

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  
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 salesperson~~[salesman]~~, or as an outside collector as the terms are

- 1 defined by 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 6~~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 7~~8~~. Any individual engaged in the delivery of newspapers to the consumer;
- 27 8~~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           ~~9~~<sup>10</sup>. Any employee employed by an establishment which is an  
7           organized nonprofit camp, religious, or nonprofit educational conference  
8           center, if it does not operate for more than two hundred ten (210) days in  
9           any calendar year;

10          ~~10~~<sup>11</sup>. 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          ~~11~~<sup>12</sup>. 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          ~~12~~<sup>13</sup>. A direct seller as defined in Section 3508(b)(2) of the Internal  
26          Revenue Code of 1986; or

27          ~~13~~<sup>14</sup>. Any individual whose function is to provide behavior support

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

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

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

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

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

20 (f) "Worker with a disability" means an individual whose earning or  
 21 productive capacity is impaired by age or physical or mental deficiency or  
 22 injury for the work he or she is to perform.

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

24 ~~{(1) Except as may otherwise be provided by this chapter,}~~ Every employer shall pay to  
 25 each of his or her employees, including tipped employees, employees under eighteen  
 26 (18) years old, and workers with a disability, wages at a rate of not less than five dollars  
 27 and eighty-five cents (\$5.85) an hour beginning on June 26, 2007, not less than six

1 dollars and fifty-five cents (\$6.55) an hour beginning July 1, 2008,~~[-and]~~ not less than  
2 seven dollars and twenty-five cents (\$7.25) an hour beginning July 1, 2009, **not less than**  
3 **thirteen dollars (\$13) an hour beginning July 1, 2024, not less than fourteen dollars**  
4 **(\$14) an hour beginning July 1, 2025, and not less than fifteen dollars (\$15) an hour**  
5 **beginning July 1, 2026, and every year thereafter.** If the federal minimum hourly wage  
6 as prescribed by 29 U.S.C. sec. 206(a)(1) is increased in excess of the minimum hourly  
7 wage in effect under this subsection, the minimum hourly wage under this subsection  
8 shall be increased to the same amount, effective on the same date as the federal minimum  
9 hourly wage rate. If the state minimum hourly wage is increased to the federal minimum  
10 hourly wage, it shall include only the federal minimum hourly rate prescribed in 29  
11 U.S.C. sec. 206(a)(1) and shall not include other wage rates or conditions, exclusions, or  
12 exceptions to the federal minimum hourly wage rate. In addition, the increase to the  
13 federal minimum hourly wage rate does not extend or modify the scope or coverage of  
14 the minimum wage rate required under this chapter.

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

27 ➔Section 3. KRS 337.295 is amended to read as follows:

1 Regulations issued by the commissioner under KRS 337.275 to 337.325, 337.345, and  
2 337.385 to 337.405 may include~~[,]~~ but are not limited to~~[,]~~ regulations defining and  
3 governing bona fide executive, administrative, or professional employees; ~~regulations~~  
4 ~~governing learners, apprentices, workers with disabilities, sheltered workshop employees,~~  
5 ~~and students,~~ regulations governing outside salespersons~~[salesmen]~~; bonuses; part-time  
6 rates; special pay for special or extra work; allowances as part of the wage rates  
7 applicable under KRS 337.275 for board, lodging, and gratuities; other facilities or  
8 services furnished by employers and used by employees; and other special items usual in  
9 a particular employer-employee relationship.

10 ➔Section 4. KRS 154.22-040 is amended to read as follows:

11 (1) Each year~~[,]~~ the authority shall, under its Rural Economic Development Assistance  
12 Program, on the basis of the final unemployment figures calculated by the  
13 Department of Workforce Development in the Education and Labor Cabinet,  
14 determine which counties have had a countywide rate of unemployment exceeding  
15 the statewide unemployment rate of the Commonwealth in the most recent five (5)  
16 consecutive calendar years, or which have had an average countywide rate of  
17 unemployment exceeding the statewide unemployment rate of the Commonwealth  
18 by two hundred percent (200%) in the most recent calendar year, and shall certify  
19 those counties as qualified counties. A county not certified on the basis of final  
20 unemployment figures may also be certified as a qualified county if the authority  
21 determines the county is one (1) of the sixty (60) most distressed counties in the  
22 Commonwealth based on the following criteria with equal weight given to each  
23 criterion:

24 (a) The average countywide rate of unemployment in the most recent three (3)  
25 consecutive calendar years, on the basis of final unemployment figures  
26 calculated by the Department of Workforce Development in the Education  
27 and Labor Cabinet;

- 1 (b) In each county the percentage of adults twenty-five (25) years of age and  
2 older who have attained at least a high school education or equivalent, on the  
3 basis of the most recent data available from the United States Department of  
4 Commerce, Bureau of the Census; and
- 5 (c) Road quality, as quantified by the access within a county to roads ranked in  
6 descending order from best quality to worst quality as follows: two (2) or  
7 more interstate highways, one (1) interstate highway, a state four (4) lane  
8 parkway, four (4) lane principal arterial access to an interstate highway, state  
9 two (2) lane parkway and none of the preceding road types, as certified by the  
10 Kentucky Transportation Cabinet to the authority.

11 If the authority determines that a county which has previously been certified as a  
12 qualified county no longer meets the criteria of this subsection, the authority shall  
13 decertify that county. The authority shall not provide inducements for any facilities  
14 in that county and an approved company shall not be eligible for the inducements  
15 offered by KRS 154.22-010 to 154.22-070 unless the tax incentive agreements  
16 required herein are entered into by all parties prior to July 1 of the year following  
17 the calendar year in which the authority decertified that county. In addition, the  
18 authority shall certify coal-producing counties, not otherwise certified as qualified  
19 counties in this subsection, for economic development projects involving the new  
20 construction of electric generation facilities. A coal-producing county shall mean a  
21 county in the Commonwealth of Kentucky that has produced coal upon which the  
22 tax imposed under KRS 143.020 was paid at any time. For economic development  
23 projects undertaken in a regional industrial park, as defined in KRS 42.4588, or in  
24 an industrial park created pursuant to an interlocal agreement in which revenues are  
25 shared as provided in KRS 65.210 to 65.300, where the physical boundaries of the  
26 industrial park lie within two (2) or more counties of which at least one (1) of the  
27 counties is a qualified county under this section, an eligible company undertaking



1 an economic development project within the physical boundaries of the industrial  
2 park may be approved for the inducements under KRS 154.22-010 to 154.22-080.

3 (2) The authority shall establish the procedures and standards for the determination and  
4 approval of eligible companies and their economic development projects by the  
5 promulgation of administrative regulations in accordance with KRS Chapter 13A.  
6 The criteria for approval of eligible companies and economic development projects  
7 shall include but not be limited to the creditworthiness of eligible companies; the  
8 number of new jobs to be provided by an economic development project to  
9 residents of the Commonwealth; and the likelihood of the economic success of the  
10 economic development project.

11 (3) The economic development project shall involve a minimum investment of one  
12 hundred thousand dollars (\$100,000) by the eligible company and shall result in the  
13 creation by the eligible company, within two (2) years from the date of the final  
14 approval authorizing the economic development project, of a minimum of fifteen  
15 (15) new full-time jobs at the site of the economic development project for  
16 Kentucky residents to be employed by the eligible company and to be held by  
17 persons subject to the personal income tax of the Commonwealth. The authority  
18 may extend this two (2) year period upon the written application of an eligible  
19 company requesting an extension.

20 (4) (a) Within six (6) months after the activation date, the approved company shall  
21 compensate a minimum of ninety percent (90%) of its full-time employees  
22 whose jobs were created with base hourly wages equal to either:

- 23 1. Seventy-five percent (75%) of the average hourly wage for the  
24 Commonwealth; or
- 25 2. Seventy-five percent (75%) of the average hourly wage for the county in  
26 which the project is to be undertaken.

27 (b) If the base hourly wage calculated in paragraph (a)1. or 2. of this subsection is

1 less than one hundred fifty percent (150%) of the federal minimum wage, then  
2 the base hourly wage shall be one hundred fifty percent (150%) of the federal  
3 minimum wage. However, for projects receiving preliminary approval of the  
4 authority prior to July 1, 2008, the base hourly wage shall be one hundred  
5 fifty percent (150%) of the federal minimum wage existing on January 1,  
6 2007. In addition to the applicable base hourly wage calculated above, the  
7 eligible company shall provide employee benefits equal to at least fifteen  
8 percent (15%) of the applicable base hourly wage; however, if the eligible  
9 company does not provide employee benefits equal to at least fifteen percent  
10 (15%) of the applicable base hourly wage, the eligible company may qualify  
11 under this section if it provides the employees hired by the eligible company  
12 as a result of the economic development project total hourly compensation  
13 equal to or greater than one hundred fifteen percent (115%) of the applicable  
14 base hourly wage through increased hourly wages combined with employee  
15 benefits.

16 (c) The requirements of this subsection shall not apply to eligible companies  
17 which are nonprofit corporations established under KRS 273.163 to 273.387  
18 ~~and whose employees are handicapped and sheltered workshop workers~~  
19 ~~employed at less than the established minimum wage as authorized by KRS~~  
20 ~~337.295].~~

21 For an eligible company, within a regional industrial park which lies within two (2)  
22 or more counties, the calculation of the wage and benefit requirement shall be  
23 determined by averaging the average county hourly wage for all counties within the  
24 regional industrial park.

25 (5) No economic development project which will result in the replacement of  
26 agribusiness, manufacturing, or electric generation facilities existing in the state  
27 shall be approved by the authority; however, the authority may approve an

1 economic development project that:

2 (a) Rehabilitates an agribusiness, manufacturing, or electric generation facility:

3 1. Which has not been in operation for a period of ninety (90) or more  
4 consecutive days;

5 2. For which the current occupant of the facility has published a notice of  
6 closure so long as the eligible company intending to acquire the facility  
7 is not an affiliate of the current occupant; or

8 3. The title to which is vested in other than the eligible company or an  
9 affiliate of the eligible company and that is sold or transferred pursuant  
10 to a foreclosure ordered by a court of competent jurisdiction or an order  
11 of a bankruptcy court of competent jurisdiction;

12 (b) Replaces an agribusiness, manufacturing, or electric generation facility  
13 existing in the Commonwealth:

14 1. The title to which shall have been taken under the exercise of the power  
15 of eminent domain, or the title to which shall be the subject of a  
16 nonappealable judgment granting the authority to exercise the power of  
17 eminent domain, in either event to the extent that normal operations  
18 cannot be resumed at the facility within twelve (12) months; or

19 2. Which has been damaged or destroyed by fire or other casualty to the  
20 extent that normal operations cannot be resumed at the facility within  
21 twelve (12) months; or

22 (c) Replaces an existing agribusiness, manufacturing, or electric generation  
23 facility located in the same qualified county, and the existing agribusiness,  
24 manufacturing, or electric generation facility to be replaced cannot be  
25 expanded due to the unavailability of real estate at or adjacent to the  
26 agribusiness, manufacturing, or electric generation facility to be replaced. Any  
27 economic development project satisfying the requirements of this subsection

1           shall only be eligible for inducements to the extent of the expansion, and no  
2           inducements shall be available for the equivalent of the agribusiness,  
3           manufacturing, or electric generation facility to be replaced. No economic  
4           development project otherwise satisfying the requirements of this subsection  
5           shall be approved by the authority which results in a lease abandonment or  
6           lease termination by the approved company without the consent of the lessor.

7   (6) With respect to each eligible company making an application to the authority for  
8       inducements, and with respect to the economic development project described in  
9       the application, the authority shall request materials and make inquiries of the  
10      applicant as necessary or appropriate. Upon review of the application and  
11      completion of initial inquiries, the authority may, by resolution, give its preliminary  
12      approval by designating an eligible company as a preliminarily approved company  
13      and authorizing the undertaking of the economic development project. After  
14      preliminary approval, the authority may by final approval designate an eligible  
15      company to be an approved company.

16      ➔Section 5. Sections 1 to 3 of this Act may be cited as the Kentucky One Fair  
17      Wage Act.