Chapter 296-360 WAC
RETALIATION, PURSUANT TO RCW 49.17.160

Last Update: 1/6/26

WAC

296-360-005 Definitions.
296-360-010 Introduction.
296-360-020 General requirements of RCW 49.17.160 of WISHA.
296-360-030 Filing a complaint of retaliation.
296-360-040 Retaliation, determination, and notification.
296-360-045 Appropriate relief for violations of RCW 49.17.160.
296-360-050 Withdrawal of complaint.
296-360-060 Arbitration or other agency proceedings.
296-360-070 Persons prohibited from retaliating.
296-360-080 Persons protected by RCW 49.17.160.
296-360-090 Unprotected activities distinguished.
296-360-100 Retaliation because of a complaint under or related to WISHA.
296-360-110 Retaliation because of a proceeding under or related to the act.
296-360-120 Retaliation because of testimony.
296-360-130 Retaliation because of exercise of any right afforded by WISHA—In general.
296-360-140 Retaliation because of exercise of right afforded by WISHA—Walkaround pay.
296-360-150 Retaliation because of exercise of right afforded by WISHA—Refusal to work in an unsafe condition.
296-360-160 Payment of damages to employee retaliated against.
296-360-170 Employee's refusal to comply with safety rules.
296-360-175 Penalties for violations of RCW 49.17.160.
296-360-180 Appeals of citations and notices of assessments.
296-360-200 Retaliation protections and enforcement—Warehouse distribution centers.

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

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

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

(3) "Division" or "DOSH" means the division of 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: RCW 49.17.040 and 49.17.050. WSR 22-14-090, § 296-360-005, filed 7/1/22, effective 7/1/22. 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.]

WAC 296-360-010 Introduction. This chapter deals with the rights of employees afforded under 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 RCW 49.17.160 that will guide the assistant director in the performance of their duties.

[Statutory Authority: RCW 49.17.040 and 49.17.050. WSR 22-14-090, § 296-360-010, filed 7/1/22, effective 7/1/22. 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.]

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

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

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

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

(2) Any employee who believes they have been retaliated against in violation of RCW 49.17.160 may file a complaint alleging a violation, within 90 days after such violation.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and 49.17.160. WSR 26-02-055, s 296-360-020, filed 1/6/26, effective 2/6/26. Statutory Authority: RCW 49.17.040 and 49.17.050. WSR 22-14-090, § 296-360-020, filed 7/1/22, effective 7/1/22. 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.]

WAC 296-360-030 Filing a complaint of retaliation. (1) Who may file. A complaint alleging retaliation may be filed by the employee, or by the employee's authorized representative.

(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.

(b) In person:

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

(c) Mail:

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

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

(4) Time for filing. 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 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 retaliation is in the nature of a continuing violation. In the absence of circumstances justifying a tolling of the 90-day period, the division will not accept untimely complaints.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and 49.17.160. WSR 26-02-055, s 296-360-030, filed 1/6/26, effective 2/6/26. Statutory Authority: RCW 49.17.040 and 49.17.050. WSR 22-14-090, § 296-360-030, filed 7/1/22, effective 7/1/22; 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.]

WAC 296-360-040 Retaliation, determination, and notification. (1) The assistant director 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 90 days of receipt of the complaint. 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 determination using a method of mailing that can be tracked or delivery that can be confirmed.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and 49.17.160. WSR 26-02-055, s 296-360-040, filed 1/6/26, effective 2/6/26. Statutory Authority: RCW 49.17.040 and 49.17.050. WSR 22-14-090, § 296-360-040, filed 7/1/22, effective 7/1/22. 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.]

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 retaliation 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 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.

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

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and 49.17.160. WSR 26-02-055, s 296-360-045, filed 1/6/26, effective 2/6/26. Statutory Authority: RCW 49.17.040 and 49.17.050. WSR 22-14-090, § 296-360-045, filed 7/1/22, effective 7/1/22.]

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.

[Statutory Authority: RCW 49.17.040 and 49.17.050. WSR 22-14-090, § 296-360-050, filed 7/1/22, effective 7/1/22. 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.]

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 retaliation has occurred, is independent of the jurisdiction of other agencies or bodies. The division may file an action in superior court regardless of the pendency of other proceedings.

(b) The division favors voluntary resolution, where possible, of disputes under procedures in collective bargaining agreements. 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 retaliation 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 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 retaliation.

(3) Deferral to outcome of other proceedings. Determinations to defer to the outcome of another proceeding 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 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 49.17.010, 49.17.040, 49.17.050, 49.17.060, and 49.17.160. WSR 26-02-055, s 296-360-060, filed 1/6/26, effective 2/6/26. Statutory Authority: RCW 49.17.040 and 49.17.050. WSR 22-14-090, § 296-360-060, filed 7/1/22, effective 7/1/22. 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.]

WAC 296-360-070 Persons prohibited from retaliating. RCW 49.17.160 specifically states that "no person shall discharge or in any manner retaliate 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 retaliating 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 retaliate against an employee.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and 49.17.160. WSR 26-02-055, s 296-360-070, filed 1/6/26, effective 2/6/26. Statutory Authority: RCW 49.17.040 and 49.17.050. WSR 22-14-090, § 296-360-070, filed 7/1/22, effective 7/1/22. 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.]

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 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.

(2) For purposes of RCW 49.17.160, an applicant for employment could be considered an employee.

[Statutory Authority: RCW 49.17.040 and 49.17.050. WSR 22-14-090, § 296-360-080, filed 7/1/22, effective 7/1/22. 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.]

WAC 296-360-090 Unprotected activities distinguished. 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: RCW 49.17.040 and 49.17.050. WSR 22-14-090, § 296-360-090, filed 7/1/22, effective 7/1/22. 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.]

WAC 296-360-100 Retaliation because of a complaint under or related to WISHA. RCW 49.17.160 prohibits discharge of, or retaliation against, an employee because the employee has filed any complaint under or related to this act.

(1) An example of a complaint made "under" WISHA would be an employee request for inspection pursuant to section 11 (RCW 49.17.110). This is not the only type of complaint protected by RCW 49.17.160, however. The range of complaints "related to" WISHA is commensurate with the broad remedial purposes of this legislation and the sweeping scope of its application.

(2) Complaints registered with other state or federal agencies that have the authority to regulate or investigate industrial safety and health conditions are complaints "related to" WISHA.

(3) The protection offered employees by WISHA would be seriously undermined if employees were discouraged from lodging complaints about industrial safety and health matters with their employers. Complaints to employers, if made in good faith, are related to WISHA, and an employee is protected against discharge or retaliation caused by a complaint to the employer.

(4) To come within the protection of RCW 49.17.160, a complaint must relate to conditions at the work place, as distinguished from complaints touching only upon general public safety and health.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and 49.17.160. WSR 26-02-055, s 296-360-100, filed 1/6/26, effective 2/6/26. 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), § 296-360-100, filed 11/13/80.]

WAC 296-360-110 Retaliation because of a proceeding under or related to the act. (1) RCW 49.17.160 prohibits discharge of, or retaliation against, any employee because the employee has "instituted or caused to be instituted any proceeding under or related to WISHA." Proceedings that can arise specifically under WISHA include inspections of worksites under RCW 49.17.070, employee contest of an abatement date under RCW 49.17.140, employee initiation of proceedings for promulgation of an industrial safety and health standard, employee application for modification or revocation of a variance under RCW 49.17.080, employee judicial challenge of a standard, and employee appeal of board of industrial insurance appeals order under RCW 49.17.140. In determining whether a "proceeding" is "related to" WISHA, the considerations discussed in WAC 296-360-100 are also applicable.

(2) An employee need not directly institute a proceeding. It is sufficient if he or she sets into motion acts of others that result in proceedings under or related to WISHA.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and 49.17.160. WSR 26-02-055, s 296-360-110, filed 1/6/26, effective 2/6/26. 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), § 296-360-110, filed 11/13/80.]

WAC 296-360-120 Retaliation because of testimony. RCW 49.17.160 prohibits discharge of, or retaliation against, any employee because the employee "has testified or is about to testify" in proceedings under or related to WISHA. This protection is not limited to testimony in proceedings instituted or caused to be instituted by the employee, but extends to any statements given in the course of judicial, quasi-judicial, and administrative proceedings, including inspections, investigations, administrative adjudications, and rules hearings.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and 49.17.160. WSR 26-02-055, s 296-360-120, filed 1/6/26, effective 2/6/26. 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), § 296-360-120, filed 11/13/80.]

WAC 296-360-130 Retaliation because of exercise of any right afforded by WISHA—In general. In addition to protecting employees who file complaints, institute proceedings, or testify in proceedings under or related to WISHA, RCW 49.17.160 also protects employees from retaliation occurring because of the exercise "of any right afforded by this chapter." Certain rights are explicitly stated in WISHA. Other rights exist by necessary implication. For example, employees may re-

quest information from the occupational safety and health administration or the department of labor and industries. Also, employees interviewed by agents of the division in the course of inspections or investigations cannot subsequently be retaliated against because of their cooperation.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and 49.17.160. WSR 26-02-055, s 296-360-130, filed 1/6/26, effective 2/6/26. 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), § 296-360-130, filed 11/13/80.]

WAC 296-360-140 Retaliation because of exercise of right afforded by WISHA—Walkaround pay. Employee participation in walkaround inspections under RCW 49.17.100 is essential. Employees are a vital source of information to the division about work place hazards. Employees must be able freely to exercise their statutory right to participate in walkarounds without fear of economic loss, such as the denial of pay for the time spent helping WISHA inspectors during the walkaround. To ensure the unimpeded flow of information to the inspectors, and the unfettered statutory right of employees to participate in walkaround inspections, an employer's failure to pay employees for time they spend in walkaround inspections is retaliation under RCW 49.17.160. In addition, an employer's failure to pay employees for time spent in other inspection-related activities, such as answering questions of inspectors or participating in the opening and closing conferences, is retaliation under RCW 49.17.160.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and 49.17.160. WSR 26-02-055, s 296-360-140, filed 1/6/26, effective 2/6/26. Statutory Authority: Chapter 49.17 RCW. WSR 94-15-096 (Order 94-07), § 296-360-140, 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), § 296-360-140, filed 11/13/80.]

WAC 296-360-150 Retaliation 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 themselves 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 themselves to the dangerous condition, they are protected against subsequent retaliation.

(3) An employee's refusal to work is protected if they meet 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 protected 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 asked the employer to correct the hazard, asked for other work, remained on the job until ordered to leave by the employer, or 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 must not necessarily preclude a finding of good faith if other factors do establish good faith.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and 49.17.160. WSR 26-02-055, s 296-360-150, filed 1/6/26, effective 2/6/26. Statutory Authority: RCW 49.17.040 and 49.17.050. WSR 22-14-090, § 296-360-150, filed 7/1/22, effective 7/1/22. 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.]

WAC 296-360-160 Payment of damages to employee retaliated against. (1) If an employer retaliates against an employee such that the employee earns less than they would have earned absent the retaliation, the employer must pay the employee the difference between the wages that the employee would have earned absent the retaliation and the wages the employee actually earned after the retaliation.

(2) If an employer retaliates 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 49.17.010, 49.17.040, 49.17.050, 49.17.060, and 49.17.160. WSR 26-02-055, s 296-360-160, filed 1/6/26, effective 2/6/26. Statutory Authority: RCW 49.17.040 and 49.17.050. WSR 22-14-090, § 296-360-160, filed 7/1/22, effective 7/1/22. 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.]

WAC 296-360-170 Employee's refusal to comply with safety rules. An employee who refuses to comply with industrial safety and health standards or valid safety rules implemented by the employer in furtherance of WISHA is not exercising a right afforded by WISHA. Discipline taken by employers solely in response to an employee's refusal to comply with appropriate safety rules and regulations is not retaliation prohibited by RCW 49.17.160. This situation should be distinguished from refusals to work discussed in WAC 296-360-150.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and 49.17.160. WSR 26-02-055, s 296-360-170, filed 1/6/26, effective 2/6/26. 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), § 296-360-170, filed 11/13/80.]

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.

[Statutory Authority: RCW 49.17.040 and 49.17.050. WSR 22-14-090, § 296-360-175, filed 7/1/22, effective 7/1/22.]

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.

[Statutory Authority: RCW 49.17.040 and 49.17.050. WSR 22-14-090, § 296-360-180, filed 7/1/22, effective 7/1/22.]

WAC 296-360-200 Retaliation protections and enforcement—Warehouse distribution centers. This chapter applies to protected activities established in RCW 49.84.032, 49.84.040, and associated rules under chapter 296-35 WAC. WAC 296-35-400 establishes protected activities covered by this chapter, and includes a rebuttable presumption on when an adverse action has taken place.

[Statutory Authority: RCW 49.84.060, 49.17.010, 49.17.040, 49.17.050, 49.17.060, chapters 49.17 and 49.84 RCW. WSR 24-12-048, § 296-360-200, filed 5/31/24, effective 7/1/24.]