

1 AN ACT relating to wage transparency.

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

8 ~~(d)~~~~(e)~~ "Employee" is any person employed by or suffered or permitted to work
9 for 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 (e) "Job posting" means any advertisement for employment, whether printed or
21 electronic, that:

- 22 1. Is made by an employer for the purpose of attracting applications for
23 employment from potential employees; and
- 24 2. Describes the position the employer seeks to fill;

25 (f) 1. "Wages" includes any compensation due to an employee by reason of
26 his or her employment, including salaries, commissions, vested
27 vacation pay, overtime pay, severance or dismissal pay, earned

1 bonuses, and any other similar advantages agreed upon by the
2 employer and the employee or provided to employees as an established
3 policy. The wages shall be payable in legal tender of the United States,
4 checks on banks, direct deposits, or payroll card accounts convertible
5 into cash on demand at full face value, subject to the allowances made
6 in this chapter. However, an employee may not be charged an
7 activation fee and the payroll card account shall provide the employee
8 with the ability, without charge, to make at least one (1) withdrawal
9 per pay period for any amount up to and including the full account
10 balance.

11 2. For the purposes of calculating hourly wage rates for scheduled
12 overtime for professional firefighters, as defined in KRS 95A.210,
13 "wages" shall not include the distribution to qualified professional
14 firefighters by local governments of supplements received from the
15 Firefighters Foundation Program Fund. For the purposes of
16 calculating hourly wage rates for unscheduled overtime for
17 professional firefighters, as defined in KRS 95A.210, "wages" shall
18 include the distribution to qualified professional firefighters by local
19 governments of supplements received from the Firefighters
20 Foundation Program Fund; and

21 (g) "Wage range" means the range of wages an employer anticipates relying
22 on when setting wages for a position, and may include:

- 23 1. Reference to any applicable pay scale;
24 2. Previously determined range of wages for the position;
25 3. Actual range of wages for those employees currently holding
26 comparable positions; or
27 4. The employer's budgeted amount for that position.

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

(a) "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;

(b)~~(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

1 the period of time fixed by the commissioner and stated in the certificate
2 issued to the person;

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

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

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

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

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

25 11. Any employee whose function is to provide twenty-four (24) hour
26 residential care on the employer's premises in a parental role to children
27 who are primarily dependent, neglected, and abused and who are in the

- 1 care of private, nonprofit childcaring facilities licensed by the Cabinet
2 for Health and Family Services under KRS 199.640 to 199.670;
- 3 12. Any individual whose function is to provide twenty-four (24) hour
4 residential care in his or her own home as a family caregiver, family
5 home provider, or adult foster care provider and who is approved to
6 provide family caregiver services to an adult with a disability through a
7 contractual relationship with a community board for mental health or
8 individuals with an intellectual disability established under KRS
9 210.370 to 210.460 or through a contractual relationship with a certified
10 waiver provider as defined in 907 KAR 7:005 sec. 1(5), or is certified or
11 licensed by the Cabinet for Health and Family Services to provide adult
12 foster care;
- 13 13. A direct seller as defined in Section 3508(b)(2) of the Internal Revenue
14 Code of 1986;
- 15 14. Any individual whose function is to provide behavior support services,
16 behavior programming services, case management services, community
17 living support services, positive behavior support services, or respite
18 services through a contractual relationship with a certified waiver
19 provider, as defined in 907 KAR 7:005 sec. 1(5), pursuant to a 1915(c)
20 home and community based services waiver program, as defined in 907
21 KAR 7:005 sec. 1(2); or
- 22 15. Any individual employed to play baseball who is compensated pursuant
23 to the terms of a contract and a collective bargaining agreement that
24 expressly provides for wages and working conditions;
- 25 ~~[(b) "Agriculture" means farming in all its branches, including cultivation and~~
26 ~~tillage of the soil; dairying; production, cultivation, growing, and harvesting~~
27 ~~of any agricultural or horticultural commodity; raising of livestock, bees,~~

~~fur-bearing 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 month in tips; and

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

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 337 IS CREATED TO READ AS FOLLOWS:

In every job posting, the employer responsible for the job posting shall disclose the wages or wage range, as well as a general description of all benefits or other compensation associated with the position described in the job posting.

➔Section 3. KRS 95A.250 is amended to read as follows:

(1) (a) An eligible local government shall be entitled to receive an annual supplement of three thousand dollars (\$3,000) and, beginning July 1, 2018, an annual supplement of four thousand dollars (\$4,000) for each qualified professional firefighter it employs, plus an amount equal to the required employer's contribution on the supplement to the defined benefit pension plan, or to a plan qualified under Section 401(a) or Section 457 of the Internal Revenue Code of 1954 as amended.

(b) The employer's contribution to any of these plans on the supplement shall not exceed the required employer's contribution to the County Employees Retirement System pursuant to KRS Chapter 78 for the hazardous duty category. The pension contribution on the supplement shall be paid whether

1 the professional firefighter entered the system under hazardous duty coverage
2 or nonhazardous coverage.

3 (c) The local unit of government shall pay the amount received for retirement
4 coverage to the appropriate retirement system to cover the required employer
5 contribution on the supplement.

6 (d) Should the foundation program funds be insufficient to pay employer
7 contributions to the system, then the total amount available for pension
8 payments shall be prorated to each eligible government so that each receives
9 the same percentage of required pension costs attributable to the supplement.

10 (e) 1. In addition to the payments received under paragraphs (a) and (b) of this
11 subsection, but only if sufficient funds are available to fully reimburse
12 each eligible local government for the employer contributions to the
13 pension system, each local government shall receive an administrative
14 expense reimbursement in an amount equal to seven and sixty-five one-
15 hundredths percent (7.65%) of the total annual supplement received
16 greater than three thousand one hundred dollars (\$3,100) for each
17 qualified professional firefighter it employs, subject to the cap
18 established by subparagraph 3. of this paragraph.

19 2. The local government may use the moneys received under this
20 paragraph in any manner it deems necessary to partially cover the costs
21 of administering the payments received under paragraph (a) of this
22 subsection.

23 3. The total amount distributed under this paragraph shall not exceed the
24 total sum of two hundred fifty thousand dollars (\$250,000) for each
25 fiscal year. If there are insufficient funds to provide for full
26 reimbursement as provided in subparagraph 1. of this paragraph, then
27 the amount shall be distributed pro rata to each eligible local

1 government so that each receives the same percentage attributable to its
2 total receipt of the cash salary supplement.

3 (2) (a) Each qualified professional firefighter, whose local government receives a
4 supplement pursuant to subsection (1)(a) of this section due to employment of
5 the firefighter, shall receive distribution of the supplement from that local
6 government in twelve (12) equal monthly installments with his or her pay for
7 the last pay period of each month. The monthly distribution shall be
8 calculated by dividing the supplement amount established in subsection (1)(a)
9 of this section by twelve (12).

10 (b) The supplement disbursed to a qualified professional firefighter pursuant to
11 this section shall not be considered "wages" as defined by KRS
12 337.010(1)(~~f~~)(e)1. and shall not be included in the hourly wage rate for
13 calculation of overtime pursuant to KRS 337.285 for scheduled overtime. The
14 supplement shall be included in the hourly wage rates for calculation of
15 overtime for unscheduled overtime pursuant to KRS 337.285.

16 (c) To determine the addition to the hourly wage rate for calculation of overtime
17 on unscheduled overtime, the annual supplement shall be divided by two
18 thousand eighty (2,080). The overtime rate for unscheduled overtime shall be
19 calculated by adding the quotient, which is the amount of the annual
20 supplement divided by two thousand eighty (2,080), to the hourly wage rate
21 and multiplying the total by one and one-half (1.5). The enhanced overtime
22 rate shall be paid only for unscheduled overtime. Scheduled overtime shall be
23 paid at one and one-half (1.5) times the regular hourly wage rate, excluding
24 the supplement.

25 (3) (a) The Kentucky Community and Technical College System shall be entitled to
26 receive annually a supplement equal to the amount determined in subsection
27 (1) of this section for each Kentucky fire and rescue training coordinator

1 employed by the Kentucky Community and Technical College System who
2 meets the qualifications for individual firefighters required in KRS 95A.230,
3 plus an amount equal to the required employer's contribution on the
4 supplement to the defined benefit pension plan.

5 (b) The Department of Military Affairs shall be entitled to receive annually a
6 supplement equal to the amount determined in subsection (1) of this section
7 for each civilian firefighter employed by the Department of Military Affairs
8 who meets the qualifications for individual firefighters required in KRS
9 95A.230, plus an amount equal to the required employer's contribution on the
10 supplement to the defined benefit pension plan.

11 (c) Each fire and rescue training coordinator employed by the Kentucky
12 Community and Technical College System and each civilian firefighter
13 employed by the Department of Military Affairs, whose employer receives a
14 supplement pursuant to this subsection, shall receive distribution from that
15 employer of the supplement which his or her qualifications brought to the
16 employer. The supplement distributed shall be in addition to his or her regular
17 salary.

18 ➔Section 4. KRS 337.020 is amended to read as follows:

19 Every employer doing business in this state shall, as often as semimonthly, pay to each of
20 its employees all wages or salary earned to a day not more than eighteen (18) days prior
21 to the date of that payment. Any employee who is absent at the time fixed for payment, or
22 who, for any other reason, is not paid at that time, shall be paid thereafter at any time
23 upon six (6) days' demand. No employer subject to this section shall, by any means,
24 secure exemption from it. Every such employee shall have a right of action against any
25 such employer for the full amount of his or her wages due on each regular pay day. The
26 provisions of this section do not apply to those individuals defined in KRS
27 337.010(2)(b)~~(a)~~2.