

1 AN ACT relating to minimum wage exceptions.

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
7 Education and Labor Cabinet;

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

10 (c) 1. "Wages" includes any compensation due to an employee by reason of
11 his 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
23 overtime for professional firefighters, as defined in KRS 95A.210(8),
24 "wages" shall not include the distribution to qualified professional
25 firefighters by local governments of supplements received from the
26 Firefighters Foundation Program Fund. For the purposes of calculating
27 hourly wage rates for unscheduled overtime for professional firefighters,

1 as defined in KRS 95A.210(9), "wages" shall include the distribution to
2 qualified professional firefighters by local governments of supplements
3 received 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
9 an 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
23 an 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
- 4 home. The provisions of this section shall include individuals employed
- 5 in 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 ninety-five thousand dollars (\$95,000) for
- 18 the five (5) preceding years exclusive of excise taxes at the retail level
- 19 or if the employee is the parent, spouse, child, or other member of his or
- 20 her employer's immediate family;
- 21 7. Any individual employed as a baby-sitter in an employer's home, or an
- 22 individual employed as a companion by a sick, convalescing, or elderly
- 23 person or by the person's immediate family, to care for that sick,
- 24 convalescing, or elderly person and whose principal duties do not
- 25 include housekeeping;
- 26 8. Any individual engaged in the delivery of newspapers to the consumer;
- 27 9. Any individual subject to the provisions of KRS Chapters 7, 16, 27A,

1 30A, and 18A provided that the secretary of the Personnel Cabinet shall
2 have the authority to prescribe by administrative regulation those
3 emergency employees, or others, who shall receive overtime pay rates
4 necessary for the efficient operation of government and the protection of
5 affected employees;

6 10. Any employee employed by an establishment which is an organized
7 nonprofit camp, religious, or nonprofit educational conference center, if
8 it does not operate for more than two hundred ten (210) days in any
9 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;

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, family
17 home provider, or adult foster care provider and who is approved to
18 provide family caregiver services to an adult with a disability through a
19 contractual relationship with a community board for mental health or
20 individuals with an intellectual disability established under KRS
21 210.370 to 210.460 or through a contractual relationship with a certified
22 waiver provider as defined in 907 KAR 7:005 sec. 1(5), or is certified or
23 licensed by the Cabinet for Health and Family Services to provide adult
24 foster care;

25 13. A direct seller as defined in Section 3508(b)(2) of the Internal Revenue
26 Code of 1986;~~{or}~~

27 14. Any individual whose function is to provide behavior support services,

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

7 **15. Any individual employed to play baseball who is compensated**
8 **pursuant to the terms of a contract and a collective bargaining**
9 **agreement that expressly provides for wages and working conditions;**

- 10 (b) "Agriculture" means farming in all its branches, including cultivation and
11 tillage of the soil; dairying; production, cultivation, growing, and harvesting
12 of any agricultural or horticultural commodity; raising of livestock, bees,
13 furbearing animals, or poultry; and any practice, including any forestry or
14 lumbering operations, performed on a farm in conjunction with farming
15 operations, including preparation and delivery of produce to storage, to
16 market, or to carriers for transportation to market;
- 17 (c) "Gratuity" means voluntary monetary contribution received by an employee
18 from a guest, patron, or customer for services rendered;
- 19 (d) "Tipped employee" means any employee engaged in an occupation in which
20 he or she customarily and regularly receives more than thirty dollars (\$30) per
21 month in tips; and
- 22 (e) "U.S.C." means the United States Code.