

FISCAL IMPACT OF PROPOSED LEGISLATION

Measure: SB 379 <REVISED>

80th Oregon Legislative Assembly – 2019 Regular Session
Legislative Fiscal Office

*Only Impacts on Original or Engrossed
Versions are Considered Official*

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Date: 2/6/2019

Measure Description:

Provides that conditioning employment on refraining from using any substance that is lawful to use in this state is unlawful employment practice.

Government Unit(s) Affected:

Statewide, Bureau of Labor and Industries (BOLI), Employment Relations Board (ERB), Department of Administrative Services (DAS), Department of Justice (DOJ), Cities, Counties

Summary of Fiscal Impact:

Costs related to the measure are indeterminate at this time - See explanatory analysis.

Analysis:

The measure would amend ORS 659A.315, which generally prohibits an employer from banning an employee’s off-duty use of lawful tobacco products. The measure would expand this prohibition to include any “substance that is lawful to use” in the State of Oregon. In other words, it would prohibit an employer from banning an employee’s or prospective employee’s off-duty use of marijuana, pharmaceuticals, and other legal substances as a condition of employment. The measure would not prohibit an employer from banning (off-duty) use of any substance, however, if the ban relates to a bona fide occupational qualification, on-duty performance while impaired (“impairment exception”), or an applicable collective bargaining agreement. The measure would take effect upon passage.

While the measure would apply to every employer in Oregon, it would generally have no to minimal fiscal impact on state government. The fiscal impact is indeterminate, however, to the Bureau of Labor and Industries (BOLI), Cities, and Counties.

Bureau of Labor and Industries

The measure would require BOLI’s Civil Rights Division to process new complaints arising under the expanded protections of ORS 659A.315. The number of new complaints would depend on, among other things, the precise definition of “substance,” the precise meaning of the impairment exception, the standard for determining impairment, which party has the burden of proof in establishing impairment, and overall compliance statewide. Nevertheless, the measure’s expanded protections would increase the Civil Rights Division’s investigative caseload. The ambiguity of the impairment exception, in cases in which it is asserted as an affirmative defense, would also increase the time BOLI would need to investigate and adjudicate claims, if not result in BOLI having to pay legal fees. To ameliorate the measure’s latent ambiguities, BOLI would likely need to adopt new administrative rules.

Given that the magnitude of complaints and investigations is unknown at this time, the potential costs of this measure are indeterminate. If the magnitude of complaints and investigations warrants additional resources, BOLI will need to return to the 2020 Legislative Session or the Emergency Board for consideration of this issue.

Cities

<Revised to include additional information.>

The measure would potentially increase the cities' employment litigation, workers' compensation litigation, costs to defend auto liability and property damage claims, and insurance premiums. Given that the magnitude of potential litigation and new claims is unknown at this time, the potential costs of this measure to the cities are indeterminate at this time.

Counties

<Revised to include additional information.>

The measure would potentially increase the counties' employment litigation, workers' compensation litigation, costs to defend auto liability and property damage claims, and insurance premiums. Given that the magnitude of potential litigation and new claims is unknown at this time, the potential costs of this measure to the counties are indeterminate at this time.