

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 Labor
7 Cabinet;
- 8 (b) "Department" means the Department of Workplace Standards in the Labor
9 Cabinet;
- 10 (c) 1. "Wages" includes any compensation due to an employee by reason of his
11 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 overtime
23 for professional firefighters, as defined in KRS 95A.210(5), "wages"
24 shall not include the distribution to qualified professional firefighters by
25 local governments of supplements received from the Firefighters
26 Foundation Program Fund. For the purposes of calculating hourly wage
27 rates for unscheduled overtime for professional firefighters, as defined in

1 KRS 95A.210(6), "wages" shall include the distribution to qualified
2 professional firefighters by local governments of supplements received
3 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 an
9 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 an
23 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 home.
- 4 The provisions of this section shall include individuals employed in
- 5 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 five hundred thousand dollars
- 18 (\$500,000)~~[ninety-five thousand dollars (\$95,000)]~~ for the five (5)
- 19 preceding years exclusive of excise taxes at the retail level or if the
- 20 employee is the parent, spouse, child, or other member of his or her
- 21 employer's immediate family;
- 22 7. Any individual employed as a baby-sitter in an employer's home, or an
- 23 individual employed as a companion by a sick, convalescing, or elderly
- 24 person or by the person's immediate family, to care for that sick,
- 25 convalescing, or elderly person and whose principal duties do not
- 26 include housekeeping;
- 27 8. Any individual engaged in the delivery of newspapers to the consumer;

- 1 9. Any individual subject to the provisions of KRS Chapters 7, 16, 27A,
2 30A, and 18A provided that the secretary of the Personnel Cabinet shall
3 have the authority to prescribe by administrative regulation those
4 emergency employees, or others, who shall receive overtime pay rates
5 necessary for the efficient operation of government and the protection of
6 affected employees;
- 7 10. Any employee employed by an establishment which is an organized
8 nonprofit camp, religious, or nonprofit educational conference center, if
9 it does not operate for more than two hundred ten (210) days in any
10 calendar year;
- 11 11. Any employee whose function is to provide twenty-four (24) hour
12 residential care on the employer's premises in a parental role to children
13 who are primarily dependent, neglected, and abused and who are in the
14 care of private, nonprofit childcaring facilities licensed by the Cabinet
15 for Health and Family Services under KRS 199.640 to 199.670; or
- 16 12. Any individual whose function is to provide twenty-four (24) hour
17 residential care in his or her own home as a family caregiver and who is
18 approved to provide family caregiver services to an adult with a
19 disability through a contractual relationship with a community board for
20 mental health or individuals with an intellectual disability established
21 under KRS 210.370 to 210.460, or is certified or licensed by the Cabinet
22 for Health and Family Services to provide adult foster care;
- 23 (b) "Agriculture" means farming in all its branches, including cultivation and
24 tillage of the soil; dairying; production, cultivation, growing, and harvesting of
25 any agricultural or horticultural commodity; raising of livestock, bees,
26 furbearing animals, or poultry; and any practice, including any forestry or
27 lumbering operations, performed on a farm in conjunction with farming

1 operations, including preparation and delivery of produce to storage, to
 2 market, or to carriers for transportation to market;

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

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

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

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

10 (1) Except as may otherwise be provided by this chapter, every employer shall pay to
 11 each of his employees wages at a rate of not less than ~~five dollars and eighty five~~
 12 ~~cents (\$5.85) an hour beginning on June 26, 2007, not less than six dollars and fifty~~
 13 ~~five cents (\$6.55) an hour beginning July 1, 2008, and not less than seven dollars~~
 14 ~~and twenty-five cents (\$7.25) an hour beginning July 1, 2009; ***not less than eight***~~
 15 ~~***dollars and eighty cents (\$8.80) an hour beginning on August 1, 2018; not less***~~
 16 ~~***than ten dollars and thirty-five cents (\$10.35) an hour beginning on August 1,***~~
 17 ~~***2019; not less than eleven dollars and ninety cents (\$11.90) an hour beginning on***~~
 18 ~~***August 1, 2020; not less than thirteen dollars and forty-five cents (\$13.45) an***~~
 19 ~~***hour beginning on August 1, 2021; and not less than fifteen dollars (\$15.00) an***~~
 20 ~~***hour beginning on August 1, 2022.***~~ If the federal minimum hourly wage as
 21 prescribed by 29 U.S.C. sec. 206(a)(1) is increased in excess of the minimum hourly
 22 wage in effect under this subsection, the minimum hourly wage under this
 23 subsection shall be increased to the same amount, effective on the same date as the
 24 federal minimum hourly wage rate. If the state minimum hourly wage is increased
 25 to the federal minimum hourly wage, it shall include only the federal minimum
 26 hourly rate prescribed in 29 U.S.C. sec. 206(a)(1) and shall not include other wage
 27 rates or conditions, exclusions, or exceptions to the federal minimum hourly wage

1 rate. In addition, the increase to the federal minimum hourly wage rate does not
 2 extend or modify the scope or coverage of the minimum wage rate required under
 3 this chapter.

4 (2) Notwithstanding the provisions of subsection (1) of this section, for any employee
 5 engaged in an occupation in which he customarily and regularly receives more than
 6 thirty dollars (\$30) per month in tips from patrons or others, the employer may pay
 7 as a minimum not less than the hourly wage rate required to be paid a tipped
 8 employee under the federal minimum hourly wage law as prescribed by 29 U.S.C.
 9 sec. 203. The employer shall establish by his records that for each week where
 10 credit is taken, when adding tips received to wages paid, not less than the minimum
 11 rate prescribed in 29 U.S.C. sec. 203 was received by the employee. No employer
 12 shall use all or part of any tips or gratuities received by employees toward the
 13 payment of the statutory minimum hourly wage as required by 29 U.S.C. sec. 203.
 14 Nothing, however, shall prevent employees from entering into an agreement to
 15 divide tips or gratuities among themselves.

16 ➔Section 3. KRS 337.420 is amended to read as follows:

17 **As used in KRS 337.420 to 337.433:**

18 (1) "Employee" means any individual employed by any employer, including but not
 19 limited to individuals employed by the state or any of its political subdivisions,
 20 instrumentalities, or instrumentalities of political subdivisions;[f-]

21 (2) "Employer" means a person who has two (2) or more employees within the state in
 22 each of twenty (20) or more calendar weeks in the current or preceding calendar
 23 year and an agent of such a person;[f-]

24 (3) "Wage rate" means all compensation for employment, including payment in kind
 25 and amounts paid by employers for employee benefits, as defined by the
 26 commissioner in regulations issued under KRS 337.420 to 337.433 and
 27 337.990(11);[f-]

- 1 (4) "Employ" includes to suffer or permit to work;~~[-]~~
- 2 (5) **"Equivalent jobs" means jobs or occupations that are equal within the meaning**
 3 **of the federal Equal Pay Act of 1963, 29 U.S.C. sec. 206(d), or jobs or**
 4 **occupations that are dissimilar but whose requirements are equivalent, when**
 5 **viewed as a composite of skill, effort, responsibility, and working conditions;**~~[-]~~
 6 "Occupation" includes any industry, trade, business, or branch thereof, or any
 7 employment or class of employment.~~[-]~~
- 8 (6) "Commissioner" means the commissioner of the Department of Workplace
 9 Standards under the direction and supervision of the secretary of the Labor Cabinet;
 10 **and**~~[-]~~
- 11 (7) "Person" includes one (1) or more individuals, partnerships, corporations, legal
 12 representatives, trustees, trustees in bankruptcy, or voluntary associations.

13 ➔Section 4. KRS 337.423 is amended to read as follows:

- 14 (1) No employer shall discriminate between employees in **this state**~~the same~~
 15 ~~establishment~~ on the basis of sex, **race, or national origin** by:
- 16 **(a)** Paying wages to any employee~~in any occupation in this state~~ at a rate less
 17 than the rate at which he or she pays any employee of the opposite sex **or of a**
 18 **different race or national origin** for~~comparable~~ work on **equivalent** jobs;
 19 **or**
- 20 **(b)** **Paying wages to employees in a job that is dominated by employees of a**
 21 **particular sex, race, or national origin at a rate less than the rate at which**
 22 **the employer pays employees in another job that is dominated by employees**
 23 **of the opposite sex or of a different race or national origin for work on**
 24 **equivalent jobs**~~which have comparable requirements relating to skill, effort~~
 25 ~~and responsibility. Differentials which are paid pursuant to established~~
 26 ~~seniority systems or merit increase systems, which do not discriminate on the~~
 27 ~~basis of sex, shall not be included within this prohibition. Nothing in KRS~~

1 ~~337.420 to 337.433 and 337.990(11) shall apply to any employer who is~~
 2 ~~subject to the federal Fair Labor Standards Act of 1938, as amended, when~~
 3 ~~that act imposes comparable or greater requirements than contained in KRS~~
 4 ~~337.420 to 337.433 and 337.990(11) and when the employer files with the~~
 5 ~~commissioner of the Department of Workplace Standards a statement that the~~
 6 ~~employer is covered by the federal Fair Labor Standards Act of 1938, as~~
 7 ~~amended].~~

8 (2) **Notwithstanding subsection (1) of this section, it shall not be a violation of this**
 9 **section for an employer to pay different wage rates if the wage rate differentials**
 10 **are based on:**

11 **(a) A bona fide seniority or merit system that does not discriminate on the basis**
 12 **of sex, race, or national origin;**

13 **(b) A system that measures earnings by quantity or quality of product; or**

14 **(c) A bona fide factor other than sex, race, or national origin, except that wage**
 15 **rate differentials based on varying market rates for equivalent jobs are not**
 16 **an exception allowed under this paragraph.**

17 (3) An employer who is paying a wage differential in violation of KRS 337.420 to
 18 337.433 and 337.990(11) shall not, in order to comply with it, reduce the wage rates
 19 of any employee.

20 ~~(4)~~(3) No person shall cause or attempt to cause an employer to discriminate against
 21 any employee in violation of KRS 337.420 to 337.433 and 337.990(11).

22 ~~(5)~~(4) No employer may discharge or discriminate against any employee by reason
 23 of any action taken by such employee to invoke or assist in any manner the
 24 enforcement of KRS 337.420 to 337.433 and 337.990(11).

25 ➔Section 5. KRS 337.425 is amended to read as follows:

26 (1) For this purpose, the commissioner, or the commissioner's authorized
 27 representative, may enter the place of employment of any employer to inspect and

1 copy payrolls and other employment records, to compare character of work and
 2 operations on which persons employed by him or her are engaged, to question such
 3 persons, and to obtain other information necessary to the administration and
 4 enforcement of KRS 337.420 to 337.433 and 337.990(11).

5 (2) The commissioner or the commissioner's authorized representative may examine
 6 witnesses under oath, and require by subpoena the attendance and testimony of
 7 witnesses and the production of any documentary evidence relating to the subject
 8 matter of any investigation undertaken pursuant to KRS 337.420 to 337.433 and
 9 337.990(11). If a person fails to attend, testify or produce documents under or in
 10 response to a subpoena, the Circuit Court in the judicial circuit where the hearing is
 11 being held, on application of the commissioner or the commissioner's
 12 representative, may issue an order requiring the person to appear before the
 13 commissioner or the commissioner's authorized representative, or to produce
 14 documentary evidence, and any failure to obey the order of the court may be
 15 punished by the court as contempt.

16 (3) The commissioner may endeavor to eliminate pay practices unlawful under KRS
 17 337.420 to 337.433 and 337.990(11) by informal methods of conference,
 18 conciliation and persuasion, and supervise the payment of wages owing to any
 19 employee under KRS 337.420 to 337.433 and 337.990(11).

20 (4) The commissioner shall promulgate administrative~~[may issue]~~ regulations in
 21 accordance with KRS Chapter 13A to specify:

22 (a) Criteria for determining whether a job is dominated by employees of a
 23 particular sex, race, or national origin, except that these administrative
 24 regulations shall not include a list of jobs;

25 (b) Acceptable methodology for determining equivalent skill, effort,
 26 responsibility, and working conditions of a job; and

27 (c) Any other matters~~[not inconsistent with the purpose of KRS 337.420 to~~

1 ~~337.433 and 337.990(11),]~~ necessary or appropriate to carry out *the*~~[its]~~
2 provisions *of KRS 337.420 to 337.433 and 337.990(11)*.

3 ➔Section 6. Administrative regulations required under the amendments in Section
4 5 of this Act shall be promulgated on or before July 1, 2019.

5 ➔Section 7. Section 4 of this Act takes effect on July 1, 2020.