

### **341.050 Covered employment.**

- (1) As used in this chapter, unless the context clearly requires otherwise and subject to the provisions of KRS 341.055, "covered employment" means service, including service in interstate commerce, performed by:
  - (a) An individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee;
  - (b) An officer of a corporation;
  - (c) An individual who performs service for remuneration for any employing unit:
    1. As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services, for his principal; or
    2. As a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal (except for side-line sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations; provided, that for purposes of this paragraph, the term "covered employment" shall include services described in subparagraphs 1. and 2. above only if the contract of service contemplates that substantially all of the services are to be performed personally by such individual; such individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation); and the services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed;
  - (d) Except as provided in KRS 341.055(4), an individual in the employ of this state or any of its instrumentalities or any political subdivision or municipality thereof or any of its instrumentalities or any instrumentality of more than one (1) of the foregoing or any instrumentality of any of the foregoing and one (1) or more other states or political subdivisions or municipalities, provided that such service is excluded from "employment" as defined in the Internal Revenue Code solely by reason of Section 3306(c)(7) of the code but only when such service is required to be "covered employment" under this chapter by reason of Section 3309 of the Internal Revenue Code, as amended, as a requirement of Section 3304 of that code, as amended, for approval of the state's unemployment insurance law; or
  - (e) An individual in the employ of a religious, charitable, educational or other organization but only if the following conditions are met:

1. The service is excluded from "employment" as defined in the Internal Revenue Code solely by reason of Section 3306(c)(8) of that code but only when such service is required to be "covered employment" under this chapter by reason of Section 3309 of the Internal Revenue Code, as amended, as a requirement of Section 3304 of that code, as amended, for approval of the state's unemployment insurance law; and
  2. The organization had four (4) or more individuals in employment for some portion of a day in each of twenty (20) different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time; or
- (f) An individual in the employ of an employing unit performing agricultural service, as defined in Section 3306(k) of the Internal Revenue Code, if either of the following conditions are met:
1. The employing unit paid wages of twenty thousand dollars (\$20,000) or more in a calendar quarter in either the current or preceding calendar year for service performed in agricultural labor; or
  2. The employing unit employed for some portion of a day in each of twenty (20) different calendar weeks, whether or not such weeks are consecutive, ten (10) or more workers (irrespective of whether the same workers were in employment in each of such weeks) performing service in agricultural labor; or
- (g) An individual in the employ of an employing unit performing domestic service in a private home, a local college club, or a local chapter of a college fraternity or sorority if the employing unit paid wages of one thousand dollars (\$1,000) or more in a calendar quarter in either the current or preceding calendar year for service performed in domestic employment; or
- (h) An individual's service described in paragraphs (e) or (f) or (g) of this subsection, has not ceased to be covered employment under paragraph (c) of subsection (3) of KRS 341.250.
- (2) The term "covered employment" shall include:
- (a) An individual's entire service, performed within, or both within and without, this state if the service is localized in this state. Service shall be deemed to be localized within a state if:
    1. The service is performed entirely within such state; or
    2. The service is performed both within and without such state but the service performed without such state is incidental to the individual's service within the state; for example, is temporary or transitory in nature or consists of isolated transactions.
  - (b) An individual's entire service, wherever performed within the United States, the Virgin Islands or Canada, if:
    1. Such service is not covered under the unemployment compensation law of any other state, the Virgin Islands or Canada; and

2. The place from which the service is directed or controlled is in this state.
- (c) The service of an individual who is a citizen of the United States, performed outside the United States (except in Canada), in the employ of an American employer (other than service which is deemed "covered employment" under the provisions of paragraphs (a) or (b) of this subsection or the parallel provisions of another state's law), if:
1. The employer's principal place of business in the United States is located in this state; or
  2. The employer has no place of business in the United States, but
    - a. The employer is an individual who is a resident of this state; or
    - b. The employer is a corporation which is organized under the laws of this state; or
    - c. The employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one (1) other state; or
  3. None of the criteria of subparagraphs 1. and 2. of this paragraph is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.
  4. An "American employer," for purposes of this paragraph, means:
    - a. An individual who is a resident of the United States; or
    - b. A partnership if two-thirds (2/3) or more of the partners are residents of the United States; or
    - c. A trust, if all of the trustees are residents of the United States; or
    - d. A corporation organized under the laws of the United States or of any state.
  5. The term "United States," for the purposes of this subsection, includes the states, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.
- (d) Service performed by an officer or member of the crew of an American vessel or American aircraft on or in connection with such vessel or such aircraft, if the operating office, from which the operations of such vessel operating on navigable waters within, or the operation of such aircraft within or the operations of such vessel or such aircraft, within or without, the United States are ordinarily and regularly supervised, managed, directed and controlled is within this state.
- (3) Notwithstanding any other provisions of this section or any of the provisions of KRS 341.055, the term "covered employment" shall also include service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax

imposed by the Federal Unemployment Tax Act is required to be covered under this chapter.

- (4) For the purpose of this chapter, if the services performed during one-half (1/2) or more of any pay period by an individual for the employing unit employing him constitutes covered employment, all the services of such individual for such period shall be deemed to be covered employment; but if the services performed during more than one-half (1/2) of any such pay period by an individual for the employing unit employing him do not constitute covered employment, then none of the services of such individual for such period shall be deemed to be covered employment. As used in this subsection, the term "pay period" means a period (of not more than thirty-one (31) consecutive days) for which a payment for service is ordinarily made to the individual by the employing unit employing him. This subsection shall not be applicable with respect to services performed in a pay period by an individual for the employing unit employing him, when any of such service is excluded because it is subject to an unemployment insurance program established by an Act of Congress.

**Effective:** July 1, 1978

**History:** Amended 1978 Ky. Acts ch. 389, sec. 4, effective July 1, 1978. -- Amended 1972 Ky. Acts ch. 21, sec. 2. -- Amended 1962 Ky. Acts ch. 207, sec. 1. -- Amended 1958 Ky. Acts ch. 4, sec. 3. -- Amended 1950 Ky. Acts ch. 206, sec. 1. -- Amended 1948 Ky. Acts ch. 216, sec. 1. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 4748g-3.