

SENATE BILL REPORT

SB 5844

As of February 18, 2019

Title: An act relating to protecting the confidentiality of industrial insurance claim records.

Brief Description: Concerning the confidentiality of industrial insurance claim records.

Sponsors: Senators Dhingra, King, Darneille, Keiser, Kuderer, Saldaña and Wagoner.

Brief History:

Committee Activity: Labor & Commerce: 2/14/19.

Brief Summary of Bill

- Requires employers to establish a written policy regarding the storage of injured workers' files to protect the confidentiality of the information.
- Subjects an employer to a civil penalty of \$1,000 for each occurrence where the employer or employer's agent reveals information in an injured worker's claim file to any person other than an authorized representative or a person who has a need to know.

SENATE COMMITTEE ON LABOR & COMMERCE

Staff: Susan Jones (786-7404)

Background: Workers injured in the course of employment are entitled to medical care under the industrial insurance program administered by the Department of Labor and Industries (L&I). Physicians or nurse practitioners examining or attending injured workers must comply with L&I's rules, and must make reports, as requested by L&I or a self-insurer, upon the condition or treatment of any worker, or upon any other matters concerning those workers in their care.

Generally, all medical information in the possession or control of any person and relevant to the particular injury in L&I's opinion pertaining to any worker whose injury or occupational disease is the basis of an industrial insurance claim must be made available at any stage of the proceedings to the employer, the claimant's representative, and L&I upon request. No person will incur any legal liability by reason of releasing the information. Workers sign a

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release authorizing L&I to receive information from the claimant's health care providers regarding the claimant's condition.

Information in claim files and records of injured workers are generally confidential. Employers, or their duly authorized representatives, may review files of their own injured workers in connection with any pending claims.

All workers and employers contribute to the Supplemental Pension Fund, which pays for cost-of-living adjustments for injured workers.

Summary of Bill: Employers, or their duly authorized representatives, or their agents who have a need to know the information may review claim files. An employer must establish a written policy regarding the storage of any files of its injured workers to protect the confidentiality of the information.

If the employer or the employer's agent reveals information in a claim file to any person other than an authorized representative or a person who has a need to know, the employer is subject to a civil penalty of \$1,000 for each occurrence. L&I must investigate a complaint and issue a notice of assessment if it determines that the employer violated the prohibition. The determination may be appealed. Once the order is final, the penalty amount collected is deposited into the Supplemental Pension Fund.

Appropriation: None.

Fiscal Note: Requested on February 12, 2019.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: This bill before you is a bill that helps protect workers confidentiality when they file an industrial insurance claim. Last session we passed SB 6214, which gives law enforcement officers and firefighters industrial insurance coverage for the P.T.S.D. that they may develop in the line of work. Unfortunately, this passage has led to unintentional consequences. This bill is an attempt to fix that. A local firefighter had filed a P.T.S.D. claim last year and ended up with all of his medical information exposed because his therapy notes were attached to the L&I claim. No one should have to have their personal mental health diagnosis exposed in this way. This fixes that issue. It requires employers to establish a written policy regarding the storage of any files of its injured workers to protect confidentiality and imposes civil penalties on employers that reveal confidential information. We have to make sure that our first responders have to access the care and the treatment for P.T.S.D. and having mental health issues they need without fearing that the medical information will be exposed for all to see.

L&I has a responsibility to share medical records with employers on claims filed. Unfortunately, the law does not differentiate between physical or mental injuries or illnesses considers mental health claims. It is a common belief in the mental health care field that the dissemination of mental health records is a barrier to seeking care and may be an impediment

to ongoing treatment in recovery. We support a worker's compensation process that does not interfere with law enforcement firefighters and paramedics from seeking mental health treatment nor should the specter of private counseling and or treatment notes being shared with the employer or the public be a barrier to recovery or the return to work.

We all care about our coworkers. When somebody is hurt or injured or has something wrong, we generally like to talk about what is wrong with the person and how can we help the person. However, sometimes, even with an employer, that goes too far. This is about is getting to that issue. We should still care for our coworkers and employees but we have to have a line of things that we should not talk about. As an employer, they learn about issues that that should not be talked about. Somebody may be embarrassed and they may not even go get treatment for some of these issues that they desperately need to get better and to be contributing members to whatever organization that they're in and that is what this bill is about we've been approached by a few folks who would like to do some small changes to the language we are very much open to that to reach this goal of ensuring that our folks privacy is protected that they get the treatment that they want without embarrassment or fear of retribution.

CON: This bill those not limited to mental health issues and that is kind of the genesis of where this bill came about. It is much broader than that so we do have some kind of concerns there. It applies to all industries. A lot of the stuff that's already in the bills already taken care of in current law regarding confidentiality. If you go online and access claim information, there's an access agreement on L&I's web site has a list of things that you agree not to do if you access that information, including participate in the unauthorized use or disclosure by any party of any information accessed. If the department's not enforcing those laws and levying the fines that are already available to them then you know that's another issue.

OTHER: We would like to see you strengthen even further. We need to have our employees have an incentive to go get help without fear that that will get out beyond any ears that need to hear it. Subsection one of the bill, which is the provision in statute where different entities are authorized to access these files. The new language covers one-half of that equation. We ask you to cover the other half, representatives of the claimant that have access to that files should be held to the confidential standard.

Persons Testifying: PRO: Senator Manka Dhingra, Prime Sponsor; Jeff DeVere, Washington Council of Police and Sheriffs; AJ Johnson, Washington State Council of Firefighters.

CON: Tom Kweciak, Building Industry Association of Washington.

OTHER: Christine Brewer, Washington Self-Insurers Association; James McMahan, Washington Association Sheriffs & Police Chiefs.

Persons Signed In To Testify But Not Testifying: No one.