

WAC 391-45-110 Deficiency notice—Cause of action statement—Deferral to arbitration. The executive director, the executive director's designee, or an examiner shall determine whether the facts alleged in the complaint may constitute an unfair labor practice within the meaning of the applicable statute.

(1) If the facts alleged do not, as a matter of law, constitute a violation, a deficiency notice identifying the defects and specifying a due date for the filing and service of an amended complaint will be issued and served on all parties. If the defects are not cured within 21 days, an order dismissing the defective allegation(s) and stating the reasons for that action must be issued and served on all parties. Unless appealed to the commission under WAC 391-45-350, an order of dismissal issued under this subsection is the final order of the agency on the defective allegation(s) with the same force and effect as if issued by the commission.

(2) If one or more allegations state a cause of action for unfair labor practice proceedings before the agency, a cause of action statement summarizing the allegation(s) will be issued and served on all parties.

(a) A cause of action statement forwarding a case for further proceedings is an interim order that may only be appealed to the commission by a notice of appeal filed after issuance of an examiner decision under WAC 391-45-310(2).

(b) The cause of action statement limits the cause(s) of action before an examiner and the commission. A complainant who claims that the cause of action statement failed to address one or more causes of action the complainant sought to advance in the complaint may, before the issuance of a notice of hearing, seek clarification from the person who issued the cause of action statement.

(c) The cause of action statement must establish the due date for the respondent to file its answer.

(3) The agency may defer the processing of allegations which state a cause of action under subsection (2) of this section pending the outcome of related contractual dispute resolution procedures, but the agency retains jurisdiction over those allegations.

(a) Deferral to arbitration may be ordered if:

(i) Employer conduct alleged to constitute an unlawful unilateral change of employee wages, hours, or working conditions is arguably protected or prohibited by a collective bargaining agreement in effect between the parties at the time of the alleged unilateral change;

(ii) The parties' collective bargaining agreement provides for final and binding arbitration of grievances concerning its interpretation or application; and

(iii) There are no procedural impediments to a determination on the merits of the contractual issue through proceedings under the contractual dispute resolution procedure.

(b) Processing of the unfair labor practice allegations under this chapter must be resumed following issuance of an arbitration award or resolution of the grievance, and the contract interpretation made in the contractual proceedings is considered binding, except if:

(i) The contractual procedures were not conducted in a fair and orderly manner; or

(ii) The contractual procedures have reached a result that is repugnant to the purposes and policies of the applicable collective bargaining statute.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-45-110, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-45-110, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 28B.52.073, 34.05.419, 41.56.140, 41.56.150 and 41.59.140. WSR 00-14-048, § 391-45-110, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-110, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-45-110, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073, 41.56.140, 41.56.150, 41.59.140 and 53.18.015. WSR 90-06-074, § 391-45-110, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-110, filed 9/30/80, effective 11/1/80.]