

WAC 162-08-298 Remedies. (1) Power of administrative law judge.

The administrative law judge has the power to exercise the general jurisdiction of the commission to eliminate and prevent discrimination by means of orders to respondents who have been found after hearing to have engaged in an unfair practice or practices.

(2) **General objectives.** An order should generally both eliminate the effects of an unfair practice and prevent the recurrence of the unfair practice. The effects of an unfair practice are eliminated by restoring the victims of the unfair practice as nearly as possible to the position they would have been in if the unfair practice had not occurred. It is appropriate to eliminate the effects of the unfair practice on persons other than the complainant or complainants, and to consider the deterrent effect of an order on persons other than the respondent or respondents. The objective of the law is to eliminate and prevent discrimination, not merely to provide treatment for victims of discrimination.

(3) **Cease and desist.** In every case where the administrative law judge finds that a respondent has engaged in an unfair practice the administrative law judge shall order the respondent to cease and desist from that unfair practice.

(4) **Examples of remedies.** Included among remedies that will effectuate the purposes of the law against discrimination in an appropriate case are the following:

(a) An order to hire persons who have been unfairly denied employment;

(b) An order to reinstate persons who have been unfairly terminated, downgraded, or reclassified;

(c) An order to upgrade persons who have been unfairly denied promotion;

(d) An order to pay back pay to a person or persons who would have had a job but for the unfair practice of the respondent;

(e) An order to pay an amount equal to the difference in pay between the job the persons had and the job they would have had but for the unfair practice of the respondent;

(f) An order restoring employment benefits, such as insurance benefits, retirement contributions, sick leave, vacation benefits, seniority standing, etc., lost or not gained because of an unfair practice;

(g) An order to admit persons to membership in a union which has unfairly excluded the persons and dispatch them to jobs in accordance with uniform rules applicable to all members;

(h) An order to merge or otherwise restructure a seniority system that unfairly disadvantages a protected class of persons;

(i) An order to rent or sell real property to persons who have been unfairly denied the property;

(j) An order to grant credit to persons who have been unfairly denied credit;

(k) An order to reimburse or compensate persons for the excess cost of credit caused by an unfair practice;

(l) An order to issue or renew insurance to persons who have been unfairly denied the insurance;

(m) Except as may be provided for complaints of unfair practices in real estate transactions, an order to pay a sum of money of up to ten thousand dollars to compensate persons for humiliation and mental suffering caused by an unfair practice;

(n) An order assessing a civil penalty against the respondent as authorized by RCW 49.60.225 (1) and (2);

(o) An order to pay interest on money that should have been paid at an earlier time, but for the unfair practice. Interest may be calculated at the current market rate for unsecured personal loans from institutions other than small loan companies licensed under chapter 31.08 RCW;

(p) An order to not retaliate against a complainant, witness, or other person for filing a complaint, testifying, or assisting in any proceeding under chapter 49.60 RCW;

(q) An order to institute affirmative programs, practices, or procedures that will eliminate an unfair practice or its effects, or will prevent the recurrence of the unfair practice;

(r) An order for any other remedy which is available under comparable civil rights laws of the United States or other states, including the federal Fair Housing Amendments Act of 1988, 42 U.S.C. sec. 3601 et seq.

This list is not exhaustive. An administrative law judge may make any order that will effectuate the purposes of the law against discrimination, provided the order is in compliance with the rules of the commission and is not otherwise prohibited by law.

(5) **Remedies not authorized.** Except as may be otherwise provided for a complaint alleging an unfair practice in a real estate transaction, an administrative law judge is not authorized to order:

(a) The payment of punitive damages;

(b) The payment of fines payable to the state.

(6) No order effectuating the law against discrimination in real estate transactions shall affect any contract, sale, encumbrance, or lease consummated before the issuance of such order and involving a bona fide purchaser, encumbrancer or tenant without actual notice of the complaint filed under this chapter.

(7) **Treatment of unemployment compensation.** When an order is made for payment of wages lost during a time when the beneficiary of the order was receiving unemployment compensation, the amount of the award shall not be reduced by the amount of unemployment compensation received. The order may make provision for payment of the portion of the award covered by unemployment compensation jointly to the beneficiary and the Washington state department of employment security, or to the department alone. (Under Washington law, it is the duty of the employee to reimburse the department of employment security when back pay is received for a period during which the employee collected unemployment compensation.)

(8) **Persons for whom relief can be ordered.** The administrative law judge may order that remedies for an unfair practice be paid or accorded to the named complainant or complainants, and, in addition, to any other persons identified as having been injured by the unfair practice.

(9) **Nature and purpose of order.** An administrative order is one means of carrying out the public purpose of the law against discrimination: To eliminate and prevent certain discrimination. The administrative law judge in framing its order shall be guided by this public purpose. The administrative law judge's task is not the determination of private rights. See WAC 162-08-061, 162-08-062. The administrative law judge is not required to observe conventional common law or equity principles in fashioning the order. The guiding principle for the administrative law judge is whether a particular remedy will effectuate the purposes of the law against discrimination. An order requiring a respondent to pay money to a person as back pay, or to compensate for some other loss, is not a private award of damages, but is a public

reparation order. Except as may be otherwise provided in RCW 49.60.260 and WAC 162-08-288, only the commission can enforce the order. The beneficiary has no property right in the money until he or she receives it. See WAC 162-08-305.

(10) **Retention of jurisdiction.** In appropriate cases the administrative law judge in his or her order may retain jurisdiction for a reasonable period of time for the purpose of determining compliance with his or her order or issuing orders supplementing or modifying the original order. If the administrative law judge does not retain jurisdiction through a provision of his or her order he or she has no jurisdiction to modify or supplement his or her order, except on reconsideration (WAC 162-08-311). Retention of jurisdiction by the administrative law judge under this subsection does not prevent the administrative law judge's order from being final for the purpose of judicial review or enforcement.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. WSR 96-13-045, § 162-08-298, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-298, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-298, filed 9/2/77.]