, all employees shall be deemed to be eligible for
8 benefits under any workers' compensation act or similar law, except for:
- 9 (a) Any employee exempted from workers' compensation coverage pursuant to
10 KRS 342.650(1), (2), ~~[(3)]~~or, (5)~~[, or (7)]~~; and
- 11 (b) The owner or owners of a business, including qualified partners as defined in
12 KRS 342.012(3).

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

- 14 (1) If an employer secures payment of compensation as required by this chapter, the
15 liability of such employer under this chapter shall be exclusive and in place of all
16 other liability of such employer to the employee, his legal representative, husband
17 or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover
18 damages from such employer at law or in admiralty on account of such injury or
19 death. For purposes of this section, the term "employer" shall include a "contractor"
20 covered by subsection (2) of KRS 342.610, whether or not the subcontractor has in
21 fact, secured the payment of compensation. The liability of an employer to another
22 person who may be liable for or who has paid damages on account of injury or
23 death of an employee of such employer arising out of and in the course of
24 employment and caused by a breach of any duty or obligation owed by such
25 employer to such other shall be limited to the amount of compensation and other
26 benefits for which such employer is liable under this chapter on account of such
27 injury or death, unless such other and the employer by written contract have agreed

1 to share liability in a different manner. The exemption from liability given an
2 employer by this section shall also extend to such employer's carrier and to all
3 employees, officers or directors of such employer or carrier, provided the exemption
4 from liability given an employee, officer or director or an employer or carrier shall
5 not apply in any case where the injury or death is proximately caused by the willful
6 and unprovoked physical aggression of such employee, officer or director.

7 (2) If an employer fails to secure payment of compensation as required by this chapter,
8 an injured employee, or his legal representative in case death results from the injury,
9 may claim compensation under this chapter and in addition may maintain an action
10 at law or in admiralty for damages on account of such injury or death, provided that
11 the amount of compensation shall be credited against the amount received in such
12 action, and provided that, if the amount of compensation is larger than the amount
13 of damages received, the amount of damages less the employee's legal fees and
14 expenses shall be credited against the amount of compensation. In such action the
15 defendant may not plead as a defense that the injury was caused by the negligence
16 of a fellow servant, that the employee assumed the risks of his employment, or that
17 the injury was due to the contributory negligence of the employee.

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

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

25 (b) Notwithstanding any voluntary agreement entered into between the United
26 States Department of Labor and a franchisor, neither a franchisor nor a
27 franchisor's employee shall be deemed to be an employee of the franchisee for

- 1 any purpose under this chapter.
- 2 (c) For purposes of this subsection, "franchisee" and "franchisor" have the same
- 3 meanings as in 16 C.F.R. sec. 436.1.