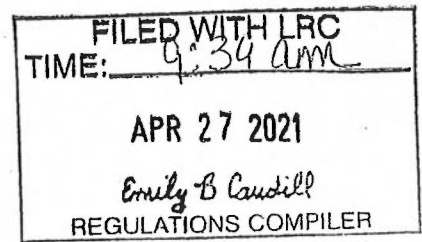


NOTICE

Amendment to 803 KAR 2:250, Discrimination, 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.



- 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 2:250. Discrimination.
- 7 RELATES TO: KRS 338.015[(7)], 338.121, 338.991
- 8 STATUTORY AUTHORITY: KRS 338.051, 338.061
- 9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Occupational
- 10 Safety and Health Standards Board to promulgate occupational safety and health administrative
- 11 regulations and authorizes the chairman to reference federal standards without board approval if
- 12 necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish,
- 13 modify, or repeal standards and reference federal standards. This administrative regulation
- 14 establishes the procedure for discrimination complaints pursuant to KRS 338.121.
- 15 Section 1. Definitions. (1) "Commissioner" is defined by KRS 338.015(7).
- 16 (2) "Complainant" means any person who makes a complaint as defined by subsection (3) of this
- 17 section.
- 18 (3) "Complaint" means any oral or written communication related to an occupational safety and
- 19 health concern made by an employee to an employer, governmental agency, or made to the
- 20 commissioner or the commissioner's designee.
- 21 (4) "Review commission" is defined by KRS 338.015(8).

1 (5) [(4)] "Secretary" is defined by KRS 338.015(12).

2 (6) "Working days" means Monday through Friday and does not include Saturday, Sunday,
3 federal, or state holidays, as well as the day of receipt of notice.

4 Section 2. Complaint [~~Procedure for Complaint to the Commissioner; Recipient of; Time for~~
5 ~~Filing; Form of Complaints~~]. (1) An employee or former employee may file an oral or written
6 complaint with the commissioner or commissioner's designee alleging discrimination [~~with the~~
7 ~~commissioner or the commissioner's designee~~].

8 (2) A complaint shall be filed no more than 120 days from the occurrence of the alleged
9 discriminatory activity.

10 (3) A complaint shall provide [~~state~~] the name and address of the complainant, name and address
11 of employer, and description of alleged discrimination.

12 (4) The commissioner or commissioner's designee shall provide the employer notification of the
13 complaint upon initiation of an investigation [~~Notification shall be given to the employer of the~~
14 ~~receipt by the commissioner of a complaint within five (5) working days~~].

15 Section 3. Settlement. (1) Settlement is encouraged at any stage of the proceedings if the
16 settlement is consistent with [~~the provisions and objectives of~~] KRS Chapter 338.

17 (2) Primary consideration shall be the reinstatement of a complainant to his or her former
18 position with back pay and assurance of the future protection of the rights of all employees
19 pursuant to [~~under~~] KRS Chapter 338.

20 Section 4. Withdrawal of Complaint to the Commissioner. (1) A request by the complainant to
21 withdraw a complaint filed with the commissioner shall be given careful consideration and
22 substantial weight.

1 (2) The commissioner or commissioner's designee shall make the final determination if a
2 complaint and subsequent investigation will be terminated.

3 Section 5. Arbitration or Other Agency Proceedings. (1) A complainant may pursue grievance
4 arbitration proceedings in collective bargaining agreements while requesting relief from other
5 agencies such as the National Labor Relations Board.

6 (2) The commissioner's jurisdiction to receive KRS 338.121(3) complaints, to investigate, and to
7 determine if discrimination [has] occurred shall be independent of the jurisdiction of other
8 agencies or bodies.

9 (3) The commissioner or commissioner's designee may investigate and issue citations against
10 any party found in violation regardless of the pendency or determination of other proceedings.

11 (4) If a complainant is pursuing remedies other than those provided by KRS 338.121, the
12 commissioner's determination [~~and deferral to the results of the proceedings~~] may be postponed.

13 Section 6. [~~Investigation of Complaint to the Commissioner; Issuance of Citation; Notice to~~
14 ~~Parties; Right of Review.~~] (1) Investigation. (a) Upon receipt of a complaint [~~under Section 2 of~~
15 ~~this administrative regulation~~], the commissioner or commissioner's designee shall initiate
16 [~~cause~~] an investigation [~~to be instituted~~].

17 (b) The investigation shall be completed and the commissioner's determination issued within
18 ninety (90) days, absent extenuating circumstances.

19 (2) Citation. (a) [(2)] If the commissioner finds a violation of KRS 338.121, he or she shall issue
20 a citation, with delivery or receipt confirmation, and recommend a penalty pursuant to KRS
21 338.991.

22 (b) The citation shall include a determination by the commissioner as to the merits of the alleged
23 violation.

1 (c) The commissioner or commissioner's designee shall provide notice of the determination to all
2 affected parties.

3 (d) The citation shall state that it shall be deemed the final order of the review commission and
4 not subject to review by any court or agency unless, within fifteen (15) working days from the
5 date of receipt of the notice, the employer notifies the commissioner in writing that the employer
6 intends to contest the citation before the review commission.

7 (e) The commissioner shall immediately transmit a notice to contest to the review commission in
8 accordance with the rules of procedure prescribed by the commission.

9 (3) Penalty. (a) The commissioner shall determine the amount of a proposed penalty, based on
10 the appropriateness of the penalty with respect to the:

11 1. Size of the business of the employer being charged,
12 2. Gravity of the violation,
13 3. Good faith of the employer, and
14 4. History of previous violations.

15 (b) Penalties shall be proposed with respect to an alleged discriminatory act even if the employer
16 immediately abates, or initiates steps to abate, the alleged violation.

17 ~~[(3) Notice of the determination shall be given to all affected parties.]~~

18 (4)(a) If the commissioner determines there has not been discriminatory action, the complainant
19 shall be notified of his or her rights of review [of the determination].

20 (b)[(a)] 1. The complainant may petition the secretary for a review of the determination.
21 2. The petition shall be in writing and state reasons why the review is requested.

22 (c)[(b)] The secretary shall affirm the determination or remand it to the commissioner for further
23 investigation[-

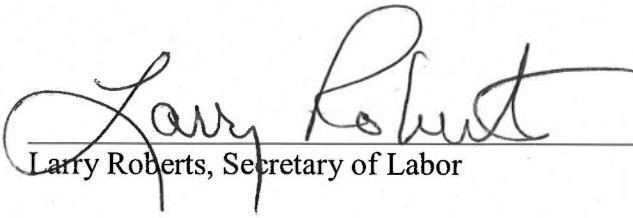
1 Section 7. Employer Contest. A citation and notice of proposed penalty shall state that it shall be
2 deemed the final order of the Review Commission and not be subject to review by any court or
3 agency unless, within fifteen (15) working days from the date of receipt of the notice, the
4 employer notifies the Commissioner of the Department of Workplace Standards in writing that
5 the employer intends to contest the citation and notification of proposed penalty before the
6 Review Commission. Within seven (7) days of receipt of contest, the commissioner shall
7 forward copies of the citation and proposed penalty and notice of contest to the Review
8 Commission.


9 Section 8. Proposed Penalties. (1) If a citation is issued, the commissioner shall notify the
10 employer by certified mail of the proposed penalty established in KRS 338.991.

11 (2) The commissioner shall determine the amount of a proposed penalty, based on the
12 appropriateness of the penalty with respect to the size of the business of the employer being
13 charged, the gravity of the violation, the good faith of the employer, and the history of previous
14 violations.

15 (3) Penalties shall be proposed with respect to an alleged discriminatory act even if the employer
16 immediately abates, or initiates steps to abate, the alleged violation].

As approved by


Larry Roberts, Secretary of Labor


Date

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=Q2VOcDQ3ZkVBaUtoNERCMDNlKzZlZz09>, 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.