

**336.137 Marketplace contractor not an employee of a marketplace platform -- Conditions -- Exclusion from application of section.**

- (1) As used in this section:
  - (a) "Marketplace contractor" means a person or entity that enters into an agreement with a marketplace platform to use its digital network or mobile application to receive connections to third-party individuals or entities seeking services; and
  - (b) "Marketplace platform" means a person or entity that:
    1. Offers a digital network or mobile application that connects marketplace contractors to third-party individuals or entities seeking the type of services offered by a marketplace contractor;
    2. Accepts service requests from the public exclusively through its digital network or mobile application and does not accept service requests by telephone, facsimile, or in person at a physical retail location; and
    3. Does not perform the services offered by the marketplace contractor at or from a physical business location that is operated by the platform in the state.
- (2) A marketplace contractor shall not be deemed to be an employee of a marketplace platform for any purpose under state and local laws, regulations, and ordinances, including but not limited to KRS Chapters 336, 341, and 342, so long as:
  - (a) The marketplace platform and the marketplace contractor agree in writing that the marketplace contractor is an independent contractor with respect to the marketplace platform;
  - (b) The marketplace platform does not unilaterally prescribe specific hours during which the marketplace contractor must be available to accept service requests from third-party individuals or entities submitted solely through the online-enabled application, software, Web site, or system of the marketplace platform;
  - (c) The marketplace platform does not prohibit the marketplace contractor from using any online-enabled application, software, Web site, or system offered by another marketplace platform;
  - (d) The marketplace platform does not restrict the marketplace contractor from engaging in another occupation or business;
  - (e) The marketplace contractor bears all or substantially all of the expenses incurred by the marketplace contractor in performing the services; and
  - (f) The marketplace platform does not supply instrumentalities or tools for the person doing the work;
- (3) For services performed by a marketplace contractor prior to July 14, 2018, the marketplace contractor shall be treated as an independent contractor of the marketplace platform and not an employee of the marketplace platform if the requirements set forth in subsection (2) of this section were met at the time at which the services were performed.

- (4) This section shall not apply to:
- (a) Service performed in the employment of a state or any political subdivision of a state, or in the employ of an Indian tribe, or any instrumentality of a state, any political subdivision of a state, or any Indian tribe that is wholly owned by one (1) or more states or political subdivisions of Indian tribes, provided such service is excluded from employment as defined in 26 U.S.C. secs. 3301 to 3311;
  - (b) Service performed in the employment of a religious, charitable, educational, or other organization that is excluded from employment as defined in 26 U.S.C. secs. 3301 to 3311, solely by reason of 26 U.S.C. sec. 3306(c)(8); or
  - (c) Services consisting of transporting freight, sealed envelopes, boxes or parcels, or other sealed containers for compensation.

**Effective:** July 14, 2018

**History:** Created 2018 Ky. Acts ch. 18, sec. 1, effective July 14, 2018.