

**Legislative Council Staff**
*Nonpartisan Services for Colorado's Legislature***Fiscal Note**

Drafting Number:	LLS 22-0835	Date:	April 4, 2022
Prime Sponsors:	Sen. Danielson; Jaquez Lewis Rep. Duran; Froelich	Bill Status:	Senate Business
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Bill Topic: WAGE THEFT EMPLOYEE MISCLASSIFICATION ENFORCEMENT

Summary of Fiscal Impact:	<input checked="" type="checkbox"/> State Revenue <input checked="" type="checkbox"/> State Expenditure <input type="checkbox"/> State Transfer	<input type="checkbox"/> TABOR Refund <input checked="" type="checkbox"/> Local Government <input type="checkbox"/> Statutory Public Entity
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The bill changes laws and enforcement procedures pertaining to wage payments, employee misclassification, and workplace safety. This includes the creation of a new enforcement unit in the Department of Law. It increases state expenditures on an ongoing basis and may increase state revenue.

Appropriation Summary: For FY 2022-23, the bill requires appropriations totaling \$734,684 to multiple state agencies.

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

Table 1
State Fiscal Impacts Under SB 22-161

		Budget Year FY 2022-23	Out Year FY 2023-24
Revenue		-	-
Expenditures	General Fund	\$734,684	\$990,984
	Centrally Appropriated	\$218,336	\$339,101
	Total Expenditures	\$953,020	\$1,330,085
	Total FTE	7.5 FTE	11.9 FTE
Transfers		-	-
Other Budget Impacts	General Fund Reserve	\$110,203	\$148,648

Summary of Legislation

The bill changes laws and enforcement procedures pertaining to wage payments, employee misclassification, and workplace safety.

Penalty modifications. The current penalty for failure to provide requested information to the Division of Labor Standards and Statistics (DLSS) in the Department of Labor and Employment (CDLE) is an unclassified misdemeanor. The bill reduces the offense to an administrative penalty of \$50 or more per day. The bill imposes automatic penalties. It also adjusts the penalty amount for multiple violations within five years on employers that fail to pay past-due wages within 14 days after a written demand or civil or administrative action is sent to or served on the employer.

Required employer notices. The bill makes several changes regarding notices to employees and practices for withholding wages for unreturned property. First, employers are required to provide notice to an employee within 10 days after an employee's termination before deducting any amount from wages or compensation for money or property that the employee failed to return or repay upon termination of employment. Second, the employer must pay the employee the deducted amount within 14 days after the employee returns or repays the money or property if the employee did so within 14 days after the notice is provided. Third, the employer must pay two times the amount of the deduction if the employer fails to provide the required notice.

Claim dismissals. The bill repeals the requirement that an employee dismiss an action against an employer after the employer makes a legal tender for the full amount claimed in the action. The bill also eliminates a court's authority to award an employer reasonable attorney fees and costs in an action in which the employee claimed wages in excess of the greater of \$7,500 or the jurisdictional limit for small claims court where the employee does not recover an amount greater than the amount the employer tendered.

Wage claims and notifications of patterns of wage nonpayment. For wage claims on or after January 1, 2023, the bill increases the threshold for wage claims that the DLSS director may adjudicate to \$15,000 or less, from the current amount of \$7,500 or less. The DLSS director may use existing authority under labor laws to gather information pertinent to wage claims from employers, employees, and other persons or entities. If the DLSS determines that an employer has violated wage laws, the bill allows employees who filed the wage claims to request the DLSS to notify similarly situated employees that the employer may be engaging in a pattern or practice of nonpayment of wages. The bill also allows recovery of attorney fees, an additional fine of 50 percent of the amount of past-due wages, and a penalty of 50 percent of past-due wages or \$3,000, whichever is greater, from an employer that fails to pay an employee past-due wages within 60 days after the determination in favor of the employee.

Discrimination and retaliation claims. The bill allows employees who allege that their employer discriminated or retaliated against them for filing or participating in a wage claim to file a civil action. Relief includes back pay, reinstatement or front pay, payment of unlawfully withheld wages, interest on past-due wages, penalties, liquidated damages, injunctive relief, and attorney fees and costs. After an investigation of a discrimination or retaliation claim, the DLSS may also order similar relief to an employee other than attorney fees and costs.

Liens on employers. For a citation, notice of assessment, or order issued against an employer on or after January 1, 2023, the DLSS is required, upon request of an employee, to file a certified copy of the citation, notice, or order with the appropriate clerk of court, after which the clerk is required to enter the citation, notice, or order as a judgment of the court, and the judgment becomes a lien against the employer's property that is superior to all other liens except property tax liens. The bill also authorizes the DLSS to issue a notice of administrative lien and levy, similar to a child support enforcement lien, when an employer fails to pay past-due wages, fines, or penalties, which lien attaches to the employer's real or personal property that is in the possession, custody, or control of another person. The bill also modifies certain provisions of the mechanics' lien law to streamline its use in the context of workers enforcing wage claims for work performed on real property.

Workplace safety. The bill requires employers to ensure the workplace is constructed, operated, and equipped, and any machinery and equipment in the workplace is placed, operated, and lighted, in a manner that provides reasonable and adequate protections to the lives, health, and safety of all employees. Employees and the newly created Worker and Employee Unit in the Department of Law (DOL) are authorized to enforce workplace safety requirements.

Worker and Employee Unit—Department of Law. The bill establishes the Worker and Employee Unit in DOL to investigate and enforce wage theft, unemployment insurance and misclassification of employees, and workplace safety claims under specified circumstances.

Comparable Crime Analysis

Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or creates a new factual basis for an existing crime. This section outlines data on crimes comparable to the offense in this bill and discusses assumptions on future rates of criminal conviction for those offense.

Prior conviction data and assumptions. This bill reclassifies the existing misdemeanor offense of failing to furnish information to the Industrial Claim Appeals Office in CDLE by making it a daily penalty of at least \$50 per day to fail or refuse to furnish information. From FY 2018-19 to FY 2020-21, zero offenders have been sentenced and convicted for this offense.

Background

House Bill 17-1021 created the Wage Theft Transparency Act, which requires the CDLE to treat certain information pertaining to a wage law violation as public records available on request pursuant to the Colorado Open Records Act (CORA). House Bill 19-1267 classified certain unclassified misdemeanors related to wage theft as crimes of theft punishable as a petty offense, misdemeanor, or felony depending on the amount of wages withheld or underpaid.

State Revenue

Beginning in FY 2022-23, the bill may increase state revenue to the Wage Theft Enforcement Fund from penalty assessments made by the DLSS, as well to Judicial Department cash funds from court filing fees resulting from employee actions against employers accused of wage theft. This revenue is subject to TABOR; however, the overall impact is expected to be minimal.

State Expenditures

The bill increases state expenditures in the CDLE and the DOL by \$1.0 million in FY 2022-23 and \$1.2 million in FY 2023-24 from the General Fund. Expenditures are shown in Table 2 and detailed below.

Table 2
Expenditures Under SB 22-161

Cost Components	FY 2022-23	FY 2023-24
Department of Labor and Employment		
Personal Services	\$417,742	\$685,984
Operating Expenses	\$8,910	\$13,095
Capital Outlay Costs	\$62,000	-
Licenses and Software	\$25,902	\$25,902
Legal Services	\$31,050	\$31,050
Centrally Appropriated Costs ¹	\$186,757	\$298,328
FTE – Personal Services	5.7 FTE	9.7 FTE
FTE – Legal Services	0.2 FTE	0.2 FTE
CDLE Subtotal	\$732,361	\$1,054,359
Department of Law		
Personal Services	\$173,200	\$230,933
Operating Expenses	\$2,160	\$2,700
Capital Outlay Costs	\$12,400	-
Mileage	\$1,320	\$1,320
Centrally Appropriated Costs ¹	\$31,579	\$40,773
FTE – Personal Services	1.6 FTE	2.0 FTE
DOL Subtotal	\$220,659	\$275,726
Total	\$953,020	\$1,330,085
Total FTE	7.5 FTE	11.9 FTE

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

Department of Labor and Employment. The CDLE requires 9.7 FTE to implement the bill. Standard operating and capital outlay costs are included for staff, as well as agency specific software licenses. First-year costs are prorated for the General Fund pay date shift. Additional detail on duties and costs under the bill are provided below.

- **Asset enforcement and investigation.** In order to freeze and seize assets from an employer in response to wage theft, the DLSS will increase staff to find, analyze the availability of, and take action against an employer's assets. Because the assets of employers include real property, corporate funds, personal and investment bank accounts, and varied personal property, work will involve specialized investigations. The DLSS requires 1.0 FTE Compliance Investigator as a subject matter authority for complex analysis and 1.5 FTE Policy Advisor to set policies, guidance, rules for documents to be sent to those in control of an employer's assets, such as banks.
- **Increased wage claim amount.** This provision is expected to increase the number and complexity of wage complaints and the amount of time required to resolve complaints. The DLSS currently has 28.0 FTE assigned to claims. Assuming a 21 percent increase in complaints, an additional 4.9 FTE Compliance Investigators are required to handle the increased volume, prorated for the January 1, 2023, effective date for this provision.
- **Rulemaking.** The DLSS will promulgate rules, publish guidance documents, update internal policies, and conduct outreach to implement the bill. This requires 1.2 FTE Policy Advisor.
- **Enforcement administration.** The DLSS is expected to file approximately 200 certified copies per year, which requires an average of 10 hours per year to file each certified copy and 400 hours to write and coordinate with courts on rules, guidance and internal policies. The DLSS will also collaborate with the Department of Law in notifying the employee protection unit of any misclassification determinations. These impacts require 0.9 FTE Legal Assistant. Finally, the DLSS will investigate and identify which employers engage in a systemic practice of violating wage laws, and provide notice to similarly situated employees. This requires complex legal research and analysis and is a commonly contested legal matter which will require approximately 0.2 FTE of an Administrative Law Judge.
- **Legal services.** External appeals are expected to require 315 hours of legal services per year from the DOL at a rate of \$98.57 per hour and 0.2 FTE.

Department of Law. The Department of Law will create a new unit within its Consumer Protection Section to investigate and enforce employee misclassifications and worker safety and protection with 1.0 FTE Senior Assistant Attorney General and 1.0 FTE Criminal Investigator hired at the salary midpoints. Costs assume a September 1, 2022, start date and are prorated for the General Fund pay date shift and standard operating and capital outlay costs are included. If actual caseload necessitates additional staff, the DOL will seek resources through the annual budget process.

Department of Personnel and Administration. The state's Division of Risk Management may see an increase in cases related to workplace safety complaints. The fiscal note assumes the state will comply with all applicable laws and that these cases will be rare. Potential costs will depend on the number of cases, case outcomes, and timing. It is assumed that any cost increases will be addressed through the annual budget process, through operating common policies, once experience is better known.

Judicial Department. Any impact on trial courts is expected to be minimal and no change in appropriations is required.

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. These costs, which include employee insurance and supplemental employee retirement payments, are shown in Table 2.

Other Budget Impacts

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve beginning in FY 2022-23. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1, which decreases the amount of General Fund available for other purposes.

Local Government

Similar to the state, local government employers are expected to comply with the provisions of the bill and any increases in cases related to workplace safety complaints are expected to be minimal.

Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed.

State Appropriations

The bill requires the following General Fund appropriations in FY 2022-23:

- \$545,604 to the Department of Labor and Employment and 5.7 FTE; of this amount, \$31,050 is reappropriated to the Department of Law with an additional 0.2 FTE; and
- \$189,080 to the Department of Law and 1.6 FTE.

State and Local Government Contacts

Alternate Defense Counsel	Counties	District Attorneys
Information Technology	Judicial	Labor
Law	Municipalities	Personnel
Property Tax Division	Public Defender	