

1 AN ACT relating to unemployment tax audits.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 341.190 is amended to read as follows:

4 (1) As used in this section:

5 (a) "Agent" means one who acts for or in the place of an individual, an
6 employing unit, or a public official by the authority of that individual,
7 employing unit, or public official; and

8 (b) "Public official" means an official, agency, or public entity within the
9 executive branch of federal, state, or local government who or which has
10 responsibility for administering or enforcing a law, or an elected official in
11 federal, state, or local government.

12 (2) Each employing unit shall keep true and accurate work records of all workers
13 employed by it, of the wages paid by it to each worker, and such other information
14 as the secretary of the Education and Labor Cabinet considers necessary for the
15 proper administration of this chapter. The records shall be open for inspection and
16 subject to being copied by the secretary or his or her authorized representatives at
17 any reasonable time and as often as necessary.

18 (3) The secretary may require any employing unit to furnish to the cabinet at its central
19 office from time to time information concerning the total amounts of wages paid,
20 total number of persons employed, an individual record of each worker employed,
21 an individual record of each worker whose employment has been terminated or who
22 has been laid-off, an individual wage and hour record of each worker employed part
23 time entitled to benefits, and other related matters, including hours worked, which
24 the secretary considers necessary to the effective administration of this chapter.

25 **(4) Any information request that is directed to an employing unit or individual**
26 **initiated by the secretary in accordance with this section shall not be enforceable**
27 **unless the request includes a reasonably particularized explanation for the**

1 *request and is not overly broad, unduly burdensome, or outside the scope of*
2 *permissible requests allowed by this section.*

3 ~~(5)~~~~(4)~~ Information obtained from an employing unit or individual and other records
4 made by the cabinet in the administration of this chapter are confidential and shall
5 not be published or be open for public inspection, except as provided below and in
6 subsections ~~(6)~~~~(5)~~ and ~~(7)~~~~(6)~~ of this section:

7 (a) 1. Public officials and the agents and contractors of public officials, in the
8 performance of their official duties, may be provided information and
9 records, but the public officials receiving the information and records
10 shall assure the confidentiality, as required in this section, of all
11 information and records so released. Official duties do not include
12 solicitation of contributions or expenditures to or on behalf of a
13 candidate for public office or a political party;

14 2. A contractor shall include a temporary staffing engaged by the cabinet
15 for any purpose in connection with the administration of this chapter;
16 and

17 3. Disclosures shall be made under this subsection only if the recipient has
18 entered into a written, enforceable, and terminable agreement with the
19 cabinet and has satisfied the safeguards set forth in federal statutes and
20 regulations;

21 (b) 1. An individual or employing unit shall be provided, upon request,
22 information and records maintained by the cabinet in the administration
23 of wage records, claim, reserve account, reimbursing employer account,
24 or any proceeding under this chapter to which it is a party.

25 2. An agent of an individual or employing unit shall be provided the
26 individual's or employing unit's information and records upon the
27 presentation of a written release or other legally enforceable evidence of

- 1 the informed consent of the individual or employing unit.
- 2 3. An attorney retained by an individual or employing unit in any
3 proceeding under this chapter shall be provided the individual's or
4 employing unit's information and records if the attorney asserts in
5 writing that he or she is representing that individual or employing unit.
- 6 4. An elected official performing constituent services shall be provided the
7 individual's or employing unit's information and records if the official
8 presents reasonable written evidence that the individual or employing
9 unit has authorized the disclosure;
- 10 (c) A third party other than an agent, or third party on an ongoing basis, shall be
11 provided the individual or employing unit's information and records if the
12 individual or employing unit to whom the information pertains provides a
13 signed written release which shall specify:
- 14 1. The information and records to be disclosed;
- 15 2. The purpose for which the information and records are sought,
16 specifying the expected service or benefit to the individual signing the
17 release, or specifying their use in the administration or evaluation of the
18 public program to which the release pertains;
- 19 3. Assurance that the information and records shall be used solely for that
20 purpose;
- 21 4. All parties who may receive the information and records disclosed; and
22 5. That state government files shall be accessed to obtain information and
23 records.

24 Disclosures shall be made under this subsection only if the recipient has
25 entered into a written, enforceable, and terminable agreement with the cabinet
26 and has satisfied the safeguards set forth in federal statutes and regulations;

- 27 (d) Precedential orders issued by the Unemployment Insurance Commission shall

1 be released provided that Social Security numbers and employer identification
2 numbers have been removed and the disclosure is otherwise consistent with
3 federal and state law;

4 (e) A public official with authority under state or federal law to obtain the
5 information and records by subpoena, other than a clerk of court on behalf of
6 a litigant, shall be provided information and records upon service of a duly
7 issued subpoena;

8 (f) A federal official, when required for the purposes of oversight and auditing of
9 the unemployment insurance program, shall be provided information and
10 records;

11 (g) Statistical information derived from information and records obtained or made
12 by the cabinet may be released to the Bureau of Labor Statistics under a
13 cooperative agreement or may be published, if it in no way reveals the identity
14 of any individual or employing unit; and

15 (h) Nothing in this section shall preclude the secretary or any employee of the
16 cabinet from testifying in any proceeding under this chapter or in any court, or
17 from introducing as evidence information and records obtained or made by
18 the cabinet in an action for violation of state or federal law to which the
19 cabinet is a party or upon order of the court.

20 ~~(6)~~~~(5)~~ Disclosures shall be made under subsection ~~(5)~~~~(4)~~ of this section only if:

21 (a) The disclosure is necessary for the proper administration of the
22 unemployment insurance program;

23 (b) No more than an incidental amount of staff time or a nominal processing cost
24 is required to make the disclosure; or

25 (c) The cost of providing the information and records is paid by the recipient
26 prior to the disclosure, consistent with federal laws and regulations, except
27 this requirement shall not apply to disclosures made under subsection

1 ~~(5)~~~~(4)~~(f) of this section nor to disclosures made under subsection ~~(5)~~~~(4)~~(e)
2 and (h) of this section if the cabinet attempts without success to recover the
3 cost of disclosure. For disclosures made to other public officials under
4 subsection ~~(5)~~~~(4)~~(a) of this section, this requirement shall be met if the
5 recipient provides a reciprocal benefit to the cabinet in the administration of
6 the unemployment insurance program, or if a reasonable reimbursement for
7 the disclosure shall be determined under federal law.

8 ~~(7)~~~~(6)~~ Recipients of information and records disclosed under subsection ~~(5)~~~~(4)~~(a)
9 and (c) of this section may redisclose the information and records only as follows:
10 (a) To the individual or employing unit who is the subject of the information and
11 records;
12 (b) To an attorney or duly authorized agent representing the individual or
13 employing unit;
14 (c) In any civil or criminal proceedings for or on behalf of the recipient;
15 (d) In response to a subpoena but only as provided in subsection ~~(5)~~~~(4)~~(e) and
16 (h) of this section;
17 (e) A public official may redisclose to an agent or contractor, but only if the
18 public official retains responsibility for the uses of the confidential
19 information and records by the agent or contractor and subject to the
20 safeguards set forth in the agreement required under subsection ~~(5)~~~~(4)~~ of this
21 section;
22 (f) A public official may redisclose to another public official;
23 (g) A state or local child support enforcement agency may redisclose to its agent
24 under contract for the purpose of carrying out child support enforcement; or
25 (h) When specifically authorized by a written release for redisclosure that meets
26 the requirements of subsection ~~(5)~~~~(4)~~(c) of this section.

27 ~~(8)~~~~(7)~~ Any disclosure or use of information and records that is inconsistent with the

1 provisions of this section shall be subject to the penalty prescribed in KRS
2 341.990(11).

3 ~~(9)~~~~(8)~~ No information and records held confidential under subsection ~~(5)~~~~(4)~~ of this
4 section shall be the subject matter or basis for any suit for slander or libel in any
5 court, but no employer or employee, or his representative, testifying before the
6 commission, the secretary, or any duly authorized representative thereof, shall be
7 exempt from punishment for perjury.

8 ➔Section 2. KRS 341.990 is amended to read as follows:

9 (1) Except as otherwise provided in subsection (11) of this section, any employee of
10 any state agency who violates any of the provisions of KRS 341.110 to 341.230
11 shall be guilty of a Class B misdemeanor.

12 (2) Any person subpoenaed to appear and testify or produce evidence in an inquiry,
13 investigation, or hearing conducted under this chapter who fails to obey the
14 subpoena shall be guilty of a Class B misdemeanor.

15 (3) Any subject employer, or officer or agent of a subject employer, who violates
16 subsection (1) of KRS 341.470 shall be guilty of a Class A misdemeanor.

17 (4) Any person who violates subsection (2) of KRS 341.470 shall be guilty of a Class A
18 misdemeanor.

19 (5) (a) Any person who knowingly makes a false statement or representation of a
20 material fact or knowingly fails to disclose a material fact to the secretary to
21 obtain or increase any benefit under this chapter or under an employment
22 security law of any other state, or of the federal government, either for himself
23 or herself or for any other person, business entity, or organization shall be
24 guilty of a Class B misdemeanor unless:

25 1. The value of the benefits procured or attempted to be procured is five
26 hundred dollars (\$500) or more but less than one thousand dollars
27 (\$1,000), in which case it is a Class A misdemeanor;

- 1 2. The value of the benefits procured or attempted to be procured is one
2 thousand dollars (\$1,000) or more, in which case it is a Class D felony;
3 or
- 4 3. The person has three (3) or more convictions under subparagraph 1. of
5 this paragraph within the last five (5) years, in which case it is a Class D
6 felony. The five (5) year period shall be measured from the dates on
7 which the offenses occurred for which the judgments of conviction were
8 entered.
- 9 (b) If any person commits two (2) or more separate offenses under paragraph (a)
10 of this subsection within ninety (90) days, the offenses may be combined and
11 treated as a single offense, and the value of the property in each offense may
12 be aggregated for the purpose of determining the appropriate charge.
- 13 (6) (a) Any person who knowingly makes a false statement or representation, or who
14 knowingly fails to disclose a material fact to prevent or reduce the payment of
15 benefits to any worker entitled thereto, or to avoid becoming or remaining
16 subject to this chapter, or to avoid or reduce any payment required of an
17 employing unit under this chapter shall be guilty of a Class B misdemeanor
18 unless:
 - 19 1. The liability avoided or attempted to be avoided is five hundred dollars
20 (\$500) or more but less than one thousand dollars (\$1,000), in which
21 case it is a Class A misdemeanor;
 - 22 2. The liability avoided or attempted to be avoided is one thousand dollars
23 (\$1,000) or more, in which case it is a Class D felony; or
 - 24 3. The person has three (3) or more convictions under subparagraph 1. of
25 this paragraph within the last five (5) years, in which case it is a Class D
26 felony. The five (5) year period shall be measured from the dates on
27 which the offenses occurred for which the judgments of conviction were

1 entered.

2 (b) If any person commits two (2) or more separate offenses under paragraph (a)
3 of this subsection within ninety (90) days, the offenses may be combined and
4 treated as a single offense, and the value of the property in each offense may
5 be aggregated for the purpose of determining the appropriate charge.

6 (c) Any person who willfully fails or refuses to furnish any reports required, or to
7 produce or permit the inspection or copying of records required in this chapter
8 shall be guilty of a Class B misdemeanor. Each such false statement,
9 representation or failure and each day of failure or refusal shall constitute a
10 separate offense.

11 (7) In any prosecution for the violation of subsection (5) or (6) of this section, it shall
12 be a defense if the person relied on the advice of an employee or agent of the Office
13 of Unemployment Insurance.

14 (8) Any person who willfully violates any provision of this chapter or any rule or
15 regulation under it, the violation of which is made unlawful or the observance of
16 which is required under the terms of this chapter, and for which no specific penalty
17 is prescribed in this chapter or in any other applicable statute, shall be guilty of a
18 violation. Each day the violation continues shall constitute a separate offense.

19 (9) In addition to the higher rates imposed under KRS 341.540(7), any person, whether
20 or not an employing unit, who knowingly advises or assists an employing unit in
21 the violation or attempted violation of KRS 341.540 or any other provision of this
22 chapter related to determining the assignment of a contribution rate shall be subject
23 to a civil monetary penalty of not less than five thousand dollars (\$5,000).

24 (10) Proceeds from all penalties imposed under subsection (9) of this section and KRS
25 341.540 shall be deposited in the unemployment compensation administration
26 account and shall be expended solely for the cost of administration of this chapter
27 consistent with KRS 341.240.

- 1 (11) Any person who violates the confidentiality provision in KRS 341.190~~(5)~~~~(4)~~ shall
- 2 be guilty of a Class A misdemeanor.