



Legislative  
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*Nonpartisan Services for Colorado's Legislature*

**HB 20-1089**

# FINAL FISCAL NOTE

**Drafting Number:** LLS 20-0736  
**Prime Sponsors:** Rep. Melton

**Date:** May 1, 2020  
**Bill Status:** Postponed Indefinitely  
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**Bill Topic:** **EMPLOYEE PROTECTION LAWFUL OFF-DUTY ACTIVITIES**

**Summary of Fiscal Impact:**

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

The bill would have clarified that it is unlawful for an employer to terminate an employee for engaging in any activity that is legal under state law while off duty. The bill may have increased state workload beginning in FY 2020-21.

**Appropriation Summary:** No appropriation would have been required.

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

## Summary of Legislation

The bill clarifies that it is unlawful for an employer to terminate an employee for engaging in any activity that is legal under state law, regardless of its legal status under federal law, while off the premises of the workplace and during non-working hours. Under current law, an employer may restrict such activity if it relates to a bona fide occupational requirement or is related to employment activities of a particular employee or group of employees, or to avoid a conflict of interest.

## Background

Under current law, it is unlawful to terminate an employee for engaging in any lawful activity, while off duty. However, the statute does not currently specify with which jurisdiction (state, local, or federal) to judge the lawfulness of the activity.

The drug and alcohol policy for Colorado state employees requires that employees refrain from reporting to work while their ability to perform job duties is impaired due to on- or off-duty use of alcohol or other drugs. All covered workers are prohibited from testing positive for metabolites of substances that are listed in the schedules of the Federal Controlled Substances Act and the State of Colorado Controlled Substances Act. Employees in violation of the policy may be referred for mandatory treatment and may be subject to personnel action.

**State Expenditures**

The bill may increase state workload beginning in FY 2020-21.

**Judicial Department.** Employee terminations in violation of the bill could lead to additional district level civil case filings in trial courts. A small increase in caseload can be accomplished within existing appropriations.

**Department of Personnel and Administration.** The bill may increase the number of appeals cases the Office of Administrative Courts would hear. A small increase in caseload can be accomplished within existing appropriations.

**Effective Date**

This bill was postponed indefinitely by the House Business Affairs and Labor Committee on February 19, 2020.

**State and Local Government Contacts**

Information Technology  
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Judicial  
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