

1 AN ACT relating to wages.

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.

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

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

- 24 1. Any individual employed in agriculture;  
25 2. Any individual employed in a bona fide executive, administrative,  
26 supervisory, or professional capacity, or in the capacity of outside  
27 salesperson~~[salesman]~~, or as an outside collector as the terms are

- 1 defined by administrative regulations of the commissioner;
- 2 3. Any individual employed by the United States;
- 3 4. Any individual employed in domestic service in or about a private
- 4 home. The provisions of this section shall include individuals employed
- 5 in domestic service in or about the home of an employer where there is
- 6 more than one (1) domestic servant regularly employed;
- 7 5. ~~Any individual classified and given a certificate by the commissioner~~
- 8 ~~showing a status of learner, apprentice, worker with a disability,~~
- 9 ~~sheltered workshop employee, and student under administrative~~
- 10 ~~procedures and administrative regulations prescribed and promulgated~~
- 11 ~~by the commissioner. This certificate shall authorize employment at the~~
- 12 ~~wages, less than the established fixed minimum fair wage rates, and for~~
- 13 ~~the period of time fixed by the commissioner and stated in the certificate~~
- 14 ~~issued to the person;~~
- 15 6. ~~Employees of retail stores, service industries, hotels, motels, and~~
- 16 ~~restaurant operations whose average annual gross volume of sales made~~
- 17 ~~for business done is less than ninety-five thousand dollars (\$95,000) for~~
- 18 ~~the five (5) preceding years exclusive of excise taxes at the retail level~~
- 19 ~~or if the employee is the parent, spouse, child, or other member of his or~~
- 20 ~~her employer's immediate family;~~
- 21 6~~7~~. Any individual employed as a baby-sitter in an employer's home, or an
- 22 individual employed as a companion by a sick, convalescing, or elderly
- 23 person or by the person's immediate family, to care for that sick,
- 24 convalescing, or elderly person and whose principal duties do not
- 25 include housekeeping;
- 26 7~~8~~. Any individual engaged in the delivery of newspapers to the consumer;
- 27 8~~9~~. Any individual subject to the provisions of KRS Chapters 7, 16, 27A,

1           30A, and 18A provided that the secretary of the Personnel Cabinet shall  
2           have the authority to prescribe by administrative regulation those  
3           emergency employees, or others, who shall receive overtime pay rates  
4           necessary for the efficient operation of government and the protection of  
5           affected employees;

6           9~~[10]~~. Any employee employed by an establishment which is an  
7           organized nonprofit camp, religious, or nonprofit educational conference  
8           center, if it does not operate for more than two hundred ten (210) days in  
9           any calendar year;

10          10~~[11]~~. Any employee whose function is to provide twenty-four (24) hour  
11          residential care on the employer's premises in a parental role to children  
12          who are primarily dependent, neglected, and abused and who are in the  
13          care of private, nonprofit childcaring facilities licensed by the Cabinet  
14          for Health and Family Services under KRS 199.640 to 199.670;

15          11~~[12]~~. Any individual whose function is to provide twenty-four (24) hour  
16          residential care in his or her own home as a family caregiver, family  
17          home provider, or adult foster care provider and who is approved to  
18          provide family caregiver services to an adult with a disability through a  
19          contractual relationship with a community board for mental health or  
20          individuals with an intellectual disability established under KRS  
21          210.370 to 210.460 or through a contractual relationship with a certified  
22          waiver provider as defined in 907 KAR 7:005 sec. 1(5), or is certified or  
23          licensed by the Cabinet for Health and Family Services to provide adult  
24          foster care;

25          12~~[13]~~. A direct seller as defined in Section 3508(b)(2) of the Internal  
26          Revenue Code of 1986; or

27          13~~[14]~~. Any individual whose function is to provide behavior support

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

7 (b) "Agriculture" means farming in all its branches, including cultivation and  
 8 tillage of the soil; dairying; production, cultivation, growing, and harvesting  
 9 of 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; and

20 (f) "Worker with a disability" means an individual whose earning or  
 21 productive capacity is impaired by age, physical or mental deficiency, or  
 22 injury for the work he or she performs.

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

24 (1) (a) Except as may otherwise be provided by this chapter, every employer shall  
 25 pay to each of his or her employees wages at a rate of not less than five  
 26 dollars and eighty-five cents (\$5.85) an hour beginning on June 26, 2007, not  
 27 less than six dollars and fifty-five cents (\$6.55) an hour beginning July 1,

1           2008, and not less than seven dollars and twenty-five cents (\$7.25) an hour  
2           beginning July 1, 2009.

3           **(b) Every employer shall pay to each of his or her workers with a disability,**  
4           **wages at a rate of not less than seventy-five percent (75%) of the state**  
5           **minimum wage beginning July 1, 2026, not less than eighty percent (80%)**  
6           **of the state minimum wage beginning July 1, 2027, and not less than one**  
7           **hundred percent (100%) of the state minimum wage beginning July 1, 2028.**  
8           **Beginning July 1, 2028, an employer who is authorized to employ workers**  
9           **with a disability at a rate less than the federal minimum wage pursuant to**  
10           **29 U.S.C. sec. 214(c) shall not employ workers with a disability at a rate**  
11           **lower than the municipality, county, or state minimum wage or the**  
12           **prevailing wage as defined in 29 C.F.R. sec. 1.2.**

13           **(c)** If the federal minimum hourly wage as prescribed by 29 U.S.C. sec. 206(a)(1)  
14           is increased in excess of the minimum hourly wage in effect under this  
15           subsection, the minimum hourly wage under this subsection shall be increased  
16           to the same amount, effective on the same date as the federal minimum hourly  
17           wage rate. If the state minimum hourly wage is increased to the federal  
18           minimum hourly wage, it shall include only the federal minimum hourly rate  
19           prescribed in 29 U.S.C. sec. 206(a)(1) and shall not include other wage rates  
20           or conditions, exclusions, or exceptions to the federal minimum hourly wage  
21           rate. In addition, the increase to the federal minimum hourly wage rate does  
22           not extend or modify the scope or coverage of the minimum wage rate  
23           required under this chapter.

24           (2) Notwithstanding the provisions of subsection (1) of this section, for any employee  
25           engaged in an occupation in which he **or she** customarily and regularly receives  
26           more than thirty dollars (\$30) per month in tips from patrons or others, the  
27           employer may pay as a minimum not less than the hourly wage rate required to be

1        paid a tipped employee under the federal minimum hourly wage law as prescribed  
 2        by 29 U.S.C. sec. 203. The employer shall establish by his or her records that for  
 3        each week where credit is taken, when adding tips received to wages paid, not less  
 4        than the minimum rate prescribed in 29 U.S.C. sec. 203 was received by the  
 5        employee. No employer shall use all or part of any tips or gratuities received by  
 6        employees toward the payment of the statutory minimum hourly wage as required  
 7        by 29 U.S.C. sec. 203. Nothing, however, shall prevent employees from entering  
 8        into an agreement to divide tips or gratuities among themselves.

9        ➔Section 3. KRS 337.295 is amended to read as follows:

10        Administrative regulations issued by the commissioner under KRS 337.275 to 337.325,  
 11        337.345, and 337.385 to 337.405 may include~~[,]~~ but are not limited to~~[,]~~ regulations  
 12        defining and governing bona fide executive, administrative, or professional employees;  
 13        ~~[regulations governing learners, apprentices, workers with disabilities, sheltered~~  
 14        ~~workshop employees, and students,]~~ regulations governing outside  
 15        salesperson~~[salesmen]~~; bonuses; part-time rates; special pay for special or extra work;  
 16        allowances as part of the wage rates applicable under KRS 337.275 for board, lodging,  
 17        and gratuities; other facilities or services furnished by employers and used by employees;  
 18        and other special items usual in a particular employer-employee relationship.

19        ➔Section 4. KRS 205.5605 is amended to read as follows:

20        As used in KRS 205.5605 to 205.5607, unless the context otherwise requires:

- 21        (1) "Budget allowance" means the amount of money made available each month to a  
 22        consumer to purchase covered services and supports. The amount of money shall  
 23        not exceed the amount that would have been allocated in the traditional Medicaid  
 24        program for nonresidential and nonmedical services for the consumer;
- 25        (2) "Consumer" means a person who has chosen to participate in the program, has met  
 26        the enrollment requirements, has a person-centered plan, and has received an  
 27        approved budget allowance;

- 1 (3) "Covered services and supports" means:
  - 2 (a) Those services and supports that are eligible for reimbursement under the
  - 3 program and that are approved for the consumer following a functional needs
  - 4 assessment and pursuant to a person-centered plan; and
  - 5 (b) *Beginning July 1, 2028, does not include services and supports utilized to*
  - 6 *refer a consumer to or secure new employment for a consumer in a*
  - 7 *sheltered workshop where consumers are paid less than minimum wage;*
- 8 (4) "Fiscal intermediary" means an entity that is approved by the cabinet to provide
- 9 service that helps the consumer manage his or her budget allowance, retains the
- 10 funds, processes any employment and tax information, reviews records to ensure
- 11 correctness, writes paychecks to providers, and delivers paychecks or electronically
- 12 transfers funds to the consumer for distribution to providers or caregivers;
- 13 (5) "Provider" means:
  - 14 (a) A person or agency licensed or otherwise permitted to render services eligible
  - 15 for reimbursement under this program for whom the consumer is not the
  - 16 employer of record; or
  - 17 (b) A consumer-employed caregiver that renders services eligible for
  - 18 reimbursement under this program for whom the consumer is the employer of
  - 19 record;
- 20 (6) "Representative" means an uncompensated individual designated by the consumer
- 21 to assist in managing the consumer's budget allowance and needed services; and
- 22 (7) "Service advisor" means the person who provides technical assistance to a
- 23 consumer in meeting responsibilities under KRS 205.5605 to 205.5607.

24 ➔Section 5. KRS 154.22-040 is amended to read as follows:

- 25 (1) Each year~~[-]~~ the authority shall, under its Rural Economic Development Assistance
- 26 Program, on the basis of the final unemployment figures calculated by the
- 27 Department of Workforce Development in the Education and Labor Cabinet,



1 determine which counties have had a countywide rate of unemployment exceeding  
2 the statewide unemployment rate of the Commonwealth in the most recent five (5)  
3 consecutive calendar years, or which have had an average countywide rate of  
4 unemployment exceeding the statewide unemployment rate of the Commonwealth  
5 by two hundred percent (200%) in the most recent calendar year, and shall certify  
6 those counties as qualified counties. A county not certified on the basis of final  
7 unemployment figures may also be certified as a qualified county if the authority  
8 determines the county is one (1) of the sixty (60) most distressed counties in the  
9 Commonwealth based on the following criteria with equal weight given to each  
10 criterion:

- 11 (a) The average countywide rate of unemployment in the most recent three (3)  
12 consecutive calendar years, on the basis of final unemployment figures  
13 calculated by the Department of Workforce Development in the Education  
14 and Labor Cabinet;
- 15 (b) In each county the percentage of adults twenty-five (25) years of age and  
16 older who have attained at least a high school education or equivalent, on the  
17 basis of the most recent data available from the United States Department of  
18 Commerce, Bureau of the Census; and
- 19 (c) Road quality, as quantified by the access within a county to roads ranked in  
20 descending order from best quality to worst quality as follows: two (2) or  
21 more interstate highways, one (1) interstate highway, a state four (4) lane  
22 parkway, four (4) lane principal arterial access to an interstate highway, state  
23 two (2) lane parkway and none of the preceding road types, as certified by the  
24 Kentucky Transportation Cabinet to the authority.

25 If the authority determines that a county which has previously been certified as a  
26 qualified county no longer meets the criteria of this subsection, the authority shall  
27 decertify that county. The authority shall not provide inducements for any facilities

1 in that county and an approved company shall not be eligible for the inducements  
2 offered by KRS 154.22-010 to 154.22-070 unless the tax incentive agreements  
3 required herein are entered into by all parties prior to July 1 of the year following  
4 the calendar year in which the authority decertified that county. In addition, the  
5 authority shall certify coal-producing counties, not otherwise certified as qualified  
6 counties in this subsection, for economic development projects involving the new  
7 construction of electric generation facilities. A coal-producing county shall mean a  
8 county in the Commonwealth of Kentucky that has produced coal upon which the  
9 tax imposed under KRS 143.020 was paid at any time. For economic development  
10 projects undertaken in a regional industrial park, as defined in KRS 42.4588, or in  
11 an industrial park created pursuant to an interlocal agreement in which revenues are  
12 shared as provided in KRS 65.210 to 65.300, where the physical boundaries of the  
13 industrial park lie within two (2) or more counties of which at least one (1) of the  
14 counties is a qualified county under this section, an eligible company undertaking  
15 an economic development project within the physical boundaries of the industrial  
16 park may be approved for the inducements under KRS 154.22-010 to 154.22-080.

17 (2) The authority shall establish the procedures and standards for the determination and  
18 approval of eligible companies and their economic development projects by the  
19 promulgation of administrative regulations in accordance with KRS Chapter 13A.  
20 The criteria for approval of eligible companies and economic development projects  
21 shall include but not be limited to the creditworthiness of eligible companies; the  
22 number of new jobs to be provided by an economic development project to  
23 residents of the Commonwealth; and the likelihood of the economic success of the  
24 economic development project.

25 (3) The economic development project shall involve a minimum investment of one  
26 hundred thousand dollars (\$100,000) by the eligible company and shall result in the  
27 creation by the eligible company, within two (2) years from the date of the final

1 approval authorizing the economic development project, of a minimum of fifteen  
2 (15) new full-time jobs at the site of the economic development project for  
3 Kentucky residents to be employed by the eligible company and to be held by  
4 persons subject to the personal income tax of the Commonwealth. The authority  
5 may extend this two (2) year period upon the written application of an eligible  
6 company requesting an extension.

- 7 (4) (a) Within six (6) months after the activation date, the approved company shall  
8 compensate a minimum of ninety percent (90%) of its full-time employees  
9 whose jobs were created with base hourly wages equal to either:
- 10 1. Seventy-five percent (75%) of the average hourly wage for the  
11 Commonwealth; or
  - 12 2. Seventy-five percent (75%) of the average hourly wage for the county in  
13 which the project is to be undertaken.
- 14 (b) If the base hourly wage calculated in paragraph (a)1. or 2. of this subsection is  
15 less than one hundred fifty percent (150%) of the federal minimum wage, then  
16 the base hourly wage shall be one hundred fifty percent (150%) of the federal  
17 minimum wage. However, for projects receiving preliminary approval of the  
18 authority prior to July 1, 2008, the base hourly wage shall be one hundred  
19 fifty percent (150%) of the federal minimum wage existing on January 1,  
20 2007. In addition to the applicable base hourly wage calculated above, the  
21 eligible company shall provide employee benefits equal to at least fifteen  
22 percent (15%) of the applicable base hourly wage; however, if the eligible  
23 company does not provide employee benefits equal to at least fifteen percent  
24 (15%) of the applicable base hourly wage, the eligible company may qualify  
25 under this section if it provides the employees hired by the eligible company  
26 as a result of the economic development project total hourly compensation  
27 equal to or greater than one hundred fifteen percent (115%) of the applicable

1 base hourly wage through increased hourly wages combined with employee  
2 benefits.

3 (c) The requirements of this subsection shall not apply to eligible companies  
4 which are nonprofit corporations established under KRS 273.163 to 273.387[  
5 ~~and whose employees are handicapped and sheltered workshop workers~~  
6 ~~employed at less than the established minimum wage as authorized by KRS~~  
7 ~~337.295].~~

8 For an eligible company, within a regional industrial park which lies within two (2)  
9 or more counties, the calculation of the wage and benefit requirement shall be  
10 determined by averaging the average county hourly wage for all counties within the  
11 regional industrial park.

12 (5) No economic development project which will result in the replacement of  
13 agribusiness, manufacturing, or electric generation facilities existing in the state  
14 shall be approved by the authority; however, the authority may approve an  
15 economic development project that:

16 (a) Rehabilitates an agribusiness, manufacturing, or electric generation facility:

17 1. Which has not been in operation for a period of ninety (90) or more  
18 consecutive days;

19 2. For which the current occupant of the facility has published a notice of  
20 closure so long as the eligible company intending to acquire the facility  
21 is not an affiliate of the current occupant; or

22 3. The title to which is vested in other than the eligible company or an  
23 affiliate of the eligible company and that is sold or transferred pursuant  
24 to a foreclosure ordered by a court of competent jurisdiction or an order  
25 of a bankruptcy court of competent jurisdiction;

26 (b) Replaces an agribusiness, manufacturing, or electric generation facility  
27 existing in the Commonwealth:

- 1           1.    The title to which shall have been taken under the exercise of the power  
2                   of eminent domain, or the title to which shall be the subject of a  
3                   nonappealable judgment granting the authority to exercise the power of  
4                   eminent domain, in either event to the extent that normal operations  
5                   cannot be resumed at the facility within twelve (12) months; or
- 6           2.    Which has been damaged or destroyed by fire or other casualty to the  
7                   extent that normal operations cannot be resumed at the facility within  
8                   twelve (12) months; or
- 9           (c)   Replaces an existing agribusiness, manufacturing, or electric generation  
10                   facility located in the same qualified county, and the existing agribusiness,  
11                   manufacturing, or electric generation facility to be replaced cannot be  
12                   expanded due to the unavailability of real estate at or adjacent to the  
13                   agribusiness, manufacturing, or electric generation facility to be replaced. Any  
14                   economic development project satisfying the requirements of this subsection  
15                   shall only be eligible for inducements to the extent of the expansion, and no  
16                   inducements shall be available for the equivalent of the agribusiness,  
17                   manufacturing, or electric generation facility to be replaced. No economic  
18                   development project otherwise satisfying the requirements of this subsection  
19                   shall be approved by the authority which results in a lease abandonment or  
20                   lease termination by the approved company without the consent of the lessor.
- 21   (6)   With respect to each eligible company making an application to the authority for  
22                   inducements, and with respect to the economic development project described in  
23                   the application, the authority shall request materials and make inquiries of the  
24                   applicant as necessary or appropriate. Upon review of the application and  
25                   completion of initial inquiries, the authority may, by resolution, give its preliminary  
26                   approval by designating an eligible company as a preliminarily approved company  
27                   and authorizing the undertaking of the economic development project. After

1 preliminary approval, the authority may by final approval designate an eligible  
2 company to be an approved company.

3 ➔Section 6. Sections 1 to 5 of this Act may be cited as the Employees with  
4 Disabilities Equal Pay Act.