

1 AN ACT relating to occupational safety and health.

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

3 ➔Section 1. KRS 338.015 is amended to read as follows:

4 As used in this chapter:

- 5 (1) "Employer" shall mean any entity for whom a person is employed except those
6 employers excluded in KRS 338.021;
- 7 (2) "Employee" shall mean any person employed except those employees excluded in
8 KRS 338.021;
- 9 (3) The term "occupational safety and health standard" means a standard which
10 requires conditions, or the adoption or use of one (1) or more practices, means,
11 methods, operations, or processes, reasonably necessary or appropriate to provide
12 safe or healthful employment and places of employment. "Standard" has the same
13 meaning as and includes the words "regulation" and "rule";
- 14 (4) "Occupational safety and health hazard" means any practice or condition in a place
15 of employment which may be deemed detrimental to the safety and health of
16 employees;
- 17 (5) "Occupational injury or illness" means any abnormal condition or disorder of an
18 employee caused by exposure to factors associated with his or her employment;
- 19 (6) "Board" means the Kentucky Occupational Safety and Health Standards Board
20 established under this chapter;
- 21 (7) "Commissioner" means the commissioner of the Department of Workplace
22 Standards under the direction and supervision of the secretary of the Education and
23 Labor Cabinet;
- 24 (8) "Review commission" means the Kentucky Occupational Safety and Health Review
25 Commission established under this chapter;
- 26 (9) The term "national consensus standard" means any occupational safety and health
27 standard or modification thereof which has been adopted and promulgated by a

1 nationally recognized standards-producing organization;

2 (10) The term "established federal standard" means any operative occupational safety
3 and health standard established by any agency of the United States government;

4 (11) "Department" means the Department of Workplace Standards;~~and~~

5 (12) "Secretary" means the secretary of the Education and Labor Cabinet; **and**

6 **(13) "Qualified representative" means a person who is reasonably necessary to**
7 **conduct an inspection based on their relevant scientific, technical, or specialized**
8 **knowledge, skill, experience, training, or education.**

9 ➔Section 2. KRS 338.062 is amended to read as follows:

10 ~~After July 1, 2021, neither~~ The Kentucky Occupational Safety and Health Standards
11 board, ~~nor~~ the secretary, **the secretary's designee, the commissioner, and the**
12 **commissioner's authorized representative** shall **not** adopt, ~~or~~ promulgate, **or enforce**
13 any occupational safety and health administrative regulation that **the Occupational Safety**
14 **and Health Administration or the United States Department of Labor has not**
15 **promulgated, or that** is more stringent than the corresponding federal provision enforced
16 by the United States Department of Labor under the Occupational Safety and Health Act
17 of 1970. Whereas the Occupational Safety and Health Act of 1970 does not apply to
18 public employees, the cabinet shall retain the authority to promulgate and enforce, as
19 necessary, administrative regulations pertaining to public employees.

20 ➔Section 3. KRS 338.091 is amended to read as follows:

21 (1) Any party adversely affected or aggrieved by a final order of the review
22 commission may appeal within thirty (30) days to the Franklin Circuit Court on the
23 record for a review of such order. No new evidence may be introduced in the
24 Circuit Court. An appeal may be taken to the Court of Appeals from any decision of
25 the Circuit Court under this section.

26 (2) **On appeal, the Franklin Circuit Court may award actual expenses incurred,**
27 **including court costs and attorney's fees, against the department.**

1 **(3)** The commencement of a proceeding~~[proceedings]~~ under this section shall ~~[not,~~
 2 ~~unless ordered by the court,]~~ operate as a stay of an order of the review
 3 commission.

4 ➔Section 4. KRS 338.111 is amended to read as follows:

5 Representatives~~[A representative]~~ of the employer shall be given the opportunity to
 6 accompany the commissioner or the authorized representative of the commissioner
 7 during the physical inspection of any place of employment as authorized by KRS
 8 338.101. A qualified~~[and a]~~ representative authorized by the employee may~~[employees~~
 9 ~~shall]~~ be given an opportunity to accompany the representative of the commissioner
 10 during the physical inspection of any place of employment related to occupational safety
 11 and health as authorized by KRS 338.101. If there is no qualified representative
 12 authorized by the employee ~~[representative]~~ available at the time of the physical
 13 inspection, the commissioner's representative may~~[shall]~~ consult with a reasonable
 14 number of employees concerning matters related to~~[of]~~ occupational safety and health in
 15 the place of employment. The representative of the commissioner shall be responsible for
 16 the conduct~~[in full charge]~~ of the inspection and may~~[, including the right to]~~ limit the
 17 number of representatives on the inspection team.

18 ➔Section 5. KRS 338.121 is amended to read as follows:

19 (1) Any current employee, or qualified representative authorized by a current
 20 employee~~[of employees]~~, who believes that a violation of an occupational safety
 21 and health standard exists that threatens physical harm, or that an imminent danger
 22 exists in their workplace, may request an inspection by giving notice to the
 23 commissioner of such violation or danger. Any such notice shall be reduced to
 24 writing, shall set forth with reasonable particularity the grounds for the notice,
 25 including the date the violation is alleged to have occurred, and shall be signed by
 26 the employee~~[employees]~~ or the qualified representative authorized by the
 27 employer~~[of employees]~~, and a copy shall be provided to the employer or the

1 employer's agent no later than at the time of inspection, except that, upon
2 written~~the~~ request of the employee~~person~~ giving such notice, his or her name
3 ~~and the names of individual employees referred to therein~~ shall not appear in such
4 copy.

5 (2) If upon receipt of notification, reasonable grounds evidence any~~are believed to~~
6 ~~exist for such~~ violation or danger in the workplace, then a special inspection shall
7 be made in accordance with the provisions of KRS 338.101 and 338.111. If no
8 reasonable grounds evidence a potential~~are believed to exist for such~~ violation
9 or~~of~~ danger, then the commissioner shall notify the employee or the qualified
10 representative authorized by the employee ~~of the employees~~ in writing of such
11 determination.

12 (3) (a) No person shall discharge or in any manner discriminate against any
13 employee because such employee has filed any complaint or instituted or
14 caused to be instituted any proceeding under or related to this chapter or has
15 testified or is about to testify in any such proceeding or because of the
16 exercise by such employee on behalf of himself or herself or others of any
17 right afforded by this chapter; and

18 (b) Any employee who believes that he or she has been discharged or otherwise
19 discriminated against by any person in violation of this subsection may,
20 within thirty (30) days~~a reasonable time~~ after such violation occurs, file a
21 complaint with the commissioner alleging such discrimination. Upon receipt
22 of such complaint, the commissioner shall cause such investigation to be
23 made as deemed appropriate. If upon such investigation, the commissioner
24 determines that the provisions of this subsection have been violated, he or she
25 shall issue a citation to the employer within six (6) months of the occurrence
26 of the violation, which may be challenged or contested in accordance with the
27 provisions of this chapter and the review commission may order ~~all~~

1 appropriate relief including ~~the~~ rehiring and reinstatement of the employee to
 2 his or her former position with back pay. ~~Upon an initial determination by the~~
 3 ~~commissioner that an employee has been discharged by an employer in~~
 4 ~~violation of subsection (3)(a) of this section, the secretary of the Education~~
 5 ~~and Labor Cabinet may order reinstatement of the employee pending a final~~
 6 ~~determination and order of the review commission.]~~

7 ➔ Section 6. KRS 338.141 is amended to read as follows:

8 (1) If upon inspection an authorized representative of the commissioner finds that an
 9 employer has violated any requirement of this chapter, a citation shall be issued to
 10 the employer. Each citation shall describe ***with particularity*** the alleged violation
 11 ***including a reference to the provision of the act, standard, rule, or administrative***
 12 ***regulation alleged to have been violated. Each citation shall*** ~~]~~ establish the time
 13 period permitted for correction ***of the alleged violation*** by fixing a reasonable date
 14 ***for elimination of*** ~~by which]~~ the alleged violation ~~[shall be eliminated,]~~ and ***may***
 15 propose ~~a~~ ~~the~~ civil penalty to be paid. If within fifteen (15) working days from the
 16 receipt of the citation an employer, employee, or ***the employee's*** representative ~~of~~
 17 ~~the employees]~~ fails to notify the commissioner that he or she intends to contest the
 18 citation, then the citation shall be deemed a final order of the review commission
 19 and not be subject to review by any court or agency.

20 ***(2) Any citation or a notice of a de minimis violation shall be promptly issued after***
 21 ***the inspection. A citation or a notice of a de minimis violation shall not be issued***
 22 ***more than six (6) months after the occurrence of any alleged violation. As used in***
 23 ***this subsection, a de minimis violation is a violation that has no direct or***
 24 ***immediate relationship to safety or health. A citation that is issued under this***
 25 ***section shall not be classified as a repeated violation when issued more than three***
 26 ***(3) consecutive years from the final order date of the previous citation.***

27 ~~(3)](2)]~~ The commissioner, upon determination that an employer is acting in good

1 faith to correct the cited violation, may grant additional time for
2 correction~~[compliance]~~ upon application by the employer.

3 ~~(4)~~~~(3)~~ If an employer, employee, or the employee's representative ~~[of the employees]~~
4 ~~]~~ notifies the commissioner that he or she intends to challenge a citation issued
5 under this section or under KRS 338.131, the commissioner shall notify the review
6 commission of such notification and the review commission shall afford an
7 opportunity for a hearing.

8 ~~(5)~~~~(4)~~ In the case of any review proceedings initiated by an employer, employee, or
9 the employee's representative ~~[of the employees]~~ under this chapter, the time period
10 permitted for correction of cited violations shall be tolled until the conclusion of
11 the action~~[may be extended by the review commission]~~.

12 ➔Section 7. KRS 338.991 is amended to read as follows:

13 (1) Any employer who willfully or repeatedly violates the requirement of any section
14 of this chapter, including any standard, regulation, or order promulgated pursuant to
15 this chapter, may be assessed a civil penalty of up to seventy thousand dollars
16 (\$70,000) for each violation, but not less than five thousand dollars (\$5,000) for
17 each willful violation.

18 (2) Any employer who has received a citation for a serious violation of the
19 requirements of any section of this chapter, including any standard, regulation, or
20 order promulgated pursuant to this chapter, shall be assessed a civil penalty of up to
21 seven thousand dollars (\$7,000) for each violation.

22 (3) Any employer who has received a citation for a violation of the requirements of any
23 section of this chapter, including any standard, regulation, or order promulgated
24 pursuant to this chapter, and such violation is specifically determined not to be of a
25 serious nature, may be assessed a civil penalty of up to seven thousand dollars
26 (\$7,000) for each violation.

27 (4) Any employer who receives a notice of a de minimis violation of any section of

1 *this chapter, including any standard, administrative regulation, or order*
2 *promulgated pursuant to this chapter, shall not be assessed a civil penalty. As*
3 *used in this subsection, a de minimis violation is a violation that has no direct or*
4 *immediate relationship to safety or health.*

5 (5) Any employer who fails to correct a violation for which a citation has been issued
6 within the period permitted for its correction may be assessed a civil penalty of up
7 to seven thousand dollars (\$7,000) for each day during which such failure or
8 violation continues.

9 ~~(6)~~~~(5)~~ Any employer found to be in violation of subsection (3) of KRS 338.121 shall
10 be assessed a civil penalty of up to ten thousand dollars (\$10,000) for each
11 violation.

12 ~~(7)~~~~(6)~~ The review commission shall have the authority to modify all civil penalties
13 and fines provided for in this chapter. The review commission may, at its discretion,
14 suspend the time period allotted for correction of a violation during the review of an
15 appeal from the violation in question.

16 ~~(8)~~~~(7)~~ All civil penalties and fines collected under the provision of this chapter shall
17 be paid into the general fund.

18 ~~(9)~~~~(8)~~ Any employer or individual who knowingly makes any false statement,
19 representation, or certification in any application, record, report, plan, or other
20 document filed or required to be maintained pursuant to this chapter shall, upon
21 conviction, be punished by a fine of not more than ten thousand dollars (\$10,000),
22 or by imprisonment for not more than six (6) months, or by both.

23 ~~(10)~~~~(9)~~ Any person who gives advance notice of any investigation or inspection to be
24 conducted under this chapter, without authority from the commissioner, shall, upon
25 conviction, be punished by a fine of not more than one thousand dollars (\$1,000), or
26 by imprisonment for not more than six (6) months, or by both.

27 ~~(11)~~~~(10)~~ Any employer or individual who willfully causes bodily harm to any

1 authorized representative of the commissioner while attempting to conduct an
2 investigation or inspection under the provisions of this chapter, shall, upon
3 conviction, be punished by a fine of not more than ten thousand dollars (\$10,000),
4 or by imprisonment for not more than one (1) year, or by both.

5 (12)~~(11)~~ As used in this section, a serious violation shall be deemed to exist in a place
6 of employment if there is a substantial probability that death or serious physical
7 harm could result from a condition which exists, or from one (1) or more practices,
8 means, methods, operations, or processes which have been adopted or are in use, in
9 such place of employment unless the employer did not, and could not with the
10 exercise of reasonable diligence, know of the presence of the violation.