


Colorado Legislative Council Staff Fiscal Note
FINAL
FISCAL NOTE

Drafting Number: LLS 09-0891
Prime Sponsor(s): Rep. Levy
 Sen. Heath

Date: June 1, 2009
Bill Status: Signed into Law
Fiscal Analyst: Clare Pramuk (303-866-2677)

TITLE: CONCERNING THE MISCLASSIFICATION OF EMPLOYEES AS INDEPENDENT CONTRACTORS FOR PURPOSES OF THE "COLORADO EMPLOYMENT SECURITY ACT", AND MAKING AN APPROPRIATION THEREFOR.

Fiscal Impact Summary	FY 2009-2010	FY 2010-2011
State Revenue		
Cash Funds		
Unemployment Revenue Fund	up to \$80,000	up to \$80,000
Employee Misclassification Advisory Opinion Fund	\$9,840	\$9,840
Unemployment Insurance Trust Fund	>\$5,000	>\$5,000
State Expenditures		
Cash Funds		
Unemployment Revenue Fund	\$975	\$975
Employee Misclassification Advisory Opinion Fund	\$9,840	\$9,840
FTE Position Change	0.2 FTE	0.2 FTE
Effective Date: The bill was signed by the Governor and became law on June 2, 2009.		
Appropriation Summary for FY 2009-2010: See State Appropriations section.		
Local Government Impact: None.		

Summary of Legislation

The bill allows any person to file a written complaint with the Division of Employment and Training in the Department of Labor and Employment alleging an employer is misclassifying an employee as an independent contractor. The division director may investigate complaints and shall focus on the most egregious complaints or those acts undertaken to gain a competitive advantage or to avoid the payment of taxes. Upon finding a violation, the director shall order the employer to pay back taxes owed plus interest. For cases where the misclassification was made with willful disregard of the law, the director is authorized to impose a fine, and upon a second or subsequent violation, prohibit an employer from contracting with the state for up to 2 years.

The bill allows an employer to request, for a fee, a nonbinding advisory opinion from the director as to how an individual employee should be classified. The department is required to conduct a statewide study on the issue of employee misclassification and report those findings in combination with information on complaint investigations, to the General Assembly within 2 years.

State Revenue

Cash funds revenue to the Division of Employment and Training is expected to increase by up to \$89,840 in FY 2009-10 and FY 2010-11. Up to \$80,000 is expected from fines levied against employers found to be in violation of the Colorado Employment Security Act to the Unemployment Revenue Fund. Fee revenue of \$9,840 both in FY 2009-10 and FY 2010-11 to the Employee Misclassification Advisory Opinion Fund is expected for fees paid for advisory opinions. An increase in revenue from employment taxes recovered is expected, but the amount cannot be determined at this time. The fiscal note assumes this revenue will be greater than \$5,000 per year to the Unemployment Insurance Trust Fund. As the division gains experience, a better estimate can be developed.

Fee Impact on Individuals, Families or Business. Section 2-2-322, C.R.S., requires legislative service agency review of measures which create or increase any fee collected by a state agency. Table 1 below identifies the fee impact of this bill.

Table 1. Fee Impact on Individuals, Families or Business for HB09-1310			
Type of Fee	New Fee	Number Affected	Total Fee Impact
Employee Classification Advisory Opinion	\$82	120	\$9,840
TOTAL			\$9,840

State Expenditures

Cash funds expenditures are expected to increase by \$10,815 and 0.2 FTE in FY 2009-10 and FY 2010-11. The director is expected to write 120 advisory opinions per year. The statewide study, rulemaking, and development of complaint procedures, will be addressed within existing funding. Table 2 below details these expenditures.

Table 2. Expenditures Under HB09-1310		
Cost Components	FY 2009-10	FY 2010-11
Personal Services	\$10,625	\$10,625
<i>FTE</i>	<i>0.2</i>	<i>0.2</i>
Operating Expenses and Capital Outlay	190	190
TOTAL	\$10,815	\$10,815

Expenditures Not Included

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. The centrally appropriated costs subject to this policy are summarized in Table 3.

Table 3. Expenditures Not Included Under HB09-1310*		
Cost Components	FY 2009-10	FY 2010-11
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$1,357	\$1,357
Supplemental Employee Retirement Payments	309	395
TOTAL	\$1,666	\$1,752

**More information is available at: http://www.state.co.us/gov_dir/leg_dir/lcsstaff/2009/comsched/CommonPolicies2009.pdf*

State Appropriations

The Department of Labor and Employment, Division of Employment and Training, requires 0.2 FTE and the following cash funds appropriations for FY 2009-10:

- ▶ Employee Misclassification Advisory Opinion Fund - \$9,840
- ▶ Unemployment Revenue Fund - \$975

Departments Contacted

Labor and Employment

Revenue