



Legislative Council Staff
Nonpartisan Services for Colorado's Legislature

Fiscal Note

Drafting Number: LLS 23-0061 Date: February 20, 2023
Prime Sponsors: Sen. Danielson; Buckner Bill Status: Senate Business
Rep. Gonzales-Gutierrez; Bacon Fiscal Analyst: Bill Zepernick | 303-866-4777
bill.zepernick@coleg.gov

Bill Topic: ENSURE EQUAL PAY FOR EQUAL WORK

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

The bill requires the Colorado Department of Labor and Employment to investigate and take enforcement action regarding complaints alleging violations of state pay equity laws, and makes updates to job posting and employee notification requirements for employers when hiring and promoting staff, including to specify that such posting and notices are not required in instances of career development or career progression. The bill increases state expenditures, minimally impacts state revenue, and impacts workload for local governments and other public entities on an ongoing basis.

Appropriation Summary: For FY 2023-24, the bill requires an appropriation of \$1.5 million to multiple state agencies.

Fiscal Note Status: The fiscal note reflects the introduced bill. Due to time constraints, it is preliminary and may be updated as additional information becomes available.

Table 1
State Fiscal Impacts Under SB 23-105

Table with 4 columns: Category, Sub-category, Budget Year FY 2023-24, and Out Year FY 2024-25. Rows include Revenue, Expenditures (General Fund, Cash Funds, Centrally Appropriated, Total Expenditures, Total FTE), Transfers, and Other Budget Impacts (General Fund Reserve).

Summary of Legislation

The bill makes several changes to state law related to the enforcement of pay equity statutes and the requirements on employers when filling positions and promoting staff, as outlined below.

Investigation and enforcement. The bill requires the director of the Department of Labor and Employment (CDLE) to investigate complaints regarding violations of Colorado’s pay equity statutes, follow leads regarding such violations, order compliance and relief upon finding a violation, and promulgate rules to enforce these provisions of law. In addition, the bill extends the maximum period for which a person pursuing a wage discrimination complaint may receive back pay to six years, from three years under current law.

Hiring and promotion. Under current law, employers are required to provide notice to all employees about opportunities for promotion and include salary and benefit information when posting a job opening. This bill defines “promotional opportunity” and “job opportunity,” and requires employers to send notice of both types of opportunities to employees, not only promotional opportunities.

Career development and progression. The bill defines “career development” and “career progression” and specifies that the job posting and employee notification requirements under current law and under the bill do not apply to these situations. For positions with career progression, the employer must disclose the requirements for career progression to eligible employees, including the terms of compensation, benefits, status, duties, and access to further advancement.

Application window and competitive hiring. In cases where the employer is interviewing candidates, or formally or informally considering more than one candidate, for a job opportunity or promotion opportunity, the job posting and the notice to employees must state the date when the application window is closing, which must be at least five days after the notice is given. In situations involving multiple candidates, the employer must, in good faith, use a competitive hiring process.

Notice to employees when filling job and promotion opportunities. Lastly, after a selected candidate for a job or promotional opportunity begins work, the bill requires the employer to provide notice to employees of certain information about the selected candidate, including the candidate’s name and former title if previously employed with the employer, as well as how an employee can demonstrate their interest in similar positions in the future, including contacts to whom an employee can express their interest.

Background

Senate Bill 19-085 removed the authority of the CDLE to take enforcement action for gender-based wage discrimination complaints and instead allowed a person to pursue a civil action within two years of an alleged violation and authorized the CDLE to establish rules to accept and mediate these types of complaints. The CDLE did not establish such a process and does not currently accept these type of complaints. CDLE currently enforces other provision of SB 19-085, including requirements around pay transparency in job postings and notifications regarding promotion opportunities, which are expanded by the current bill.

State Revenue

The bill may increase state cash fund revenue from employer penalties to the Wage Theft Enforcement Fund. Overall, any revenue is expected to be minimal as the Colorado Wage Act encourages the CDLE to waive most fines assessed against employers if the employer complies with the law. Any revenue reduction from court filing fees is also expected to be minimal.

State Expenditures

The bill increases state expenditures by \$1.9 million in FY 2023-24 and \$1.8 million in FY 2024-25 and future years, paid from the General Fund and cash funds. These costs, which are summarized in Table 2 and described below, are for:

- a new wage discrimination investigation and enforcement unit in the CDLE;
- central human resource support and resources for state agencies in the Department of Personnel and Administration (DPA); and
- additional human resource staff in state agencies to respond to wage complaints and provide certain new notices under the bill.

Table 2
State Expenditures Under SB 23-105

	FY 2023-24	FY 2024-25
Department of Labor and Employment		
Personal Services	\$580,994	\$594,020
Operating Expenses	\$29,096	\$29,366
Capital Outlay Costs	\$46,690	-
Legal Services	\$95,166	\$95,166
Document, Evidence, and Translation Services	\$15,000	\$15,000
Travel	\$4,720	\$4,720
Centrally Appropriated Costs ¹	\$168,942	\$173,685
FTE – Personal Services	6.5 FTE	6.7 FTE
FTE – Legal Services	0.5 FTE	0.5 FTE
CDLE Subtotal	\$940,608	\$911,957
Department of Personnel and Administration		
Personal Services	\$266,546	\$290,777
Operating Expenses	\$4,860	\$5,400
Capital Outlay Costs	\$26,680	-
Centrally Appropriated Costs ¹	\$64,622	\$71,298
FTE – Personal Services	3.6 FTE	4.0 FTE
DPA Subtotal	\$362,708	\$367,475

**Table 2 Cont.
State Expenditures Under SB 23-105**

Statewide HR Impacts (All Agencies)		
Personal Services	\$388,908	\$424,263
Operating Expenses	\$8,235	\$9,045
Capital Outlay Costs	\$46,690	-
Centrally Appropriated Costs ¹	\$103,610	\$113,529
FTE – Personal Services	6.1 FTE	6.7 FTE
Statewide HR Subtotal	\$547,443	\$546,837
Total	\$1,850,759	\$1,826,269
Total FTE	16.7 FTE	17.9 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

Department of Labor and Employment

To create a new investigation and enforcement unit for wage discrimination complaints, the CDLE will have costs of about \$0.9 million per year for additional staff, legal services, various document, evidence, and translation services, and travel costs, as described below. These costs are assumed to be paid from the Employment Support Fund.

Assumptions. According to the CDLE, between 2,000 to 3,000 pay discrimination lawsuits are filed annually. It is assumed that a significant portion of these cases will pursue enforcement actions through the new process established in this bill, whether in addition to, or in place of, pursuing a civil action. The exact number of complaints is unknown, as the criteria that the CDLE will use to prioritize cases have not been established. The fiscal note assumes staffing levels necessary to establish this unit; additional staff may be required based on the actual number of complaints received.

Staffing. Based on the assumptions above, the CDLE will require about 6.7 FTE on an ongoing basis for staff in the new unit. This staff will include a unit manager, program assistant, and compliance investigators. Given the nature of this work, an economist is also required to process and evaluate wage data. An administrative law judge and legal assistant are required to mediate cases, issue enforcement orders, and respond to appeals. Standard operating and capital outlay costs are included for this staff, as well as licenses for standard software used by the Division of Labor Standards and Statistics. FTE and costs are prorated for an August 2023 start date.

Legal services. It is estimated that the CDLE will require about 900 hours per year of legal services, provided by the Department of Law at a cost of \$105.74 per hour. In the first year, legal services will include support for rulemaking; ongoing legal service needs reflect the need for both general counsel and complaint-specific support. The Department of Law requires reappropriated funds and 0.5 FTE for this work.

Other costs. The CDLE will have a variety of other costs to operate the unit, including cost for document management, evidence processing, postage, and translation and interpretation services.

Together, these items are estimated to cost around \$15,000 per year. In addition, staff travel will cost around \$4,700 per year, based on staff reimbursement for 8,000 miles of travel in a personal vehicle.

Department of Personnel and Administration

Staffing. The DPA will have costs of about \$365,000 per year and require 4.0 FTE to support state agencies involves in wage-related complaints and to train state agencies on the requirements of the bill. Specifically, 1.0 FTE for an HR specialist is required to provide support regarding pay equity analysis and department inquiries, 2.0 FTE of data management staff are required to process data and prepare reports, both centrally and in support of state agencies, and 1.0 FTE for training staff is required to train state agencies and supervisors on the requirements of the bill regarding employee notices and other requirements under the bill. Standard operating and capital outlay costs are included for these staff, and costs are prorated for an August 2023 start date. These costs are assumed to be paid from the General Fund.

Risk management costs. By extending the maximum period that a person may receive back pay from three years to six years, persons with a successful wage discrimination claim against a state agency will be able to recoup a larger settlement. Such employment settlements are paid from the Risk Management Fund in the DPA, which is supported by common policy assessments paid by state agencies based on prior settlements and actuarial analysis. Given that the current two-year statute of limitation on wage discrimination complaints is not changed by the bill, it is assumed that larger settlements, if they are incurred, will not impact the Risk Management Fund for several years, and will be addressed through the annual budget process as more information becomes available based on the number of cases, case outcomes, and the agencies involved.

Statewide Human Resource Staffing

The bill will create the need for additional human resource staffing in across state agencies, equal to about 6.7 FTE statewide. This staffing is estimated to increase costs by about \$545,000 per year starting in FY 2023-24. Costs are paid from both General Fund and cash funds. This workload is driven primarily from increased complaints involving state employees through the new process in the CDLE, as well as additional workload associated with hiring and promoting staff. These impacts are described below. Appendix A provides a breakdown of these estimated costs by agency.

Wage complaints. It is assumed that state employees will use the new process established in the CDLE to investigate and enforce wage complaints. It is assumed that about 40 additional wage complaints will be filed with the CDLE by state employees each year. On the low end, smaller agencies will likely receive 0 or 1 complaints in any given year. At the high end, agencies with large number of staff, such as the Department of Human Services and Department of Corrections, may receive around 6 to 8 complaints per year. Each complaint is assumed to require, on average, 300 hours of staff time to investigate and respond. The amount of time per complaint will vary depending on the nature of the allegation and how far it proceeds through the CDLE's enforcement process. Complaints account for most of the impact to state agency human resource operations described in this section.

Posting and notice requirements. The fiscal note uses current turnover rates and staffing levels to estimate the likely number of vacancies in each state agency that might result in a job opportunity or promotion opportunity under the bill. Each vacancy is assumed to take an additional 15 minutes of

staff time, on average, to ensure that all job opportunities are shared internally with employees and to send the required notice within five days after filling the position. To the extent that some state agencies are currently posting or sending notice to employees about staff changes that are classified as “career progression” or “career development” under the bill, workload will be decreased and may offset some of the estimated staff time for other duties under the bill.

Career progression. It is assumed that the various aspects of the state personnel system, including [pay plans](#) and [descriptions of classified positions by level](#), are sufficient for state agencies to meet the disclosure requirements of the bill concerning career progression. Workload may increase to the extent that individual departments develop more detailed information for their staff about the requirements for career progression.

Other Agency Impacts

Given their relatively smaller size and nature of operations, it is assumed that the Legislative and Judicial Departments can comply with the requirements of the bill within existing appropriations. The reduction in civil cases filed in the trial courts as a result of the CDLE hearing process is not expected to require a reduction in appropriations. The bill will also impact institutions of higher education. Additional information on impacts to these institutions may be added in a subsequent revision to this fiscal note.

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 include employee insurance, supplemental employee retirement payments, and, in the case of the CDLE, leased space for new staff. These costs are shown in Table 2 above.

Other Budget Impacts

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1, decreasing the amount of General Fund available for other purposes.

Local Government and Statutory Public Entity Impacts

Similar to the state impacts described above, local governments—including counties, municipalities, special districts, and school districts—and statutorily created public entities—such as PERA, Connect for Health Colorado, Pinnacle Assurance, the Colorado Housing Finance Authority, to name only a few—will have increased costs to adjust hiring processes for job and promotional opportunities, to ensure that required information is included and shared with employees, and to address any employee wage complaints filed with the CDLE. To the extent local governments and public entities no longer post jobs and provide notice in situations classified as career progression and career development under the bill, workload may decrease and offset other impacts under the bill.

Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed. The provisions of Section 8-5-201, C.R.S., as amended by the bill, apply to promotions, career progressions, and career developments that take place on or after this effective date.

State Appropriations

For FY 2023-24, the bill requires the following appropriations:

- \$771,666 to the CDLE from the Employment Support Fund, and 6.5 FTE. Of this amount, \$95,166 is reappropriated to the Department of Law for legal services, with an additional 0.5 FTE;
- \$298,086 to the DPA from the General Fund, and 3.6 FTE; and
- \$443,833 to various state agencies for human resource staff, including \$363,798 General Fund and \$80,036 from cash funds (see Appendix A).

Departmental Differences

State agencies have indicated several differences with the fiscal note, as follows.

Department of Labor and Employment. The CDLE requests that the General Fund be used to enforce the bill's labor standards. The federal Department of Labor has determined that certain spending from the Employer Support Fund is not in compliance with federal law. Until the fund is back into compliance, the CDLE prefers not to make additional expenditures from this fund. The fiscal note assumes that these administrative costs constitute allowable uses of the Employer Support Fund.

Department of Personnel and Administration. The DPA estimates that the bill requires 8.0 FTE, including three human resource specialists, three data management analysts, and two trainers. The fiscal note assumes that the work required of the department can be conducted with fewer staff.

Statewide human resource staffing. The DPA estimates that the statewide impact of the bill on agency human resource staff will be at least \$2.5 million and 25 FTE in FY 2023-24 and at least \$1.9 million and 20 FTE in FY 2024-25 and ongoing. The fiscal note includes lower estimates for the amount of work required to post jobs and send notices, and assumes no additional review of state job classifications are required under the bill. The fiscal note also uses the lower end of the DPA estimate for time spent by state agency staff addressing each wage complaints and assumes about 16 fewer cases per year. Lastly, the fiscal note assumes the minimum salary for new state agency human resource staff, rather than the classification midpoint salary.

State and Local Government Contacts

Counties	District Attorneys	Information Technology	Judicial
Labor	Higher Education	Law	Legislature
Personnel	Regulatory Agencies		

The revenue and expenditure impacts in this fiscal note represent changes from current law under the bill for each fiscal year. For additional information about fiscal notes, please visit: leg.colorado.gov/fiscalnotes.

**Appendix A
State Agency Human Resource Staffing Under SB 23-105
FY 2023-24 Appropriations**

Agency	FTE	Personal Services	Capital Outlay	Operating Expenses	Total²	General Fund	Cash Funds
Agriculture	0.1	\$6,376	\$765	\$135	\$7,276	\$7,276	\$0
Corrections	1.2	\$76,507	\$9,185	\$1,620	\$87,311	\$87,311	\$0
Education	0.2	\$12,751	\$1,531	\$270	\$14,552	\$14,552	\$0
Governor's Office	0.3	\$19,127	\$2,296	\$405	\$21,828	\$21,828	\$0
Health Care Policy & Financing	0.2	\$12,751	\$1,531	\$270	\$14,552	\$14,552	\$0
Human Services	0.9	\$57,380	\$6,889	\$1,215	\$65,484	\$65,484	\$0
Labor & Employment	0.4	\$25,502	\$3,062	\$540	\$29,104	\$29,104	\$0
Law	0.2	\$12,751	\$1,531	\$270	\$14,552	\$14,552	\$0
Natural Resources	0.5	\$31,878	\$3,827	\$675	\$36,380	\$0	\$36,380
Personnel & Administration	0.2	\$12,751	\$1,531	\$270	\$14,552	\$14,552	\$0
Public Health & Environment	0.5	\$31,878	\$3,827	\$675	\$36,380	\$36,380	\$0
Public Safety	0.5	\$31,878	\$3,827	\$675	\$36,380	\$36,380	\$0
Regulatory Agencies	0.1	\$6,376	\$765	\$135	\$7,276	\$0	\$7,276
Revenue	0.3	\$19,127	\$2,296	\$405	\$21,828	\$21,828	\$0
Transportation	0.5	\$31,878	\$3,827	\$675	\$36,380	\$0	\$36,380
Total	6.1	\$388,908	\$46,690	\$8,235	\$443,833	\$363,798	\$80,036

¹ The Departments of Early Childhood, Higher Education, Local Affairs, Military and Veterans Affairs, State, and Treasury, as well as the Legislative and Judicial Departments, are assumed to require less than 0.1 FTE and are excluded from this table.

² The total excludes centrally appropriated costs.