

Amendment 57 Additional Remedies for Injured Employees

1 **Amendment 57 proposes amending the Colorado statutes to:**

- 2 ♦ require every private employer in Colorado with ten or more employees
3 to provide a safe and healthy workplace; and
- 4 ♦ allow an injured employee to seek damages in court, beyond workers'
5 compensation benefits, if the employee believes that the employer
6 failed to provide a safe and healthy workplace.

7 **Summary and Analysis**

8 Currently, federal and state safety standards exist to ensure safe working
9 conditions for employees. Companies may be fined if they do not meet these
10 standards. Employees who are injured at work receive benefits through workers'
11 compensation.

12 ***What remedies are available to injured employees under workers'***
13 ***compensation?*** Workers' compensation is the exclusive remedy for employees to
14 receive benefits from employers for on-the-job injuries. State law requires all
15 employers with one or more full- or part-time employees to provide workers'
16 compensation benefits for on-the-job injuries and work-related diseases. Benefits are
17 provided regardless of whether the injury was caused by the employer, the employee,
18 the equipment, or a third party. Employees are entitled to specific benefits, which are
19 outlined in state law, without going to court. When a workplace injury occurs, an
20 injured employee receives the following benefits, depending on the circumstances:

- 21 ♦ reasonable and necessary medical care, at no cost to the employee;
- 22 ♦ tax-free payment for lost wages up to two-thirds of the injured
23 employee's salary;
- 24 ♦ payment for permanent disability and disfigurement;
- 25 ♦ vocational rehabilitation;
- 26 ♦ funeral expenses; and
- 27 ♦ death benefits for surviving dependents.

28 An employee may appeal the determination of benefits through a state system, but
29 cannot sue an employer for damages. An employee may sue a third party whose
30 negligence may have caused or contributed to a workplace injury to recover damages
31 in excess of workers' compensation benefits. In 2005, over 120,000 workplace
32 injuries were reported, and of those, approximately 85,000 resulted in claims for
33 medical care and 16,600 resulted in claims for lost wages.

34 ***What additional remedies are offered to injured employees under***
35 ***Amendment 57?*** In addition to any remedies received under workers' compensation,
36 Amendment 57 allows an injured employee to sue an employer if he or she believes

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1 that the employer failed to provide a safe and healthy workplace. Amendment 57
2 applies to employees working at private companies with ten or more employees. An
3 employee cannot receive damages that he or she already received under workers'
4 compensation. Under Amendment 57, examples of damages that an employee may
5 sue for include:

- 6 ♦ past and future monetary losses;
- 7 ♦ pain and suffering;
- 8 ♦ emotional distress;
- 9 ♦ inconvenience;
- 10 ♦ mental anguish;
- 11 ♦ loss of enjoyment of life; and
- 12 ♦ other non-monetary losses.

13 **Arguments For**

14 1) The workers' compensation system does not always meet the needs of injured
15 employees. While an injured employee receives medical care at no cost, the choice of
16 doctor and treatment options are limited. Further, an injured employee who is unable
17 to work may receive wage payments that are far below the employee's previous
18 take-home earnings. By allowing the courts to review individual cases,
19 Amendment 57 establishes another avenue for employees to seek compensation for
20 injuries, such as pain and suffering, beyond the benefits provided by workers'
21 compensation.

22 2) Amendment 57 encourages an increased focus on workplace safety, and both
23 employers and employees benefit from safe and healthy workplaces. Safe
24 workplaces allow employees to be efficient and productive, saving employers money.
25 Maintaining a safe workplace reduces employees' concerns about their day-to-day
26 safety and the likelihood of injury. Amendment 57 provides a mechanism to financially
27 penalize employers who endanger the safety of their employees.

28 **Arguments Against**

29 1) Amendment 57 is unnecessary. The current workers' compensation system
30 effectively balances the needs of employees and employers. It ensures prompt
31 delivery of benefits to injured employees without the delay, expense, and risk involved
32 with a lawsuit and controls costs for employers. Amendment 57 disrupts this balance
33 by requiring employers to continue to pay for workers' compensation benefits and
34 making them subject to lawsuits from injured employees seeking additional benefits.
35 Moreover, employers are already motivated to provide safe and healthy workplaces to
36 comply with safety regulations, lower costs for worker replacement and insurance
37 premiums, and increase employee productivity.

38 2) The negative effect of Amendment 57 on the state's economy outweighs any
39 potential benefits to some injured employees. It exposes employers to increased

1 liability and legal costs. These costs are expected to be passed on to consumers and
 2 employees through higher prices for goods and services, lower wages, and reduced
 3 employee benefits. Amendment 57 may increase unemployment by discouraging
 4 businesses from locating or expanding in Colorado.

5 Estimate of Fiscal Impact

6 **State revenue and spending.** Amendment 57 is expected to lead to new court
 7 filings by employees injured at work. Because the measure establishes a new right of
 8 action, there is no experience available to estimate the number of filings that will
 9 result. Table 1 shows both annual state revenue and spending increases if 1 percent,
 10 10 percent, or 25 percent of workers' compensation claims for lost wages result in new
 11 court cases. Revenue increases result from court filing fees, and spending increases
 12 pay for additional court staff. As people become aware of their ability to sue under
 13 this measure, the potential for significant revenue and spending increases is real.

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Table 1. Annual State Revenue and Spending Increases under Amendment 57*			
	1% of Claims Result in a Court Case	10% of Claims Result in a Court Case	25% of Claims Result in a Court Case
Cases Filed	166	1,660	4,150
New Revenue - Fees	\$61,000	\$608,000	\$1,520,000
New Spending	\$139,000	\$1,433,000	\$3,583,000
New Employees	2	18	44

23 * Table 1 shows only government spending and does not include costs to private companies.