

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, family  
27          home provider, or adult foster care provider and who is approved to

- 1 provide family caregiver services to an adult with a disability through a  
2 contractual relationship with a community board for mental health or  
3 individuals with an intellectual disability established under KRS  
4 210.370 to 210.460 or through a contractual relationship with a certified  
5 waiver provider as defined in 907 KAR 7:005 sec. 1(5), or is certified or  
6 licensed by the Cabinet for Health and Family Services to provide adult  
7 foster care;
- 8 13. A direct seller as defined in Section 3508(b)(2) of the Internal Revenue  
9 Code of 1986; or
- 10 14. Any individual whose function is to provide behavior support services,  
11 behavior programming services, case management services, community  
12 living support services, positive behavior support services, or respite  
13 services through a contractual relationship with a certified waiver  
14 provider, as defined in 907 KAR 7:005 sec. 1(5), pursuant to a 1915(c)  
15 home and community based services waiver program, as defined in 907  
16 KAR 7:005 sec. 1(2);
- 17 (b) "Agriculture" means farming in all its branches, including cultivation and  
18 tillage of the soil; dairying; production, cultivation, growing, and harvesting of  
19 any agricultural or horticultural commodity; raising of livestock, bees,  
20 furbearing animals, or poultry; and any practice, including any forestry or  
21 lumbering operations, performed on a farm in conjunction with farming  
22 operations, including preparation and delivery of produce to storage, to  
23 market, or to carriers for transportation to market;
- 24 (c) "Gratuity" means voluntary monetary contribution received by an employee  
25 from a guest, patron, or customer for services rendered;
- 26 (d) "Tipped employee" means any employee engaged in an occupation in which  
27 he or she customarily and regularly receives more than thirty dollars (\$30) per

1 month in tips; and

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

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

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

19 (2) Notwithstanding the provisions of subsection (1) of this section, for any employee  
20 engaged in an occupation in which he customarily and regularly receives more than  
21 thirty dollars (\$30) per month in tips from patrons or others, the employer may pay  
22 as a minimum not less than the hourly wage rate required to be paid a tipped  
23 employee under the federal minimum hourly wage law as prescribed by 29 U.S.C.  
24 sec. 203. The employer shall establish by his records that for each week where  
25 credit is taken, when adding tips received to wages paid, not less than the minimum  
26 rate prescribed in 29 U.S.C. sec. 203 was received by the employee. No employer  
27 shall use all or part of any tips or gratuities received by employees toward the

1 payment of the statutory minimum hourly wage as required by 29 U.S.C. sec. 203.  
2 Nothing, however, shall prevent employees from entering into an agreement to  
3 divide tips or gratuities among themselves.

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

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

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

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

27 ➔Section 3. Whereas the impact of the state of emergency in response to COVID-

1 19 on Kentucky's essential employees is of the utmost importance, an emergency is  
2 declared to exist, and this Act takes effect upon its passage and approval by the Governor  
3 or upon its otherwise becoming a law.