



Legislative
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HB 18-1378

**FINAL
FISCAL NOTE**

Drafting Number: LLS 18-0683 **Date:** July 20, 2018
Prime Sponsors: Rep. Danielson **Bill Status:** Postponed Indefinitely
 Sen. Donovan; Fields **Fiscal Analyst:** Erin Reynolds | 303-866-4146
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Bill Topic: EQUAL PAY FOR EQUAL WORK ACT

Summary of Fiscal Impact:

<input checked="" type="checkbox"/> State Revenue (<i>minimal</i>)	<input checked="" type="checkbox"/> TABOR Refund (<i>minimal</i>)
<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government (<i>potential</i>)
<input type="checkbox"/> State Transfer	<input checked="" type="checkbox"/> Statutory Public Entity (<i>potential</i>)

This bill would have modified the policies related to gender-based pay discrimination in Colorado by creating new standards for employers and modifying enforcement requirements for the Colorado Department of Labor and Employment. It would have also created a civil action for employees. Beginning in FY 2018-19, the bill would have increased state revenue and expenditures on an ongoing basis. The bill may have also increased expenditures for state and local governments and statutory public entities.

Appropriation Summary: In FY 2018-19, the bill would have required an appropriation of \$92,673 to the Colorado Department of Labor and Employment.

Fiscal Note Status: The fiscal note reflects the reengrossed version bill. This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

**Table 1
State Fiscal Impacts Under HB 18-1378**

		FY 2018-19	FY 2019-20
Revenue		-	-
Expenditures	Cash Funds	\$92,673	\$90,810
	Centrally Appropriated	\$17,987	\$19,417
	Total	\$110,660	\$110,227
	Total FTE	1.4 FTE	1.5 FTE
Transfers		-	-
TABOR Refund		-	-

Summary of Legislation

This bill modifies state law related to gender-based pay discrimination in Colorado.

Employer requirements. Under current law, employers are prohibited from discriminating in the amount or rate of wages based on gender. The bill clarifies that employers may not discriminate on the basis of gender, or on the basis of gender in combination with another protected status, by paying an employee of one gender a wage rate less than the rate paid to an employee of a different gender for substantially similar work, when viewed as a composite of skill, effort, and responsibility and regardless of job title. Employers are required to take additional specific anti-discrimination actions, including:

- announcing all opportunities simultaneously to all existing employees;
- disclosing hourly pay rates or salary ranges in all job listings, and hiring within that rate or range, or republishing a listing with an adjusted rate or range before selecting the pay for a prospective employee; and
- keeping records of job descriptions and wage histories for all employees during their duration of employment, plus three years after the end of employment.

An exception to the discrimination prohibition exists if the employer demonstrates that a wage differential is based upon one or more factors. Each of these factors must be demonstrated to be reasonably applied, and account for the entire wage differential; prior salary does not, by itself, justify any disparity in compensation. These factors include:

- a seniority system;
- a merit system;
- a system that measures earnings by quantity or quality of production; or
- a bona fide factor other than sex that is job-related and is consistent with a business necessity such as education, training, or experience.

Employers are prohibited from:

- discharging, discriminating, or retaliating against an employee by reason of an action taken by the employee to invoke this section on behalf of anyone, or any action taken by the employee to assist in any manner in the enforcement of this section;
- taking disciplinary action against an employee because of an inquiry, disclosure, comparison, or discussion of wages;
- requiring, as a condition of employment, an employee to disclose his or her wages; and
- requiring an employee to sign a waiver or other document prohibiting the employee from disclosing his or her wage information.

Colorado Department of Labor and Employment duties. Under current law, the director of the Colorado Department of Labor and Employment's (CDLE's) Division of Labor Standards and Statistics may inspect employer records when a complaint is made by an employee related to discrimination on the basis of gender. This bill repeals the inspection of records, and instead requires employers to take specific anti-discrimination action, as discussed above. The director must enforce these standards and may promulgate rules for this purpose. The director is authorized to investigate complaints against employers. If an employer violation is determined, fines between \$500 and \$10,000 may be assessed per violation, payable to the Employer Support Fund.

Court remedies. The bill removes CDLE's enforcement authority related to employee complaints and instead permits an aggrieved employee to bring a civil action in district court to pursue remedies specified in the bill. The bill does not preclude an employee from asserting any other available legal claims.

An employee aggrieved by a wage discrimination violation may commence a civil action in district court no later than two years after the cause of action accrues; or three years if the employer violation was willful. Civil actions apply to all wages paid, regardless of date, disclosure, and continued employment.

Employees may be awarded economic damages plus liquidated damages. If the employer demonstrates good faith, liquidated damages need not be awarded and the court may award an amount less than an amount equal to the employee's loss of pay. An employer is also liable for legal and equitable relief, which may include employment, reinstatement, promotion, pay increase, payment of lost wages, and liquidated damages. If an employee demonstrates that an employer violated the laws enforced by CDLE, the court may also order appropriate related relief.

State Revenue

The bill may minimally increase state revenue from fines and court filing fees. The revenue increase is assumed to be minimal and has not been estimated.

Employer fines. The bill allows the CDLE to assess a fine between \$500 and \$10,000 per employer violation related to pay discrimination. The fiscal note assumes that employers will comply with the law and that fine revenue will be minimal. Fines will be deposited into the Employment Support Fund in CDLE.

Court filing fees. The bill may increase revenue from filing fees by a minimal amount. For informational purposes, the filing fee in civil court is \$224. This fee is deposited into various accounts in the Judicial Department.

TABOR Refund

This bill minimally increases state revenue from fines and fees, which will increase the amount of money required to be refunded under TABOR for FY 2018-19 and FY 2019-20. Since the bill increases the TABOR refund obligation without a corresponding change in General Fund revenue, the amount of money available in the General Fund for the budget will decrease by an identical amount. State revenue subject to TABOR is not estimated for years beyond FY 2019-20.

State Expenditures

The bill increases expenditures by \$110,660 and 1.4 FTE in FY 2018-19 and \$110,227 and 1.5 FTE in FY 2019-20 and future years from the Employment Support Fund in CDLE. These costs are shown in Table 2 and discussed below.

Table 2
Expenditures Under HB 18-1378

	FY 2018-19	FY 2019-20
Department of Labor and Employment		
Personal Services	\$81,937	\$89,385
Operating Expenses and Capital Outlay Costs	\$10,736	\$1,425
Centrally Appropriated Costs*	\$17,987	\$19,417
Total Cost	\$110,660	\$110,227
Total FTE	1.4 FTE	1.5 FTE

* Centrally appropriated costs are not included in the bill's appropriation.

Colorado Department of Labor and Employment. Beginning in FY 2018-19, the bill requires 1.5 FTE Compliance Investigator to respond to complaints and conduct investigations. This amount has been prorated for the bill's effective date in the first fiscal year. Standard operating and capital outlay costs are included.

Judicial Department. To the extent that court filings increase, workload in the district courts of the Judicial Department will increase. The fiscal note assumes that employers will comply with the law and that this impact can be accomplished within existing appropriations. For informational purposes, the court would have to see at least 549 new civil cases to require an additional FTE Judicial Officer.

All state agencies. To the extent that a state employee files a civil claim under the bill, an affected state agency would have increased costs to litigate and/or settle the claim. Additional appropriations will be requested through the annual budget process on an as needed basis.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be \$17,987 in FY 2018-19 and \$19,417 in FY 2019-20.

Local Government, School District, and Statutory Public Entity

Similar to the state, if an employee of a local government, school district, special district, or statutory public entity files a civil claim under the bill, these entities may see increased costs. Any increases have not been estimated, but are assumed to be minimal.

Effective Date

The bill was postponed indefinitely by the Senate State, Veterans, and Military Affairs Committee on May 4, 2018.

State Appropriations

The bill includes an appropriation of \$85,034 and an allocation of 1.2 FTE from the Employment Support Fund to the Department of Labor and Employment. It requires an appropriation of \$92,673 and an allocation of 1.4 FTE from the Employment Support Fund to the Department of Labor and Employment.

State and Local Government Contacts

Counties	District Attorneys	Information Technology
Judicial	Labor	Law
Municipalities	Personnel	Special Districts