



## Legislative Council Staff *Nonpartisan Services for Colorado's Legislature*

# Fiscal Note

**Drafting Number:** LLS 22-0587  
**Prime Sponsors:** Rep. Ransom; Sandridge  
**Date:** February 28, 2022  
**Bill Status:** House Health & Insurance  
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**Bill Topic:** **PROHIBIT DISCRIMINATION COVID-19 VACCINE STATUS**

**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 prohibits discrimination based on COVID-19 vaccine status and allows for civil action to be taken against an employer by an employee or applicant. It increases state and local expenditures and may increase state revenue beginning in FY 2022-23.

**Appropriation Summary:** For FY 2022-23, the bill requires an appropriation of \$16,288 to the Department of Labor and Employment. Costs for the Department of Personnel and Administration will be paid from the Risk Management Fund and do not require an appropriation.

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

**Table 1  
State Fiscal Impacts Under HB 22-1100**

		Budget Year FY 2022-23	Out Year FY 2023-24
<b>Revenue</b>		-	-
<b>Expenditures</b>	General Fund	\$16,288	\$17,769
	Reappropriated Funds	up to \$869,959	up to \$869,959
	Centrally Appropriated	\$4,465	\$4,598
	<b>Total Expenditures</b>	<b>up to \$890,712</b>	<b>up to \$892,326</b>
	<b>Total FTE</b>	<b>1.6 FTE</b>	<b>1.6 FTE</b>
<b>Transfers</b>		-	-
<b>TABOR Refund</b>	General Fund Reserve	\$2,443	\$2,665

## Summary of Legislation

The bill prohibits an employer from taking adverse action against an employee or applicant for employment based on the individual's COVID-19 immunization status. An aggrieved employee or applicant may file a civil action for injunctive, affirmative, and equitable relief and, if the employer acted with malice or wanton or willful misconduct or has repeatedly violated the law, the court may also award punitive damages and attorney fees and costs.

Additionally, the bill specifies that the COVID-19 vaccine is not mandatory, that the state cannot require any individual to obtain a COVID-19 vaccine, and that government agencies and private businesses, including health insurers, cannot discriminate against clients, patrons, or customers based on their COVID-19 vaccination status. A person aggrieved by a violation of these prohibitions may file a civil action for injunctive and other appropriate relief and may be awarded punitive damages and attorney fees and costs for wanton, willful, or repeated violations.

## 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).<sup>1</sup>

**Colorado COVID-19 vaccination mandates.**<sup>2</sup> 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.<sup>3</sup> 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.

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<sup>1</sup> 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>

<sup>2</sup> 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](https://drive.google.com/file/d/1jwZbZQjMonCdKAbBZ_h1TqhEDKm6AqLW/view)

<sup>3</sup> 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 Revenue**

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

**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, and by \$20,753 in FY 2022-23 and \$22,367 in FY 2023-24 in the Department of Labor and Employment (CDLE). DPA expenditures are paid from reappropriated funds from affected state agencies, and CDLE expenditures are paid from the General Fund. Workload may also increase for trial courts in the Judicial Department. These impacts are summarized in Table 2 and discussed below.

**Table 2  
Expenditures Under HB 22-1100**

	FY 2022-23	FY 2023-24
<b>Department of Personnel and Administration<sup>1</sup></b>		
Risk Management	up to \$639,004	up to \$639,004
Legal Services	\$230,955	\$230,955
FTE - Legal Services	1.3 FTE	1.3 FTE
<b>DPA Subtotal</b>	<b>up to \$869,959</b>	<b>Up to \$869,959</b>
<b>Department of Labor and Employment</b>		
Personal Services	\$16,288	\$17,769
Centrally Appropriated Costs <sup>2</sup>	\$4,465	\$4,598
FTE - Personal Services	0.3 FTE	0.3 FTE
<b>CDLE Subtotal</b>	<b>\$20,753</b>	<b>\$22,367</b>
<b>Total</b>	<b>up to \$890,712</b>	<b>up to \$892,326</b>
<b>Total FTE</b>	<b>1.6 FTE</b>	<b>1.6 FTE</b>

<sup>1</sup> These costs can be absorbed by the state's Risk Management Fund in the first year, and will be addressed through common policies in future fiscal years.

<sup>2</sup> 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 prohibits a vaccine mandate; however, 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 Division of Labor and Statistics in the CDLE administers state employment and labor laws. It requires 0.3 FTE Compliance Investigator I to maintain public outreach materials and respond to an estimated 50 inquiries per month regarding the bill.

**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.

**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 will increase the amount of General Fund held in reserve by the amounts shown in Table 1, which will decrease the amount of General Fund available for other purposes.

## 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 Appropriations

For FY 2022-23, the bill requires an appropriation of \$16,288 from the General Fund to the Department of Labor and Employment and 0.3 FTE.

## State and Local Government Contacts

Counties	District Attorneys	Information Technology
Judicial	Law	Labor
Municipalities	Personnel	Public Health and Environment