

**RCW 49.60.250 Hearing of complaint by administrative law judge—
Limitation of relief—Penalties—Order—Arbitration.** (1) In case of failure to reach an agreement for the elimination of such unfair practice, and upon the entry of findings to that effect, the entire file, including the complaint and any and all findings made, shall be certified to the chairperson of the commission. The chairperson of the commission shall thereupon request the appointment of an administrative law judge under Title 34 RCW to hear the complaint and shall cause to be issued and served in the name of the commission a written notice, together with a copy of the complaint, as the same may have been amended, requiring the respondent to answer the charges of the complaint at a hearing before the administrative law judge, at a time and place to be specified in such notice.

(2) The place of any such hearing may be the office of the commission or another place designated by it. The case in support of the complaint shall be presented at the hearing by counsel for the commission: PROVIDED, That the complainant may retain independent counsel and submit testimony and be fully heard. No member or employee of the commission who previously made the investigation or caused the notice to be issued shall participate in the hearing except as a witness, nor shall the member or employee participate in the deliberations of the administrative law judge in such case. Any endeavors or negotiations for conciliation shall not be received in evidence.

(3) The respondent shall file a written answer to the complaint and appear at the hearing in person or otherwise, with or without counsel, and submit testimony and be fully heard. The respondent has the right to cross-examine the complainant.

(4) The administrative law judge conducting any hearing may permit reasonable amendment to any complaint or answer. Testimony taken at the hearing shall be under oath and recorded.

(5) If, upon all the evidence, the administrative law judge finds that the respondent has engaged in any unfair practice, the administrative law judge shall state findings of fact and shall issue and file with the commission and cause to be served on such respondent an order requiring such respondent to cease and desist from such unfair practice and to take such affirmative action, including, (but not limited to) hiring, reinstatement or upgrading of employees, with or without back pay, an admission or restoration to full membership rights in any respondent organization, or to take such other action as, in the judgment of the administrative law judge, will effectuate the purposes of this chapter, including action that could be ordered by a court, except that damages for humiliation and mental suffering shall not exceed twenty thousand dollars, and including a requirement for report of the matter on compliance. Relief available for violations of RCW 49.60.222 through 49.60.224 shall be limited to the relief specified in RCW 49.60.225.

(6) If a determination is made that retaliatory action, as defined in RCW 42.40.050, has been taken against a whistleblower, as defined in RCW 42.40.020, the administrative law judge may, in addition to any other remedy, require restoration of benefits, back pay, and any increases in compensation that would have occurred, with interest; impose a civil penalty upon the retaliator of up to five thousand dollars; and issue an order to the state employer to suspend the retaliator for up to thirty days without pay. At a minimum, the administrative law judge shall require that a letter of reprimand be

placed in the retaliator's personnel file. No agency shall issue any nondisclosure order or policy, execute any nondisclosure agreement, or spend any funds requiring information that is public under the public records act, chapter 42.56 RCW, be kept confidential; except that nothing in this section shall affect any state or federal law requiring information be kept confidential. All penalties recovered shall be paid into the state treasury and credited to the general fund.

(7) The final order of the administrative law judge shall include a notice to the parties of the right to obtain judicial review of the order by appeal in accordance with the provisions of RCW 34.05.510 through 34.05.598, and that such appeal must be served and filed within thirty days after the service of the order on the parties.

(8) If, upon all the evidence, the administrative law judge finds that the respondent has not engaged in any alleged unfair practice, the administrative law judge shall state findings of fact and shall similarly issue and file an order dismissing the complaint.

(9) An order dismissing a complaint may include an award of reasonable attorneys' fees in favor of the respondent if the administrative law judge concludes that the complaint was frivolous, unreasonable, or groundless.

(10) The commission shall establish rules of practice to govern, expedite, and effectuate the foregoing procedure.

(11) Instead of filing with the commission, a complainant may pursue arbitration conducted by the American arbitration association or another arbitrator mutually agreed by the parties, with the cost of arbitration shared equally by the complainant and the respondent.

[2008 c 266 s 8. Prior: 1993 c 510 s 23; 1993 c 69 s 14; 1992 c 118 s 5; 1989 c 175 s 115; 1985 c 185 s 23; 1983 c 293 s 1; 1981 c 259 s 2; 1957 c 37 s 18; 1955 c 270 s 17; prior: 1949 c 183 s 8, part; Rem. Supp. 1949 s 7614-27, part.]

Findings—Intent—2008 c 266: See note following RCW 42.40.020.

Application—2008 c 266: See RCW 42.40.910.

Severability—1993 c 510: See note following RCW 49.60.010.

Severability—1993 c 69: See note following RCW 49.60.030.

Effective date—1989 c 175: See note following RCW 34.05.010.

Effective date—1981 c 259: "Sections 2, 3, 4 and 5 of this 1981 act shall take effect upon the enactment of House Bill 101, 1981 Regular Session." [1981 c 259 s 7.] Sections 2, 3, 4, and 5 of 1981 c 259 consist of amendments to RCW 49.60.250, 49.60.260, and 49.60.270 and the enactment of RCW 49.60.330, respectively. House Bill 101 was enacted as chapter 67, Laws of 1981. It was signed by the governor on April 25, 1981. Since chapter 67, Laws of 1981 took effect on July 1, 1982, the apparent intent is for sections 2, 3, 4, and 5 of 1981 c 259 to take effect on that date. For effective date of 1981 c 67, see note following RCW 34.12.010.

Assignment of administrative law judge for human rights commission proceedings: RCW 34.12.037.