

1 AN ACT relating to occupational safety and health.

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

3 ➔Section 1. KRS 338.015 is amended to read as follows:

4 As used in this chapter:

- 5 (1) "Employer" shall mean any entity for whom a person is employed except those
6 employers excluded in KRS 338.021;
- 7 (2) "Employee" shall mean any person employed except those employees excluded in
8 KRS 338.021;
- 9 (3) The term "occupational safety and health standard" means a standard which
10 requires conditions, or the adoption or use of one (1) or more practices, means,
11 methods, operations, or processes, reasonably necessary or appropriate to provide
12 safe or healthful employment and places of employment. "Standard" has the same
13 meaning as and includes the words "regulation" and "rule";
- 14 (4) "Occupational safety and health hazard" means any practice or condition in a place
15 of employment which may be deemed detrimental to the safety and health of
16 employees;
- 17 (5) "Occupational injury or illness" means any abnormal condition or disorder of an
18 employee caused by exposure to factors associated with his or her employment;
- 19 (6) "Board" means the Kentucky Occupational Safety and Health Standards Board
20 established under this chapter;
- 21 (7) "Commissioner" means the commissioner of the Department of Workplace
22 Standards under the direction and supervision of the secretary of the Education and
23 Labor Cabinet;
- 24 (8) "Review commission" means the Kentucky Occupational Safety and Health Review
25 Commission established under this chapter;
- 26 (9) The term "national consensus standard" means any occupational safety and health
27 standard or modification thereof which has been adopted and promulgated by a

1 nationally recognized standards-producing organization;

2 (10) The term "established federal standard" means any operative occupational safety
3 and health standard established by any agency of the United States government;

4 (11) "Department" means the Department of Workplace Standards;~~and~~

5 (12) "Secretary" means the secretary of the Education and Labor Cabinet; **and**

6 **(13) "Qualified representative" means a person who is reasonably necessary to**
7 **conduct an inspection based on their relevant scientific, technical, or specialized**
8 **knowledge, skill, experience, training, or education.**

9 ➔Section 2. KRS 338.062 is amended to read as follows:

10 ~~[After July 1, 2021, neither]The[Kentucky Occupational Safety and Health Standards]~~
11 board **and**~~[nor]~~ the secretary shall **not** adopt, ~~[or]~~ promulgate, **or enforce** any
12 occupational safety and health administrative regulation that **the Occupational Safety**
13 **and Health Administration or the United States Department of Labor has not**
14 **promulgated, or that** is more stringent than the corresponding federal provision enforced
15 by the United States Department of Labor under the Occupational Safety and Health Act
16 of 1970. Whereas the Occupational Safety and Health Act of 1970 does not apply to
17 public employees, the cabinet shall retain the authority to promulgate and enforce, as
18 necessary, administrative regulations pertaining to public employees.

19 ➔Section 3. KRS 338.091 is amended to read as follows:

20 (1) Any party adversely affected or aggrieved by a final order of the review
21 commission may appeal within thirty (30) days to the Franklin Circuit Court on the
22 record for a review of such order. No new evidence may be introduced in the
23 Circuit Court. An appeal may be taken to the Court of Appeals from any decision of
24 the Circuit Court under this section.

25 (2) **On appeal, the Franklin Circuit Court may award actual expenses incurred,**
26 **including court costs and attorney's fees, against the department.**

27 **(3)** The commencement of **a proceeding**~~[proceedings]~~ under this section shall ~~[not,~~

1 ~~unless ordered by the court,~~ operate as a stay of an order of the review
2 commission.

3 ➔ Section 4. KRS 338.111 is amended to read as follows:

4 **Representatives**~~[A representative]~~ of the employer **shall be given the opportunity to**
5 **accompany the commissioner or the authorized representative of the commissioner**
6 **during the physical inspection of any place of employment as authorized by KRS**
7 **338.101. A qualified**~~[and a]~~ representative authorized by the **employee may**~~[employees~~
8 ~~shall]~~ be given an opportunity to accompany the representative of the commissioner
9 during the physical inspection of any place of employment **related to occupational safety**
10 **and health** as authorized by KRS 338.101. If there is no **qualified representative**
11 authorized **by the** employee ~~[representative]~~ available at the time of **the physical**
12 inspection, the commissioner's representative **may**~~[shall]~~ consult with a reasonable
13 number of employees concerning matters **related to**~~[of]~~ occupational safety and health in
14 the place of employment. The representative of the commissioner shall be **responsible for**
15 **the conduct**~~[in full charge]~~ of the inspection **and may**~~[, including the right to]~~ limit the
16 number of representatives on the inspection team.

17 ➔ Section 5. KRS 338.121 is amended to read as follows:

18 (1) Any **current** employee, or **qualified** representative **authorized by a current**
19 **employee**~~[of employees]~~, who believes that a violation of an occupational safety
20 and health standard exists that threatens physical harm, or that an imminent danger
21 exists **in their workplace**, may request an inspection by giving notice to the
22 commissioner of such violation or danger. Any such notice shall be reduced to
23 writing, shall set forth with reasonable particularity the grounds for the notice,
24 **including the date the violation is alleged to have occurred**, and shall be signed by
25 the **employee**~~[employees]~~ or **the qualified** representative **authorized by the**
26 **employer**~~[of employees]~~, and a copy shall be provided **to** the employer or the
27 employer's agent no later than at the time of inspection, except that, upon

1 ~~written~~^[the] request of the ~~employee~~^[person] giving such notice, his or her name
2 ~~[and the names of individual employees referred to therein]~~ shall not appear in such
3 copy.

4 (2) If upon receipt of notification, reasonable grounds ~~evidence any~~^[are believed to exist for such] violation or danger in the workplace, then a special inspection shall
5 be made in accordance with the provisions of KRS 338.101 and 338.111. If no
6 reasonable grounds ~~evidence a potential~~^[are believed to exist for such] violation
7 ~~or~~^[of] danger, then the commissioner shall notify the employee or the qualified
8 representative authorized by the employee ~~[of the employees]~~ in writing of such
9 determination.
10

11 (3) (a) No person shall discharge or in any manner discriminate against any
12 employee because such employee has filed any complaint or instituted or
13 caused to be instituted any proceeding under or related to this chapter or has
14 testified or is about to testify in any such proceeding or because of the
15 exercise by such employee on behalf of himself or herself or others of any
16 right afforded by this chapter; and

17 (b) Any employee who believes that he or she has been discharged or otherwise
18 discriminated against by any person in violation of this subsection may,
19 within thirty (30) days~~[a reasonable time]~~ after such violation occurs, file a
20 complaint with the commissioner alleging such discrimination. Upon receipt
21 of such complaint, the commissioner shall cause such investigation to be
22 made as deemed appropriate. If upon such investigation, the commissioner
23 determines that the provisions of this subsection have been violated, he or she
24 shall issue a citation to the employer within six (6) months of the occurrence
25 of the violation, which may be challenged or contested in accordance with the
26 provisions of this chapter and the review commission may order ~~all~~
27 ~~appropriate relief including~~ the rehiring and reinstatement of the employee to

1 his or her former position with back pay.~~[Upon an initial determination by the~~
2 ~~commissioner that an employee has been discharged by an employer in~~
3 ~~violation of subsection (3)(a) of this section, the secretary of the Education~~
4 ~~and Labor Cabinet may order reinstatement of the employee pending a final~~
5 ~~determination and order of the review commission.]~~

6 ➔Section 6. KRS 338.141 is amended to read as follows:

- 7 (1) If upon inspection an authorized representative of the commissioner finds that an
8 employer has violated any requirement of this chapter, a citation shall be issued to
9 the employer. Each citation shall describe **with particularity** the alleged violation
10 **including a reference to the provision of the act, standard, rule, or administrative**
11 **regulation alleged to have been violated. Each citation shall**~~[.]~~ establish the time
12 period permitted for correction **of the alleged violation** by fixing a reasonable date
13 **for elimination of**~~[by which]~~ the alleged violation ~~[shall be eliminated,]~~ and **may**
14 propose ~~a~~~~[the]~~ civil penalty to be paid. If within fifteen (15) working days from the
15 receipt of the citation an employer, employee, or **the employee's** representative ~~[of~~
16 ~~the employees]~~ fails to notify the commissioner that he or she intends to contest the
17 citation, then the citation shall be deemed a final order of the review commission
18 and not be subject to review by any court or agency. **Any citation or notice of a de**
19 **minimus violation that has no direct or immediate relationship to safety or health**
20 **shall be promptly issued after the inspection. A citation shall not be issued more**
21 **than six (6) months after the occurrence of any alleged violation.**
- 22 (2) The commissioner, upon determination that an employer is acting in good faith to
23 correct the cited violation, may grant additional time for **correction**~~[compliance]~~
24 upon application by the employer.
- 25 (3) If an employer, employee, or **the employee's** representative ~~[of the employees]~~
26 ~~]notifies~~ the commissioner that he or she intends to challenge a citation issued
27 under this section or under KRS 338.131, the commissioner shall notify the review

- 1 commission of such notification and the review commission shall afford an
2 opportunity for a hearing.
- 3 (4) In the case of any review proceedings initiated by an employer, employee, or the
4 employee's representative ~~[of the employees]~~ under this chapter, the time period
5 permitted for correction of cited violations **shall be tolled until the conclusion of**
6 **the action** ~~[may be extended by the review commission].~~