

1 AN ACT relating to labor and employment overtime provisions.

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

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

4 (1) As used in this chapter, unless the context requires otherwise:

5 (a) "Commissioner" means the commissioner of the Department of Workplace
6 Standards under the direction and supervision of the secretary of the Labor
7 Cabinet;

8 (b) "Department" means the Department of Workplace Standards in the Labor
9 Cabinet;

10 (c) 1. "Wages" includes any compensation due to an employee by reason of his
11 or her employment, including salaries, commissions, vested vacation
12 pay, overtime pay, severance or dismissal pay, earned bonuses, and any
13 other similar advantages agreed upon by the employer and the employee
14 or provided to employees as an established policy. The wages shall be
15 payable in legal tender of the United States or checks on banks
16 convertible into cash on demand at full face value, subject to the
17 allowances made in this chapter;

18 2. For the purposes of calculating hourly wage rates for scheduled overtime
19 for professional firefighters, as defined in KRS 95A.210(5), "wages"
20 shall not include the distribution to qualified professional firefighters by
21 local governments of supplements received from the Firefighters
22 Foundation Program Fund. For the purposes of calculating hourly wage
23 rates for unscheduled overtime for professional firefighters, as defined in
24 KRS 95A.210(6), "wages" shall include the distribution to qualified
25 professional firefighters by local governments of supplements received
26 from the Firefighters Foundation Program Fund;

27 (d) "Employer" is any person, either individual, corporation, partnership, agency,

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

4 (e) "Employee" is any person employed by or suffered or permitted to work for an
 5 employer.

6 (2) As used in KRS 337.275 to 337.325, 337.345, and KRS 337.385 to 337.405, unless
 7 the context requires otherwise:

8 (a) "Bona fide executive, administrative, supervisory, or professional capacity"
 9 has the same meaning as that established by the Secretary of the United
 10 States Department of Labor under 29 U.S.C. sec. 213(a) for purposes of the
 11 Fair Labor Standards Act;

12 (b) "Employee" is any person employed by or suffered or permitted to work for an
 13 employer, but shall not include:

14 1. Any individual employed in agriculture;

15 2. Any individual employed in:

16 a. A bona fide executive, administrative, supervisory, or professional
 17 capacity who is paid on a salary basis at least nine hundred
 18 thirteen dollars (\$913) per week or an equivalent amount for
 19 periods of time longer than one (1) week, including
 20 compensation that is paid on a biweekly, semimonthly, or
 21 monthly basis. Beginning on January 1, 2020, this amount shall
 22 be adjusted by the commissioner every three (3) years to equal
 23 the fortieth percentile of weekly earnings of full-time, salaried
 24 workers in the lowest wage census region in the second quarter
 25 of the year preceding the update published by the United States
 26 Department of Labor, Bureau of Labor Statistics;~~;~~ or~~in~~

27 b. The capacity of outside salesman, or as an outside collector as the

1 terms are defined by administrative regulations of the
2 commissioner;

3 3. Any individual employed by the United States;

4 4. Any individual employed in domestic service in or about a private home.

5 The provisions of this section shall include individuals employed in
6 domestic service in or about the home of an employer where there is
7 more than one (1) domestic servant regularly employed;

8 5. Any individual classified and given a certificate by the commissioner
9 showing a status of learner, apprentice, worker with a disability,
10 sheltered workshop employee, and student under administrative
11 procedures and administrative regulations prescribed and promulgated
12 by the commissioner. This certificate shall authorize employment at the
13 wages, less than the established fixed minimum fair wage rates, and for
14 the period of time fixed by the commissioner and stated in the certificate
15 issued to the person;

16 6. Employees of retail stores, service industries, hotels, motels, and
17 restaurant operations whose average annual gross volume of sales made
18 for business done is less than ninety-five thousand dollars (\$95,000) for
19 the five (5) preceding years exclusive of excise taxes at the retail level or
20 if the employee is the parent, spouse, child, or other member of his or
21 her employer's immediate family;

22 7. Any individual employed as a baby-sitter in an employer's home, or an
23 individual employed as a companion by a sick, convalescing, or elderly
24 person or by the person's immediate family, to care for that sick,
25 convalescing, or elderly person and whose principal duties do not
26 include housekeeping;

27 8. Any individual engaged in the delivery of newspapers to the consumer;

- 1 9. Any individual subject to the provisions of KRS Chapters 7, 16, 27A,
2 30A, and 18A provided that the secretary of the Personnel Cabinet shall
3 have the authority to prescribe by administrative regulation those
4 emergency employees, or others, who shall receive overtime pay rates
5 necessary for the efficient operation of government and the protection of
6 affected employees;
- 7 10. Any employee employed by an establishment which is an organized
8 nonprofit camp, religious, or nonprofit educational conference center, if
9 it does not operate for more than seven (7) months in any calendar year;
- 10 11. Any employee whose function is to provide twenty-four (24) hour
11 residential care on the employer's premises in a parental role to children
12 who are primarily dependent, neglected, and abused and who are in the
13 care of private, nonprofit childcaring facilities licensed by the Cabinet
14 for Health and Family Services under KRS 199.640 to 199.670; or
- 15 12. Any individual whose function is to provide twenty-four (24) hour
16 residential care in his or her own home as a family caregiver and who is
17 approved to provide family caregiver services to an adult with a
18 disability through a contractual relationship with a community board for
19 mental health or individuals with an intellectual disability established
20 under KRS 210.370 to 210.460, or is certified or licensed by the Cabinet
21 for Health and Family Services to provide adult foster care;
- 22 ~~(c)~~~~(b)~~ "Agriculture" means farming in all its branches, including cultivation
23 and tillage of the soil; dairying; production, cultivation, growing, and
24 harvesting of any agricultural or horticultural commodity; raising of livestock,
25 bees, furbearing animals, or poultry; and any practice, including any forestry
26 or lumbering operations, performed on a farm in conjunction with farming
27 operations, including preparation and delivery of produce to storage, to

1 market, or to carriers for transportation to market;

2 ~~(d)~~~~(e)~~ "Gratuity" means voluntary monetary contribution received by an
3 employee from a guest, patron, or customer for services rendered;

4 ~~(e)~~~~(d)~~ "Tipped employee" means any employee engaged in an occupation in
5 which he or she customarily and regularly receives more than thirty dollars
6 (\$30) per month in tips; and

7 ~~(f)~~~~(e)~~ "U.S.C." means the United States Code.

8 (3) As used in KRS 337.505 to 337.550, unless the context requires otherwise:

9 (a) "Construction" includes construction, reconstruction, improvement,
10 enlargement, alteration, or repair of any public works project by contract fairly
11 estimated to cost more than two hundred fifty thousand dollars (\$250,000). No
12 public works project, if procured under a single contract and subject to the
13 requirements of this section, may be divided into multiple contracts of lesser
14 value to avoid compliance with the provisions of this section;

15 (b) "Contractor" and "subcontractor" include any superintendent, foreman, or
16 other authorized agent of any contractor or subcontractor who is in charge of
17 the construction of the public works or who is in charge of the employment or
18 payment of the employees of the contractor or subcontractor who are
19 employed in performing the work to be done or being done by the contractor
20 or subcontractor under the particular contract with any public authority;

21 (c) 1. "Locality" shall be determined by the commissioner. The commissioner
22 may designate more than one (1) county as a single locality, but if more
23 than one (1) county is designated, the multicounty locality shall not
24 extend beyond the boundaries of a state Senatorial district. The
25 commissioner shall not designate less than an entire county as a locality.
26 If there is not available in the locality a sufficient number of competent,
27 skilled laborers, workmen, and mechanics to efficiently and properly

1 construct the public works, "locality" shall include any other locality
2 nearest the one in which the work of construction is to be performed and
3 from which such available skilled laborers, workmen, and mechanics
4 may be obtained in sufficient number to perform the work; and

5 2. "Locality" with respect to contracts advertised or awarded by the
6 Transportation Cabinet of this state shall be determined by the secretary
7 of the Transportation Cabinet. The secretary may designate any number
8 of counties as constituting a single locality. The secretary may also
9 designate all counties of the Commonwealth as a single locality, but he
10 or she shall not designate less than an entire county as a locality;

11 (d) "Public authority" means any officer, board, or commission of this state, or
12 any political subdivision or department thereof in the state, or any institution
13 supported in whole or in part by public funds, including publicly owned or
14 controlled corporations, authorized by law to enter into any contract for the
15 construction of public works and any nonprofit corporation funded to act as an
16 agency and instrumentality of the government agency in connection with the
17 construction of public works, and any "private provider", as defined in KRS
18 197.500, which enters into any contract for the construction of an "adult
19 correctional facility", as defined in KRS 197.500; and

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

24 (4) If the federal government or any of its agencies furnishes by loans or grants any part
25 of the funds used in constructing public works, and if the federal government or its
26 agencies prescribe predetermined prevailing minimum wages to be paid to
27 mechanics, workmen, and laborers employed in the construction of the public

1 works, and if KRS 337.505 to 337.550 is also applicable, those wages in each
2 classification which are higher shall prevail.

3 →Section 2. KRS 337.020 is amended to read as follows:

4 Every employer doing business in this state shall, as often as semimonthly, pay to each of
5 its employees all wages or salary earned to a day not more than eighteen (18) days prior to
6 the date of that payment. Any employee who is absent at the time fixed for payment, or
7 who, for any other reason, is not paid at that time, shall be paid thereafter at any time
8 upon six (6) days' demand. No employer subject to this section shall, by any means,
9 secure exemption from it. Every such employee shall have a right of action against any
10 such employer for the full amount of his wages due on each regular pay day. The
11 provisions of this section do not apply to those individuals defined in KRS
12 337.010(2)(~~b~~)(~~a~~)².

13 →Section 3. KRS 337.285 is amended to read as follows:

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

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

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

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

23 (c) ~~]Employees as defined and exempted from the overtime provision of the Fair~~
24 ~~Labor Standards Act in Sections 213(b)(1), 213(b)(6), 213(b)(10), and~~
25 ~~213(b)(17) of Title 29, U.S.C.;~~

26 (~~b~~)(~~d~~) Employees whose function is to provide twenty-four (24) hour
27 residential care on the employer's premises in a parental role to children who

1 are primarily dependent, neglected, and abused and who are in the care of
2 private nonprofit childcaring facilities licensed by the Cabinet for Health and
3 Family Services under KRS 199.640 to 199.670; or

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

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

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

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

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

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

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

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

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

27 (7) If compensation is paid to a county or city employee for accrued compensatory time

1 off, the compensation shall be paid at the regular rate earned by the county or city
2 employee at the time the county or city employee receives the payment.

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

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

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

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

15 (10) Nothing in subsections (4) to (9) of this section shall be construed to supersede any
16 collective bargaining agreement, memorandum of understanding, or any other
17 agreement between the employer and representative of the county or city
18 employees.

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

23 (12) In addition to the designation of a work week under subsection (1) of this section,
24 local governments, as defined in KRS 95A.210(3), may designate a work period for
25 professional firefighter employees as defined in KRS 95A.210. The designated
26 work period shall be not less than one (1) work week of seven (7) consecutive days
27 and not more than four (4) work weeks of twenty-eight (28) consecutive days for

1 purposes of complying with the requirements of the Federal Labor Standards Act of
2 1938, as amended, 29 U.S.C. secs. 201 et seq. This subsection shall not exempt
3 local governments from complying with the overtime requirements set forth in
4 subsection (1) of this section and is intended to:

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

8 (b) Allow for the application of the partial exemption set forth in 29 U.S.C. sec.
9 207(k) in determining overtime pay under the Fair Labor Standards Act of
10 1938, as amended, 29 U.S.C. secs. 201 et seq., only.

11 (13) (a) A law enforcement department of a consolidated local government organized
12 under KRS Chapter 67C shall not be deemed to have violated subsection (1)
13 of this section with respect to the employment of a peace officer if:

14 1. The officer works eighty (80) hours or less in a work period of fourteen
15 (14) consecutive days; and

16 2. The law enforcement department and a representative of a collective
17 bargaining unit certified under KRS 67C.408 that includes the officer
18 agree to the exception.

19 (b) It is the intent of this subsection to allow the employment of a peace officer
20 for longer than forty (40) hours in any seven (7) consecutive days within a
21 fourteen (14) day work period without incurring the obligation to pay a rate of
22 not less than one and one-half (1-1/2) times the officer's hourly wage under
23 subsection (1) of this section.