

1 AN ACT relating to minimum wage for essential workers and declaring an
2 emergency.

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

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

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

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

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

11 (c) 1. "Wages" includes any compensation due to an employee by reason of his
12 or her employment, including salaries, commissions, vested vacation
13 pay, overtime pay, severance or dismissal pay, earned bonuses, and any
14 other similar advantages agreed upon by the employer and the employee
15 or provided to employees as an established policy. The wages shall be
16 payable in legal tender of the United States, checks on banks, direct
17 deposits, or payroll card accounts convertible into cash on demand at
18 full face value, subject to the allowances made in this chapter. However,
19 an employee may not be charged an activation fee and the payroll card
20 account shall provide the employee with the ability, without charge, to
21 make at least one (1) withdrawal per pay period for any amount up to
22 and including the full account balance.

23 2. For the purposes of calculating hourly wage rates for scheduled overtime
24 for professional firefighters, as defined in KRS 95A.210(8), "wages"
25 shall not include the distribution to qualified professional firefighters by
26 local governments of supplements received from the Firefighters
27 Foundation Program Fund. For the purposes of calculating hourly wage

1 rates for unscheduled overtime for professional firefighters, as defined in
 2 KRS 95A.210(9), "wages" shall include the distribution to qualified
 3 professional firefighters by local governments of supplements received
 4 from the Firefighters Foundation Program Fund;

5 (d) "Employer" is any person, either individual, corporation, partnership, agency,
 6 or firm who employs an employee and includes any person, either individual,
 7 corporation, partnership, agency, or firm acting directly or indirectly in the
 8 interest of an employer in relation to an employee;~~and~~

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

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

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

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

21 (f) "Essential employee " is a person who is declared essential by executive
 22 order, who is employed by or suffered or permitted to work for an employer,
 23 paid an hourly wage, and works in one (1) of the following industries:
 24 healthcare, public health, emergency services, public works, critical food
 25 supply chain, agriculture, energy, water and waste management,
 26 transportation and logistics, communications and information technology,
 27 local or state government operations, critical manufacturing, hazardous

1 *materials operations, financial services, chemical supply chain, or defense*
2 *industrial base.*

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

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

7 1. Any individual employed in agriculture;
8 2. Any individual employed in a bona fide executive, administrative,
9 supervisory, or professional capacity, or in the capacity of outside
10 salesman, or as an outside collector as the terms are defined by
11 administrative regulations of the commissioner;

12 3. Any individual employed by the United States;

13 4. Any individual employed in domestic service in or about a private home.
14 The provisions of this section shall include individuals employed in
15 domestic service in or about the home of an employer where there is
16 more than one (1) domestic servant regularly employed;

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

25 6. Employees of retail stores, service industries, hotels, motels, and
26 restaurant operations whose average annual gross volume of sales made
27 for business done is less than ninety-five thousand dollars (\$95,000) for

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

1 disability through a contractual relationship with a community board for
2 mental health or individuals with an intellectual disability established
3 under KRS 210.370 to 210.460, or is certified or licensed by the Cabinet
4 for Health and Family Services to provide adult foster care; or

5 13. A direct seller as defined in Section 3508(b)(2) of the Internal Revenue
6 Code of 1986.

7 (b) "Agriculture" means farming in all its branches, including cultivation and
8 tillage of the soil; dairying; production, cultivation, growing, and harvesting of
9 any agricultural or horticultural commodity; raising of livestock, bees,
10 furbearing animals, or poultry; and any practice, including any forestry or
11 lumbering operations, performed on a farm in conjunction with farming
12 operations, including preparation and delivery of produce to storage, to
13 market, or to carriers for transportation to market;

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

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

19 (e) "U.S.C." means the United States Code.

20 ➔Section 2. 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 of the minimum wage
8 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. The employer shall establish by his records that for each week where
15 credit is taken, when adding tips received to wages paid, not less than the minimum
16 rate prescribed in 29 U.S.C. sec. 203 was received by the employee. No employer
17 shall use all or part of any tips or gratuities received by employees toward the
18 payment of the statutory minimum hourly wage as required by 29 U.S.C. sec. 203.
19 Nothing, however, shall prevent employees from entering into an agreement to
20 divide tips or gratuities among themselves.

21 **(3) Notwithstanding the provisions of subsection (1) and (2) of this section, when a**
22 **state of emergency is declared by the Governor of Kentucky resulting in the**
23 **designation of essential employees, every employer with a gross revenue of at**
24 **least one billion dollars (\$1,000,000,000) shall pay to each employee deemed an**
25 **essential employee an hourly hazard wage rate not less than fifteen dollars (\$15)**
26 **per hour for forty (40) hours of working time in any week and one and a half (1-**
27 **1/2) times that essential employee's regular hourly wage for each hour of**

1 working time in excess of forty (40) hours in any week. This overtime rate shall
2 not include any individual employed in a bona fide executive or professional
3 capacity, effective on the effective date of this Act.

4 (a) The hazard wage created by this subsection shall match the percentage
5 increase of the Consumer Price Index, CPI-U, U.S. city average, not
6 seasonally adjusted as calculated by the U.S. Department of Labor for the
7 twelve (12) months preceding the previous September 1.

8 (b) If the regular wage of a qualifying essential employee in the
9 Commonwealth or federal prevailing wage for government contractors in
10 the same class or function area is higher than the hazard wage set under
11 this subsection, the worker shall be paid at the higher rate.

12 (c) Nothing in this subsection shall be construed to entitle an essential
13 employee to both his or her regular wage and the hazard wage triggered by
14 the declaration of an emergency.

15 ➔Section 3. Whereas the impact of the state of emergency in response to COVID-
16 19 on Kentucky's essential employees is of the utmost importance, an emergency is
17 declared to exist, and this Act takes effect upon its passage and approval by the Governor
18 or upon its otherwise becoming a law.