

WAC 296-128-800 Enforcement—Retaliation—Appeals. (1) A person, firm, or corporation aggrieved by a citation and notice of assessment or a determination of compliance may, within thirty days after the date of such decision, submit a request for reconsideration to the department setting forth the grounds for seeking such reconsideration, or submit an appeal to the director pursuant to the procedures outlined in subsection (4) of this section. If the department receives a timely request for reconsideration, the department will either accept the request or treat the request as a notice of appeal.

(2) If a request for reconsideration is accepted, the department will send notice of the request for reconsideration to the employer and the employee. The department will determine if there are any valid reasons to reverse or modify the department's original decision to issue a citation and notice of assessment or determination of compliance within thirty days of receipt of such request. The department may extend this period by providing advance written notice to the employee and employer setting forth good cause for an extension of the period, and specifying the duration of the extension. After reviewing the reconsideration, the department will either:

(a) Notify the employee and the employer that the citation and notice of assessment or determination of compliance is affirmed; or

(b) Notify the employee and the employer that the citation and notice of assessment or determination of compliance has been reversed or modified.

(3) A request for reconsideration submitted to the department shall stay the effectiveness of the citation and notice of assessment or the determination of compliance pending the reconsideration decision by the department.

(4) Within thirty days after the date the department issues a citation and notice of assessment or a determination of compliance, or within thirty days after the date the department issues its decision on the request for reconsideration, a person, firm, or corporation aggrieved by a citation and notice of assessment or a determination of compliance may file with the director a notice of appeal.

(5) A notice of appeal filed with the director under this section shall stay the effectiveness of the citation and notice of assessment or the determination of compliance pending final review of the appeal by the director as provided for in chapter 34.05 RCW.

(6) Upon receipt of a notice of appeal, the director shall assign the hearing to an administrative law judge of the office of administrative hearings to conduct the hearing and issue an initial order. The hearing and review procedures shall be conducted in accordance with chapter 34.05 RCW, and the standard of review by the administrative law judge of an appealed citation and notice of assessment or determination of compliance shall be de novo. Any party who seeks to challenge an initial order shall file a petition for administrative review with the director within thirty days after service of the initial order. The director shall conduct administrative review in accordance with chapter 34.05 RCW.

(7) If a request for reconsideration is not submitted to the department within thirty days after the date of the original citation and notice of assessment or determination of compliance, and a person, firm, or corporation aggrieved by a citation and notice of assessment or determination of compliance did not submit an appeal to the director, then the citation and notice of assessment or determination of compliance is final and binding, and not subject to further appeal.

(8) The director shall issue all final orders after appeal of the initial order. The final order of the director is subject to judicial review in accordance with chapter 34.05 RCW.

(9) Director's orders that are not appealed within the time period specified in this section and chapter 34.05 RCW are final and binding, and not subject to further appeal.

(10) An employer who fails to allow adequate inspection of records in an investigation by the department under WAC 296-128-780 through 296-128-800 within a reasonable time period may not use such records in any appeal under such rules to challenge the correctness of any determination by the department.

[Statutory Authority: RCW 49.46.810, 49.46.005, 49.46.020, 49.46.090, 49.46.100, 49.46.120, 49.46.200, 49.46.210, 49.46.810, 49.46.820, and 49.46.830. WSR 18-01-111, § 296-128-800, filed 12/19/17, effective 1/1/18.]