

1 AN ACT relating to employment.

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 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 3[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 4[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 5[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 6[8]. Any individual engaged in the delivery of newspapers to the consumer;
- 27 7[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 ~~8~~[10]. 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 ~~9~~[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 ~~10~~[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 ~~11~~[13]. A direct seller as defined in Section 3508(b)(2) of the Internal
26 Revenue Code of 1986; or

27 ~~12~~[14]. 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 ~~fur-bearing 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 ~~(c)~~~~(d)~~ "Tipped employee" means any employee engaged in an occupation in
17 which he or she customarily and regularly receives more than thirty dollars
18 (\$30) per month in tips; and

19 ~~(d)~~~~(e)~~ "U.S.C." means the United States Code.

20 ➔Section 2. KRS 337.020 is amended to read as follows:

21 Every employer doing business in this state shall, as often as semimonthly, pay to each of
22 its employees all wages or salary earned to a day not more than eighteen (18) days prior
23 to the date of that payment. Any employee who is absent at the time fixed for payment, or
24 who, for any other reason, is not paid at that time, shall be paid thereafter at any time
25 upon six (6) days' demand. No employer subject to this section shall, by any means,
26 secure exemption from it. Every such employee shall have a right of action against any
27 such employer for the full amount of his wages due on each regular pay day. The

1 provisions of this section do not apply to those individuals defined in KRS
2 337.010(2)(a)~~[2]~~.

3 ➔Section 3. KRS 342.610 is amended to read as follows:

- 4 (1) Every employer subject to this chapter shall be liable for compensation for injury,
5 occupational disease, or death without regard to fault as a cause of the injury,
6 occupational disease, or death.
- 7 (2) A contractor who subcontracts all or any part of a contract and his or her carrier
8 shall be liable for the payment of compensation to the employees of the
9 subcontractor unless the subcontractor primarily liable for the payment of such
10 compensation has secured the payment of compensation as provided for in this
11 chapter. Any contractor or his or her carrier who shall become liable for such
12 compensation may recover the amount of such compensation paid and necessary
13 expenses from the subcontractor primarily liable therefor. A person who contracts
14 with another:
- 15 (a) To have work performed consisting of the removal, excavation, or drilling of
16 soil, rock, or mineral, or the cutting or removal of timber from land; or
- 17 (b) To have work performed of a kind which is a regular or recurrent part of the
18 work of the trade, business, occupation, or profession of such person
19 shall for the purposes of this section be deemed a contractor, and such other person
20 a subcontractor. This subsection shall not apply to the owner or lessee of land
21 principally used for agriculture.
- 22 (3) Liability for compensation shall not apply to injury, occupational disease, or death
23 to the employee if the employee willfully intended to injure or kill himself, herself,
24 or another.
- 25 (4) If an employee voluntarily introduced an illegal, nonprescribed substance or
26 substances or a prescribed substance or substances in amounts in excess of
27 prescribed amounts into his or her body detected in the blood, as measured by a

1 scientifically reliable test, that could cause a disturbance of mental or physical
2 capacities, it shall be presumed that the illegal, nonprescribed substance or
3 substances or the prescribed substance or substances in amounts in excess of
4 prescribed amounts caused the injury, occupational disease, or death of the
5 employee and liability for compensation shall not apply to the injury, occupational
6 disease, or death to the employee.

7 (5) If injury or death results to an employee through the deliberate intention of his or
8 her employer to produce such injury or death, the employee or the employee's
9 dependent as herein defined shall receive the amount provided in this chapter in a
10 lump sum to be used, if desired, to prosecute the employer. The dependents may
11 bring suit against the employer for any amount they desire. If injury or death results
12 to an employee through the deliberate intention of his or her employer to produce
13 such injury or death, the employee or the employee's dependents may take under
14 this chapter, or in lieu thereof, have a cause of action at law against the employer as
15 if this chapter had not been passed, for such damage so sustained by the employee,
16 his dependents or personal representatives as is recoverable at law. If a suit is
17 brought under this subsection, all right to compensation under this chapter shall
18 thereby be waived as to all persons. If a claim is made for the payment of
19 compensation or any other benefit provided by this chapter, all rights to sue the
20 employer for damages on account of such injury or death shall be waived as to all
21 persons.

22 (6) Prior to issuing any building permit pursuant to KRS 198B.060(10), every local
23 building official shall require proof of workers' compensation coverage from the
24 builder before a permit is issued. A person who is exempt under the exception
25 contained in KRS 342.650(~~1~~)(~~2~~), and any contractor otherwise exempt from this
26 chapter, shall so certify to the local building official, in writing and on a form
27 prescribed by the commissioner, in lieu of providing proof of workers'

1 compensation coverage.

2 (7) Every employer subject to this chapter, at its principal office and such other
 3 locations where employees customarily report for payroll and personnel matters,
 4 shall post a notice stating the name of its workers' compensation insurance carrier
 5 and policy number, setting forth the means to access medical care for injuries, the
 6 employee's obligation to give notice of accidents, and such other matters
 7 concerning the employee's rights under this chapter as may be required by the
 8 commissioner so as to afford every employee the opportunity to become informed
 9 about the employer's workers' compensation program. The format and contents of
 10 the notice shall be established by the commissioner through administrative
 11 regulation, and copies shall be provided to the employer by its insurance carrier.

12 ➔Section 4. KRS 342.630 is amended to read as follows:

13 The following shall constitute employers mandatorily subject to, and required to comply
 14 with, the provisions of this chapter:

15 (1) Any person~~[, other than one engaged solely in agriculture,]~~ that has in this state one
 16 (1) or more employees subject to this chapter.

17 (2) The state, any agency thereof, and each county, city of any class, school district,
 18 sewer district, drainage district, tax district, public or quasipublic corporation, or
 19 any other political subdivision or political entity of the state that has one (1) or
 20 more employees subject to this chapter.

21 ➔Section 5. KRS 342.650 is amended to read as follows:

22 The following employees are exempt from the coverage of this chapter:

23 (1)~~[Any person employed as a domestic servant in a private home by an employer who
 24 has less than two (2) employees each regularly employed forty (40) or more hours a
 25 week in domestic servant employment;~~

26 (2)~~]~~ Any person employed, for not exceeding twenty (20) consecutive work days, to do
 27 maintenance, repair, remodeling, or similar work in or about the private home of the

1 employer, or if the employer has no other employees subject to this chapter, in or
2 about the premises where that employer carries on his or her trade, business, or
3 profession;

4 ~~(2)~~~~(3)~~ Any person performing services in return for aid or sustenance only, received
5 from any religious or charitable organization;

6 ~~(3)~~~~(4)~~ Any person for whom a rule of liability for injury or death is provided by the
7 laws of the United States, except those persons covered under Title IV, Public Law
8 91-173, 91st Congress, commonly referred to as the Black Lung Benefits of the
9 Federal Coal Mine Health and Safety Act of 1969, or as amended;

10 ~~[(5) Any person employed in agriculture;]~~

11 ~~(4)~~~~(6)~~ Any person who would otherwise be covered but who elects not to be covered
12 in accordance with the administrative regulations promulgated by the
13 commissioner;

14 ~~(5)~~~~(7)~~ Any person participating as a driver or passenger in a voluntary vanpool or
15 carpool program while that person is on the way to or from his or her place of
16 employment. For the purposes of this subsection, carpool or vanpool means any
17 method by which two (2) or more employees are transported from their residences
18 to their places of employment;

19 ~~(6)~~~~(8)~~ Members of a religious sect or division that is an adherent of established
20 tenets or teachings by reason of which members are conscientiously opposed to
21 acceptance of the benefits of any public or private insurance which makes payments
22 in the event of death, disability, old age, or retirement, or makes payments toward
23 the cost of, or provides services for, medical bills, including the benefits of any
24 insurance system established by the Federal Social Security Act, 42 U.S.C. secs.
25 301 et seq., and it is the practice, and has been for ten (10) or more years, for
26 members of the sect or division to make reasonable provision for their dependent
27 members;

1 ~~(7)~~~~(9)~~ Any licensed or unlicensed, commissioned, ordained or unordained, or lay
 2 minister of religion who has no set oral or written agreement with a church or
 3 religious organization to receive a fixed regular payment for services provided to
 4 the church or who works no more than ten (10) hours per week;

5 ~~(8)~~~~(10)~~ Any caretaker of a cemetery or property owned or operated by a church or
 6 religious organization who provides general cleanup services, including but not
 7 limited to mowing, raking, dusting, sweeping, and mopping which could be
 8 performed for other individuals or organizations, who works no more than ten (10)
 9 hours per week;

10 ~~(9)~~~~(11)~~ A direct seller as defined in Section 3508(b)(2) of the Internal Revenue Code
 11 of 1986; and

12 ~~(10)~~~~(12)~~ Any individual whose function is to provide behavior support services,
 13 behavior programming services, case management services, community living
 14 support services, positive behavior support services, or respite services through a
 15 contractual relationship with a certified waiver provider, as defined in 907 KAR
 16 7:005 sec. 1(5), pursuant to a 1915(c) home and community based services waiver
 17 program, as defined in 907 KAR 7:005 sec. 1(2).

18 ➔Section 6. KRS 304.12-250 is amended to read as follows:

19 (1) It shall be an unfair or deceptive trade practice for a health insurance policy to
 20 exclude coverage for a health condition based solely on the fact that the health
 21 condition is work-related, unless the claimant is eligible for benefits under any
 22 workers' compensation act or similar law.

23 (2) For purposes of this section, all employees shall be deemed to be eligible for
 24 benefits under any workers' compensation act or similar law, except for:

25 (a) Any employee exempted from workers' compensation coverage pursuant to
 26 KRS 342.650(1), (2), ~~(3)~~or, (5)~~, or (7)~~; and

27 (b) The owner or owners of a business, including qualified partners as defined in

1 KRS 342.012(3).

2 ➔Section 7. KRS 342.690 is amended to read as follows:

- 3 (1) If an employer secures payment of compensation as required by this chapter, the
4 liability of such employer under this chapter shall be exclusive and in place of all
5 other liability of such employer to the employee, his legal representative, husband
6 or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover
7 damages from such employer at law or in admiralty on account of such injury or
8 death. For purposes of this section, the term "employer" shall include a "contractor"
9 covered by ~~subsection (2) of~~ KRS 342.610~~(2)~~, whether or not the subcontractor
10 has in fact, secured the payment of compensation. The liability of an employer to
11 another person who may be liable for or who has paid damages on account of injury
12 or death of an employee of such employer arising out of and in the course of
13 employment and caused by a breach of any duty or obligation owed by such
14 employer to such other shall be limited to the amount of compensation and other
15 benefits for which such employer is liable under this chapter on account of such
16 injury or death, unless such other and the employer by written contract have agreed
17 to share liability in a different manner. The exemption from liability given an
18 employer by this section shall also extend to such employer's carrier and to all
19 employees, officers or directors of such employer or carrier, provided the
20 exemption from liability given an employee, officer or director or an employer or
21 carrier shall not apply in any case where the injury or death is proximately caused
22 by the willful and unprovoked physical aggression of such employee, officer or
23 director.
- 24 (2) If an employer fails to secure payment of compensation as required by this chapter,
25 an injured employee, or his legal representative in case death results from the
26 injury, may claim compensation under this chapter and in addition may maintain an
27 action at law or in admiralty for damages on account of such injury or death,

1 provided that the amount of compensation shall be credited against the amount
2 received in such action, and provided that, if the amount of compensation is larger
3 than the amount of damages received, the amount of damages less the employee's
4 legal fees and expenses shall be credited against the amount of compensation. In
5 such action the defendant may not plead as a defense that the injury was caused by
6 the negligence of a fellow servant, that the employee assumed the risks of his
7 employment, or that the injury was due to the contributory negligence of the
8 employee.

9 (3) An employer shall retain all common law defenses against any action by an
10 employee who elects not to be covered, as provided under ~~subsection [(6)] of~~ KRS
11 342.650~~(6)~~(4).

12 (4) (a) Notwithstanding any voluntary agreement entered into between the United
13 States Department of Labor and a franchisee, neither a franchisee nor a
14 franchisee's employee shall be deemed to be an employee of the franchisor for
15 any purpose under this chapter.

16 (b) Notwithstanding any voluntary agreement entered into between the United
17 States Department of Labor and a franchisor, neither a franchisor nor a
18 franchisor's employee shall be deemed to be an employee of the franchisee for
19 any purpose under this chapter.

20 (c) For purposes of this subsection, "franchisee" and "franchisor" have the same
21 meanings as in 16 C.F.R. sec. 436.1.