

FILED WITH LRC TIME: 3:42 pm JUL 01 2025 <i>Emily B Caudill</i> REGULATIONS COMPILER

STATEMENT OF EMERGENCY

803 KAR 2:250E

This emergency administrative regulation amends 803 KAR 2:250, Discrimination. This amendment requires employers to comply with 29 C.F.R. Part 1977, Discrimination Against Employees Exercising Rights Under the Williams Steiger Occupational Safety and Health Act of 1970.

It is necessary to promulgate this emergency regulation, pursuant to House Bill 398 of the 2025 Regular Session and subsequent amendment to Kentucky Revised Statute ("KRS") 338.121, effective June 27, 2025, and to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 of the Occupational Safety and Health ("OSH") Act of 1970, 29 CFR 1902.3(c)(1), 29 CFR 1902.3(d)(1), 29 CFR 1902.3(d)(2), 29 CFR 1902.37(b)(3), 29 CFR 1953.1(a), 29 CFR 1953.1(b), 29 CFR 1953.5(a)(1), 29 CFR 1953.(a)(2), 29 CFR 1956.2(a), 29 CFR 1956.10(d)(1), and 29 CFR 1977.3, which all require Kentucky OSH regulations to be as effective as the federal requirements.

This emergency administrative regulation shall be replaced by an ordinary administrative regulation, which is being filed simultaneously with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.



ANDY BESHEAR, Governor



JAMIE LINK, Chair
Occupational Safety and Health Standards Board

1 EDUCATION AND LABOR CABINET

2 Department of Workplace Standards

3 Division of Occupational Safety and Health Compliance

4 Division of Occupational Safety and Health Education and Training

5 *Emergency*
(Amendment)

6 803 KAR 2:250 E. Discrimination.

7 RELATES TO: KRS 338.015, 338.071, 338.121, 338.141, 338.991

8 STATUTORY AUTHORITY: KRS 338.051, 338.061

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Occupational
10 Safety and Health Standards Board to promulgate occupational safety and health administrative
11 regulations and authorizes the chairman to reference federal standards without board approval if
12 necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish,
13 modify, or repeal standards and reference federal standards. This administrative regulation
14 establishes the procedure for discrimination complaints pursuant to KRS 338.121.

15 Section 1. Definitions.

16 (1) "Commissioner" is defined by KRS 338.015(7).

17 (2) "Complainant" means any person who makes a "complaint" as defined by subsection (3) of
18 this section.

(3) "Complaint" means any oral or written communication related to an occupational safety and health concern made by an employee to an employer, governmental agency, or made to the commissioner or the commissioner's designee.

(4) "Review commission" is defined by KRS 338.015(8).

(5) "Secretary" is defined by KRS 338.015(12).

(6) "Working days" means Monday through Friday and does not include Saturday, Sunday, federal, or state holidays, and the day of receipt of notice.

Section 2. Complaint.

(1) An employee or former employee may file an oral or written complaint with the commissioner or commissioner's designee alleging discrimination.

(2) A complaint shall be filed no more than 30 [~~420~~] days from the occurrence of the alleged discriminatory activity.

(3) A complaint shall provide the name and address of the complainant, name and address of employer, date, and description of alleged discrimination.

(4) The commissioner or commissioner's designee shall provide the employer notification of the complaint upon initiation of an investigation.

Section 3. Settlement.

(1) Settlement shall be encouraged at any stage of the proceedings if the settlement is consistent with KRS Chapter 338.

(2) Primary consideration shall be the reinstatement of a complainant to his or her former position with back pay and assurance of the future protection of the rights of all employees pursuant to KRS Chapter 338.

Section 4. Withdrawal of Complaint to the Commissioner.

(1) A request by the complainant to withdraw a complaint filed with the commissioner shall be given careful consideration and substantial weight.

(2) The commissioner or commissioner's designee shall make the final determination if a complaint and subsequent investigation will be withdrawn and terminated.

Section 5. Arbitration or Other Agency Proceedings.

(1) A complainant may pursue grievance arbitration proceedings in collective bargaining agreements while requesting relief from other agencies such as the National Labor Relations Board.

(2) The commissioner's jurisdiction to receive KRS 338.121(3) complaints, to investigate, and to determine if discrimination occurred shall be independent of the jurisdiction of other agencies or bodies.

(3) The commissioner or commissioner's designee may investigate and issue citations against any party found in violation regardless of the pendency or determination of other proceedings.

(4) If a complainant is pursuing remedies other than those established by KRS 338.121, the commissioner's determination shall be postponed.

Section 6.

(1) Investigation. (a) Upon receipt of a complaint, the commissioner or commissioner's designee may ~~shall~~ initiate an investigation.

(b) The investigation shall be completed and the commissioner's determination issued within ninety (90) days, absent extenuating circumstances.

(2) Citation. (a) If the commissioner finds a violation of KRS 338.121, he or she shall issue a citation, with delivery or receipt confirmation, and recommend a penalty pursuant to KRS 338.991.

(b) The citation shall include a determination by the commissioner as to the merits of the alleged violation.

(c) The commissioner or commissioner's designee shall provide notice of the determination to all affected parties.

(d) The citation shall state that it shall be deemed the final order of the review commission and not subject to review by any court or agency, as established by KRS 338.141, unless, within fifteen (15) working days from the date of receipt of the notice, the employer notifies the commissioner in writing that the employer intends to contest the citation before the review commission.

(e) The commissioner shall immediately transmit a notice to contest to the review commission in accordance with the rules of procedure prescribed by the commission in accordance with KRS 338.071.

(3) Penalty. (a) The commissioner shall determine the amount of a proposed penalty, based on the appropriateness of the penalty with respect to the:

1. Size of the business of the employer being charged,
2. Gravity of the violation,
3. Good faith of the employer, and
4. History of previous violations.

(b) Penalties shall be proposed with respect to an alleged discriminatory act even if the employer immediately abates, or initiates steps to abate, the alleged violation.

(4)(a) If the commissioner determines there has not been discriminatory action, the complainant shall be notified of his or her rights of review.

(b) 1. The complainant may petition the secretary for a review of the determination.

2. The petition shall be in writing and state reasons why the review is requested.

(c) The secretary shall affirm the determination or remand it to the commissioner for further investigation.

As approved by



Jamie Link, Chair, Occupational Safety and Health Standards Board



Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this emergency administrative regulation shall be held August 21, 2025, at 3:00 pm EDST via Zoom. Public access to the meeting is at:

<https://us06web.zoom.us/j/84374411820>, or by telephone at (713) 353-0212 or (888) 822-7517 toll free, conference code 194378.

Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed emergency administrative regulation. Written comments shall be accepted through August 31, 2025. Send written notification of intent to be heard at the public hearing or written comments on the proposed emergency administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Education and Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email robin.maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation Number: 803 KAR 2:250E

Contact person: Robin Maples

Phone: (502) 564-4107

Email: Robin.Maples@ky.gov

Facsimile: (502) 564-4769

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this emergency administrative regulation defines terms. Section 2 amends complaint language. Section 6 updates language regarding the obligation to investigate a complaint. All other sections are unchanged.

(b) The necessity of this emergency administrative regulation: This emergency regulation is necessary pursuant to House Bill 398 of the 2025 Regular Session and subsequent amendment to Kentucky Revised Statute (“KRS”) 338.121, effective June 27, 2025, and to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 of the Occupational Safety and Health (“OSH”) Act of 1970, 29 CFR 1902.3(c)(1), 29 CFR 1902.3(d)(1), 29 CFR 1902.3(d)(2), 29 CFR 1902.37(b)(3), 29 CFR 1953.1(a), 29 CFR 1953.1(b), 29 CFR 1953.5(a)(1), 29 CFR 1953.(a)(2), 29 CFR 1956.2(a), 29 CFR 1956.10(d)(1), and 29 CFR 1977.3, which all require Kentucky OSH regulations to be as effective as the federal requirements. This emergency regulation is equivalent.

(c) How this emergency administrative regulation conforms to the content of the authorizing statutes: KRS 338.061 authorizes the Kentucky Occupational Safety and Health Standards Board to adopt, modify, or repeal occupational safety and health administrative regulations. This emergency administrative regulation is necessary pursuant to House Bill 398 of the 2025 Regular Session and subsequent amendment to KRS 338.121, effective June 27, 2025, and to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 of the OSH Act, 29 CFR 1902.3(c)(1), 29 CFR 1902.3(d)(1), 29 CFR 1902.3(d)(2), 29 CFR 1902.37(b)(3), 29 CFR 1953.1(a), 29 CFR 1953.1(b), 29 CFR 1953.5(a)(1), 29 CFR 1953.(a)(2), 29 CFR 1956.2(a), 29 CFR 1956.10(d)(1) and 29 CFR 1977.3, which all require the Kentucky OSH Program to be as effective as OSHA. This emergency regulation complies and conforms with the authorizing statutes.

(d) How this emergency administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency administrative regulation is necessary pursuant to House Bill 398 of the 2025 Regular Session and subsequent amendment to KRS 338.121, effective June 27, 2025, ensures the state requirement is as effective as the federal requirement, and meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 of the OSH Act of 1970, 29 CFR 1902.3(c)(1), 29 CFR 1902.3(d)(1), 29 CFR 1902.3(d)(2), 29 CFR 1902.37(b)(3), 29 CFR 1953.1(a), 29 CFR 1953.1(b), 29 CFR 1953.5(a)(1), 29 CFR 1953.(a)(2),

29 CFR 1956.2(a), 29 CFR 1956.10(d)(1), and 29 CFR 1977.3, which all require Kentucky OSH regulations to be as effective as the federal requirements.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment complies with House Bill 398 of the 2025 Regular Session and subsequent amendment to KRS 338.121, effective June 27, 2025.

(b) The necessity of the amendment to this emergency administrative regulation: Kentucky operates a State Plan approved by OSHA that provides employee OSH protections. OSHA approves, monitors, and provides funding to Kentucky. It is necessary to promulgate this emergency regulation pursuant to House Bill 398 of the 2025 Regular Session and subsequent amendment to KRS 338.062, effective June 27, 2025, and to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 of the OSH Act of 1970, 29 CFR 1902.3(c)(1), 29 CFR 1902.3(d)(1), 29 CFR 1902.3(d)(2), 29 CFR 1902.37(b)(3), 29 CFR 1953.1(a), 29 CFR 1953.1(b), 29 CFR 1953.5(a)(1), 29 CFR 1953.(a)(2), 29 CFR 1956.2(a), 29 CFR 1956.10(d)(1), and 29 CFR 1977.3, which all require the Kentucky OSH Program to be as effective as OSHA. The Education and Labor Cabinet must promulgate this emergency administrative to ensure the state is at least as effective as the federal requirement. This emergency administrative regulation ensures Kentucky's compliance with the federal mandates, maintains Kentucky's primacy, and retains federal funding.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 338.061 authorizes the Kentucky OSH Standards Board to adopt, modify, or repeal OSH administrative regulations. This emergency administrative regulation is necessary pursuant to House Bill 398 of the 2025 Regular Session and subsequent amendment to KRS 338.062, effective June 27, 2025, and to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 of the OSH Act of 1970, 29 CFR 1902.3(c)(1), 29 CFR 1902.3(d)(1), 29 CFR 1902.3(d)(2), 29 CFR 1902.37(b)(3), 29 CFR 1953.1(a), 29 CFR 1953.1(b), 29 CFR 1953.5(a)(1), 29 CFR 1953.(a)(2), 29 CFR 1956.2(a), 29 CFR 1956.10(d)(1), and 29 CFR 1977.3, which all require the Kentucky OSH Program to be as effective as OSHA. This emergency regulation complies and conforms with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment complies with the amendment to KRS 338.121 and keeps the state program consistent with the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this emergency administrative regulation: This emergency administrative regulation affects all employers in the Commonwealth covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to the OSH Program to implement this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment complies with the amendment to KRS 338.121 and ensures the state requirement is as effective as the federal program.

(5) Provide an estimate of how much it will cost to implement this emergency administrative regulation:

(a) Initially: There is no cost to the OSH Program to implement this emergency administrative regulation.

(b) On a continuing basis: There are no new costs associated with this emergency regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this emergency administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this emergency administrative regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this emergency administrative regulation.

(8) State whether or not this emergency administrative regulation establishes any fees or directly or indirectly increases any fees: This emergency administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FISCAL IMPACT STATEMENT

803 KAR 2:250E

Contact Person: Robin Maples

Phone: (502) 564-4107

Email: robin.maples@ky.gov

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 338.061 authorizes the Kentucky Occupational Safety and Health Standards Board to adopt, modify, or repeal occupational safety and health administrative regulations. This emergency administrative regulation is necessary pursuant to House Bill 398 of the 2025 Regular Session and subsequent amendment to KRS 338.121, effective June 27, 2025, and to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 of the OSH Act of 1970, 29 CFR 1902.3(c)(1), 29 CFR 1902.3(d)(1), 29 CFR 1902.3(d)(2), 29 CFR 1902.37(b)(3), 29 CFR 1953.1(a), 29 CFR 1953.1(b), 29 CFR 1953.5(a)(1), 29 CFR 1953.(a)(2), 29 CFR 1956.2(a), and 29 CFR 1956.10(d)(1).

(2) State whether this administrative regulation is expressly authorized by an act of the General Assembly, and if so, identify the act: This emergency administrative regulation is necessary pursuant to House Bill 398 of the 2025 Regular Session and subsequent amendment to KRS 338.121, effective June 27, 2025.

(3)(a) Identify the promulgating agency and any other affected state units, parts, or divisions: This administrative regulation affects any unit, part, or division of state or local government covered by KRS Chapter 338.

(b) Estimate the following for each affected state unit, part, or division identified in (3)(a):

1. Expenditures:

For the first year: None

For subsequent years: None

2. Revenues:

For the first year: None

For subsequent years: None

3. Cost Savings:

For the first year: None

For subsequent years: None

(4)(a) Identify affected local entities (for example: cities, counties, fire departments, school districts): This administrative regulation affects any unit, part, or division of state or local government covered by KRS Chapter 338.

(b) Estimate the following for each affected local entity identified in (4)(a):

1. Expenditures:

For the first year: None

For subsequent years: None

2. Revenues:

For the first year: None

For subsequent years: None

3. Cost Savings:

For the first year: None

For subsequent years: None

(5)(a) Identify any affected regulated entities not listed in (3)(a) or (4)(a): None

(b) Estimate the following for each regulated entity identified in (5)(a):

1. Expenditures:

For the first year: None

For subsequent years: None

2. Revenues:

For the first year: None

For subsequent years: None

3. Cost Savings:

For the first year: None

For subsequent years: None

(6) Provide a narrative to explain the following for each entity identified in (3)(a), (4)(a), and (5)(a):

(a) Fiscal impact of this administrative regulation: This administrative regulation imposes no new direct cost burden on employers and does not require them to take any action to comply.

(b) Methodology and resources used to reach this conclusion: Not applicable.

(7) Explain, as it relates to the entities identified in (3)(a), (4)(a), and (5)(a):

(a) Whether this administrative regulation will have a “major economic impact”, as defined by KRS 13A.010(13): This administrative regulation will not have a “major economic impact” as defined by KRS 13A.010(13).

(b) The methodology and resources used to reach this conclusion: Not applicable.

FEDERAL MANDATE ANALYSIS COMPARISON

Regulation Number: 803 KAR 2:250E

Agency Contact: Robin Maples

Phone: (502) 564-4107

Email: robin.maples@ky.gov

Facsimile: (502) 564-4769

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 of the OSH Act of 1970, 29 CFR 1902.3(c)(1), 29 CFR 1902.3(d)(1), 29 CFR 1902.3(d)(2), 29 CFR 1902.37(b)(3), 29 CFR 1953.1(a), 29 CFR 1953.1(b), 29 CFR 1953.5(a)(1), 29 CFR 1953.5(a)(2), 29 CFR 1956.2(a), 29 CFR 1956.10(d)(1), and 29 CFR 1977.3.

2. State compliance standards. The Kentucky OSH Program is mandated to be at least as effective as the federal requirement. This regulation is equivalent.

3. Minimum or uniform standards contained in the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 of the OSH Act of 1970, 29 CFR 1902.3(c)(1), 29 CFR 1902.3(d)(1), 29 CFR 1902.3(d)(2), 29 CFR 1902.37(b)(3), 29 CFR 1953.1(a), 29 CFR 1953.1(b), 29 CFR 1953.5(a)(1), 29 CFR 1953.5(a)(2), 29 CFR 1956.2(a), 29 CFR 1956.10(d)(1), and 29 CFR 1977.3.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This amendment does not impose stricter requirements.

EMERGENCY REGULATION DOCUMENTATION

It is necessary to promulgate this emergency regulation. pursuant to House Bill 398 of the 2025 Regular Session and subsequent amendment to Kentucky Revised Statute (“KRS”) 338.121, effective June 27, 2025, and to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 of the Occupational Safety and Health (“OSH”) Act of 1970, 29 CFR 1902.3(c)(1), 29 CFR 1902.3(d)(1), 29 CFR 1902.3(d)(2), 29 CFR 1902.37(b)(3), 29 CFR 1953.1(a), 29 CFR 1953.1(b), 29 CFR 1953.5(a)(1), 29 CFR 1953.(a)(2), 29 CFR 1956.2(a), 29 CFR 1956.10(d)(1), and 29 CFR 1977.3, which all require Kentucky OSH regulations to be as effective as the federal requirements.