

1 AN ACT relating to minimum wage for essential workers.

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
7 Education and Labor Cabinet;

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

10 (c) 1. "Wages" includes any compensation due to an employee by reason of
11 his 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
23 overtime for professional firefighters, as defined in KRS 95A.210(8),
24 "wages" shall not include the distribution to qualified professional
25 firefighters by local governments of supplements received from the
26 Firefighters Foundation Program Fund. For the purposes of calculating
27 hourly wage rates for unscheduled overtime for professional firefighters,

1 as defined in KRS 95A.210(9), "wages" shall include the distribution to
2 qualified professional firefighters by local governments of supplements
3 received 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
9 an 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; and

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

1 *industrial base.*

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

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

- 6 1. Any individual employed in agriculture;
- 7 2. Any individual employed in a bona fide executive, administrative,
8 supervisory, or professional capacity, or in the capacity of outside
9 salesman, or as an outside collector as the terms are defined by
10 administrative regulations of the commissioner;
- 11 3. Any individual employed by the United States;
- 12 4. Any individual employed in domestic service in or about a private
13 home. The provisions of this section shall include individuals employed
14 in domestic service in or about the home of an employer where there is
15 more than one (1) domestic servant regularly employed;
- 16 5. Any individual classified and given a certificate by the commissioner
17 showing a status of learner, apprentice, worker with a disability,
18 sheltered workshop employee, and student under administrative
19 procedures and administrative regulations prescribed and promulgated
20 by the commissioner. This certificate shall authorize employment at the
21 wages, less than the established fixed minimum fair wage rates, and for
22 the period of time fixed by the commissioner and stated in the certificate
23 issued to the person;
- 24 6. Employees of retail stores, service industries, hotels, motels, and
25 restaurant operations whose average annual gross volume of sales made
26 for business done is less than ninety-five thousand dollars (\$95,000) for
27 the five (5) preceding years exclusive of excise taxes at the retail level

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

1 contractual relationship with a community board for mental health or
2 individuals with an intellectual disability established under KRS
3 210.370 to 210.460 or through a contractual relationship with a certified
4 waiver provider as defined in 907 KAR 7:005 sec. 1(5), or is certified or
5 licensed by the Cabinet for Health and Family Services to provide adult
6 foster care;

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

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

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

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

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

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

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

- 3 (1) Except as may otherwise be provided by this chapter, every employer shall pay to
4 each of his or her employees wages at a rate of not less than five dollars and eighty-
5 five cents (\$5.85) an hour beginning on June 26, 2007, not less than six dollars and
6 fifty-five cents (\$6.55) an hour beginning July 1, 2008, and not less than seven
7 dollars and twenty-five cents (\$7.25) an hour beginning July 1, 2009. If the federal
8 minimum hourly wage as prescribed by 29 U.S.C. sec. 206(a)(1) is increased in
9 excess of the minimum hourly wage in effect under this subsection, the minimum
10 hourly wage under this subsection shall be increased to the same amount, effective
11 on the same date as the federal minimum hourly wage rate. If the state minimum
12 hourly wage is increased to the federal minimum hourly wage, it shall include only
13 the federal minimum hourly rate prescribed in 29 U.S.C. sec. 206(a)(1) and shall
14 not include other wage rates or conditions, exclusions, or exceptions to the federal
15 minimum hourly wage rate. In addition, the increase to the federal minimum hourly
16 wage rate does not extend or modify the scope or coverage of the minimum wage
17 rate required under this chapter.
- 18 (2) Notwithstanding the provisions of subsection (1) of this section, for any employee
19 engaged in an occupation in which he or she customarily and regularly receives
20 more than thirty dollars (\$30) per month in tips from patrons or others, the
21 employer may pay as a minimum not less than the hourly wage rate required to be
22 paid a tipped employee under the federal minimum hourly wage law as prescribed
23 by 29 U.S.C. sec. 203. The employer shall establish by his or her records that for
24 each week where credit is taken, when adding tips received to wages paid, not less
25 than the minimum rate prescribed in 29 U.S.C. sec. 203 was received by the
26 employee. No employer shall use all or part of any tips or gratuities received by
27 employees toward the payment of the statutory minimum hourly wage as required

1 by 29 U.S.C. sec. 203. Nothing, however, shall prevent employees from entering
2 into an agreement to divide tips or gratuities among themselves.

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

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

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

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