

1 AN ACT relating to wage payment.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 514 IS CREATED TO
4 READ AS FOLLOWS:

5 (1) As used in this section, unless the context requires otherwise:

6 (a) "Employee" has the same meaning as in KRS 337.010(1);

7 (b) "Employer" has the same meaning as in KRS 337.010(1); and

8 (c) "Wages" has the same meaning as in KRS 337.010(1).

9 (2) An employer or person is guilty of theft of wages when an employer:

10 (a) Fails to pay an employee all wages, salary, gratuities, earnings, or
11 commissions at the employee's rate of pay or at the rate or rates of pay
12 required by law, including any applicable statute, regulation, rule,
13 ordinance, government resolution or policy, contract, or other legal
14 authority, whichever rate of pay is greater;

15 (b) Directly or indirectly causes any employee to give a receipt for wages for a
16 greater amount than that actually paid to the employee for services
17 rendered;

18 (c) Directly or indirectly demands or receives from any employee any rebate or
19 refund from the wages owed the employee; or

20 (d) Makes or attempts to make it appear in any manner that the wages paid to
21 any employee were greater than the amount actually paid to the employee.

22 (3) Theft of wages is a Class A misdemeanor unless the value of the wages is:

23 (a) Five hundred dollars (\$500) or more but less than ten thousand dollars
24 (\$10,000), in which case it is a Class D felony; or

25 (b) Ten thousand dollars (\$10,000) or more, in which case it is a Class C
26 felony.

27 (4) The Attorney General and the appropriate local prosecutor shall have concurrent

1 **jurisdiction to enforce this section.**

2 ➔ Section 2. KRS 336.080 is amended to read as follows:

3 The secretary may have inspected any place of employment affected by or subject to any
4 law of this state relating to the employment of labor, except places of employment within
5 the jurisdiction of the Department for Natural Resources. In the discharge of his or her
6 duties, the secretary or the secretary's authorized deputy may enter places of employment
7 at any reasonable time **and without unreasonable delay.** Upon request, the cabinet shall
8 furnish to any employer a detailed report of any inspection in his or her place of business.

9 ➔ Section 3. KRS 337.020 is amended to read as follows:

10 Every employer doing business in this state shall, as often as semimonthly, pay to each of
11 its employees all wages or salary earned to a day not more than eighteen (18) days prior to
12 the date of that payment. Any employee who is absent at the time fixed for payment, or
13 who, for any other reason, is not paid at that time, shall be paid thereafter at any time
14 upon six (6) days' demand. No employer subject to this section shall, by any means,
15 secure exemption from it. Every such employee shall have a right of action against any
16 such employer for the full amount of his wages due on each regular pay day. **In addition**
17 **to any other remedies set forth in this chapter, if payment is not made within ten (10)**
18 **days of the demand, the commissioner may charge and collect the wages earned by the**
19 **employee at the employee's rate of pay, or at the rates required by state or federal law,**
20 **whichever is greater.** The provisions of this section do not apply to those individuals
21 defined in KRS 337.010(2)(a)2.

22 ➔ Section 4. KRS 337.070 is amended to read as follows:

23 All employers who employ ten (10) or more and pay their employees by check or
24 otherwise, making deductions from the salaries and wages due said employees, shall state
25 specifically the amount for which the deductions are made, **the rate of pay and the basis**
26 **thereof, the total number of hours worked, and the total amount of gross pay earned by**
27 **the employee during that period.** ~~and~~ Each such employer at the time of payment of

1 salary or wage to each employee shall furnish the employee a paper or electronic
2 statement giving the amount of each deduction and the general purpose for which the
3 deduction is made. If an employer provides an electronic statement, then the employer
4 shall provide access to a computer and printer for review and printing by the employee.

5 ➔Section 5. KRS 337.200 is amended to read as follows:

6 **(1)** Except for employers who have been doing business in the state for five (5)
7 consecutive years, every employer engaged in construction work~~[-, or the severance,~~
8 ~~preparation, or transportation of minerals,]~~ shall furnish on a form prescribed by the
9 commissioner a performance bond to **ensure**~~[assure]~~ the payment of all wages due from
10 the employer. Surety for the bond shall be an amount of money equal to the employer's
11 gross payroll operating at full capacity for four (4) weeks. Any employee whose wages
12 are secured by a bond may obtain payment of those wages, liquidated damages, and
13 attorney's fees as provided by law on presentation to the commissioner of a final
14 judgment entered by a court of competent jurisdiction. The bond may be terminated, with
15 the approval of the commissioner, on submission of the employer's statement, lawfully
16 administered under oath, that the employer has ceased doing business in the state and that
17 all due wages have been paid.

18 **(2) Every employer, including a subcontractor or subsidiary, engaged in or**
19 **incorporated for the purpose of engaging in the severance, preparation, or**
20 **transportation of minerals, prior to the commencement of the severance,**
21 **preparation, or transportation of minerals, shall furnish to the commissioner on**
22 **a form prescribed by the commissioner a wage payment bond to ensure the**
23 **payment of wages due from the employer to his or her employees. The amount of**
24 **the wage payment bond shall be equal to the employer's gross payroll operating**
25 **at full capacity or production for four (4) weeks plus fifteen percent (15%) of the**
26 **employer's gross payroll operating at full capacity or production for four (4)**
27 **weeks.**

1 (3) Every employer who is required to post a wage payment bond under subsection
2 (2) of this section shall:

3 (a) Maintain the wage payment bond in the amount described in subsection (2)
4 of this section until released from the obligation by the commissioner;

5 (b) Submit to the commissioner, on or before the first day of July of each
6 calendar year during which the employer has posted a wage payment bond,
7 a statement, lawfully administered under oath, verifying the average
8 number of employees employed by the employer during the previous
9 calendar year; and

10 (c) Post, in a conspicuous place that is accessible to the employees of the
11 employer, a copy of the wage payment bond and a copy of the notice in the
12 form prescribed by the commissioner regarding the duties of employers
13 under this section.

14 (3) The wage payment bond described in subsection (2) of this section may be
15 terminated with the approval of the commissioner, on submission of the
16 employer's statement, lawfully administered under oath, that one (1) of the
17 following has occurred:

18 (a) The employer has ceased doing business in the Commonwealth and that all
19 due wages have been paid; or

20 (b) The employer has maintained a wage payment bond described in subsection
21 (1) of this section for no fewer than five (5) consecutive years and has paid
22 all wages and fringe benefits due to the employer's employees.

23 ➔ Section 6. KRS 337.295 is amended to read as follows:

24 Regulations issued by the commissioner under Section 5 of this Act, KRS 337.275 to
25 337.325, 337.345, and 337.385 to 337.405 may include, but are not limited to, regulations
26 defining and governing bona fide executive, administrative, or professional employees;
27 regulations governing learners, apprentices, workers with disabilities, sheltered workshop

employees, and students, regulations governing outside salesmen; bonuses; part-time rates; special pay for special or extra work; allowances as part of the wage rates applicable under KRS 337.275 for board, lodging, and gratuities; other facilities or services furnished by employers and used by employees; and other special items including wage payment bonds, usual in a particular employer-employee relationship.

➔ SECTION 7. A NEW SECTION OF KRS CHAPTER 337 IS CREATED TO READ AS FOLLOWS:

Notwithstanding any other provision in this chapter, any employee whose wages and fringe benefits are secured by a wage payment bond as described in subsection (2) of Section 5 of this Act, and who has wages and fringe benefits due and unpaid, shall have a civil cause of action in the Circuit Court of the county where the employee works to enjoin further violations and damages, in an amount equal to the value of the wages and fringe benefits due plus costs including liquidated damages and attorneys' fees.

➔ Section 8. KRS 337.320 is amended to read as follows:

(1) Every employer shall keep a record of:

(a) The name, address, and occupation of each employee;

(b) The rate of pay, and the amount paid each pay period to each employee;

(c) ~~(b)~~ The hours worked each day and each week by each employee, including for all employees paid at piece rate, the number of pieces completed at each piece rate;

(d) A list of personnel policies provided to the employee, including the date the policies were given to the employee and a brief description of the policies;

(e) A copy of the statement provided to each employee pursuant to Section 4 of this Act; and

(f) ~~(e)~~ Such other information as the commissioner requires.

(2) Such records shall be kept on file at the employer's principal place of business for

1 at least three (3) years~~[one (1) year]~~ after entry. They shall be open to the inspection
2 and transcript of the commissioner or the commissioner's authorized representative
3 at any reasonable time, and every employer shall furnish to the commissioner or the
4 commissioner's authorized representative on demand a sworn statement verifying
5 the authenticity of the records~~[them]~~. The commissioner may require the statement
6 to be upon forms prescribed or approved by him or her.

7 (3) If the records maintained by the employer do not provide sufficient information
8 to determine the exact amount of back due wages due an employee, the
9 commissioner may make a determination of wages due based on available
10 evidence.

11 ➔SECTION 9. A NEW SECTION OF KRS CHAPTER 337 IS CREATED TO
12 READ AS FOLLOWS:

13 (1) At the commencement of employment, an employer shall provide each employee a
14 written notice containing the following information:

15 (a) The rate or rates of pay and basis thereof, including whether the employee
16 is paid by the hour, shift, day, week, salary, piece, commission, or other
17 method, and the specific application of any additional rates;

18 (b) Allowances, if any, claimed pursuant to permitted meals and lodging;

19 (c) Paid vacation, sick time, or other accruals of paid time off and the terms of
20 use;

21 (d) The employee's employment status and whether the employee is exempt
22 from minimum wage or overtime requirements or from other provisions of
23 this chapter;

24 (e) A list of deductions that may be made from the employee's pay;

25 (f) The number of days in the pay period, the regularly scheduled pay day, and
26 the pay day on which the employee will receive the first payment of wages
27 earned;

1 (g) The legal name of the employer and the operating name of the employer, if
2 different from the legal name;

3 (h) The physical address of the employer's main office or principal place of
4 business and a mailing address, if different; and

5 (i) The telephone number of the employer.

6 (2) The employer shall maintain a copy of the written notice set forth in subsection
7 (1) of this section signed by each employee acknowledging receipt of the notice.
8 The notice shall be provided to each employee in English and shall include text
9 provided by the commissioner informing each employee of the right to request the
10 notice be provided in a particular language other than English. If such a request
11 is received, the employer shall provide the notice in the language requested. The
12 commissioner shall make available to employers the text to be included in the
13 English version of the notice required by this section and shall assist employers
14 with the translation of the notice into the languages requested by employees.

15 (3) The employer shall provide employees with any written changes to the
16 information contained in the notice set forth in subsection (1) of this section prior
17 to the date the changes take effect.

18 ➔Section 10. KRS 337.990 is amended to read as follows:

19 The following civil penalties shall be imposed, in accordance with the provisions in KRS
20 336.985, for violations of the provisions of this chapter:

21 (1) Any firm, individual, partnership, or corporation that violates KRS 337.020 shall be
22 assessed a civil penalty of not less than one hundred dollars (\$100) nor more than
23 one thousand dollars (\$1,000) for each offense. Each failure to pay an employee the
24 wages when due him under KRS 337.020 shall constitute a separate offense.

25 (2) Any employer who violates KRS 337.050 or Section 9 of this Act shall be assessed
26 a civil penalty of not less than one hundred dollars (\$100) nor more than one
27 thousand dollars (\$1,000).

- 1 (3) Any employer who violates KRS 337.055 shall be assessed a civil penalty of not
2 less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000)
3 for each offense and shall make full payment to the employee by reason of the
4 violation. Each failure to pay an employee the wages as required by KRS 337.055
5 shall constitute a separate offense.
- 6 (4) Any employer who violates KRS 337.060 shall be assessed a civil penalty of not
7 less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000)
8 and shall also be liable to the affected employee for the amount withheld, plus
9 interest at the rate of ten percent (10%) per annum.
- 10 (5) Any employer who violates the provisions of KRS 337.065 shall be assessed a civil
11 penalty of not less than one hundred dollars (\$100) nor more than one thousand
12 dollars (\$1,000) for each offense and shall make full payment to the employee by
13 reason of the violation.
- 14 (6) Any person who fails to comply with KRS 337.070 shall be assessed a civil penalty
15 of not less than one hundred dollars (\$100) nor more than one thousand dollars
16 (\$1,000) for each offense and each day that the failure continues shall be deemed a
17 separate offense.
- 18 (7) Any employer who violates any provision of KRS 337.275 to 337.325, KRS
19 337.345, and KRS 337.385 to 337.405, or willfully hinders or delays the
20 commissioner or the commissioner's authorized representative in the performance
21 of his or her duties under KRS 337.295, or fails to keep and preserve any records as
22 required under KRS 337.320 and 337.325, or falsifies any record, or refuses to
23 make any record or transcription thereof accessible to the commissioner or the
24 commissioner's authorized representative shall be assessed a civil penalty of not less
25 than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000). A
26 civil penalty of not less than one thousand dollars (\$1,000) shall be assessed for any
27 subsequent violation of KRS 337.285(4) to (9) and each day the employer violates

1 KRS 337.285(4) to (9) shall constitute a separate offense and penalty.

2 (8) Any employer who pays or agrees to pay wages at a rate less than the rate applicable
3 under KRS 337.275 and 337.285, or any wage order issued pursuant thereto shall be
4 assessed a civil penalty of not less than one hundred dollars (\$100) nor more than
5 one thousand dollars (\$1,000).

6 (9) Any employer who discharges or in any other manner discriminates against any
7 employee because the employee has made any complaint to his or her employer, to
8 the commissioner, or to the commissioner's authorized representative that he or she
9 has not been paid wages in accordance with KRS 337.275 and 337.285 or
10 regulations issued thereunder, or because the employee has caused to be instituted
11 or is about to cause to be instituted any proceeding under or related to KRS
12 337.385, or because the employee has testified or is about to testify in any such
13 proceeding, shall be deemed in violation of KRS 337.275 to 337.325, KRS 337.345,
14 and KRS 337.385 to 337.405 and shall be assessed a civil penalty of not less than
15 one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

16 (10) Any employer who violates KRS 337.365 shall be assessed a civil penalty of not
17 less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

18 (11) A person shall be assessed a civil penalty of not less than one hundred dollars
19 (\$100) nor more than one thousand dollars (\$1,000) when that person discharges or
20 in any other manner discriminates against an employee because the employee has:

21 (a) Made any complaint to his or her employer, the commissioner, or any other
22 person; or

23 (b) Instituted, or caused to be instituted, any proceeding under or related to KRS
24 337.420 to 337.433; or

25 (c) Testified, or is about to testify, in any such proceedings.

26 ➔Section 11. KRS 337.994 is amended to read as follows:

27 **(1) The commissioner shall conduct investigations to verify employer's compliance**

1 with Section 5 of this Act. If the commissioner finds information to establish that
2 a violation has occurred, the commissioner shall notify the employer of the
3 alleged violation and the sum of the civil penalty assessed in writing by certified
4 mail and notify in writing the affected employees and the secretary of the Energy
5 and Environment Cabinet that a civil penalty has been assessed against the
6 employer.

7 (2) A cited employer shall notify the commissioner in writing that he or she intends
8 to contest the citation and penalty within fifteen (15) days of the employer's
9 receipt of the citation. If notice is not provided within the fifteen (15) days, the
10 citation shall be deemed final.

11 (3) If written notice of a contest is received by the commissioner within the fifteen
12 (15) days, the commissioner shall schedule a hearing in accordance with KRS
13 Chapter 13B. The commissioner shall bear the burden of proof to establish the
14 alleged violation stated in the citation by a preponderance of the evidence.

15 (4) Any employer who violates KRS 337.200 by failing to post a required wage
16 payment bond or by failing to post a wage payment bond sufficient to pay
17 employees the last four (4) weeks of wages and fringe benefits shall be assessed a
18 penalty~~[fined not less than one hundred dollars (\$100) nor more than]~~ of one
19 thousand dollars (\$1000)~~[five hundred dollars (\$500)]~~ per offense. Each day that
20 the employer violates KRS 337.200 and each employee whose wages are not
21 ensured by the wage payment bond shall constitute a separate offense and penalty.~~†~~
22 ~~If the employer is a corporation, the officers of the corporation shall be personally~~
23 ~~liable for the penalty imposed herein.]~~

24 (5) The commissioner shall notify the secretary of the Energy and Environment
25 Cabinet if an employer engaged in the severance, preparation, or transportation
26 of minerals has failed to comply with the wage payment bond requirements of
27 Section 5 of this Act. The employer shall have sixty (60) days from the date the

1 notice was mailed to the secretary of the Energy and Environment Cabinet to post
2 a wage payment bond that meets the requirements of Section 5 of this Act before
3 the Energy and Environment Cabinet may revoke the employer's permit to
4 operate.

5 (6) If an employer required to comply with Section 5 of this Act fails to do so, the
6 person, in the case of a sole proprietorship; a partner, in the case of a
7 partnership; a principal, in the case of a limited liability company; or a corporate
8 officer, in the case of a corporation, shall be personally and individually liable,
9 jointly and severally, for the penalties imposed. Neither the dissolution nor
10 withdrawal of the corporation, partnership, or other entity from the
11 Commonwealth, nor the cessation of holding status as a proprietor, partner,
12 principal, or officer shall discharge the liability of any person.

13 (7) The commissioner and the Attorney General shall have concurrent jurisdiction to
14 enforce this section.

15 ➔Section 12. KRS 351.175 is amended to read as follows:

16 (1) The operation of a coal mine in Kentucky is a privilege granted by the
17 Commonwealth of Kentucky to a licensee who satisfies the requirements of this
18 section and demonstrates that the mine is or will be operated in a safe manner and in
19 accordance with the laws of this Commonwealth.

20 (2) Within forty-five (45) days after January 1, 1953, and of each year thereafter, the
21 owner, operator, lessee, or licensee of each mine shall procure from the department
22 a license to operate the mine, and the license shall not be transferable. Any owner,
23 operator, lessee, or licensee who assumes control of a mine, opens a new mine, or
24 reopens an abandoned mine during any calendar year shall procure a license before
25 mining operations are begun.

26 (3) The license shall be in printed form as the commissioner may prescribe and when
27 issued shall be kept posted at a conspicuous place near the main entrance of the

1 mine.

2 (4) Requests for a license shall be made to the department and shall be accompanied by
3 a United States postal money order or cashier's check drawn in favor of the State
4 Treasurer in an amount established by administrative regulations of a minimum of
5 one hundred dollars (\$100) and a maximum of fifteen hundred dollars (\$1,500). The
6 license shall be issued when the following are properly submitted to the
7 commissioner:

- 8 (a) The annual report of the licensee and the annual mine map required in KRS
9 351.170 and 352.450;
- 10 (b) A certification from the commissioner of the Department of Workers' Claims
11 that the licensee has provided positive proof of compliance with the
12 provisions of KRS Chapter 342;
- 13 (c) A certification from the commissioner of the Department of Revenue that the
14 licensee is not a "delinquent taxpayer" as defined in KRS Chapter 131;
- 15 (d) Mine seal construction plan filed with the state and approved by MSHA;
- 16 (e) Roof control plan filed with the state and approved by MSHA;
- 17 (f) The ventilation plan required in KRS 352.020;~~[-and]~~
- 18 (g) An approved emergency action plan required by KRS 352.640;and
- 19 (h) A certification from the commissioner of the Department of Workplace
20 Standards that the licensee has posted a wage payment bond as required by
21 Section 5 of this Act.

22 (5) The department shall immediately revoke any license if the department receives:

- 23 (a) Withdrawal of the certification of compliance with KRS Chapter 342 issued
24 by the commissioner of the Department of Workers' Claims;~~[-or]~~
- 25 (b) Notice from the commissioner of the Department of Revenue that the licensee
26 is a "delinquent taxpayer" as defined in KRS Chapter 131;or
- 27 (c) Withdrawal of the certification of compliance with Section 5 of this Act

1 ***issued by the commissioner of the Department of Workplace Standards.***

2 (6) The commissioner, the director of the Division of Mine Safety, or the mine safety
3 specialist shall have the authority to stop production or close any mine whose
4 operator fails to procure a license or fails to furnish a certification of workers'
5 compensation coverage as required under this section.

6 (7) The department shall be authorized to seek injunctive relief for any violation of this
7 section. Revocation of a license by the department shall be an administrative
8 function of the department. Appeals from revocation by the department shall be
9 brought in Franklin Circuit Court.

10 (8) A license which has been revoked under the "delinquent taxpayer" provision shall
11 not be reissued until a written tax clearance has been received from the
12 commissioner of revenue.

13 (9) No mine underlying a cemetery shall be licensed by the commissioner unless two-
14 thirds (2/3) of the governing body of that cemetery vote in approval of the
15 operation. The application for a license shall contain an affidavit setting forth the
16 approval of the cemetery's governing body. This subsection applies only to those
17 cemetaries with governing bodies.

18 ***(10) On or before March 1 of each year, the secretary shall submit to the***
19 ***commissioner of the Department of Workplace Standards a report listing each***
20 ***license currently in effect. The report shall include:***

21 ***(a) The name of the licensee;***

22 ***(b) The date the license was first issued;***

23 ***(c) The date of any renewals of the license;***

24 ***(d) The registered agent of the licensee;***

25 ***(e) The address of the principal place of business of the licensee; and***

26 ***(f) The names of any known officers or managing members.***