

WAC 296-128-780 Enforcement—Retaliation.

(1) An employee who believes that they were subject to retaliation by their employer, as defined in WAC 296-128-770, for the exercise of any employee right under chapter 49.46 RCW, may file a complaint with the department within one hundred eighty days of the alleged retaliatory action. The department may, at its discretion, extend the one hundred eighty-day period on recognized equitable principles or because extenuating circumstances exist. For example, the department may extend the one hundred eighty-day period when there is evidence that the employer has concealed or misled the employee regarding the alleged retaliatory action.

(2) If an employee files a timely complaint with the department alleging retaliation, the department will investigate the complaint and issue either a citation and notice of assessment or a determination of compliance within ninety 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.

(3) The department may consider a complaint to be otherwise resolved when the employee and the employer reach a mutual agreement to remedy any retaliatory action, or the employee voluntarily and on the employee's own initiative withdraws the complaint. Mutual agreements include, but are not limited to, rehiring, reinstatement, back pay, and reestablishment of benefits.

(4) If the department's investigation finds that the employee's allegation of retaliation cannot be substantiated, the department will issue a determination of compliance to the employee and the employer detailing such finding.

(5) If the department's investigation finds that the employer retaliated against the employee, and the complaint is not otherwise resolved, the department may, at its discretion, notify the employer that the department intends to issue a citation and notice of assessment, and may provide up to thirty days after the date of such notification for the employer to take corrective action to remedy the retaliatory action. If the complaint is not otherwise resolved, then the department shall issue a citation and notice of assessment. The department's citation and notice of assessment may:

(a) Order the employer to make payable to the employee earnings that the employee did not receive due to the employer's retaliatory action, including interest of one percent per month on all earnings owed. The earnings and interest owed will be calculated from the first date earnings were owed to the employee;

(b) Order the employer to restore the employee to the position of employment held by the employee when the retaliation occurred, or restore the employee to an equivalent position with equivalent employment hours, work schedule, benefits, pay, and other terms and conditions of employment;

(c) Order the employer to cease using any policy that counts the use of paid sick leave as an absence that may lead to or result in discipline against the employee;

(d) For the first violation, order the employer to pay the department a civil penalty as specified in WAC 296-128-790; and

(e) For a repeat violation, order the employer to pay the department up to double the civil penalty as specified in WAC 296-128-790.

(6) The department will send the citation and notice of assessment or determination of compliance to both the employer and 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.

(7) During an investigation of the employee's retaliation complaint, if the department discovers information suggesting alleged violations by the employer of the employee's other rights under chapter 49.46 RCW, and all applicable rules, the department may investigate and take appropriate enforcement action without requiring the employee to file a new or separate complaint. If the department determines that the employer violated additional rights of the employee under chapter 49.46 RCW, and all applicable rules, the employer may be subject to additional enforcement actions for the violation of such rights. If the department discovers information alleging the employer retaliated against or otherwise violated rights of other employees under chapter 49.46 RCW, and all applicable rules, the department may launch further investigation under chapter 49.46 RCW, and all applicable rules, without requiring additional complaints to be filed.

(8) The department may prioritize retaliation investigations as needed to allow for timely resolution of complaints.

(9) Nothing in WAC 296-128-780 through 296-128-800 impedes the department's ability to investigate under the authority prescribed in RCW 49.48.040.

(10) Nothing in WAC 296-128-780 through 296-128-800 precludes an employee's right to pursue private legal action.

[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, § 296-128-780, filed 12/19/17, effective 1/1/18.]