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# Fiscal Note

<b>Drafting Number:</b>	LLS 21-0558	<b>Date:</b>	March 24, 2021
<b>Prime Sponsors:</b>	Sen. Winter; Pettersen Rep. Lontine; Gray	<b>Bill Status:</b>	Senate Judiciary
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**Bill Topic:**                   **PROTECTING OPPORTUNITIES & WORKERS' RIGHTS ACT**

<b>Summary of Fiscal Impact:</b>	<input checked="" type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
	<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
	<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

This bill expands discrimination and unfair employment protections for Colorado workers. It will increase state and local revenue and expenditure on an ongoing basis.

**Appropriation Summary:**           For FY 2021-22, this bill requires an appropriation of \$5.2 million to multiple state agencies.

**Fiscal Note Status:**               This fiscal note reflects the introduced bill.

**Table 1**  
**State Fiscal Impacts Under SB 21-176**

		<b>Budget Year FY 2021-22</b>	<b>Out Year FY 2022-23</b>
<b>Revenue</b>		-	-
<b>Expenditures</b>	General and Cash Funds	\$5,243,129	\$3,918,065
	Reappropriated Funds	-	\$1,340,244
	Centrally Appropriated	\$825,737	\$893,916
	<b>Total Expenditures</b>	<b>\$6,068,866</b>	<b>\$6,152,225</b>
	<b>Total FTE</b>	<b>43.9 FTE</b>	<b>47.6 FTE</b>
<b>Transfers</b>		-	-
<b>TABOR Refund</b>		-	-

## **Summary of Legislation**

This bill expands protections for Colorado workers by:

- adding 'marital status' and 'caregiver status' as protected classes under the Colorado Anti-Discrimination Act (CADA);
- expanding the definition of employee in relation to harassment claims by adding contractors, domestic service workers, unpaid interns, and volunteers as being under the control of the employer;
- changing the requirements of claiming a hostile work environment so that a single incident is sufficient for a claim, instead of a pattern of behavior;
- changing requirements around the investigation of claims;
- assigning more requirements to employers related to their ability to disprove claims and avoid liability;
- waiving sovereign immunity by a public entity for injuries resulting from unfair employment practices;
- repealing the limits on remedies in cases involving age discrimination;
- limiting the ability of an employer to require confidentiality during settlement; and
- limiting the use of pre-employment medical inquiries or examinations.

This bill also changes the pathway for claims to be heard in court. Currently, claims are allowed to be brought in district court after an employee exhausts all administrative remedies. This bill allows these claims to be brought in county or district court without the need to exhaust all administrative remedies as long as the person first submits a written charge to the Civil Rights Division in the Department of Regulatory Agencies (DORA) or makes a written demand for compensation or other relief from their employer. It expands the time limit for filing from 6 months to 300 days after the incident occurs. In addition, a jury can consider comments and incidents not directed at the employee bringing the claim.

## **Assumptions**

Currently, 49,900 state employees are covered under CADA, and this bill would add state contractors, subcontractors and their employees. Last year, the state had approximately 61,500 contracts with 10,700 vendors. This fiscal note assumes that each vendor has five employees, increasing the number of covered individuals to 103,400.

## **State Revenue**

To the extent that the bill increases civil case filings, state revenue to the Judicial Department will increase beginning in FY 2021-22. This increase may be offset partially, to the degree that some cases may shift from district court to Denver County Court. This fee revenue is subject to TABOR.

**State Expenditures**

This bill will increase state expenditures across multiple agencies by \$6.1 million beginning in FY 2021-22 and in future years. For the first year, it is assumed that these costs will be paid primarily from the General Fund, and with various cash funds paying some costs for additional human resources staff. In future years, costs for the Department of Personnel and Administration and to the Department of Law will be reappropriated from other state agencies based on the number of claims incurred, and will be paid using a mix of General Fund and cash funds from affected agencies. These costs are displayed in Table 2 and described below.

**Table 2  
 Expenditures Under SB 21-176**

<b>Cost Components</b>	<b>FY 2021-22</b>	<b>FY 2022-23</b>
<b>Department of Regulatory Agencies</b>		
Personal Services	\$368,415	\$401,908
Operating Expenses	\$9,450	\$9,450
Capital Outlay Costs	\$43,400	-
Legal Services	\$15,951	\$15,951
Centrally Appropriated Costs <sup>1</sup>	\$182,770	\$193,159
FTE – Personal Services	6.5 FTE	7.0 FTE
<b>DORA Subtotal</b>	<b>\$619,986</b>	<b>\$620,468</b>
<b>Department of Personnel and Administration</b>		
Personal Services	\$111,427	\$116,242
Operating Expenses	\$1,350	\$1,350
Capital Outlay Costs	\$6,200	-
Legal Services	\$340,288	\$340,288
Legal Services (Outside Counsel)	\$171,200	\$171,200
Training	\$21,063	-
Settlements	\$828,756	\$828,756
Centrally Appropriated Costs <sup>1</sup>	\$25,083	\$26,518
FTE – Personal Services	1.5 FTE	1.6 FTE
FTE – Legal Services	2.0 FTE	2.0 FTE
<b>DPA Subtotal</b>	<b>\$1,505,367</b>	<b>\$1,484,354</b>

**Table 2  
 Expenditures Under SB 21-176 (Cont.)**

<b>Cost Components</b>	<b>FY 2021-22</b>	<b>FY 2022-23</b>
<b>HR Staff - Multiple Agencies</b>		
Personal Services	\$3,046,279	\$3,323,214
Operating Expenses	\$49,950	\$49,950
Capital Outlay Costs	\$229,400	-
Centrally Appropriated Costs <sup>1</sup>	\$617,884	\$674,239
Multiple Agencies HR FTE	33.9 FTE	37.0 FTE
<b>Multiple Agencies Subtotal</b>	<b>\$3,943,513</b>	<b>\$4,047,403</b>
<b>Total</b>	<b>\$6,068,866</b>	<b>\$6,152,225</b>
<b>Total FTE</b>	<b>43.9 FTE</b>	<b>47.6 FTE</b>

<sup>1</sup> Centrally appropriated costs are not included in the bill's appropriation.

**Department of Personnel and Administration.** This bill will increase expenditures in the state's risk management program and the State Personnel Board in the Department of Personnel and Administration. The state's actual costs will depend on a number of factors, including number and complexity of cases, case outcomes, and the timing of cases and judgements. This fiscal note assumes cases will increase by 50 percent, and that 86 percent of those cases will result in a settlement payout by the state. Potential costs include:

- **State Personnel Board:** To the extent that this bill increases the number of cases the State Personnel Board hearings, workload will increase. In addition, the bill prohibits non-disclosure provisions in settlements, which may lead to fewer cases being settled and an increase in workload for the board. The expected increase in cases will require 0.6 FTE of additional administrative judges.
- **Risk Management Liability Program:** To the extent that more civil cases are filed, this bill could cause an increase in the number of liability claims received by the state. The new provisions in this bill make it easier for a plaintiff to bring a civil case, expands the number of people eligible to bring claims, and lowers the standards to prove harassment or a hostile work environment. An increase in claims will increase the number of investigations required, the amount of legal services provided by the Department of Law and outside counsel, and more payouts from the state liability pool. To handle the administrative work from the anticipated increase in cases, the State Risk Management division will require 1.0 FTE additional administrative staff.
- **Training.** The bill requires employers to comply with various requirements to avoid liability. Training programs will need to be developed and implemented across all state agencies in order to mitigate risk. Developing of training modules is estimated to cost approximately \$10,000 per 30 minute modules at a total cost of \$20,000. Content development will cost \$1,063 for 10 hours of work.

- **Legal services.** The Department of Law will represent the state in discrimination cases that are heard by the State Personnel Board. Assuming 3,200 hours annually at a rate of \$106.34 per hour, state agencies will have costs of \$340,288, paid to the Department of Law. The Department of Law requires 2.0 FTE for this work. In cases where the Department of Law has a conflict of interest, outside counsel will be brought in at a cost of \$214 per hour for an estimated 800 hours annually.

**Department of Regulatory Agencies.** This bill will increase in complaints filed with the Civil Rights Division. This fiscal note assumes a 25 percent increase in case filings based on expanding which groups are protected classes and by adding more types of workers under this law. The expected increase in case filings will require an additional 7.0 FTE to investigate, track, and manage new cases. Staff required include compliance investigators, legal assistants, technicians, administrative assistants, mediators, and an investigations manager. Costs for these staff are shown in Table 2 above.

**Judicial Department.** This bill may increase the number of case filings and increase workload for the trial courts by expanding who can file a discrimination claim and removing some of the requirements to file. This workload increase is expected to be minimal, as it is assumed that most employers will follow the law and that many employees will continue to pursue administrative remedies. As this bill allows claims to be filed in either district or county court, it is also expected that some of the workload will be offset by some cases being filed with Denver County Court, outside of the state court system.

**All state agencies.** This bill will increase the amount of grievances and claims filed in each state agency's internal human resources department, which will require additional HR staff to handle this workload. To calculate the number of additional HR staff that each state agency will require, this fiscal note assumes a ratio of 1 additional FTE per 1,000 state employees. Agencies that utilize a greater number of contractors, unpaid interns, or volunteers will require a higher number of FTE. It is assumed that agencies with less than 500 FTE and that do not utilize a large number of contractors, interns, or volunteers will not require additional HR staff. In total, this will increase HR staff by 37 FTE across all state agencies. This staff will be paid for using General Fund and various cash funds. Staff in FY 2021-22 is prorated to 33.9 FTE due to the General Fund paydate shift. Table 3 includes a breakdown of staffing amounts and total costs by department.

**Table 3**  
**Human Resource Staffing by Department**

<b>Agency</b>	<b>FTE Required</b>	<b>FY 2021-22</b>	<b>FY 2022-23</b>
Corrections	8.0	\$719,056.0	\$778,936.0
Education	0.8	\$71,905.6	\$77,893.6
Governor	0.5	\$44,941.0	\$48,683.5
Health Care Policy and Financing	0.5	\$44,941.0	\$48,683.5
Human Services	6.5	\$584,233.0	\$632,885.5
Information Technology	2.0	\$179,764.0	\$194,734.0
Judicial	6.0	\$539,292.0	\$584,202.0
Labor and Employment	1.2	\$107,858.4	\$116,840.4
Law	0.5	\$44,941.0	\$48,683.5
Military and Veterans Affairs	0.8	\$71,905.6	\$77,893.6
Natural Resources	2.0	\$179,764.0	\$194,734.0
Public Health and Environment	1.4	\$125,834.8	\$136,313.8
Public Safety	1.8	\$161,787.6	\$175,260.6

**Table 3  
 Human Resource Staffing by Department (Cont.)**

<b>Agency</b>	<b>FTE Required</b>	<b>FY 2021-22</b>	<b>FY 2022-23</b>
Regulatory Agencies	0.5	\$44,941.0	\$48,683.5
Revenue	1.5	\$134,823.0	\$146,050.5
Transportation	3.0	\$269,646.0	\$292,101.0
<b>Totals</b>	<b>37.0 FTE</b>	<b>\$3,325,634.0</b>	<b>\$3,602,579.0</b>

**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 \$825,737 in FY 2021-22 and \$893,916 in FY 2022-23.

### **Local Government**

Similar to the state, to the extent that there is an increase in the number of claims relating to local government entities and employees, costs and workload may increase for local governments. In addition, expanded liability for local governments will increase costs for insurance coverage, settlements, and legal costs. Actual costs for a particular local government will vary based on the number of cases filed within that jurisdiction.

**Denver County Court.** This bill allows civil case filings to be filed in district or county court. To the extent cases shift from district court to county court, revenue, costs, and workload will increase for the Denver County Court, which is managed and funded by the city and county of Denver.

### **Effective Date**

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed.

### **State Appropriations**

For FY 2021-22, this bill requires the following appropriations:

- \$437,216 General Fund and 6.5 FTE to the Department of Regulatory Agencies, of which \$15,951 is reappropriated to the Department of Law for legal services;
- \$1,480,284 General Fund and 1.5 FTE to the Department of Personnel and Administration, of which \$340,288 is reappropriated to the Department of Law for legal services with an additional 2.0 FTE; and
- \$3,325,629 and 33.9 FTE from General Fund and various cash funds to multiple agencies for HR staff, based on the information in Table 3.

## Departmental Difference

Several departments estimated that they will require additional HR staff beyond that included in the fiscal note. The fiscal note used a consistent methodology across all agencies, which resulted in differing staffing estimates in some cases. The fiscal note does not include the full amount requested by departments in these cases due to different assumptions on required workload. Table 4 includes a comparison of differing department estimates and the fiscal note estimate for increased HR staffing.

**Table 4**  
**Comparison of Department and Fiscal Notes Staff Estimates**

<b>Department</b>	<b>Department Estimate</b>	<b>Fiscal Note Estimate</b>
Agriculture	0.8 FTE	0 FTE
Healthcare Policy & Financing	1.0 FTE	0.5 FTE
Corrections	10 FTE	8 FTE
Labor and Employment	3 FTE	1.2 FTE
State	0.1 FTE	0 FTE
Treasury	0.1 FTE	0 FTE
Higher Education	1.0 FTE	0 FTE

## State and Local Government Contacts

All State Agencies