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FISCAL IMPACT REPORT

ORIGINAL DATE 02/24/21

SPONSOR Lopez LAST UPDATED _____ HB _____

SHORT TITLE “Joint Employer” in Human Rights Act SB 405

ANALYST Bachechi

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total			\$152.9	\$152.9	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB29, HB111, HB113, HB192, SB80 and SB408
 Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

Workforce Solutions Department (WSD)
 Office of the Attorney General (NMAG)

SUMMARY

Synopsis of Bill

Senate Bill 405 amends the definition of “employer” in Section 28-1-2, NMSA 1978 of the New Mexico Human Rights Act, to include a “joint employer;” permitting claimants to file a single charge against two separate employers. It defines a “joint employer” as one who “shares control of an employee with another employer and the employee acts directly or indirectly in the interest of both employers” or one that “acts directly or indirectly in the interest of another employer in relation to the employee.”

There is no effective date of this bill. It is assumed the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

WSD estimates this bill would result in additional operating budget impact, including an increase in mailing and supplies costs as documents would be sent to and received from three parties (as

opposed to two). This would give rise to a need for administrative support in processing these cases and an additional investigator to accommodate the increase in the workload. WSD further notes investigators would need formal training to be able to understand this theory of liability and what evidence is needed to prove or disprove it.

Currently, WSD's Human Rights Bureau (HRB) processes these cases as two separate cases. This bill would combine the two cases into one and could potentially have significant impact on the funds received from the EEOC, as they would count as only one case for reimbursement and could no longer be dual-filed. WSD asserts the potential loss of EEOC reimbursements would significantly impact the HRB's funding and operations.

SIGNIFICANT ISSUES

WSD reports:

- SB405 will limit the rights of claimants because they will be allowed to file only one claim under the Human Rights Act, thereby eliminating their right to file in Federal court. Cases cannot be dual-filed with the EEOC because the EEOC will not accept any charge with more than one entity as a respondent.
- By incorporating joint employer liability explicitly into the process, claimants without attorneys would become even more disadvantaged than they already are. WSD estimates that joint-employer filings would predominately come directly from attorneys as unrepresented claimants are likely unaware of possible joint employer liability and the evidentiary requirements.
- SB405 does not include provisions to guide the Human Right Bureau on the processes or practicality of investigating charges against "joint employers." Investigators would need training relevant to a joint employer theory of liability.
- SB405 could result in fewer cases being resolve early in the process because more parties would be involved in the case and would have to be willing to engage in mediation.

PERFORMANCE IMPLICATIONS

Over the past year, WSD has dedicated funding resources and staff time to developing a case tracking system to improve the performance of the HRB. Passage of SB 405 would significantly delay launch of this system as it is currently structured for one-to-one respondent-to-claimant ratios per case. Many parts of the system would have to be re-formatted to allow for joint employer filings.

WSD further contents that other cases could suffer delays in processing because of the additional processes joint employer cases would demand. Processing cases against two employers separately is a familiar process to investigators and facilitates the determination of each employer's liability.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB405 relates to HB29, HB111, HB113, HB192, SB80 and SB408. All of these bill seek to

amend the Human Rights Act.

TECHNICAL ISSUES

SB405 does not make it entirely clear how many employees a joint employer must have to fall within the constraints of the Human Rights Act. Although “employer” is defined as a person with four or more employees, it is unclear, as drafted, whether a joint employer must also have four or more employees before becoming subject to the Human Rights Act or whether a joint employer with only one employee shared with an employer of four would also be included.

OTHER SUBSTANTIVE ISSUES

This bill may lead to some confusion as to whether an employee working for joint employers would have to name both (or more) joint employers in a complaint alleging unlawful conduct by only one of the joint employers.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

WSD notes, claimants currently are able to file charges against both employers under the cover of two separate case numbers. Those cases are investigated simultaneously by the same investigator, and are easy to administratively separate, if necessary. All due process rights that this bill proposes are already provided to claimants who may have joint employer liability, without the additional complexity and expense of combining the cases.

CLB/al