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Revised Fiscal Note

(replaces fiscal note dated February 20, 2023)

Drafting Number: LLS 23-0061 Date: March 17, 2023
Prime Sponsors: Sen. Danielson; Buckner Bill Status: Senate Appropriations
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Bill Topic: ENSURE EQUAL PAY FOR EQUAL WORK

- Summary of Fiscal Impact: [X] State Revenue [X] TABOR Refund
[X] State Expenditure [X] Local Government
[X] 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 \$550,805 to multiple state agencies.

Fiscal Note Status: This revised fiscal note reflects the introduced bill, as amended by the Senate Business, Labor, and Technology Committee.

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. The bill excludes employees of the State of Colorado from the CDLE investigations process.

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.

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 who will regularly be working with the selected candidate within 30 days of the person starting work in the position. Information in the notice must include 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 about \$0.7 million in FY 2023-24 and \$1.2 million in FY 2024-25 and future years, paid from the General Fund and cash funds. These costs, summarized in Table 2, are for the creation of a new wage discrimination investigation and enforcement unit in the CDLE, as well as central human resource support and training in the Department of Personnel and Administration (DPA). The bill also impacts workload for human resource staff and hiring managers across state agencies and institutions of higher education. These impacts are discussed in more detail below.

Table 2
State Expenditures Under SB 23-105

	FY 2023-24	FY 2024-25
Department of Labor and Employment		
Personal Services	\$297,664	\$555,536
Operating Expenses	\$13,299	\$25,788
Capital Outlay Costs	\$46,690	-
Legal Services	\$63,444	\$95,166
Document, Evidence, and Translation Services	\$7,500	\$15,000
Travel	\$2,360	\$4,720
Centrally Appropriated Costs ¹	\$124,534	\$221,376
FTE – Personal Services	3.4 FTE	6.2 FTE
FTE – Legal Services	0.3 FTE	0.5 FTE
CDLE Subtotal	\$555,491	\$917,586
Department of Personnel and Administration		
Personal Services	\$97,813	\$234,751
Operating Expenses	\$2,025	\$4,050
Capital Outlay Costs	\$20,010	-
Centrally Appropriated Costs ¹	\$22,382	\$55,038
FTE – Personal Services	1.2 FTE	3.0 FTE
DPA Subtotal	\$142,230	\$293,839
Total Costs	\$697,721	\$1,211,425
Total FTE	4.9 FTE	9.7 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 \$555,000 in FY 2023-24 and \$920,000 in FY 2024-25 and future years 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 and are prorated in the first year for the bill's January 1, 2024, effective date.

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, nor is the criteria that the CDLE will use to prioritize cases. Generally, it is assumed that the CDLE will focus its resources on complaints involving allegations of systemic wage discrimination and/or larger numbers of employees.

Staffing. Based on the assumptions above, the CDLE will require about 6.2 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. In the first year, 3.4 FTE is required after account for start-up tasks and a half-year impact from the bill's January 1, 2024, effective date.

Legal services. It is estimated that the CDLE will require about 600 hours of legal services in the first year and 900 hours in the second and future years, 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 0.3 FTE in FY 2023-24 and 0.5 FTE in FY 2024-25 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. Costs are prorated for a half-year impact in the first year.

Department of Personnel and Administration

The DPA will have costs of about \$142,000 and 1.2 FTE in FY 2023-24 and \$290,000 and 3.0 FTE in FY 2024-25 and future years to support state agencies and provide training on the requirements of the bill. These costs are assumed to be paid from the General Fund.

Staffing. Specifically, the DPA will require HR and training staff to train state agencies and supervisors on the requirements of the bill regarding employee notices. The DPA will also provide additional support and analysis for agencies involved in wage discrimination complaints under current law (which may be filed through the courts or the state personnel system, even if state employees are excluded from the new CDLE process under the bill). By expanding the length of time

that an employee may seek redress for alleged wage discrimination, additional work is required to gather and analyze data to respond to the complaint. Standard operating and capital outlay costs are included for these staff, and costs are prorated for a January 1, 2024, start date and the General Fund pay date shift.

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 Impacts

The bill impacts all state agencies and institutions of higher education regarding hiring and promotion of employees. These impacts are described below.

Posting and notice requirements. The bill increases workload for state agencies and institutions to ensure that all job opportunities are shared internally and to send the required notice to specified employees within thirty 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. Given the timeline for providing notice, and the fact that many agencies and institutions already communicate this type of information to employees after making hiring and promotion decisions, the overall impact is assumed to be minimal and no change in appropriations is required.

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.

Judicial Department

The bill may reduce civil cases filings with the trial courts as a result of the CDLE hearing process. However, given that filing a lawsuit and a complaint with the CDLE may both occur, it is assumed that no reduction in appropriations is required.

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, indirect cost assessments and 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. In addition, local governments will be required 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 January 1, 2024, 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:

- \$430,957 to the CDLE from the Employment Support Fund, and 3.4 FTE. Of this amount, \$63,444 is reappropriated to the Department of Law for legal services, with an additional 0.3 FTE; and
- \$119,848 to the DPA from the General Fund, and 1.2 FTE

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.

State and Local Government Contacts

All State and Local Agencies