



Legislative Council Staff
Nonpartisan Services for Colorado's Legislature

Fiscal Note

Drafting Number: LLS 21-0490 **Date:** February 16, 2021
Prime Sponsors: Rep. Gray; Van Winkle **Bill Status:** House Business
 Sen. Bridges; Cooke **Fiscal Analyst:** Erin Reynolds | 303-866-4146
 Erin.Reynolds@state.co.us

Bill Topic: WORKERS' COMPENSATION

Summary of Fiscal Impact:

<input checked="" 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 checked="" type="checkbox"/> Statutory Public Entity

The bill makes various changes and clarifications to the Workers' Compensation Act of Colorado. It increases expenditures for the state and a statutory public entity and potentially increases state revenue beginning in FY 2021-22.

Appropriation Summary: No appropriation is required.

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

Table 1
State Fiscal Impacts Under HB 21-1050

		Budget Year FY 2021-22	Out Year FY 2022-23
Revenue		-	-
Expenditures	Various Funds ¹	\$170,000	\$170,000
Transfers		-	-
TABOR Refund		-	-

¹ First-year costs are assumed to be absorbed by the risk management pool. In subsequent years, General Fund, cash funds, and federal funds will be reappropriated from state agencies to the risk management pool based on actual claims data.

Summary of Legislation

The bill makes various changes and clarifications to the Workers' Compensation Act of Colorado. Specifically, the bill:

- adds guardian ad litem and conservator services in the list of medical aid that an employer is required to provide to an employee incapacitated as a result of a work-related injury or occupational disease;
- requires an injured worker who is claiming mileage reimbursement related to obtaining medical care to submit the claim within 120 days of incurring the expense, and requires the employer or insurer to pay or dispute the mileage within 30 days after submission;
- clarifies that offsets to disability benefits granted by the federal "Old-Age, Survivors, and Disability Insurance Amendments of 1965" only apply if the payments were not already being received by the employee at the time of the work-related injury;
- prohibits the reduction of an employee's temporary disability or medical benefits based on apportionment, limits apportionment of permanent impairment to specific situations, and declares that the employer or insurer bears the burden of proof at an apportionment hearing regarding a reduction in permanent impairment or permanent total disability benefits;
- adds the following conditions that must be met for an employer or insurer to request the selection of an independent medical examiner when an authorized treating physician has not determined that the employee has reached maximum medical improvement (MMI):
 - an examining physician must have examined the employee at least 20 months after the date of the injury;
 - have determined that the employee has reached MMI, and have served a written report to the authorized treating physician specifying that the examining physician has determined that the employee has reached MMI; and
 - the authorized treating physician must have responded that the employee has not reached MMI or must have failed to respond within 15 days after service of the report;
- lowers the whole person impairment rating threshold for combined temporary disability and permanent partial disability payment caps;
- clarifies when benefits and penalties payable to an injured worker are deemed paid;
- prohibits an employer or insurer from withdrawing an admission of liability when two years or more have passed since the date the admission of liability on the issue of compensability was filed, except in cases of fraud;
- prohibits the director of the Division of Workers' Compensation or an administrative law judge from determining issues of compensability or liability unless specific benefits or penalties are awarded or denied at the same time;
- clarifies the scope of authority of prehearing administrative law judges;
- increases the threshold amount that an injured worker must earn in order for permanent total disability payments to end, and allows for annual adjustment to the threshold beginning in 2022; and
- clarifies the types of orders from the Division of Workers' Compensation, Industrial Claims Appeals Panel, or administrative law judge that are subject to review or appeal and where such filings are made.

Background

The Risk Management Program in the Department of Personnel and Administration (DPA) protects the state's human resource and property assets through the administration of liability, property, and workers' compensation coverage for state agencies. The workers' compensation program is used to pay workers' compensation benefits to state employees. The state is self-insured for workers' compensation claims. Annually, the Risk Management program's actuary projects the state's total workers' compensation needs by analyzing prior year's losses. Using this same data, the actuary then estimates the allocation for each agency as a percent of the total (including each institution of higher education).

State Revenue

Beginning in FY 2021-22, state revenue to the trial courts in the Judicial Department may increase by a minimal amount due to additional conservator and guardianship filings. This revenue is subject to TABOR.

State Expenditures

Beginning in FY 2021-22, the bill increases expenditures in the DPA by an estimated \$170,000 per year for increased benefit payments and costs. In the first year, this cost is assumed to be absorbed by the risk management pool. In subsequent years, General Fund, cash funds, and federal funds will be reappropriated from state agencies to the risk management pool based on actual claims data.

Department of Personnel and Administration. Under current law, a claimant whose impairment rating is 25 percent or lower faces a cap on their combined temporary disability and permanent partial disability payments of \$75,000, and a claimant with an impairment rating greater than 25 percent is subject to a cap of \$150,000. The bill lowers the impairment rating threshold to 19 percent, which will increase benefit payouts. Assuming the DPA workers' compensation caseload remains similar to calendar year 2019, the bill will increase cash fund expenditures by \$155,000 beginning in FY 2021-22.

The bill also makes changes to the appeal process for dissatisfied parties in a workers' compensation case. These changes will increase cash fund expenditures in the DPA by \$15,000 for additional transcription and legal services.

Additionally, the Office of Administrative Courts in the DPA will have an increase in workload if the number of workers' compensation hearings increase. A small increase in caseload can be accomplished within existing resources.

Judicial Department. The bill may increase workload for trial courts due to the bill's new requirement that employers or the employer's insurer must provide guardian ad litem or conservator services. This workload increase can be accomplished within existing appropriations.

TABOR refunds. Under the December 2020 Legislative Council Staff Economic and Revenue Forecast, the state is not expected to collect revenue above the TABOR limit in either FY 2021-22 or FY 2022-23, and refund obligations are not anticipated for these years. This bill does not change these expectations concerning refunds to taxpayers.

Statutory Public Entity

This bill will increase the benefits paid to injured workers by Pinnacol Assurance. Any increase in benefit payments will be offset through premiums charged to employers.

Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed, and applies on or after this date to workers' compensation claims pending or filed, applications for hearings regarding apportionment filed, initial admissions of liability on the issue of compensability filed, and to injuries that occur.

State and Local Government Contacts

Information Technology
Personnel

Judicial
Pinnacol Assurance

Labor