WSR 26-16-079
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Order 26-03—Filed August 4, 2026, 3:59 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 26-05-063.

Title of Rule and Other Identifying Information: Chapter 296-120 WAC, Pregnancy-related accommodation.

Hearing Location(s): On September 14, 2026, at 9:30 a.m., at the department of labor and industries (L&I), 12806 Gateway Drive South, Tukwila, WA 98168. A prehearing overview will begin at 9:00 a.m. The hearing will start at 9:30 a.m. and will continue until all oral comments are received;

On September 16, 2026, at 1:30 p.m., at L&I, 7273 Linderson Way S.W., Tumwater, WA 98601. A prehearing overview will begin at 1:00 p.m. The hearing will start at 1:30 p.m. and will continue until all oral comments are received; and

On September 18, 2026, at 9:30 a.m., via Teams at https://teams.microsoft.com/meet/22372238162475?p=Q2mV0MFDfvzBp3sn2o, Meeting ID 223 722 381 624 75, Passcode Bv7rr74L; or join by phone 564-999-2000, Meeting ID 480 957 394#. A prehearing overview will begin at 9:00 a.m. The hearing will start at 9:30 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: November 17, 2026.

Submit Written Comments to: Angela MacNeil, L&I, Division of Labor Standards, Healthcare Labor Standards, P.O. Box 44510, Olympia, WA 98504-4510, email ESRules@Lni.wa.gov, fax 360-902-5300, beginning August 5, 2026, 8:00 a.m., by September 21, 2026, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Angela MacNeil, phone 253-370-9305, fax 360-902-5300, TTY 1-800-833-6388, email ESRules@Lni.wa.gov, by September 7, 2026.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: L&I was directed by the legislature to develop rules to implement and enforce the updates to Washington's pregnancy-related accommodation law enacted under 2025's E2SSB 5217, chapter 379, Laws of 2025, and are now under chapter 49.92 RCW. Currently, Washington's pregnancy-related accommodation law applies to employers with 15 or more employees and is enforced by the Washington attorney general's office. When the updates under 2025's E2SSB 5217/chapter 49.92 RCW go into effect on January 1, 2027, the law will apply to all employers in the state with enforcement transferring to L&I. E2SSB 5217/chapter 49.92 RCW also include requirements related to pay for travel and break time for employees to express milk. L&I is directed to investigate complaints and take enforcement actions including assessing penalties and other amounts owed to employees. Before taking enforcement action, E2SSB 5217/chapter 49.92 RCW requires L&I contact employers and attempt in good faith to reach agreement on reasonable accommodation or interim accommodations before issuing any citation or order. The proposed rules include the following labor standards requirements for an employer of employees who require pregnancy-related accommodations.

The proposed rules include:

- Requirements for all employers to provide specific reasonable accommodations unless the employer can demonstrate the accommodation would cause undue hardship.

- Specific accommodations the statute requires must be approved by an employer and are not subject to a claim of undue hardship.
- Factors that may be considered in determining whether a reasonable accommodation would impose undue hardship on an employer.
- Accommodations that may be subject to an employer's request for written medical certification, clarity on what constitutes complete written certification, and the form for written certification.
- Requirements for accommodations for the expression of milk.
- Retaliation protections.
- Processes for enforcement, including investigation complaints, issuing orders, assessing civil penalties and remedies to employees, and appeals.

L&I's division of labor standards will implement and enforce the rules for pregnancy-related accommodations.

Reasons Supporting Proposal: E2SSB 5217 created chapter 49.92 RCW, giving statutory authority to enforce pregnancy-related accommodation to L&I.

Statutory Authority for Adoption: Chapter 49.92 RCW.

Statute Being Implemented: Chapter 49.92 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Angela MacNeil, Tumwater, Washington, 253-370-9305; Implementation and Enforcement: Ellen Ware, Tumwater, Washington, 360-338-2475.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Angela MacNeil, L&I, Division of Labor Standards, Healthcare Labor Standards, P.O. Box 44510, Olympia, WA 98504-4510, phone 253-370-9305, fax 360-902-5300, email ESRules@Lni.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: All portions of the rule not listed below are exempt under RCW 34.05.310 (4)(c).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The portions of the proposed rule not exempt under RCW 34.05.310 (4)(c) impose no costs on industries or employers as outlined below.

WAC 296-120-100 Applicability	This section provides L&I's interpretation of statutory provisions and does not independently impose a penalty or sanction on a person or entity.
WAC 296-120-010 (5) and (6) Definitions	These definitions are explanatory and provide L&I's interpretation for terms in chapter 49.46 RCW and do not independently impose a penalty or sanction on a person or entity.
WAC 296-120-110 (1) and (2) Employer responsibilities	These subsections include language that provides L&I's interpretation of statutory provisions and do not independently impose a penalty or sanction on a person or entity.
WAC 296-120-115 Undue hardship—Burden of proof	This section provides L&I's interpretation of statutory provisions and does not independently impose a penalty or sanction on a person or entity.
WAC 296-120-125 (1), (2), (4), (6), and (7) Protections for the expression of milk	These subsections include language that provides L&I's interpretation of statutory provisions and do not independently impose a penalty or sanction on a person or entity.
WAC 296-120-130 Reasonable accommodation enforcement—Complaints, investigations, and citations	This section addresses L&I enforcement and does not create an additional cost of compliance for employers.
WAC 296-120-135 Order of immediate restraint	This section addresses L&I enforcement and does not create an additional cost of compliance for employers.
WAC 296-120-140 Reasonable accommodation Enforcement—Civil penalties	This section addresses L&I enforcement and does not create an additional cost of compliance for employers.
WAC 296-120-145 Reasonable accommodation enforcement—Appeals	This section addresses L&I enforcement and does not create an additional cost of compliance for employers.
WAC 296-120-150 Retaliation	Portions of this section provide L&I's interpretation of statutory provisions and do not independently impose a penalty or sanction on a person or entity.
WAC 296-120-155 Retaliation enforcement—Complaints, investigations, and citations	This section addresses L&I enforcement and does not create an additional cost of compliance for employers.
WAC 296-120-165 Retaliation enforcement—Appeals	This section addresses L&I enforcement and does not create an additional cost of compliance for employers.
WAC 296-120-175 Additional rights	Portions of this section provide L&I's interpretation of statutory provisions and do not independently impose a penalty or sanction on a person or entity.

August 4, 2026
Joel Sacks
Director

RDS-7099.5

Chapter 296-120 WAC
PREGNANCY-RELATED ACCOMMODATION

NEW SECTION

WAC 296-120-100 Applicability. This chapter applies to employee and employer conduct, acts, or omissions related to pregnancy accommodation under chapter 49.92 RCW occurring on or after January 1, 2027.

NEW SECTION

WAC 296-120-105 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Director" means the director of the department of labor and industries or authorized representative.

(3) "Employee" means an employee who is employed in the business of the employee's employer whether by way of manual labor or otherwise.

(4) "Employer" has the same meaning and must be interpreted consistent with how that term is defined in RCW 49.60.040, except that for the purposes of this chapter only, "employer" includes any employer who employs one or more persons and any religious or sectarian organization not organized for private profit.

(5) "Interim accommodation" means a temporary measure, agreed upon between the employee and employer to support an employee's pregnancy related needs while a permanent reasonable accommodation is being identified, evaluated, or implemented. An interim accommodation is not a substitute for, and does not replace, a permanent reasonable accommodation. It is intended to allow the employee to continue working during this transitional period. Leave will not be considered an interim accommodation unless the employee voluntarily selects or requests it as such.

(6) "Pregnancy" includes the employee's pregnancy, childbirth, and related prenatal and postpartum mental and physical health conditions, including the need to express breast milk.

(7) "Reasonable accommodation" means the following:

(a) Providing more frequent, longer, or flexible restroom breaks;

(b) Modifying a no food or drink policy;

(c) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, or acquiring or modifying equipment, devices, or an employee's workstation;

(d) Providing seating or allowing the employee to sit more frequently if the employee's job requires the employee to stand;

(e) Providing for a temporary transfer to a less strenuous or less hazardous position;

(f) Providing assistance with manual labor and limits on lifting;

(g) Scheduling flexibility for prenatal and postpartum visits, including allowing the use of leave required under chapter 49.12 or 49.46 RCW;

(h) Providing reasonable break time for an employee to express breast milk for two years after the child's birth each time the employee has a need to express milk and providing a private location which may be used by the employee to express breast milk according to WAC 296-120-125; and

(i) Any further pregnancy accommodation an employee may request, and to which an employer must give reasonable consideration in consultation with information provided on pregnancy accommodation by the department or the attending health care provider of the employee.

(8) "Undue hardship" means an action requiring significant difficulty or expense. Undue hardship does not apply to the accommodations listed under WAC 296-120-110(2).

NEW SECTION

WAC 296-120-110 Employer responsibilities. (1) Employers are required to make a reasonable accommodation or interim accommodation for an employee for pregnancy, unless the employer can demonstrate that doing so would cause undue hardship on the employer's program, enterprise, or business.

(2) Employers cannot claim undue hardship for the following reasonable accommodations or interim accommodations:

(a) Providing more frequent, longer, or flexible restroom breaks.

(b) Modifying a no food or drink policy.

(c) Limiting lifting more than 17 pounds.

(d) Providing seating or allowing the employee to sit more frequently if the employee's job requires the employee to stand.

(3) Employers may not:

(a) Deny a job or other employment opportunities to an otherwise qualified employee based on the employee's need for reasonable accommodation or interim accommodation;

(b) Require an employee to take leave if another reasonable accommodation or interim accommodation can be provided for the employee's pregnancy;

(c) Retaliate against an employee for exercising any right under this chapter or take adverse action against an employee who requests, declines, or uses an accommodation under chapter 49.92 RCW that affects the terms, conditions, or privileges of employment.

(4) Chapter 49.92 RCW and applicable rules do not require an employer to create additional employment that the employer would not otherwise have created, unless the employer does so or would do so for other classes of employees who need accommodation.

(5) Chapter 49.92 RCW and applicable rules do not require an employer to discharge any employee, transfer any employee with more seniority, or promote any employee who is not qualified to perform the job, unless the employer does so or would do so to accommodate other classes of employees who need accommodation.

NEW SECTION

WAC 296-120-115 Undue hardship—Burden of proof. (1) The employer has the burden of demonstrating that providing reasonable accommodation would impose an undue hardship on the employer's program, enterprise, or business.

(2) In determining whether a reasonable accommodation would impose an undue hardship on an employer, factors to be considered may include:

(a) The nature and cost of the accommodation;

(b) The overall financial resources of the employer;

(c) The overall size of the employer's business with respect to the number of employees and the number, type, and location of the available facilities;

(d) The accommodation's effect on expenses and resources or its effect upon the operations of the employer; and

(e) The employer's provision of similar accommodations to other classes of employees.

NEW SECTION

WAC 296-120-120 Written certification. (1) An employer may request that the employee provide written certification from the employee's treating health care professional regarding the need for reasonable accommodation, but an employer cannot request the employee provide written certification from the employee's treating health care professional regarding the following accommodations:

(a) Providing more frequent, longer, or flexible restroom breaks;

(b) Modifying a no food or drink policy;

(c) Providing seating or allowing the employee to sit more frequently if the employee's job requires the employee to stand;

(d) Providing reasonable break time for an employee to express breast milk for two years after the child's birth each time the employee has a need to express milk and providing a private location which may be used by the employee to express breast milk; and

(e) Limiting lifting more than 17 pounds.

(2) A written certification is considered complete if it affirms the employee's need for reasonable accommodation or identifies reasonable accommodation needed due to pregnancy.

(3) An employer may not request or require additional medical information or that a written certification include additional information than in subsection (2) of this section to justify the need for reasonable accommodation.

(4) A written certification may be submitted using any form or medium. An employer may not require the use of any specific form for an employee to submit a written certification.

NEW SECTION

WAC 296-120-125 Protections for the expression of milk. (1) An employer must provide reasonable break time for an employee to express breast milk for two years after the child's birth each time the employee has a need to express milk. "Reasonable break time" means a break period that is appropriate, adequate, or proportionate given the circumstances and is in addition to meal and break time required by chapter 49.12 RCW, WAC 296-126-092, or WAC 296-131-020. Circumstances that factor into the duration of a reasonable break time include, but are not limited to:

(a) Time needed to travel to and from the location for expressing milk;

(b) Time needed to travel to and from storage location for expressed milk if not within the location for expressing milk; and

(c) Time needed to clean milk expression equipment.

(2) An employer must provide a private location, other than a bathroom, if such a location exists at the place of business or worksite, which may be used by the employee to express breast milk. A "private location" means a location that is shielded from view and protected from intrusion by others. The location must be clean and maintained in a condition appropriate for expressing milk and functional for expressing milk.

(3) If a private location does not exist at the place of business or worksite, the employer must work with the employee to identify a convenient location and work schedule to accommodate their needs.

(4) Any break time and time traveling to a location identified by the employer in subsections (2) and (3) of this section must be paid to the employee at the employee's regular compensation rate as defined in RCW 49.46.020. This constitutes a wage payment requirement as defined in RCW 49.48.082.

(5) An employer may not require an employee to use paid leave during reasonable break time or travel time to express milk.

(6) An employer may not penalize or treat an employee adversely based on the employee's use of reasonable break time or work schedule changes made pursuant to this section, including if the employee's ability to meet quota, points, or other incentives system is impacted.

(7) An employer may not reduce or otherwise lessen an employee's pay based on work schedule changes made under subsection (3) of this section.

NEW SECTION

WAC 296-120-130 Reasonable accommodation enforcement—Complaints, investigations, and citations. (1) Upon receiving a complaint alleging one or more violations of reasonable accommodations requirements under chapter 49.92 RCW or any associated rules, the department shall investigate the complaint. The department will not accept complaints alleging violations of reasonable accommodation requirements that occurred more than three years before the date that the department received the complaint.

(2) During an investigation, if the department discovers information suggesting additional violations of chapter 49.92 RCW, or any associated rules, the department may investigate and take appropriate enforcement action without any additional complaint.

(3) Prior to issuing any order under this section, the department must first contact the employer and attempt in good faith to reach an agreement on reasonable accommodation or interim accommodation.

(4) If the department and the employer are unable to reach an agreement, the department may issue an order of immediate restraint under WAC 296-120-135.

(5) Upon investigation of a complaint under this section, the department may 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 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.

(6) If the department's investigation finds that an employee's allegation cannot be substantiated, the department may issue a determination of compliance or closure letter to the employee and the employer detailing such findings.

(7) If the department's investigation finds that the employer violated the accommodation requirements of chapter 49.92 RCW or associated rules, and the complaint is not otherwise resolved, the department may issue a citation and notice of assessment.

(8) The department's notice of assessment, pursuant to RCW 49.48.083, may order the employer to:

(a) Provide reasonable accommodation as required;

(b) Cease using any policy that is not in compliance with the requirements of chapter 49.92 RCW or associated rules;

(c) Modify any policy that interferes with an employee's rights under chapter 49.92 RCW or associated rules;

(d) Adopt policies that ensure the employer's compliance with, and notify employees of their rights under, chapter 49.92 RCW and any associated rules;

(e) Provide employees, including managers and human resources personnel, training approved by the department on the requirements of chapter 49.92 RCW or associated rules;

(f) Pay all amounts owed due to the employer's failure or refusal to make reasonable accommodation, including interest of one percent per month on all amounts owed, to the employee;

(g) Provide the employee any combination of reinstatement and payment of leave hours; and

(h) Pay the department a civil penalty as specified in WAC 296-120-140.

(9) The department shall send a citation and notice of assessment or a determination of compliance to both the employer and the complainant 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.

(10) The department may continue to monitor compliance throughout the duration of reasonable accommodation. The department may initiate a new investigation, issue additional temporary orders as defined under WAC 296-120-135, or issue additional determinations, without the filing of an additional complaint.

NEW SECTION

WAC 296-120-135 Order of immediate restraint. (1) If, during the investigation of a complaint under WAC 296-120-130, the department and the employer are unable to reach an agreement, the department may issue a temporary order immediately restraining any such condition, practice, method, process, or means in the workplace that violates any provision of chapter 49.92 RCW or associated rules.

(2) The order of immediate restraint may not be in effect longer than 90 calendar days. To extend the order beyond 90 calendar days, the department must seek a restraining order, or other such relief as appears appropriate under the circumstances, in the superior court of the county wherein such conditions of employment or practice exist.

(3) An employer may contest an order restraining any condition of employment or practice issued under subsection (1) of this section within 10 working days of the effective date of the order by making an application to the superior court of the county wherein such conditions of employment or practice exist. Upon the filing of any such petition, the superior courts of the state of Washington shall have jurisdiction to grant appropriate relief from the order.

(4) Any employer who has been issued an order immediately restraining a condition, practice, method, process, or means in the workplace, pursuant to chapter 49.92 RCW or associated rules, and who nevertheless continues such condition, practice, method, process, or means, the department may issue a civil penalty per WAC 296-120-140 for each day an employer continues such condition, practice, method, process, or means that is in violation.

NEW SECTION

WAC 296-120-140 Reasonable accommodation enforcement—Civil penalties. (1) The department may assess civil penalties for violations of reasonable accommodation requirements under chapter 49.92 RCW or associated rules. For violations of reasonable accommodation requirements related to expression of milk, the department may assess a civil penalty under this chapter or RCW 49.17.530 but may not assess duplicative penalties for the same violation. For the purposes of a civil penalty under this section, each occurrence affecting an individual employee seeking reasonable accommodation constitutes a separate violation.

(2) For employers with fewer than 15 employees, civil penalties for first time violations will be not less than $1,500 for each violation. For employers with 15 or more employees, civil penalties for first time violations will be not less than $3,000 for each violation. In addition to the base minimum penalty, the department may increase the penalty amount considering the totality of the circumstances including, but not limited to, consideration of following factors:

(a) The employer size and resources;

(b) The gravity of the violation, including the nature, extent, the potential harm of the violations, and the amounts owed the worker due to the violations;

(c) The good faith of the employer, including the promptness of responding to requests for reasonable or interim accommodation, efforts to work in consultation with the employee to identify and make reasonable or interim accommodation, actions to avoid unnecessary delays, and cooperation with the department's investigation; and

(d) The employer's history of previous complaints and violations of pregnancy-related accommodations under chapter 49.92 RCW and the associated rules, including settlements.

(3) The assessed penalty under subsection (2) of this section is increased for repeat violations as follows:

(a) 1st time × 2.5

(b) 2nd time × 5

(c) 3rd time × 10

(4) The department may, at any time, waive or reduce any civil penalty assessed against an employer under this section if the department determines that the employer has taken corrective action.

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

NEW SECTION

WAC 296-120-145 Reasonable accommodation enforcement—Appeals. (1) A person, firm, or corporation aggrieved by a citation and notice of assessment or a determination of compliance issued by the department under WAC 296-120-130 may appeal the citation and notice of assessment by filing a notice of appeal with the department within 30 days of the department's issuance of the citation and notice of assessment. A citation and notice of assessment or a determination of compliance not appealed within 30 days is final and binding, and not subject to further appeal.

(2) A notice of appeal filed with the department under this section shall stay the effectiveness of the citation and notice of assessment or a determination of compliance pending final review of the appeal by the department as provided for under chapter 34.05 RCW.

(3) Upon receipt of a notice of appeal, the department shall assign the hearing to an administrative law judge of the office of administrative hearings to conduct the hearing and issue an initial order. The hearing and review procedures shall be conducted in accordance with chapter 34.05 RCW, and the standard of review by the administrative law judge of an appealed citation and notice of assessment or determination of compliance shall be de novo. Any party who seeks to challenge an initial order shall file a petition for administrative review with the department within 30 days after service of the initial order. The department shall conduct administrative reviews in accordance with chapter 34.05 RCW.

(4) The department shall issue all final orders after appeal of the initial order. The final order of the department is subject to judicial review in accordance with chapter 34.05 RCW.

(5) Orders that are not appealed within the time period specified in this section and chapter 34.05 RCW are final and binding, and not subject to further appeal.

(6) An employer who fails to allow adequate inspection of records in an investigation by the department under this section within a reasonable time period may not use such records in any appeal under this section to challenge the correctness of any verification by the department of the penalty assessed.

NEW SECTION

WAC 296-120-150 Retaliation. (1) It is unlawful for an employer to interfere with, restrain, or deny the exercise of any employee right provided under or in connection with chapter 49.92 RCW or associated rules.

(2) It is unlawful for an employer to take any adverse action against an employee because the employee has exercised their rights provided under chapter 49.92 RCW or associated rules. Such rights include, but are not limited to: Requesting, declining, or using an accommodation; filing an action, or instituting or causing to be instituted any proceeding under or related to chapter 49.92 RCW or associated rules; exercising any right to pregnancy-related accommodations provided under chapter 49.92 RCW or associated rules; or cooperating as a witness including testifying or intending to testify in any such investigation or proceeding related to any rights provided under chapter 49.92 RCW or associated rules.

(3) Adverse action means any action taken or threatened by an employer against an employee for their exercise of chapter 49.92 RCW, or rights under associated rules which may include, but are not limited to:

(a) Terminating, suspending, demoting, or denying a promotion;

(b) Withholding opportunities such as professional development and leadership engagements that would otherwise be available;

(c) Reducing or changing the number of work hours for which the employee is scheduled;

(d) Altering the employee's preexisting work schedule;

(e) Reducing the employee's rate of pay;

(f) Otherwise impact the terms or conditions of employment;

(g) Threatening to take, or taking action, based on the immigration status of the employee or an employee's family member.

NEW SECTION

WAC 296-120-155 Retaliation enforcement—Complaints, investigations, and citations. (1) An employee who believes that they were subject to retaliation by their employer, as defined in WAC 296-120-150, for the exercise of any employee right under chapter 49.92 RCW or associated rules, may file a complaint with the department. The department will investigate complaints filed within 180 days of the alleged retaliatory action. The department may, at its discretion, extend the 180-day period based 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 or the department initiates an investigation 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 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 findings.

(5) If the department's investigation finds that the employer retaliated against the employee, and the complaint is not otherwise resolved, then the department may 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 amounts owed due to the employer's retaliatory action, including interest of one percent per month on all earnings owed;

(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 is not in compliance with the requirements of chapter 49.92 RCW or associated rules; and

(d) Order the employer to pay the department a civil penalty as specified under WAC 296-120-140.

(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 49.92 RCW or associated 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 49.92 RCW or associated 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 49.92 RCW or associated rules, the department may launch further investigation under chapter 49.92 RCW or associated rules, without requiring additional complaints to be filed.

NEW SECTION

WAC 296-120-160 Retaliation enforcement—Civil penalties. (1) If the department's investigation finds that an employer retaliated against an employee, pursuant to the procedures outlined in WAC 296-120-155, the department may order the employer to pay the department a civil penalty as specified under WAC 296-120-140.

(2) The department may, at any time, waive or reduce any civil penalty assessed against an employer under this section if the department determines that the employer has taken corrective action to remedy the retaliatory action.

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

NEW SECTION

WAC 296-120-165 Retaliation enforcement—Appeals. (1) A person, firm, or corporation aggrieved by a citation and notice of assessment or a determination of compliance may, within 30 days after the date of such decision, submit a request for reconsideration to the department setting forth the grounds for seeking such reconsideration, or submit an appeal to the department pursuant to the procedures outlined in subsection (4) of this section. If the department receives a timely request for reconsideration, the department will either accept the request or treat the request as a notice of appeal. The provisions of this section shall not apply to an order of immediate restraint.

(2) If a request for reconsideration is accepted, the department will send notice of the request for reconsideration to the employer and the employee. The department will determine if there are any valid reasons to reverse or modify the department's original decision to issue a citation and notice of assessment or determination of compliance

within 30 days of receipt of such request. The department may extend this period by providing advance written notice to the employee and employer, setting forth good cause for an extension of the period, and specifying the duration of the extension. After reviewing the reconsideration, the department will either:

(a) Notify the employee and the employer that the citation and notice of assessment or determination of compliance is affirmed; or

(b) Notify the employee and the employer that the citation and notice of assessment or determination of compliance has been reversed or modified.

(3) A request for reconsideration submitted to the department shall stay the effectiveness of the citation and notice of assessment or the determination of compliance pending the reconsideration decision by the department.

(4) Within 30 days after the date the department issues a citation and notice of assessment or a determination of compliance, or within 30 days after the date the department issues its decision on the request for reconsideration, a person, firm, or corporation aggrieved by a citation and notice of assessment or a determination of compliance may file with the department a notice of appeal.

(5) A notice of appeal filed with the department under this section shall stay the effectiveness of the citation and notice of assessment or the determination of compliance pending final review of the appeal by the department as provided for in chapter 34.05 RCW.

(6) Upon receipt of a notice of appeal, the department shall assign the hearing to an administrative law judge of the office of administrative hearings to conduct the hearing and issue an initial order. The hearing and review procedures shall be conducted in accordance with chapter 34.05 RCW, and the standard of review by the administrative law judge of an appealed citation and notice of assessment or determination of compliance shall be de novo. Any party who seeks to challenge an initial order shall file a petition for administrative review with the department within 30 days after service of the initial order. The department shall conduct administrative review in accordance with chapter 34.05 RCW.

(7) If a request for reconsideration is not submitted to the department within 30 days after the date of the original citation and notice of assessment or determination of compliance, and a person, firm, or corporation aggrieved by a citation and notice of assessment or determination of compliance did not submit an appeal to the department, then the citation and notice of assessment or determination of compliance is final and binding, and not subject to further appeal.

(8) The department shall issue all final orders after appeal of the initial order. The final order of the department is subject to judicial review in accordance with chapter 34.05 RCW.

(9) Director's orders that are not appealed within the time period specified in this section and chapter 34.05 RCW are final and binding, and not subject to further appeal.

(10) An employer who fails to allow adequate inspection of records in an investigation by the department under WAC 296-120-105 through 296-120-170 within a reasonable time period may not use such records in any appeal under such rules to challenge the correctness of any determination by the department.

NEW SECTION

WAC 296-120-170 Enforcement—Collections. Collections of amounts owed for unpaid citations and notices of assessment under this chapter will be handled pursuant to the procedures outlined in RCW 49.48.086.

NEW SECTION

WAC 296-120-175 Additional rights. (1) Nothing in this chapter precludes a person from pursuing a civil cause of action as provided under chapter 49.92 RCW.

(2) Nothing in this chapter precludes a person whose complaint is resolved by the department from seeking remedies provided under RCW 49.92.030(2), including costs of suit and reasonable attorneys' fees, that were not addressed through the department's enforcement.

(3) Nothing in this chapter preempts, limits, diminishes, or otherwise affects any other provision of law relating to sex discrimination or pregnancy, or in any way diminishes or limit legal protections or coverage for pregnancy, childbirth, or pregnancy-related health conditions.

NEW SECTION

WAC 296-120-180 Severability. If any provision of the rules in this chapter, or their application to any person or circumstance is held invalid, the remainder of these rules or their application of the provision to other persons or circumstances is not affected.