

# HOUSE BILL REPORT

## SB 5614

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### As Passed House:

April 8, 1999

**Title:** An act relating to restricting Washington industrial safety and health act citations as a result of employee misconduct.

**Brief Description:** Concerning the issuance of citations under the Washington industrial safety and health act.

**Sponsors:** Senators Hochstatter, Oke, T. Sheldon and Heavey.

### Brief History:

#### Committee Activity:

Commerce & Labor: 4/2/99 [DP].

#### Floor Activity:

Passed House: 4/8/99, 95-0.

### Brief Summary of Bill

- Directs the Department of Labor and Industries not to cite employers for serious Washington Industrial Safety and Health Act (WISHA) violations that are the result of unpreventable employee misconduct.
- Establishes the elements for proving unpreventable employee misconduct.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** Do pass. Signed by 8 members: Representatives Clements, Republican Co-Chair; Conway, Democratic Co-Chair; B. Chandler, Republican Vice Chair; Wood, Democratic Vice Chair; Hurst; Lisk; McIntire and McMorris.

**Staff:** Douglas Ruth (786-7134).

### Background:

The Washington Industrial Safety and Health Act (WISHA) establishes a general duty for employers covered by the act to provide work places that are free from recognized

hazards. It also requires employers to comply with specific safety and health standards adopted by the Department of Labor and Industries. As part of these duties, employers have a responsibility to eradicate preventable hazards, including preventing conduct by employees that violate safety and health standards.

Washington employers can be cited by the department for violations of WISHA. Employers receiving citations are subject to civil penalties. A violation is "serious" if it presents a substantial probability that death or serious physical harm would result. The department may immediately require the employer to correct or remove the cause of serious violations. Citations may be appealed to the Board of Industrial Insurance Appeals.

Various federal courts and the Board of Industrial Insurance Appeals have recognized an "unpreventable employee misconduct" defense to WISHA citations. The department must excuse a violation if an employer can prove that a hazardous situation was caused by employee misconduct and that the employer took action to guard against the situation. The employer must prove: (1) the employer established work rules to prevent the violation; (2) the rules were adequately communicated to employees; (3) the employer took steps to discover violations; and (4) the employer effectively enforced the rules when infractions were discovered.

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**Summary of Bill:**

The Department of Labor and Industries may not issue a citation to an employer for a violation of WISHA if:

- (1) the employer has a written safety program to prevent a violation, including training;
- (2) the employer's program and rules were adequately communicated to employees;
- (3) the employer takes reasonable measures to discover and correct violations of the safety rules; and
- (4) the employer enforces its safety program in practice, not just in theory.

This limitation on issuing citations does not apply to serious violations that have a substantial probability of resulting in death or serious physical harm.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** None.

**Testimony Against:** None.

**Testified:** None.