

RCW 49.17.160 Discrimination against employee filing complaint, instituting proceedings, or testifying prohibited—Procedure—Remedy.

(1) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or herself or others of any right afforded by this chapter. Prohibited discrimination includes an action that would deter a reasonable employee from exercising their rights under this chapter.

(2) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person in violation of this section may, within 90 days after such violation occurs, file a complaint with the director alleging such discrimination. The department may, at its discretion, extend the time period on recognized equitable principles or due to extenuating circumstances.

(3) Within 90 days of the receipt of the complaint filed under this section, the director shall notify the complainant and the employer of his or her determination under subsections (4) and (5) of this section unless the matter is otherwise resolved. The department may extend the period by providing advance written notice to the complainant and the employer setting forth good cause for an extension of the period, and specifying the duration of the extension.

(4) (a) If the director determines that the provisions of this section have been violated, the director will issue a citation and notice of assessment describing the violation to the employer, ordering all appropriate relief, and may assess a civil penalty.

(b) Appropriate relief may include, but is not limited to, the following:

(i) Restoring the complainant to the position of employment held by the complainant when the discrimination occurred, or restoring the complainant to an equivalent position with equivalent employment hours, work schedule, benefits, pay, and other terms and conditions of employment; and

(ii) Ordering the employer to make payable to the complainant earnings that the complainant did not receive due to the employer's discriminatory action, including interest of one percent per month on all earnings owed. The earnings and interest owed will be calculated from the first date earnings were owed to the employee.

(c) A civil penalty not to exceed the maximum penalty for a serious violation under this chapter may be assessed for the first occurrence. A civil penalty not to exceed the maximum penalty for a repeat violation under this chapter may be assessed for each repeat occurrence. Civil penalties are not contingent upon relief being granted to the worker.

(5) If the director finds there is insufficient evidence to determine that the provisions of this section have been violated, the director will issue a letter of closure and the employee may institute the action on his or her own behalf within 30 days of such determination. In any such action the superior court shall have jurisdiction, for cause shown, to restrain violations of subsection (1) of this section and order all appropriate relief including rehiring or reinstatement of the complainant to his or her former position with back pay.

(6) The department must notify the employer and the complainant of a citation and notice of assessment issued under subsection (4) of

this section using a method by which the mailing can be tracked or the delivery can be confirmed. Citations and notices of assessments shall state that the employer has 30 days within which to notify the department that the employer wishes to appeal the citation or notice of assessment, and that the complainant has 15 working days within which to notify the department that the complainant wishes to appeal the order of appropriate relief in the notice of assessment. If, within 30 days from the communication of the notice issued by the director, the employer fails to notify the department that the employer intends to appeal the citation or notice of assessment, and no notice of appeal of the order of appropriate relief is filed by the complainant within such time, the citation and notice of assessment shall be deemed a final order of the department and not subject to review by any court or agency.

(7) If an employer or complainant notifies the department of an appeal, the department may reassume jurisdiction according to the timeline, process for hearing, and issuance of corrective notices of redetermination under RCW 49.17.140(4). The redetermination shall become final subject to direct appeal by an employer or complainant to the board of industrial insurance appeals within 15 working days of such redetermination with service of notice of appeal upon the director. In the event that the director does not reassume jurisdiction as provided in this subsection, the director shall promptly notify the state board of industrial insurance appeals of all notifications of intention to appeal the citation and notice of assessment and certify a full copy of the record in such appeal matters to the board. The board of industrial insurance appeals shall afford an opportunity for a hearing in the case of each such appellant and the department shall be represented in such hearing by the attorney general and the board shall in addition provide the complainant an opportunity to participate as a party to hearings of employer appeals under this subsection and provide the employer an opportunity to participate as a party to hearings of complainant appeals under this subsection. The board shall thereafter make disposition of the issues in accordance with procedures relative to contested cases appealed to the state board of industrial insurance appeals. A notice of appeal filed under this section shall stay the effectiveness of any citation or notice of assessment except orders of reinstatement pending review by the board of industrial insurance appeals.

(8) Civil penalties imposed under this section shall be paid to the director for deposit in the supplemental pension fund established in RCW 51.44.033.

(9) Collections of amounts owed for unpaid citations and notices of assessment will be handled pursuant to the procedures outlined in RCW 51.48.120 through 51.48.150.

(10) Nothing in this section diminishes the rights, privileges, or remedies of any employee under any federal or state law or under any collective bargaining agreement. The department and complainant may pursue remedies in superior court that are outside the board of industrial insurance appeals' jurisdiction. [2021 c 253 § 3; 2010 c 8 § 12013; 1973 c 80 § 16.]

Effective date—2021 c 253 § 3: "Section 3 of this act takes effect July 1, 2022." [2021 c 253 § 7.]

Rule-making authority—Worker safety and health—2021 c 253: See note following RCW 49.17.130.