

NOTICE

Amendment to 803 KAR 2:230, Pay during inspection activity, was filed with the Legislative Research Commission on April 27, 2021.

The amendment is posted at <https://legislature.ky.gov>. Select the Kentucky Law Tab, Kentucky Administrative Regulations, KAR List by Title, then Title 803 Labor Cabinet and scroll down to the regulation under Chapter 2 Occupational Safety and Health.

Changes to the regulation and public hearing information is available at the aforementioned website or in the pages below following this notice.

FILED WITH LRC
TIME: 9:34 am
APR 27 2021
Emily B Caudill
REGULATIONS COMPILER

1 LABOR CABINET
2 Department of Workplace Standards
3 Division of Occupational Safety and Health Compliance
4 Division of Occupational Safety and Health Education and Training
5 (Amendment)
6 803 KAR 2:230. Pay during inspection activity [activities].
7 RELATES TO: KRS 338.111, 338.121(3)
8 STATUTORY AUTHORITY: KRS 338.051, 338.061 [~~KRS Chapter 13A~~]
9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky
10 Occupational Safety and Health Standards Board to promulgate occupational safety and health
11 ~~[The commissioner has the authority and responsibility for promulgating]~~ administrative
12 regulations and authorizes the chairman to reference federal standards without board approval if
13 necessary to meet federal time requirements [~~to accomplish the purposes of this chapter~~]. KRS
14 338.061 authorizes the board to establish, modify, or repeal standards and reference federal
15 standards. [~~Employee participation in walk-around inspections provides a necessary source of~~
16 ~~information to the representatives of the commissioner concerning the presence of work place~~
17 ~~hazards. Fear of economic loss through denial of pay during the walkaround inspection is a~~
18 ~~denial of free exercise of the right of an employee representative to participate in the walkaround~~
19 ~~inspection. The purpose of this]~~ This administrative regulation establishes employee payment
20 during inspection activity [~~for is to encourage and to promote employee representative~~
21 ~~participation in walk-around inspections by providing for pay during the conduct of walk-around~~

1 ~~inspections and related activity~~].

2 Section 1. Definitions. (1) “Commissioner” is defined by KRS 338.015.

3 (2) “Compliance officer” means a person authorized by the commissioner to conduct
4 occupational safety and health inspections.

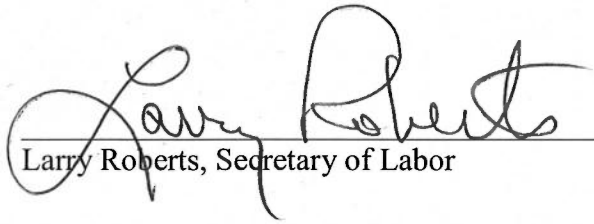
5 (3) “Employee” is defined by KRS 338.015(2).

6 (4) “Employer” is defined by KRS 338.015(1).

7 Section 2. (1) Employees, when on regular duty time, shall be paid [at] their regular rate of pay
8 during the conduct of ~~the walkaround inspection~~ [~~walk-around inspections~~] and other inspection
9 related activities such as responding to ~~compliance officer~~ questions and [~~of compliance officers,~~
10 ~~or~~] participating in ~~an~~ opening and closing ~~conference~~ [~~conferences~~].

11 (2) An employer's failure to pay employees for time engaged in ~~inspection activity~~ [~~these~~
12 activities] is discriminatory pursuant to [~~under~~] KRS 338.121(3).

As approved by


Larry Roberts, Secretary of Labor

Date April 26, 2021

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2021 at 10:00 am (ET). The meeting will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph (8) b (2020) and the continuing state of emergency. Public access to the meeting will be available at

<https://us02web.zoom.us/j/86731399141?pwd=Q2VOcDQ3ZkVBaUtoNERCMDNIKzZJZz09, password 446261>; or by telephone at (713) 353-0212, (888) 822-7517 toll free, conference code 194378.

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 July 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, Telephone: (502) 564-4107, Facsimile: (502) 564-4769, Email: Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation Number: 803 KAR 2:230

Contact person: Robin Maples (502) 564-4107, Robin.Maples@ky.gov, Facsimile: (502) 564-4769

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation, effective since June 6, 1979, defines terms. Section 2 maintains the language regarding employee pay, and discrimination protection, during inspection activity. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with House Bill (HB) 50 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(b) The necessity of this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health (OSH) Standards Board to promulgate OSH administrative regulations. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation, effective since June 6, 1979, defines terms. Section 2 maintains the language regarding employee pay, and discrimination protection, during inspection activity. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky OSH Standards Board to promulgate OSH administrative regulations. This regulation complies and conforms with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment promotes employee health and safety throughout Kentucky. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(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 employers in the Commonwealth covered by KRS Chapter 338.

(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 imposed and no immediate action is required.

(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 to the OSH Program to implement this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation promotes worker safety and health throughout Kentucky. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: (a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the OSH Program to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal 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: There is neither an increase in fees nor an increase in funding necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

Regulation Number: 803 KAR 2:230

Agency Contact: Robin Maples (502) 564-4107, Robin.Maples@ky.gov, Facsimile: (502) 564-4769

1. Federal statute or regulation constituting the federal mandate.
Not applicable.

2. State compliance standards.
This regulation addresses employee pay, and discrimination protection, during inspection activity.

3. Minimum or uniform standards contained in the federal mandate.
Not applicable.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no direct federal equivalent.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This regulation addresses employee pay, and discrimination protection, during inspection activity. Amendments to this regulation are technical and intended to maintain consistency with other regulations.