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HOUSE BILL 2764

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State of Washington                      61st Legislature                      2010 Regular Session

By Representatives Conway, Green, Nelson, and Simpson

Read first time 01/13/10. Referred to Committee on Commerce & Labor.

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 influenza-like symptoms; or (ii) needed to  
10 obtain medical diagnosis or care for influenza-like symptoms.

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 any period in which the federal,  
14 state, or local government recommends a period of exclusion for persons  
15 with influenza-like symptoms.

16            (2)(a) An employee who believes he or she was discharged or  
17 disciplined in violation of this section may file a complaint alleging  
18 the violation with the director. The employee may allege a violation

1 only by filing such a complaint within ninety days of the alleged  
2 violation.

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

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

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

19 (3) For the purposes of this section:

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

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

26 (c) "Symptoms of influenza" means one or more symptoms of  
27 influenza-like illnesses, as determined to be appropriate by the  
28 director in consultation with the secretary of health. Such illnesses  
29 include, but are not limited to, an illness from the H1N1 virus in 2009  
30 and 2010.

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

35 (4) The legislature declares that the public policies articulated  
36 in this section depend on the procedures established in this section  
37 and no civil or criminal action may be maintained relying on the public  
38 policies articulated in this section without complying with the

1 procedures set forth in this section, and to that end all civil actions  
2 and civil causes of action for such injuries and all jurisdiction of  
3 the courts of this state over such causes are hereby abolished, except  
4 as provided in this section.

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