



# KENTUCKY

## QUICK AND EASY GUIDE TO LABOR & EMPLOYMENT LAW

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PROVIDED BY BAKER DONELSON

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## At-Will Employment

The Kentucky employer/employee relationship is governed by the at-will employment doctrine. This means that an employer may discharge an employee with or without cause, and with or without notice. *Jackson v. JB Hunt Transport., Inc.*, 384 S.W.3d 177, 183 (Ky. Ct. App. 2012). The Kentucky Supreme Court recognizes a narrow exception to the at-will employment doctrine, which applies when the discharge violates a fundamental, well-defined public policy that is evidenced by a constitutional or statutory provision. *Grzyb v. Evans*, 700 S.W.2d 399, 400 (Ky. 1985). This exception applies only where the alleged reason for discharge is explicitly prohibited by the legislature, for the employee's failure or refusal to violate a law in the course of employment, for an employee's exercise of a right conferred by well-established legislative enactment, or for discriminatory reasons. *Id.* at 401. Further, the discharge will only violate public policy if the legislatively conferred right has an employment-related nexus. *Id.* at 402. Some examples of discharges that violate Kentucky's public policy include firing an employee who has filed claims against an employer, or an employee who receives a diagnosis of coal-related pneumoconiosis with no respiratory impairment resulting from exposure to coal dust; an employee whose wages have been subject to a garnishment order; or who has asserted collective bargaining rights. Ky. Rev. Stat. § 342.197, Ky. Rev. Stat. § 427.140, Ky. Rev. Stat. § 336.130.

In addition, the employer and employee may alter the at-will employment context by explicitly stating in an employment contract that it is only terminable pursuant to its express terms, such as "for cause." *Shah v. American Synthetic Rubber Corp.*, 655 S.W.2d 489 (Ky. 1983).

## Immigration Verification

Kentucky places no additional employment verification procedures on employers, beyond federal I-9 compliance. There is no requirement to use E-Verify under Kentucky state law. Kentucky employers have the option to use E-Verify to voluntarily confirm their employees' eligibility for lawful employment.

## Drug Testing

Employers are free to implement drug testing policies at their own discretion. Employers are not expressly prohibited from discharging at-will employees who test positive during random drug tests. Kentucky does, however, offer a credit towards workers' compensation insurance premiums if the employer becomes certified by the Kentucky Department of Workers Claims as a drug-free workplace. Ky. Rev. Stat. § 351.186. The requirements for becoming a certified drug-free workplace in Kentucky are listed in Section 803 Ky. Admin. Reg. 25:280. Records of drug or alcohol test results received by an employer shall be confidential communications, and shall not be disclosed by the employer to any party unless a written release of information is granted and signed by the employee or the release is ordered by a court of competent jurisdiction. *Id.* If submitting to a drug test is a condition of employment, the employer is required to pay the costs of testing. Ky. Rev. Stat. § 336.220.

Kentucky state law requires miners and certain law enforcement personnel to pass a drug and alcohol screening test before they start employment. Ky. Rev. Stat. §§ 351.182; Ky. Rev. Stat. § 15.3971.

Under Kentucky's workers' compensation law, an employer is not liable for compensation in cases of injury, occupational disease, or death of the employee if the employee willfully intended to injure or kill himself or another. Ky. Rev. Stat. § 342.610(3).

For workers' compensation, if an employee voluntarily introduces an illegal, nonprescribed substance or substances, or a prescribed substance or substances in amounts in excess of prescribed amounts into his or her body detected in the blood, as measured by a scientifically reliable test, that could cause a disturbance of mental or physical capacities, it is presumed that the illegal substance caused the injury, and liability for compensation will not apply. Ky. Rev. Stat. § 342.610(4). This presumption is rebuttable if the employee shows that the substance did not cause an impairment or the impairment did not cause the injury. *Id.* Further, reporting to work under the influence of alcohol or drugs, or consuming alcohol or drugs on an employer's premises during working hours, is misconduct that can be used to deny unemployment benefits. Ky. Rev. Stat. § 341.370.



A Kentucky employer may hire an individual who has failed a drug screen related to employment, while also being protected from any liability for a civil action alleging negligent hiring, retention, or supervision for a negligent act by the employee as a result of the employee's substance use disorder, as long as the employer complies with the requirements outlined in Ky. Rev. Stat. § 222.215.

Despite the legalization of medical marijuana in Kentucky, effective January 1, 2025, employers are permitted to maintain a "drug-free workplace". Ky. Rev. Stat. § 218B.040. To maintain a safe workplace and mitigate unreasonable risks, employers will have the authority to conduct drug tests on employees in "good faith" if they suspect they are under the influence of medical marijuana while at work. *Id.* Employers can include contract provisions that forbid employees from using medical marijuana. *Id.*

## **Employment Leave**

### **Jury Duty Leave**

It is unlawful for an employer to persuade or attempt to persuade any employee to avoid jury service, intimidate, coerce, or threaten any juror in that respect, or remove or otherwise subject an employee to adverse employment action as a result of jury service if the employee provides reasonable notice of their absence. It is also unlawful for an employer to require or request an employee to use annual, vacation, or sick leave for time spent responding to a summons for jury duty. Ky. Rev. Stat. § 29A.160. Employers are not required to pay wages while an employee is on jury duty. An employer cannot fire an employee for taking time off as mandated by law to appear in a local, state, or federal court or administrative tribunal or hearing. The employee must give notice to the employer before taking time off by providing a copy of the court or administrative certificate. Ky. Rev. Stat. § 337.415.

### **Voting Leave**

An employee cannot be penalized for taking a reasonable time off to vote, provided the employee casts the vote. Ky. Rev. Stat. § 118.035. Employees who are eligible to vote are entitled to a reasonable amount of time off, of not less than four hours to cast a ballot on the day of the election or request an application for, or execute an absentee ballot, if they request leave at least one day in advance. *Id.* The employer may specify the hours during which an employee may leave work to vote. *Id.*

### **Parental Leave**

The State of Kentucky does not have a parental leave law that applies to private employers. However, if covered, the employer may be subject to the federal Family Medical Leave Act of 1993 (FMLA) and its requirements.

### **Kentucky Adoption Leave Law**

Under Kentucky's Adoption Leave Law, adoptive parents must receive, upon written request, a reasonable period of unpaid leave not to exceed six weeks, or a greater leave period if stipulated under the employer's policy. Ky. Rev. Stat. § 337.015. Employers who provide paid leave or other benefits to birth parents following the birth of a child must also offer the same type, amount, and duration of paid leave and benefits to employees following the adoption of a child. *Id.* However, this law does not apply to an adoption by a fictive kin, stepparent, stepsibling, blood relative, including a relative of half-blood, first cousin, aunt, uncle, nephew, niece, and a person of a preceding generation as denoted by prefixes of grand, great, or great-great, or a foster parent who adopts a foster child who is already in their care. *Id.*

### **Military Leave**

Members of the Kentucky National Guard have the right to take unlimited unpaid leave for active duty or training. Ky. Rev. Stat. § 38.238. Upon completion of their leave, these employees must be reinstated to their former positions with no loss of seniority or benefits. *Id.* Employers may not discriminate against these employees based on their military service. Ky. Rev. Stat. § 38.460. Employers also may not use threats to prevent employees from enlisting in the military. *Id.*

## Vacation, Sick, Holiday, and Bereavement Leave

The State of Kentucky does not require private employers to offer employees vacation, bereavement, holiday, or sick leave, either paid or unpaid. However, if covered, employers may be subject to the federal Family Medical Leave Act of 1993 (FMLA) and its requirements.

## Domestic Violence Leave

The State of Kentucky does not have a state law regarding unpaid or paid sick leave or job-protected leave from work for domestic violence, sexual assault, or stalking.

## Whistleblower Laws

The Kentucky Whistleblower Act protects public employees from reprisal for making a good faith report about suspected violations of the law or mismanagement, waste, fraud, abuse of authority, or a substantial and specific danger to public health or safety. Ky. Rev. Stat. § 61.102.

## Smoking Laws

An employer cannot refuse to hire, discharge, or otherwise discriminate against an individual with respect to the terms and conditions of employment because the individual is a smoker or nonsmoker, as long as the person complies with any workplace policy concerning smoking. Ky. Rev. Stat. § 344.040. The employer cannot require that any employee abstain from using tobacco products outside the course of employment. *Id.* However, it is not an unlawful practice to offer incentives or benefits to employees who participate in smoking cessation programs nor is it an unlawful practice for there to be a difference in employee contribution rates for smokers and nonsmokers in relation to an employer-sponsored health plan. *Id.*

The statutory protection against discrimination for smoking only applies to employers who have eight or more employees within Kentucky, in each of 20 or more calendar weeks in the current or proceeding calendar year. Ky. Rev. Stat. § 344.030.

## Kentucky Pregnant Workers Act

The Kentucky Pregnant Workers Act (KPWA) expressly prohibits employment discrimination in relation to an employee's pregnancy, childbirth, or related medical conditions. Ky. Rev. Stat. §§ 344.030. Employers with 15 or more employees within Kentucky, in each of 20 or more calendar weeks in the current or proceeding calendar year must make reasonable accommodations to any employee with limitations related to pregnancy, childbirth, or related medical conditions. *Id.* According to the KPWA, it is illegal for an employer to refuse reasonable accommodations for any employee with limitations related to pregnancy, childbirth, or related medical conditions who requests an accommodation. *Id.* These accommodations may include, but are not limited to: (1) more frequent or longer breaks; (2) time off to recover from childbirth; (3) acquiring or modifying equipment; (4) providing appropriate seating; (5) temporary transfer to a less strenuous or less hazardous position; (6) job restructuring; (7) light duty; (8) modified work schedule; and (9) providing a private space (other than a bathroom) for expressing breast milk. *Id.* The employer does not have to provide an accommodation if they can demonstrate that it would impose an undue hardship on the employer's business. *Id.* Employers must give new employees written notice at the start of their employment of the right to be free from discrimination related to pregnancy, childbirth, and related medical conditions, along with the right to reasonable accommodations. Ky. Rev. Stat. § 344.040. In addition, employers must prominently display written notice of these rights regarding pregnancy, childbirth, and related medical conditions, including the right to reasonable accommodations, in an area accessible to employees. *Id.*

## Rest Breaks

All employers, except those who are under the Federal Railway Labor Act, must give employees an opportunity for a rest period of at least ten minutes during each four hours worked. Ky. Rev. Stat. § 337.365. Further, the rest period must be in addition to the regularly scheduled lunch period, and no reduction in compensation can be made for hourly or salaried employees. *Id.*

## Meal Breaks

All employers, except those who are under the Federal Railway Labor Act, must give their employees a reasonable period for lunch. Ky. Rev. Stat. § 337.355.

The lunch break should be as close to the middle of the employee's work shift as possible, and the employee cannot be required to take a lunch period sooner than three hours after the work shift begins or more than five hours after the shift begins. *Id.*

## Minimum Wage, Overtime, and Wage Recordkeeping

Kentucky's minimum wage is \$7.25 per hour. Ky. Rev. Stat. § 337.275. Employers must still comply with federal wage laws and regulations. *Id.* If the federal minimum hourly wage is increased above the Kentucky state minimum hourly wage, the Kentucky minimum wage will be increased to the same amount. *Id.* An employer can pay tipped employees \$2.13 per hour if the employee's tips bring the total hourly wage up to the federal minimum wage. *Id.* No employer may use any portion of employees' tips or gratuities to meet the statutory minimum hourly wage. *Id.*

Kentucky state law governing overtime pay can be found at Ky. Rev. Stat. § 337.285. Generally, if an employee works more than 40 hours per work week, the employee must be compensated at a rate of one and one-half times the regular rate of pay at which they are employed. *Id.* This does not apply to employees of retail stores engaged in work connected with selling, purchasing, and distributing merchandise, wares, goods, articles, or commodities; or employees of restaurants, hotels, and motels, and employees who are exempt from overtime under the federal Fair Labor Standards Act. *Id.*

Every employer shall keep a record of: (a) the amount paid each pay period to each employee; (b) the hours worked each day and each week by each employee; and (c) such other information as required. Ky. Rev. Stat. § 337.320. The records must be kept on file for at least a year after entry and must be furnished to any authorized representative on demand. *Id.*

## Final Payments

An employer must pay any employee who leaves or is discharged from employment all wages or salary in full earned by the employee no later than the next normal pay period after the date of dismissal or voluntary leaving of 14 days after such date, whichever occurs last. Ky. Rev. Stat. § 337.055. Any employee who is absent at the time fixed for payment by an employer, or who, for any other reason, is not paid at that time, shall be paid thereafter at any time or upon 14 days' demand. *Id.*

## Unemployment Insurance

Unemployment insurance benefits provide income to individuals who have lost work through no fault of their own. The benefits are intended to partially offset the loss of wages while an unemployed worker searches for suitable work or until an employer can recall the employee to work. Nothing is deducted from the employee's wages to pay for this coverage. To qualify for this benefit program, an employee must reside in Kentucky and fulfill the following criteria: be unemployed or working less than full time, worked in Kentucky during the past 12 months, earned a minimum wage as determined by Kentucky guidelines, and actively seek work each week when collecting benefits. Unemployment benefits are administered by the Kentucky Department for Employment Services. Additional information regarding the benefits may be accessed at [www.benefits.gov/benefit/1720](http://www.benefits.gov/benefit/1720).

## Workers' Compensation

The Kentucky Workers' Compensation Act, Ky. Rev. Stat. § 342.0011, *et seq.*, applies to every employer in Kentucky with one or more covered employees. Certain employees, such as agricultural workers and employees of religious institutions, are not covered by the act. Ky. Rev. Stat. § 342.650. Covered employees who suffer injuries and/or occupational diseases arising out of and in the course of their employment may be eligible to receive several types of benefits under the Act. Ky. Rev. Stat. § 342.610. Under the Act, the employee must give notice of the accident to the employer as soon as practicable. Ky. Rev. Stat. § 342.185.

The Act is administered by the Kentucky Department of Workers' Claims; additional information regarding the Act may be accessed at [elc.ky.gov/Workers-Compensation/Pages/default.aspx](http://elc.ky.gov/Workers-Compensation/Pages/default.aspx).

Finally, an employer may not harass, coerce, or discriminate against an employee in any manner for filing or pursuing a lawful workers' compensation claim Ky. Rev. Stat. § 342.197. An employee may have a cause of action for retaliatory discharge even if they have not yet filed a formal workers' compensation claim. *Bishop v. Manpower, Inc. of Cent. Kentucky*, 211 S.W.3d 71, 75 (Ky. Ct. App. 2006). To succeed on a claim of retaliation, the employee must prove that the pursuit or filing of the workers' compensation claim was a substantial and motivating factor but for which the employee would not have suffered an adverse employment action. *Id.*

### Non-Compete Agreements

Non-compete agreements in Kentucky are governed by common law. For a non-compete agreement to be valid and enforceable in Kentucky, it must meet specific requirements, with the primary condition being that the covenant is supported by consideration. *Charles T. Creech, Inc. v. Brown*, 433 S.W.3d 345 (Ky. 2014). When an employee enters a non-compete agreement, the employer must provide something valuable to the employee in return. *Id.* For example, typically, the employer introduces the non-compete clause at the start of the employment, offering to hire the employee for pay. In contrast, the employee agrees to limit access to specific jobs if they leave.

### Child Labor

Generally, 14 years of age is the minimum age for employment under Kentucky state law. Ky. Rev. Stat. § 339.220. Minors who are 14 years of age or older are permitted to work, subject to various restrictions on the type and amount of work. Ky. Rev. Stat. § 339.230. Any minors permitted to work cannot work more than five hours continuously without a lunch break of at least 30 minutes. Ky. Rev. Stat. § 339.270. Minors must also receive a rest period of at least ten minutes during each four hours worked, in addition to the regularly scheduled lunch period, with no reduction in compensation. *Id.*

### Gun Laws

Under Kentucky law, an employer cannot prohibit any person who is legally entitled to possess a firearm from possessing a firearm in a vehicle on the employer's property. Ky. Rev. Stat. § 237.106. A firearm may be removed from the vehicle in the case of self-defense, defense of another, defense of property, or as authorized by the owner of the property. *Id.* However, an employer is not liable for wrongful termination for firing an employee who moved a firearm out of the trunk of their vehicle and into a co-worker's vehicle, because the statute only permits the removal of the gun from the vehicle for defense. *Holly v. UPS Supply Chain Solutions, Inc.*, 163 F. Supp. 3d 465, 473 (W.D. Ky. 2016).

### Pre-Employment Inquiry

Employers can ask applicants about their disabilities and the extent to which they have been overcome by treatment, medication, appliances, or other rehabilitation. Employers should be aware that this statute may conflict with the ADA. Ky. Rev. Stat. § 207.140.

### Additional Laws and Regulations

#### Kentucky Civil Rights Act

Ky. Rev. Stat. § 344.010, *et seq.*, mimics Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act of 1990, as amended, in that it prohibits discrimination based on an individual's race, color, religion, national origin, sex, or disability. Further, Kentucky law prohibits employment discrimination against individuals aged 40 and older. Ky. Rev. Stat. § 344.040. The Act covers public and private employers with eight or more employees, except that disability discrimination covers employers with 15 or more employees. Ky. Rev. Stat. § 344.030.

#### Kentucky Equal Pay Law

Kentucky law, Ky. Rev. Stat. § 337.420, *et seq.*, mimics the Equal Pay Act of 1963 in that it prohibits discrimination between employees in the same establishment, on the basis of sex, in their compensation for

comparable work. However, differences in pay based on seniority or merit increase systems that are unrelated to gender discrimination are not covered by this law. Ky. Rev. Stat. § 337.423.

### **Reporting Requirements**

Employers are required to provide the Cabinet for Health and Family Services with a report that contains the name, address, and Social Security number of each newly-hired employee who is permitted to return to work after being furloughed, laid off, or separated. Ky. Rev. Stat. § 405.435. In addition, the employer must provide the employer's name, address, and – if the employer has been assigned one – federal and state employer identification numbers. *Id.* The information must be provided within 20 days of the hiring or return to work of the employee. *Id.*

### **References**

Kentucky recognizes a tort cause of action for negligent hiring. An employer can be held liable when its failure to exercise ordinary care in hiring or retaining an employee creates a foreseeable risk of harm to a third person. *Oakley v. Flor-Shin, Inc.*, 964 S.W.2d 438, 441 (Ky. Ct. App. 1998). Kentucky law immunizes employers from civil liability for disclosing information about a current or former employee to a prospective employer in most situations. An employer who provides information related to the professional conduct of a current or former employee to a prospective employer of that employee at the request of that employee or prospective employer is immune from civil liability arising out of the disclosure unless: (1) the employer disclosed information it knew was false, with reckless disregard of whether it was true or false, or with intent to mislead the prospective employer; or (2) the disclosure constitutes an unlawful discriminatory practice under Ky. Rev. Stat. Chapter 344; Ky. Rev. Stat. § 411.225.

### **Medical Examinations**

It is unlawful for any employer to require any employee or applicant to pay the cost of a medical examination or of furnishing any records required by the employer as a condition of employment. Ky. Rev. Stat. § 336.220.

The Kentucky Equal Opportunities Act prohibits discrimination based on physical disability, including acquired immunodeficiency syndrome (AIDS) and human immunodeficiency virus (HIV) infection. Ky. Rev. Stat. § 207.130, *et seq.* Both laws cover public employers and private employers with eight or more employees, except that disability discrimination under the Kentucky Civil Rights Act covers employers with 15 or more employees. KY Rev. Stat. § 344.030.

### **Medical Marijuana**

Effective January 1, 2025, Senate Bill 47 (SB 47) will allow the use of medical cannabis for eligible individuals in Kentucky. However, outside of the medical cannabis program, using cannabis remains illegal in the state. Ky. Rev. Stat. § 218B.040. Employers are not obligated to allow or accept the use, consumption, or possession of medical marijuana in the workplace, even if certain medical conditions qualify as disabilities under the Americans with Disabilities Act (ADA). *Id.*

Employers are protected from any claims by employees for discrimination or wrongful discharge if the issue is related to the misuse of medical marijuana. *Id.* Employees who have been terminated for violating an employer's drug policy cannot claim unemployment benefits. *Id.*

Employers have the authority to prohibit medical marijuana cardholders from operating machinery, equipment, and tools if there is a potential safety risk. *Id.* Employees are not allowed to be under the influence of medical marijuana while performing tasks within their scope of work. *Id.*

### **Employee Electronic Communications**

Kentucky does not address the monitoring or recording of an employee's internet usage or the monitoring of an employee's email communications.

### **Mini-WARN Act**

Kentucky does not have a mini-WARN Act or other similar notice requirements for group layoffs.

### **Race-Based Hair Discrimination**

The CROWN Act (Creating a Respectful and Open World for Natural Hair) applies to all employers and provides that an employer may not discriminate against an employee for wearing their hair in braids, locs, twists, or in another manner that is part of the cultural identification of the employee's ethnic group or that is a physical characteristic of the employee's ethnic group. Some cities, including Lexington, Louisville, Frankfort, and Covington, have passed local protections under the CROWN Act.