

**WAC 296-135-150 Appeals from notices of infraction and determinations of compliance.**

(1) Except as otherwise provided in chapter 49.76 RCW and these rules, appeal from the director's decision is governed by the Administrative Procedure Act, chapter 34.05 RCW and the model rules of procedure, chapter 10-08 WAC. An employer or employee may file an appeal from a notice of infraction or determination of compliance under chapter 49.76 RCW and these rules within twenty days of issuance of the decision. The appealing party shall file two copies of its notice of appeal with the department at the office designated on the notice of infraction or determination of compliance. If no party files an appeal from the notice of infraction or determination of compliance within twenty days of its issuance, the notice of infraction or determination of compliance is final and binding and not subject to further appeal.

(2) Upon receipt of a timely appeal of a notice of infraction or determination of compliance, the department must:

(a) Notify the employer and employee of the receipt of the appeal; and

(b) Conduct a hearing in accordance with chapter 34.05 RCW and chapter 10-08 WAC.

(3) Appeals shall be assigned to the office of administrative hearings. The burden of proof at hearing shall be on the party alleging violation of chapter 49.76 RCW and these rules. The standard of proof is by a preponderance of the evidence. The administrative law judge will issue a proposed decision that includes findings of fact, conclusions of law, and if appropriate, any penalty for infraction.

(4) The employee, employer, and/or department may appeal to the director within thirty days after the date of issuance of the proposed decision. The appeals shall be in writing, stating the reasons why the proposed decision is incorrect, and must be filed with the director. The appealing party must serve on all other parties or their representatives a copy of the notice of appeal at the time it is filed. The director may also determine that the proposed decision be reviewed.

(5) If none of the parties files an appeal within thirty days of issuance of a proposed decision, and the director does not order review within such time, the proposed decision shall become final without further action and may not be appealed either to the director or the courts.

(6) The respondent parties must file with the director and serve upon all other parties or their representatives their responsive written arguments, if any, within thirty days after the date the notice of appeal from a proposed decision and the arguments of the appellant were served upon them.

(7) The director or the director's designee will review the administrative law judge's proposed decision in accordance with the Administrative Procedure Act, chapter 34.05 RCW. The director shall issue a final decision that can affirm, modify, or reverse the proposed decision. In addition, the director may:

(a) Allow the parties to present oral arguments as well as the written arguments;

(b) Require the parties to specify the portions of the record on which the parties rely;

(c) Require the parties to submit additional information by affidavit or certificate;

(d) Remand the matter to the administrative law judge for further proceedings; or

(e) Require a departmental employee to prepare a summary of the record for the director to review.

(8) The director or the director's designee will serve the final decision on all parties. Any aggrieved party may appeal the final decision to superior court pursuant to the Administrative Procedure Act, chapter 34.05 RCW. If no party files an appeal within thirty days of service of the final decision, the final decision is conclusive and binding on all parties.

[Statutory Authority: Chapter 49.76 RCW and 2008 c 286. WSR 10-14-099, § 296-135-150, filed 7/6/10, effective 9/1/10.]