

1 AN ACT relating to sheltered employment.

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, checks on banks, direct
16 deposits, or payroll card accounts convertible into cash on demand at
17 full face value, subject to the allowances made in this chapter. However,
18 an employee may not be charged an activation fee and the payroll card
19 account shall provide the employee with the ability, without charge, to
20 make at least one (1) withdrawal per pay period for any amount up to
21 and including the full account balance.

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

1 KRS 95A.210(6), "wages" shall include the distribution to qualified
 2 professional firefighters by local governments of supplements received
 3 from the Firefighters Foundation Program Fund;

4 (d) "Employer" is any person, either individual, corporation, partnership, agency,
 5 or firm who employs an employee and includes any person, either individual,
 6 corporation, partnership, agency, or firm acting directly or indirectly in the
 7 interest of an employer in relation to an employee; and

8 (e) "Employee" is any person employed by or suffered or permitted to work for an
 9 employer, except that:

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

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

18 For purposes of this paragraph, "franchisee" and "franchisor" have the same
 19 meanings as in 16 C.F.R. sec. 436.1.

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

22 (a) "Employee" is any person employed by or suffered or permitted to work for an
 23 employer, but shall not include:

24 1. Any individual employed in agriculture;

25 2. Any individual employed in a bona fide executive, administrative,
 26 supervisory, or professional capacity, or in the capacity of outside
 27 salesperson~~salesman~~, or as an outside collector as the terms are

- 1 defined by administrative regulations of the commissioner;
- 2 3. Any individual employed by the United States;
- 3 4. Any individual employed in domestic service in or about a private home.
- 4 The provisions of this section shall include individuals employed in
- 5 domestic service in or about the home of an employer where there is
- 6 more than one (1) domestic servant regularly employed;
- 7 5. Any individual classified and given a certificate by the commissioner
- 8 showing a status of learner, apprentice, worker with a disability,
- 9 sheltered workshop employee whose employment began with a
- 10 sheltered workshop prior to January 1, 2021, or~~and~~ student under
- 11 administrative procedures and administrative regulations prescribed and
- 12 promulgated by the commissioner. This certificate shall authorize
- 13 employment at the wages, less than the established fixed minimum fair
- 14 wage rates, and for the period of time fixed by the commissioner and
- 15 stated in the certificate 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 two hundred ten (210) days in any
10 calendar year;
- 11 11. Any employee whose function is to provide twenty-four (24) hour
12 residential care on the employer's premises in a parental role to children
13 who are primarily dependent, neglected, and abused and who are in the
14 care of private, nonprofit childcaring facilities licensed by the Cabinet
15 for Health and Family Services under KRS 199.640 to 199.670; or
- 16 12. Any individual whose function is to provide twenty-four (24) hour
17 residential care in his or her own home as a family caregiver and who is
18 approved to provide family caregiver services to an adult with a
19 disability through a contractual relationship with a community board for
20 mental health or individuals with an intellectual disability established
21 under KRS 210.370 to 210.460, or is certified or licensed by the Cabinet
22 for Health and Family Services to provide adult foster care;
- 23 (b) "Agriculture" means farming in all its branches, including cultivation and
24 tillage of the soil; dairying; production, cultivation, growing, and harvesting of
25 any agricultural or horticultural commodity; raising of livestock, bees,
26 furbearing animals, or poultry; and any practice, including any forestry or
27 lumbering operations, performed on a farm in conjunction with farming

1 operations, including preparation and delivery of produce to storage, to
 2 market, or to carriers for transportation to market;

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

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

8 (e) "U.S.C." means the United States Code.

9 ➔Section 2. KRS 337.295 is amended to read as follows:

10 **(1) Administrative** regulations **promulgated**~~issued~~ by the commissioner under KRS
 11 337.275 to 337.325, 337.345, and 337.385 to 337.405 may include, but are not
 12 limited to, regulations defining and governing bona fide executive, administrative,
 13 or professional employees; regulations governing learners, apprentices, workers
 14 with disabilities, sheltered workshop employees, and students, regulations
 15 governing outside salesmen; bonuses; part-time rates; special pay for special or
 16 extra work; allowances as part of the wage rates applicable under KRS 337.275 for
 17 board, lodging, and gratuities; other facilities or services furnished by employers
 18 and used by employees; and other special items usual in a particular employer-
 19 employee relationship.

20 **(2) The commissioner shall promulgate administrative regulations to:**

21 **(a) Allow persons employed in a sheltered workshop prior to January 1, 2021,**
 22 **to remain in that employment situation if approved by the worker or his or**
 23 **guardian. The administrative regulations shall require review of a worker's**
 24 **sheltered workshop employment situation every five (5) years and approval**
 25 **of the employment by the worker or his or her guardian;**

26 **(b) Prohibit new employment in sheltered workshops after January 1, 2021,**
 27 **unless the person can show employment opportunities are not available**

1 *within his or her county of residence or a thirty (30) mile radius of his or*
 2 *her residence; and*

3 *(c) Encourage supported employment opportunities in lieu of sheltered*
 4 *workshop employment.*

5 *(3) The commissioner shall not issue Fair Labor Standards Act 14c certificates to*
 6 *any employer.*

7 ➔Section 3. KRS 205.5605 is amended to read as follows:

8 As used in KRS 205.5605 to 205.5607, unless the context otherwise requires:

9 (1) "Budget allowance" means the amount of money made available each month to a
 10 consumer to purchase covered services and supports. The amount of money shall
 11 not exceed the amount that would have been allocated in the traditional Medicaid
 12 program for nonresidential and nonmedical services for the consumer;

13 (2) "Consumer" means a person who has chosen to participate in the program, has met
 14 the enrollment requirements, has a person-centered plan, and has received an
 15 approved budget allowance;

16 (3) "Covered services and supports":

17 *(a)* Means those services and supports that are eligible for reimbursement under
 18 the program and that are approved for the consumer following a functional
 19 needs assessment and pursuant to a person-centered plan; *and*

20 *(b) Beginning on January 1, 2021, does not include services and supports*
 21 *utilized to refer a consumer to, or secure new employment for a consumer*
 22 *in, a sheltered workshop where consumers are paid less than minimum*
 23 *wage;*

24 (4) "Fiscal intermediary" means an entity that is approved by the cabinet to provide
 25 service that helps the consumer manage his or her budget allowance, retains the
 26 funds, processes any employment and tax information, reviews records to ensure
 27 correctness, writes paychecks to providers, and delivers paychecks or electronically

- 1 transfers funds to the consumer for distribution to providers or caregivers;
- 2 (5) "Provider" means:
- 3 (a) A person or agency licensed or otherwise permitted to render services eligible
- 4 for reimbursement under this program for whom the consumer is not the
- 5 employer of record; or
- 6 (b) A consumer-employed caregiver that renders services eligible for
- 7 reimbursement under this program for whom the consumer is the employer of
- 8 record;
- 9 (6) "Representative" means an uncompensated individual designated by the consumer
- 10 to assist in managing the consumer's budget allowance and needed services; and
- 11 (7) "Service advisor" means the person who provides technical assistance to a
- 12 consumer in meeting responsibilities under KRS 205.5605 to 205.5607.