

FISCAL IMPACT OF PROPOSED LEGISLATION

Measure: SB 379 - A

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

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

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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), Cities, Counties

Summary of Fiscal Impact:

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

Analysis:

The measure would make it an unlawful employment practice for any employer to require an employee or prospective employee, as a condition of employment, to refrain from using any lawful substance under Oregon law during nonworking hours, except when relating to a bona fide occupational qualification for health and safety, or the performance of work while impaired (“impairment exception”). However, the protection would not apply to certain classes of employees or prospective employees, including certain federal contractors or employees, public safety personnel, licensed health care professionals, public transit operators, construction or heavy machine workers, or employees subject to a collective bargaining agreement prohibiting off-duty use of a substance. The measure would take effect upon passage.

Statewide

While the measure would apply to every employer in Oregon, it would generally have a minimal fiscal impact on state government, if any impact.

Bureau of Labor and Industries (BOLI)

The BOLI Civil Rights Division would need to process new complaints stemming from the expanded protection in the measure. The number of new complaints, however, would depend on the precise definition of “substance,” the application 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 is expected to increase the investigative caseload in the BOLI Civil Rights Division. The ambiguity of the impairment exception, in cases in which it is asserted as an affirmative defense, would also increase the time it would take BOLI to investigate and adjudicate claims, if not result in BOLI having to pay legal costs. To ameliorate some of these ambiguities, BOLI would likely need to adopt new administrative rules.

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

Cities

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

Counties

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