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REVISED FISCAL NOTE

(replaces fiscal note dated June 2, 2020)

Drafting Number: LLS 20-1189 Date: June 9, 2020
Prime Sponsors: Sen. Fenberg; Bridges Bill Status: House Health & Insurance
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Bill Topic: SICK LEAVE FOR EMPLOYEES

- Summary of Fiscal Impact: State Revenue, State Expenditure, State Transfer, TABOR Refund, Local Government, Statutory Public Entity

The bill creates the Healthy Families and Workplace Act, which requires employers to provide paid sick leave to employees. The bill will increase state revenue and state and local expenditures on an ongoing basis.

Appropriation Summary: In FY 2020-21, the bill requires and includes an appropriation of \$206,566 to the Department of Labor and Employment.

Fiscal Note Status: The fiscal note reflects the reengrossed bill.

Table 1 State Fiscal Impacts Under SB 20-205

Table with 3 columns: Category, FY 2020-21, FY 2021-22. Rows include Revenue, Expenditures* (General Fund, Centrally Appropriated, Total), Total FTE, Transfers, and TABOR Refund.

* State agencies and institutions of higher education may incur costs under the bill, including use of sick leave, eligibility of seasonal and temporary employees for sick leave, sick leave accruals by part-time employees, and leave tracking system updates. These costs have not been included in this fiscal note and will be addressed through the annual budget process as necessary.

Summary of Legislation

The bill creates the Healthy Families and Workplace Act and requires that all employers in Colorado provide paid sick leave to each employee. Beginning January 1, 2021, all employers in Colorado must provide one hour of paid sick leave for every 30 hours worked, up to a maximum of 48 hours per year. Employees begin accruing paid sick leave when employment begins, or may receive all hours up front, and may use that leave as it is accrued. Employees are permitted to carry accrued sick leave forward to use in the future, but the employer is not required to allow employees to accrue or take more than 48 hours in a 12-month period. An employee may use paid sick leave in hourly increments. The employee must make a good faith effort to provide notice of any paid sick leave. Employers may request documentation for absences longer than four consecutive days.

Use of leave. Paid sick leave may be used for:

- the employee's own health or health care or that of a member of the employee's family (which is expanded to include another person related by blood, marriage, civil union, or adoption; foster or legal guardianship; or any person whom the employee is responsible for providing or arranging health-related care);
- absences related to specified incidences of domestic abuse, sexual assault, or harassment; or
- when a public official has ordered the closure of the employee's workplace, or the school or child care facility of the employee's child, due to a public health emergency.

Employers are not required to pay out unused sick leave balances. However, if a terminated employee returns to work with the same employer within a six-month period, that employer is required to reinstate any uncompensated, accrued sick leave balances for that employee.

Paid sick leave during a public health emergency. The bill requires employers to provide employees with additional paid leave during a public health emergency as defined in the bill. Employers must provide employees who normally work 40 or more hours a week with at least 80 hours of additional paid sick leave. For employees that work less than 40 hours a week, employers must provide additional paid sick leave in the amount of time the employee is scheduled to work in a 14-day period or the amount of time the employee actually works on average in a 14-day period. Employees may only use the leave once during a declared public health emergency, and employees may use this additional leave for up to a month after the end or suspension of a public health emergency. Employers must provide this additional sick leave for absences that are listed in the bill; however, employers may require employees to use other available paid sick leave provided by the employer before using public health emergency paid sick leave.

Notice. Employers are required to notify employees of the amount of paid sick leave to which they are entitled and the terms of its use. The Colorado Department of Labor and Employment (CDLE) is required to create and make available posters and notices outlining the paid sick leave policy for use by employers. An employer who willfully violates these requirements is subject to a civil fine not to exceed \$100 per separate violation. Fines are credited to the General Fund.

Employee rights and civil actions. Employees are not required to disclose the details of medical conditions or absences related to abuse. An employer is prohibited from retaliating against any attempt by an employee to exercise his or her rights under the bill or from counting paid sick leave used by an employee as an absence that may lead to or result in disciplinary action. Employers may take disciplinary action against employees that use sick leave for anything other than the purposes outlined in the bill.

Enforcement. Employers are required to retain records documenting hours worked, paid sick leave accrued, and paid sick leave used for each employee for a three-year period. Employers are to provide reasonable access to records for monitoring by the CDLE. The CDLE is provided with rulemaking authority and is given jurisdiction over enforcement of the bill's requirements. Any findings, awards, or orders issued by the CDLE are subject to judicial review.

COVID-19 related sick leave. Through December 31, 2020, every Colorado employer must provide paid sick leave as required under the federal Families First Coronavirus Response Act.

Background

Thirteen states have enacted paid sick time laws requiring private sector employers to provide employees with a certain amount of paid sick time. The laws in six of these states apply to all private sector employers, while the other laws apply to those with more than 10 to 15 employees. These laws allow employees to accrue one hour of paid sick time for every 30 to 52 hours worked, which can be used after a typical waiting period of 90 days. For more information about paid sick leave laws in other states, see Legislative Council Staff's issue brief on Family, Medical, and Sick Leave Laws:

http://leg.colorado.gov/sites/default/files/paid_family_leave_laws_issue_brief_-_march_2020_update.pdf

The federal Families First Coronavirus Response Act expands the U.S. Family and Medical Leave Act of 1993 to allow certain employees to take leave to care for their child while school or childcare is closed due to COVID-19. Leave taken in excess of ten days must be paid. The law also requires employers to provide up to two weeks of paid sick leave for any employees unable to work due to circumstances related to COVID-19. The law applies to employers with 500 or fewer employees, though those with 50 or fewer employees may qualify for an exemption. Employers are eligible for certain tax credits based on leave wages paid. These provisions are in effect through December 31, 2020. For more information on federal legislation passed in response to the COVID-19 disaster emergency, see Legislative Council Staff's memorandum on recent federal legislation:

<http://leg.colorado.gov/publications/updated-summary-federal-legislation-passed-response-covid-19-20-11>

Assumptions

The fiscal note assumes that CDLE will handle 480 paid sick leave complaints per year, with 25 percent of those claims (120 claims) requiring a full investigation. This fiscal note assumes that complaints take an average of 40 hours to complete.

State Revenue

Beginning in FY 2020-21, this bill may increase revenue credited to the General Fund as a result of any civil fines. The bill authorizes fines of up to \$100 for an employer that willfully violates the requirements of the bill. In addition, to the extent the bill increases civil case filings, state revenue will increase.

State Expenditures

The bill increases state General Fund expenditures by \$249,566 and 2.7 FTE in FY 2020-21 and \$298,196 and 3.5 FTE in FY 2021-22 and future years. In addition, the bill may increase workload of other state agencies and institutions of higher education. These costs are shown in Table 2 and discussed below.

**Table 2
Expenditures Under SB 20-205**

	FY 2020-21	FY 2021-22
Department of Labor and Employment		
Personal Services	\$177,851	\$237,134
Operating Expenses	\$3,915	\$4,725
Capital Outlay Costs	\$24,800	-
Centrally Appropriated Costs*	\$43,000	\$56,337
Total Cost	\$249,566	\$298,196
Total FTE	2.7 FTE	3.5 FTE

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

Department of Labor and Employment. CDLE requires 3.0 FTE compliance investigator staff and 0.5 FTE hearing officer to handle the 480 annual complaints. Staff will implement and manage the program, analyze and investigate complaints, and handle appeals. Rulemaking and other legal services costs will be required to resolve disputes and address any cases that are appealed to the district court. If the volume or complexity of cases exceed the estimate, this fiscal notes assumes these impacts will be addressed through the annual budget process. First-year costs are prorated to reflect the General Fund paydate shift and a September 1 hire date.

Legal services. Under the bill, the CDLE will require up to 100 hours of legal services, provided by the Department of Law. This minimal increase in legal services costs will be accounted for through the annual budget process, with the Department of Law billing client agencies based on their historical utilization of legal services. Therefore, no change in appropriations is required in this bill.

Judicial Department. This bill may increase trial court workload for judicial review of paid sick leave cases decided by the CDLE. In addition, the bill will increase costs for the Judicial Department by approximately \$18,000 to provide sick leave for contract employees. These costs can be accomplished within existing appropriations.

All other state agencies and institutions of higher education. State agencies and institutions of higher education may incur several costs related to this bill, including use of sick leave, eligibility of seasonal and temporary employees for sick leave, sick leave accruals by part-time employees, and leave tracking system updates. This fiscal note assumes any affected agency will request additional funding through the annual budget process as necessary. These potential cost increases are discussed further below:

- **Use of sick leave.** The bill may expand the reasons for which sick leave may be used. To the extent that absences require the hiring of temporary personnel or other employees are granted overtime to cover missed shifts, costs will increase. This increase is expected to vary by state agency and institution of higher education, and may be higher in agencies that are required to be staffed 24-hours a day, such as the Department of Corrections or Department of Human Services.
- **Seasonal and temporary employees.** The bill makes paid sick leave available to seasonal and temporary employees who are currently ineligible under state leave policies. The impact of this is indeterminate, but has the potential to be significant in some agencies with a high number of seasonal and/or temporary employees, such as the Department of Natural Resources. For example, several institutions of higher education have identified potential costs ranging from \$250,000 to \$8.0 million to provide sick leave for temporary or part-time student employees.
- **Sick leave accruals by part-time employees.** For certain part-time employees, current leave accruals may be less than those required by the bill. This analysis assumes that this will increase workload to update leave accrual calculations and, to the extent that granting additional paid sick leave allows these employees to be out of the office more frequently, it may either increase costs or workload for other staff to backfill those duties.
- **Leave tracking system.** The state is currently implementing and updating a centralized leave tracking system. It is unknown at this time how the bill may impact this project.

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 \$43,000 in FY 2020-21 and \$56,337 in FY 2021-22.

Local Government

Similar to state agencies, local governments (including counties, municipalities, special districts, school districts, and other political subdivisions of the state) and statutory public entities may experience cost increases related to the use of sick leave, eligibility of seasonal and temporary employees, sick leave accruals by part-time employees, and leave tracking system updates. These impacts have not been estimated.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

In FY 2020-21, the bill requires and includes a General Fund appropriation of \$206,566 to the Department of Labor and Employment and 2.7 FTE.

State and Local Government Contacts

Counties
Information Technology
Labor
Natural Resources
School Districts

Corrections
Human Services
Law
Personnel
Special Districts

Higher Education
Judicial
Municipalities
RTD
Transportation