



STATEMENT OF CONSIDERATION
RELATING to 803 KAR 1:006

Education and Labor Cabinet, Department of Workplace Standards
(Not Amended After Comments)

I. The public hearing on 803 KAR 1:006, scheduled for February 22, 2023, at 10:00 a.m., to be held by the Education and Labor Cabinet was cancelled; however, written comments were received during the public comment period.

II. The following people submitted written comments:

<u>Name and Title</u>	<u>Agency/Organization/Entity/Other</u>
Edward Depp	Dinsmore & Shohl LLP on behalf of the Kentucky Electric Cooperatives

III. The following people from the promulgating administrative body responded to the written comments:

<u>Name and Title</u>
John Ghaelian, General Counsel, Workplace Standards Legal Division

IV. Summary of Comments and Responses

(1) SUBJECT MATTER: Regulatory Confusion and Promulgation Authority

(a) Comment: Edward Depp stated that the proposed amendment to the regulation would create regulatory uncertainty and confusion as to the factors utilized to determine if an individual is an independent contractor or an employee. This is due to the agency's reliance on the "right to control" factor. Further, Mr. Depp believes the agency is exceeding its regulatory authority by promulgating this amendment to the regulation.

(b) Response: KRS 337.010(1)(d) defines "employer." For KRS Chapter 337 to apply, there must be an employer-employee relationship. This regulation is necessary to define what constitutes the employer-employee relationship and is authorized by KRS 337.295, which provides the agency with the authority to promulgate regulations relevant to KRS Chapter 337. The amendments to the regulation are designed to ensure that independent contractors are not improperly categorized as employees by the agency for wage and hour purposes. Further, the regulation reinstates factors that were used by the agency in 803 KAR 1:005, the current regulation's predecessor. The amendments will ensure that the agency does not improperly categorize independent contractors as employees by focusing on control of the work performed as well as the additional factors enumerated in the regulation.

**SUMMARY OF STATEMENT OF CONSIDERATION AND
ACTION TAKEN BY PROMULGATING ADMINISTRATIVE BODY**

The public hearing on this administrative regulation was canceled; however, written comment was received. The Education and Labor Cabinet, Department of Workplace Standards responded to the comment and will not be amending the administrative regulation.