

WAC 296-128-90090 Enforcement—Administrative violations. (1)

If an entertainer files a complaint with the department alleging a violation of any administrative requirement of RCW 49.46.360 or any associated rules, the department will investigate the complaint under RCW 49.46.360. Alleged violations include, but are not limited to, failure of an establishment to comply with: Written contract requirements of RCW 49.46.360 (2) and (3), signage requirements of RCW 49.46.360(5), notice requirements of RCW 49.46.360(6), and associated rules.

(2) The department may not investigate any such alleged violation of rights that occurred more than three years before the date that the entertainer filed the complaint.

(3) If an entertainer files a timely complaint with the department, the department will investigate the complaint and issue either a citation assessing a civil penalty or a closure letter, unless the complaint is otherwise resolved.

(4) If the department's investigation finds that an entertainer's allegation cannot be substantiated, the department will issue a closure letter to the entertainer and the establishment detailing such finding.

(5) If the department's investigation finds that the establishment violated an administrative requirement, and the complaint is not otherwise resolved, the department may, at its discretion, notify the establishment that the department intends to issue a citation and notice of assessment. The department may provide up to 30 days after the date of such notification for the establishment to take corrective action to remedy the violation. If the complaint is not otherwise resolved, then the department shall issue a citation and notice of assessment. The department's citation and notice of assessment may:

(a) Order the establishment to provide written notices of reasons for the termination or refusal to rehire an entertainer;

(b) Order the establishment to cease using any written contracts, policies, or notices that are in violation of RCW 49.46.360 or associated rules;

(c) Order the establishment to update and correct any written contracts, policies, or notices that are in violation of RCW 49.46.360 or associated rules;

(d) For the first violation, order the establishment to pay the department a civil penalty; and

(e) For a repeat violation, order the establishment to pay the department up to double the last civil penalty issued.

(6) If the department determines that the violation of rights under RCW 49.46.360 or associated rules was a willful violation, and the establishment fails to take corrective action, the department may order the establishment to pay the department a civil penalty as specified in (a) of this subsection.

(a) A citation assessing a civil penalty for a willful violation of such rights will be \$1,000 for each willful violation. For a repeat willful violator, the citation assessing a civil penalty will not be less than \$2,000, but no greater than \$20,000 for each repeat willful violation.

(b) The department may not assess a civil penalty if the establishment reasonably relied on:

(i) A written order, ruling, approval, opinion, advice, determination, or interpretation of the director; or

(ii) An interpretive or administrative policy issued by the department and filed with the office of the code reviser. In accordance with the department's retention schedule obligations under chapter 40.14 RCW, the department will maintain a complete and accurate record of all written orders, rulings, approvals, opinions, advice, determinations, and interpretations for purposes of determining whether an establishment is immune from civil penalties under (b) of this subsection.

(c) The department may, at any time, waive or reduce a civil penalty assessed under this section.

(d) The department will deposit civil penalties paid under this section in the supplemental pension fund established under RCW 51.44.033.

(7) The department will send notice of a citation assessing a civil penalty or the closure letter to both the establishment and the entertainer.

(8) During any investigation under RCW 49.46.360 or associated rules, if the department discovers information suggesting additional violations of any requirements of RCW 49.46.360 or any associated rules, the department may investigate and take appropriate enforcement action without any additional complaint. The department may also initiate an investigation on behalf of one or more entertainers for a violation of any requirements of RCW 49.46.360 or any associated rules, when the director otherwise has reason to believe that a violation may have occurred or will occur.

(9) The department may conduct a consolidated investigation for any alleged administrative violations identified under RCW 49.46.360 or associated rules, when there are common questions of law or fact involving entertainers for the same establishment.

(10) The department may, for the purposes of enforcing RCW 49.46.360 or any associated rules, issue subpoenas to compel the attendance of witnesses or parties and the production of documents and records, administer oaths and examine witnesses under oath, take depositions, and seek affidavits or other verifications. The department may request an establishment perform a self-audit of any records. The results or conclusions of the self-audit must be provided to the department within a reasonable time. Reasonable timelines will be specified in the self-audit request. The records examined by the establishment in order to perform the self-audit must be made available to the department upon request.

(11) For purposes of this section, the following definitions apply:

(a) "Repeat willful violator" means any establishment that has been the subject of a final and binding citation for a willful violation of one or more rights under RCW 49.46.360, and all associated rules, within three years of the date of issuance of the most recent citation for a willful violation of one or more such rights.

(b) "Willful" means a knowing and intentional action that is neither accidental nor the result of a bona fide dispute.

[Statutory Authority: RCW 49.46.360. WSR 24-24-075, s 296-128-90090, filed 12/2/24, effective 1/2/25.]