**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.]