

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;

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

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

27 14. Any individual whose function is to provide behavior support services,

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).*