

HOUSE BILL REPORT

SSB 5564

As Passed House:
February 26, 2022

Title: An act relating to protecting the confidentiality of employees using employee assistance programs.

Brief Description: Protecting the confidentiality of employees using employee assistance programs.

Sponsors: Senate Committee on Labor, Commerce & Tribal Affairs (originally sponsored by Senators Keiser, Kuderer, Conway, Hunt, Lovick, Randall, Stanford and Wilson, C.).

Brief History:

Committee Activity:

Labor & Workplace Standards: 2/16/22, 2/18/22 [DP].

Floor Activity:

Passed House: 2/26/22, 93-2.

Brief Summary of Substitute Bill

- Prohibits employers from obtaining individually identifiable information regarding an employee's participation in an employee assistance program.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: Do pass. Signed by 7 members: Representatives Sells, Chair; Berry, Vice Chair; Hoff, Ranking Minority Member; Mosbrucker, Assistant Ranking Minority Member; Bronoske, Harris and Ortiz-Self.

Staff: Jessica Cable (786-7290) and Trudes Tango (786-7384).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

An employee assistance program (EAP) is a program offered by employers to assist employees with work and life concerns. Employee assistance programs may provide support to employees for depression, stress, addictions, anger, parenting, relationships, and grief and loss. Employees of private employers may have access to an EAP through their employer's human resources or benefits department.

The Department of Enterprise Services administers the Washington State Employee Assistance Program (WSEAP). The WSEAP is a confidential program created to promote the health, safety, and well-being of state employees. Employees' participation and all individually identifiable information gathered in the process of conducting the WSEAP must be kept confidential; however, agency management may be provided with certain information in the case of poor job performance. An employee's participation or nonparticipation in the EAP must not be a factor in a decision affecting the employee's job security, promotional opportunities, corrective or disciplinary action, or other employment rights.

Summary of Bill:

An employer may not obtain individually identifiable information regarding an employee's participation in an EAP. Individually identifiable information gathered in the process of conducting an EAP must be kept confidential.

The prohibition does not apply to:

- authorized disclosures under the WSEAP;
- disclosures to an employer regarding an employee's attendance in an EAP, which the employee was required to attend as a condition of continued employment; and
- disclosures that are made to prevent or lessen a perceived threat to the health or safety of an individual or the public or permitted or required under state law.

An employee's participation or nonparticipation in an EAP must not be a factor in a decision affecting an employee's job security, promotional opportunities, corrective or disciplinary action, or other employment rights.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Employees need behavioral health assistance and employers should not be able to control or access counselor's notes when an employee uses an EAP. This bill provides

the same confidentiality protections for private EAPs as the WSEAP. Disclosures may be made under the duty to warn and to confirm attendance. It will ensure that employers cannot access employee information and provide assurance to employees that they can seek help without concern their employers will find out.

(Opposed) None.

Persons Testifying: Senator Karen Keiser, prime sponsor; and James McMahan, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: None.