

AN ACT relating to wages.

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

➔Section 1. KRS 337.010 is amended to read as follows:

- (1) As used in this chapter, unless the context requires otherwise:
 - (a) "Commissioner" means the commissioner of the Department of Workplace Standards under the direction and supervision of the secretary of the Labor Cabinet;
 - (b) "Department" means the Department of Workplace Standards in the Labor Cabinet;
 - (c)
 1. "Wages" includes any compensation due to an employee by reason of his or her employment, including salaries, commissions, vested vacation pay, overtime pay, severance or dismissal pay, earned bonuses, and any other similar advantages agreed upon by the employer and the employee or provided to employees as an established policy. The wages shall be payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to the allowances made in this chapter;
 2. For the purposes of calculating hourly wage rates for scheduled overtime for professional firefighters, as defined in KRS 95A.210(5), "wages" shall not include the distribution to qualified professional firefighters by local governments of supplements received from the Firefighters Foundation Program Fund. For the purposes of calculating hourly wage rates for unscheduled overtime for professional firefighters, as defined in KRS 95A.210(6), "wages" shall include the distribution to qualified professional firefighters by local governments of supplements received from the Firefighters Foundation Program Fund;
 - (d) "Employer" is any person, either individual, corporation, partnership, agency,

or firm who employs an employee and includes any person, either individual, corporation, partnership, agency, or firm acting directly or indirectly in the interest of an employer in relation to an employee; and

- (e) "Employee" is any person employed by or suffered or permitted to work for an employer.
- (2) As used in KRS 337.275 to 337.325, 337.345, and KRS 337.385 to 337.405, unless the context requires otherwise:
- (a) "Employee" is any person employed by or suffered or permitted to work for an employer, but shall not include:
 - 1. Any individual employed in agriculture;
 - 2. Any individual employed in a bona fide executive, administrative, supervisory, or professional capacity, or in the capacity of outside salesman, or as an outside collector as the terms are defined by administrative regulations of the commissioner;
 - 3. Any individual employed by the United States;
 - 4. Any individual employed in domestic service in or about a private home. The provisions of this section shall include individuals employed in domestic service in or about the home of an employer where there is more than one (1) domestic servant regularly employed;
 - 5. Any individual classified and given a certificate by the commissioner showing a status of learner, apprentice, worker with a disability, sheltered workshop employee, and student under administrative procedures and administrative regulations prescribed and promulgated by the commissioner. This certificate shall authorize employment at the wages, less than the established fixed minimum fair wage rates, and for the period of time fixed by the commissioner and stated in the certificate issued to the person;

6. Employees of retail stores, service industries, hotels, motels, and restaurant operations whose average annual gross volume of sales made for business done is less than five hundred thousand dollars (~~\$500,000~~)[~~ninety five thousand dollars (\$95,000)~~] for the five (5) preceding years exclusive of excise taxes at the retail level or if the employee is the parent, spouse, child, or other member of his or her employer's immediate family;
7. Any individual employed as a baby-sitter in an employer's home, or an individual employed as a companion by a sick, convalescing, or elderly person or by the person's immediate family, to care for that sick, convalescing, or elderly person and whose principal duties do not include housekeeping;
8. Any individual engaged in the delivery of newspapers to the consumer;
9. Any individual subject to the provisions of KRS Chapters 7, 16, 27A, 30A, and 18A provided that the secretary of the Personnel Cabinet shall have the authority to prescribe by administrative regulation those emergency employees, or others, who shall receive overtime pay rates necessary for the efficient operation of government and the protection of affected employees;
10. Any employee employed by an establishment which is an organized nonprofit camp, religious, or nonprofit educational conference center, if it does not operate for more than seven (7) months in any calendar year;
11. Any employee whose function is to provide twenty-four (24) hour residential care on the employer's premises in a parental role to children who are primarily dependent, neglected, and abused and who are in the care of private, nonprofit childcaring facilities licensed by the Cabinet for Health and Family Services under KRS 199.640 to 199.670; or

12. Any individual whose function is to provide twenty-four (24) hour residential care in his or her own home as a family caregiver and who is approved to provide family caregiver services to an adult with a disability through a contractual relationship with a community board for mental health or individuals with an intellectual disability established under KRS 210.370 to 210.460, or is certified or licensed by the Cabinet for Health and Family Services to provide adult foster care;
- (b) "Agriculture" means farming in all its branches, including cultivation and tillage of the soil; dairying; production, cultivation, growing, and harvesting of any agricultural or horticultural commodity; raising of livestock, bees, furbearing animals, or poultry; and any practice, including any forestry or lumbering operations, performed on a farm in conjunction with farming operations, including preparation and delivery of produce to storage, to market, or to carriers for transportation to market;
- (c) "Gratuity" means voluntary monetary contribution received by an employee from a guest, patron, or customer for services rendered;
- (d) "Tipped employee" means any employee engaged in an occupation in which he or she customarily and regularly receives more than thirty dollars (\$30) per month in tips; and
- (e) "U.S.C." means the United States Code.
- (3) As used in KRS 337.505 to 337.550, unless the context requires otherwise:
- (a) "Construction" includes construction, reconstruction, improvement, enlargement, alteration, or repair of any public works project by contract fairly estimated to cost more than two hundred fifty thousand dollars (\$250,000). No public works project, if procured under a single contract and subject to the requirements of this section, may be divided into multiple contracts of lesser value to avoid compliance with the provisions of this section;

- (b) "Contractor" and "subcontractor" include any superintendent, foreman, or other authorized agent of any contractor or subcontractor who is in charge of the construction of the public works or who is in charge of the employment or payment of the employees of the contractor or subcontractor who are employed in performing the work to be done or being done by the contractor or subcontractor under the particular contract with any public authority;
- (c) 1. "Locality" shall be determined by the commissioner. The commissioner may designate more than one (1) county as a single locality, but if more than one (1) county is designated, the multicounty locality shall not extend beyond the boundaries of a state Senatorial district. The commissioner shall not designate less than an entire county as a locality. If there is not available in the locality a sufficient number of competent, skilled laborers, workmen, and mechanics to efficiently and properly construct the public works, "locality" shall include any other locality nearest the one in which the work of construction is to be performed and from which such available skilled laborers, workmen, and mechanics may be obtained in sufficient number to perform the work; and
2. "Locality" with respect to contracts advertised or awarded by the Transportation Cabinet of this state shall be determined by the secretary of the Transportation Cabinet. The secretary may designate any number of counties as constituting a single locality. The secretary may also designate all counties of the Commonwealth as a single locality, but he or she shall not designate less than an entire county as a locality;
- (d) "Public authority" means any officer, board, or commission of this state, or any political subdivision or department thereof in the state, or any institution supported in whole or in part by public funds, including publicly owned or controlled corporations, authorized by law to enter into any contract for the

construction of public works and any nonprofit corporation funded to act as an agency and instrumentality of the government agency in connection with the construction of public works, and any "private provider", as defined in KRS 197.500, which enters into any contract for the construction of an "adult correctional facility", as defined in KRS 197.500; and

(e) "Public works" includes all buildings, roads, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, and all other structures or work, including "adult correctional facilities", as defined in KRS 197.500, constructed under contract with any public authority.

(4) If the federal government or any of its agencies furnishes by loans or grants any part of the funds used in constructing public works, and if the federal government or its agencies prescribe predetermined prevailing minimum wages to be paid to mechanics, workmen, and laborers employed in the construction of the public works, and if KRS 337.505 to 337.550 is also applicable, those wages in each classification which are higher shall prevail.

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

(1) Except as may otherwise be provided by this chapter, every employer shall pay to each of his employees wages at a rate of not less than ~~{five dollars and eighty five cents (\$5.85) an hour beginning on June 26, 2007, not less than six dollars and fifty five cents (\$6.55) an hour beginning July 1, 2008, and not less than }seven dollars and twenty-five cents (\$7.25) an hour beginning July 1, 2009, **and not less than eight dollars and twenty cents (\$8.20) an hour beginning on August 1, 2016.** If the federal minimum hourly wage as prescribed by 29 U.S.C. sec. 206(a)(1) is increased in excess of the minimum hourly wage in effect under this subsection, the minimum hourly wage under this subsection shall be increased to the same amount, effective on the same date as the federal minimum hourly wage rate. If the state minimum hourly wage is increased to the federal minimum hourly wage, it shall~~

include only the federal minimum hourly rate prescribed in 29 U.S.C. sec. 206(a)(1) and shall not include other wage rates or conditions, exclusions, or exceptions to the federal minimum hourly wage rate. In addition, the increase to the federal minimum hourly wage rate does not extend or modify the scope or coverage of the minimum wage rate required under this chapter.

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

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

- (1) "Employee" means any individual employed by any employer, including but not limited to individuals employed by the state or any of its political subdivisions, instrumentalities, or instrumentalities of political subdivisions.
- (2) "Employer" means a person who has two (2) or more employees within the state in each of twenty (20) or more calendar weeks in the current or preceding calendar year and an agent of such a person.
- (3) "Wage rate" means all compensation for employment, including payment in kind and amounts paid by employers for employee benefits, as defined by the commissioner in regulations issued under KRS 337.420 to 337.433 and

337.990(14).

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

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

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

~~337.420 to 337.433 and 337.990(14) shall apply to any employer who is subject to the federal Fair Labor Standards Act of 1938, as amended, when that act imposes comparable or greater requirements than contained in KRS 337.420 to 337.433 and 337.990(14) and when the employer files with the commissioner of the Department of Workplace Standards a statement that the employer is covered by the federal Fair Labor Standards Act of 1938, as amended].~~

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

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

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

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

(3) An employer who is paying a wage differential in violation of KRS 337.420 to 337.433 and 337.990(14) shall not, in order to comply with it, reduce the wage rates of any employee.

~~(4)(3)~~ No person shall cause or attempt to cause an employer to discriminate against any employee in violation of KRS 337.420 to 337.433 and 337.990(14).

~~(5)(4)~~ No employer may discharge or discriminate against any employee by reason of any action taken by such employee to invoke or assist in any manner the enforcement of KRS 337.420 to 337.433 and 337.990(14).

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

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

copy payrolls and other employment records, to compare character of work and operations on which persons employed by him or her are engaged, to question such persons, and to obtain other information necessary to the administration and enforcement of KRS 337.420 to 337.433 and 337.990(14).

- (2) The commissioner or the commissioner's authorized representative may examine witnesses under oath, and require by subpoena the attendance and testimony of witnesses and the production of any documentary evidence relating to the subject matter of any investigation undertaken pursuant to KRS 337.420 to 337.433 and 337.990(14). If a person fails to attend, testify or produce documents under or in response to a subpoena, the Circuit Court in the judicial circuit where the hearing is being held, on application of the commissioner or the commissioner's representative, may issue an order requiring the person to appear before the commissioner or the commissioner's authorized representative, or to produce documentary evidence, and any failure to obey the order of the court may be punished by the court as contempt.
- (3) The commissioner may endeavor to eliminate pay practices unlawful under KRS 337.420 to 337.433 and 337.990(14) by informal methods of conference, conciliation and persuasion, and supervise the payment of wages owing to any employee under KRS 337.420 to 337.433 and 337.990(14).
- (4) The commissioner shall promulgate administrative~~[may issue]~~ regulations in accordance with KRS Chapter 13A to specify:
 - (a) Criteria for determining whether a job is dominated by employees of a particular sex, race, or national origin, except that such administrative regulations shall not include a list of jobs;
 - (b) Acceptable methodology for determining equivalent skill, effort, responsibility, and working conditions of a job; and
 - (c) Any other matters~~[not inconsistent with the purpose of KRS 337.420 to~~

~~337.433 and 337.990(14),]~~ necessary or appropriate to carry out *the*~~[its]~~ provisions *of KRS 337.420 to 337.433 and 337.990(14).*

➔Section 6. Administrative regulations required in Section 5 of this Act shall be promulgated on or before July 1, 2017.

➔Section 7. Section 4 of this Act takes effect on July 1, 2018.