

**337.285 Time and a half for employment in excess of forty hours -- Compensatory time -- County or city employee, Trooper R Class, CVE R Class -- Designated work period for professional firefighters.**

- (1) No employer shall employ any of his employees for a work week longer than forty (40) hours, unless such employee receives compensation for his employment in excess of forty (40) hours in a work week at a rate of not less than one and one-half (1-1/2) times the hourly wage rate at which he is employed.
- (2) This provision shall not apply to the following:
  - (a) Employees of retail stores engaged in work connected with selling, purchasing, and distributing merchandise, wares, goods, articles, or commodities;
  - (b) Employees of restaurant, hotel, and motel operations;
  - (c) Employees as defined and exempted from the overtime provision of the Fair Labor Standards Act in Sections 213(b)(1), 213(b)(6), 213(b)(10), and 213(b)(17) of Title 29, U.S.C.;
  - (d) Employees whose function is to provide twenty-four (24) hour residential care on the employer's premises in a parental role to children who are primarily dependent, neglected, and abused and who are in the care of private nonprofit childcaring facilities licensed by the Cabinet for Health and Family Services under KRS 199.640 to 199.670; or
  - (e) Any individual who is employed by a third-party employer or agency other than the family or household using his or her services to provide in-home companionship services for a sick, convalescing, or elderly person.
- (3) As used in subsection (2) of this section, "companionship services" means those services which provide in-home fellowship, care, and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs. These services may include household work related to the care of the aged or infirm person such as meal preparation, bed making, washing of clothes, and other similar services. They may also include the performance of general household work, provided that the household work is incidental, i.e., does not exceed twenty percent (20%) of the total weekly hours worked. The term "companionship services" does not include services relating to the care and protection of the aged or infirm which require and are performed by trained personnel, such as a registered or practical nurse.
- (4) Notwithstanding the provisions of subsection (1) of this section or any other chapter of the KRS to the contrary, upon written request by a county or city employee or a Trooper R Class or CVE R Class, made freely and without coercion, pressure, or suggestion by the employer, and upon a written agreement reached between the employer and the county or city employee or the Trooper R Class or CVE R Class before the performance of the work, a county or city employee or a Trooper R Class or CVE R Class who is authorized to work one (1) or more hours in excess of the prescribed hours per week may be granted compensatory leave on an hour-for-hour basis. Upon the written request by a county or city employee or a Trooper R Class

or CVE R Class, made freely and without coercion, pressure, or suggestion by the employer, and upon a written agreement reached between the employer and the county or city employee or the Trooper R Class or CVE R Class, before the performance of the work, a county or city employee or a Trooper R Class or CVE R Class who is not exempt from the provisions of the Federal Fair Labor Standards Act of 1938, as amended, 29 U.S.C. secs. 201 et seq., may be granted compensatory time in lieu of overtime pay, at the rate of not less than one and one-half (1-1/2) hours for each hour the county or city employee or the Trooper R Class or CVE R Class is authorized to work in excess of forty (40) hours in a work week.

- (5) (a) Upon the request of the county or city employee or the Trooper R Class or CVE R Class, and as provided in subsection (4) of this section, compensatory time shall be awarded as follows:
    1. A county or city employee who provided work in excess of forty (40) hours in a public safety activity, an emergency response activity, or a seasonal activity as described in 29 C.F.R. sec. 553.24, may accrue not more than four hundred eighty (480) hours of compensatory time; or
    2. A county or city employee or a Trooper R Class or CVE R Class engaged in other work in excess of forty (40) hours, may accrue not more than two hundred forty (240) hours of compensatory time.
  - (b) A county or city employee or a Trooper R Class or CVE R Class who has accrued four hundred eighty (480) hours of compensatory time off pursuant to paragraph (a)1. of this subsection, or two hundred forty (240) hours of compensatory time off pursuant to paragraph (a)2. of this subsection, shall for additional overtime hours of work, be paid overtime compensation.
- (6) A county or city employee or a Trooper R Class or CVE R Class who has accrued compensatory time off as provided in subsection (4) of this section, and who requested the use of compensatory time, shall be permitted by the employer to use the compensatory time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the employer. Mere inconvenience to the employer shall not constitute a sufficient basis for denial of a county or city employee's request or a Trooper R Class or CVE R Class request for compensatory time off.
  - (7) If compensation is paid to a county or city employee or a Trooper R Class or CVE R Class for accrued compensatory time off, the compensation shall be paid at the regular rate earned by the county or city employee or the Trooper R Class or CVE R Class at the time the county or city employee or the Trooper R Class or CVE R Class receives the payment.
  - (8) Upon a county or city employee's termination of employment or the termination of employment of a Trooper R Class or CVE R Class, all unused accrued compensatory time shall be paid at a rate of compensation not less than:
    - (a) The average regular rate received by the county or city employee or the Trooper R Class or CVE R Class during the last three (3) years of the employment of the county or city employee or Trooper R Class or CVE R Class; or

- (b) The final regular rate received by the county or city employee or Trooper R Class or CVE R Class, whichever is higher.
- (9) Compensatory time shall not be used as a means to avoid statutory overtime compensation. A county or city employee or a Trooper R Class or CVE R Class shall have the right to use compensatory time earned and shall not be coerced to accept more compensatory time than an employer can realistically and in good faith expect to be able to grant within a reasonable period upon the county or city employee or the Trooper R Class or CVE R Class making the request for compensatory time off.
- (10) Nothing in subsections (4) to (9) of this section shall be construed to supersede any collective bargaining agreement, memorandum of understanding, or any other agreement between the employer and representative of the county or city employees or the Trooper R Class or CVE R Class.
- (11) As used in subsections (4) to (9) of this section:
  - (a) "County or city employee" means an employee of any county, city, charter county, consolidated local government, unified local government, or urban-county government, including an employee of a county or city elected official;
  - (b) "CVE R Class" has the same meaning as in KRS 16.010; and
  - (c) "Trooper R Class" has the same meaning as in KRS 16.010.
- (12) In addition to the designation of a work week under subsection (1) of this section, local governments, as defined in KRS 95A.210(5), may designate a work period for professional firefighter employees as defined in KRS 95A.210. The designated work period shall be not less than one (1) work week of seven (7) consecutive days and not more than four (4) work weeks of twenty-eight (28) consecutive days for purposes of complying with the requirements of the Federal Labor Standards Act of 1938, as amended, 29 U.S.C. secs. 201 et seq. This subsection shall not exempt local governments from complying with the overtime requirements set forth in subsection (1) of this section and is intended to:
  - (a) Clarify the option to designate both a work week for compliance with Kentucky law and a work period for compliance with the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. secs. 201 et seq.; and
  - (b) Allow for the application of the partial exemption set forth in 29 U.S.C. sec. 207(k) in determining overtime pay under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. secs. 201 et seq., only.
- (13) (a) A law enforcement department of a consolidated local government organized under KRS Chapter 67C shall not be deemed to have violated subsection (1) of this section with respect to the employment of a peace officer if:
  - 1. The officer works eighty (80) hours or less in a work period of fourteen (14) consecutive days; and
  - 2. The law enforcement department and a representative of a collective bargaining unit certified under KRS 67C.408 that includes the officer agree to the exception.
- (b) It is the intent of this subsection to allow the employment of a peace officer

for longer than forty (40) hours in any seven (7) consecutive days within a fourteen (14) day work period without incurring the obligation to pay a rate of not less than one and one-half (1-1/2) times the officer's hourly wage under subsection (1) of this section.

**Effective:** July 14, 2018

**History:** Amended 2018 Ky. Acts ch. 195, sec. 1, effective July 14, 2018. -- Amended 2016 Ky. Acts ch. 43, sec. 1, effective April 6, 2016. -- Amended 2009 Ky. Acts ch. 33, sec. 5, effective March 20, 2009. -- Amended 2008 Ky. Acts ch. 75, sec. 1, effective July 15, 2008. -- Amended 2005 Ky. Acts ch. 99, sec. 607, effective June 20, 2005. -- Amended 2004 Ky. Acts ch. 122, sec. 1, effective July 13, 2004. -- Amended 2002 Ky. Acts ch. 68, sec. 1, effective July 15, 2002; and ch. 329, sec. 1, effective July 15, 2002. -- Amended 1998 Ky. Acts ch. 426, sec. 559, effective July 15, 1998. -- Amended 1986 Ky. Acts ch. 423, sec. 193, effective July 1, 1987. -- Amended 1982 Ky. Acts ch. 376, sec. 1, effective July 15, 1982. -- Amended 1980 Ky. Acts ch. 326, sec. 1, effective July 15, 1980. -- Amended 1978 Ky. Acts ch. 198, sec. 2, effective June 17, 1978. -- Amended 1976 Ky. Acts ch. 285, sec. 1. -- Created 1974 Ky. Acts ch. 391, sec. 3.

**Legislative Research Commission Note** (3/25/19). 2019 Ky. Acts ch. 67, sec. 1, amended KRS 95A.210 to add new subsections and to change the internal numbering of others. KRS 337.285(12) cites KRS 95A.210(3). It is clear from the context that in this section KRS 95A.210(3) should have been changed to KRS 95A.210(5) to conform. This error has been corrected in codification under the authority of KRS 7.136.