

1           AN ACT relating to family care leave.

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 salesman, or as an outside collector as the terms are defined by

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

27                    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;

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

7 15. Any individual employed to play baseball who is compensated pursuant  
8 to the terms of a contract and a collective bargaining agreement that  
9 expressly provides for wages and working conditions;

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

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

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

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

23 **(3) As used in this subsection and Section 2 of this Act, unless the context requires**  
24 **otherwise:**

25 **(a) "Committed relationship" means a relationship between individuals who**  
26 **are currently engaged in a relationship of a romantic or intimate nature,**  
27 **and does not include a casual acquaintanceship or ordinary fraternization**

1        in a business or social context. The following factors may be considered in  
2        addition to any other relevant factors in determining whether the  
3        relationship is of a romantic or intimate nature:

- 4        1. Declarations of romantic interest;
- 5        2. The relationship is characterized by the expectation of affection;
- 6        3. Attendance at social outings together as a couple;
- 7        4. The frequency and type of interaction between the persons, including  
8        whether the persons have been involved together over time and on a  
9        continuous basis;
- 10        5. The length of the relationship; and
- 11        6. Other indications of a substantial connection that would lead a  
12        reasonable person to understand that a committed relationship exists;

13        (b) "Family care leave" means unpaid leave to care for a child or family  
14        member of the employee;

15        (c) "Family member" means a:

- 16        1. Person to whom the employee is related by blood, legal custody, or  
17        marriage;
- 18        2. Child who lives with an employee for whom the employee permanently  
19        assumes and discharges parental responsibility;
- 20        3. Person with whom the employee shares, or has shared within the last  
21        year, a mutual residence and with whom the employee maintains a  
22        committed relationship; or
- 23        4. Foster child;

24        (d) "Health care provider" means any person licensed under federal or state  
25        law to provide health care services;

26        (e) "Same employer" means an office, division, subdivision, or other  
27        organizational section of an employer in which both employees have the

1                   same or interrelated duties and the absence of both employees would unduly  
2                   disrupt the conduct of the employer's business; and

3                   (f) "Serious health condition" means an illness, injury, impairment, or  
4                   physical or mental condition that involves either:

5                   1. Inpatient care in a hospital, hospice, or residential health care facility;  
6                   or

7                   2. Continuing treatment or supervision by a health care provider or other  
8                   competent individual.

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

11                  (1) It shall be an unlawful employment practice for any employer to refuse to grant  
12                  family care leave of up to twelve (12) work weeks in any twelve (12) month period  
13                  by an employee if the employee has more than twelve (12) months of service and  
14                  at least one thousand two hundred fifty (1,250) hours of service with that  
15                  employer during the previous twelve (12) month period. Family care leave  
16                  requested pursuant to this section shall be deemed to have been granted by the  
17                  employer only if it includes a guarantee of employment for the employee in the  
18                  same or a comparable position upon the termination of the leave.

19                  (2) An employee shall be entitled to family care leave described in subsection (1) of  
20                  this section for the:

21                  (a) Birth, adoption, or foster care placement of a child to the employee or to a  
22                  family member and for whom the employee assumes and discharges  
23                  parental responsibility; or

24                  (b) Care of a family member who has a serious health condition.

25                  (3) The entitlement to family care leave under subsection (2)(a) of this section shall  
26                  expire twelve (12) months after the birth, adoption, or foster care placement of  
27                  the child.

1        (4) In the case of a family member who has a serious health condition, family care  
2        leave may be taken intermittently when medically necessary as determined by the  
3        family member's health care provider.

4        (5) Upon agreement between the employer and the employee, family care leave may  
5        be taken on a reduced leave schedule, during which the twelve (12) work weeks of  
6        family care leave may be taken over a period not to exceed twenty-four (24)  
7        consecutive work weeks.

8        (6) This section shall not be construed to require an employer to provide paid family  
9        care leave, but an employer may permit an employee to use paid leave in the  
10        following circumstances:

11        (a) Any paid family, vacation, personal, or compensatory leave provided by an  
12        employer that the employee elects to use for family care leave shall count  
13        against the twelve (12) work weeks of allowable family care leave; and

14        (b) If an employer has a program that allows an employee to use paid leave of  
15        another employee under certain conditions, and the conditions have been  
16        met, the employee may use the paid leave as family care leave and the leave  
17        shall count against the twelve (12) work weeks of family care leave.

18        (7) If two (2) family members are employees of the same employer, the employer  
19        may limit to:

20        (a) Twelve (12) work weeks during a twenty-four (24) month period the  
21        aggregate number of family care leave work weeks to which the family  
22        members are entitled; and

23        (b) Four (4) work weeks during a twenty-four (24) month period the aggregate  
24        number of family care leave work weeks to which the family members are  
25        entitled to take simultaneously.

26        (8) If the necessity for leave under this section is foreseeable based on the birth of a  
27        child to, adoption of a child by, or foster care placement of a child with an

1        employee, the employee shall provide the employer with reasonable prior notice of  
2        the expected birth, adoption, or foster care placement of a child with the  
3        employee.

4        (9) If the necessity for leave under this section is foreseeable based on planned  
5        medical treatment or care, an employee shall:

6        (a) Provide the employer with reasonable prior notice; and  
7        (b) Make a reasonable effort to schedule the care in a manner that does not  
8        unduly disrupt the operations of the employer.

9        (10) Information that an employee gives to an employer regarding a family member's  
10        medical record and a family relationship, pursuant to which the employee seeks  
11        to take family care leave under this section, shall be used only to make a decision  
12        in regard to the provisions of this chapter. An employer shall keep information  
13        regarding the family member's medical record and family relationship  
14        confidential.

15        (11) (a) In the event that family care leave is being requested to care for a family  
16        member under subsection (2)(b) of this section, an employer may require  
17        that the request be supported by a certification issued by the health care  
18        provider of the family member. The employee shall provide a copy of the  
19        certification to the employer.

20        (b) The certification provided by the employee to the employer shall state:  
21        1. The date on which the serious health condition commenced;  
22        2. The probable duration of the condition; and  
23        3. An estimate of the amount of time that the employee is needed to care  
24        for the family member.

25        (12) A person shall not interfere with, restrain, or deny the exercise of or any attempt  
26        to exercise any right provided by this section.

27        (13) An employer shall not retaliate or otherwise discriminate against an employee

1            **enforcing his or her rights under this section.**

2            ➔Section 3. KRS 337.990 is amended to read as follows:

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

6            (1) Any firm, individual, partnership, or corporation that violates KRS 337.020 shall be  
7            assessed a civil penalty of not less than one hundred dollars (\$100) nor more than  
8            one thousand dollars (\$1,000) for each offense. Each failure to pay an employee the  
9            wages when due him under KRS 337.020 shall constitute a separate offense.

10           (2) Any employer who violates KRS 337.050 shall be assessed a civil penalty of not  
11           less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

12           (3) Any employer who violates KRS 337.055 shall be assessed a civil penalty of not  
13           less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000)  
14           for each offense and shall make full payment to the employee by reason of the  
15           violation. Each failure to pay an employee the wages as required by KRS 337.055  
16           shall constitute a separate offense.

17           (4) Any employer who violates KRS 337.060 shall be assessed a civil penalty of not  
18           less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000)  
19           and shall also be liable to the affected employee for the amount withheld, plus  
20           interest at the rate of ten percent (10%) per annum.

21           (5) Any employer who violates the provisions of KRS 337.065 shall be assessed a civil  
22           penalty of not less than one hundred dollars (\$100) nor more than one thousand  
23           dollars (\$1,000) for each offense and shall make full payment to the employee by  
24           reason of the violation.

25           (6) Any person who fails to comply with KRS 337.070 shall be assessed a civil penalty  
26           of not less than one hundred dollars (\$100) nor more than one thousand dollars  
27           (\$1,000) for each offense and each day that the failure continues shall be deemed a

1           separate offense.

2   (7) Any employer who violates any provision of KRS 337.275 to 337.325, KRS  
3        337.345, and KRS 337.385 to 337.405, or willfully hinders or delays the  
4        commissioner or the commissioner's authorized representative in the performance  
5        of his or her duties under KRS 337.295, or fails to keep and preserve any records as  
6        required under KRS 337.320 and 337.325, or falsifies any record, or refuses to  
7        make any record or transcription thereof accessible to the commissioner or the  
8        commissioner's authorized representative shall be assessed a civil penalty of not  
9        less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).  
10       A civil penalty of not less than one thousand dollars (\$1,000) shall be assessed for  
11       any subsequent violation of KRS 337.285(4) to (9) and each day the employer  
12       violates KRS 337.285(4) to (9) shall constitute a separate offense and penalty.

13   (8) Any employer who pays or agrees to pay wages at a rate less than the rate  
14       applicable under KRS 337.275 and 337.285, or any wage order issued pursuant  
15       thereto shall be assessed a civil penalty of not less than one hundred dollars (\$100)  
16       nor more than one thousand dollars (\$1,000).

17   (9) Any employer who discharges or in any other manner discriminates against any  
18       employee because the employee has made any complaint to his or her employer, to  
19       the commissioner, or to the commissioner's authorized representative that he or she  
20       has not been paid wages in accordance with KRS 337.275 and 337.285 or  
21       regulations issued thereunder, or because the employee has caused to be instituted  
22       or is about to cause to be instituted any proceeding under or related to KRS  
23       337.385, or because the employee has testified or is about to testify in any such  
24       proceeding, shall be deemed in violation of KRS 337.275 to 337.325, KRS 337.345,  
25       and KRS 337.385 to 337.405 and shall be assessed a civil penalty of not less than  
26       one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

27   (10) Any employer who violates KRS 337.365 shall be assessed a civil penalty of not

1           less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

2   (11) A person shall be assessed a civil penalty of not less than one hundred dollars

3           (\$100) nor more than one thousand dollars (\$1,000) when that person discharges or

4           in any other manner discriminates against an employee because the employee has:

5           (a) Made any complaint to his or her employer, the commissioner, or any other

6           person; or

7           (b) Instituted, or caused to be instituted, any proceeding under or related to KRS

8           337.420 to 337.433; or

9           (c) Testified, or is about to testify, in any such proceedings.

10   (12) Any person who violates Section 2 of this Act shall be assessed a civil penalty of

11       not less than one hundred dollars (\$100) nor more than one thousand dollars

12       (\$1,000).