

# EMPLOYMENT LAW SUMMARY

## Kentucky Minimum Wage Laws



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Federal minimum wage law is governed by the Fair Labor Standards Act (FLSA). The current federal minimum wage rate is \$7.25 per hour for nonexempt employees. Kentucky wage laws complement federal law and, in some cases, prescribe more stringent or additional requirements that employers must follow. Whenever employers are subject to both state and federal laws, the law that provides the greater protection for the employee will apply.

The [Kentucky Department of Workplace Standards](#) (KDWS), part of the Kentucky Labor Cabinet, enforces and investigates minimum wage violation claims.

### Minimum Wage Rate

Kentucky has adopted the federal minimum wage rate of **\$7.25 per hour** as the state standard. Any future increase in the federal minimum wage rate will automatically increase the state minimum wage rate by the same amount, on the same effective date.

Employee wages are defined as any advantage provided to employees as an established policy or agreed upon by the employer and the employee. In other words, an employee's wages are the entire amount of compensation the employee receives for his or her labor or services. This includes:

- Salaries;
- Earned bonuses;
- Commissions;
- Vested vacation pay;
- Overtime pay; and
- Severance or dismissal pay.

Wages can be fixed or based on time, task, piece, commission or other methods. Employers cannot use employment contracts to avoid their obligation to pay at least the minimum wage rate.

### Allowances

Kentucky law allows employers to include the reasonable cost of **board, lodging or other facilities** as part of their employees' wages, if these benefits are customarily furnished to the employees and voluntarily accepted by employees.

The reasonable cost of board, lodging and other facilities is the net cost the employer incurs for these services. Kentucky regulations specifically prohibit employers (or any third party affiliated to them) from deriving any profit from these benefits.

Board, lodging and other facilities are customarily furnished if they are regularly provided by the employer to its employees or customarily provided by other employers engaged in the same or similar trade, business or occupation within the same or similar communities.

Acceptable board, lodging and other facilities include:

- Meals furnished at company restaurants or cafeterias or by hospitals, hotels or restaurants to their employees;
- Meals, dormitory rooms and tuition furnished by a college to its student employees;
- Housing furnished for dwelling purposes;
- General merchandise furnished at company stores and commissaries (including food, clothing, and household goods), fuel, electricity, water and gas furnished for the noncommercial personal use of the employee; and
- Transportation furnished to employees between their house and work, where the travel time does not constitute hours worked and the transportation is not an incident of and necessary to the employment.

The cost of providing facilities that are primarily for the benefit or convenience of the employer is not recognized as "reasonable" and cannot be included in computing wages. Facilities primarily for the benefit or convenience of the employer shall include, for example:

- Tools of the trade and other materials and services incidental to carrying on the employer's business;
- The cost of any construction by or for the employer; and
- The cost of uniforms and of their laundering, if the nature of the business requires the employees to wear a uniform.

## Exemptions

Kentucky minimum wage rate requirements do not apply to:

- Agricultural workers;
- Bona fide administrative, executive and professional employees;
- Outside sales personnel;
- Federal employees;
- Casual babysitters and companions for the sick, convalescing or elderly (principal duties cannot include housekeeping);
- Domestic employees working in or about a private home (regardless of how many domestic employees work in that home);
- Individuals working for retail stores, service industries, hotels, motels or restaurants, if the employer has an average annual gross sales volume lower than \$95,000 for the five preceding years (not including excise taxes);
- Individuals working for a parent, spouse, child or other member of their immediate families;
- Newspaper delivery employees;
- Certain emergency response employees and judicial, legislative and court support personnel;
- Nonprofit camp, religious or educational center employees working for a camp or center that does not operate for more than seven months in any calendar year;
- Childcare facility employees who provide 24-hour residential care in a parental role to dependent, neglected and abused children (the children must be in the care of private, nonprofit facilities that are properly licensed for child caring by the Kentucky Cabinet for Health and Family Services); or
- Individuals who provide 24-hour residential care in their own home as family caregivers (must receive approval from the Kentucky Cabinet for Health and Family Services to provide adult foster care).

## Tipped Employees

Tipped employee wages in Kentucky are calculated using a cash wage, a tip credit and the state minimum wage rate. The cash wage in Kentucky is **\$2.13 per hour**. The cash wage is determined by subtracting the tip credit from the minimum wage rate. State law requires that employers make up the difference when an employee's tips, combined with the employee's cash wage, fall below the minimum wage.

Employers can use the tip credit in addition to any allowances mentioned above. However, employers can claim a tip credit only for the hours their employees work in a tipped occupation. In addition, employers cannot use the tip credit if their employees operate under an agreement requires crediting or turning tips over to the employer as part of the employer's gross receipts.

In Kentucky, a tip is a sum presented by a customer as a gift or gratuity in recognition of some service performed. A tip is distinguished from a payment of a charge made for the service. A payment is considered a tip if:

- The customer has sole control on whether to give a tip, the amount of the tip and who receives the tip; and
- The employee is not compelled by contract or agreement to collect the gratuity in behalf of his or her employer.

Tips do not include (even when distributed among the employees):

- Any compulsory charge for service imposed on a customer by an employer's establishment (such as 10 percent surcharge on the amount of the bill for large parties);
- Negotiated employee payment amounts between an employer and a customer for banquet facilities; or
- Funds collected by employees under an agreement where any amount presented by customers as tips belong to the employer and must be credited or turned over to the employer (even when the amount collected is not a compulsory charge on the customer).

A tipped employee is an individual who receives **at least \$30 per month** tips in an occupation in which tips or gratuities are customarily exchanged for services.

Tipped employees can voluntarily enter into an agreement to divide gratuities among themselves. Under these circumstances, employers may inform their employees of the existence of a voluntary pool. Upon petition from the tipped employees participating in the voluntary pool, employers may act as custodians for the safekeeping of the funds placed in the pool if the account is properly identified and segregated from the employer's other business records. This account must also be open to examination by pool participants. However, employers cannot require tipped employees to pool their tips into a common account.

## Apprentices and Learners

Apprentices, learners and trainees can receive wages below the minimum wage rate when authorized by the KDWS.

**Apprentices** qualify for this authorization if they are:

- At least 16 years of age;
- Indentured; and
- Employed in a bona fide apprenticeship program.

Apprentices must also be individually registered by the program sponsor with the Supervisor of Apprenticeship and Training, a division of the Kentucky Labor Cabinet. Employers cannot hire more than one apprentice for every three regular employees for the project the apprentice was hired to work in.

**Trainees** are individuals who are at least 16 years of age and are employed in an on-the-job training program. These programs must be approved by a federal agency to promote equal employment opportunities in conjunction with federal-aid construction projects. Employers cannot hire more than one trainee for every three regular employees for the project the trainee was hired to work in.

Apprenticeship programs are plans that contain all terms and conditions for the qualification, recruitment, selection, employment and training of a trainee. On-the-job training programs are plans that contain all terms and conditions for the qualification, recruitment, selection, employment and training of a trainee. Both types of programs must provide a written employment agreement which indicates the graduating compensation scale and whether required school time will be compensated.

Kentucky minimum wage laws prohibit employers, labor organization and joint labor-management committees controlling apprenticeships or other training programs from discriminating against any individual because of race, color, religion, national origin, sex, age or disability regarding the individual's admission to or employment in any apprenticeship or training program.

## Handicapped and Sheltered Workshop Employee's Wages

Employers must pay handicapped workers and sheltered workshop employees a wage rate at least equal to the minimum wage rate unless a lower wage rate has been authorized by a special certificate issued by the KDWS or the U.S. Department of Labor (DOL).

A handicapped worker is an individual whose earning or productive capacity for the work he or she was hired to perform is impaired because of age, physical or mental deficiency or injury.

Sheltered workshop employees are individuals working for a nonprofit charitable organization or institution that exists to rehabilitate handicapped workers while providing compensation for labor or other occupational rehabilitation activity of an educational or therapeutic nature.

## Prohibited Practices

Kentucky minimum wage laws prohibit wage discrimination and retaliation.

## Discrimination and Equal Pay

Under Kentucky's equal pay law, employers are prohibited from discriminating against their employees on the basis of race, color, religion, national origin, sex, age or disability. In addition, state law requires employers **with at least two employees** within the state in each of **20 or more weeks** during the current or preceding calendar year to pay equal wages to employees of both sexes when they perform comparable work in the same establishment on jobs which have similar requirements relating to skill, effort and responsibility.

However, employers are allowed to apply different compensation standards or different employment terms, conditions or privileges, if based on a system that measures quantity or quality of production, seniority, merit or to accommodate employment in different locations if the differences are not the result of an intention to discriminate.

When comparing wages to ensure compliance with state law, an employee's wage rate includes all payments made to or on behalf of the employee as remuneration for employment, including fringe benefits such as:

- Vacation and holiday pay;
- Premium payments for work on Saturdays, Sundays, holidays, or regular days of rest; and
- Pension benefits, insurance benefits, and other fringe benefits paid as compensation for employment.

In contrast, for equal pay compliance, employers should not include payments that are not considered payment for employment, such as payments related to maternity and reasonable payments for reimbursable expenses of traveling on the employer's business.

Also, Kentucky minimum wage laws explicitly allow employers to give (or use the results of) any professionally developed ability test to their employees, as long as the test, its administration or any action based on test results is not designed, intended or used to discriminate.

Employers cannot reduce an employee's wages to comply with equal pay requirements.

In case of a wage investigation, employers are required to allow the KDWS to question any employee in the place of employment, during work hours regarding their wages and hours of work. The KDWS is also authorized to inspect and copy payroll and other employment records.

Employees who want to report a violation of the state's wage and hour laws must file a complaint with the KDWS no later than *six months* after the alleged violation takes place.

## Retaliation

Kentucky minimum wage laws prohibit employers from discharging or discriminating against any employee that makes a complaint to the employer, reports a violation to the KDWS, cooperates with or assists the KDWS in a wage investigation or testifies (or is about to testify) in a proceeding.

## Notice and Postings

Kentucky minimum wage laws require employers to post and maintain updated information regarding the state's minimum wage rate and work hour laws. The notice must be posted in a conspicuous and accessible place in or about the premises where any person subject to these laws is employed.

Employers are also required to display an abstract that informs employees of the state's wage anti-discrimination laws.

Model notices for these laws are available for download, free of charge, from the KDWS [website](#).

## Enforcement

Kentucky law authorizes the KDWS to place **a lien** on an employer's real and personal property (after all administrative and judicial appeals have been exhausted) to enforce the payment of civil penalties. The lien must:

- Be recorded in favor of the Labor Cabinet;
- Be for an amount equal to unpaid wages and penalties due;
- Include an interest rate of 12 percent per year (effective from the date the violation notice is final but not before all judicial appeals have been exhausted);
- Be attached to all property and rights currently or subsequently acquired by the employer;
- Be superior to the lien of any subsequent mortgage or encumbrance; and
- Last for up to 10 years from the time of recording.

Employers can appeal all KDWS orders and decisions through an administrative hearing process.

## Penalties

Employers that pay wages below the minimum wage rate will be required to pay:

- The difference between what they paid and what they should have paid their affected employees;
- An amount equal to unpaid wages as liquidated damages;
- Attorney's fees; and
- Court costs.

However, an employer may avoid having to pay liquidated damages if it can prove that it acted in good faith and had reasonable grounds for believing its action or omission was not a violation.

In addition, if paying wages below the minimum wage rate was the result of forced labor or services, employers may be required to pay **punitive damages** equal to **at least three times** the full amount of unpaid wages and overtime compensation applicable, and interest. Forced labor or services are activities performed or provided by another person through force, fraud or coercion.

Finally, employers may be subject to a civil penalty of **between \$100 and \$1,000** for:

- Entering into an agreement to pay wages below the minimum wage rate;
- Requiring tipped employees to participate in a tip pool;
- Willful violations;
- Willfully hindering or delaying a wage investigation;
- Failing to keep and preserve required records;
- Falsifying any record;
- Refusing to make any record (or its transcription) accessible; or
- Retaliating against employees for making a complaint, reporting a violation or participating in an investigation.

Employers that discriminate against their workers may be required to pay **unpaid wages, cover reasonable attorney's fees, court costs** and take any other **affirmative action** a court declares necessary to impose (such as reinstatement of discharged employees). State law also allows employees to recover an additional amount equal to their unpaid wages for willful violations.

## More Information

Contact Heffernan Insurance Brokers for more information on wage payment and work hour laws in Kentucky.

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