

WAC 296-136-140 Retaliation—Enforcement. (1) An employee or former employee who believes that they were subject to retaliation by their employer, as defined in chapter 49.84 RCW and associated rules, for the exercise of any employee right under chapter 49.84 RCW, may file a complaint with the department within 180 days of the alleged retaliatory action. The department may, at its discretion, extend the 180-day period on recognized equitable principles or because extenuating circumstances exist. For example, the department may extend the 180-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 90 days after the date on which the department received the complaint, unless the complaint is otherwise resolved. The department may extend the time period by providing advance written notice to the employee and the employer setting forth good cause for an extension of the time 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 was rebutted by the employer and 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 30 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 pay the department a civil penalty as specified in WAC 296-136-150.

(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 wage and labor standard protections in statutes and 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 wage and labor standard protections in statutes and 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 wage and labor standard protections in statutes and applicable rules, the department may launch further investigation under chapters 49.46 and 49.84 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 chapter 49.84 RCW or associated rules impedes the department's ability to investigate under the authority prescribed in RCW 49.84.040.

[Statutory Authority: Chapter 49.84 RCW. WSR 24-12-045, § 296-136-140, filed 5/31/24, effective 7/1/24.]