

1 AN ACT relating to employment schedules.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 337 IS CREATED TO
4 READ AS FOLLOWS:

5 *As used in Sections 1 to 8 of this Act, unless the context requires otherwise:*

6 *(1) (a) "Employee" means any person employed by or suffered or permitted to*
7 *work for an employer in a retail establishment, hotel, motel, hospitality*
8 *establishment, food services or restaurant establishment, or service*
9 *industry;*

10 *(b) "Employee" does not include:*

11 *1. Any individual employed in a bona fide executive, administrative,*
12 *supervisory, or professional capacity;*

13 *2. Any individual supplied to an employer by an employer leasing*
14 *company; or*

15 *3. Any individual employed by retail stores, service industries, motels,*
16 *hotels, and restaurant operations whose average annual gross volume*
17 *of sales made for business done is less than five hundred thousand*
18 *dollars (\$500,000) for the five (5) preceding years exclusive of excise*
19 *taxes at the retail level;*

20 *(3) "Employer" means any person, either individual, corporation, partnership,*
21 *agency, or firm that employs an employee and includes any person, either*
22 *individual, corporation, partnership or agency, or firm, acting directly or*
23 *indirectly in the interest of an employer in relation to an employee;*

24 *(4) "On-call shift" means any time that an employer requires an employee to be*
25 *available to work or to contact the employer or wait to be contacted by the*
26 *employer for the purpose of determining whether the employee must report to*
27 *work. During the shift, on-call status applies regardless of whether the employee*

1 is located on or off the employer's premises;

2 (5) "Roadside assistance" means off-site repair assistance rendered to a motorist
3 with a disabled vehicle;

4 (6) "Ticketed event" means a sporting, entertainment, civic, charitable or other event
5 that requires a ticket for admission. The ticket may be electronic, physical, or a
6 name on a list held by the event organizer;

7 (7) "Time of hire" means the period after an offer of employment and acceptance of
8 the offer of employment and on or before the commencement of employment;

9 (8) "Work schedule" means the hours, days, and times, including regular work
10 shifts and on-call shifts, when an employee is required by an employer to perform
11 duties of employment for which the employee will receive compensation;

12 (9) "Work shift" means the specific and consecutive hours the employer requires the
13 employee to work;

14 (10) "Workweek" means a fixed period of time established by an employer that
15 reflects a regularly recurring period of one hundred and sixty-eight (168) hours
16 or seven (7) consecutive twenty-four (24) hour periods. A workweek may begin on
17 any day of the week and any hour of the day and need not coincide with a
18 calendar week. The beginning of a workweek may be changed if the change is
19 intended to be permanent; and

20 (11) "Writing" or "written" means a printed or printable communication in physical
21 or electronic format, including a communication that is transmitted through
22 electronic mail, text message, or a computer system or is otherwise sent and
23 stored electronically.

24 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 337 IS CREATED TO
25 READ AS FOLLOWS:

26 (1) An employer shall provide a new employee with a written good faith estimate of
27 the employee's work schedule at the time of hire.

1 (2) The good faith estimate shall include the following:

2 (a) The median number of hours the employee can expect to work in an
 3 average one (1) month period;

4 (b) A detailed explanation of the voluntary standby list described in Section 3 of
 5 this Act;

6 (c) A verification of whether an employee who is not on the voluntary standby
 7 list can expect to work on-call shifts and, if so, setting forth an objective
 8 standard for when an employee not listed on the voluntary standby list may
 9 be expected to be available to work on-call shifts; and

10 (d) Whether the schedule is based on a prior year schedule that is a good faith
 11 estimate of seasonal or episodic work.

12 (3) The employer shall provide the good faith estimate in the language that the
 13 employer typically uses to communicate with the employee.

14 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 337 IS CREATED TO
 15 READ AS FOLLOWS:

16 (1) An employer shall maintain a standby list of employees whom the employer will
 17 request to work additional hours to address unanticipated customer needs or
 18 unexpected employee absences if the listed employees have requested or agreed in
 19 writing to be included on the standby list and the employer notifies each employee
 20 in writing:

21 (a) That the list is voluntary and how an employee may request to be removed
 22 from the list;

23 (b) How the employer will notify a standby list employee of additional hours
 24 available and how an employee may accept the additional hours; and

25 (c) That the employee is not required to accept the additional hours offered.

26 (2) An employer shall provide an employee on the standby list with notice of
 27 additional hours available by in-person conversation, telephone call, electronic

- 1 mail, text message, or other accessible electronic or written format.
- 2 (3) An employee who receives notice of additional hours available under this section
3 may decline to accept the additional hours offered.
- 4 (4) An employee may request to be removed from the standby list at any time.
- 5 (5) An employer may not retaliate against an employee who:
6 (a) Does not request or agree to be added to the standby list;
7 (b) Requests to be removed from the standby list; or
8 (c) Declines an employer's request that the employee work additional hours as
9 a result of the employee being on the standby list.
- 10 (6) The standby list is not a list of employees scheduled for on-call shifts and the
11 employer is not required to include a list of employees on the standby list in the
12 written work schedule.

13 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 337 IS CREATED TO
14 READ AS FOLLOWS:

- 15 (1) An employer shall provide an employee with a work schedule in writing at least
16 seven (7) calendar days before the first day of the work schedule.
- 17 (2) The employer shall post the written work schedule in a conspicuous and
18 accessible location, in English and in the language the employer typically uses to
19 communicate with the employees.
- 20 (3) The employer shall provide a written work schedule that runs through the last
21 date of the posted work schedule in effect at the time of delivery to:
22 (a) A new employee on or before the employee's first day of work; or
23 (b) An existing employee on the employee's first day of work after a leave of
24 absence.
- 25 (4) The written work schedule shall include all work shifts and on-call shifts for the
26 work period.
- 27 (5) If the employer requests changes to the written work schedule after the advance

1 notice required in this section:

2 (a) The employer shall provide the employee with timely notice of the change by
 3 in-person conversation, telephone call, electronic mail, text message, or
 4 other accessible electronic or written format; and

5 (b) The employee may decline any work shifts not included in the employee's
 6 written work schedule.

7 (6) At any time after the advance notice of written work schedule required in this
 8 section, an employee may request in writing that the employer add the employee
 9 to one (1) or more work shifts or on-call work shifts. Any changes to the
 10 employee's written work schedule resulting from such employee-requested work
 11 schedule changes are not subject to the advance notice requirements of this
 12 section.

13 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 337 IS CREATED TO
 14 READ AS FOLLOWS:

15 (1) Unless the employee requests or consents to work such hours, an employer may
 16 not schedule or require an employee to work during the following rest periods:

17 (a) The first ten (10) hours following the end of the previous calendar day's
 18 work shift or on-call shift; or

19 (b) The first ten (10) hours following the end of a work shift or on-call shift
 20 that spanned two (2) calendar days.

21 (2) Except as provided in subsection (3) of this section, an employer shall
 22 compensate an employee for each hour or portion of an hour that the employee
 23 works during a rest period described in subsection (1) of this section at one and
 24 one-half (1-½) times the employee's regular rate of pay.

25 (3) Subsection (2) of this section does not apply to any hour or portion of an hour
 26 that an employee works during the rest period described in subsection (1) of this
 27 section during which the employee is engaged in providing roadside assistance

1 services.

2 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 337 IS CREATED TO
3 READ AS FOLLOWS:

4 (1) At time of hire and during employment, an employee may identify any limitations
5 or changes in the employee’s work schedule availability. The employee may also
6 request not to be scheduled for work shifts during certain times or at certain
7 locations.

8 (2) An employer may require the employee to provide reasonable verification of the
9 need for a request made under subsection (1) of this section.

10 (3) An employer may not retaliate against an employee for making a request under
11 subsection (1) of this section.

12 (4) An employer is under no obligation to grant an employee’s request under
13 subsection (1) of this section.

14 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 337 IS CREATED TO
15 READ AS FOLLOWS:

16 (1) An employer shall provide the following compensation to an employee for each
17 employer requested change that occurs to the employee’s written work schedule
18 without the advance notice required in Section 4 of this Act:

19 (a) One (1) hour of pay at the employee’s regular rate of pay, in addition to
20 wages earned, when the employer:

21 1. Adds more than thirty (30) minutes of work to the employee’s work
22 shift;

23 2. Changes the date or start or end time of the employee’s work shift with
24 no loss of hours; or

25 3. Schedules the employee for an additional work shift or on-call shift;
26 and

27 (b) One-half (1/2) times the employee’s regular rate of pay per hour for each

1 scheduled hour that the employee does not work when the employer:

2 1. Subtracts hours from the employee's work shift before or after the
3 employee reports for duty;

4 2. Changes the date or start or end time of the employee's work shift,
5 resulting in a loss of work shift hours;

6 3. Cancels the employee's work shift; or

7 4. Does not ask the employee to perform work when the employee is
8 scheduled for an on-call shift.

9 (2) The requirements for additional compensation in this section shall not apply
10 when:

11 (a) An employer changes the start or end time of an employee's work shift by
12 thirty (30) minutes or less;

13 (b) An employee mutually agrees with another employee to employee-initiated
14 work shift swaps or coverage. The employer may require that work shift
15 swaps or coverage under this paragraph be preapproved by the employer.
16 The employer may assist employees in finding such arrangements, provided
17 that any employer assistance shall be limited to helping an employee
18 identify other employees who may be available to provide work shift swaps
19 or coverage and may not include the employer arranging the work shift
20 swap or coverage;

21 (c) An employee requests changes to the employee's written work schedule,
22 including adding or subtracting hours, and the employee documents the
23 request in writing;

24 (d) An employer makes changes to an employee's written work schedule at the
25 employee's request;

26 (e) An employer subtracts hours from an employee's work schedule for
27 disciplinary reasons for just cause, provided the employer documents the

- 1 incident leading to the employee's discipline in writing;
- 2 (f) An employee's work shift or on-call shift cannot begin or continue due to
- 3 threats to employees or property or due to the recommendation of a public
- 4 official;
- 5 (g) Operations cannot begin or continue because public utilities fail to supply
- 6 electricity, water, or gas or there is a failure in the public utilities or sewer
- 7 system;
- 8 (h) Operations cannot begin or continue due to a natural disaster or a similar
- 9 cause not within the employer's control, including when the natural
- 10 disaster or similar cause physically affects the work site;
- 11 (i) Operations hours change or are substantially altered because a ticketed
- 12 event is cancelled or rescheduled or there are changes in duration due to
- 13 circumstances that are outside the employer's control and that occur after
- 14 the employer provides the written work schedule;
- 15 (j) An employer requests that an employee on a voluntary standby list work
- 16 additional hours as described in Section 2 of this Act and the employee
- 17 consents to work the additional hours; or
- 18 (k) An employer requests that an employee work additional hours to address
- 19 unanticipated customer needs or unexpected employee absence and the
- 20 employee consents in writing to work the additional hours.

21 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 337 IS CREATED TO

22 READ AS FOLLOWS:

23 It is an unlawful practice for an employer to:

- 24 (1) Interfere with, restrain, deny or attempt to deny the exercise of any right
- 25 protected under Sections 1 to 8 of this Act; or
- 26 (2) Retaliate or in any way discriminate against an individual with respect to hire or
- 27 tenure or any other term or condition of employment because the individual has

1 *inquired about the provisions of Sections 1 to 8 of this Act.*

2 ➔Section 9. KRS 337.990 is amended to read as follows:

3 The following civil penalties shall be imposed, in accordance with the provisions in KRS
4 336.985, for violations of the provisions of this chapter:

- 5 (1) Any firm, individual, partnership, or corporation that violates KRS 337.020 shall be
6 assessed a civil penalty of not less than one hundred dollars (\$100) nor more than
7 one thousand dollars (\$1,000) for each offense. Each failure to pay an employee the
8 wages when due him under KRS 337.020 shall constitute a separate offense.
- 9 (2) Any employer who violates KRS 337.050 shall be assessed a civil penalty of not
10 less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).
- 11 (3) Any employer who violates KRS 337.055 shall be assessed a civil penalty of not
12 less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000)
13 for each offense and shall make full payment to the employee by reason of the
14 violation. Each failure to pay an employee the wages as required by KRS 337.055
15 shall constitute a separate offense.
- 16 (4) Any employer who violates KRS 337.060 shall be assessed a civil penalty of not
17 less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000)
18 and shall also be liable to the affected employee for the amount withheld, plus
19 interest at the rate of ten percent (10%) per annum.
- 20 (5) Any employer who violates the provisions of KRS 337.065 shall be assessed a civil
21 penalty of not less than one hundred dollars (\$100) nor more than one thousand
22 dollars (\$1,000) for each offense and shall make full payment to the employee by
23 reason of the violation.
- 24 (6) Any person who fails to comply with KRS 337.070 shall be assessed a civil penalty
25 of not less than one hundred dollars (\$100) nor more than one thousand dollars
26 (\$1,000) for each offense and each day that the failure continues shall be deemed a
27 separate offense.

- 1 (7) Any employer who violates any provision of KRS 337.275 to 337.325, KRS
2 337.345, and KRS 337.385 to 337.405, or willfully hinders or delays the
3 commissioner or the commissioner's authorized representative in the performance
4 of his or her duties under KRS 337.295, or fails to keep and preserve any records as
5 required under KRS 337.320 and 337.325, or falsifies any record, or refuses to
6 make any record or transcription thereof accessible to the commissioner or the
7 commissioner's authorized representative shall be assessed a civil penalty of not less
8 than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000). A
9 civil penalty of not less than one thousand dollars (\$1,000) shall be assessed for any
10 subsequent violation of KRS 337.285(4) to (9) and each day the employer violates
11 KRS 337.285(4) to (9) shall constitute a separate offense and penalty.
- 12 (8) Any employer who pays or agrees to pay wages at a rate less than the rate applicable
13 under KRS 337.275 and 337.285, or any wage order issued pursuant thereto shall be
14 assessed a civil penalty of not less than one hundred dollars (\$100) nor more than
15 one thousand dollars (\$1,000).
- 16 (9) Any employer who discharges or in any other manner discriminates against any
17 employee because the employee has made any complaint to his or her employer, to
18 the commissioner, or to the commissioner's authorized representative that he or she
19 has not been paid wages in accordance with KRS 337.275 and 337.285 or
20 regulations issued thereunder, or because the employee has caused to be instituted
21 or is about to cause to be instituted any proceeding under or related to KRS
22 337.385, or because the employee has testified or is about to testify in any such
23 proceeding, shall be deemed in violation of KRS 337.275 to 337.325, KRS 337.345,
24 and KRS 337.385 to 337.405 and shall be assessed a civil penalty of not less than
25 one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).
- 26 (10) Any employer who violates KRS 337.365 shall be assessed a civil penalty of not
27 less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

- 1 (11) A person shall be assessed a civil penalty of not less than one hundred dollars
2 (\$100) nor more than one thousand dollars (\$1,000) when that person discharges or
3 in any other manner discriminates against an employee because the employee has:
- 4 (a) Made any complaint to his or her employer, the commissioner, or any other
5 person; or
 - 6 (b) Instituted, or caused to be instituted, any proceeding under or related to KRS
7 337.420 to 337.433; or
 - 8 (c) Testified, or is about to testify, in any such proceedings.

9 **(12) Any employer who violates Sections 1 to 8 of this Act shall be assessed a civil**
10 **penalty not less than five hundred dollars (\$500) nor more than two thousand**
11 **dollars (\$2,000). Each violation is a separate and distinct offense. In the case of a**
12 **continuing violation, each day's continuance is a separate and distinct violation.**