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FISCAL IMPACT REPORT

ORIGINAL DATE 02/06/09
 LAST UPDATED 02/26/09 HB 489/HJCS

SPONSOR HJC

SHORT TITLE Employee Protection From Retaliation SB _____

ANALYST Peery-Galon

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Workforce Solutions Department (WSD)
 Administrative Office of the Courts (AOC)
 State Personnel Office (SPO)
 Attorney General's Office (AGO)

No Responses Received From

Association of Counties
 New Mexico Municipal League

SUMMARY

Synopsis of Substitute

The House Judiciary Committee Substitute for House Bill 489 amends Section 37-1-5 NMSA to state a civil action to enforce any provision of Chapter 50, Article 4 NMSA 1978 is to be commenced within three years after a violation last occurs. The three-year period will be tolled during a Labor Relations Division of the Workforce Solutions Department investigation of an employer, but such an investigation is not deemed a prerequisite to person bringing a civil action, nor will it bar a civil action brought pursuant to Chapter 50, Article 4 NMSA 1978.

The proposed legislation enacts a new section of the Minimum Wage Act to provide that it is a violation for an employer or other person to discharge, demote, deny promotion to or otherwise discriminate against a person in retaliation for the assertion of a claim or right pursuant to the Act or assisting another person to do so or for informing another person about employment rights or other rights provided by law. The proposed legislation amends Section 50-4-26 NMSA 1978 to provide that a person who commits a misdemeanor violation of the Minimum Wage Act shall

be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978. Section 50-4-26 is further amended to provide that the director of the Labor Relations Division of the Workforce Solutions Department, rather than the State Labor Commissioner, shall enforce and prosecute violations of the Minimum Wage Act. Further, the proposed legislation provides that in addition to other penalties, an employer in violation Section 50-4-22 NMSA 1978 shall be liable to the affected employees in the amount of their unpaid or underpaid minimum wages plus interest, and in an additional amount equal to twice the unpaid or underpaid wages. A court may order appropriate injunctive relief, including requiring an employer to post in the place of business a notice describing violations by the employer as found by the court or a copy of a cease and desist order applicable to the employer. Also, a new section states “a civil action to enforce any provision of Chapter 50, Article 4 NMSA 1978 may encompass all violations that occurred as part of a continuing course of conduct regardless of the date on which they occurred”.

FISCAL IMPLICATIONS

WSD’s noted an increase in expenses of the labor law administrators and investigators would occur.

AOC reported there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

SPO noted the House Judiciary Committee Substitute for House Bill 489 adds a new paragraph that removes the statute of limitations if there is a pattern of similar violation that provides Workforce Solutions Department flexibility to deal with chronic offenders.

PERFORMANCE IMPLICATIONS

AOC noted the proposed legislation may have an impact on the following district court measures: cases disposed of as a percent of cases filed and percent change in case filings by case type.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 489 has a relationship to House Bill 493, Senate Bill 33, Senate Bill 305, House Bill 196 and House Bill 494. WSD noted the proposed legislation is similar to House Bill 493 with the exception of differences on the administrative enforcement process.

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