

### **341.055 Noncovered employment.**

Unless the employing unit thereof has elected that the services become covered employment under the provisions of subsection (3) or (4) of KRS 341.250, "covered employment" shall not include:

- (1) Service performed in agricultural labor, as defined in Section 3306(k) of the Internal Revenue Code, but only if the service is not defined as "covered employment" in paragraphs (f) and (h) of subsection (1) of KRS 341.050; or agricultural service performed prior to January 1, 1980, by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to Sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act;
- (2) Domestic service in a private home, a local college club, or local chapter of a college fraternity or sorority, but only if the service is not defined as "covered employment" in paragraphs (g) and (h) of subsection (1) of KRS 341.050;
- (3) Service in the employ of an organization described in paragraph (e) of subsection (1) of KRS 341.050, but only if the service is not defined as "covered employment" in paragraphs (e) and (h) of subsection (1) of KRS 341.050;
- (4) Certain service performed in the employ of this state or any of its political subdivisions, municipalities, or instrumentalities thereof, but only if the service is performed by an individual in the exercise of his or her duties:
  - (a) As a public elected official;
  - (b) As a member of a legislative body of this state or a political subdivision thereof;
  - (c) As a member of the judiciary of this state or political subdivision thereof;
  - (d) As a member of the State National Guard or Air National Guard;
  - (e) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; or
  - (f) In a position which, under or pursuant to the state law is designated as a major nontenured policymaking or advisory position, or a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight (8) hours per week or by reason of service on any appointed state or local board or commission;
- (5) Except as provided in paragraph (d) of subsection (1) of KRS 341.050, service performed in the employ of any other state or any political subdivision thereof, or of the United States government or an instrumentality of the United States exempt by federal law from the contributions imposed by this chapter, except that to the extent that the Congress of the United States shall permit states to require instrumentalities of the United States to make payments into an unemployment fund under a state unemployment insurance law, all the provisions of this chapter shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employing units, individuals and services; provided that if this state shall not be certified for any year by the Secretary of Labor of the United States under Section 3304 of the Internal Revenue Code, the payments required of such instrumentalities,

with respect to such year, shall be refunded from the fund in the same manner and within the same period as is provided in KRS 341.330 with respect to contributions erroneously collected;

- (6) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an Act of Congress. The secretary may enter into agreements with the proper agencies under such Act of Congress to provide reciprocal treatment to workers who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment compensation under such Act of Congress, or who have, after acquiring potential rights to unemployment compensation under such Act of Congress, acquired rights to benefits under this chapter;
- (7) Service performed by a worker in the employ of his or her son, daughter, or spouse, and service performed by a child under the age of twenty-one (21) in the employ of his or her father or mother;
- (8) Service performed in the employ of a foreign government, including service as a consular, or other officer or employee, or a nondiplomatic representative, or of an instrumentality wholly owned by a foreign government if:
  - (a) The service is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof; and
  - (b) The secretary finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and of instrumentalities thereof;
- (9) Service performed as a student nurse in the employ of a hospital or a nurses' training school by a worker who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to the laws of this state; and service performed as an intern in the employ of a hospital by a worker who has completed a four (4) years' course in a medical school chartered or approved pursuant to the laws of this state;
- (10) Service performed by a worker for an employing unit as an insurance agent or as an insurance solicitor, if all such service performed by such worker for such employing unit is performed for remuneration solely by way of commission;
- (11) Service performed by a worker under the age of eighteen (18) in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;
- (12) Service not in the course of the employing unit's trade or business performed in any calendar quarter by a worker, unless the cash remuneration paid for such service is fifty dollars (\$50) or more and such service is performed by an individual who is regularly employed by such employing unit to perform such service. For the purpose of this subsection, an individual shall be deemed to be regularly employed by an employing unit during a calendar quarter only if:

- (a) On each of some twenty-four (24) days during the quarter, the individual performs for such employing unit for some portion of the day service not in the course of the employing unit's trade or business; or
  - (b) The individual was regularly employed, as determined under paragraph (a) of this subsection, by the employing unit in the performance of the service during the preceding calendar quarter;
- (13) Service performed in any calendar quarter in the employ of any organization exempt from income tax under Section 501(a) of the Internal Revenue Code, other than an organization described in Section 401(a), or under Section 521 of the Internal Revenue Code, if the remuneration for the service is less than fifty dollars (\$50);
- (14) Service performed in the employ of an international organization;
- (15) Service covered by an election, duly approved by the agency charged with the administration of any other state or federal employment security law, in accordance with an arrangement pursuant to KRS 341.145 during the effective period of the election;
- (16) Service performed in the employ of a school, college, or university, if the service is performed:
  - (a) By a student who is enrolled and is regularly attending classes at the school, college or university; or
  - (b) By the spouse of such a student, if the spouse is advised, at the time the spouse commences to perform the service, that:
    - 1. The employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school, college, or university; and
    - 2. The employment will not be covered by any program of unemployment insurance;
- (17) Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if the service is an integral part of such program, and such institution has so certified to the employer, except that this subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers;
- (18) Service performed in the employ of a hospital, if the service is performed by a patient of the hospital, as defined in KRS 341.067;
- (19) Service performed in the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; or by a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by the order;

- (20) Service defined in KRS 341.050(1)(d) and (e) performed for a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age, physical or mental deficiency, or injury, or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving the rehabilitation or remunerative work; or as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof by an individual receiving the work relief or work training; or in a custodial or penal institution by an inmate of such institution;
- (21) Service performed by a direct seller as defined in Section 3508(b)(2) of the Internal Revenue Code of 1986; or
- (22) Any individual whose function is to provide behavior support services, behavior programming services, case management services, community living support services, positive behavior support services, or respite services through a contractual relationship with a certified waiver provider, as defined in 907 KAR 7:005 sec. 1(5), pursuant to a 1915(c) home and community based services waiver program, as defined in 907 KAR 7:005 sec. 1(2).

**Effective:** June 29, 2021

**History:** Amended 2021 Ky. Acts ch. 153, sec. 3, effective June 29, 2021. -- Amended 2020 Ky. Acts ch. 2, sec. 3, effective July 15, 2020. -- Amended 1990 Ky. Acts ch. 6, sec. 1, effective July 13, 1990. -- Amended 1988 Ky. Acts ch. 106, sec. 1, effective July 15, 1988. -- Amended 1986 Ky. Acts ch. 26, sec. 2, effective July 15, 1986. -- Amended 1980 Ky. Acts ch. 385, sec. 1, effective July 15, 1980. -- Amended 1978 Ky. Acts ch. 389, sec. 5, effective July 1, 1978. -- Amended 1974 Ky. Acts ch. 74, Art. VI, sec. 107(21). -- Created 1972 Ky. Acts ch. 21, sec. 3.