

SENATE BILL REPORT

SB 5564

As Reported by Senate Committee On:
Labor, Commerce & Tribal Affairs, January 20, 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: Senators Keiser, Kuderer, Conway, Hunt, Lovick, Randall, Stanford and Wilson, C..

Brief History:

Committee Activity: Labor, Commerce & Tribal Affairs: 1/17/22, 1/20/22 [DPS, DNP].

Brief Summary of First Substitute Bill

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

SENATE COMMITTEE ON LABOR, COMMERCE & TRIBAL AFFAIRS

Majority Report: That Substitute Senate Bill No. 5564 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair, Labor; Stanford, Vice Chair, Commerce & Tribal Affairs; King, Ranking Member; Braun, Rivers, Robinson and Saldaña.

Minority Report: Do not pass.

Signed by Senator Schoesler.

Staff: Matt Shepard-Koningsor (786-7627)

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.

Background: An employee assistance program (EAP) is a program offered by employers to assist employees with work and life concerns. EAPs may provide support to employees for depression, stress, addictions, anger, parenting, relationships, and grief and loss. EAPs may also provide support regarding legal and financial concerns. Many state employees have access to the Washington State Employee Assistance Program (WSEAP).

WSEAP is a free, confidential program created to promote the health, safety, and well-being of state employees. WSEAP is administered by the Washington State Department of Enterprise Services. Under WSEAP, employees' participation and all individually identifiable information gathered in the process of conducting WSEAP must be kept confidential, however, agency management may be provided with certain information in the case of poor job performance. Participation or nonparticipation in WSEAP must not be a factor in a decision affecting an employee's job security, promotional opportunities, corrective or disciplinary action, or other employment rights.

Employees of private employers may have access to an EAP through their employer's human resources or benefits department.

Summary of Bill (First Substitute): It is unlawful for an employer to 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 state EAP;
- 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.

EFFECT OF CHANGES MADE BY LABOR, COMMERCE & TRIBAL AFFAIRS COMMITTEE (First Substitute):

The prohibition on employers obtaining individually identifiable information and the confidentiality of such information regarding an employee participating in an employee assistance program (EAP) does not apply to:

- authorized disclosures under the state EAP;
- 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.

Appropriation: None.

Fiscal Note: Available.

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 on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: The culture surrounding these programs has been a challenge to getting our employees to seek the help they need. Information shared by an employee in an EAP was shared with their employer because the confidentiality of such communications were limited by the employer. Washington law regarding the state EAP is very good and so this bill mimics that law as applied to the private sector. EAPs save lives, whether through providing needed financial assistance or help to individuals experiencing workplace bullying. When I see others in need, I often ask if their employer offers an EAP and if so, encourage them to use it. Confidentiality is critical to successful therapy. No one should worry their time spent with mental health professionals might be used to cause them further harm.

CON: The bill does not allow a claimant to release information voluntarily. Many employers use an EAP as part of "last chance agreements," and this bill could affect an employee's ability to remain employed or be discharged. What is being said in EAP sessions should be kept confidential but the bill should allow the ability to know whether certain employees attended a required EAP.

Persons Testifying: PRO: Senator Karen Keiser, Prime Sponsor; James McMahan, WA Assoc Sheriffs & Police Chiefs; Joshua Estes, Respectful Workplace Washington; Pamela Raphael.

CON: Robert Battles, Association of Washington Business (AWB).

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