

1 AN ACT relating to employment.

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 3 of this Act, unless the context requires otherwise:*

6 *(1) "Constructive discharge" means the resignation of an employee because of a*  
7 *working condition or conditions that an objective and reasonable person would*  
8 *find intolerable. "Constructive discharge" does not mean resignation because of*  
9 *an employer's refusal to promote the employee or improve wages, responsibilities,*  
10 *or other terms and conditions of employment;*

11 *(2) "Discharge" means termination of employment and includes a constructive*  
12 *discharge as defined in subsection (1) of this section, resignation, elimination of*  
13 *the job, layoff for lack of work, failure to recall or rehire, and any other cutback*  
14 *in the number of employees;*

15 *(3) "Fringe benefits" means the value of any employer-paid vacation leave, sick*  
16 *leave, medical insurance plan, disability insurance plan, life insurance plan, and*  
17 *pension or retirement benefit plan in force on the date of the termination;*

18 *(4) "Good cause" means reasonable job-related grounds for dismissal based on a*  
19 *failure to satisfactorily perform job duties, disruption of the employer's operation,*  
20 *or other legitimate business reason;*

21 *(5) "Lost wages" means the gross amount of wages that would have been reported to*  
22 *the Internal Revenue Service as gross income on form W-2 and includes*  
23 *additional compensation deferred at the option of the employee; and*

24 *(6) "Public policy" means a policy in effect at the time of the discharge concerning*  
25 *the public health, safety, or welfare established by constitutional provision,*  
26 *statute, or administrative regulation.*

27 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 337 IS CREATED TO

1 READ AS FOLLOWS:

2 (1) A discharge of an employee is wrongful if:

3 (a) It is in retaliation for the employee's refusal to violate public policy, for  
4 reporting a violation of public policy, or for reporting what the employee  
5 reasonably believes is a violation of public policy;

6 (b) The discharge is not for good cause and the employee has completed the  
7 employer's probationary period of employment; or

8 (c) The employer violated the express provisions of its own written personnel  
9 policy.

10 (2) (a) During a probationary period of employment not to exceed nine (9) months,  
11 the employment may be terminated at the will of either the employer or the  
12 employee on notice to the other for any reason other than reasons  
13 prohibited by law or no reason.

14 (b) If an employer does not establish a specific probationary period or provide  
15 that there is no probationary period prior to or at the time of hire, there is a  
16 probationary period of six (6) months from the date of hire.

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

19 (1) Any employer who commits a wrongful discharge shall be liable to the employee  
20 or employees in the amount of their lost wages and fringe benefits for a period  
21 not to exceed four (4) years from the date of discharge, together with interest on  
22 the lost wages and fringe benefits. Interim earnings, including amounts the  
23 employee could have earned with reasonable diligence, shall be deducted from  
24 the amount awarded for lost wages. Before interim earnings are deducted from  
25 lost wages, there shall be deducted from the interim earnings any reasonable  
26 amounts expended by the employee in searching for, obtaining, or relocating to  
27 new employment.

- 1 (2) The employee shall recover punitive damages as allowed by KRS 411.184 and  
2 411.186 if it is established by clear and convincing evidence that the employer  
3 acted toward the employee with oppression, fraud, or malice in violating Section  
4 2 of this Act.
- 5 (3) An employee is entitled to any damages for an employer's violation of Section 2  
6 of this Act except as provided in subsections (1) and (2) of this section, provided  
7 that nothing in Sections 1 to 3 of this Act shall limit or diminish an employee's  
8 right to any form of damages or relief under any other statute or common law.
- 9 (4) An action to recover any liability established by this section may be maintained in  
10 any court of competent jurisdiction by any one (1) or more employees for and on  
11 behalf of himself, herself, or themselves and other employees similarly situated.
- 12 (5) An action filed for violation of Section 2 of this Act shall be filed no later than  
13 one (1) year after the date of discharge.
- 14 (6) (a) If an employer maintains written internal procedures under which an  
15 employee may appeal a discharge within the organizational structure of the  
16 employer, the employee shall first exhaust those procedures prior to filing  
17 an action in court pursuant to Sections 1 to 3 of this Act;
- 18 (b) If an employer's internal procedures or remedies are not completed within  
19 ninety (90) days from the date the employee initiates the internal  
20 procedures, then the employee may file a court action pursuant to Sections  
21 1 to 3 of this Act; and
- 22 (c) The limitation in subsection (5) of this section is tolled until the employer's  
23 internal procedures are exhausted, except that in no case may the  
24 provisions of the employer's internal procedures extend the limitation more  
25 than one hundred twenty (120) days.