

WAC 296-130-070 Appeal of infraction notice. (1) If an employer desires to contest the notice of infraction issued, the employer will file two copies of a notice of appeal with the department at the office designated on the notice of infraction, within twenty days of issuance of the infraction.

(2) The department must:

(a) Conduct a hearing in accordance with chapter 34.05 RCW and chapter 10-08 WAC; and

(b) Notify the employee who filed the initial complaint that resulted in the notice of infraction.

(3) Employers may appear before the administrative law judge through counsel, or may represent themselves. The department must be represented by the office of the attorney general.

(4) All relevant evidence shall be admissible in a hearing convened pursuant to RCW 49.12.270 through 49.12.295. Admission of evidence is subject to the Administrative Procedure Act, chapter 34.05 RCW.

(5) The administrative law judge will issue a proposed decision that includes findings of fact, conclusions of law, and if appropriate, any legal penalty. The proposed decision will be served by certified mail or personally on the employer and the department. The employer or department may appeal to the director within thirty days after the date of issuance of the proposed decision. If none of the parties appeals within thirty days, the proposed decision may not be appealed either to the director or the courts.

(6) An appellant must file with the director an original and four copies of its notice of appeal. The notice of appeal must specify which findings and conclusions are erroneous. The appellant must attach to the notice the written arguments supporting its appeal.

The appellant must serve a copy of the notice of appeal and the arguments on the other parties. The respondent parties must file with the director their written arguments within thirty days after the date the notice of appeal and the arguments were served upon them.

(7) The director or his/her designee will review the proposed decision in accordance with the Administrative Procedure Act, chapter 34.05 RCW. The director may: Allow the parties to present oral arguments as well as the written arguments; require the parties to specify the portions of the record on which the parties rely; require the parties to submit additional information by affidavit or certificate; remand the matter to the administrative law judge for further proceedings; and require a departmental employee to prepare a summary of the record for the director to review. The director shall issue a final decision that can affirm, modify, or reverse the proposed decision.

(8) The director or his/her designee will serve the final decision on all parties. Any aggrieved party may appeal the final decision to superior court pursuant to the Administrative Procedure Act, chapter 34.05 RCW unless the final decision affirms an unappealed proposed decision. If no party appeals within twenty days, the director's decision is conclusive and binding on all parties.

[Statutory Authority: RCW 49.12.033, 49.12.280, 49.12.285, 43.22.270, 2002 c 243, and chapters 49.12 and 43.22 RCW. WSR 03-03-010, § 296-130-070, filed 1/6/03, effective 1/6/03. Statutory Authority: RCW 43.22.270 and 1988 c 236. WSR 88-18-044 (Order 88-20), § 296-130-070, filed 8/31/88.]