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Fiscal Note

Drafting Number: LLS 22-0651
Prime Sponsors: Rep. Van Winkle

Date: February 28, 2022
Bill Status: House Business
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Bill Topic: **EMPLOYEE EXEMPTION COVID-19 VACCINE REQUIREMENT**

Summary of Fiscal Impact:

<input checked="" type="checkbox"/> State Revenue	<input checked="" type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill requires employers to grant COVID-19 vaccine exemptions. Employees terminated on the basis of COVID-19 vaccine non-compliance are not disqualified from unemployment benefit eligibility. The bill increases state and local expenditures and may increase state revenue beginning in FY 2022-23.

Appropriation Summary: No appropriation is required. Costs for the Department of Personnel and Administration will be paid from the Risk Management Fund.

Fiscal Note Status: The fiscal note reflects the introduced bill.

Table 1
State Fiscal Impacts Under HB 22-1200

		Budget Year FY 2022-23	Out Year FY 2023-24
Revenue		-	-
Expenditures	Reappropriated Funds	up to \$869,959	up to \$869,959
	Total FTE	1.3 FTE	1.3 FTE
Transfers		-	-
Other Budget Impacts		-	-

Summary of Legislation

The bill requires an employer that imposes a COVID-19 vaccine requirement to grant an employee an exemption if the employee submits a written request stating that compliance with the requirement would endanger the employee's or household member's health and well-being or would violate or conflict with the employee's sincerely held religious beliefs. If an employer terminates an employee for failing to comply with the employer's COVID-19 vaccine requirement, the terminated employee is not disqualified from eligibility for unemployment benefits.

Background

Federal COVID-19 vaccination mandates. Under Centers for Medicare and Medicaid Services rule established November 2021, a range of health care providers receiving federal funding are to require their employees to be vaccinated, with exemptions allowed for medical and religious reasons. After state challenges, the U.S. Supreme Court lifted injunctions in mid-January, and the CMS is currently implementing the mandate. Two other mandates have been either blocked by the U.S. Supreme Court and withdrawn (the Occupational Safety and Health Administration's vaccine mandate for businesses with 100 or more employees) or are in state courts of appeal (the president's Executive Order requiring federal contractors to be vaccinated, in Georgia).¹

Colorado COVID-19 vaccination mandates.² State employees are currently required to attest vaccination status and, in some cases, required to undergo serial testing in lieu of vaccination. Departments that provide services for vulnerable or at-risk populations, populations living in congregate living settings, in-person programs, and public health laboratories—such as the Departments of Corrections, Human Services, and Public Health and Environment—may create additional, more restrictive safety measures and mandatory vaccination policies for employees in contact with these populations as directed by their department. In such cases, full vaccination can be required with no option for testing, although religious and medical exemptions and reasonable accommodation requests shall be addressed as required by law pursuant to the Equal Employment Opportunity Commission's vaccination guidance.³ Consequences for employees who do not comply with these mandatory vaccination policies may include corrective and/or disciplinary action up to and including termination pursuant to the applicable State Personnel Board Rules and Director's Administrative Procedures and Executive Order D 2021 132 Colorado's Disaster Recovery Order.

State Revenue

To the extent that individuals file civil actions under the bill, filing fee revenue will increase. Court fee revenue is subject to TABOR.

¹ Explainer: Who must follow Biden's vaccine mandates? Associated Press, February 24, 2022: <https://apnews.com/article/coronavirus-pandemic-joe-biden-us-supreme-court-health-business-4b627f784e59e82e59ed66ed17cc8b67>

² Colorado Division of Human Resources, COVID-19 Vaccination and Serial Testing Requirements, revised February 28, 2022: https://drive.google.com/file/d/1jwZbZQjMonCdKAbBZ_h1TqhEDKm6AqLW/view

³ Equal Employment Opportunity Commission's vaccination guidance: <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#K>

State Expenditures

The bill increases state expenditures by up to \$869,959 per year in the Department of Personnel and Administration (DPA) beginning in FY 2022-23 paid from reappropriated funds from affected state agencies. Expenditures are also expected to increase in the Department of Labor and Employment. Expenditures are shown in Table 2 and detailed below.

**Table 2
Expenditures Under HB 22-1200**

	FY 2022-23	FY 2023-24
Department of Personnel and Administration		
Risk Management	\$639,004	\$639,004
Legal Services	\$230,955	\$230,955
Total	\$869,959	\$869,959
Total FTE	1.3 FTE	1.3 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

Department of Personnel and Administration. As discussed in the Background section, the state currently has certain COVID-19 vaccine mandates as required by federal and state policy. The bill requires employers to allow exemptions to the mandate; therefore, the fiscal note assumes that conflicting laws will result in increased litigation against the state, which will increase costs in the state's Risk Management Program, administered by the DPA. Cost estimates are based on the data and assumptions detailed below, and include legal defense costs and settlement payments. Costs will be paid using reappropriated funds in the Risk Management Fund and require no appropriation.

- **Data and assumptions.** Out of the state's 65,000 employees, 546 have applied for exemptions from a COVID-19 vaccination mandate. Applying the three-year average of employment-related claims to this number, it is anticipated that there will be up to nine additional employment-related claims.
- **Employment-related claims and legal services costs.** The fiscal note assumes that of the nine claims: one will settle at the Colorado Governmental Immunity Act cap, \$387,000, with legal services estimated at \$109,773; two will settle at an average amount, \$126,002, with legal services estimated at \$36,591 per case; and the remainder will result in litigation only at the Office of Risk Management's average cost of \$8,000 per case. As discussed below, actual costs may vary from these estimates, but are provided for informational purposes to describe the potential liability to the state from these types of claims.
- **Costs to be addressed through the annual budget process.** The state's actual costs will depend on a number of factors, including the number and complexity of cases, case outcomes, and the timing of cases and judgments. Depending on the number of cases annually, costs may vary from year to year or be spread out over a number of years. It is assumed that ongoing costs will be addressed through the annual budget process once more information on cases and settlements are known.

Department of Labor and Employment. The Department of Labor and Employment is expected to have an increase in inquiries to its Division of Labor Standards and Statistics, as well an increase in unemployment insurance claims. These costs are expected to be absorbed in the first fiscal year, and addressed through the annual budget process if they are significant.

Judicial Department. To the extent that individuals file civil actions against an employer or potential employer, expenditures in trial courts will increase. The fiscal note assumes this impact will be minimal and no change in appropriations is required.

Local Government

Similar to the state, local government expenditures are expected to increase from employment-related claims filed against county and municipal employers.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State and Local Government Contacts

Counties
Law

Information Technology
Municipalities

Labor
Personnel and Administration