

WAC 296-128-830 Enforcement—Complaints alleging a violation of other rights under chapter 49.46 RCW—Duty of department to investigate—Citations—Civil penalties. (1) If an employee files a complaint with the department alleging a violation of the employee's rights under chapter 49.46 RCW, and all applicable rules, that are not otherwise enforced by the department pursuant to WAC 296-128-780 through 296-128-820, or the Wage Payment Act, RCW 49.48.082 through 49.48.087, the department will investigate the complaint under this section. Alleged violations include, but are not limited to, failure of an employer to comply with: The recordkeeping requirements set forth in WAC 296-128-010; the requirements to maintain written policies or collective bargaining agreements, as outlined in WAC 296-128-650(3), 296-128-660(2), 296-128-710(1), and 296-128-730(4); and notification and reporting requirements set forth in WAC 296-128-760.

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

(b) If an employee 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 within sixty days after the date on which the department received the complaint, unless the complaint is otherwise resolved. The department may extend the period by providing advance written notice to the employee and the employer setting forth good cause for an extension of the period, and specifying the duration of the extension.

(c) The department will send notice of a citation assessing a civil penalty or the closure letter to both the employer and the employee by service of process or using a method by which the mailing can be tracked or the delivery can be confirmed to their last known addresses.

(2) If the department's investigation finds that the employee's allegation cannot be substantiated, the department will issue a closure letter to the employee and the employer detailing such finding.

(3) If the department determines that the violation of rights under chapter 49.46 RCW, and all applicable rules, that are not enforced by the department pursuant to WAC 296-128-780 through 296-128-820, or the Wage Payment Act, RCW 49.48.082 through 49.48.087, was a willful violation, and the employer fails to take corrective action, the department may order the employer 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 one thousand dollars for each willful violation. For a repeat willful violator, the citation assessing a civil penalty will not be less than two thousand dollars for each repeat willful violation, but no greater than twenty thousand dollars for each repeat willful violation.

(b) The department may not issue a citation assessing a civil penalty if the employer 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, determi-

nations, and interpretations for purposes of determining whether an employer 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 if the director determines that the employer has taken corrective action to resolve the violation.

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

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

(a) "Repeat willful violator" means any employer that has been the subject of a final and binding citation for a willful violation of one or more rights under chapter 49.46 RCW, and all applicable 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 49.46.810, 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, § 296-128-830, filed 12/19/17, effective 1/1/18.]