



**Colorado
Legislative
Council
Staff**

HB16-1438

**FINAL
FISCAL NOTE**

FISCAL IMPACT: State Local Statutory Public Entity Conditional No Fiscal Impact

Drafting Number: LLS 16-0123 **Date:** July 14, 2016
Prime Sponsor(s): Rep. Winter **Bill Status:** Signed into Law
 Sen. Martinez Humenik **Fiscal Analyst:** Amanda Hayden (303-866-4918)

BILL TOPIC: EMPLOYER ACCOMMODATIONS RELATED TO PREGNANCY

Fiscal Impact Summary	FY 2016-2017	FY 2017-2018
State Revenue		
State Expenditures	Minimal increase.	
Appropriation Required: None.		
Future Year Impacts: Ongoing minimal state expenditure increase.		

Summary of Legislation

This bill requires employers to engage in a timely, good-faith, interactive process when an employee or applicant requests reasonable accommodations related to pregnancy or physical recovery from childbirth. Reasonable accommodations may include the provision of more frequent or longer break periods; more frequent bathroom, food, or water breaks; acquisition or modification of equipment or seating; limitations on lifting; temporary transfer to a less strenuous or hazardous position or light duty, if available; assistance with manual labor; or modified work schedules, as long as certain conditions are met. Employers must provide these accommodations to an applicant for employment or to an employee, if requested, unless the accommodations place an undue hardship on the employer's business. "Undue hardship" is defined as an action requiring significant difficulty or expense to the employer and can include consideration of the following factors:

- the nature and cost of the accommodations;
- the overall financial resources of the employer or overall size of the business; and
- the accommodation's effect on expenses, resources, or operations.

In response to a request or need for reasonable accommodations related to pregnancy or childbirth, an employer may not:

- take adverse actions against an employee;
- deny employment opportunities to an applicant or employee;
- require an applicant or employee to accept an accommodation that the applicant or employee has not requested or is unnecessary; or
- require an employee to take leave if the employer can provide another reasonable accommodation.

Employers must provide written notice of the right to be free from discriminatory or unfair employment practices related to these requirements to new employees and existing employees within 120 days of the bill's effective date, and they must post the notice in a conspicuous place. With the exception of posting the notice, any violation of these requirements constitutes a discriminatory or unfair employment practice.

The bill clarifies that it neither increases nor decreases an employee's rights, under any other law, to paid or unpaid leave associated with the employee's pregnancy. The bill also specifies that a court must not award punitive damages in a civil action involving a claim of failure to make reasonable accommodations for conditions related to pregnancy or childbirth if the defendant demonstrated good faith efforts to comply with the requirement.

Background

"Employer" is defined in statute as the state of Colorado or any political subdivision, commission, department, institution, or school district thereof; and every other person employing persons within in the state. It does not include religious organizations or associations, except those supported in whole or in part by money raised by taxation or public borrowing.

The Colorado Civil Rights Division (CCRD) in the Department of Regulatory Agencies (DORA) investigates complaints of employment discrimination. Over the last three years, the CCRD has received an average of 32 complaints per year of employment discrimination related to pregnancy or childbirth. The CCRD currently refers to federal law, the Pregnancy Discrimination Act, when enforcing the Colorado Anti-Discrimination Act in these matters.

State Expenditures

Beginning in FY 2016-17, the bill increases workload and potentially increases costs in DORA, the Colorado Department of Labor and Employment (CDLE), and other state agencies, as discussed below.

Department of Regulatory Agencies. Workload in the CCRD in DORA will increase to investigate complaints of workplace discrimination or retaliation against employees related to the bill's requirements. The CCRD has staff and processes in place to receive, investigate, and mediate complaints of employment discrimination. The fiscal note assumes that any increase in workload can be accomplished within existing appropriations.

Colorado Department of Labor and Employment. Workload in CDLE will increase to inform employers of the law change by posting information online. CDLE may also field phone calls from employers inquiring about the bill's requirements. The fiscal note assumes that any increase in workload will be minimal and can be accomplished within existing appropriations.

Other state agencies. All state agencies must provide written notice and reasonable accommodations related to pregnancy or childbirth to employees who request them. In addition, the bill's undue hardship provision allows state agencies to opt out of any accommodation requiring significant expense. The fiscal note assumes that for any agency not already doing so, meeting this requirement will increase costs or workload by a minimal amount. No increase in appropriations to any state agency is expected.

Local Government and Statutory Public Entity Impact

The bill may increase workload in local governments and statutory public entities where employees request reasonable accommodations related to pregnancy or childbirth. The fiscal note has not estimated these costs, but assumes they will be minimal.

Effective Date

The bill was signed into law by the Governor on June 1, 2016, and takes effect August 10, 2016, assuming no referendum petition is filed.

State and Local Government Contacts

All Departments Counties Municipalities Special Districts