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

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

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

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

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

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

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

2. For the purposes of calculating hourly wage rates for scheduled overtime for professional firefighters, as defined in KRS 95A.210(8), "wages" shall not include the distribution to qualified professional firefighters by local governments of supplements received from the Firefighters Foundation Program Fund. For the purposes of calculating hourly wage
rates for unscheduled overtime for professional firefighters, as defined in
KRS 95A.210(9), "wages" shall include the distribution to qualified
professional firefighters by local governments of supplements received
from the Firefighters Foundation Program Fund;

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

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

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

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

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

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

industrial base.

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

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

1. Any individual employed in agriculture;

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

3. Any individual employed by the United States;

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

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

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

7. Any individual employed as a baby-sitter in an employer's home, or an
individual employed as a companion by a sick, convalescing, or elderly
person or by the person's immediate family, to care for that sick,
convalescing, or elderly person and whose principal duties do not
include housekeeping;

8. Any individual engaged in the delivery of newspapers to the consumer;

9. Any individual subject to the provisions of KRS Chapters 7, 16, 27A,
30A, and 18A provided that the secretary of the Personnel Cabinet shall
have the authority to prescribe by administrative regulation those
emergency employees, or others, who shall receive overtime pay rates
necessary for the efficient operation of government and the protection of
affected employees;

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

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

12. Any individual whose function is to provide twenty-four (24) hour
residential care in his or her own home as a family caregiver, family
home provider, or adult foster care provider and who is approved to
provide family caregiver services to an adult with a disability through a
contractual relationship with a community board for mental health or
individuals with an intellectual disability established under KRS
210.370 to 210.460 or through a contractual relationship with a certified
waiver provider as defined in 907 KAR 7:005 sec. 1(5), or is certified or
licensed by the Cabinet for Health and Family Services to provide adult
foster care;

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

14. Any individual whose function is to provide behavior support services,
behavior programming services, case management services, community
living support services, positive behavior support services, or respite
services through a contractual relationship with a certified waiver
provider, as defined in 907 KAR 7:005 sec. 1(5), pursuant to a 1915(c)
home and community based services waiver program, as defined in 907
KAR 7:005 sec. 1(2);

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

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

(d) "Tipped employee" means any employee engaged in an occupation in which
he or she customarily and regularly receives more than thirty dollars ($30) per

Section 2. KRS 337.275 is amended to read as follows:

(1) Except as may otherwise be provided by this chapter, every employer shall pay to each of his employees wages at a rate of not less than five dollars and eighty-five cents ($5.85) an hour beginning on June 26, 2007, not less than six dollars and fifty-five cents ($6.55) an hour beginning July 1, 2008, and not less than seven dollars and twenty-five cents ($7.25) an hour beginning July 1, 2009. If the federal minimum hourly wage as prescribed by 29 U.S.C. sec. 206(a)(1) is increased in excess of the minimum hourly wage in effect under this subsection, the minimum hourly wage under this subsection shall be increased to the same amount, effective on the same date as the federal minimum hourly wage rate. If the state minimum hourly wage is increased to the federal minimum hourly wage, it shall include only the federal minimum hourly rate prescribed in 29 U.S.C. sec. 206(a)(1) and shall not include other wage rates or conditions, exclusions, or exceptions to the federal minimum hourly wage rate. In addition, the increase to the federal minimum hourly wage rate does not extend or modify the scope or coverage of the minimum wage rate required under this chapter.

(2) Notwithstanding the provisions of subsection (1) of this section, for any employee engaged in an occupation in which he customarily and regularly receives more than thirty dollars ($30) per month in tips from patrons or others, the employer may pay as a minimum not less than the hourly wage rate required to be paid a tipped employee under the federal minimum hourly wage law as prescribed by 29 U.S.C. sec. 203. The employer shall establish by his records that for each week where credit is taken, when adding tips received to wages paid, not less than the minimum rate prescribed in 29 U.S.C. sec. 203 was received by the employee. No employer shall use all or part of any tips or gratuities received by employees toward the
payment of the statutory minimum hourly wage as required by 29 U.S.C. sec. 203. Nothing, however, shall prevent employees from entering into an agreement to divide tips or gratuities among themselves.

(3) (a) Notwithstanding subsections (1) and (2) of this section, when a state of emergency is declared by the Governor of Kentucky resulting in the designation of essential employees, every employer with a gross revenue of at least one billion dollars ($1,000,000,000) shall pay to each employee deemed an essential employee an hourly hazard wage rate not less than fifteen dollars ($15) per hour for forty (40) hours of working time in any week and one and a half (1-1/2) times that essential employee's regular hourly wage for each hour of working time in excess of forty (40) hours in any week. On and after the effective date of this Act, the overtime rate established by this subsection shall not apply to any individual employed in a bona fide executive or professional capacity.

(b) The hazard wage rate established by this subsection shall match the percentage increase of the Consumer Price Index for all Urban Consumers, U.S. city average, not seasonally adjusted, as calculated by the United States Department of Labor for the twelve (12) months preceding the previous September 1.

(c) If the regular wage of a qualifying essential employee in the Commonwealth or federal prevailing wage for government contractors in the same class or function area is higher than the hazard wage established by this subsection, the worker shall be paid at the higher rate.

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

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