

1 LABOR CABINET

2 Department of Workplace Standards

3 (Amendment)

4 803 KAR 1:070. Executive, administrative, supervisory or professional employees; salesmen.

5 RELATES TO: KRS 337.275, 337.285

6 STATUTORY AUTHORITY: KRS 337.010(2)(a)2, 337.295

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.010(2)(a)2 exempts any
8 individual employed in a bona fide executive, administrative, supervisory, or professional
9 capacity, or in the capacity of outside salesman, or as an outside collector as the terms are defined
10 by administrative regulations of the commissioner~~[executive director]~~ from both the minimum
11 wage and overtime requirements set forth in KRS 337.275 and 337.285. This administrative
12 regulation defines what constitutes an individual employed in a bona fide executive,
13 administrative, supervisory, or professional capacity, or in the capacity of an outside salesman or
14 outside collector.

15 Section 1. Scope. (1) The exemptions set forth in KRS 337.010(2)(a)2, as defined by this
16 administrative regulation, shall not~~do not~~ apply to manual laborers or other "blue collar" workers
17 who perform work involving repetitive operations with their hands, physical skill, and energy.
18 These nonexempt "blue collar" employees gain the skills and knowledge required for performance

1 of their routine manual and physical work through apprenticeships and on-the-job training,
2 not through the prolonged course of specialized intellectual instruction required for exempt learned
3 professionals such as medical doctors, architects, and archeologists. Thus, for example,
4 nonmanagement production line employees and nonmanagement employees in maintenance,
5 construction, and similar occupations such as carpenters, electricians, mechanics, plumbers, iron
6 workers, craftsmen, operating engineers, longshoremen, construction workers, and laborers are
7 entitled to minimum wage and overtime premium pay under KRS Chapter 337, and ***shall not***
8 ***be***~~are not~~ exempt under this administrative regulation no matter how highly paid they are.

9 (2)(a) The KRS 337.010(2)(a)2 exemptions and this administrative regulation also
10 ***shall***~~do~~ not apply to police officers, detectives, deputy sheriffs, state troopers, highway patrol
11 officers, parole or probation officers, park rangers, fire fighters, paramedics, emergency medical
12 technicians, ambulance personnel, rescue workers, hazardous materials workers, and similar
13 employees, regardless of rank or pay level, who perform work such as preventing, controlling, or
14 extinguishing fires of any type; rescuing fire, crime, or accident victims; preventing or detecting
15 crimes; conducting investigations or inspections for violations of law; performing surveillance;
16 pursuing, restraining, and apprehending suspects; detaining or supervising suspected and
17 convicted criminals, including those on probation or parole; interviewing witnesses; interrogating
18 and fingerprinting suspects; preparing investigative reports; or other similar work.

19 (b) These employees ***shall***~~do~~ not qualify as exempt executive employees, because their
20 primary duty is not management of the enterprise in which the employee is employed or of a
21 customarily recognized department or subdivision thereof as required under Section 2 of this
22 administrative regulation. Thus, for example, a police officer or fire fighter whose primary duty is
23 to investigate crimes or fight fires ***shall***~~is~~ not ***be*** exempt under KRS 337.010(2)(a)(2) merely

1 because the police officer or fire fighter also directs the work of other employees in the conduct of
2 an investigation or fighting a fire.

3 (c) These employees shall~~(do)~~ not qualify as exempt administrative employees, because
4 their primary duty is not the performance of work directly related to the management or general
5 business operations of the employer or the employer's customers as required under Section 3 of
6 this administrative regulation.

7 (d) These employees shall~~(do)~~ not qualify as exempt professionals, because their primary
8 duty is not the performance of work requiring knowledge of an advanced type in a field of science
9 or learning customarily acquired by a prolonged course of specialized intellectual instruction or
10 the performance of work requiring invention, imagination, originality, or talent in a recognized
11 field of artistic or creative endeavor as required under Section 4 of this administrative regulation.
12 Although some police officers, fire fighters, paramedics, emergency medical technicians, and
13 similar employees have college degrees, a specialized academic degree is not a standard
14 prerequisite for employment in these occupations.

15 Section 2. General Rule for Executive Employees. (1) The term "individual employed in a
16 bona fide executive capacity" in KRS 337.010(2)(a)2 shall mean an employee:

17 (a) Compensated on a salary basis at a rate of not less than \$684~~[\$455]~~ per week, exclusive
18 of board, lodging, or other facilities;

19 (b) Whose primary duty is management of the enterprise in which the employee is
20 employed or of a customarily recognized department or subdivision thereof;

21 (c) Who customarily and regularly directs the work of two (2) or more other employees;
22 and

1 (d) Who has the authority to hire or fire other employees or whose suggestions and
2 recommendations as to the hiring, firing, advancement, promotion, or any other change of status
3 of other employees are given particular weight.

4 (2) Business owner. The term "employee employed in a bona fide executive capacity" in
5 KRS 337.010(2)(a)2 also includes~~include~~ any employee who owns at least a bona fide twenty
6 (20) percent equity interest in the enterprise in which the employee is employed, regardless of
7 whether the business is a corporate or other type of organization, and who is actively engaged in
8 its management. The salary requirements of Section 8 of this administrative regulation shall not
9 apply to business owners described in this subsection.

10 (3) Management. "Management" shall include, but is not limited to, activities such as
11 interviewing, selecting, and training employees; setting and adjusting their rates of pay and hours
12 of work; directing the work of employees; maintaining production or sales records for use in
13 supervision or control; appraising employees' productivity and efficiency for the purpose of
14 recommending promotions or other changes in status; handling employee complaints and
15 grievances; disciplining employees; planning the work; determining the techniques to be used;
16 apportioning the work among the employees; determining the types of material, supplies,
17 machinery, equipment, or tools to be used or merchandise to be bought, stocked, or sold;
18 controlling the flow and distribution of materials or merchandise and supplies; providing for the
19 safety and security of the employees or the property; planning and controlling the budget; and
20 monitoring or implementing legal compliance measures.

21 (4) Department or subdivision.

22 (a) The phrase "a customarily-recognized department or subdivision" distinguishes
23 between a mere collection of employees assigned from time to time to a specific job or series of

1 jobs and a unit with permanent status and function. A customarily-recognized department or
2 subdivision shall have a permanent status and continuing function. For example, a large
3 employer's human resources department may~~might~~ have subdivisions for labor relations,
4 pensions and other benefits, equal employment opportunity, and personnel management, each of
5 which has a permanent status and function.

6 (b) If an enterprise has more than one (1) establishment, the employee in charge of each
7 establishment may be considered in charge of a recognized subdivision of the enterprise.

8 (c) A recognized department or subdivision may be physically outside the employer's
9 establishment and may move from place to place. The mere fact that the employee works in more
10 than one (1) location shall~~does~~ not invalidate the exemption if other factors show that the
11 employee is actually in charge of a recognized unit with a continuing function in the organization.

12 (d) Continuity of the same subordinate personnel is not essential to the existence of a
13 recognized unit with a continuing function. An otherwise exempt employee shall~~does~~ not lose
14 the exemption merely because the employee draws and supervises workers from a pool or
15 supervises a team of workers drawn from other recognized units, if other factors are present that
16 indicate that the employee is in charge of a recognized unit with a continuing function.

17 (5) Two (2) or more other employees.

18 (a) To qualify as an exempt executive under this section, the employee shall customarily
19 and regularly direct the work of two (2) or more other employees. The phrase "two (2) or more
20 other employees" means two (2) full-time employees or their equivalent. One (1) full-time and two
21 (2) half-time employees, for example, are equivalent to two (2) full-time employees. Four (4) half-
22 time employees are also equivalent.

1 (b) The supervision may be distributed among two (2), three (3), or more employees, but
2 each employee shall customarily and regularly direct the work of two (2) or more other full-time
3 employees or the equivalent. Thus, for example, a department with five (5) full-time, nonexempt
4 workers may have up to two (2) exempt supervisors if each such supervisor customarily and
5 regularly directs the work of two (2) of those workers.

6 (c) An employee who merely assists the manager of a particular department and supervises
7 two (2) or more employees only in the actual manager's absence shall~~does~~ not meet this
8 requirement.

9 (d) Hours worked by an employee shall not be credited more than once for different
10 executives. Thus, a shared responsibility for the supervision of the same two (2) employees in the
11 same department shall~~does~~ not satisfy this requirement. However, a full-time employee who
12 works four (4) hours for one (1) supervisor and four (4) hours for a different supervisor, for
13 example, may be credited as a half-time employee for both supervisors.

14 (6) Particular weight. To determine whether an employee's suggestions and
15 recommendations are given "particular weight," factors to be considered include, but are not
16 limited to, whether it is part of the employee's job duties to make the suggestions and
17 recommendations; the frequency with which the suggestions and recommendations are made or
18 requested; and the frequency with which the employee's suggestions and recommendations are
19 relied upon. An executive's suggestions and recommendations shall pertain to employees whom
20 the executive customarily and regularly directs. It shall not include an occasional suggestion with
21 regard to the change in status of a coworker. An employee's suggestions and recommendations
22 may be deemed to have "particular weight" even if a higher level manager's recommendation has

1 more importance and even if the employee does not have authority to make the ultimate decision
2 as to the employee's change in status.

3 (7) Concurrent duties.

4 (a) Concurrent performance of exempt and nonexempt work shall~~does~~ not disqualify an
5 employee from the executive exemption if the requirements of this administrative regulation are
6 otherwise met. Whether an employee meets the requirements of this administrative regulation
7 when the employee performs concurrent duties is determined on a case-by-case basis. Exempt
8 executives shall make the decision regarding when to perform nonexempt duties and remain
9 responsible for the success or failure of business operations under their management while
10 performing the nonexempt work. In contrast, the nonexempt employee shall be directed by a
11 supervisor to perform the exempt work or performs the exempt work for defined time periods. An
12 employee whose primary duty is ordinary production work or routine, recurrent, or repetitive tasks
13 shall not qualify for exemption as an executive.

14 (b) For example, an assistant manager in a retail establishment may perform work such as
15 serving customers, cooking food, stocking shelves, and cleaning the establishment, except
16 performance of the nonexempt work shall~~does~~ not preclude the exemption if the assistant
17 manager's primary duty is management. An assistant manager may supervise employees and serve
18 customers at the same time without losing the exemption. An exempt employee may also
19 simultaneously direct the work of other employees and stock shelves.

20 (c) In contrast, a relief supervisor or working supervisor whose primary duty is performing
21 nonexempt work on the production line in a manufacturing plant shall~~does~~ not become exempt
22 merely because the nonexempt production line employee occasionally has some responsibility for
23 directing the work of other nonexempt production line employees if, for example, the exempt

1 supervisor is unavailable. Similarly, an employee whose primary duty is to work as an electrician
2 is not an exempt executive even if the employee also directs the work of other employees on the
3 job site, orders parts and materials for the job, and handles requests from the prime contractor.

4 Section 3. General Rule for Administrative Employees. (1) The term "individual employed
5 in a bona fide administrative capacity" in KRS 337.010(2)(a)2 shall mean any employee:

6 (a) Compensated on a salary or fee basis at a rate of not less than \$684~~[\$455]~~ per week,
7 exclusive of board, lodging, or other facilities;

8 (b) Whose primary duty is the performance of office or nonmanual work directly related
9 to the management or general business operations of the employer or the employer's customers;
10 and

11 (c) Whose primary duty includes the exercise of discretion and independent judgment with
12 respect to matters of significance.

13 (2) Directly related to management or general business operations.

14 (a) To qualify for the administrative exemption, an employee's primary duty shall be the
15 performance of work directly related to the management or general business operations of the
16 employer or the employer's customers. The phrase "directly related to the management or general
17 business operations" refers to the type of work performed by the employee. To meet this
18 requirement, an employee shall perform work directly related to assisting with the running or
19 servicing of the business, as distinguished, for example, from working on a manufacturing
20 production line or selling a product in a retail or service establishment.

21 (b) Work directly related to management or general business operations includes, but is not
22 limited to, work in functional areas such as tax; finance; accounting; budgeting; auditing;
23 insurance;

1 quality control; purchasing; procurement; advertising; marketing; research; safety and health;
2 personnel management; human resources; employee benefits; labor relations; public relations;
3 government relations; computer network; internet and database administration; legal and
4 regulatory compliance; and similar activities. Some of these activities may be performed by
5 employees who also would qualify for another exemption.

6 (c) An employee may qualify for the administrative exemption if the employee's primary
7 duty is the performance of work directly related to the management or general business operations
8 of the employer's customers. Thus, for example, employees acting as advisers or consultants to
9 their employer's clients or customers (as tax experts or financial consultants, for example) may be
10 exempt.

11 (3) Discretion and independent judgment.

12 (a) To qualify for the administrative exemption, an employee's primary duty shall include
13 the exercise of discretion and independent judgment with respect to matters of significance. The
14 exercise of discretion and independent judgment shall involve the comparison and the evaluation
15 of possible courses of conduct, and acting or making a decision after the various possibilities have
16 been considered. The term "matters of significance" refers to the level of importance or
17 consequence of the work performed.

18 (b) The phrase "discretion and independent judgment" shall be applied in the light of all
19 the facts involved in the particular employment situation in which the question arises. Factors to
20 consider if determining whether an employee exercises discretion and independent judgment with
21 respect to matters of significance include, but are not limited to: whether the employee has
22 authority to formulate, affect, interpret, or implement management policies or operating practices;
23 whether the employee carries out major assignments in conducting the operations of the business;

1 whether the employee performs work that affects business operations to a substantial degree, even
2 if the employee's assignments are related to operation of a particular segment of the business;
3 whether the employee has authority to commit the employer in matters that have significant
4 financial impact; whether the employee has authority to waive or deviate from established policies
5 and procedures without prior approval; whether the employee has authority to negotiate and bind
6 the company on significant matters; whether the employee provides consultation or expert advice
7 to management; whether the employee is involved in planning long- or short-term business
8 objectives; whether the employee investigates and resolves matters of significance on behalf of
9 management; and whether the employee represents the company in handling complaints,
10 arbitrating disputes, or resolving grievances.

11 (c) For the exercise of discretion and independent judgment, the employee shall have
12 authority to make an independent choice, free from immediate direction or supervision. Except,
13 employees may exercise discretion and independent judgment even if their decisions or
14 recommendations are reviewed at a higher level. Thus, the term "discretion and independent
15 judgment" shall~~does~~ not require that the decisions made by an employee have a finality that goes
16 with unlimited authority and a complete absence of review. The decisions made as a result of the
17 exercise of discretion and independent judgment may consist of recommendations for action rather
18 than the actual taking of action. The fact that an employee's decision may be subject to review and
19 that upon occasion the decisions are revised or reversed after review does not mean that the
20 employee is not exercising discretion and independent judgment. For example, the policies
21 formulated by the credit manager of a large corporation may be subject to review by higher
22 company officials who may approve or disapprove these policies. The management consultant

1 who has made a study of the operations of a business and who has drawn a proposed change in
2 organization may have the plan reviewed or revised by superiors before it is submitted to the client.

3 (d) An employer's volume of business may make it necessary to employ a number of
4 employees to perform the same or similar work. The fact that many employees perform identical
5 work or work of the same relative importance shall~~does~~ not mean that the work of each employee
6 does not involve the exercise of discretion and independent judgment with respect to matters of
7 significance.

8 (e) The exercise of discretion and independent judgment shall be more than the use of skill
9 in applying well-established techniques, procedures, or specific standards described in manuals or
10 other sources. The exercise of discretion and independent judgment also shall not include clerical
11 or secretarial work, recording, or tabulating data, or performing other mechanical, repetitive,
12 recurrent, or routine work. An employee who simply tabulates data is not exempt, even if labeled
13 as a "statistician".

14 (f) An employee does not exercise discretion and independent judgment with respect to
15 matters of significance merely because the employer will experience financial losses if the
16 employee fails to perform the job properly. For example, a messenger who is entrusted with
17 carrying large sums of money does not exercise discretion and independent judgment with respect
18 to matters of significance even though serious consequences may flow from the employee's
19 neglect. Similarly, an employee who operates very expensive equipment does not exercise
20 discretion and independent judgment with respect to matters of significance merely because
21 improper performance of the employee's duties may cause serious financial loss to the employer.

22 (4) Administrative exemption examples.

1 (a) Insurance claims adjusters meet the duties requirements for the administrative
2 exemption, whether they work for an insurance company or other type of company, if their duties
3 include activities such as interviewing insureds, witnesses, and physicians; inspecting property
4 damage; reviewing factual information to prepare damage estimates; evaluating and making
5 recommendations regarding coverage of claims; determining liability and total value of a claim;
6 negotiating settlements; and making recommendation regarding litigation.

7 (b) Employees in the financial services industries meet the duties requirements for the
8 administrative exemption if their duties include work such as collecting and analyzing information
9 regarding the customer's income, assets, investments, or debts; determining which financial
10 products best meet the customer's needs and financial circumstances; advising the customer
11 regarding the advantages and disadvantages of different financial products; and marketing,
12 servicing, or promoting the employer's financial products. Except, an employee whose primary
13 duty is selling financial products shall~~does~~ not qualify for the administrative exemption.

14 (c) An employee who leads a team of other employees assigned to complete major projects
15 for the employer (such as purchasing, selling, or closing all or part of the business, negotiating a
16 real estate transaction or a collective bargaining agreement, or designing and implementing
17 productivity improvements) meets the duties requirements for the administrative exemption, even
18 if the employee does not have direct supervisory responsibility over the other employees on the
19 team.

20 (d) An executive assistant or administrative assistant to a business owner or senior
21 executive of a large business generally meets the duties requirements for the administrative
22 exemption if the employee, without specific instructions or prescribed procedures, has been
23 delegated authority regarding matters of significance.

1 (e) Human resources managers who formulate, interpret, or implement employment
2 policies and management consultants who study the operations of a business and propose changes
3 in organization meet the duties requirements for the administrative exemption. However, personnel
4 clerks who "screen" applicants to obtain data regarding their minimum qualifications and fitness
5 for employment shall~~do~~ not meet the duties requirements for the administrative exemption. The
6 personnel clerks typically will reject all applicants who do not meet minimum standards for the
7 particular job or for employment by the company. The minimum standards are usually set by the
8 exempt human resources manager or other company official, and the decision to hire from the
9 group of qualified applicants who do meet the minimum standards is similarly made by the exempt
10 human resources manager or other company officials. Thus, if the interviewing and screening
11 functions are performed by the human resources manager or personnel manager who makes the
12 hiring decision or makes recommendations for hiring from the pool of qualified applicants, the
13 duties constitute exempt work, even though routine, because this work is directly and closely
14 related to the employee's exempt functions.

15 (f) Purchasing agents with authority to bind the company on significant purchases meet the
16 duties requirements for the administrative exemption even if they are required~~must~~ consult with
17 top management officials when making a purchase commitment for raw materials in excess of the
18 contemplated plant needs.

19 (g) Ordinary inspection work shall~~does~~ not meet the duties requirements for the
20 administrative exemption. Inspectors normally perform specialized work along standardized lines
21 involving well-established techniques and procedures which may have been catalogued and
22 described in manuals or other sources. The inspectors rely on techniques and skills acquired by

1 special training or experience. They have some leeway in the performance of their work but only
2 within closely prescribed limits.

3 (h) Employees usually called examiners or graders, such as employees that grade lumber,
4 shall~~[do]~~ not meet the duties requirements for the administrative exemption. The employees
5 usually perform work involving the comparison of products with established standards which are
6 frequently catalogued. Often, after continued reference to the written standards, or through
7 experience, the employee acquires sufficient knowledge so that reference to written standards is
8 unnecessary. The substitution of the employee's memory for a manual of standards shall~~[does]~~
9 not convert the character of the work performed to exempt work requiring the exercise of discretion
10 and independent judgment.

11 (i) Comparison shopping performed by an employee of a retail store who merely reports to
12 the buyer the prices at a competitor's store shall~~[does]~~ not qualify for the administrative
13 exemption. Except, the buyer who evaluates the reports on competitor prices to set the employer's
14 prices meets the duties requirements for the administrative exemption.

15 (j) Public sector inspectors or investigators of various types, such as fire prevention or
16 safety, building or construction, health or sanitation, environmental or soils specialists, and similar
17 employees, shall~~[do]~~ not meet the duties requirements for the administrative exemption because
18 their work typically does not involve work directly related to the management or general business
19 operations of the employer. The employees also shall~~[do]~~ not qualify for the administrative
20 exemption because their work involves the use of skills and technical abilities in gathering factual
21 information, applying known standards or prescribed procedures, determining which procedure to
22 follow, or determining whether prescribed standards or criteria are met.

23 (5) Educational establishments.

1 (a) The term "individual employed in a bona fide administrative capacity" shall also include
2 employees:

3 1. Compensated for services on a salary or fee basis at a rate of not less than ~~\$684~~^[\$455]
4 per week, exclusive of board, lodging, or other facilities, or on a salary basis which is at least equal
5 to the entrance salary for teachers in the educational establishment by which employed; and

6 2. Whose primary duty is performing administrative functions directly related to academic
7 instruction or training in an educational establishment, department, or subdivision thereof.

8 (b) The term "educational establishment" means an elementary or secondary school
9 system, an institution of higher education, or other educational institution. Elementary and
10 secondary schools are those day or residential schools that provide elementary or secondary
11 education, as determined by state law. The term "other educational establishment" includes special
12 schools for mentally or physically disabled or gifted children, regardless of any classification of
13 the schools as elementary, secondary, or higher. Factors relevant in determining whether post-
14 secondary career programs are educational institutions include whether the school is licensed by a
15 state agency responsible for the state's educational system or accredited by a nationally-recognized
16 accrediting organization for career schools. Also, for the purposes of the exemption, a distinction
17 shall not be drawn between public and private schools, or between those operated for profit and
18 those that are not for profit.

19 (c) The phrase "performing administrative functions directly related to academic
20 instruction or training" means work related to the academic operations and functions in a school
21 rather than to administration along the lines of general business operations. Academic
22 administrative functions include operations directly in the field of education. Jobs relating to areas
23 outside the educational field are not within the definition of academic administration.

1 1. Employees engaged in academic administrative functions include: the superintendent or
2 other head of an elementary or secondary school system, and any assistants, responsible for
3 administration of matters such as curriculum, quality and methods of instructing, measuring and
4 testing the learning potential and achievement of students, establishing and maintaining academic
5 and grading standards, and other aspects of the teaching program; the principal and any vice-
6 principals; department heads in institutions of higher education; academic counselors who perform
7 work such as administering school testing programs, assisting students with academic problems,
8 and advising students concerning degree requirements; and other employees with similar
9 responsibilities;

10 2. Jobs relating to building management and maintenance, jobs relating to the health of the
11 students, and academic staff such as social workers, psychologists, lunch room managers, or
12 dieticians do not perform academic administrative functions. Although the work is not considered
13 academic administration, the employees may qualify for another exemption, if the requirements
14 for the exemption are met.

15 Section 4. General Rule for Professional Employees. (1) The term "individual employed in
16 a bona fide professional capacity" in KRS 337.010(2)(a)(2) shall mean any employee:

17 (a) Compensated on a salary or fee basis at a rate of not less than ~~\$684~~[\$455] per week,
18 exclusive of board, lodging, or other facilities; and

19 (b) Whose primary duty is the performance of work:

20 1. Requiring knowledge of an advanced type in a field of science or learning customarily
21 acquired by a prolonged course of specialized intellectual instruction; or

22 2. Requiring invention, imagination, originality, or talent in a recognized field of artistic or
23 creative endeavor.

1 (2) Learned professionals.

2 (a) To qualify for the learned professional exemption, an employee's primary duty shall be
3 the performance of work requiring advanced knowledge in a field of science or learning
4 customarily acquired by a prolonged course of specialized intellectual instruction. This primary
5 duty test includes three (3) elements:

6 1. The employee shall perform work requiring advanced knowledge;

7 2. The advanced~~[advance]~~ knowledge shall be in a field of science or learning; and

8 3. The advanced knowledge shall be customarily acquired by a prolonged course of
9 specialized intellectual instruction.

10 (b) The phrase "work requiring advanced knowledge" means work which is predominantly
11 intellectual in character, and which includes work requiring the consistent exercise of discretion
12 and judgment, as distinguished from performance of routine mental, manual, mechanical, or
13 physical work. An employee who performs work requiring advanced knowledge uses the advanced
14 knowledge to analyze, interpret, or make deductions from varying facts or circumstances.
15 Advanced knowledge shall not be attained at the high school level.

16 (c) The phrase "field of science or learning" includes the traditional professions of law,
17 medicine, theology, accounting, actuarial computation, engineering, architecture, teaching,
18 various types of physical, chemical and biological sciences, pharmacy, and other similar
19 occupations that have a recognized professional status as distinguished from the mechanical arts
20 or skilled trades where in some instances the knowledge is of a fairly advanced type, but is not in
21 a field of science or learning.

22 (d) The phrase "customarily acquired by a prolonged course of specialized intellectual
23 instruction" restricts the exemption to professions where specialized academic training is a

1 standard prerequisite for entrance into the profession. The best prima facie evidence that an
2 employee meets this requirement is possession of the appropriate academic degree. Except, the
3 word~~[work]~~ "customarily" means that the exemption shall also be available to employees in those
4 professions who have substantially the same knowledge level and perform substantially the same
5 work as the degreed employees, but who attained the advanced knowledge through a combination
6 of work experience and intellectual instruction. Thus, for example, the learned professional
7 exemption is available to the occasional lawyer who has not gone to law school, or the occasional
8 chemist who does not possess a degree in chemistry. Except, the learned professional exemption
9 shall not be available for occupations that customarily may be performed with only the general
10 knowledge acquired by an academic degree in any field, with knowledge acquired through an
11 apprenticeship, or with training in the performance of routine mental, manual, mechanical, or
12 physical processes. The learned professional exemption also shall not apply to occupations in
13 which most employees have acquired their skill by experience rather than by advanced,
14 specialized, intellectual instruction.

15 (e) Registered or certified medical technologists. Registered or certified medical
16 technologists who have successfully completed three (3) academic years of preprofessional study
17 in an accredited college or university plus a fourth year of professional course work in a school of
18 medical technology approved by the Council of Medical Education of the American Medical
19 Association meet the duties requirements of the learned professional exemption.

20 (f) Nurses. Registered nurses who are registered by the state examining board meet the
21 duties requirements for the learned professional exemption. Licensed practical nurses and other
22 similar health care employees, shall~~[do]~~ not qualify as exempt learned professionals, because

1 possession of a specialized, advanced, academic degree is not a standard prerequisite for entry into
2 the occupations.

3 (g) Dental hygienists. Dental hygienists who have successfully completed four (4)
4 academic years of preprofessional and professional study in an accredited college or university
5 approved by the Commission on Accreditation of Dental and Dental Auxiliary Educational
6 Programs of the American Dental Association meet the duties requirements for the learned
7 professional exemption.

8 (h) Physician assistants. Physician assistants who have successfully completed four (4)
9 academic years of preprofessional and professional study, including graduation from a physician
10 assistant program accredited by the Accreditation Review Commission on Education for the
11 Physician Assistant, and who are certified by the National Commission on Certification of
12 Physician Assistants meet the duties requirements for the learned professional exemption.

13 (i) Accountants. Certified public accountants meet the duties requirements for the learned
14 professional exemption. In addition, many other accountants who are not certified public
15 accountants but perform similar job duties may qualify as exempt learned professionals. Except,
16 accounting clerks, bookkeepers, and other employees who normally perform a great deal of routine
17 work do not qualify as exempt professionals.

18 (j) Chefs. Chefs, such as executive chefs and sous chefs, who have attained a four (4) year
19 specialized academic degree in a culinary arts program, meet the duties requirements for the
20 learned professional exemption. The learned professional exemption shall not be available to cooks
21 who perform predominantly routine mental, manual, mechanical, or physical work.

22 (k) Paralegals. Paralegals and legal assistants shall~~(do)~~ not qualify as exempt learned
23 professionals, because an advanced, specialized, academic degree is not a standard prerequisite for

1 entry into the field. Although many paralegals possess general four (4) year advanced degrees,
2 most specialized paralegal programs are two (2) year associate degree programs from a community
3 college or equivalent institution. Except, the learned professional exemption is available for
4 paralegals who possess advanced specialized degrees in other professional fields and apply
5 advanced knowledge in that field in the performance of their duties. For example, if a law firm
6 hires an engineer as a paralegal to provide expert advice on product liability cases or to assist on
7 patent matters, that engineer qualifies for exemption.

8 (l) Athletic trainers. Athletic trainers who have successfully completed four (4) academic
9 years of preprofessional and professional study in a specialized curriculum accredited by the
10 Commission on Accreditation of Allied Health Education programs and who are certified by the
11 Board of Certification of the National Athletic Trainers Association meet the duties requirements
12 for the learned professional exemption.

13 (m) Funeral directors or embalmers. Licensed funeral directors and embalmers meet the
14 duties requirements for the learned professional exemption only if they are required to complete
15 successfully four (4) academic years of preprofessional and professional study, including
16 graduation from a college of mortuary science accredited by the American Board of Funeral
17 Service Education, in order to be licensed.

18 (n) The areas in which the professional exemption may be available are expanding. As
19 knowledge is developed, academic training is broadened, and specialized degrees are offered in
20 new and diverse fields, thus creating new specialists in particular fields of science or learning.
21 When an advanced, specialized degree has become a standard requirement for a particular
22 occupation, that occupation may have acquired the characteristics of a learned profession.
23 Accrediting and certifying organizations similar to those listed in this section also may be created

1 in the future. Those organizations may develop similar specialized curriculums and certification
2 programs which, if a standard requirement for a particular occupation, may indicate that the
3 occupation has acquired the characteristics of a learned profession.

4 (3) Creative professionals.

5 (a) To qualify for the creative professional exemption, an employee's primary duty shall
6 be the performance of work requiring invention, imagination, originality, or talent in a recognized
7 field of artistic or creative endeavor as opposed to routine mental, manual, mechanical, or physical
8 work. The exemption shall not apply to work which can be produced by a person with general
9 manual or intellectual ability and training.

10 (b) To qualify for exemption as a creative professional, the work performed shall be "in a
11 recognized field of artistic or creative endeavor". This includes fields such as music, writing,
12 acting, and the graphic arts.

13 (c) The requirement of "invention, imagination, originality, or talent" distinguishes the
14 creative professions from work that primarily depends on intelligence, diligence, and accuracy.
15 The duties of employees vary widely, and exemption as creative professional depends on the extent
16 of the invention, imagination, originality, or talent exercised by the employee. Determination of
17 exempt creative professional status, therefore, shall be made on a case-by-case basis. This
18 requirement is met by actors, musicians, composers, conductors, and soloists; painters who at most
19 are given the subject matter of their painting; cartoonists who are merely told the title or underlying
20 concept of a cartoon and rely on their own creative ability to express the concept; essayists,
21 novelists, short-short writers, and screenplay writers who choose their own subjects and hand in a
22 finished piece of work to their employers (the majority of these persons are, not employees but
23 selfemployed); and persons holding the more responsible writing positions in advertising agencies.

1 This requirement is not met by a person who is employed as a copyist, as an "animator" of motion-
2 picture cartoons, or as a retoucher of photographs, since the work is not properly described as
3 creative in character.

4 (d) Journalists may satisfy the duties requirements for the creative professional exemption
5 if their primary duty is work requiring invention, imagination, originality, or talent, as opposed to
6 work which depends primarily on intelligence, diligence, and accuracy. Employees of newspapers,
7 magazines, television, and other media **shall not be**~~[are not]~~ exempt creative professionals if they
8 only collect, organize, and record information that is routine or already public, or if they do not
9 contribute a unique interpretation or analysis to a news product. Thus, for example, newspaper
10 reporters who merely rewrite press releases or who write standard recounts of public information
11 by gathering facts on routine community events **shall not be**~~[are not]~~ exempt creative
12 professionals. Reporters also **shall**~~[do]~~ not qualify as exempt creative professionals if their work
13 product is subject to substantial control by the employer. Except, journalists may qualify as exempt
14 creative professionals if their primary duty is performing on the air in radio, television, or other
15 electronic media; conducting investigative interviews; analyzing or interpreting public events;
16 writing editorials, opinion columns, or other commentary; or acting as a narrator or commentator.

17 (4) Teachers.

18 (a) The term "individual employed in a bona fide professional capacity" in KRS
19 337.010(2)(a)2 shall also mean any employee with a primary duty of teaching, tutoring,
20 instructing, or lecturing in the activity of imparting knowledge and who is employed and engaged
21 in this activity as a teacher in an educational establishment by which the employee is employed.

22 (b) Exempt teachers include, but are not limited to: regular academic teachers; teachers of
23 kindergarten or nursery school pupils; teachers of gifted or disabled children; teachers of skilled

1 and semiskilled trades and occupations; teachers engaged in automobile driving instruction;
2 aircraft flight instructors; home economics teachers; and vocal or instrumental music instructors.
3 Those faculty members who are engaged as teachers but also spend a considerable amount of their
4 time in extracurricular activities such as coaching athletic teams or acting as moderators or advisors
5 in [~~sueh~~] areas such as drama, speech, debate, or journalism are engaged in teaching. Those
6 activities are a recognized part of the schools' responsibility in contributing to the educational
7 development of the student.

8 (c) The possession of an elementary or secondary teacher's certificate provides a clear
9 means of identifying the individuals contemplated as being within the scope of the exemption for
10 teaching professionals. Teachers who possess a teaching certificate shall qualify for the exemption
11 regardless of the terminology (e.g., permanent, conditional, standard, provisional, temporary,
12 emergency, or unlimited) used by the state to refer to different kinds of certificates.
13 Private[private] schools and public schools are not uniform in requiring a certificate for
14 employment as an elementary or secondary school teacher, and a teacher's certificate is not
15 generally necessary for employment in institutions of higher education or other educational
16 establishments. Therefore, a teacher who is not certified may be considered for exemption, if that
17 individual is employed as a teacher by the employing school or school system.

18 (d) The salary requirements of Section 8 of this administrative regulation shall not apply
19 to the teaching professionals described in this subsection.

20 (5) Practice of law or medicine.

21 (a) The term "individual employed in a bona fide professional capacity" in KRS
22 337.010(2)(a)2 shall also mean:

1 1. Any employee who holds a valid license or certificate to practice law or medicine, or
2 any of their branches, and is actually engaged in that practice; and

3 2. Any employee who holds the requisite academic degree for the general practice of
4 medicine and is engaged in an internship or resident program pursuant to the practice of the
5 profession.

6 (b) For medicine, the exemption shall apply to physicians and other practitioners licensed
7 and practicing in the field of medicine, medical science, and healing, or any of the medical
8 specialties practiced by physicians or practitioners. The term "physicians" includes medical
9 doctors, including general practitioners and specialists, osteopathic physicians (doctors of
10 osteopathy), podiatrists, dentists (doctors of dental medicine), and optometrists (doctors of
11 optometry or bachelors of science in optometry).

12 (c) Employees engaged in internship or resident programs, whether or not licensed to
13 practice prior to commencement of the program, shall qualify as exempt professionals if they enter
14 the internship or resident programs after earning the appropriate degree required for the general
15 practice of their profession.

16 (d) The salary requirements of Section 8 of this administrative regulation shall not apply
17 to the employees described in this subsection.

18 Section 5. The term "individual employed in a bona fide supervisory capacity" in KRS
19 337.010(2)(a)2 shall mean any employee:

20 (1) Whose primary duty consists of customarily and regularly directing the work of two (2)
21 or more other employees, as defined in Section 2(5) of this administrative regulation, where he or
22 she is employed; and

1 (2) Who is compensated for their[his] services on a salary basis at a rate of not less than
2 \$684[\$455] per week, exclusive of board, lodging, or other facilities.

3 Section 6. General Rule for Outside Sales Employees. (1) The term "individual employed
4 in the capacity of outside salesman" shall mean any employee:

5 (a) Whose primary duty is:

6 1. Making sales; or

7 2. Obtaining orders or contracts for services or for the use of facilities for which
8 consideration will be paid by the client or customer; and

9 (b) Who is customarily and regularly engaged away from the employer's place or places
10 of business in performing the employee's primary duty.

11 (2) In determining the primary duty of an outside sales employee, work performed
12 incidental to and in conjunction with the employee's own outside sales or solicitations, including
13 incidental deliveries and collections, shall be regarded as exempt outside sales work. Other work
14 that furthers the employee's sales efforts also shall be regarded as exempt work including, for
15 example, writing sales reports, updating or revising the employee's sales or display catalogue,
16 planning itineraries and attending sales conferences.

17 (3) The salary requirements of Section 8 of this administrative regulation shall not apply
18 to the outside sales employees described in this section.

19 (4) Making sales or obtaining orders.

20 (a) Making sales within the meaning of this section includes the transfer of title to tangible
21 property, and in certain cases, of tangible and valuable evidences of intangible property. Sales
22 [~~Sale~~] includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or
23 other disposition.

1 (b) Obtaining orders for the use of facilities includes the selling of time on radio or
2 television, the solicitation of advertising for newspapers and other periodicals, and the solicitation
3 of freight for railroads and other transportation agencies.

4 (c) The word "services" extends the outside sales exemption to employees who sell or take
5 orders for a service, which may be performed for the customer by someone other than the person
6 taking the order.

7 (5) Away from the employer's place of business. An outside sales employee shall be
8 customarily and regularly engaged "away from the employer's place or places of business". The
9 outside sales employee shall be an employee who makes sales at the customer's place of business
10 or, if selling door-to-door, at the customer's home. Outside sales shall not include sales made by
11 mail, telephone, or the Internet unless the contact is used merely as an adjunct to personal calls.
12 Thus, any fixed site, whether home or office, used by a salesperson as a headquarters for telephonic
13 solicitation of sales shall be~~is~~ considered one (1) of the employer's places of business, even
14 though the employer is not in any formal sense the owner or tenant of the property. Except, an
15 outside sales employee shall~~does~~ not lose the exemption by displaying samples in hotel sample
16 rooms during trips from city to city; these sample rooms shall not be considered as the employer's
17 places of business. Similarly, an~~an~~ outside sales employee shall~~does~~ not lose the exemption
18 by displaying the employer's products at a trade show. If selling actually occurs, rather than just
19 sales promotion, trade shows of short duration (i.e., one (1) or two (2) weeks) shall not be
20 considered as the employer's place of business.

21 (6) Promotion work.

22 (a) Promotion work is one (1) type of activity often performed by persons who make sales,
23 which may or may not be exempt outside sales work, depending upon the circumstances under

1 which it is performed. Promotional work that is actually performed incidental to and in conjunction
2 with an employee's own outside sales or solicitations shall be[is] exempt work. On the other hand,
3 promotional work that is incidental to sales made, or to be made, by someone else shall not be[are
4 ~~not~~] exempt outside sales work. An employee who does not satisfy the requirements of this section
5 may still qualify as an exempt employee under other sections of this administrative regulation.

6 (b) A manufacturer's representative, for example, may perform various types of
7 promotional activities such as putting up displays and posters, removing damaged or spoiled stock
8 from the merchant's shelves, or rearranging the merchandise. That employee may be considered
9 an exempt outside sales employee if the employee's primary duty is making sales or contracts.
10 Promotion activities directed toward consummation of the employee's own sales shall be[are]
11 exempt. Promotional activities designed to stimulate sales that will be made by someone else shall
12 not be[are ~~not~~] exempt outside sales work.

13 (c) Another example is a company representative who visits chain stores, arranges the
14 merchandise on shelves, replenishes stock by replacing old with new merchandise, sets up displays
15 and consults with the store manager when inventory runs low, but does not obtain a commitment
16 for additional purchases. The arrangement of merchandise on the shelves or the replenishing of
17 stock shall not be[is ~~not~~] exempt work unless it is incidental to and in conjunction with the
18 employee's own outside sales. Because the employee in this instance does not consummate the
19 sale nor direct efforts toward the consummation of a sale, the work shall not be[is ~~not~~] exempt
20 outside sales work.

21 (7) Drivers who sell.

22 (a) Drivers who deliver products and also sell the products may qualify as exempt outside
23 sales employees only if the employee has a primary duty of making sales. In determining the

1 primary duty of drivers who sell, work performed incidental to and in conjunction with the
2 employee's own outside sales or solicitations, including loading, driving, or delivering products,
3 shall be regarded as exempt outside sales work.

4 (b) Several factors shall be considered in determining if a driver has a primary duty of
5 making sales, including, but not limited to: a comparison of the driver's duties with those of other
6 employees engaged as truck drivers and as salespersons; possession of a selling or solicitor's
7 license when the license is required by law or ordinances; presence or absence of customary or
8 contractual arrangements concerning amount of products to be delivered; description of the
9 employee's occupation in collective bargaining agreements; the employer's specifications as to
10 qualifications for hiring; sales training; attendance at sales conferences; methods of payment; and
11 proportion of earnings directly attributable to sales.

12 (c) Drivers who may qualify as exempt outside sales employees include:

13 1. A driver who provides the only sales contact between the employer and the customers
14 visited, who calls on customers and takes orders for products, who delivers products from stock in
15 the employee's vehicle or procures and delivers the product to the customer on a later trip, and
16 who receives compensation commensurate with the volume of products sold.

17 2. A driver who obtains or solicits orders for the employer's products from persons who
18 have authority to commit the customer for purchases.

19 3. A driver who calls on new prospects for customers along the employee's route and
20 attempts to convince them of the desirability of accepting regular delivery of goods.

21 4. A driver who calls on established customers along the route and persuades regular
22 customers to accept delivery of increased amounts of goods or of new products, even though the
23 initial sale or agreement for delivery was made by someone else.

1 (d) Drivers who shall~~[do]~~ not qualify as exempt outside sales employees include:

2 1. A route driver whose primary duty is to transport products sold by the employer through
3 vending machines and to keep the machines stocked, in good operating condition, and in good
4 locations.

5 2. A driver who often calls on established customers day after day or week after week,
6 delivering a quantity of the employer's products at each call if the sale was not significantly
7 affected by solicitations of the customer by the delivering driver, or the amount of the sale is
8 determined by the volume of the customer's sales since the previous delivery.

9 3. A driver primarily engaged in making deliveries to customers and performing activities
10 intended to promote sales by customers (including placing point-of-sale and other advertising
11 materials, price stamping commodities, arranging merchandise on shelves, in coolers or in
12 cabinets, rotating stock according to date, and cleaning and otherwise servicing display cases),
13 unless the work is in furtherance of the driver's own sales efforts.

14 Section 7. The term "individual employed as an outside collector" shall mean any
15 employee:

16 (1) Who is employed for the purpose of and who is customarily and regularly engaged
17 away from his employer's place or places of business and whose primary duty is:

18 (a) Collecting money for goods or services previously or presently furnished by his
19 employer; or

20 (b) Collecting money for an account placed in the hands of his employer for collection.

21 (2) In determining the primary duty of an outside collector, work performed incidental to
22 and in conjunction with the employee's outside collection activities shall be regarded as exempt
23 work.

1 (3) The salary requirements of Section 8 of this administrative regulation shall~~[do]~~ not
2 apply to the outside collector employees described in this section.

3 Section 8. Salary Requirements. Amount of salary required.

4 (1) To qualify as an exempt executive, administrative, professional, or supervisory
5 employee under KRS 337.010(2)(a)2, an employee shall be compensated on a salary basis at a rate
6 of not less than \$684~~[\$455]~~ per week, exclusive of board, lodging, or other facilities.
7 Administrative and professional employees may also be paid on a fee basis as defined in Section
8 12 of this administrative regulation.

9 (2) The \$684~~[\$455]~~ a week may be translated into equivalent amounts for periods longer
10 than one (1) week. The requirement shall~~[will]~~ be met if the employee is compensated biweekly
11 on a salary basis of \$1,368~~[\$910]~~, semimonthly on a salary basis of \$1,482~~[\$985.83]~~, or monthly
12 on a salary basis of \$2,964~~[\$1,971.66]~~. Except, the shortest period of payment that meets this
13 compensation requirement is one (1) week.

14 (3) For academic administrative employees, the compensation requirement also may be
15 met by compensation on a salary basis at a rate at least equal to the entrance salary for teachers in
16 the educational establishment by which the employee is employed, as provided in Section 3(4) of
17 this administrative regulation.

18 (4) For computer employees, the compensation requirement also may be met by
19 compensation on an hourly basis at a rate not less than twenty-seven (27) dollars and sixty-three
20 (63) cents an hour, as provided in Section 14 of this administrative regulation.

21 (5) For professional employees, the compensation requirements in this section shall not
22 apply to employees engaged as teachers; employees who hold a valid license or certificate
23 permitting the practice of law or medicine or any of their branches and are actually engaged in the

1 practice thereof; or to employee who hold the requisite academic degree for the general practice
2 of medicine and are engaged in an internship or resident program pursuant to the practice of the
3 profession. In the case of medical occupations, the exception from the salary or fee requirement
4 shall not apply to pharmacists, nurses, therapists, technologists, sanitarians, dietitians, social
5 workers, psychologists, psychometrists, or other professions which service the medical profession.

6 Section 9. Highly-Compensated Employees. (1) An employee with total annual
7 compensation of at least \$107,432~~[\$100,000]~~ ***shall be***~~[is—deemed]~~ exempt under KRS
8 337.010(2)(a)2 if the employee customarily and regularly performs any one (1) or more of the
9 exempt duties or responsibilities of an executive, administrative, or professional employee
10 identified in this administrative regulation. ***Where the annual period covers periods both prior to***
11 ***and after the date this administrative regulation is effected, the amount of total annual***
12 ***compensation due will be determined on a proportional basis.***

13 (2)(a) "Total annual compensation" shall include at least \$684~~[\$455]~~ per week paid on a
14 salary or fee basis. Total annual compensation may also include commissions, nondiscretionary
15 bonuses, and other nondiscretionary compensation earned during a fifty-two (52) week period.
16 Total annual compensation shall not include board, lodging, or other facilities as defined in Section
17 13 of this administrative regulation, and shall not include payments for medical insurance,
18 payments for life insurance, contributions to retirement plans, and the cost of other fringe benefits.

19 (b) If an employee's total annual compensation does not total at least the minimum amount
20 established in subsection (1) of this section by the last pay period of the fifty-two (52) week period,
21 the employer may, during the last pay period or within one (1) month after the end of the fifty-two
22 (52) week period, make one (1) final payment sufficient to achieve the required level. For example,
23 an employee may earn \$90,000~~[\$80,000]~~ in base salary, and the employer may anticipate based

1 upon past sales that the employee also will earn \$17,432~~[\$20,000]~~ in commissions. Except, due to
2 poor sales in the final quarter of the year, the employee actually only earns \$12,000~~[\$10,000]~~ in
3 commissions. In this situation, the employer may within one (1) month after the end of the year
4 make a payment of at least \$5,432~~[\$10,000]~~ to the employee. The final payment made after the
5 end of the fifty-two (52) week period shall count only toward the prior year's total annual
6 compensation and not toward the total annual compensation in the year it was paid. If the employer
7 fails to make the payment, the employee shall not qualify as a highly compensated employee, but
8 may still qualify as exempt under other sections of this administrative regulation.

9 (c) An employee who does not work a full year for the employer, either because the
10 employee is newly hired after the beginning of the year or ends the employment before the end of
11 the year, may qualify for exemption under this section if~~is~~ the employee receives a pro rata
12 portion of the minimum amount established in subsection (1) of this section, based upon the
13 number of weeks that the employee will be or has been employed. An employer may make one (1)
14 final payment as under paragraph (b) of this subsection within one (1) month after the end of
15 employment.

16 (d) The employer may use any fifty-two (52) week period as the year, such as a calendar
17 year, a fiscal year, or an anniversary of hire year. If the employer does not identify some other year
18 period in advance, the calendar year shall apply.

19 (3) A high level of compensation is a strong indicator of an employee's exempt status, thus
20 eliminating the need for a detailed analysis of the employee's job duties. Thus, a highly
21 compensated employee shall qualify for exemption if the employee customarily and regularly
22 performs any one (1) of the exempt duties or responsibilities of an executive, administrative, or
23 professional employee identified in this administrative regulation. An employee shall~~may~~

1 qualify as a highly compensated executive employee, for example, if the employee customarily
2 and regularly directs the work of two (2) or more other employees, even though the employee does
3 not meet all of the other requirements for the executive exemption under Section 2 of this
4 administrative regulation.

5 (4) This section shall apply only to employees whose primary duty includes performing
6 office or nonmanual work. Thus, for example, nonmanagement production line workers and
7 nonmanagement employees in maintenance, construction, and similar occupations such as
8 carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers,
9 longshoremen, construction workers, laborers, and other employees who perform work involving
10 repetitive operations with their hands, physical skill, and energy ***shall not be***~~[are not]~~ exempt under
11 this section no matter how highly paid they might be.

12 Section 10. Salary Basis. (1)(a) An employee will be considered to be paid "on a salary
13 basis" within the meaning of this administrative regulation if the employee regularly receives each
14 pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of
15 the employee's compensation, which amount is not subject to reduction because of variations in
16 the quality or quantity of the work performed. Subject to the exceptions in subsection 2 of this
17 section, the employee shall receive ***the employee's***~~[his or her]~~ full salary for any week in which
18 the employee performs any work without regard to the number of days or hour worked. Exempt
19 employees need not be paid for any workweek in which they perform no work.

20 (b) An employee shall not be considered to be "on a salary basis" if deductions from the
21 employee's predetermined compensation are made for absences occasioned by the employer or by
22 the operating requirements of the business. Accordingly, if the employee is ready, willing and able
23 to work, deductions shall not be made for time when work is not available.

1 (c) Up to ten (10) percent of the salary amount required may be satisfied by the payment
2 of nondiscretionary bonuses, incentives and commissions, that are paid annually or more
3 frequently. The employer may utilize any 52-week period as the year, such as a calendar year,
4 fiscal year, or an anniversary of hire year. If the employer does not identify some other year
5 period in advance, the calendar year shall apply. This provision shall not apply to highly
6 compensated employees. If by the last pay period of the 52-week period the sum of the
7 employee's weekly salary plus nondiscretionary bonus, incentive and commission payments
8 received is less than fifty two (52) times the weekly salary amount required, the employer may
9 make one final payment sufficient to achieve the required level no later than the next pay period
10 after the end of the year. Any final payment made after the end of the 52-week period may count
11 only toward the prior year's salary amount and not toward the salary amount in the year it was
12 paid. An employee who does not work a full 52-week period for the employer, either because
13 the employee is newly hired after the beginning of this period or ends the employment before
14 the end of this period, may qualify for exemption if the employee receives a pro rata portion of
15 the minimum amount established, based upon the number of weeks that the employee will be or
16 has been employed. An employer may make one final payment of this section within on pay
17 period after the end of employment.

18 (2) The prohibition against deductions from pay in the salary basis requirement shall be^[is]
19 subject to the following exceptions:

20 (a) Deductions from pay may be made, if an exempt employee is absent from work for one
21 (1) or more full days for personal reasons, other than sickness or disability. Thus, if an employee
22 is absent for two (2) full days to handle personal affairs, the employee's salaried status shall^[is]
23 not be affected if deductions are made from the employee's^[his] salary for two (2) full days.

1 Except, if an exempt employee is absent for one and one-half (1 1/2) days for personal reasons,
2 the employer may deduct only for the one (1) full-day absence.

3 (b) Deductions may also be made for absences of one (1) or more full days occasioned by
4 sickness or disability, if the deduction is made in accordance with a bona fide plan, policy, or
5 practice of providing compensation for loss of salary occasioned by both sickness and disability.
6 Thus, if the employer's particular plan, policy or practice provides compensation for the absences,
7 deductions for absences of one (1) or more full days because of sickness or disability may be made
8 before an employee has qualified under the plan, policy, or practice, and after the employee has
9 exhausted his or her leave allowance thereunder. It is not required that the employee be paid any
10 portion of his or her salary for the day or days for which the employee receives compensation for
11 leave under the plan, policy or practice. Similarly, if the employer operates under a state sickness
12 and disability insurance law, or a private sickness and disability insurance plan, deductions may
13 be made for absences of one (1) or more full days if benefits are provided in accordance with the
14 particular law or plan. For an industrial accident, the "salary basis" requirement shall~~will~~ be met
15 if the employee is compensated for loss of salary in accordance with the applicable compensation
16 law or the plan adopted by the employer; if, the employer also has some plan, policy or practice
17 of providing compensation for sickness and disability other than that relating to industrial
18 accidents.

19 (c) Deductions shall~~may~~ not be made for absences of an employee caused by jury duty,
20 attendance as a witness, or temporary military leave. Except the employer may, offset any amounts
21 received by an employee as jury or witness fees or military pay for a particular week against the
22 salary due for that particular week without loss of the exemption.

1 (d) Deductions from pay of exempt employees may be made for penalties imposed in good
2 faith for infractions of safety rules of major significance. Safety rules of major significance include
3 those relating to the prevention of serious danger in the workplace or to other employees, such as
4 rules prohibiting smoking in explosive plants, oil refineries, and coal mines.

5 (e) Deductions from pay of exempt employees may be made for unpaid disciplinary
6 suspensions of one (1) or more full days imposed in good faith for infractions of workplace conduct
7 rules. These suspensions shall be imposed pursuant to a written policy applicable to all employees.
8 Thus, for example, an employer may suspend an exempt employee without pay for three (3) days
9 for violating a generally applicable written policy prohibiting sexual harassment. Similarly, an
10 employer may suspend an exempt employee without pay for twelve (12) days for violating a
11 generally applicable written policy prohibiting workplace violence.

12 (f) An employer is not required to pay the full salary in the initial or terminal week of
13 employment. Rather, an employer may pay a proportionate part of an employee's full salary for
14 the time actually worked in the first and last week of employment. In those weeks, the payment of
15 an hourly or daily equivalent of the employee's full salary for the time actually worked ~~shall~~will
16 meet the requirement. Except, employees are not paid on a salary basis within the meaning of these
17 administrative regulations if they are employed occasionally for a few days, and the employer pays
18 them a proportionate part of the weekly salary when so employed.

19 (g) An employer is not required to pay the full salary for weeks in which an exempt
20 employee takes unpaid leave under the Family and Medical Leave Act. Rather, if an exempt
21 employee takes unpaid leave under the Family and Medical Leave Act, an employer may pay a
22 proportionate part of the full salary for time actually worked. For example, if an employee who
23 normally works forty (40) hours per week uses four (4) hours of unpaid leave under the Family

1 and Medical Leave Act, the employer may deduct ten (10) percent of the employee’s normal salary
2 that week. (3) If calculating the amount of a deduction from pay allowed under subsection (2) of
3 this section, the employer may use the hourly or daily equivalent of the employee’s full weekly
4 salary or any other amount proportional to the time actually missed by the employee. A deduction
5 from pay as a penalty for violations of major safety rules allowed under subsection (2)(d) of this
6 section may be made in any amount.

7 (4) Effect of improper deductions from salary.

8 (a) An employer who makes improper deductions from salary shall lose the exemption if
9 the facts demonstrate that the employer did not intend to pay employees on a salary basis. An
10 actual practice of making improper deductions demonstrates that the employer did not intend to
11 pay employees on a salary basis. The factors to consider if determining whether an employer has
12 an actual practice of making improper deductions include, but are not limited to: the number of
13 improper deductions, particularly as compared to the number of employee infractions warranting
14 discipline; the time period during which the employer make improper deductions; **the number and**
15 **geographic location of employees whose salary was improperly reduced**; the number and
16 geographic location of managers responsible for taking the improper deductions; and whether the
17 employer has a clearly communicated policy permitting or prohibiting improper deductions.

18 (b) If the facts demonstrate that the employer has an actual practice of making improper
19 deductions, the exemption **shall be**^[is] lost during the time period in which the improper deductions
20 were made for employees in the same job classification working for the same managers responsible
21 for the actual improper deductions. Employees in different job classifications or who work for
22 different manager shall not lose their status as exempt employees. Thus, for example, if a manager
23 at a company facility routinely docks the pay of engineers at that facility for partial-day personal

1 absences, then all engineers at that facility whose pay could have been improperly docked by the
2 manager shall lose the exemption; except engineers at other facilities or working for other
3 manager, remain exempt.

4 (c) Improper deductions that are either isolated or inadvertent shall not result in loss of the
5 exemption for any employees subject to the improper deductions, if the employer reimburses the
6 employees for the improper deductions.

7 (d) If an employer has a clearly communicated policy that prohibits the improper pay
8 deductions specified in this section and includes a complaint mechanism, reimburses employees
9 for any improper deductions, and makes a good faith commitment to comply in the future, the
10 employer shall not lose the exemption for any employees unless the employer willfully violates
11 the policy by continuing to make improper deductions after receiving employee complaints. If an
12 employer fails to reimburse employees for any improper deductions or continues to make improper
13 deductions after receiving employee complaints, the exemption shall be[is] lost during the time
14 period in which the improper deductions were made for employees in the same job classification
15 working for the same managers responsible for the actual improper deductions. The best evidence
16 of a clearly communicated policy is a written policy that was distributed to employees prior to the
17 improper pay deductions by, for example, providing a copy of the policy to employees at the time
18 of hire, publishing the policy in an employee handbook; or publishing the policy on the employer's
19 Intranet.

20 (e) This subsection shall not be construed in an unduly technical manner so as to defeat the
21 exemption.

22 Section 11. Minimum Guarantee Plus Extra. (1) An employer may provide an exempt
23 employee with additional compensation without losing the exemption or violating the salary basis

1 requirement, if the employment arrangement also includes a guarantee of at least the minimum
2 weekly required amount paid on a salary basis. Thus, for example, an exempt employee guaranteed
3 at least \$684~~[\$455]~~ each week paid on a salary basis may also receive additional compensation of
4 a one (1) percent commission on sales. An exempt employee also may receive a percentage of the
5 sales or profits of the employer if the employment arrangement also includes a guarantee of at least
6 \$684~~[\$455]~~ each week paid on a salary basis. Similarly, the exemption shall not be~~[is not]~~ lost if
7 an exempt employee who is guaranteed at least \$684~~[\$455]~~ each week paid on a salary basis also
8 receives additional compensation based on hours worked for work beyond the normal workweek.
9 The additional compensation may be paid on any basis (e.g., flat sum, bonus payment, straight-
10 time hourly amount, time and one-half (1/2), or any other basis), and may include paid time off.

11 (2) An exempt employee's earnings may be computed on an hourly, a daily, or a shift basis,
12 without losing the exemption or violating the salary basis requirement, if the employment
13 arrangement also includes a guarantee of at least the minimum weekly required amount paid on a
14 salary basis regardless of the number of hours, days, or shifts worked, and a reasonable relationship
15 exists between the guaranteed amount and the amount actually earned. The reasonable relationship
16 test is met if the weekly guarantee is roughly equivalent to the employee's usual earnings at the
17 assigned hourly, daily, or shift rate for the employee's normal scheduled workweek. Thus, for
18 example, an exempt employee guaranteed compensation of at least \$725~~[\$500]~~ for any week in
19 which the employee performs any work, and who normally works four (4) or five (5) shifts each
20 week, may be paid \$210~~[\$150]~~ per shift without violating the salary basis requirement. The
21 reasonable relationship requirement shall apply only if the employee's pay is computed on an
22 hourly, daily, or shift basis. It shall not apply, for example, to an exempt store manager paid a
23 guaranteed salary ~~[of \$650]~~ per week that exceeds the current salary level who also receives a

1 commission of one-half (1/2) percent of all sales in the store or five (5) percent of the store's
2 profits, which in some weeks may total as much as, or even more than, the guaranteed salary.

3 Section 12. Fee Basis. (1) Administrative and professional employees may be paid on a fee
4 basis, rather than on a salary basis. An employee shall be considered to be paid on a "fee basis"
5 within the meaning of this administrative regulation if the employee is paid an agreed sum for a
6 single job regardless of the time required for its completion. These payments resemble piecework
7 payments with the important distinction that generally a "fee" is paid for the kind of job that is
8 unique rather than for a series of jobs repeated an indefinite number of times and for which
9 payment on an identical basis is made over and over again. Payments based on the number of hours
10 or days worked and not on the accomplishment of a given single task shall not be considered
11 payments on a fee basis.

12 (2) To determine whether the fee payment meets the minimum amount of salary required
13 for exemption under this administrative regulation, the amount paid to the employee shall be tested
14 by determining the time worked on the job and whether the fee payment is at a rate that would
15 amount to at least the current minimum salary[\$455] per week if the employee worked forty (40)
16 hours. Thus, an artist paid \$350[\$250] for a picture that took twenty (20) hours to complete shall
17 meet~~meets~~ the minimum salary requirements for exemption since earnings at this rate would
18 yield the artist \$700[\$500] if forty (40) hours were worked.

19 Section 13. Board, Lodging, or Other Facilities. (1) The phrase "exclusive of board,
20 lodging, or other facilities" shall mean "free and clear" or independent of any claimed credit for
21 noncash items of value that an employer may provide to an employee. Thus, the costs incurred by
22 an employer to provide an employee with board, lodging, or other facilities shall not count towards
23 the minimum salary amount required for exemption under this administrative regulation. Separate

1 transactions are not prohibited between employers and their employees, but the costs to employers
2 associated with the transactions may not be considered in determining if an employee has received
3 the full required minimum salary payment.

4 (2) "Other facilities" refers to items similar to board and lodging, such as meals furnished
5 at company restaurants or cafeterias or by hospitals, hotels, or restaurants to their employees;
6 meals, dormitory rooms, and tuition furnished by a college to its student employees; merchandise
7 furnished at company stores or commissaries, including articles of food, clothing, and household
8 effects; housing furnished for dwelling purposes; and transportation furnished to employees for
9 ordinary commuting between their homes and work.

10 Section 14. General Rule for Computer Employees. (1) Computer system analysts,
11 computer programmers, software engineers, or other similarly skilled workers in the computer
12 field shall be eligible for an exemption as professionals under KRS 337.010(2)(a)2. Because job
13 titles vary widely and change quickly in the computer industry, job titles shall not be determinative
14 of the applicability of this exemption.

15 (2) The exemption shall apply to any computer employee compensated on a salary or fee
16 basis at a rate of not less than ~~\$684~~[\$455] per week, exclusive of board, lodging, or other facilities,
17 or on an hourly basis at a rate of not less than twenty-seven (27) dollars and sixty-three (63) cents
18 an hour, whose primary duty consists of:

19 (a) The application of systems analysis techniques and procedures, including consulting
20 with users, to determine hardware, software, or system functional specifications;

21 (b) The design, development, documentation, analysis, creation, testing, or modification of
22 computer systems or programs, including prototypes, based on and related to user or system design
23 specifications;

1 (c) The design, documentation, testing, creation, or modification of computer programs
2 related to machine operating systems; or

3 (d) A combination of the aforementioned duties, the performance of which requires the
4 same level of skills.

5 (3) The exemption for employees in computer occupations shall not include employees
6 engaged in the manufacture or repair of computer hardware and related equipment. Employees
7 whose work is highly dependent upon, or facilitated by, the use of computers and computer
8 software programs (e.g., engineers, drafters, and others skilled in computer-aided design software),
9 but who are not primarily engaged in computer systems analysis and programming or other
10 similarly skilled computer-related occupations shall also not be exempt computer professionals.

11 (4) Computer employees, either within or outside the scope of this exemption, may also
12 have executive and administrative duties which qualify the employees for exemption under
13 Sections 2 and 3 of this administrative regulation. For example, systems analysts and computer
14 programmers ***shall*** meet the duties requirements for the administrative exemption if their primary
15 duty includes work such as planning, scheduling, and coordinating activities required to develop
16 systems to solve complex business, scientific, or engineering problems of the employer or the
17 employer's customers. Similarly, a senior or lead computer programmer who manages the work
18 of two (2) or more other programmers in a customarily recognized department or subdivision of
19 the employer, and whose recommendations as to the hiring, firing, advancement, promotion, or
20 other change of status of the other programmers are given particular weight, ***shall meet***~~[meets]~~ the
21 duties requirements for the executive exemption.

22 Section 15. Miscellaneous Provisions. (1) Primary duty.

1 (a) To qualify for exemption under this administrative regulation, an employee's "primary
2 duty" shall be the performance of exempt work. The term "primary duty" shall mean the principal,
3 main, major, or most important duty that the employee performs. Determination of an employee's
4 primary duty shall be based on all the facts in a particular case, with the major emphasis on the
5 character of the employee's job as a whole. Factors to consider in determining the primary duty of
6 an employee include, but are not limited to, the relative importance of the exempt duties as
7 compared with other types of duties; the amount of time spent performing exempt work; the
8 employee's relative freedom from direct supervision; and the relationship between the employee's
9 salary and the wages paid to other employees for the kind of nonexempt work performed by the
10 employee.

11 (b) The amount of time spent performing exempt work may be a useful guide in
12 determining whether exempt work is the primary duty of an employee. Thus, employees who
13 spend more than fifty (50) percent of their time performing exempt work shall satisfy the primary
14 duty requirement. Except time alone, is not the sole test, and nothing in this subsection requires
15 that exempt employees spend more than fifty (50) percent of their time performing exempt work.
16 Employees who do not spend more than fifty (50) percent of their time performing exempt duties
17 may nonetheless meet the primary duty requirement if the other factors support that conclusion.

18 (c) Thus, for example, assistant managers in retail establishment who perform exempt
19 executive work such as supervising and directing the work of other employees, ordering
20 merchandise, managing the budget, and authorizing payment of bills may have management as
21 their primary duty even if the assistant managers spend more than fifty (50) percent of the time
22 performing nonexempt work such as running the cash register. Except, if the assistant managers

1 are closely supervised and earn little more than the nonexempt employees, the assistant managers
2 shall[dø] not satisfy the primary duty requirement.

3 (2) Customarily and regularly. The phrase "customarily and regularly" shall mean a
4 frequency that shall be greater than occasional but which, may be less than constant. Tasks or work
5 performed "customarily and regularly" includes work normally and recurrently performed every
6 workweek; it shall[døes] not include isolated or one (1) time tasks.

7 (3) Exempt or nonexempt work. The term "exempt work" shall mean all work described in
8 this administrative regulation and the activities directly and closely related to the work. All other
9 work shall be considered "nonexempt".

10 (4) Directly and closely related.

11 (a) Work that is "directly and closely related" to the performance of exempt work shall also
12 be considered exempt work. The phrase "directly and closely related" means tasks that are related
13 to exempt duties and that contribute to or facilitate performance of exempt work. Thus, "directly
14 and closely related" work may include physical tasks and menial tasks that arise out of exempt
15 duties, and the routine work without which the exempt employee's exempt work cannot be
16 performed properly. Work "directly and closely related" to the performance of exempt duties may
17 also include recordkeeping; monitoring and adjusting machinery; taking notes; using the computer
18 to create documents or presentations; opening the mail for the purpose of reading it and making
19 decisions; and using a photocopier or fax machine. Work is not "directly and closely related" if the
20 work is remotely related or completely unrelated to exempt duties.

21 (b) The following examples further illustrate the type of work that is and is not normally
22 considered as directly and closely related to exempt work:

1 1. Keeping time, production, or sales records for subordinates is work directly and closely
2 related to an exempt executive's function of managing a department and supervising employees.

3 2. The distribution of materials, merchandise, or supplies to maintain control of the flow
4 of and expenditures for the items is directly and closely related to the performance of exempt
5 duties.

6 3. A supervisor who spot checks and examines the work of subordinates to determine
7 whether they are performing their duties properly, and whether the product is satisfactory, is
8 performing work which is directly and closely related to managerial and supervisory functions, if
9 the checking is distinguishable from the work ordinarily performed by a nonexempt inspector.

10 4. A supervisor who sets up a machine may be engaged in exempt work, depending upon
11 the nature of the industry and the operation. In some cases the setup work, or adjustment of the
12 machine for a particular job, is typically performed by the same employees who operate the
13 machine. That setup work is part of the production operation and is not exempt. In other cases, the
14 setting up of the work is a highly skilled operation which the ordinary production worker or
15 machine tender typically does not perform. In large plants, nonsupervisors may perform the work.
16 In~~in~~ small plants, the work may be a regular duty of the executive and is directly and closely
17 related to the executive's responsibility for the work performance of subordinates and for the
18 adequacy of the final product. Under those circumstances, it is exempt work.

19 5. A department manager in a retail or service establishment who walks about the sales
20 floor observing the work of sales personnel under the employee's supervision to determine the
21 effectiveness of their sales techniques, checks on the quality of customer service being given, or
22 observes customer preferences is performing work which is directly and closely related to
23 managerial and supervisory functions.

1 6. A business consultant may take extensive notes recording the flow of work and materials
2 through the office or plant of the client; after returning to the office of the employer, the consultant
3 may personally use the computer to type a report and create a proposed table of organization.
4 Standing alone, or separated from the primary duty, the note-taking and typing would be routine
5 in nature. Except, because this work is necessary for analyzing the data and making
6 recommendations, the work is directly and closely related to exempt work. While it is possible to
7 assign notetaking and typing to nonexempt employees, and in fact it is frequently the practice to
8 do so, delegating those routine tasks is not required as a condition of exemption.

9 7. A credit manager who makes and administers the credit policy of the employer,
10 establishes credit limits for customers, authorizes the shipment of orders on credit, and makes
11 decisions on whether to exceed credit limits is performing exempt work. Work that is directly and
12 closely related to these exempt duties may include checking the status of accounts to determine
13 whether the credit limit would be exceeded by the shipment of a new order, removing credit reports
14 from the files for analysis, and writing letters giving credit data and experience to other employers
15 or credit agencies.

16 8. A traffic manager in charge of planning a company's transportation, including the most
17 economical and quickest routes for shipping merchandise to and from the plant, contracting for
18 common-carrier and other transportation facilities, negotiating with carriers for adjustments for
19 damages to merchandise, and making the necessary rearrangements resulting from delays,
20 damages or irregularities in transit, is performing exempt work. If the employee also spends part
21 of the day taking telephone orders for local deliveries, the order-taking is a routine function and is
22 not directly related to the exempt work.

1 9. An example of work directly and closely related to exempt professional duties is a
2 chemist performing menial tasks such as cleaning a test tube in the middle of an original
3 experiment, even though the menial tasks can be assigned to laboratory assistants.

4 10. A teacher performs work directly and closely related to exempt duties if, while taking
5 students on a field trip, the teacher drives a school van or monitors the students' behavior in a
6 restaurant.

7 (5) Use of manuals. The use of manuals, guidelines, or other established procedures
8 containing or relating to highly technical, scientific, legal, financial, or other similarly complex
9 matters that can be understood or interpreted only by those with advanced or specialized
10 knowledge or skills shall not preclude exemption under KRS 337.010(2)(a)(2) or this
11 administrative regulation. The manuals and procedures provide guidance in addressing difficult or
12 novel circumstances and thus use of the reference material does not affect an employee's exempt
13 status. Except the exceptions set forth in KRS 337.101(2)(a)(2) are not available, for employees
14 who simply apply well-established techniques or procedures described in manuals or other sources
15 within closely prescribed limits to determine the correct response to an inquiry or set of
16 circumstances.

17 (6) Trainees. The executive, administrative, professional, supervisory, outside sales, and
18 computer employee exemptions shall not apply to employees training for employment in an
19 executive, administrative, professional, supervisory, outside sales, or computer employee capacity
20 who are not actually performing the duties of an executive, administrative, professional,
21 supervisory, outside sales or computer employee.

22 (7) Emergencies.

1 (a) An exempt employee shall not lose the exemption by performing work of a normally
2 nonexempt nature because of the existence of an emergency. Thus, if emergencies arise that
3 threaten the safety of employees, a cessation of operations, or serious damage to the employer's
4 property, any work performed in an effort to prevent those results is considered exempt work.

5 (b) An "emergency" shall not include occurrences that are not beyond control or for which
6 the employer can reasonably provide in the normal course of business. Emergencies generally
7 occur only rarely, and are events that the employer cannot reasonably anticipate.

8 (c) The following examples illustrate the distinction between emergency work considered
9 exempt work and routine work that is not exempt work:

10 1. A mine superintendent who pitches in after an explosion and digs out workers who are
11 trapped in the mine is still a bona fide executive.

12 2. Assisting nonexempt employees with their work during periods of heavy workload or to
13 handle rush orders is not exempt work.

14 3. Replacing a nonexempt employee during the first day or partial day of an illness may be
15 considered exempt emergency work depending upon factors such as the size of the establishment
16 and of the executive's department, the nature of the industry, the consequences that would flow
17 from the failure to replace the ailing employee immediately, and the feasibility of filling the
18 employee's place promptly.

19 4. Regular repair and cleaning of equipment is not emergency work, even if necessary to
20 prevent fire or explosion; except, repairing equipment may be emergency work if the breakdown
21 of or damage to the equipment was caused by accident or carelessness that the employer could not
22 reasonably anticipate.

1 (8) Occasional tasks. Occasional, infrequently recurring tasks that cannot practicably be
2 performed by nonexempt employees, but are the means for an exempt employees to carry out
3 properly exempt functions and responsibilities, shall be considered exempt work. The following
4 factors shall be considered in determining whether the work is exempt work: Whether the same
5 work is performed by any of the exempt employee's subordinates; practicability of delegating the
6 work to a nonexempt employee; whether the exempt employee performs the task frequently or
7 occasionally; and existence of an industry practice for the exempt employee to perform the task.

8 (9) Combination exemptions. Employees who perform a combination of exempt duties as
9 set forth in this administrative regulation for executive, administrative, professional, supervisory,
10 outside sales, and computer employees may qualify for exemption. Thus, for example, an
11 employee whose primary duty involves a combination of exempt administrative and exempt
12 executive work may qualify for exemption. In other words, work that is exempt under one (1)
13 section of this administrative regulation shall not defeat the exemption under any other section.

14 (10) Motion picture producing industry. The requirement that the employee be paid "on a
15 salary basis" shall not apply to an employee in the motion picture producing industry who is
16 compensated at a base rate of at least \$1,043~~[\$695]~~ a week (exclusive of board, lodging, or other
17 facilities). Thus, an employee in this industry who is otherwise exempt under Sections 2, 3, or 4
18 of this administrative regulation, and who is employed at a base rate of at least \$1,043~~[\$695]~~ a
19 week is exempt if paid a proportionate amount (based on a week of not more than six (6) days) for
20 any week in which the employee does not work a full workweek for any reason. Moreover, an
21 otherwise exempt employee in this industry qualifies for exemption if the employee is employed
22 at a daily rate under the following circumstances:

1 (a) The employee is in a job category for which a weekly base rate is not provided, and the
2 daily base rate would yield at least \$1,043[\$695] if six (6) days were worked; or

3 (b) The employee is in a job category having a weekly base rate of at least \$1,043[\$695],
4 and the daily base rate is at least one-sixth (1/6) of such weekly base rate.

5 (11) Employees of public agencies.

6 (a) An employee of a public agency who otherwise meets the salary basis requirements of
7 Section 10 of this administrative regulation shall not be disqualified from exemption under
8 Sections 2, 3, 4, 5, or 14 of this administrative regulation on the basis that the employee is paid
9 according to a pay system established by statute, ordinance, or administrative regulation, or by a
10 policy or practice established pursuant to principles of public accountability, under which the
11 employee accrues personal leave and sick leave and which requires the public agency employee's
12 pay to be reduced or the employee to be placed on leave without pay for absences for personal
13 reasons or because of illness or injury of less than one (1) work-day if accrued leave is not used
14 by an employee because:

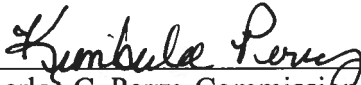
15 1. Permission for its use has not been sought or has been sought and denied;

16 2. Accrued leave has been exhausted; or

17 3. The employee chooses to use leave without pay.

18 (b) Deductions from the pay of an employee of a public agency for absences due to a budget
19 required furlough shall not disqualify the employee from being paid on a salary basis except in the
20 workweek in which the furlough occurs and for which the employee's pay is accordingly reduced.

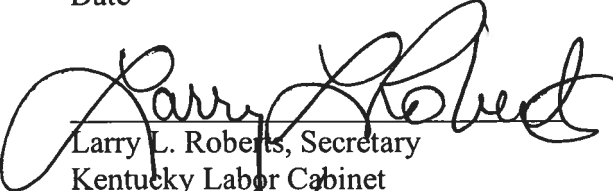
As approved by



Kimberlee C. Perry, Commissioner
Department of Workplace Standards

6.14.21

Date



Larry L. Roberts, Secretary
Kentucky Labor Cabinet

6/14/21

Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2021 at 2:00pm (ET). This hearing will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph 8(b) (R.S. 2020) and the continuing state of emergency due to the novel coronavirus pandemic. Public access to the meeting will be available at <https://us02web.zoom.us/j/83102207739?pwd=dUFjQzE0ZnJJdkpwME5lZWtQdUlydz09>, password 265686 or by telephone at (713) 353-0212 or 888-822-7517 (toll free), conference code 278497.

Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2021. Send notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Erin Bravo, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, Telephone: (502) 564-1554, Facsimile: (502) 564-5484, Email: erin.bravo@ky.gov

REGULATORY IMPACT AND TIERING STATEMENT

Regulation Number 803 KAR 1:070

Contact Person: Erin Bravo, Telephone: (502) 564-1554, Facsimile: (502) 564-5484,
Email: erin.bravo@ky.gov

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation defines criteria for qualifying as an individual employed in a bona fide executive, administrative, supervisory, or professional capacity, or in the capacity of an outside salesman or collector, all of which are exempt from overtime and minimum wage requirements.
 - (b) The necessity of this administrative regulation: KRS 337.010(2)(a)(2) and 337.295 require the commissioner to define criteria for those exempted from overtime and minimum wage and overtime in the statute.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 337.295 authorizes the commissioner to promulgate administrative regulations under KRS 337.275 to 337.325, 337.345, and 337.385 to 337.405. KRS 337.010(2)(a)(2) requires the commissioner to define what constitutes an individual employed in a bona fide executive, administrative, supervisory, or professional capacity, or in the capacity of an outside salesman or collector. This administrative regulation defines those terms.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to define and provide guidance on the exemptions to KRS 337.275 and 337.285. It helps employers and employees in understanding their obligations and rights under the law.

- (2) If this is an amendment to an existing regulation, provide a brief summary of:
 - (a) How this amendment will change this existing administrative regulation: The amendment updates the administrative regulation to match the current language that is utilized by the department and to ensure compliance with KRS Chapter 13A. Dollar amounts in examples are updated to more accurately reflect current minimum wage requirements. Further, more guidance is provided in how to calculate time. This amendment does not change any wage standards.
 - (b) The necessity of the amendment to this administrative regulation: This amendment updates language to ensure compliance with KRS Chapter 13A and ensures effective guidance for the statutory provisions under KRS Chapter 337.
 - (c) How the amendment conforms to the content of the authorizing statutes: KRS 337.295 authorizes the commissioner to promulgate administrative regulations under KRS 337.275 to 337.325, 337.345, and 337.385 to 337.405. KRS 337.010(2)(a)(2) requires the commissioner to define what constitutes an individual employed in a bona fide executive, administrative, supervisory, or professional capacity, or in the capacity of an outside salesman or collector. This administrative regulation defines those terms.

- (d) How the amendment will assist in the effective administration of the statutes: This amendment updates language to clarify the guidance provided in the administrative regulation to ensure that employees are paid in accordance with statutory requirements.
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all subject employers who employ employees in the Commonwealth subject to KRS Chapter 337, as well as, their employees.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
- (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are required by this amendment.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost associated with this amendment.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection and guidance for employers on when employees are exempt from KRS 337.275 and 337.285.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
- (a) Initially: This administrative regulation, as amended, is not anticipated to generate any new or additional costs.
 - (b) On a continuing basis: This administrative regulation, as amended, is not anticipated to generate any new or additional costs.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state funding.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: This administrative regulation, as amended, is not anticipated to generate any increase in fees or funding.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees associated with this administrative regulation.
- (9) TIERING: Is tiering applied? Tiering is not applied. All employers and employees covered by KRS Chapter 337 are treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number 803 KAR 1:070

Contact Person: Erin Bravo, Telephone: (502) 564-1554, Facsimile: (502) 564-5484,
Email: erin.bravo@ky.gov

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Most state and local governmental entities are subject to KRS Chapter 337.
2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 337.295 and 337.010(2)(a)2.
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
 - a. How much revenue will the administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue.
 - b. How much revenue will the administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue.
 - c. How much will it cost to administer this program for the first year? There is no cost to this amendment.
 - d. How much will it cost to administer this program for subsequent years? There is no cost to this amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Unknown

Expenditures (+/-): Unknown

Other explanations: This amendment does not impose any additional requirements.