

1 AN ACT relating to wages.

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~~[(8)]~~, "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~~[(9)]~~, "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 salesman, or as an outside collector as the terms are defined by

1 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, and student under administrative
10 procedures and administrative regulations prescribed and promulgated
11 by the commissioner. This certificate shall authorize employment at the
12 wages, less than the established fixed minimum fair wage rates, and for
13 the period of time fixed by the commissioner and stated in the certificate
14 issued to the person;

15 6. Employees of retail stores, service industries, hotels, motels, and
16 restaurant operations whose average annual gross volume of sales made
17 for business done is less than five hundred thousand dollars
18 (\$500,000)~~[ninety-five thousand dollars (\$95,000)]~~ for the five (5)
19 preceding years exclusive of excise taxes at the retail level or if the
20 employee is the parent, spouse, child, or other member of his or her
21 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;
- 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, family
18 home provider, or adult foster care provider and who is approved to
19 provide family caregiver services to an adult with a disability through a
20 contractual relationship with a community board for mental health or
21 individuals with an intellectual disability established under KRS
22 210.370 to 210.460 or through a contractual relationship with a certified
23 waiver provider as defined in 907 KAR 7:005 sec. 1(5), or is certified or
24 licensed by the Cabinet for Health and Family Services to provide adult
25 foster care;
- 26 13. A direct seller as defined in Section 3508(b)(2) of the Internal Revenue
27 Code of 1986; or

1 14. Any individual whose function is to provide behavior support services,
2 behavior programming services, case management services, community
3 living support services, positive behavior support services, or respite
4 services through a contractual relationship with a certified waiver
5 provider, as defined in 907 KAR 7:005 sec. 1(5), pursuant to a 1915(c)
6 home and community based services waiver program, as defined in 907
7 KAR 7:005 sec. 1(2);

8 (b) "Agriculture" means farming in all its branches, including cultivation and
9 tillage of the soil; dairying; production, cultivation, growing, and harvesting of
10 any agricultural or horticultural commodity; raising of livestock, bees,
11 furbearing animals, or poultry; and any practice, including any forestry or
12 lumbering operations, performed on a farm in conjunction with farming
13 operations, including preparation and delivery of produce to storage, to
14 market, or to carriers for transportation to market;

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

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

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

21 ➔Section 2. KRS 337.275 is amended to read as follows:

22 (1) (a) Except as may otherwise be provided by this chapter, every employer shall
23 pay to each of his or her employees wages at a rate of not less than: ~~five~~
24 ~~dollars and eighty-five cents (\$5.85) an hour beginning on June 26, 2007, not~~
25 ~~less than six dollars and fifty-five cents (\$6.55) an hour beginning July 1,~~
26 ~~2008, and not less than]~~

27 1. Seven dollars and twenty-five cents (\$7.25) an hour beginning July 1,

- 1 2009;
- 2 2. Eight dollars and twenty cents (\$8.20) an hour beginning on the
- 3 effective date of this Act;
- 4 3. Nine dollars and fifteen cents (\$9.15) an hour beginning on July 1,
- 5 2023;
- 6 4. Ten dollars and ten cents (\$10.10) an hour beginning on July 1, 2024;
- 7 5. Eleven dollars (\$11) an hour beginning on July 1, 2025;
- 8 6. Twelve dollars and five cents (\$12.05) an hour beginning on July 1,
- 9 2026;
- 10 7. Thirteen dollars and ten cents (\$13.10) an hour beginning on July 1,
- 11 2027;
- 12 8. Thirteen dollars and ninety-five cents (\$13.95) an hour beginning on
- 13 July 1, 2028; and
- 14 9. Fifteen dollars (\$15) an hour beginning on July 1, 2029.

15 **(b)** If the federal minimum hourly wage as prescribed by 29 U.S.C. sec. 206(a)(1)

16 is increased in excess of the minimum hourly wage in effect under this

17 subsection, the minimum hourly wage under this subsection shall be increased

18 to the same amount, effective on the same date as the federal minimum hourly

19 wage rate. If the state minimum hourly wage is increased to the federal

20 minimum hourly wage, it shall include only the federal minimum hourly rate

21 prescribed in 29 U.S.C. sec. 206(a)(1) and shall not include other wage rates

22 or conditions, exclusions, or exceptions to the federal minimum hourly wage

23 rate. In addition, the increase to the federal minimum hourly wage rate does

24 not extend or modify the scope or coverage of the minimum wage rate

25 required under this chapter.

26 (2) **(a)** Notwithstanding the provisions of subsection (1) of this section, for any

27 employee engaged in an occupation in which he **or she** customarily and

regularly receives more than thirty dollars (\$30) per month in tips from patrons or others, the employer may pay as a minimum not less than:

1. Two dollars and thirteen cents (\$2.13) an hour beginning on the effective date of this Act;

2. Three dollars and five cents (\$3.05) an hour beginning on July 1, 2023;

3. Three dollars and ninety-five cents (\$3.95) an hour beginning on July 1, 2024; and

4. Four dollars and ninety cents (\$4.90) an hour beginning on July 1, 2025.

(b) If the hourly wage rate required to be paid a tipped employee under the federal minimum hourly wage law as prescribed by 29 U.S.C. sec. 203 is increased in excess of the minimum hourly wage in effect under this subsection, the minimum hourly wage under this subsection shall be increased to the same amount, effective on the same date as the federal minimum hourly wage rate.

(c) The employer shall establish by his **or her** records that for each week where credit is taken, when adding tips received to wages paid, not less than the minimum rate prescribed in **subsection (1) of this section**~~[29 U.S.C. sec. 203]~~ was received by the employee. No employer shall use all or part of any tips or gratuities received by employees toward the payment of the statutory minimum hourly wage as required by **subsection (1) of this section**~~[29 U.S.C. sec. 203]~~. Nothing, however, shall prevent employees from entering into an agreement to divide tips or gratuities among themselves.

(3) Nothing in this chapter shall be construed to restrict the power of any city, county, urban-county government, charter county government, consolidated local government, or unified local government to adopt and enforce minimum wage

1 rate ordinances in excess of the requirements of this section so long as they
2 comply with at least the minimum applicable standards set forth in this section.
3 In the case of a consolidated local government, the governing body of the
4 consolidated local government is the only local governing body that may establish
5 a minimum wage under this subsection, and the minimum wage set by that
6 governing body shall apply countywide.