



**Colorado  
Legislative  
Council  
Staff**

**SB16-114**

**FISCAL NOTE**

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

**Drafting Number:** LLS 16-0866 **Date:** February 18, 2016  
**Prime Sponsor(s):** Sen. Carroll; Ulibarri **Bill Status:** Senate SVMA  
 Rep. Danielson **Fiscal Analyst:** Kerry White (303-866-3469)

**BILL TOPIC:** EMPLOYEE-EARNED PAID SICK LEAVE

Fiscal Impact Summary	FY 2016-2017	FY 2017-2018
<b>State Revenue</b>	<b>&lt;\$5,000</b>	<b>&lt;\$5,000</b>
General Fund	<\$5,000	<\$5,000
<b>State Expenditures</b>	<b>at least \$283,888</b>	<b>at least \$252,700</b>
General Fund	247,810	208,440
Centrally Appropriated Costs	36,078	44,260
<b>TABOR Impact</b>	<\$5,000	<\$5,000
<b>FTE Position Change</b>	3.1 FTE	3.6 FTE
<b>Appropriation Required:</b> \$247,810 - Department of Labor and Employment (FY 2016-17).		
<b>Future Year Impacts:</b> Ongoing increase in state revenue and state expenditures.		

**Summary of Legislation**

This bill creates the Healthy Families and Workplace Act and requires that all employers in Colorado provide paid sick leave to each employee as follows:

- at least one hour for every 30 hours worked, up to 72 hours per 12-month period if the employer has more than 10 employees; or
- at least one hour for every 30 hours worked, up to 40 hours per 12-month period if the employer has fewer than 10 employees.

The bill applies to all statutorily-defined employees, which includes any person, including a migratory laborer, performing labor or services for the benefit of an employer in which the employee is subject to an employer's control and direction. It does not apply to independent contractors.

**Use of leave.** Employees are permitted to carry accrued sick leave forward to use in the future, but the employer is not required to allow the employee to take more than it is required to grant in a given 12-month period.

Paid sick leave may be used for:

- the employee's own health care or that of a member of the employee's family (which is expanded to include another person related by blood, marriage, adoption, foster or legal guardianship; a domestic partner; the spouse of an employee's child, parent, sibling, or grandparent; or any other person living within the same household of the employee for at least six months or who has a close relationship equivalent to that of a family member);
- absences related to specified incidences of domestic abuse, sexual assault, or harassment; or
- when a public official has ordered the closure of the employee's workplace, or the school or child care facility of the employee's child, due to a public health emergency.

Employers are not required to pay out unused sick leave balances. However, if a terminated employee returns to work with the same employer within a 12-month period, that employer is required to reinstate any uncompensated, accrued sick leave balances for that employee.

**Notice.** Employers are required to notify employees of the amount of paid sick leave to which they are entitled and the terms of its use. The Colorado Department of Labor and Employment (CDLE) is required to create and make available posters outlining the paid sick leave policy for use by employers.

**Employee rights and civil actions.** Employees are not required to disclose the details of medical conditions or absences related to abuse. An employer is prohibited from retaliating against any attempt by an employee to exercise his or her rights under the bill or from counting paid sick leave used by an employee as an absence that may lead to or result in disciplinary action. An employer who willfully violates these requirements is subject to a civil fine not to exceed \$100 per separate violation. Fines are credited to the General Fund.

**Enforcement.** Employers are required to retain records documenting hours worked, paid sick leave accrued and paid sick leave used, for each employee for a five-year period. Employers are to provide reasonable access to records for monitoring by the CDLE. CDLE is provided with rulemaking authority and is given jurisdiction over enforcement of the bill's requirements. Any findings, awards, or orders issued by the CDLE are subject to judicial review.

## **State Revenue**

Beginning in FY 2016-17, this bill may increase revenue credited to the General Fund as a result of any civil fines. The bill authorizes fines of up to \$100 for an employer that willfully violates the requirements of the bill. Fine revenue is anticipated to be minimal and less than \$5,000 in any fiscal year.

## **TABOR Impact**

This bill increases state revenue from fines, which will increase the amount of money required to be refunded under TABOR. TABOR refunds are paid out of the General Fund.

**State Expenditures**

**This bill increases state General Fund expenditures by at least \$283,888 and 3.1 FTE in FY 2016-17 and by at least \$252,700 and 3.6 FTE in FY 2017-18 and future years. Table 1 and the discussion that follows describe the costs of the bill.**

<b>Table 1. Expenditures Under SB16-114</b>		
<b>Cost Components</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
Personal Services	\$149,986	\$180,873
FTE	3.1 FTE	3.6 FTE
Operating Expenses and Capital Outlay Costs	21,860	3,325
Legal Services	38,004	18,242
Computer Programming	32,960	0
Printing and Postage	5,000	6,000
Centrally Appropriated Costs*	36,078	44,260
<b>TOTAL</b>	<b>\$283,888</b>	<b>\$252,700</b>

\* Centrally appropriated costs are not included in the bill's appropriation.

**Colorado Department of Labor and Employment.** Costs assume at least 1,600 complaints and inquiries will be filed, requiring 3.0 FTE compliance investigator staff and 0.5 FTE administrative staff. Staff will analyze and investigate complaints, conduct field investigations and monitor employers, examine records, draft legal documents, and process fines for violations. Rulemaking and other legal services costs will be required to resolve disputes and address any cases that are appealed to the district court. This is anticipated to require 400 hours of legal services in FY 2016-17 and 192 hours in FY 2017-18 and future years. One-time computer system changes are required in FY 2016-17 to update the eComp computer system in order to track and maintain data on requests related to sick leave policies. Printing and postage costs will be incurred to prepare employer posters, as required under the bill.

This analysis assumes that should the volume or complexity of cases exceed the estimate provided in this fiscal note, the CDLE will request additional appropriations through the annual budget process.

**Centrally appropriated costs.** 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 estimated in the fiscal note for informational purposes and summarized in Table 2.

<b>Table 2. Centrally Appropriated Costs Under SB16-114</b>		
<b>Cost Components</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$23,243	\$28,053
Supplemental Employee Retirement Payments	12,835	16,207
<b>TOTAL</b>	<b>\$36,078</b>	<b>\$44,260</b>

**Department of Law.** The Department of Law is expected to assist with rulemaking and other legal services for an estimated 400 hours in FY 2016-17 and 192 hours in FY 2017-18 and future years. These costs are shown in the CDLE and will be reappropriated to the Department of Law. The Department of Law also requires 0.2 FTE in FY 2016-17 and 0.1 FTE in FY 2017-18 and future years.

**Judicial Department.** This bill is expected to increase workload in district courts to provide judicial review of cases decided by the CDLE. This workload increase is anticipated to be minimal and will not require an increase in appropriations.

**Other state agencies.** Other state agencies may incur several costs related to this bill, including use of sick leave, records retention, seasonal and temporary employees, leave tracking system updates, and sick leave accruals by part-time employees.

*Use of sick leave.* As compared to current policy, the bill expands the reasons for which sick leave may be used. To the extent that absences require the hiring of temporary personnel or other employees are granted overtime to cover missed shifts, costs will increase. This increase is expected to vary by state agency (and may be higher in certain agencies such as the Department of Corrections, which has facilities that are required to be staffed 24-hours a day) and has not been estimated. Another possibility is that employees are currently using vacation leave for reasons which will shift to sick leave under SB16-114. As vacation leave balances, within certain caps, are payable to employees who terminate their employment with the state, the net effect of SB16-114 may be to increase the amount payable to employees who leave state employment. The fiscal note assumes affected agencies will request additional appropriations as needed through the annual budget process.

*Records retention.* The bill requires employers retain all sick leave records for five years, compared to the current three year requirement. This is expected to increase costs for record retention by a minimal amount. However, as medical records are retained for six years under current policy and will now only be required to be kept for five years, a decrease in costs may partially or fully offset the increase related to leave records.

*Seasonal and temporary employees.* The bill makes paid sick leave available to seasonal and temporary employees, who are currently ineligible under state leave policies. The impact of this is indeterminate, but has the potential to be significant in certain entities, such as within institutions of higher education and the Department of Natural Resources (DNR). For example, the University of Colorado identified potential costs ranging from \$900,000 to \$1.7 million, assuming that all paid sick leave granted is taken and that labor is replaced with another employee making the same hourly wage. Similarly, the DNR identified that it could incur costs of up to \$381,522, primarily within the Division of Parks and Wildlife.

*Leave tracking systems.* There is no centralized leave tracking system in the state. As such, some or all agencies may incur costs to update computer systems to ensure that leave accruals are performed in accordance with SB16-114 and that any prior leave balances are reinstated for employees returning within 12 months. This analysis assumes that affected agencies that cannot accommodate programming needs within existing appropriations will request them through the annual budget process.

*Sick leave accruals by part-time employees.* For certain part-time employees, current leave accruals may be less than those required by the bill. This analysis assumes that this will increase workload to update leave accrual calculations and, to the extent that granting additional paid sick

leave allows these employees to be out of the office more frequently, it may either increase costs or workload for other staff to backfill those duties. These impacts are assumed to be minimal and do not require an increase in appropriations for any state agency.

### **Local Government and Statutory Public Entity Impact**

Similar to state agencies, local governments (including counties, municipalities, special districts, school districts, and other political subdivisions of the state) and statutory public entities may experience cost increases related to the use of sick leave, records retention, seasonal and temporary employees, leave tracking system updates, and sick leave accruals by part-time employees. These impacts have not been estimated.

### **Effective Date**

The bill takes effect August 10, 2016, if the General Assembly adjourns on May 11, 2016, as scheduled, and no referendum petition is filed.

### **State Appropriations**

For FY 2016-17, the bill requires an appropriation of \$247,810 General Fund and an allocation of 2.9 FTE to the Department of Labor and Employment. Of this amount, \$38,004 should be reappropriated to the Department of Law, which also requires an allocation of 0.2 FTE.

### **Departmental Difference**

The Colorado Department of Labor and Employment identified total costs of \$505,056 and 5.8 FTE in FY 2016-17 and \$495,157 and 7.0 FTE in FY 2017-18 and future years. The CDLE estimate and fiscal note agree on the projected number of cases that will require further action, legal services costs, computer system costs, and printing/postage costs. The fiscal note and department differ on the assumptions related to the amount of work resulting from employee inquiries and that required to process each complaint. The fiscal note takes a more conservative approach and assumes that if the volume of calls or work for cases requiring further action is consistently at the higher end of the range then the department can request additional appropriations as needed in the future.

### **State and Local Government Contacts**

All Departments

Counties

Municipalities