

1 LABOR CABINET

2 Office of Unemployment Insurance

3 (Amendment)

4 787 KAR 1:300. Successorship.

5 RELATES TO: KRS 341.070, 341.540

6 STATUTORY AUTHORITY: KRS 336.015, 36.050~~[151B-020]~~, 341.115, 341.540(2),

7 2021 Ky Acts ch. 169 Part 1(I)(7)

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the
9 secretary to promulgate administrative regulations necessary to administer KRS Chapter 341. KRS
10 341.540(2) provides that the basis for successorship, other than transfers between employing units
11 with common ownership, shall be determined in accordance with administrative regulations
12 promulgated by the secretary. This administrative regulation establishes the conditions under
13 which an employing unit shall be found to be successor to another.

14 Section 1. Definitions. (1) "Domestic employing unit" means an employing unit for which
15 service is provided as described in KRS 341.050(1)(g).

16 (2) "Going concern" means an employing unit that is providing goods or services,
17 maintaining a staff or meeting payroll.

1 *(3) "Negotiation" means dealings conducted between two or more parties for the purpose of*
2 *reaching an understanding.*

3 Section 2. Except as provided in Section 3 of this administrative regulation, successorship
4 shall be deemed to have occurred between two (2) employing units if:

5 (1) Negotiation occurs to bring about the transfer, either directly between the parties to the
6 transfer, or indirectly through a third party intermediary; and

7 (2) At least two (2) of the conditions established in the subsection are met, except this
8 requirement shall not be satisfied if only paragraphs (c) and (d) of this subsection are met:

9 (a) The employing unit was a going concern at the time negotiations for the transfer began;

10 (b) The subsequent owner or operator continued or resumed basically the same type of
11 employing unit in the same location;

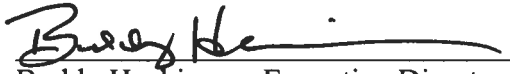
12 (c) The subsequent owner employed fifty (50) percent or more of the previous owner's
13 workers in covered employment;

14 (d) The previous owner employed fifty (50) percent or more of the subsequent owner's
15 workers in covered employment; or

16 (e) The subsequent owner acquired work contracts or commitments from the previous
17 owner.

18 Section 3. Successorship for a domestic employing unit shall be deemed to have occurred
19 if two (2) of the conditions established under Section 2(2)(a) through (e) of this administrative
20 regulation exist.

As approved by



Buddy Hoskinson, Executive Director
Office of Unemployment Insurance

4/21/2021

Date



Larry L. Roberts, Secretary
Kentucky Labor Cabinet

6/21/2021

Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 27, 2021 at 2:00 (ET). This hearing will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph 8(b) (R.S. 2020) and the continuing state of emergency due to the novel coronavirus pandemic. Public access to the meeting will be available at <https://us02web.zoom.us/j/88991458931?pwd=eTZYZMEo0V3Qydnk0alB3MFFyYmZVUT09>, password 358248 or by telephone at 713-353-0212 or 888-822-7517 (toll free), conference code 278497.

Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2021. Send notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Buddy Hoskinson, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, Telephone: (502) 564-2199, Facsimile: (502) 564-7850, Email: buddy.hoskinson@ky.gov.

REGULATORY IMPACT AND TIERING STATEMENT

Regulation Number 787 KAR 1:300

Contact Person: Buddy Hoskinson, Telephone: (502) 564-2199, Facsimile: (502) 564-7850,
Email: buddy.hoskinson@ky.gov.

(1) Provide a brief summary of:

- (a) What this administrative regulation does: This administrative regulation establishes conditions under which an employing unit shall be found to be successor to another.
- (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish when an employing unit is determined to be successor to another.
- (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 341.115(1) authorizes the secretary to adopt administrative regulations deemed necessary or suitable for the proper administration of KRS Chapter 341. KRS 341.540(2) authorizes the secretary to determine when an employing unit is determined to be successor to another.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the office in determining when an employer should be found to be successor to another.

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

- (a) How this amendment will change this existing administrative regulation: This amendment updates statutory authority and adds a definition for “negotiation.”
- (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the statutory authority and to clarify when negotiation is determined to have occurred.
- (c) How the amendment conforms to the content of the authorizing statutes: KRS 341.115(1) authorizes the secretary to amend administrative regulations deemed necessary or suitable for the proper administration of KRS Chapter 341. KRS 341.540(2) authorizes the secretary to determine when an employing unit is determined to be successor to another.
- (d) How the amendment will assist in the effective administration of the statutes: This amendment will assist the office in determining when an employer should be found to be successor to another.

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

(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 required by this amendment.
 - (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 associated with this amendment.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Employing units will have correct reserve account credited to their business and will have the correct tax rate applied.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
- (a) Initially: This administrative regulation, as amended, is not anticipated to generate any new or additional costs.
 - (b) On a continuing basis: This administrative regulation, as amended, is not anticipated to generate any new or additional costs.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: RS 341.240 provides for the establishment of the unemployment compensation administration fund and establishes that all of the money in this fund shall be expended solely to defray the cost of the administration of KRS Chapter 341.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: This administrative regulation, as amended, is not anticipated to generate any increase in fees or funding.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees associated with this administrative regulation.
- (9) TIERING: Is tiering applied? Tiering is not applied. All employing units are treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number 787 KAR 1:300

Contact Person: Buddy Hoskinson, Telephone: (502) 564-2199, Facsimile: (502) 564-7850,
Email: buddy.hoskinson@ky.gov.

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Most state and local governmental entities are subject to unemployment insurance coverage and thus are potentially affected by this administrative regulation, though in practice the incidence of successor ship between governmental entities are rare.
2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 336.015, 336.050, 341.115, 341.540, and 2021 Ky acts ch. 169 Part 1(I)(7).
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
 - a. How much revenue will the administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue.
 - b. How much revenue will the administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue.
 - c. How much will it cost to administer this program for the first year? There is no cost to this amendment.
 - d. How much will it cost to administer this program for subsequent years? There is no cost to this amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None.

Expenditures (+/-): None.

Other explanations: