

WAC 391-08-520 Declaratory orders. Any person may petition the commission for a declaratory order under RCW 34.05.240 with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the agency. For purposes of this section, the term person includes natural persons, employee organizations, and employers.

(1) A petition for a declaratory order must generally adhere to the following form:

(a) At the top of the page must appear the wording "Before the Public Employment Relations Commission," a caption setting out "In the Matter of the Petition of (name of petitioner to be inserted) for a Declaratory Order," and the title "Petition."

(b) The body of the petition must set out, in numbered paragraphs:

(i) The name, email address, and mailing address of the petitioner and of the petitioner's representative, if any;

(ii) The name(s), email address(es), and mailing address(es) of any other party that the petitioner seeks to have bound by any declaratory order issued by the commission, and the name(s), email address(es), and mailing address(es) of those parties' representatives, if known;

(iii) The rule(s), order(s), or statute(s) from which the controversy arises;

(iv) The facts that the petitioner wishes the commission to consider;

(v) The issues that the petitioner wishes the commission to address;

(vi) The relief requested by the petitioner; and

(vii) The reasons on which the petitioner relies to show that uncertainty necessitating resolution exists; there is actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory opinion; the uncertainty adversely affects the petitioner; and the adverse effect of uncertainty on the petitioner outweighs any adverse effects on others or on the general public that may likely arise from the order requested.

(c) The petition must be filed and served as required by WAC 391-08-120.

(2) Within 15 days after receipt of a petition for a declaratory order, the executive director or designee shall give notice of the petition to all persons to whom notice is required by law and may give notice to any other person the executive director or designee deems desirable. The notice must establish a deadline for necessary parties other than the petitioner to file written consent to the determination of the matter by a declaratory order.

(3) The petition and any responses from parties must be forwarded to the commission for consideration. The commission may not issue a declaratory order if:

(a) The matter is or could have been the subject of any other adjudicative proceeding before the commission; or

(b) A necessary party whose rights would be substantially prejudiced does not consent, in writing, to the determination of the matter by a declaratory order.

(4) The commission may consider the petition without argument and shall, within 30 days after receipt of the petition, do one of the following:

(a) Enter an order declaring the applicability of the rule, order, or statute in question to the specified circumstances;

(b) Set a reasonable time and place for a hearing to be held within 90 days after receipt of the petition, including submission of evidence by the parties if deemed necessary by the commission or submission of written argument if the material facts are not in dispute. The commission shall give seven days' or more advance written notice to the petitioner and other persons who have been given notice of the petition under subsection (2) of this section of the time, date, and place for the hearing or submission and of the issues it will be considering;

(c) Set a specified time within 90 days after receipt of the petition when it will enter a declaratory order;

(d) Decline to enter a declaratory order, stating the reasons for its action.

(5) The commission may extend the time limits of subsection (4)(b) and (c) of this section, for good cause.

(6) The commission may, at any time before taking final action on a petition under this section, request submission of additional facts or argument, which may include setting the case for oral argument.

(7) If the commission proceeds in the manner provided in subsection (4)(b) of this section, it shall within a reasonable time after conclusion of the proceeding:

(a) Issue a declaratory order; or

(b) Notify the petitioner and any other party to the proceeding that no declaratory order will be issued and state the reasons for that action.

(8) A declaratory order entered by the commission or a decision to decline to enter a declaratory order must be in writing and be served on all parties identified in subsection (2) of this section. Each declaratory order must contain the names of all parties to the proceeding on which it is based, the particular facts on which it is based, and the reasons for its conclusions.

(9) A declaratory order is a final agency order.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-08-520, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-08-520, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.240. WSR 98-14-112, § 391-08-520, filed 7/1/98, effective 8/1/98.]