


Colorado Legislative Council Staff Fiscal Note
STATE
FISCAL IMPACT

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Prime Sponsor(s): Rep. Levy
Sen. Carroll M.

Bill Status: House Judiciary

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TITLE: CONCERNING THE CREATION OF REMEDIES AVAILABLE IN EMPLOYMENT DISCRIMINATION CASES.

Fiscal Impact Summary	FY 2010-2011	FY 2011-2012
State Revenue		
State Expenditures		
General Fund	\$75,445	\$163,955
FTE Position Change	1.1 FTE	2.2 FTE
Effective Date: August 11, 2010, assuming the General Assembly adjourns May 12, 2010, as scheduled and no referendum petition is filed.		
Appropriation Summary for FY 2010-2011: See State Appropriations section.		
Local Government Impact: None.		

Summary of Legislation

This bill establishes the Workplace Fairness and Civil Rights and Remedies Act of 2010. It allows a plaintiff in an employment discrimination case brought under state law to receive compensatory and punitive damages. These damages are in addition to the remedies available under current law including front pay, back pay, interest on back pay, reinstatement or hiring, and other equitable relief. The bill caps the total compensatory and punitive damages that may be awarded, but if the case is tried by a jury, the court is not to inform the jury of the caps. The court may award reasonable attorney fees and costs to the prevailing party.

For the first year the bill is effective, compensatory and punitive damages, and attorney fees and costs, are only available against an employer with 15 or more employees. The damage limits for employers with 15 or more employees are the same as in federal law. The damage limits for all employers are shown below:

For employers with:	Maximum Overall Damages
14 or fewer employers	\$25,000
between 15 and 100 employees	\$50,000
between 101 and 200 employees	\$100,000
between 201 and 500 employees	\$200,000
more than 500 employees	\$300,000

Background

Colorado Civil Rights Division Under state law, a person who believes he or she has been discriminated against must exhaust administrative relief before filing with a court. To accomplish this, the person must file a charge of discrimination (claim) with the Colorado Civil Rights Division (CCRD) of the Department of Regulatory Agencies. The division investigates the claim and the director makes a determination. If a claim is not settled at the division, the person may file with the appropriate court within 90 days of a determination, dismissal, or after receiving a "Right to Sue".

Federal Civil Rights Law. Under federal law, plaintiffs who prevail in employment discrimination cases may be awarded compensatory and punitive damages, and attorneys fees. This only applies to cases against employers with 15 or more employees. An exception is the Age Discrimination in Employment Act (ADEA) which applies to employers with 20 or more employees and allows for the award of attorneys fees but not compensatory or punitive damages. Discrimination on the basis of sexual orientation cannot be brought under federal law.

State Expenditures

General Fund expenditures will increase by \$75,445 and 1.1 FTE in FY 2010-11 and \$163,955 and 2.5 FTE in FY 2011-12 to address increased caseload at the Colorado Civil Rights Division. Expenditures are detailed in Table 1 and based on the assumptions explained below.

Table 1. Expenditures Under HB10-1229		
Cost Components	FY 2010-11	FY 2011-12
Personal Services	\$54,941	\$124,311
FTE	1.1	2.5
Operating Expenses and Capital Outlay	6,182	9,567
Legal Services	14,322	30,077
TOTAL	\$75,445	\$163,955

Claims filed with the CCRD for employment discrimination are increasing under current law. Between FY 2006-07 and FY 2008-09, charges increased by an average of 10 percent per year as shown in Table 2. There is no reason to assume that this growth will not continue. The fiscal note assumes that for FY 2009-10, 783 charges will be filed with the CCRD and uses this as a baseline for estimating fiscal impact.

Fiscal Year	Actual	Change
FY 2006-07	593	N/A
FY 2007-08	635	42
FY 2008-09	712	77
FY 2009-10*	783	71

**Projected*

CCRD offers a more desirable mechanism for investigating claims than the Equal Employment Opportunity Commission (EEOC). When the CCRD investigates a claim, all information discovered is available to both parties and can be used in court. Alternately, when a claim is filed with the EEOC, all discovery is kept confidential. Some cases that would have been filed under federal law in order to recover compensatory and punitive damages and attorney's fees, will now be filed for resolution at CCRD. In addition, CCRD has a 270 day deadline for completing an investigation which the EEOC does not.

Many claims are already filed with the CCRD. The increase in filings is expected to be limited by the assumption that the person would file with the CCRD regardless of the expectation of compensatory and punitive damages. A person can file with CCRD without an attorney and receive the same relief as a person with an attorney.

The majority of employers in Colorado have less than 15 employees. For actions occurring on or after August 11, 2011, employees of employers with 14 or fewer employees can recover up to \$25,000 and attorney fees. While the bill may cause employers to modify their behavior to avoid claims of discrimination, the sheer volume of employers now subject to increased remedies suggests an increase in claims.

More attorneys will be willing to represent people claiming employment discrimination. In hearings on a similar bill in a prior session, witnesses testified that attorneys were not willing to take employment discrimination cases that were exclusively covered by state law. It follows that if attorneys have the potential of recovering their costs, they will solicit cases and influence an increase in the number of people who will file claims with the CCRD.

CCRD conducts outreach on employment discrimination. Within its current appropriation, the CCRD conducts training throughout the state on employment and sexual harassment. Because the bill does not create a new cause of action, the fiscal note does not include an increase in funding for outreach.

No other state offers a good comparison. Given the complexity of the issues involved with employment discrimination, a comparable example of implementation of this same law in another state is not available. While other states may offer the same remedies, a credible comparison would require a depth of analysis that is not currently available.

CCRD caseload will increase. The fiscal note holds that given the assumptions above, the bill will influence the filing of 10 percent more claims in the first year it is in effect and an additional 10 percent (total of 20%) more filings in FY 2011-12. This equates to an additional 79 charges filed in FY 2010-11 and 165 in FY 2011-12.

Increases in Judicial Branch caseload can be absorbed. Although some cases are expected to be heard in state court rather than federal court, and additional claims are expected to go from CCRD to state court, these are not considered to be of sufficient numbers to drive a fiscal impact to the courts.

Funding for new caseload. One investigator can investigate 84 cases per year so staffing includes 0.9 FTE for investigation with 0.2 for intake in FY 2010-11 and 1.8 FTE for investigation and 0.4 FTE for intake in FY 2011-12. Legal services hours of 190 and 399 are required for FY 2010-11 and FY 2011-12 respectively from the Department of Law. The fiscal note assumes that should caseloads be higher than estimated, funding will be requested through the supplemental or annual budget process.

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 HB10-1229*		
Cost Components	FY 2010-11	FY 2011-12
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$7,810	\$17,750
Supplemental Employee Retirement Payments	2,043	5,625
Indirect Costs	13,520	30,728
Leased Space	4,620	10,500
TOTAL	\$27,993	\$64,603

*More information is available at: <http://www.colorado.gov/cs/Satellite/CGA-LegislativeCouncil/CLC/1200536133924>

State Appropriations

For FY 2010-11, the Department of Regulatory Agencies requires a General Fund appropriation of \$75,445 and 1.1 FTE. Of this, the Department of Law requires \$14,322 reappropriated funds.

Departmental Differences

The CCRD estimates the impact of HB10-1229 to be \$281,649 and 4.3 FTE in FY 2010-11 and \$306,982 and 5.1 FTE in FY 2011-12. CCRD compared Colorado to 9 other states that have similar remedies in place and calculated an average of 1 claim of discrimination for every 5,393 residents. They applied this to the population of Colorado and arrived at an increase of 230 cases in FY 2010-11 and 280 cases in FY 2011-12. Although this approach has value, the fiscal note does not consider a comparison based only on population sufficient to determine the impact of this legislation. The CCRD also included that additional outreach would be required to educate the public and employers of the changes. As noted above, because the bill does not create a new cause of action, outreach costs are not included in the fiscal note.

Departments Contacted

Regulatory Agencies
Personnel and Administration

Judicial Branch
Law