



Compensatory and punitive damages are limited based on the size of the employer, and the commission or court are directed to consider the size and assets of the defendant and the egregiousness of the intentional discriminatory or unfair employment practice when assigning damages. Federal law damage limits are shown in Table 1.

<b>Employer Size</b>	<b>Maximum Compensatory and Punitive Damages</b>
1 to 100	\$50,000
101 to 200	100,000
201 to 500	200,000
501 and up	300,000

By September 1, 2013, the commission is required to appoint a working group of employers and employees, including human resources professionals, to assist in education and outreach efforts and to foster compliance with laws prohibiting discriminatory or unfair employment practices. The commission is allowed to accept and expend gifts, grants and donations to fund this effort. Agencies that interact with private business are directed to post information on their websites within existing resources to encourage compliance with the provisions of the bill.

## **Background**

**Colorado Civil Rights Division.** Under state law, a person who believes he or she has been discriminated against must exhaust administrative relief before filing with a court. To accomplish this, the person must file a charge of discrimination (claim) with the Colorado Civil Rights Division (CCRD) in the Department of Regulatory Agencies. The CCRD investigates the claim and the director makes a determination. If a claim is not settled at the division, the person may sue in an appropriate court within 90 days of the determination.

**Federal Civil Rights Law.** Under federal law, plaintiffs who prevail in employment discrimination cases may be awarded compensatory and punitive damages, and attorneys fees. This only applies to cases against employers with 15 or more employees. An exception is the Age Discrimination in Employment Act (ADEA) which applies to employers with 20 or more employees and allows for the award of attorneys fees but not compensatory or punitive damages. Claims of employment discrimination on the basis of sexual orientation cannot be brought under federal law.

## **State Revenue**

The commission may accept and expend gifts, grants and donations for expenditures related to educational efforts, including the volunteer working group. No such funding has been identified at this time and is expected to be minimal.

**State Expenditures**

**This bill is expected to increase expenditures by \$12,914 and 0.2 FTE in FY 2014-15 and at least \$391,296 and 3.1 FTE in FY 2015-16.**

*Department of Law, and all state agencies.* Because this bill allows state employees to receive compensatory damages and expands their ability to sue for employment discrimination, **the bill is expected to increase expenditures by \$365,393 and 2.7 FTE** in the Department of Law for claims of discrimination filed with the State Personnel Board (board). These expenditures begin in FY 2015-16 to account for a lag in filing after the January 1, 2015, effective date.

Increased workload in the department is due to an increased number of cases and more complex cases. An average employment discrimination case requires about 300 hours of legal services. With this bill, a case is expected to require 415 hours of legal services to account for the extra complexity. So for every case that would have been filed regardless of the bill, an additional 115 hours will be required. The fiscal note also assumes that more cases will require discretionary review which is required when an employee files a petition for hearing with the board. The assumed numbers of each type of claims and associated costs for the department are shown in Table 2 using the department's blended rate of \$77.25 per hour.

<b>Types of Cases</b>	<b>Number of Claims</b>	<b>Hours</b>	<b>Cost</b>
Cases filed or sustained because of new remedies	6	415	\$192,353
Increased hours for all cases filed regardless of new remedies	16	115	142,140
Cases under discretionary review	8	50	30,900
<b>TOTAL</b>	<b>30</b>	<b>580</b>	<b>\$365,393</b>

Typically the Department of Law bills agencies for services and receives reappropriated funds. Cases where the employee prevails will be subject to awards of compensatory damages up to \$300,000 and attorney fees. These awards, plus fees from legal services, will be paid with state funds from the affected agencies. This will be addressed in the annual budget process for FY 2015-16 and beyond, and funded from various funding sources, based on the affected state agencies.

*CCRD, Department of Regulatory Agencies.* To address increased caseload at the CCRD, **General Fund expenditures will increase by \$16,081 and 0.2 FTE in FY 2014-15 and \$25,903 and 0.4 FTE in FY 2015-16.** Expenditures related to educational efforts, including the volunteer working group, may be funded by gifts, grants and donations if available. The fiscal note assumes that the working group will identify its workload and funding requirements.

The CCRD is expected to have an increase of 24 cases per calendar year. One investigator can investigate 84 cases per year, so staffing includes 0.2 FTE for intake and investigation for half of FY 2014-15 and 0.4 FTE for intake and investigation in FY 2015-16. The CCRD requires 40 hours of legal services in FY 2014-15 and 81 hours in FY 2015-16 from the Department of Law. The fiscal note assumes that if caseloads are higher than estimated, funding will be requested through the supplemental or annual budget process. Expenditures for the CCRD are detailed in Table 3.

<b>Table 3. CCRD Expenditures Under HB13-1136</b>			
<b>Cost Components</b>	<b>FY 2013-14</b>	<b>FY 2014-15</b>	<b>FY 2015-16</b>
Personal Services	\$0	\$9,824	\$19,646
FTE	0	0.2	0.4
Legal Services	0	3,090	6,257
<b>TOTAL</b>	<b>\$0</b>	<b>\$12,914</b>	<b>\$25,903</b>

**Judicial.** The fiscal note assumes that this expanded application of employment discrimination law will result in an increase in the filing of such cases, particularly given the availability for recovery of attorney fees and costs to the prevailing party. The weighted caseload standards for district court judges indicate that a judge can handle approximately 549 civil cases per year. Therefore, about 150 new employment discrimination cases will have to be filed in the state courts to create a significant level of judicial officer need. While these cases will be some of the most complex civil cases in the district court, it is expected that the overall number of new and transfer cases will be within this limit and that the resulting increase in workload can be addressed within existing appropriations.

**Risk management services, Department of Personnel and Administration.** Because of the high standard of proving malice or reckless indifference to the rights of the plaintiff, the fiscal note assumes that no additional claims of discrimination will be filed in state court by state employees as a result of this bill. If cases are filed in state court and won, the awards will be paid out of the Risk Management Fund regardless of whether individual agencies have contributed sufficient moneys to the fund. Once the actuary for DPA has incorporated the impact of the bill on cases filed by state employees, the DPA will build these factors into its common policy allocations. If necessary, this will be addressed in the annual budget process for FY 2015-16 and in future years and funded from various funding sources.

**Expenditures Not Included**

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 summarized in Table 4. These numbers are estimated using assumptions for FY 2014-15 and FY 2015-16 so may change prior to implementation.

<b>Table 4. Expenditures Not Included Under HB13-1136*</b>			
<b>Cost Components</b>	<b>FY 2013-14</b>	<b>FY 2014-15</b>	<b>FY 2015-16</b>
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$0	\$1,342	\$2,683
Supplemental Employee Retirement Payments	0	603	1,364
<b>TOTAL</b>	<b>\$0</b>	<b>\$1,945</b>	<b>\$4,047</b>

\*More information is available at: <http://colorado.gov/fiscalnotes>

### **Local Government Impact**

Local governments are expected to see an increase in discrimination claims taken to court for discrimination based on age and sexual orientation beginning after January 1, 2015. The cost for the increased caseload will depend on the number of and outcome of the cases. The size of potential damages allowed will depend on the size of the local governments involved and cannot be estimated.

### **Departments Contacted**

Law  
Regulatory Agencies

Judicial  
Personnel and Administration