



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

HB 20-1415

REVISED FISCAL NOTE

(replaces fiscal note dated June 5, 2020)

Drafting Number: LLS 20-1307 Date: June 9, 2020
Prime Sponsors: Rep. Herod; Sullivan Bill Status: Senate Finance
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Bill Topic: WHISTLEBLOWER PROTECTION PUBLIC HEALTH EMERGENCIES

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

The bill prohibits a principal from taking adverse action against a worker who raises concerns about workplace health and safety practices related to a public health emergency. The bill includes multiple avenues through which a worker may seek relief for a violation of the bill. The bill will increase state expenditures beginning in FY 2020-21.

Appropriation Summary: In FY 2020-21, the bill requires and includes an appropriation of \$270,153 to the Department of Labor and Employment.

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

Table 1 State Fiscal Impacts Under HB 20-1415

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

Summary of Legislation

The bill prohibits a principal, including an employer, certain labor contractors, public employers, and entities that rely on independent contractors for a specified percentage of their workforce, from discriminating, retaliating, or taking adverse action against any worker who:

- raises concerns about workplace health and safety practices or hazards related to a public health emergency to the principal, the principal's agent, other workers, a government agency, or the public if the workplace health and safety practices fail to meet guidelines established by a federal, state, or local public health agency with jurisdiction over the workplace; or
- voluntarily wears personal protective equipment, such as a mask, faceguard, or gloves, in their workplace.

A worker may seek relief for a violation of the bill by:

- filing a complaint with the Division of Labor Standards and Statistics in the Department of Labor and Employment (CDLE);
- bringing an action in district court, after exhausting administrative remedies; or
- bringing a whistleblower action in the name of the state in district court, after exhausting administrative remedies.

State Revenue

The bill may increase state cash fund revenue from penalties. In addition, to the extent the bill increases civil case filings, state revenue will increase.

State Expenditures

In FY 2020-21, the bill will increase state cash fund expenditures by \$311,659 and 2.8 FTE, and by \$293,059 and 2.8 FTE in FY 2021-22 and in subsequent years, from the Employment Support Cash Fund as shown in Table 2 and discussed below.

Table 2
Expenditures Under HB 20-1415

	FY 2020-21	FY 2021-22
Department of Labor and Employment		
Personal Services	\$183,368	\$183,368
Operating Expenses	\$3,375	\$3,375
Capital Outlay Costs	\$18,600	-
Legal Services	\$63,960	\$63,960
Salesforce Licenses	\$850	\$850
Centrally Appropriated Costs*	\$41,506	\$41,506
FTE – Personal Services	2.5 FTE	2.5 FTE
FTE – Legal Services	0.3 FTE	0.3 FTE
Total Cost	\$311,659	\$293,059
Total FTE	2.8 FTE	2.8 FTE

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

Department of Labor and Employment. Beginning in FY 2020-21, state cash fund expenditures in the CDLE will increase in order to implement the bill and to investigate complaints related to the bill.

Personal services. Beginning in FY 2020-21, the CDLE will hire the following 2.5 FTE to implement this bill:

- 1.5 FTE compliance investigator to review and investigate complaints;
- 0.5 FTE administrative law judge to help address complaints using experience with labor case law; and
- 0.5 FTE program assistant to perform administrative work and support other staff in implementing the bill.

Legal services. Beginning in FY 2020-21, the Department of Law will provide 600 hours in legal services to the CDLE. The Department of Law will advise and represent the CDLE in the administration of this bill. To provide legal services, the Department of Law requires reappropriated funds and 0.3 FTE in the first year and future years

Department of Law. The Department of Law may also provide representation to other state agencies when they are charged with violating this bill. Given the bill's compensatory damages provisions, the possibility of punitive damages, the lack of any limitations period for filing claims, and the open-ended nature of the employee protections, it may result in the filing of multiple administrative appeals and lawsuits. It is estimated that the Department of Law may provide approximately 3,000 hours of legal services across state agencies each year, at a cost of about \$320,000. The fiscal note assumes once the actual increase in legal services for specific state agencies is known, appropriations for legal services will be requested through the annual budget process.

Judicial Department. The Judicial Department may see an increase in civil case filings as a result of this bill. However, the increase is expected to be minimal. If a larger than expected increase occurs, the fiscal note assumes any additional costs will be addressed through the annual budget process.

Department of Personnel and Administration. The bill will have an indeterminate effect on the Liability Fund within the Risk Management Program in the Department of Personnel and Administration (DPA). If there are a significant number of whistleblower claims that require remuneration, the DPA may need to seek additional funds through the annual budget process for the Liability Fund.

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 \$41,506 in FY 2020-21 and \$41,506 in FY 2021-22.

Local Government

The bill could result in additional expenditures for local governments beginning in FY 2020-21, if local governments see more litigation as a result of the bill. However, this fiscal note assumes that most local governments will follow the law, and any such increase in expenditures will be minimal.

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 an appropriation of \$270,153 to the Department of Labor and Employment from the Employment Support Cash Fund.

State and Local Government Contacts

Counties	District Attorneys	Information Technology
Judicial	Labor	Law
Municipalities	Personnel	