

1       AN ACT relating to employment schedules.

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

3           ➔ SECTION 1. A NEW SECTION OF KRS CHAPTER 337 IS CREATED TO  
4       READ AS FOLLOWS:

5       *As used in Sections 1 to 8 of this Act, unless the context requires otherwise:*

6       *(1) "Employee" means any person employed by or suffered or permitted to work for  
7           an employer, but does not include:*

8           *(a) Any individual employed in agriculture;*

9           *(b) Any individual employed in a bona fide executive, administrative,  
10           supervisory, or professional capacity, or in the capacity of outside salesman,  
11           or as an outside collector as the terms are defined by administrative  
12           regulations of the commissioner;*

13           *(c) Any individual employed by the United States;*

14           *(d) Any individual employed in domestic service in or about a private home,  
15           including individuals employed in domestic service in or about the home of  
16           an employer where there is more than one (1) domestic servant regularly  
17           employed;*

18           *(e) Any individual classified and given a certificate by the commissioner that:*

19           *1. Shows a status of learner, apprentice, worker with a disability,  
20           sheltered workshop employee, or student under administrative  
21           procedures and administrative regulations prescribed and  
22           promulgated by the commissioner; and*

23           *2. Authorizes employment at the wages, less than the established fixed  
24           minimum fair wage rates, and for the period of time fixed by the  
25           commissioner and stated in the certificate issued to the person;*

26           *(f) Employees of retail stores, service industries, hotels, motels, and restaurant  
27           operations whose average annual gross volume of sales made for business*

1           done is less than ninety-five thousand dollars (\$95,000) for the five (5)  
2           preceding years exclusive of excise taxes at the retail level, or if the  
3           employee is the parent, spouse, child, or other member of his or her  
4           employer's immediate family;

5           (g) Any individual employed as a babysitter in an employer's home, or an  
6           individual employed as a companion by a sick, convalescing, or elderly  
7           person or by the person's immediate family, to care for that sick,  
8           convalescing, or elderly person and whose principal duties do not include  
9           housekeeping;

10           (h) Any individual engaged in the delivery of newspapers to the consumer;

11           (i) Any individual subject to KRS Chapter 7, 16, 18A, 27A, or 30A, provided  
12           that the secretary of the Personnel Cabinet shall have the authority to  
13           prescribe by administrative regulation those emergency employees, or  
14           others, who shall receive overtime pay rates necessary for the efficient  
15           operation of government and the protection of affected employees;

16           (j) Any employee employed by an establishment which is an organized  
17           nonprofit camp or religious or nonprofit educational conference center, if it  
18           does not operate for more than two hundred ten (210) days in any calendar  
19           year;

20           (k) Any employee whose function is to provide twenty-four (24) hour residential  
21           care on the employer's premises in a parental role to children who are  
22           primarily dependent, neglected, and abused and who are in the care of  
23           private, nonprofit child-caring facilities licensed by the Cabinet for Health  
24           and Family Services under KRS 199.640 to 199.680; or

25           (l) Any individual whose function is to provide twenty-four (24) hour  
26           residential care in his or her own home as a family caregiver and who is  
27           approved to provide family caregiver services to an adult with a disability

1                   through a contractual relationship with a community board for mental  
2                   health or individuals with an intellectual disability established under KRS  
3                   210.370 to 210.480, or is certified or licensed by the Cabinet for Health and  
4                   Family Services to provide adult foster care;

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

9                   (3) "On-call shift" means any time that an employer requires an employee to be  
10                   available to work or to contact the employer or wait to be contacted by the  
11                   employer for the purpose of determining whether the employee must report to  
12                   work. During the shift, on-call status applies regardless of whether the employee  
13                   is located on or off the employer's premises;

14                   (4) "Roadside assistance" means off-site repair assistance rendered to a motorist  
15                   with a disabled vehicle;

16                   (5) "Ticketed event" means sporting, entertainment, civic, charitable, or other event  
17                   that requires a ticket for admission. The ticket may be electronic, physical, or a  
18                   name on a list held by the event organizer;

19                   (6) "Time of hire" means the period after an offer of employment and acceptance of  
20                   the offer of employment and on or before the commencement of employment;

21                   (7) "Work schedule" means the hours, days, and times during a workweek,  
22                   including regular work shifts and on-call shifts, when an employee is required by  
23                   an employer to perform duties of employment for which the employee will receive  
24                   compensation;

25                   (8) "Work shift" means the specific and consecutive hours the employer requires the  
26                   employee to work;

27                   (9) "Workweek" means a fixed period of time established by an employer that

1       reflects a regularly recurring period of one hundred sixty-eight (168) hours or  
2       seven (7) consecutive twenty-four (24) hour periods. A workweek may begin on  
3       any day of the week and any hour of the day and need not coincide with a  
4       calendar week. The beginning of a workweek may be changed if the change is  
5       intended to be permanent; and

6       (10) "Writing" or "written" means a printed or printable communication in physical  
7       or electronic format, including a communication that is transmitted through  
8       electronic mail, text message, or a computer system or is otherwise sent and  
9       stored electronically.

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

12      (1) An employer shall provide a new employee with a written good-faith estimate of  
13       the employee's work schedule at the time of hire.

14      (2) The good-faith estimate shall include the following:

15       (a) The average number of hours the employee can expect to work in an  
16       average one (1) month period;

17       (b) A detailed explanation of the voluntary standby list described in Section 3 of  
18       this Act;

19       (c) A verification of whether an employee who is not on the voluntary standby  
20       list can expect to work on-call shifts and, if so, setting forth an objective  
21       standard for when an employee not listed on the voluntary standby list may  
22       be expected to be available to work on-call shifts; and

23       (d) Whether the schedule is based on a prior year schedule that is a good-faith  
24       estimate of seasonal or episodic work.

25      (3) The employer shall provide the good-faith estimate in the language that the  
26       employer typically uses to communicate with the employee.

27      ➔ SECTION 3. A NEW SECTION OF KRS CHAPTER 337 IS CREATED TO

1 READ AS FOLLOWS:

2 (1) An employer shall maintain a standby list of employees whom the employer will  
3 request to work additional hours to address unanticipated customer needs or  
4 unexpected employee absences if the listed employees have requested or agreed in  
5 writing to be included on the standby list and the employer notifies each employee  
6 in writing:

7 (a) That the list is voluntary and how an employee may request to be removed  
8 from the list;

9 (b) How the employer will notify a standby list employee of additional hours  
10 available and how an employee may accept the additional hours; and

11 (c) That the employee is not required to accept the additional hours offered.

12 (2) An employer shall provide an employee on the standby list with notice of  
13 additional hours available by in-person conversation, telephone call, electronic  
14 mail, text message, or other accessible electronic or written format.

15 (3) An employee who receives notice of additional hours available under this section  
16 may decline to accept the additional hours offered.

17 (4) An employee may request to be removed from the standby list at any time.

18 (5) An employer may not retaliate against an employee who:

19 (a) Does not request or agree to be added to the standby list;

20 (b) Requests to be removed from the standby list; or

21 (c) Declines an employer's request that the employee work additional hours as  
22 a result of the employee being on the standby list.

23 (6) The standby list is not a list of employees scheduled for on-call shifts, and the  
24 employer is not required to include a list of employees on the standby list in the  
25 written work schedule.

26 ➔ SECTION 4. A NEW SECTION OF KRS CHAPTER 337 IS CREATED TO

27 READ AS FOLLOWS:

- 1    (1) An employer shall provide an employee with a work schedule in writing at least
- 2    seven (7) calendar days before the first day of the work schedule.
- 3    (2) The employer shall post the written work schedule in a conspicuous and
- 4    accessible location, in English and in the language the employer typically uses to
- 5    communicate with the employees if the employer typically uses a language other
- 6    than English to communicate with the employees.
- 7    (3) The employer shall provide a written work schedule that runs through the last
- 8    date of the posted work schedule in effect at the time of delivery to:
- 9       (a) A new employee on or before the employee's first day of work; or
- 10       (b) An existing employee on the employee's first day of work after a leave of
- 11       absence.
- 12    (4) The written work schedule shall include all work shifts and on-call shifts for the
- 13    work period.
- 14    (5) If the employer requests changes to the written work schedule after the advance
- 15    notice required in this section:
- 16       (a) The employer shall provide the employee with timely notice of the change by
- 17       in-person conversation, telephone call, electronic mail, text message, or
- 18       other accessible electronic or written format; and
- 19       (b) The employee may decline any work shifts not included in the employee's
- 20       written work schedule.
- 21    (6) At any time after the advance notice of written work schedule required in this
- 22    section, an employee may request in writing that the employer add the employee
- 23    to one (1) or more work shifts or on-call work shifts. Any changes to the
- 24    employee's written work schedule resulting from such employee-requested work
- 25    schedule changes are not subject to the advance notice requirements of this
- 26    section.

27    ➔ SECTION 5. A NEW SECTION OF KRS CHAPTER 337 IS CREATED TO

1 READ AS FOLLOWS:

2 (1) Unless the employee requests or consents to work such hours, an employer may  
3 not schedule or require an employee to work during the following rest periods:

4 (a) The first ten (10) hours following the end of the previous calendar day's  
5 work shift or on-call shift; or

6 (b) The first ten (10) hours following the end of a work shift or on-call shift  
7 that spanned two (2) calendar days.

8 (2) Except as provided in subsection (3) of this section, an employer shall  
9 compensate an employee for each hour or portion of an hour that the employee  
10 works during a rest period described in subsection (1) of this section at one and  
11 one-half (1-1/2) times the employee's regular rate of pay.

12 (3) Subsection (2) of this section does not apply to any hour or portion of an hour  
13 that an employee works during the rest period described in subsection (1) of this  
14 section during which the employee is engaged in providing roadside assistance  
15 services.

16 ➔ SECTION 6. A NEW SECTION OF KRS CHAPTER 337 IS CREATED TO

17 READ AS FOLLOWS:

18 (1) At the time of hire and during employment, an employee may identify any  
19 limitations or changes in the employee's work schedule availability. The  
20 employee may also request not to be scheduled for work shifts during certain  
21 times or at certain locations.

22 (2) An employer may require the employee to provide reasonable verification of the  
23 need for a request made under subsection (1) of this section.

24 (3) An employer may not retaliate against an employee for making a request under  
25 subsection (1) of this section.

26 (4) An employer is under no obligation to grant an employee's request under  
27 subsection (1) of this section.

1            ➔ SECTION 7. A NEW SECTION OF KRS CHAPTER 337 IS CREATED TO  
2 READ AS FOLLOWS:

3            (1) An employer shall provide the following compensation to an employee for each  
4            employer-requested change that occurs to the employee's written work schedule  
5            without the advance notice required in Section 4 of this Act:

6            (a) One (1) hour of pay at the employee's regular rate of pay, in addition to  
7            wages earned, when the employer:

8            1. Adds more than thirty (30) minutes of work to the employee's work  
9            shift;

10            2. Changes the date or start or end time of the employee's work shift with  
11            no loss of hours; or

12            3. Schedules the employee for an additional work shift or on-call shift;  
13            and

14            (b) One-half (1/2) times the employee's regular rate of pay per hour for each  
15            scheduled hour that the employee does not work when the employer:

16            1. Subtracts hours from the employee's work shift before or after the  
17            employee reports for duty;

18            2. Changes the date or start or end time of the employee's work shift,  
19            resulting in a loss of work shift hours;

20            3. Cancels the employee's work shift; or

21            4. Does not ask the employee to perform work when the employee is  
22            scheduled for an on-call shift.

23            (2) The requirements for additional compensation in subsection (1) of this section  
24            shall not apply when:

25            (a) An employer changes the start or end time of an employee's work shift by  
26            thirty (30) minutes or less;

27            (b) An employee mutually agrees with another employee to employee-initiated

1        work shift swaps or coverage. The employer may require that work shift  
2        swaps or coverage under this paragraph be preapproved by the employer.  
3        The employer may assist employees in finding such arrangements, provided  
4        that any employer assistance shall be limited to helping an employee  
5        identify other employees who may be available to provide work shift swaps  
6        or coverage and may not include the employer arranging the work shift  
7        swap or coverage;

8        (c) An employee requests changes to the employee's written work schedule,  
9        including adding or subtracting hours, and the employee's request is  
10        documented in writing;

11        (d) An employer makes changes to an employee's written work schedule at the  
12        employee's request;

13        (e) An employer subtracts hours from an employee's work schedule for  
14        disciplinary reasons for just cause, provided the employer documents the  
15        incident leading to the employee's discipline in writing;

16        (f) An employee's work shift or on-call shift cannot begin or continue due to  
17        threats to employees or property or due to the recommendation of a public  
18        official;

19        (g) Operations cannot begin or continue because public utilities fail to supply  
20        electricity, water, or gas or there is a failure in the public utilities or sewer  
21        system;

22        (h) Operations cannot begin or continue due to a natural disaster or a similar  
23        cause not within the employer's control, including when the natural disaster  
24        or similar cause physically affects the work site;

25        (i) Operations hours change or are substantially altered because a ticketed  
26        event is canceled, is rescheduled, or changes in duration due to  
27        circumstances that are outside the employer's control and that occur after

1                   *the employer provides the written work schedule; or*  
2                   *(j) An employer requests that an employee on a voluntary standby list work*  
3                   *additional hours as described in Section 3 of this Act, and the employee*  
4                   *consents to work the additional hours.*

5                   ➔ SECTION 8. A NEW SECTION OF KRS CHAPTER 337 IS CREATED TO  
6 READ AS FOLLOWS:

7                   *It is an unlawful practice for an employer to:*

- 8                   *(1) Interfere with, restrain, deny, or attempt to deny the exercise of any right*  
9                   *protected under Sections 1 to 8 of this Act; or*
- 10                   *(2) Retaliate or in any way discriminate against an individual with respect to hire or*  
11                   *tenure or any other term or condition of employment because the individual has*  
12                   *inquired about the provisions of Sections 1 to 8 of this Act.*

13                   ➔ Section 9. KRS 337.990 is amended to read as follows:

14                   The following civil penalties shall be imposed by the Education and Labor Cabinet, in  
15 accordance with the provisions in KRS 336.985, for violations of the provisions of this  
16 chapter:

- 17                   (1) Any firm, individual, partnership, or corporation that violates KRS 337.020 shall be  
18                   assessed a civil penalty of not less than one hundred dollars (\$100) nor more than  
19                   one thousand dollars (\$1,000) for each offense. Each failure to pay an employee the  
20                   wages when due him *or her* under KRS 337.020 shall constitute a separate offense.
- 21                   (2) Any employer who violates KRS 337.050 shall be assessed a civil penalty of not  
22                   less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).
- 23                   (3) Any employer who violates KRS 337.055 shall be assessed a civil penalty of not  
24                   less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000)  
25                   for each offense and shall make full payment to the employee by reason of the  
26                   violation. Each failure to pay an employee the wages as required by KRS 337.055  
27                   shall constitute a separate offense.

- 1       (4) Any employer who violates KRS 337.060 shall be assessed a civil penalty of not  
2       less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000)  
3       and shall also be liable to the affected employee for the amount withheld, plus  
4       interest at the rate of ten percent (10%) per annum.
- 5       (5) Any employer who violates the provisions of KRS 337.065 shall be assessed a civil  
6       penalty of not less than one hundred dollars (\$100) nor more than one thousand  
7       dollars (\$1,000) for each offense and shall make full payment to the employee by  
8       reason of the violation.
- 9       (6) Any person who fails to comply with KRS 337.070 shall be assessed a civil penalty  
10      of not less than one hundred dollars (\$100) nor more than one thousand dollars  
11      (\$1,000) for each offense and each day that the failure continues shall be deemed a  
12      separate offense.
- 13      (7) Any employer who violates any provision of KRS 337.275 to 337.325, KRS  
14      337.345, and KRS 337.385 to 337.405, or willfully hinders or delays the  
15      commissioner or the commissioner's authorized representative in the performance  
16      of his or her duties under KRS 337.295, or fails to keep and preserve any records as  
17      required under KRS 337.320 and 337.325, or falsifies any record, or refuses to  
18      make any record or transcription thereof accessible to the commissioner or the  
19      commissioner's authorized representative shall be assessed a civil penalty of not  
20      less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).  
21      A civil penalty of not less than one thousand dollars (\$1,000) shall be assessed for  
22      any subsequent violation of KRS 337.285(4) to (9) and each day the employer  
23      violates KRS 337.285(4) to (9) shall constitute a separate offense and penalty.
- 24      (8) Any employer who pays or agrees to pay wages at a rate less than the rate  
25      applicable under KRS 337.275 and 337.285, or any wage order issued pursuant  
26      thereto shall be assessed a civil penalty of not less than one hundred dollars (\$100)  
27      nor more than one thousand dollars (\$1,000).

1       (9) Any employer who discharges or in any other manner discriminates against any  
2       employee because the employee has made any complaint to his or her employer, to  
3       the commissioner, or to the commissioner's authorized representative that he or she  
4       has not been paid wages in accordance with KRS 337.275 and 337.285 or  
5       regulations promulgated~~issued~~ thereunder, or because the employee has caused to  
6       be instituted or is about to cause to be instituted any proceeding under or related to  
7       KRS 337.385, or because the employee has testified or is about to testify in any  
8       such proceeding, shall be deemed in violation of KRS 337.275 to 337.325, KRS  
9       337.345, and KRS 337.385 to 337.405 and shall be assessed a civil penalty of not  
10      less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

11      (10) Any employer who violates KRS 337.365 shall be assessed a civil penalty of not  
12      less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

13      (11) A person shall be assessed a civil penalty of not less than one hundred dollars  
14      (\$100) nor more than one thousand dollars (\$1,000) when that person discharges or  
15      in any other manner discriminates against an employee because the employee has:  
16           (a) Made any complaint to his or her employer, the commissioner, or any other  
17           person; or  
18           (b) Instituted, or caused to be instituted, any proceeding under or related to KRS  
19           337.420 to 337.433; or  
20           (c) Testified, or is about to testify, in any such proceedings.

21      (12) Any employer who violates Sections 1 to 8 of this Act shall be assessed a civil  
22      penalty of not less than five hundred dollars (\$500) nor more than two thousand  
23      dollars (\$2,000). Each violation is a separate and distinct offense. In the case of a  
24      continuing violation, each day's continuance is a separate and distinct violation.