

**SENATE
STATE OF MINNESOTA
NINETIETH SESSION**

S.F. No. 2660

(SENATE AUTHORS: TOMASSONI, Hoffman, Abeler and Jensen)

DATE	D-PG	OFFICIAL STATUS
02/26/2018	6193	Introduction and first reading
		Referred to Jobs and Economic Growth Finance and Policy
03/01/2018	6250	Withdrawn and returned to author

1.1 A bill for an act

1.2 relating to employment; providing employee exemptions from employer mandatory

1.3 influenza vaccine requirements; excluding certain conduct as employment

1.4 misconduct; amending Minnesota Statutes 2017 Supplement, section 268.095,

1.5 subdivision 6; proposing coding for new law in Minnesota Statutes, chapter 181.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. **[181.987] INFLUENZA VACCINATION REQUIREMENTS IN**

1.8 **WORKPLACE.**

1.9 (a) An employer having a policy that requires employees to receive an annual influenza

1.10 vaccination must allow an exemption from the requirement if an employee provides:

1.11 (1) a statement to the employer signed by a physician that an influenza vaccination is

1.12 contraindicated for the employee for medical reasons; or

1.13 (2) a statement to the employer that the employee does not wish to receive an influenza

1.14 vaccination based on the conscientiously held religious beliefs of the employee.

1.15 (b) An employer may assign an employee receiving an exemption under paragraph (a)

1.16 to job duties that do not involve direct contact with the public.

1.17 Sec. 2. Minnesota Statutes 2017 Supplement, section 268.095, subdivision 6, is amended

1.18 to read:

1.19 Subd. 6. **Employment misconduct defined.** (a) Employment misconduct means any

1.20 intentional, negligent, or indifferent conduct, on the job or off the job that displays clearly:

1.21 (1) a serious violation of the standards of behavior the employer has the right to

1.22 reasonably expect of the employee; or

(2) a substantial lack of concern for the employment.

(b) Regardless of paragraph (a), the following is not employment misconduct:

(1) conduct that was a consequence of the applicant's mental illness or impairment;

(2) conduct that was a consequence of the applicant's inefficiency or inadvertence;

(3) simple unsatisfactory conduct;

(4) conduct an average reasonable employee would have engaged in under the circumstances;

(5) conduct that was a consequence of the applicant's inability or incapacity;

(6) good faith errors in judgment if judgment was required;

(7) absence because of illness or injury of the applicant, with proper notice to the employer;

(8) absence, with proper notice to the employer, in order to provide necessary care because of the illness, injury, or disability of an immediate family member of the applicant;

(9) conduct that was a consequence of the applicant's chemical dependency, unless the applicant was previously diagnosed chemically dependent or had treatment for chemical dependency, and since that diagnosis or treatment has failed to make consistent efforts to control the chemical dependency; ~~or~~

(10) conduct that was a consequence of the applicant, or an immediate family member of the applicant, being a victim of domestic abuse, sexual assault, or stalking. For the purposes of this subdivision, "domestic abuse," "sexual assault," and "stalking" have the meanings given them in subdivision 1-; or

(11) conduct that was a consequence of the applicant's refusal to submit to a mandatory influenza vaccination required by the employer.

(c) Regardless of paragraph (b), clause (9), conduct in violation of sections 169A.20, 169A.31, 169A.50 to 169A.53, or 171.177 that interferes with or adversely affects the employment is employment misconduct.

(d) If the conduct for which the applicant was discharged involved only a single incident, that is an important fact that must be considered in deciding whether the conduct rises to the level of employment misconduct under paragraph (a). This paragraph does not require that a determination under section 268.101 or decision under section 268.105 contain a specific acknowledgment or explanation that this paragraph was considered.

- 3.1 (e) The definition of employment misconduct provided by this subdivision is exclusive
- 3.2 and no other definition applies.