

**WSR 22-14-090**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed July 1, 2022, 2:29 p.m., effective July 1, 2022]

Effective Date of Rule: July 1, 2022.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: This rule will go into effect immediately upon filing, allowed under RCW 34.05.380(3), because the changes made by ESHB 1097, codified in RCW 49.17.160, become effective on July 1, 2022. The rules need to be effective the same day so that any complaints alleging discrimination or retaliation are handled in alignment with the legislative intent and statutory updates.

Purpose: The Washington Industrial Safety and Health Act (WISHA), under chapter 49.17 RCW, protects workers from discrimination or retaliation for exercising their rights under WISHA to a safe and healthy workplace.

ESHB 1097, which became law in 2021, made changes to the WISHA discrimination protections under RCW 49.17.160. The department of labor and industries has subsequently updated chapter 296-360 WAC, Discrimination, to better align with ESHB 1097. These updates include:

- Division of occupational safety and health (DOSH) has the authority to issue administrative orders when investigations of discrimination complaints find sufficient evidence that an employer violated RCW 49.17.160.
- A process for issuance of citations and notices of assessments to order relief to the worker and penalties to the employer, and a process for employer and employee appeals of the citation and notice of assessment.
- The time allowed to file a safety and health discrimination complaint has changed from 30 to 90 days.
- The definition of "discrimination" has been amended for clarification.

Additionally, chapter 296-360 WAC, Discrimination, has also been updated to align with Washington state case law specific to "substantial factor" causation test, where a violation of RCW 49.17.160 occurs when an employee's engagement in protected activity was a substantial factor in the employer's decision for the adverse action. Previously, certain provisions within the rule were based on the Occupational Safety and Health Administration's interpretative rules applying federal case law to discrimination under Section 11(c) of the Occupational Safety and Health Act. The change to apply Washington case law is necessary to ensure that DOSH applies the appropriate standard used by Washington courts in its investigations and orders issued under ESHB 1097.

Citation of Rules Affected by this Order: New WAC 296-360-045, 296-360-175 and 296-360-180; and amending WAC 296-360-005, 296-360-010, 296-360-020, 296-360-030, 296-360-040, 296-360-050, 296-360-060, 296-360-070, 296-360-080, 296-360-090, 296-360-150, and 296-360-160.

Statutory Authority for Adoption: RCW 49.17.040 and 49.17.050.

Adopted under notice filed as WSR 22-10-107 on May 4, 2022.

Changes Other than Editing from Proposed to Adopted Version: WAC 296-360-045(1), added the word "all" before "appropriate relief." This change was requested during formal comments, and is made to align rule

language with both statute and new WAC 296-360-040. This makes the rule clear and consistent.

WAC 296-360-150(4), reorganized subsection to read more clearly and ensure employees understand when refusal of work due to a hazard or unsafe condition is protected.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 3, Amended 12, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 12, Repealed 0.

Date Adopted: July 1, 2022.

Joel Sacks  
Director

#### OTS-3642.4

AMENDATORY SECTION (Amending WSR 94-15-096, filed 7/20/94, effective 9/20/94)

**WAC 296-360-005 Definitions.** For the purposes of this chapter.

(1) "Assistant director" ~~((-))~~ means the assistant director for the division of ((consultation and compliance)) occupational safety and health at the department of labor and industries.

(2) "Department" means the department of labor and industries.

~~((2))~~ (3) "Division" ((-)) or "DOSH" means the division of ((consultation and compliance)) occupational safety and health of the department of labor and industries.

(4) "Director" means the director of the department of labor and industries.

(5) "Employ" has the same meaning as in WAC 296-360-080.

(6) "Employee" has the same meaning as in RCW 49.17.020.

(7) "Person" has the same meaning as in RCW 49.17.020.

(8) "Repeat violation" means a violation where the employer has been cited one or more times previously for violation of RCW 49.17.160 and the prior violation has become a final order no more than five years prior to the employer committed the violation being cited.

[Statutory Authority: Chapter 49.17 RCW. WSR 94-15-096 (Order 94-07), § 296-360-005, filed 7/20/94, effective 9/20/94. Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.240, chapters 43.22 and 42.30 RCW. WSR 80-17-015 (Order 80-21), § 296-360-005, filed 11/13/80.]

AMENDATORY SECTION (Amending WSR 80-17-015, filed 11/13/80)

**WAC 296-360-010 Introduction.** (~~((1) Chapter 49.17 RCW, the Washington Industrial Safety and Health Act (WISHA), is designed to regulate employment conditions affecting industrial safety and health and to achieve safer and healthier work places throughout the state. WISHA requires every person who has employees to furnish each of his or her employees employment and a place of employment free from recognized hazards that are causing or likely to cause death or serious physical harm, and to comply with industrial safety and health standards promulgated under WISHA.~~

~~(2) Employees and representatives of employees are afforded a wide range of substantive and procedural rights under WISHA. Effective implementation of WISHA and achievement of its goals depend in large part upon the active but orderly participation of employees, individually and through their representatives.~~

~~(3)) This chapter deals ((essentially)) with the rights of employees afforded under RCW 49.17.160 ((. RCW 49.17.160)), which prohibits reprisals, in any form, against employees who exercise rights under WISHA. The purpose of this chapter is to make available in one place interpretations of the various provisions of ((section 16 of WISHA)) RCW 49.17.160 that will guide the assistant director in the performance of ((his or her)) their duties ((thereunder)).~~

[Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.240, chapters 43.22 and 42.30 RCW. WSR 80-17-015 (Order 80-21), § 296-360-010, filed 11/13/80.]

AMENDATORY SECTION (Amending WSR 80-17-015, filed 11/13/80)

**WAC 296-360-020 General requirements of RCW 49.17.160 of WISHA.**

~~((RCW 49.17.160 provides that)) (1) No person shall discharge or in any manner discriminate against any employee because the employee has:~~

~~(a) Filed any complaint under or related to WISHA((τ));~~

~~(b) Instituted or caused to be instituted any proceeding under or related to WISHA((τ));~~

~~(c) Testified or is about to testify in any proceeding under or related to WISHA((τ)); or~~

~~(d) Exercised on ((his or her)) their own behalf or on behalf of others any right afforded by WISHA.~~

~~(2) Any employee who believes ((that he/she has)) they have been discriminated against in violation of ((section 16 of WISHA may, within thirty days after the violation occurs, file a complaint with the assistant director alleging the violation. The division shall investigate the complaint and, if the assistant director determines that section 16 of WISHA has been violated, the division may bring a civil action against the violator in superior court. The suit may ask the court to restrain violations of RCW 49.17.160 and to grant other appropriate relief, including rehiring or reinstating the employee to his or her former position with back pay)) RCW 49.17.160 may file a complaint alleging a violation, within 90 days after such violation.~~

[Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.240, chapters 43.22 and 42.30 RCW. WSR 80-17-015 (Order 80-21), § 296-360-020, filed 11/13/80.]

AMENDATORY SECTION (Amending WSR 82-13-045, filed 6/11/82)

**WAC 296-360-030 Filing a complaint of discrimination.** (1) Who may file. A complaint (~~(of RCW 49.17.160)~~) alleging discrimination may be filed by the employee (~~(him or herself)~~), or by ((a)) the employee's authorized representative (~~(authorized to do so on his or her behalf)~~).

(2) Nature of filing. No particular form of complaint is required.

(3) Place of filing. The complaint should be filed with the division by the following methods:

(a) Department website: <https://lni.wa.gov/workers-rights/workplace-complaints/discrimination-in-the-workplace>.

(b) In person:

Department of Labor and Industries  
DOSH-Discrimination Program  
7273 Linderson Way S.W.  
Tumwater, WA 98501

(c) Mail:

Department of Labor and Industries  
DOSH-Discrimination Program  
P.O. Box 44600  
Olympia, WA 98504-4600; or

(d) Phone: 360-902-6088 or 1-800-423-7233.

(4) Time for filing. (~~(RCW 49.17.160(3) provides that an employee who believes that he or she has been discriminated against in violation of RCW 49.17.160 "may, within thirty days after such violation occurs" file a complaint with the assistant director. A major purpose of the thirty-day period is to allow the assistant director to decline to entertain complaints that have become stale. Accordingly, the division will presume that complaints not filed within thirty days of an alleged violation are untimely. There may be circumstances, however,))~~ The complaint must be filed timely as stated in WAC 296-360-020(2). Circumstances may exist that justify tolling, meaning pause, delay, or extend, the ((thirty-day)) 90-day period on recognized equitable principles or because strongly extenuating circumstances exist, e.g., where the employer has concealed, or misled the employee regarding the grounds for, discharge or other adverse action; or where the discrimination is in the nature of a continuing violation. In the absence of circumstances justifying a tolling of the ((thirty-day)) 90-day period, the division ((shall)) will not accept untimely complaints.

[Statutory Authority: RCW 49.17.040 and 49.17.050. WSR 82-13-045 (Order 82-22), § 296-360-030, filed 6/11/82. Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.240, chapters 43.22 and 42.30 RCW. WSR 80-17-015 (Order 80-21), § 296-360-030, filed 11/13/80.]

AMENDATORY SECTION (Amending WSR 94-15-096, filed 7/20/94, effective 9/20/94)

**WAC 296-360-040 Discrimination, determination, and notification ((of assistant director's determination)).** (1) (~~(RCW 49.17.160(3) provides that)~~) The assistant director ((is to)) must determine if a

violation of RCW 49.17.160 has occurred, or whether there was insufficient evidence to determine if a violation occurred.

(2) The assistant director will notify a complainant and their employer of the determination made under subsection (1) of this section within ((ninety)) 90 days of receipt of the complaint ((of his determination whether prohibited discrimination has occurred. This ninety-day provision is directory, not mandatory. Although)). The department may extend the 90-day period by providing advance written notice to the complainant and the employer setting forth good cause for an extension of the period, and specifying the duration of the extension.

(a) Violation occurred. If the assistant director determines that RCW 49.17.160 has been violated, the assistant director will issue a citation and notice of assessment describing the violation to the employer, ordering all appropriate relief as described in WAC 296-360-045, and may assess a civil penalty as described in WAC 296-360-175. Complainants and employers have the right to appeal the citation and notice of assessment in accordance with WAC 296-360-180.

(b) Insufficient evidence. If the assistant director finds there is insufficient evidence to determine that a violation occurred, the assistant director will issue a letter of closure and the employee may institute the action on their own behalf within 30 days of such determination as allowed in RCW 49.17.160.

(i) The complainant may file a written request for review by the director within 15 working days of receipt of the determination. The request for director review must set forth the basis for the request. The request must be filed by mail to the address in WAC 296-360-030 (3)(c) or in-person to the address in WAC 296-360-030 (3)(b).

(ii) Upon review the director may set aside the assistant director's determination and issue a citation and notice of assessment, remand the matter for further investigation, or affirm the determination of the assistant director.

(3) Every effort will be made to notify complainants of the ((assistant director's determination within ninety days, there may be instances when it is not possible to do so)) determination using a method of mailing that can be tracked or delivery that can be confirmed.

((2) If a complainant receives a determination from the assistant director that prohibited discrimination has not occurred, the complainant may file a written request for review by the director within fifteen working days of receipt of the determination. The request for review must set forth the basis for the request. The request shall be filed by mailing or delivering the request to the Director of Labor and Industries, P.O. Box 44000, Olympia, Washington 98504-4000. Upon review the director may set aside the assistant director's determination, remand the matter for further investigation, or affirm the determination of the assistant director. The director shall notify the complainant of the decision after review.))

[Statutory Authority: Chapter 49.17 RCW. WSR 94-15-096 (Order 94-07), § 296-360-040, filed 7/20/94, effective 9/20/94. Statutory Authority: RCW 49.17.040 and 49.17.050. WSR 85-10-004 (Order 85-09), § 296-360-040, filed 4/19/85. Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.240, chapters 43.22 and 42.30 RCW. WSR 80-17-015 (Order 80-21), § 296-360-040, filed 11/13/80.]

NEW SECTION**WAC 296-360-045 Appropriate relief for violations of RCW**

**49.17.160.** (1) A citation and notice of assessment issued for a violation of RCW 49.17.160 as required by WAC 296-360-040, must include all appropriate relief which may include, but is not limited to, the following:

(a) Restoring the complainant to the position of employment held by the complainant when the discrimination occurred, or restoring the complainant to an equivalent position with equivalent employment hours, work schedule, benefits, pay, and other terms and conditions of employment; and

(b) Ordering the employer to make payable to the complainant earnings that the complainant did not receive due to the employer's discriminatory 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.

(2) A civil penalty may be issued in accordance with WAC 296-360-175, Penalties for violations of RCW 49.17.160.

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AMENDATORY SECTION (Amending WSR 94-15-096, filed 7/20/94, effective 9/20/94)

**WAC 296-360-050 Withdrawal of complaint.** Enforcing the provisions of RCW 49.17.160 is not only a matter of protecting rights of individual employees, but also of protecting the public interest. Attempts by an employee to withdraw a filed complaint will not necessarily result in termination of the division's investigation. A voluntary and uncoerced request from a complainant to withdraw a complaint will be given careful consideration; however, the division's jurisdiction cannot be foreclosed as a matter of law by unilateral action of the employee. (~~However, a voluntary and uncoerced request from a complainant to withdraw his/her complaint shall generally be accepted.~~)

[Statutory Authority: Chapter 49.17 RCW. WSR 94-15-096 (Order 94-07), § 296-360-050, filed 7/20/94, effective 9/20/94. Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.240, chapters 43.22 and 42.30 RCW. WSR 80-17-015 (Order 80-21), § 296-360-050, filed 11/13/80.]

AMENDATORY SECTION (Amending WSR 80-17-015, filed 11/13/80)

**WAC 296-360-060 Arbitration or other agency proceedings.** (1) General.

(a) An employee who files a complaint under RCW 49.17.160 may pursue remedies under grievance arbitration proceedings in collective bargaining agreements, and may also resort to other agencies, such as the National Labor Relations Board, for relief. The division's jurisdiction to entertain RCW 49.17.160 complaints, to investigate, and to determine whether discrimination has occurred, is independent of the jurisdiction of other agencies or bodies. The division may file an ac-

tion in superior court regardless of the pendency of other proceedings.

(b) (~~Where it is possible, however,~~) The division favors voluntary resolution, where possible, of disputes under procedures in collective bargaining agreements. (~~Also,~~) The division should defer to the jurisdiction of other forums established to resolve disputes that may also be related to RCW 49.17.160 complaints. Thus, where a complainant is pursuing remedies other than those provided by RCW 49.17.160 it may be proper to postpone the assistant director's determination whether discrimination has occurred, and defer to the results of such proceedings.

(2) Postponement of determination. Postponement of determination is justified where the rights asserted in other proceedings are substantially the same as rights under RCW 49.17.160 and those proceedings are not likely to violate the rights guaranteed by RCW 49.17.160. The factual issues in the (~~such~~) proceedings must be substantially the same as those raised by the RCW 49.17.160 complaint, and the forum hearing the matter must have the power to determine the ultimate issue of discrimination.

(3) Deferral to outcome of other proceedings. Determinations to defer to the outcome of another proceeding (~~begun~~) initiated by a complainant must be made after careful scrutiny. It must be clear that the proceeding dealt adequately with all factual issues, that it was fair, regular, and free of procedural infirmities, and that its outcome did not violate the purpose and policy of WISHA. If another action (~~begun~~) initiated by a complainant is dismissed without an adjudicatory hearing on the merits, the division will not necessarily regard the dismissal as determinative of the merits of the RCW 49.17.160 complaint.

[Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.240, chapters 43.22 and 42.30 RCW. WSR 80-17-015 (Order 80-21), § 296-360-060, filed 11/13/80.]

AMENDATORY SECTION (Amending WSR 80-17-015, filed 11/13/80)

**WAC 296-360-070 Persons prohibited from discriminating.** RCW 49.17.160 specifically states that "no person shall discharge or in any manner discriminate against any employee" because the employee has exercised rights under WISHA. RCW 49.17.020(5), defines "person" as "one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons." Consequently, the prohibitions of RCW 49.17.160 are not limited to actions taken by employers against their own employees. A person may be charged with discriminating against an employee of another person. RCW 49.17.160 extends to such entities as organizations representing employees in collective bargaining, employment agencies, or any other person in a position to discriminate against an employee. (~~(See Meek v. United States, 136 F.2d 679 (6th Cir., 1943); Bowe v. Judson C. Burns, 137 F.2d 37 (3rd Cir., 1943).)~~)

[Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.240, chapters 43.22 and 42.30 RCW. WSR 80-17-015 (Order 80-21), § 296-360-070, filed 11/13/80.]

AMENDATORY SECTION (Amending WSR 94-15-096, filed 7/20/94, effective 9/20/94)

**WAC 296-360-080 Persons protected by RCW 49.17.160.** (1) All employees are afforded the full protection of RCW 49.17.160. WISHA defines an employee as "an employee of an employer who is employed in a business of ((his/her)) their employer which affects commerce." RCW 49.17.020(4). WISHA does not define "employ"; however, the broad remedial nature of WISHA demonstrates a clear intent that the existence of an employment relationship, for purposes of RCW 49.17.160, is to be based upon economic realities rather than upon common law doctrines and concepts. ((See U.S. v. Silk, 331 U.S. 704 (1947); Rutherford Food Corporation v. McComb, 331 U.S. 722 (1947).))

(2) For purposes of RCW 49.17.160, an applicant for employment could be considered an employee. ((See NLRB v. Lamar Creamery, 246 F.2d 8 (5th Cir., 1957).))

[Statutory Authority: Chapter 49.17 RCW. WSR 94-15-096 (Order 94-07), § 296-360-080, filed 7/20/94, effective 9/20/94. Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.240, chapters 43.22 and 42.30 RCW. WSR 80-17-015 (Order 80-21), § 296-360-080, filed 11/13/80.]

AMENDATORY SECTION (Amending WSR 94-15-096, filed 7/20/94, effective 9/20/94)

**WAC 296-360-090 Unprotected activities distinguished.** ((~~(1)~~) An employer or others may base actions that adversely affect an employee upon nondiscriminatory grounds. An employee's engagement in activities protected by WISHA does not automatically render him/her immune from discharge or discipline for legitimate reasons, or from adverse action dictated by nonprohibited considerations. See NLRB v. Dixie Motor Coach Corp. 128 F.2d 201 (5th Cir., 1942).)

(2) ~~To establish a violation of RCW 49.17.160, the employee's engagement in protected activity need not be the sole consideration behind discharge or other adverse action. If protected activity was a substantial reason for the action, or if the discharge or other adverse action would not have taken place "but for" the employee's engagement in protected activity, RCW 49.17.160 has been violated.~~) If the employee's engagement in protected activities was a substantial factor in bringing about the employer's decision, RCW 49.17.160 has been violated. "Substantial factor" means a significant motivating factor in bringing about the employer's decision. "Substantial factor" does not mean the only factor or the main factor in the challenged act or decision. Ultimately, the issue as to whether an employee's engagement in protected activities was a substantial factor for the discharge or other adverse action is determined on the basis of the facts in the particular case.

[Statutory Authority: Chapter 49.17 RCW. WSR 94-15-096 (Order 94-07), § 296-360-090, filed 7/20/94, effective 9/20/94. Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.240, chapters 43.22 and 42.30 RCW. WSR 80-17-015 (Order 80-21), § 296-360-090, filed 11/13/80.]



AMENDATORY SECTION (Amending WSR 80-17-015, filed 11/13/80)

**WAC 296-360-150 Discrimination because of exercise of right afforded by WISHA—Refusal to work in an unsafe condition.** (1) Review of WISHA and examination of the legislative history discloses that, as a general matter, WISHA grants no specific right to employees to walk off the job because of potential unsafe conditions at the work place. A hazardous condition that may violate WISHA will ordinarily be corrected by the employer, once brought to its attention. If the employer does not correct a hazard, or if there is a dispute about the existence of a hazard, the employee normally can ask the division to inspect the work place pursuant to RCW 49.17.110, or can seek help from other public agencies that have responsibility for safety and health. Under such circumstances, an employer would not violate RCW 49.17.160 by disciplining an employee who refuses to work because of an alleged safety or health hazard.

(2) Occasions arise, however, when an employee is confronted with a choice between not performing assigned tasks or subjecting him- or herself to serious injury or death arising from a hazard at the work place. If the employee, with no reasonable alternative, refuses in good faith to expose him- or herself to the dangerous condition, he or she is protected against subsequent discrimination.

(3) An employee's refusal to work is protected if he or she meets the following requirements:

(a) The refusal to work must be in good faith, and must not be a disguised attempt to harass the employer or disrupt the employer's business;

(b) The hazard causing the employee's apprehension of death or injury must be such that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury; and

(c) There must be insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels.

(4) As indicated in subsection (3) of this section, an employee's refusal to work is ~~((not))~~ protected ~~((unless))~~ if it is a good faith response to a hazardous condition. To determine whether an employee has acted in good faith, the division will consider, among other factors, whether the employer knew that the hazard could cause serious injury, death, or that the hazard was prescribed by a specific safety standard promulgated under WISHA or any other law that relates to the safety and health of a place of employment. The division may also consider whether the employee ~~((~~

~~(a))~~ asked the employer to correct the hazard ~~((~~

~~(b))~~ asked for other work ~~((~~

~~(c))~~ remained on the job until ordered to leave by the employer ~~((~~ or ~~((d))~~ informed the employer that, if the hazard was not corrected, the employee would refuse to work.

The lack of one or more of these factors ~~((shall))~~ must not necessarily preclude a finding of good faith if other factors do establish good faith. ~~((The division will also consider whether the employer knew that the hazard could cause serious injury or death, or that the hazard was prescribed by a specific safety standard promulgated under WISHA or any other law that relates to the safety and health of a place of employment.))~~

[Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.240, chapters 43.22 and 42.30 RCW. WSR 80-17-015 (Order 80-21), § 296-360-150, filed 11/13/80.]

AMENDATORY SECTION (Amending WSR 80-17-015, filed 11/13/80)

**WAC 296-360-160 Payment of damages to employee discriminated against.** (1) If an employer discriminates against an employee such that the employee earns less than he or she would have earned absent the discrimination, the employer (~~shall~~) must pay the employee the difference between the wages that the employee would have earned absent the discrimination and the wages the employee actually earned after the discrimination.

(2) If an employer discriminates against an employee for a refusal to work that is protected under WAC 296-360-150, the employer need not pay the employee's wages for the time spent fixing the hazard, or that would have been spent fixing the hazard, if the employer (a) had to or would have had to shut down the job to make the repair and (b) had not other work the employee could have done.

[Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.240, chapters 43.22 and 42.30 RCW. WSR 80-17-015 (Order 80-21), § 296-360-160, filed 11/13/80.]

NEW SECTION

**WAC 296-360-175 Penalties for violations of RCW 49.17.160.**

(1) (a) Penalties for violations of RCW 49.17.160 are as follows:

Employer Size	Penalty Amount Per Violation
1 - 25	\$5,000
26 - 100	\$7,000
101 - 250	\$10,000
251+	\$14,000

(b) Employer size is determined by the maximum number of workers employed in the 12-month period since the alleged violation occurred.

(2) Repeat violations. Penalty amounts will increase for repeat violations. The number of repeated violations will be calculated based on the number of violations found within the last five years.

(a) The first repeat violation the base penalty amount under subsection (1) (b) of this section will be multiplied by three.

(b) Any violation above a single reoccurrence the base penalty under subsection (1) (b) of this section will be multiplied by five.

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NEW SECTION**WAC 296-360-180 Appeals of citations and notices of assessments.**

(1) WAC 296-900-17005 and 296-900-17010 apply to appeals described in this section. The remainder of the section outlines the timelines for notifying the department about appeals of the citation and notice of assessment issued by the department.

(2) Citation and notice of assessment appeal. Both the employer and the complainant have a right to appeal determinations made under WAC 296-360-040.

(a) Notification to the department.

(i) An employer has 30 calendar days of receipt of the citation and notice of assessment to notify the department that the employer wishes to appeal the citation or notice of assessment; and

(ii) The complainant has 15 working days from receipt of the citation and notice of assessment to notify the department that the complainant wishes to appeal the order of appropriate relief stated in the notice of assessment.

(b) The citation and notice of assessment will become a final order of the department, not subject to review by any court or agency, if the department does not receive notification of appeal from the employer or complainant as stated in (a) of this subsection.

(3) The department may reassume jurisdiction according to the timeline, process for hearing, and issuance of corrective notices of redetermination under RCW 49.17.140(4) upon receiving notice of appeal from the employer, employee, or both.

(a) The redetermination will become the final order subject to direct appeal by an employer or complainant to the board of industrial insurance appeals within 15 working days of such redetermination with service of notice of appeal upon the director.

(b) In the event that the department does not reassume jurisdiction, the department must notify the state board of industrial insurance appeals of all notifications of intention to appeal the citation and notice of assessment and certify a full copy of the record in such appeal matters to the board.

(4) A notice of appeal filed under this section will stay the effectiveness of any citation or notice of assessment except orders of reinstatement pending review by the board of industrial appeals.

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