



The Bell Policy Center

Standard for Awarding Defendant Litigation Costs in Employment Discrimination Cases

House Bill 16-1299

Testimony to the House State, Veterans and Military Affairs Committee
 Rich Jones, Director of Policy and Research
 March 28, 2016

Thank you for the opportunity to present this testimony.

I am Rich Jones, the director of policy and research with the Bell Policy Center. The Bell is a non-partisan, nonprofit research and advocacy organization founded on progressive values and dedicated to making Colorado a state of opportunity for all.

The Bell Policy Center opposes HB16-1299 to lower the standards for awarding fees and costs to the prevailing defendant in employment discrimination cases. The Bell strongly advocated for the passage of the Job Protection and Civil Rights Enforcement Act of 2013, (HB13-1136) because it made great strides in protecting the rights of workers and employers. As the governor said after signing the bill, "We believe HB13-1136 strikes the appropriate balance between protecting small-business employers from costly and frivolous litigation and providing the victims of intentional and unacceptable discrimination with appropriate remedies."¹

The changes proposed in HB16-1299 are likely to discourage some workers who feel they are discriminated against in the workplace from going forward with legitimate lawsuits. In a detailed analysis of state anti-discrimination laws that provide remedies to workers who prove workplace discrimination, the Bell Policy Center found that these laws have no statistical effect on the creation of small businesses.

HB13-1136 aligned Colorado with the majority of other states, including nearly all of Colorado's regional neighbors as well as federal law, in regard to remedies. Forty-two other states and the District of Columbia provide at least one meaningful remedy for successful employment-discrimination lawsuits. Thirty-eight states offer attorney fees, and 35 states offer compensatory and/or punitive damages. Six states and the District of Columbia offer three remedies — compensatory damages, punitive damages and attorney fees to people employed in a business

with one or more employees. Only two of those states have caps on damages and neither has a cap as low as Colorado's.²

In our August 2015 analysis, we found that there is no statistically significant difference in the creation of small businesses in those states with remedies and those without remedies. In addition, there was no statistically significant difference in the creation of small businesses among states based on the strength of their remedies for victims of workplace discrimination. In fact, we found that states with stronger anti-discrimination laws had better small business numbers than those with less-stringent laws.³ In a subsequent analysis not yet published, we found there is no statistically significant difference in the growth in small business jobs between those states with and without remedies. We also found no statistically significant difference in the growth of small business jobs among the states based on the number of remedies offered.⁴

The changes proposed in HB16-1299 would weaken the protections established in the Job Protection and Civil Rights Enforcement Act of 2013. Lowering the standards for awarding attorney fees and costs in employment discrimination cases will discourage workers from pursuing legitimate employment discrimination claims. We urge you to vote no on HB16-1299 today.

If you have any questions, or if I can provide further information, please contact me at (303) 297-0456, ext. 224, or jones@bellpolicy.org.

¹Gov. Hickenlooper signs Job Protection and Civil Rights Enforcement Act of 2013, May 6, 2013, <http://www.colorado.gov/cs/Satellite/GovHickenlooper/CBON/1251642285570>

² State Comparison - Employment Discrimination Filing and Legislation, Bell Policy Center, January 2013.

³Anti-Discrimination Remedies Do Not Harm Small Business Growth, The Bell Policy Center, August 4, 2015, <http://www.bellpolicy.org/sites/default/files/Anti-Discrimination%20Remedies%20Do%20Not%20Harm%20Small%20Business%20Growth%20August%204%202015.pdf>

⁴ Anti-Discrimination Remedies Have No Effect on Small Business Job Growth, The Bell Policy Center, Draft Analysis, March 2016.