

AMERICAN PAYROLL ASSOCIATION

March 20, 2020

The Honorable Jason Petrie
Chair, House Judiciary Committee
Kentucky General Assembly
702 Capital Avenue
Annex Room 313
Frankfort, KY 40601

Re: Payroll management concerns with H.B. 606, An Act Relating to Wage Payment

The American Payroll Association (APA) brings to your attention payroll management concerns in provisions of H.B. 606.

About APA

The APA is a nonprofit association serving the interests of about 20,000 payroll professionals nationwide. APA's primary mission is to educate its members and the payroll industry about the best practices associated with paying America's workers while complying with applicable federal, state, and local laws and regulations. APA members are directly responsible for calculating wages and tax withholding for their employers.

Payroll Concerns with H.B. 606

As currently written, the provisions in Section 4 amending KRS § 337.070 and requiring an employee's pay statement to include the rate of pay, basis for the rate of pay, total number of hours worked, and total amount of gross pay earned by an employee during a pay period are overly broad. These terms do not consider the following:

- For salaried employees exempt from the overtime rules under the federal Fair Labor Standards Act (FLSA), total hours worked are usually not captured by payroll systems. Instead, only exceptions to the standard workweek are recorded (e.g., vacation, personal, and sick time). The FLSA does not require employers to record the hours worked by salaried exempt employees. These new requirements become further complicated when an employer uses a monthly or semi-monthly pay period because hourly rates will vary by pay period. The salary remains the same but the number of hours in the period will vary because the number of workdays in the period will vary.

Recently, Virginia expanded its pay statement law to require the reporting of hours worked to discourage wage theft and included an exception for salaried exempt employees. The language is reprinted in this letter for your consideration.

- Employees who are paid on a per diem basis or by piece rate. Examples of these employees might include legislators, who are paid a flat amount for each day they are in session and certain positions where the pay is based on the number of processes completed (e.g., a doctor paid based on the number of patients or procedures performed or a production employee paid by the piece).

In addition, H.B. 606 does not offer payroll professionals enough time to comply. APA understands that Kentucky bills generally take effect 90 days after adjournment of the legislative session during which they are passed. However, because some of the proposed requirements will require programming changes to payroll management systems that must be developed and tested, a minimum of six months is requested. An effective date of January 1 is preferred.

To discuss APA's concerns further, please contact Alice Jacobsohn at 202-248-3901 or ajacobsohn@americanpayroll.org. Thank you for your consideration.

Sincerely,



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Cochair, APA State and Local Topics
Subcommittee



Bruce Phipps, CPP
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Carlanna Livingstone, CPP
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Cc: Representative Chris Fugate and Representative Bobby McCool

Virginia Language

Code of Virginia Title 40.1 Labor and Employment

Article 2 § 40.1-29 Time and medium of payment; withholding wages; written statement of earnings; agreement for forfeiture of wages; proceedings to enforce compliance; penalties

VA Code § 40.1-29.C. is amended to read as follows (See Virginia H.B. 689ER, effective March 10, 2020):

No employer shall withhold any part of the wages or salaries of any employee except for payroll, wage or withholding taxes or in accordance with law, without the written and signed authorization of the employee. On each regular pay date, each employer ... shall provide to each employee a written statement, by a paystub or online accounting, that shows the name and address of the employer, the number of hours worked during the pay period, if the employee is paid on the basis of (i) the number of hours worked or (ii) a salary that is less than the standard salary level adopted by regulation of the U.S. Department of Labor pursuant to § 13(a)(1) of the federal Fair Labor Standards Act, 29 U.S.C. § 213(a)(1), as amended, establishing an exemption from the Act's overtime premium pay requirements; the rate of pay, the gross wages earned by the employee during the pay period,; and the amount and purpose of any deductions therefrom. The paystub or online accounting shall include sufficient information to enable the employee to determine how the gross and net pay were calculated....