

AN ACT relating to franchisees.

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, except that:

1. Notwithstanding any voluntary agreement entered into between the United States Department of Labor and a franchisee, neither a franchisee nor a franchisee's employee shall be deemed to be an employee of the franchisor for any purpose under this chapter.

2. For purposes of this subsection, "franchisee" and "franchisor" have the same definitions as in 16 C.F.R. sec. 436.1.

- (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 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 338.021 is amended to read as follows:

- (1) This chapter applies to all employers, employees, and places of employment throughout the Commonwealth except the following:
 - (a) Employees of the United States government.
 - (b) Employers, employees and places of employment over which federal agencies other than the Occupational Safety and Health Administration of the United States Department of Labor exercise statutory authority to prescribe or enforce

standards or regulations affecting occupational safety and health.

- (2) (a) *Notwithstanding any voluntary agreement entered into between the United States Department of Labor and a franchisee, neither a franchisee nor a franchisee's employee shall be deemed to be an employee of the franchisor for any purpose under this chapter.*
- (b) *For purposes of this subsection, "franchisee" and "franchisor" have the same definitions as in 16 C.F.R. sec. 436.1.*

- (3) Nothing in this chapter shall be construed to supersede or in any manner affect any workers' compensation law or to enlarge or diminish or affect in any manner the common law or statutory rights, duties, or liabilities of employers or employees, under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of employment.

➔Section 3. KRS 341.070 is amended to read as follows:

As used in this chapter, unless the context clearly requires otherwise, "subject employer" means:

- (1) Any employing unit which in any calendar quarter in either the current or preceding calendar year paid for service in covered employment wages of fifteen hundred dollars (\$1,500) or more.
- (2) Any employing unit which for some portion of a day in each of twenty (20) different calendar weeks, whether or not such weeks are consecutive, in either the current or the preceding calendar year, had in covered employment at least one (1) worker (irrespective of whether the same worker was in employment in each such day).
- (3) Any employing unit for which service in covered employment, as defined in paragraph (d) of subsection (1) of KRS 341.050, is performed.
- (4) Any employing unit for which service in covered employment, as defined in paragraph (e) or (h) of subsection (1) of KRS 341.050, is performed.

- (5) Any employing unit for which service in covered employment, as defined in paragraph (f) or (h) of subsection (1) of KRS 341.050, is performed.
- (6) Any employing unit for which service in covered employment, as defined in paragraph (g) or (h) of subsection (1) of KRS 341.050, is performed.
- (7) Any employing unit that succeeds to or acquires the organization, trade, or business, or substantially all of the assets of another employing unit which at the time of such succession or acquisition is a subject employer, or which succeeds to or acquires a portion of the organization, trade, or business of another employing unit, which portion, if treated as a separate employing unit, would be, at the time of the succession or acquisition, a subject employer under subsection (1), (2), or (5) of this section.
- (8) Any employing unit for which service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment fund; or which, as a condition for approval of this chapter for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, pursuant to such act, to be a "subject employer" under this chapter.
- (9) Any employing unit which has elected to become subject to this chapter, pursuant to subsection (3) of KRS 341.250.
- (10) For purposes of subsections (1) through (6) of this section, covered employment shall include service which would constitute covered employment but for the fact that such service is deemed to be performed entirely within another state pursuant to an election under an arrangement entered into (in accordance with KRS 341.145) by the secretary and an agency charged with the administration of any other state or federal unemployment compensation law.
- (11) Any employing unit which, having become a subject employer under subsections (1) through (9) of this section, has not ceased to be a subject employer under KRS

341.250.

- (12) For purposes of subsections (2), (4), and (5) of this section, if any week includes both December 31 and January 1, the days of that week up to January 1 shall be deemed one (1) calendar week and the days beginning January 1 another week.
- (13) Notwithstanding the provisions of this section or any other provision of this chapter, no employing unit shall be initially determined a subject employer on the basis of covered employment performed more than five (5) calendar years prior to the year in which such determination is made, unless the secretary can show that the records of such employment experience were fraudulently concealed or withheld for the purpose of escaping liability under this chapter.

(14) (a) Notwithstanding any voluntary agreement entered into between the United States Department of Labor and a franchisee, neither a franchisee nor a franchisee's employee shall be deemed to be an employee of the franchisor for any purpose under this chapter.

(b) For purposes of this subsection, "franchisee" and "franchisor" have the same definitions as in 16 C.F.R. sec. 436.1.

➔Section 4. KRS 342.690 is amended to read as follows:

- (1) If an employer secures payment of compensation as required by this chapter, the liability of such employer under this chapter shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death. For purposes of this section, the term "employer" shall include a "contractor" covered by subsection (2) of KRS 342.610, whether or not the subcontractor has in fact, secured the payment of compensation. The liability of an employer to another person who may be liable for or who has paid damages on account of injury or death of an employee of such employer arising out of and in the course of

employment and caused by a breach of any duty or obligation owed by such employer to such other shall be limited to the amount of compensation and other benefits for which such employer is liable under this chapter on account of such injury or death, unless such other and the employer by written contract have agreed to share liability in a different manner. The exemption from liability given an employer by this section shall also extend to such employer's carrier and to all employees, officers or directors of such employer or carrier, provided the exemption from liability given an employee, officer or director or an employer or carrier shall not apply in any case where the injury or death is proximately caused by the willful and unprovoked physical aggression of such employee, officer or director.

- (2) If an employer fails to secure payment of compensation as required by this chapter, an injured employee, or his legal representative in case death results from the injury, may claim compensation under this chapter and in addition may maintain an action at law or in admiralty for damages on account of such injury or death, provided that the amount of compensation shall be credited against the amount received in such action, and provided that, if the amount of compensation is larger than the amount of damages received, the amount of damages less the employee's legal fees and expenses shall be credited against the amount of compensation. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, that the employee assumed the risks of his employment, or that the injury was due to the contributory negligence of the employee.
- (3) An employer shall retain all common law defenses against any action by an employee who elects not to be covered, as provided under subsection (6) of KRS 342.650.

(4) (a) Notwithstanding any voluntary agreement entered into between the United States Department of Labor and a franchisee, neither a franchisee nor a franchisee's employee shall be deemed to be an employee of the franchisor

for any purpose under this chapter.

(b) For purposes of this subsection, "franchisee" and "franchisor" have the same definitions as in 16 C.F.R. sec. 436.1.

→Section 5. KRS 344.030 is amended to read as follows:

For the purposes of KRS 344.030 to 344.110:

- (1) "Qualified individual with a disability" means an individual with a disability as defined in KRS 344.010 who, with or without reasonable accommodation, can perform the essential functions of the employment position that the individual holds or desires unless an employer demonstrates that he is unable to reasonably accommodate an employee's or prospective employee's disability without undue hardship on the conduct of the employers' business. Consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.
- (2) "Employer" means a person who has eight (8) 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, except for purposes of determining discrimination based on disability, employer means a person engaged in an industry affecting commerce who has fifteen (15) or more employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year, and any agent of that person, except that, for two (2) years following July 14, 1992, an employer means a person engaged in an industry affecting commerce who has twenty-five (25) or more employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding year, and any agent of that person. For the purposes of determining discrimination based on disability, employer shall not include:

- (a) The United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or
- (b) A bona fide private membership club (other than a labor organization) that is exempt from taxation under Section 501(c) of the Internal Revenue Service Code of 1986.
- (3) "Employment agency" means a person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such person.
- (4) "Labor organization" means a labor organization and an agent of such an organization, and includes an organization of any kind, an agency or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and a conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.
- (5) "Employee" means an individual employed by an employer, but does not include an individual employed by his parents, spouse, or child, or an individual employed to render services as a domestic in the home of the employer.
- (a) Notwithstanding any voluntary agreement entered into between the United States Department of Labor and a franchisee, neither a franchisee nor a franchisee's employee shall be deemed to be an employee of the franchisor for any purpose.**
- (b) For purposes of this subsection, "franchisee" and "franchisor" have the same definitions as in 16 C.F.R. sec. 436.1.**
- (6) "Reasonable accommodation" means making existing facilities used by employees readily accessible to and usable by individuals with disabilities, job restructuring,

part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

- (7) "Religion" means all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.
- (8) The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in this section shall be interpreted to permit otherwise.
- (9) "Undue hardship," for purposes of disability discrimination, means an action requiring significant difficulty or expense, when considered in light of the following factors:
- (a) The nature and cost of the accommodation needed;
 - (b) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at the facility; the effect on expenses and resources; or the impact otherwise of such accommodation upon the operation of the facility;
 - (c) The overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; and the number, type, and location of its facilities; and

- (d) The type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.