
SUBSTITUTE HOUSE BILL 2764

State of Washington 61st Legislature 2010 Regular Session

By House Commerce & Labor (originally sponsored by Representatives Conway, Green, Nelson, and Simpson)

READ FIRST TIME 02/03/10.

1 AN ACT Relating to protecting employees from adverse employment
2 actions because of influenza; and adding a new section to chapter 49.12
3 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 49.12 RCW
6 to read as follows:

7 (1)(a) An employer may not discharge from employment or discipline
8 an employee because the employee was absent from employment because he
9 or she: (i) Experienced symptoms of pandemic influenza; or (ii) needed
10 to obtain medical diagnosis or care for symptoms of pandemic influenza.

11 (b) An employer may require that such an absence be supported by a
12 certification issued by the employee's health care provider.

13 (c) This section applies during an influenza pandemic declared by
14 the secretary of the department of health.

15 (2)(a) An employee who believes he or she was discharged or
16 disciplined in violation of this section may file a complaint alleging
17 the violation with the director. The employee may allege a violation
18 only by filing such a complaint within ninety days of the alleged
19 violation.

1 (b) Upon receipt of the complaint, the director must cause an
2 investigation to be made as the director deems appropriate and must
3 determine whether this section has been violated. Notice of the
4 director's determination must be sent to the complainant and the
5 employer within ninety days of receipt of the complaint.

6 (c) If the director determines that this section was violated and
7 the employer fails to reinstate the employee or withdraw the
8 disciplinary action taken against the employee, whichever is
9 applicable, within thirty days of receipt of notice of the director's
10 determination, the employee may bring an action against the employer
11 alleging a violation of this section and seeking reinstatement or
12 withdrawal of the disciplinary action.

13 (d) In any action brought under this section, the superior court
14 shall have jurisdiction, for cause shown, to restrain violations under
15 this section and to order reinstatement of the employee or withdrawal
16 of the disciplinary action.

17 (3) For the purposes of this section:

18 (a) "Employer" means an employer who had twenty or more full-time
19 equivalent employees in the previous year.

20 (b) "Reinstatement" means reinstatement with back pay, without loss
21 of seniority or benefits, and with removal of any related adverse
22 material from the employee's personnel file, if a file is maintained by
23 the employer.

24 (c) "Symptoms of pandemic influenza" means one or more symptoms of
25 pandemic influenza identified by the state health officer and specified
26 in the declaration of an influenza pandemic by the secretary of the
27 department of health.

28 (d) "Withdrawal of disciplinary action" means withdrawal of
29 disciplinary action with back pay, without loss of seniority or
30 benefits, and with removal of any related adverse material from the
31 employee's personnel file, if a file is maintained by the employer.

32 (4) The legislature declares that the public policies articulated
33 in this section depend on the procedures established in this section
34 and no civil or criminal action may be maintained relying on the public
35 policies articulated in this section without complying with the
36 procedures set forth in this section, and to that end all civil actions
37 and civil causes of action for such injuries and all jurisdiction of

1 the courts of this state over such causes are hereby abolished, except
2 as provided in this section.

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