

Initiative #93 Additional Remedies for Injured Employees

1 **Amendment ? 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 on-the-job
14 injuries. State law requires all employers with one or more full- or part-time
15 employees to provide workers' compensation benefits for on-the-job injuries or
16 work-related diseases, regardless of who or what caused the injury. Employees are
17 entitled to specific benefits, which are outlined in state law, without going to court.
18 When a workplace injury occurs, an injured employee receives the following benefits,
19 depending on the circumstances:

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

27 An employee may appeal the determination of benefits through a state system,
28 but cannot seek damages in court. In 2005, over 120,000 workplace injuries were
29 reported, and of those, approximately 85,000 resulted in claims for medical care and
30 16,600 resulted in claims for lost wages.

31 ***What additional remedies are offered to injured employees under***
32 ***Amendment (?)?*** In addition to any remedies received under workers'
33 compensation, Amendment ? allows an injured employee to sue in court if he or she
34 believes that the employer failed to provide a safe and healthy workplace.
35 Amendment ? applies to employees working at private companies with ten or more
36 employees. An employee cannot receive damages that he or she already received

1 under workers' compensation. Under Amendment ?, examples of damages that an
2 employee may sue for include:

- 3 ◆ past and future monetary losses;
- 4 ◆ pain and suffering;
- 5 ◆ emotional distress;
- 6 ◆ inconvenience;
- 7 ◆ mental anguish;
- 8 ◆ loss of enjoyment of life; and
- 9 ◆ other non-monetary losses.

10 **Arguments For**

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

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

24 **Arguments Against**

25 1) Amendment ? is unnecessary. The current workers' compensation system
26 effectively balances the needs of employees and employers. It ensures prompt
27 delivery of benefits to injured employees without the delay, expense, and risk involved
28 with a lawsuit and controls costs for employers. Allowing injured employees to sue for
29 additional benefits disrupts this balance. Moreover, employers are already motivated
30 to provide safe and healthy workplaces to comply with safety regulations, lower costs
31 for worker replacement and insurance premiums, and increase employee productivity.

32 2) The negative effect of Amendment ? on the state's economy outweighs any
33 potential benefits to some injured employees. It exposes employers to increased
34 liability and legal costs. These increased costs are likely to be passed on to
35 consumers and employees through increased prices for goods and services, lower
36 wages, and reduced employee benefits. Amendment ? may increase unemployment
37 by discouraging businesses from locating or expanding in Colorado. It could also
38 result in significant litigation, adding to the current backlog of court cases.

1 **Estimate of Fiscal Impact**

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

11 **Table 1. Annual State Revenue and Spending Increases**
 12 **Under Amendment ?***

	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

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