337.285 Time and a half for employment in excess of forty hours -- Compensatory time.

(1) No employer shall employ any of his employees for a work week longer than forty (40) hours, unless such employee receives compensation for his employment in excess of forty (40) hours in a work week at a rate of not less than one and one-half (1-1/2) times the hourly wage rate at which he is employed.

(2) This provision shall not apply to the following:

(a) Employees of retail stores engaged in work connected with selling, purchasing, and distributing merchandise, wares, goods, articles, or commodities;

(b) Employees of restaurant, hotel, and motel operations;

(c) Employees as defined and exempted from the overtime provision of the Fair Labor Standards Act in Sections 213(b)(1), 213(b)(6), 213(b)(10), and 213(b)(17) of Title 29, U.S.C.;

(d) Employees 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

(e) Any individual who is employed by a third-party employer or agency other than the family or household using his or her services to provide in-home companionship services for a sick, convalescing, or elderly person.

(3) As used in subsection (2) of this section, "companionship services" means those services which provide in-home fellowship, care, and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs. These services may include household work related to the care of the aged or infirm person such as meal preparation, bed making, washing of clothes, and other similar services. They may also include the performance of general household work, provided that the household work is incidental, i.e., does not exceed twenty percent (20%) of the total weekly hours worked. The term "companionship services" does not include services relating to the care and protection of the aged or infirm which require and are performed by trained personnel, such as a registered or practical nurse.

(4) Notwithstanding the provisions of subsection (1) of this section or any other chapter of the KRS to the contrary, upon written request by a county or city employee, made freely and without coercion, pressure, or suggestion by the employer, and upon a written agreement reached between the employer and the county or city employee before the performance of the work, a county or city employee who is authorized to work one (1) or more hours in excess of the prescribed hours per week may be granted compensatory leave on an hour-for-hour basis. Upon the written request by a county or city employee, made freely and without coercion, pressure, or suggestion by the employer, and upon a written agreement reached between the employer and the county or city employee before the performance of the work, a

county or city employee who is not exempt from the provisions of the Federal Fair Labor Standards Act of 1938, as amended, 29 U.S.C. secs. 201 et seq., may be granted compensatory time in lieu of overtime pay, at the rate of not less than one and one-half (1-1/2) hours for each hour the county or city employee is authorized to work in excess of forty (40) hours in a work week.

(5) (a) Upon the request of the county or city employee, and as provided in subsection (4) of this section, compensatory time shall be awarded as follows:

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

2. A county or city employee engaged in other work in excess of forty (40) hours, may accrue not more than two hundred forty (240) hours of compensatory time.

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

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

(7) If compensation is paid to a county or city employee for accrued compensatory time off, the compensation shall be paid at the regular rate earned by the county or city employee at the time the county or city employee receives the payment.

(8) Upon a county or city employee's termination of employment, all unused accrued compensatory time shall be paid at a rate of compensation not less than:

(a) The average regular rate received by the county or city employee during the last three (3) years of the county or city employee's employment; or

(b) The final regular rate received by the county or city employee, whichever is higher.

(9) Compensatory time shall not be used as a means to avoid statutory overtime compensation. A county or city employee shall have the right to use compensatory time earned and shall not be coerced to accept more compensatory time than an employer can realistically and in good faith expect to be able to grant within a reasonable period upon the county or city employee making the request for compensatory time off.

(10) Nothing in subsections (4) to (9) of this section shall be construed to supersede any collective bargaining agreement, memorandum of understanding, or any other

agreement between the employer and representative of the county or city employees.

(11) As used in subsections (4) to (9) of this section, "county or city employee" means an employee of any county, city, charter county, consolidated local government, unified local government, or urban-county government, including an employee of a county or city elected official.

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

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

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

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History: Amended 2009 Ky. Acts ch. 33, sec. 5, effective March 20, 2009. -- Amended 2008 Ky. Acts ch. 75, sec. 1, effective July 15, 2008. -- Amended 2005 Ky. Acts ch. 99, sec. 607, effective June 20, 2005. -- Amended 2004 Ky. Acts ch. 122, sec. 1, effective July 13, 2004. -- Amended 2002 Ky. Acts ch. 68, sec. 1, effective July 15, 2002; and ch. 329, sec. 1, effective July 15, 2002. -- Amended 1998 Ky. Acts ch. 426, sec. 559, effective July 15, 1998. -- Amended 1986 Ky. Acts ch. 423, sec. 193, effective July 1, 1987. -- Amended 1982 Ky. Acts ch. 376, sec. 1, effective July 15, 1982. -- Amended 1980 Ky. Acts ch. 326, sec. 1, effective July 15, 1980. -- Amended 1978 Ky. Acts ch. 198, sec. 2, effective June 17, 1978. -- Amended 1976 Ky. Acts ch. 285, sec. 1. -- Created 1974 Ky. Acts ch. 391, sec. 3.