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## Commerce & Labor Committee

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### HB 2764

**Brief Description:** Protecting employees from adverse employment actions because of influenza.

**Sponsors:** Representatives Conway, Green, Nelson and Simpson.

<p style="text-align: center;"><b>Brief Summary of Bill</b></p> <ul style="list-style-type: none"><li>• Prohibits an employer from discharging or disciplining an employee because of an absence from employment related to influenza-like symptoms.</li></ul>
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**Hearing Date:** 1/19/10

**Staff:** Jill Reinmuth (786-7134).

**Background:**

In Washington, the general rule is that employment is "terminable at-will." In other words, an employer may discharge an employee at any time without cause, and an employee may quit employment at any time without cause. Similarly, an employer may take other employment action that he or she deems appropriate.

Exceptions to the general rule that employment is "terminable at-will" have been enacted by Congress and the Legislature and recognized by Washington courts. For example, an employer may not discharge an employee for exercising rights under certain state and federal laws (e.g., the federal Family and Medical Leave Act [FMLA] and the state Minimum Wage Act). An employer also may not discharge an employee because he or she is a member of a protected class under the Washington Law Against Discrimination or other anti-discrimination laws. An employer may be liable for wrongful discharge for terminating an employee because he or she refused to commit an illegal act or because he or she performed a public duty.

Exceptions to the general rule that an employer may take other employment action that he or she deems appropriate also have been enacted by Congress and the Legislature. For example, an

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employer may not use the taking of FMLA-leave as a negative factor in employment actions, such as hiring, promotions, or disciplinary actions. An employer also may not discriminate against a person in compensation or in other terms or conditions of employment because he or she is a member of a protected class under anti-discrimination laws.

In 2009, after the H1N1 virus was first detected in people in the United States, the Centers for Disease Control and Prevention issued guidance recommending that people with influenza-like illness remain at home until at least 24 hours after they are free of fever, or signs of a fever without the use of fever-reducing medications.

**Summary of Bill:**

An employer is prohibited from discharging or disciplining an employee because he or she was absent from employment because he or she experienced influenza-like symptoms, or needed to obtain medical diagnosis or care for such symptoms. An employer is permitted to require that such an absence be supported by a certification issued by the employee's health care provider. These provisions apply during periods in which the federal, state, or local government recommends a period of exclusion for persons with influenza-like symptoms.

An employee who is discharged or disciplined because of such an absence may file a complaint with the director of the Department of Labor and Industries within 90 days of the discharge or the disciplinary action. Upon receipt of a complaint, the director must investigate and determine whether the employee was discharged or disciplined because of such an absence. The director also must send a notice of his or her determination to the employee and the employer within 90 days of receipt of the complaint. If the director determines that the employee was discharged or disciplined because of such an absence and the employer fails to reinstate the employee or withdraw the disciplinary action within 30 days of receipt of notice of the director's determination, the employee may bring an action against the employer in superior court seeking reinstatement or withdrawal of the disciplinary action. Reinstatement or withdrawal of the disciplinary action must be with back pay, without loss of seniority or benefits, and with removal of any related adverse material from the employee's personnel file.

An employer is a person who employed 20 or more full-time equivalent employees in the previous year.

Symptoms of influenza are symptoms of influenza-like illnesses, as determined to be appropriate by the director of the Department of Labor and Industries in consultation with the secretary of the Department of Health. Such illnesses include an illness from the H1N1 virus in 2009 or 2010.

**Appropriation:** None.

**Fiscal Note:** Requested on January 12, 2010.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.