

1 AN ACT relating to compensatory time.

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

3 ➔Section 1. KRS 337.285 is amended to read as follows:

- 4 (1) No employer shall employ any of his employees for a work week longer than forty
5 (40) hours, unless such employee receives compensation for his employment in
6 excess of forty (40) hours in a work week at a rate of not less than one and one-half
7 (1-1/2) times the hourly wage rate at which he is employed.
- 8 (2) This provision shall not apply to the following:
- 9 (a) Employees of retail stores engaged in work connected with selling,
10 purchasing, and distributing merchandise, wares, goods, articles, or
11 commodities;
- 12 (b) Employees of restaurant, hotel, and motel operations;
- 13 (c) Employees as defined and exempted from the overtime provision of the Fair
14 Labor Standards Act in Sections 213(b)(1), 213(b)(6), 213(b)(10), and
15 213(b)(17) of Title 29, U.S.C.;
- 16 (d) Employees whose function is to provide twenty-four (24) hour residential care
17 on the employer's premises in a parental role to children who are primarily
18 dependent, neglected, and abused and who are in the care of private nonprofit
19 childcaring facilities licensed by the Cabinet for Health and Family Services
20 under KRS 199.640 to 199.670; or
- 21 (e) Any individual who is employed by a third-party employer or agency other
22 than the family or household using his or her services to provide in-home
23 companionship services for a sick, convalescing, or elderly person.
- 24 (3) As used in subsection (2) of this section, "companionship services" means those
25 services which provide in-home fellowship, care, and protection for a person who,
26 because of advanced age or physical or mental infirmity, cannot care for his or her
27 own needs. These services may include household work related to the care of the

1 aged or infirm person such as meal preparation, bed making, washing of clothes,
2 and other similar services. They may also include the performance of general
3 household work, provided that the household work is incidental, i.e., does not
4 exceed twenty percent (20%) of the total weekly hours worked. The term
5 "companionship services" does not include services relating to the care and
6 protection of the aged or infirm which require and are performed by trained
7 personnel, such as a registered or practical nurse.

8 (4) Notwithstanding the provisions of subsection (1) of this section or any other chapter
9 of the KRS to the contrary, upon written request by a county or city employee or a
10 Trooper R Class or CVE R Class, made freely and without coercion, pressure, or
11 suggestion by the employer, and upon a written agreement reached between the
12 employer and the county or city employee or the Trooper R Class or CVE R Class
13 before the performance of the work, a county or city employee or a Trooper R
14 Class or CVE R Class who is authorized to work one (1) or more hours in excess of
15 the prescribed hours per week may be granted compensatory leave on an hour-for-
16 hour basis. Upon the written request by a county or city employee or a Trooper R
17 Class or CVE R Class, made freely and without coercion, pressure, or suggestion
18 by the employer, and upon a written agreement reached between the employer and
19 the county or city employee or the Trooper R Class or CVE R Class, before the
20 performance of the work, a county or city employee or a Trooper R Class or CVE
21 R Class who is not exempt from the provisions of the Federal Fair Labor Standards
22 Act of 1938, as amended, 29 U.S.C. secs. 201 et seq., may be granted compensatory
23 time in lieu of overtime pay, at the rate of not less than one and one-half (1-1/2)
24 hours for each hour the county or city employee or the Trooper R Class or CVE R
25 Class is authorized to work in excess of forty (40) hours in a work week.

26 (5) (a) Upon the request of the county or city employee or the Trooper R Class or
27 CVE R Class, and as provided in subsection (4) of this section, compensatory

1 time shall be awarded as follows:

2 1. A county or city employee who provided work in excess of forty (40)
3 hours in a public safety activity, an emergency response activity, or a
4 seasonal activity as described in 29 C.F.R. sec. 553.24, may accrue not
5 more than four hundred eighty (480) hours of compensatory time; or

6 2. A county or city employee or a Trooper R Class or CVE R Class
7 engaged in other work in excess of forty (40) hours, may accrue not
8 more than two hundred forty (240) hours of compensatory time.

9 (b) A county or city employee or a Trooper R Class or CVE R Class who has
10 accrued four hundred eighty (480) hours of compensatory time off pursuant to
11 paragraph (a)1. of this subsection, or two hundred forty (240) hours of
12 compensatory time off pursuant to paragraph (a)2. of this subsection, shall for
13 additional overtime hours of work, be paid overtime compensation.

14 (6) A county or city employee or a Trooper R Class or CVE R Class who has accrued
15 compensatory time off as provided in subsection (4) of this section, and who
16 requested the use of compensatory time, shall be permitted by the employer to use
17 the compensatory time within a reasonable period after making the request if the use
18 of the compensatory time does not unduly disrupt the operations of the employer.
19 Mere inconvenience to the employer shall not constitute a sufficient basis for denial
20 of a county or city employee's request or a Trooper R Class or CVE R Class
21 request for compensatory time off.

22 (7) If compensation is paid to a county or city employee or a Trooper R Class or CVE
23 R Class for accrued compensatory time off, the compensation shall be paid at the
24 regular rate earned by the county or city employee or the Trooper R Class or CVE
25 R Class at the time the county or city employee or the Trooper R Class or CVE R
26 Class receives the payment.

27 (8) Upon a county or city employee's termination of employment or the termination of

- 1 employment of a Trooper R Class or CVE R Class, all unused accrued
 2 compensatory time shall be paid at a rate of compensation not less than:
- 3 (a) The average regular rate received by the county or city employee or the
 4 Trooper R Class or CVE R Class during the last three (3) years of the
 5 employment of the county or city employee or Trooper R Class or CVE R
 6 Class~~employee's employment~~; or
- 7 (b) The final regular rate received by the county or city employee or Trooper R
 8 Class or CVE R Class, whichever is higher.
- 9 (9) Compensatory time shall not be used as a means to avoid statutory overtime
 10 compensation. A county or city employee or a Trooper R Class or CVE R Class
 11 shall have the right to use compensatory time earned and shall not be coerced to
 12 accept more compensatory time than an employer can realistically and in good faith
 13 expect to be able to grant within a reasonable period upon the county or city
 14 employee or the Trooper R Class or CVE R Class making the request for
 15 compensatory time off.
- 16 (10) Nothing in subsections (4) to (9) of this section shall be construed to supersede any
 17 collective bargaining agreement, memorandum of understanding, or any other
 18 agreement between the employer and representative of the county or city employees
 19 or the Trooper R Class or CVE R Class.
- 20 (11) As used in subsections (4) to (9) of this section:~~;~~
- 21 (a) "County or city employee" means an employee of any county, city, charter
 22 county, consolidated local government, unified local government, or urban-
 23 county government, including an employee of a county or city elected official;~~;~~
- 24 (b) "CVE R Class" has the same meaning as in KRS 16.010; and
- 25 (c) "Trooper R Class" has the same meaning as in KRS 16.010.
- 26 (12) In addition to the designation of a work week under subsection (1) of this section,
 27 local governments, as defined in KRS 95A.210(3), may designate a work period for

1 professional firefighter employees as defined in KRS 95A.210. The designated
2 work period shall be not less than one (1) work week of seven (7) consecutive days
3 and not more than four (4) work weeks of twenty-eight (28) consecutive days for
4 purposes of complying with the requirements of the Federal Labor Standards Act of
5 1938, as amended, 29 U.S.C. secs. 201 et seq. This subsection shall not exempt
6 local governments from complying with the overtime requirements set forth in
7 subsection (1) of this section and is intended to:

8 (a) Clarify the option to designate both a work week for compliance with
9 Kentucky law and a work period for compliance with the Fair Labor Standards
10 Act of 1938, as amended, 29 U.S.C. secs. 201 et seq.; and

11 (b) Allow for the application of the partial exemption set forth in 29 U.S.C. sec.
12 207(k) in determining overtime pay under the Fair Labor Standards Act of
13 1938, as amended, 29 U.S.C. secs. 201 et seq., only.

14 (13) (a) A law enforcement department of a consolidated local government organized
15 under KRS Chapter 67C shall not be deemed to have violated subsection (1)
16 of this section with respect to the employment of a peace officer if:

17 1. The officer works eighty (80) hours or less in a work period of fourteen
18 (14) consecutive days; and

19 2. The law enforcement department and a representative of a collective
20 bargaining unit certified under KRS 67C.408 that includes the officer
21 agree to the exception.

22 (b) It is the intent of this subsection to allow the employment of a peace officer
23 for longer than forty (40) hours in any seven (7) consecutive days within a
24 fourteen (14) day work period without incurring the obligation to pay a rate of
25 not less than one and one-half (1-1/2) times the officer's hourly wage under
26 subsection (1) of this section.