

RCW 50A.40.040 Damages—Recovery—Private right of action—Complaint withdrawal, resolution—Termination of department's administrative action. (1) A private action to recover damages under RCW 50A.40.030 may be brought against any employer by any one or more employees for and on behalf of:

- (a) The employee or employees; or
- (b) The employees and other employees similarly situated.

(2) Any action under subsection (1) of this section must be filed with a court of competent jurisdiction within the state. Any private action for an alleged violation of RCW 50A.40.010 must be commenced within three years of the date of the alleged violation.

(3) In an action under subsection (1) of this section the court shall, in addition to any judgment awarded to a prevailing plaintiff, award reasonable attorneys' fees, reasonable expert witness fees, and other costs of the action to be paid by the defendant.

(4) A private right of action is only available to an employee who either has not filed a complaint with the department, has withdrawn a filed complaint under subsection (5) of this section, or has resolved a complaint under subsection (6) of this section.

(5) An employee who has filed a complaint with the department under RCW 50A.40.020 may elect to withdraw the complaint by providing written notice to the department within ten business days after filing the complaint with the department. Withdrawing a complaint terminates the department's administrative action.

(6) A complaint may be resolved upon agreement by all parties. Resolution of a complaint must be communicated to the department prior to the department's issuance of a determination. Resolution of a complaint terminates the department's administrative action.

(7) In the event the department's administrative action is terminated under subsection (5) or (6) of this section:

- (a) The department will immediately discontinue its investigation and any action against the employer; and
- (b) The determination, if already issued, along with any related findings of fact and conclusions of law, and any payments or offers of payment made by the employer including interest, are not admissible in any court action or other judicial or administrative proceeding.

(8) Nothing in this section shall be construed to limit or affect:

- (a) Except as provided in subsection (4) of this section, the right of any employee to pursue any judicial, administrative, or other action available with respect to an employer;
- (b) The right of the department to pursue any judicial, administrative, or other action available with respect to an employee that is identified as a result of a complaint under RCW 50A.40.020; or
- (c) The right of the department to pursue any judicial, administrative, or other action available with respect to an employer in the absence of a complaint. [2020 c 125 s 17.]