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Final Fiscal Note

Drafting Number: LLS 23-0708 Date: July 25, 2023
Prime Sponsors: Rep. Valdez Bill Status: Vetoed by Governor
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Bill Topic: EMPLOYEES MAY ACCEPT CASH TIPS

- Summary of Fiscal Impact:
[X] State Revenue [ ] TABOR Refund
[X] State Expenditure [ ] Local Government
[ ] State Transfer [ ] Statutory Public Entity

The bill would have prohibited employers from taking adverse action against an employee who accepts a cash gratuity offered by a patron of the business. It would have increased state revenue and expenditures on an ongoing basis.

Appropriation Summary: For FY 2023-24, the bill would have required an appropriation of \$79,262 to the Department of Labor and Employment.

Fiscal Note Status: The fiscal note reflects the enrolled bill. This bill was vetoed by the Governor on May 23, 2023; therefore, the impacts identified in this analysis do not take effect.

Table 1
State Fiscal Impacts Under HB 23-1146

Table with 4 columns: Category, Sub-category, Budget Year FY 2023-24, and Out Year FY 2024-25. Rows include Revenue, Expenditures (General Fund, Centrally Appropriated, Total Expenditures, Total FTE), Transfers, and Other Budget Impacts (General Fund Reserve).

## Summary of Legislation

The bill prohibits an employer from taking adverse action against an employee who accepts a cash gratuity offered by a patron of the business, with certain exceptions.

## Background

Pursuant to Section 8-2-126, C.R.S., “adverse action” for an employee means demotion, reassignment to a lower-ranked position or to a position with a lower level of compensation, decrease in compensation level, denial of promotion, or termination of employment.

## Assumptions

The fiscal note assumes that the Department of Labor and Employment (CDLE) will receive 200 adverse action claims as a result of the legislation. This estimate is based on the number of retaliation claims the CDLE receives per year under the Healthy Families and Workplaces Act and the Health and Safety Whistleblowing Law.

## State Revenue

CDLE may see a minimal increase in fines assessed against employers due to the expected increase in complaints under the legislation, credited to the Wage Theft Enforcement Fund. Most fines assessed against employers will be waived if the ordered amounts are paid to claimants within specific timeframes. Fine revenue is subject to TABOR.

## State Expenditures

State expenditures in the CDLE will increase by \$107,437 in FY 2023-24 and \$58,680 in FY 2024-25 and ongoing, as shown in Table 2 and detailed below. Expenditures are paid from the General Fund.

**Table 2**  
**Expenditures Under HB 23-1146**

	FY 2023-24	FY 2024-25
<b>Department of Labor &amp; Employment</b>		
Personal Services	\$65,706	\$38,484
Operating Expenses	\$6,886	\$3,578
Capital Outlay Costs	\$6,670	-
Centrally Appropriated Costs <sup>1</sup>	\$28,175	\$16,618
<b>Total</b>	<b>\$107,437</b>	<b>\$58,680</b>
<b>Total FTE</b>	<b>0.8 FTE</b>	<b>0.5 FTE</b>

<sup>1</sup> Centrally appropriated costs are not included in the bill's appropriation.

**Department of Labor.** Beginning in FY 2023-24, the CDLE requires funding for staff and technology costs to address the increase in adverse action claims.

- **Staff.** CDLE requires 0.5 FTE annually for a Compliance Investigator II to screen approximately 200 adverse action complaints annually, with each complaint taking approximately one hour to complete, and to investigate 14 of those claims, at 60 hours per investigation. In addition, CDLE requires 0.5 FTE in FY 2023-24 only for a Policy Advisor V to conduct research, create internal and external rulemaking policy, and provide investigative guidance to the compliance investigator. First-year costs are prorated for the General Fund pay date shift and a September 1 start date. Standard operating and capital outlay costs are included.
- **Software licenses.** CDLE requires \$5,806 in FY 2023-24 and \$2,903 in FY 2024-25 and subsequent years for software licenses for the new staff, which are in addition to standard operating costs for new staff.
- **Legal services.** CDLE requires legal services hours to support rulemaking related to the bill's requirements. The increase is expected to be accommodated within current allotment. No change in appropriations is required. Legal services are provided by the Department of Law.
- **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.

## 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 current version of the bill includes a General Fund appropriation of \$38,436 to the Department of Labor and Employment for FY 2023-24, and 0.4 FTE; however, the fiscal note estimates that an appropriation of \$79,262 and 0.8 FTE is required, based on the estimates shown in the State Expenditures section above.

## State and Local Government Contacts

Information Technology  
Law

Judicial

Labor