



Unfair Labor Practices:

A Guide to Filing & Presenting Your Case



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This guide provides general, informal help for the public and people involved in unfair labor practice (ULP) disputes before the Washington State Public Employment Relations Commission (PERC). It does not replace PERC’s laws or rules, and it is not meant to be legal advice. It is always a good idea to review PERC’s rules, relevant laws, and past cases when dealing with a dispute.

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Introduction to Unfair Labor Practices

The Washington State Public Employment Relations Commission (PERC) is the state agency that enforces and administers Washington's collective bargaining laws.

What Employees Are Covered by PERC Laws?

To review all the laws PERC administers and the **public-sector employees** who are covered by them, visit our [Laws/Rules webpage](#) or see [appendix B](#).

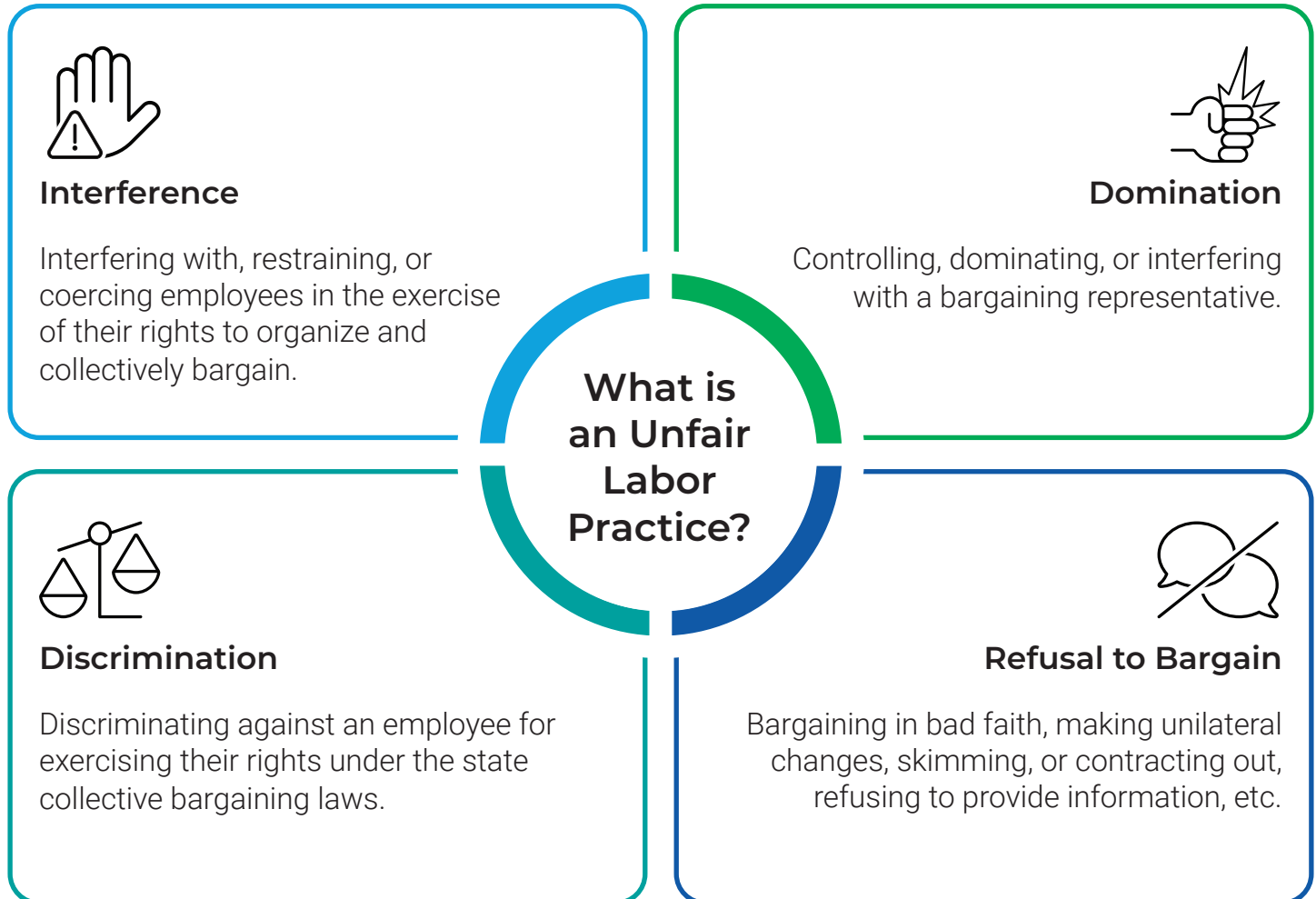
If PERC Does Not Have Jurisdiction, Who Can I Contact?

PERC does not have jurisdiction over all workplace disputes. For example, **PERC only has jurisdiction to resolve discrimination complaints based on protected union activity** and does not accept cases dealing with discrimination by employers based on other factors like race or gender. Contact these agencies for other types of discrimination or workplace complaints:

L&I Workplace Rights	State Employment Discrimination	Federal Employment Discrimination	Private- Sector Labor Complaints
Labor and Industries Workplace Rights ensures employees have rights regarding safe working conditions, fair wages, protection from discrimination, without fear of retaliation, all based on state labor laws.	The Human Rights Commission is responsible for enforcing state laws to combat employment discrimination based on age, race, religion, sex, color, or disability.	The Equal Employment Opportunity Commission is responsible for enforcing federal laws that make it illegal to discriminate because of a person's race, color, religion, sex, national origin, age, or disability.	The National Labor Relations Board protects private-sector employees' rights to organize, improve working conditions, and choose or reject union representation. It also prevents unfair labor practices by employers and unions.
lni.wa.gov 866.219.7321	hum.wa.gov 800.233.3247	eeoc.gov 800.669.4000	nlr.gov 844.762.6572

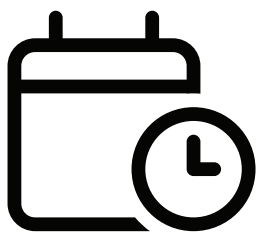
What Is An Unfair Labor Practice?

An unfair labor practice (ULP) is action by a public-sector employer or union that violates the law. Washington laws generally prohibit employers and unions from the following:



When Can I File a Complaint with PERC?

Statute of Limitations

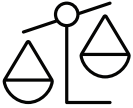


A complaint must be filed with PERC within

6 months

of the date the complainant knew or had reason to know of the ULP conduct.

What Types of ULP Cases Can Individual Employees File?

Type of ULP	Against An Employer	Against a Union
 Interference	Employer Interference ▶ Independent ▶ Weingarten ▶ Improper unit placement	Union Interference ▶ Independent ▶ Duty of fair representation
 Discrimination	Employer Discrimination ▶ For the employee engaging in protected union activity ▶ For the employee filing a complaint or testifying before PERC	Union Discrimination ▶ For the employee filing a complaint or testifying before PERC ▶ For the union inducing the employer to commit a violation or discrimination
 Domination	Employer Domination	An employee cannot allege domination against a union.
 Refusal to Bargain	An employee cannot file this type of allegation; only a union or employer can.	



To learn more about each of these types of ULPs, including the elements required to prove that the ULP occurred, see [appendix C1](#) or [appendix C2](#). Go deeper by learning how to [research PERC's case law](#).

What Remedies Can I Receive If I Win a ULP Case?

If you file and succeed in a ULP case, PERC will issue an order to stop ULPs from occurring again. A typical order will direct the employer or union to take the following actions:

 Cease and Desist	The employer or union must stop the unlawful action.
 Post a Notice	The employer or union must post a notice explaining PERC's order where employees can see it.
 Read the Notice	The notice must be read aloud at a meeting of the governing body.

In some cases, additional remedies could be awarded:

 Restore the Status Quo	If needed, actions must be taken to return things to how they were before the ULP, like reinstating wages or working conditions.
 Make Employees Whole	If necessary, a financial remedy (like backpay) may be provided to fix the harm caused by the ULP. Financial remedies designed to punish parties (fines, general money damages, pain and suffering) are not awarded by PERC.
 Extraordinary Remedies	In special cases, PERC may require the party that committed ULPs to pay attorney fees or attend training.

What Is the Process for Deciding if a ULP Has Occurred?



For detailed information about each step in the process, see [“What Happens After I File My Complaint.”](#)

Do I Need an Attorney to File a Complaint?

Rules to Review: [WAC 391-08-010](#) and [WAC 391-45-010](#)

No, an attorney is not required.

- ▶ It's your choice whether to have an attorney or another advocate represent you.
- ▶ PERC cannot provide or recommend an attorney.

Responsibility of Each Party

PERC does not investigate the allegations in ULP cases. Carefully read PERC's rules of practice and procedure before filing or presenting a case. Agency rules apply the same way to

- ▶ parties with an attorney, and
- ▶ parties representing themselves.



Investigate Your Case

Each party is responsible for gathering their own evidence and preparing for hearing.



Present Your Evidence

Each party is responsible for presenting evidence at hearing to support their claims.

What Should I Do Before Filing a Complaint?



Before filing a complaint, it is highly recommended that you **read previous decisions to get a better understanding of the law** that may relate to your claims and to learn more about

- ▶ conduct that could violate Washington state law,
- ▶ PERC's ULP remedies, and
- ▶ how PERC decides ULP cases.

How Do I Search PERC Decisions?

SEARCH DECISIONS

[Advanced Search](#)

Advanced Search

Allows you to see more search fields and narrow the results.

ADVANCED SEARCH

Full Text Search

Use quotation marks to search specific terms (see examples listed below).

Date

Use the date fields to search for the most recent decisions.

Decision Maker

Examiner or Commission

These decisions describe specific facts of the case, explain the laws that apply, and analyze whether the alleged conduct was found to be a ULP.

ULP Manager

These dismissal decisions can help you understand what a complaint needs to be accepted by PERC.

Case Type

Select 'Unfair Labor Practice' to narrow your search results to ULP decisions only.



Read Multiple Previous Decisions

Learn more about the conduct that could violate Washington law, PERC's ULP remedies, and how PERC decides ULP cases.

Common ULP Search Terms

- ▶ contracting out
- ▶ discrimination
- ▶ domination
- ▶ duty of fair representation
- ▶ duty to bargain
- ▶ good faith
- ▶ independent interference or interference
- ▶ invidious discrimination
- ▶ mandatory subjects
- ▶ provide information
- ▶ skimming
- ▶ unilateral change

Filing an Unfair Labor Practice Complaint

The first step of PERC's ULP process is filing a written complaint. PERC will review your complaint to see if it qualifies for further processing before the agency.

How Do I File and Serve a Complaint?

Rules to Review: [WAC 391-45-050](#) and [WAC 391-08-120](#)



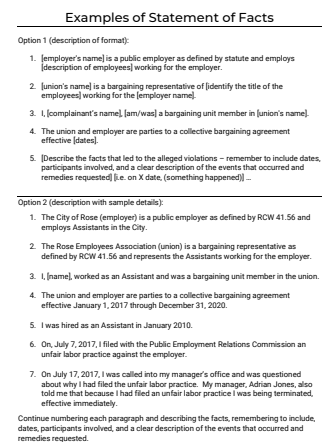
A complaint alleging ULP violations must be filed within **six months** of when you knew or should have known of the ULP conduct.

Prepare Your Statement of Facts

Write a **statement of facts** document on a sheet of paper or using a word processing software (such as Microsoft Word) and **tell your story in numbered paragraphs**:

- ▶ Explain the events that occurred surrounding the alleged ULP violation.
- ▶ Include the required elements using the 'Types of Violations' in [appendix C1](#) or [appendix C2](#).
- ▶ Include specific allegations, times, dates, places, and participants.
- ▶ Indicate whether a related grievance has been filed.
- ▶ Describe the remedies you are requesting. See [page 7](#) for reference.

A **sample statement of facts** is available on our [website](#) and in [appendix D](#).



DO include all necessary facts within the statement of facts document.



DO NOT attach additional documents at the time of filing.



PERC does not investigate allegations.

The complainant must prove their case and present documents **at the hearing**.

Any documents filed before the cause of action are not considered evidence.

File and Serve Your Complaint

File and serve the complaint form and the statement of facts. There are two ways to file:



Complaints, pleadings, **motions**, briefs, and all other types of case documents must be served on (or sent to) the other party in one of the ways outlined in [WAC 391-08-120](#).

1. E-Filing

- ▶ Log into the [E-Filing system](#).
- ▶ Select the unfair labor practice complaint form and fill out the requested information.
- ▶ Include the contact person for each party involved.
- ▶ Attach your statement of facts.
- ▶ Choose one of the options in the serve & submit section:
 - ◆ Yes—Select 'Yes' to serve PERC and all parties through E-Filing.
 - ◆ No—Select 'No' to only serve PERC. You will then be responsible to serve a copy of the complaint and statement of facts on the **respondent** separately. You will also need to include a completed certificate of **service** identifying who you served the documents on.



The deadline for **filing** documents with PERC is **5:00 p.m. Pacific Time**.

2. Email, fax, mail, or in person

- ▶ Fill out the [ULP complaint form](#).
- ▶ Send both the complaint form and statement of facts via email, fax, or mail or deliver in person to PERC and to the respondent (**charged party**).
- ▶ Include a completed certificate of service identifying who you served the documents on.

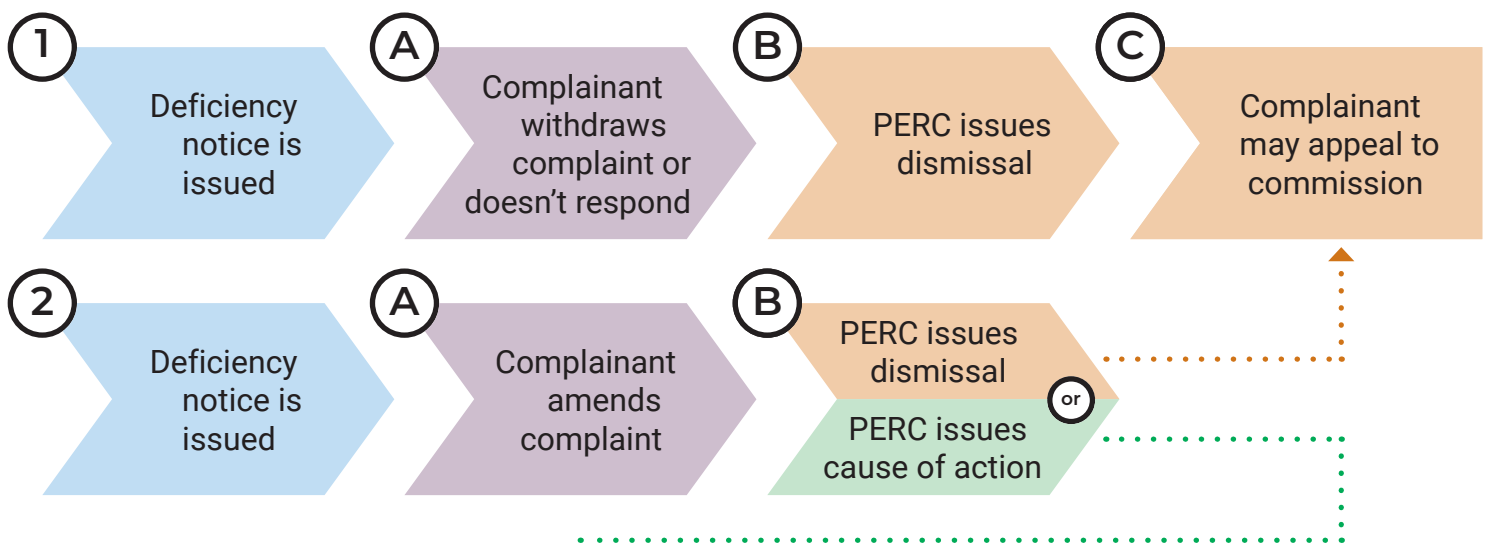
What Happens After I File My Complaint?

A PERC ULP administrator reviews the statement of facts assuming all the facts are true and provable, and there are generally two outcomes:

- 1. The complaint is deficient**—If the statement of facts does not include ALL the elements for the alleged violation(s) or there are procedural problems, a **deficiency notice** or partial deficiency notice is issued.
- 2. The complaint proceeds**—If the statement of facts includes ALL the elements for the alleged violation(s), and there are no procedural problems, a **cause of action statement** is issued.

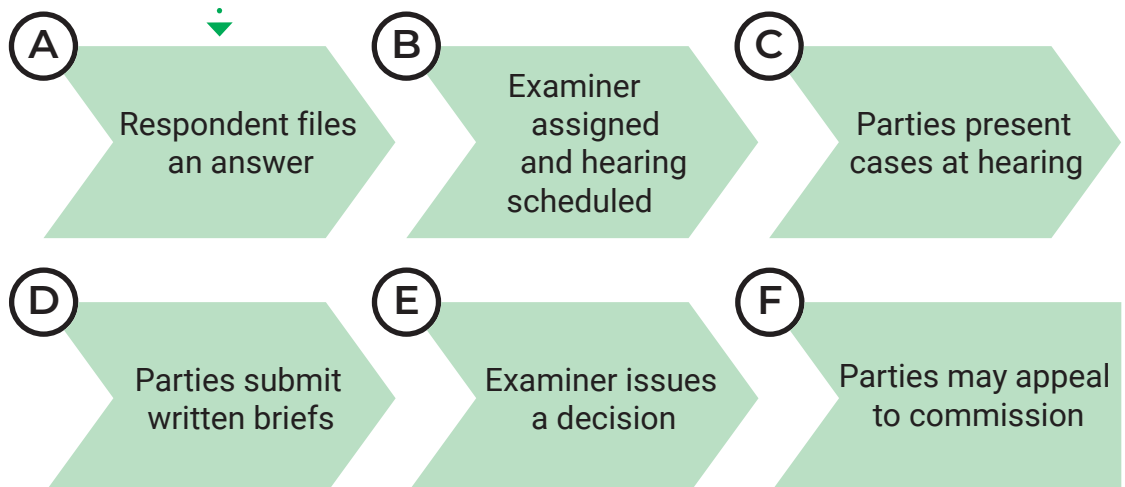
Outcome 1: Complaint is Deficient

After PERC issues a deficiency notice or partial deficiency notice, a complaint may follow one of two paths:



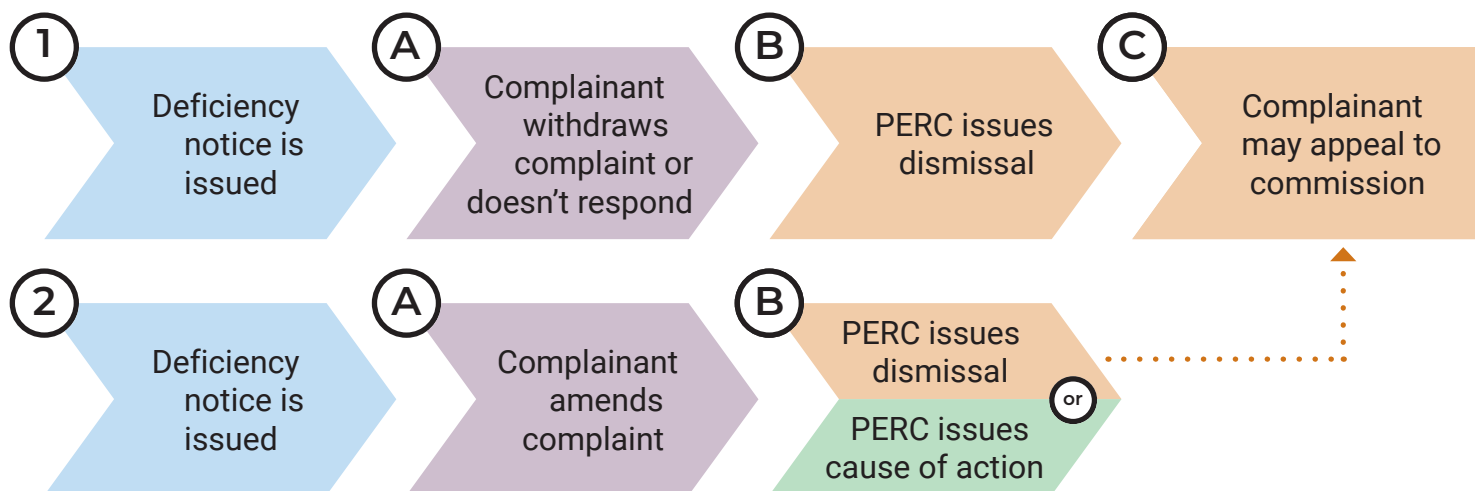
Outcome 2: Complaint Proceeds

After PERC issues a cause of action:



What Are the Next Steps If I Receive a Deficiency Notice?

A complaint may follow one of two paths:



Amend Your Complaint

To amend your complaint or statement of facts, follow these three steps:

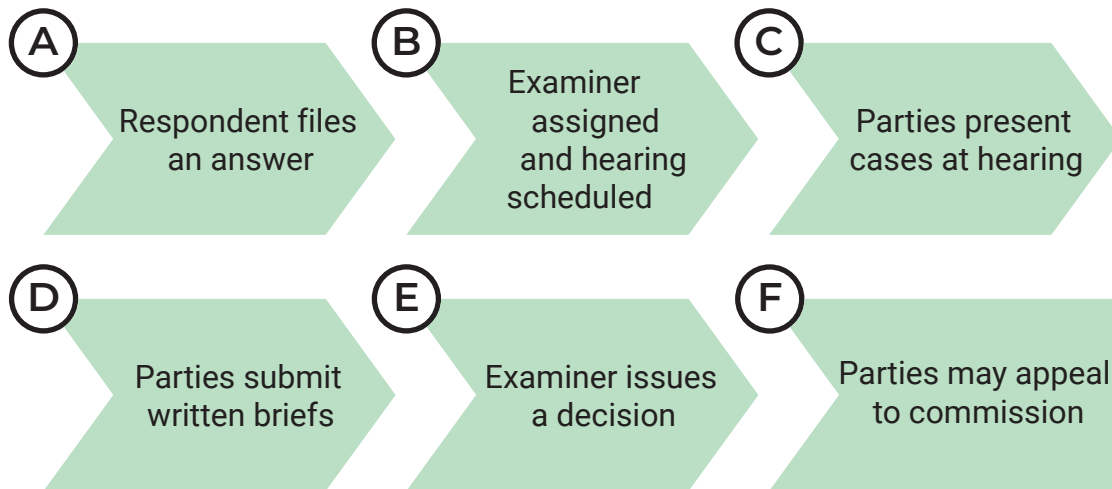
1. Review the details of what is missing or needs to be corrected.
2. Write an updated statement of facts including any new or additional information using numbered paragraphs.*
3. Submit the amended complaint or statement of facts to PERC and the respondent via the E-Filing portal in the existing case number as a document titled "Amended Statement of Facts."

PERC will review your amended statement of facts and determine if a cause of action exists or dismiss the deficient allegations. ([WAC 391-45-070](#))

- ▶ **If a cause of action is issued**, the process follows step 1 described on [page 14](#).
- ▶ **If an order of dismissal is issued**, you have 20 days to file an **appeal** with the commission. See the [appeals](#) section for more information on the process. ([WAC 391-45-350](#))

* Documents should be created in a word processing software (such as Microsoft Word) and saved as a PDF.

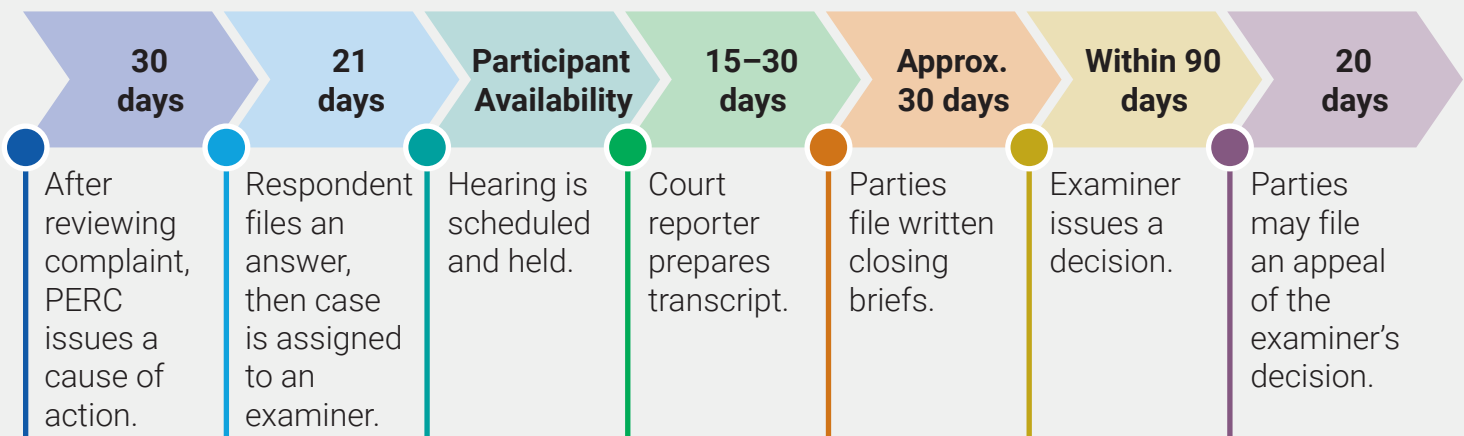
What Are the Next Steps If I Receive a Cause of Action?



- After a cause of action statement is issued, the respondent should file and serve an answer.
 - The answer responds to each of the numbered paragraphs in the statement of facts.
 - The respondent may admit, deny, or neither admit nor deny the allegations in the complaint.
 - The **complainant** does not respond to the answer.
- The case is assigned to a PERC **examiner** who schedules a hearing.
 - The complainant can amend their statement of facts before or after the case has been assigned to an examiner.

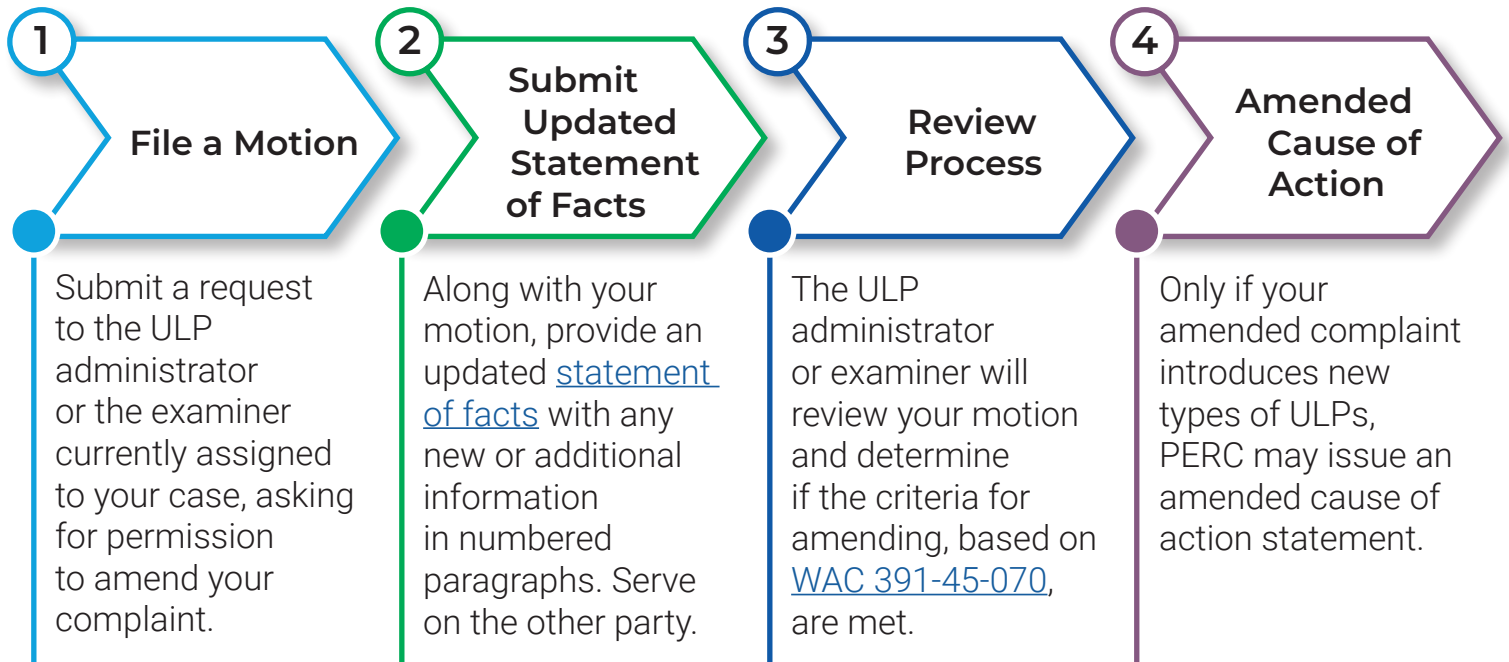
If
a cause of
action is issued,
you will present
evidence at
hearing.

Complaint Timeline After a Cause of Action Is Issued



Can I Amend My Complaint or Statement of Facts After Receiving a Cause of Action?

To amend your complaint or statement of facts, follow the steps below. These steps ensure that the proper process is followed and the necessary updates to your complaint are formally recognized:



Unfair Labor Practice Hearings

To prove a ULP claim, a complainant must present their evidence before a PERC examiner at a hearing. This section outlines the steps leading up to a hearing and what to expect on your hearing day.

What is a Hearing?

A hearing is your chance to present all the **evidence** that supports your case. Hearings are administrative (less formal than a court trial) and aim to be straightforward. Here's how they work:



Who Runs the Hearing?

- ▶ An **examiner** will oversee the process.



What is the Scope?

- ▶ Focused only on the **ULP claim(s)** listed in PERC's cause of action statement.
- ▶ Includes any defenses raised by the respondent in its answer.



Your Role at the Hearing

If you're **the complainant**
(party who filed the case):

- ▶ You have the **burden of proof**.
- ▶ You must present evidence (testimony and documents) to support your claim(s).

⋮ If you're **the respondent**
(party responding to the case):

- ▶ You must prove any defenses you raised.
- ▶ You can also present evidence (testimony and documents).

Before the Hearing Day

Rules to Review: Chapters [391-08 WAC](#) and [391-45 WAC](#)

Assignment of Examiner

 **Rules to Review:** [WAC 391-45-130](#)

- ▶ You will receive a letter with your assigned examiner's name.
- ▶ The examiner will help schedule your hearing.
- ▶ Send all case-related correspondence to the examiner and include all other parties.
- ▶ The examiner communicates jointly with all parties—**no private (ex parte) discussions.**

**Check
for letters
or emails from
your examiner and
respond promptly
if needed.**

Prehearing Conferences

**Be
prepared to
join and provide
input.**

- ▶ Prehearing conferences may be held by phone or video to discuss
 - ◆ scheduling,
 - ◆ hearing procedures, or
 - ◆ other case-related details.

Settlement Mediation

 **Rules to Review:** [WAC 391-45-260](#)

- ▶ Mediation is available without cost to the parties before your hearing.
 - ▶ A neutral PERC mediator guides discussion with both sides to explore settlement options.
 - ▶ The mediator does not have the power to force anyone to settle.
 - ▶ Mediation is
 - ◆ **typically voluntary:** You won't be penalized for declining.
 - ◆ **confidential:** Discussions cannot be used as evidence later.
 - ▶ If both parties agree to mediate, the examiner will connect you with a mediator. The mediator will not discuss the case with your assigned examiner.
-  Do not include your examiner in mediation communications.

Prehearing Motions

 **Rules to Review:** [WAC 391-08-120](#) and [-155](#)

Motions are formal requests for rulings or orders in a case. Occasionally, parties file motions with their examiner before a hearing.



Motions

A motion for summary judgment is a request to rule on a case without a hearing if there are no disputed “material” facts and one side is entitled to legal judgment in their favor based on the undisputed facts.

- ▶ **Purpose:** Ends a case without a hearing if no material facts are disputed.
- ▶ **Process:**
 - ◆ **Moving party** files the motion.
 - ◆ **Nonmoving party** may file a **response brief** explaining why summary judgment is not appropriate and identifying disputed facts.
 - ◆ **Moving party** may file a **reply brief** responding to the opposition.



Filing and Deadlines

Deadlines for response and reply briefs depend on whether a hearing date has been set.

- ▶ Carefully read the rules for exact timelines and procedures.
- ▶ Search [PERC’s Decisia database](#) for “summary judgment” to read more about the legal standards examiners use to decide these motions.
- ▶ Motions, responses, and replies must be filed with PERC and served on all parties.
- ▶ Follow the methods outlined in [WAC 391-08-120](#) for proper service.



Examiner’s Role

Examiners carefully review **summary judgment motions** and handle them with great caution since granting them **ends the case without a hearing**.

Discovery

 **Law to Review:** [RCW 34.05.446\(1\)](#)

Legal discovery is the process where parties exchange evidence to prepare for a hearing.

-  PERC does not allow the types of discovery often available for other legal hearings. Parties do not get to question witnesses before the hearing or send broad requests for documents to one another.
-  PERC does not oversee disputes involving the [Public Records Act](#).



Gather Evidence for Hearing

▶ **Gather evidence independently:**

- ◆ Collect relevant documents and witness information on your own.

▶ **Communicate informally:**

- ◆ Discuss with the opposing party about the possibility of sharing documents or witness lists before the hearing.

Subpoenas

 **Rule & Laws to Review:** [WAC 391-08-310](#); [RCW 34.05.446\(1\)](#) and [.588\(1\)](#)

A subpoena is a written order that (a) **compels a witness to appear** at a hearing or (b) **requires someone to provide documents** at a hearing. Subpoenas may be used when informal agreements fail.



How to Request a Subpoena

A party can ask for a subpoena if there are relevant witnesses or documents needed at the hearing but that the parties cannot agree to provide.

▶ **Steps for Self-Represented Parties:**

- ◆ **File a petition with the examiner** for a subpoena.
- ◆ Be prepared to explain how the testimony or documents are
 - **relevant** to the hearing, and
 - **reasonable in scope** (not excessive or unnecessary).



Parties are responsible for serving subpoenas, covering related costs, and seeking enforcement if needed.

► Steps for Attorneys:

- ◆ Attorneys can issue subpoenas independently without petitioning the examiner.

Responsibilities After a Subpoena Is Issued

The subpoena is issued **to the requesting party**, who must

- **serve the subpoena** to the witness or record bearer, and
- pay any required fees:
 - ◆ **Witness fee** and mileage for a subpoenaed witness.
 - ◆ **Costs** for producing records or mileage for a subpoenaed party.

Objections To a Subpoena

If a subpoenaed party finds the subpoena **“unreasonable” or “oppressive,”** they can ask the examiner to **quash (strike) or modify** the subpoena.

Enforcement of Subpoenas

Examiners do NOT have the power to enforce subpoenas. If the subpoenaed party does not comply with a subpoena, the requesting party may

- seek enforcement of the subpoena in superior court, or
- ask the examiner to make an “adverse inference” (assumption) about what the subpoenaed evidence might have shown.

Notice of Hearing

 **Rule to Review:** [WAC 391-45-170](#)

The notice of hearing provides essential details for attending the hearing:

- Date(s), start time, and location of your hearing.
- For virtual hearings, information on how to access the hearing online.
- Instructions for requesting **disability accommodations or language interpreters.**



It is your responsibility to share the hearing information with your witnesses and attendees.

Rescheduling a Hearing

 **Rule to Review:** [WAC 391-08-180](#)

A hearing can only be rescheduled (referred to as a “**continuance**”) for “**good cause.**”

Steps to Request a Continuance

- ▶ **Contact the other parties** to
 - ◆ explain the reason for the continuance, and
 - ◆ ask if they agree to rescheduling.
- ▶ **Write the examiner:**
 - ◆ Include all other parties’ representatives in your communication.
 - ◆ State whether all parties agree or disagree to the continuance.
 - ◆ Provide a clear explanation of why a continuance is needed.

If Parties Disagree

- ▶ The examiner may
 - ◆ schedule a **prehearing conference**, or
 - ◆ communicate with the parties to make a decision.

What to Expect On Your Hearing Day



Hearings occur on weekdays, either virtually or in person, and may be set for one or more days.



Come fully prepared. If the examiner provides instructions, read and follow them carefully.



PERC hearings are open to the public, so anyone can observe.



The examiner controls the schedule and may permit a lunch break or shorter breaks to manage logistics.

PERC Hearing Process

Examiner Opens Hearing

The hearing begins with an introduction and procedural overview.

Opening Statements

Each party presents an overview of their case before presenting evidence.

Evidence Taking

Testimony and documents are presented in this order:

- ▶ Complainant's evidence
- ▶ Respondent's evidence
- ▶ **Rebuttal**—complainant responds to respondent's evidence
- ▶ Surrebuttal—respondent may reply to complainant's rebuttal

Closing Arguments

Each party summarizes their case and key points.

Parties discuss the timeline for filing written closing briefs with the examiner.

Examiner Closes Hearing

Once both sides state they are finished ("rest their cases"), evidence presentation ends and the examiner formally closes the hearing.

Court Reporter

 **Rule to Review:** [WAC 10-08-170](#)



What They Do

- ▶ PERC arranges for a **private court reporter** to attend each ULP hearing.
- ▶ The court reporter creates a written record (**transcript**) of everything said during the hearing.
- ▶ Copies of the transcript are available from the court reporter for a fee.



Important Instructions

- ▶ Follow any guidance from the examiner or court reporter to help produce a clear transcript.
- ▶ **Speak slowly and clearly** during the hearing.



For Virtual Hearings

- ▶ Test your device's microphone ahead of time to ensure clear audio.

Opening Statements



Hearing Introduction

The examiner will start with opening remarks and ask each party's representative(s) to **introduce themselves**.



What Are Opening Statements?

Opening statements **provide** the examiner with a roadmap of what to expect from the evidence presented during the hearing.



Who Speaks First?

- ▶ The **complainant** delivers their opening statement first.
- ▶ The **respondent** can
 - ◆ speak immediately after the complainant, or
 - ◆ reserve their opening statement until it is their turn to present evidence.



**Opening
statements are
not evidence.**

How to Present Evidence

Parties present evidence through live witness testimony and documents (exhibits).



Witness Testimony

- ▶ Call witnesses to testify under oath.
- ▶ Ask questions to bring out their story or relevant information (**direct examination**).
- ▶ Focus questions on what you need to prove for the case.
- ▶ Testimony must be relevant to the claims and defenses.
- ▶ If you represent yourself and plan to testify, the examiner may discuss how to format your testimony.



Documents (Exhibits)

- ▶ Submit documents that support your case during the hearing.
- ▶ Inform the examiner in advance if the parties agree upon the admission of documents (**joint exhibits**).
- ▶ Question a witness familiar with the document. Then tell the examiner you wish to “offer” the document into evidence.
- ▶ Examiner will decide based on **relevance** and **foundation** (testimony about the document).



Preparation Tips

1=
2=

Follow the examiner’s instructions for submitting and labeling exhibits.



For in-person hearings:
Bring photocopies of exhibits.



For virtual hearings:
Submit exhibits electronically as instructed.

Cross-Examination

What Is Cross-Examination?

- ▶ When a party questions a witness called to testify by the other side.
- ▶ Used to **clarify or challenge information from the witness's direct testimony**.
- ▶ Focus on bringing out details that support your side or question the witness's credibility.

Purpose

- ▶ Highlight important facts that favor your case.
- ▶ Call attention to inconsistencies or context that may affect the witness's story or credibility.

How It Works

 Cross-examination is question and answer only.

 Do not

- ◆ share your own version of events, or
- ◆ argue with or explain why you disagree with the witness's answers.

Participation

- ▶ Each party can cross-examine any witness but is **not required** to do so.

Redirect and Recross-Examination

What is Redirect Examination?

- ▶ The party who originally called the witness can ask more questions after cross-examination.
- ▶ Questions must focus on topics raised during cross-examination.

What is Recross-Examination?

- ▶ Other parties may ask follow-up questions after redirect examination.

Final Step

- ▶ Once all questioning is finished, **the examiner excuses the witness** from the hearing.

Objections to Evidence

Objections signal that a piece of evidence (question or document) is improper or irrelevant for the examiner to consider. During a hearing, objections may be raised to questions or exhibits.

Common Types of Objections

- ▶ **Relevance:** The evidence does not relate to the issues in the case.
- ▶ **Asked and Answered:** The question has already been asked and answered by the witness.
- ▶ **Lack of Foundation:** There is insufficient prior testimony to link the evidence to the case.
- ▶ **Hearsay:** Evidence is based on someone else's out-of-court statements and is not firsthand proof.
 - ◆ The examiner may admit hearsay evidence if it is considered reliable on a case-by-case basis.
- ▶ **Authenticity:** The document's genuineness is in question.

How to Object

- ▶ Say **"I object"** or **"objection"** immediately after the question is asked or the evidence is introduced. Objections cannot be raised later (e.g., on appeal).
- ▶ For repeated issues, you can request a **"standing objection"** to an entire line of questioning.
- ▶ The examiner will ask you to briefly state the type of objection.
- ▶ The witness **cannot answer** until the examiner rules on the objection.

If Your Evidence is Objected To

- ▶ You may briefly explain to the examiner why your evidence is proper.

Closing Arguments

 **Rules to Review:** [WAC 391-45-290](#), [391-08-120](#) and [-180](#)

Types of Closing Arguments

- ▶ **Written Briefs:** Most common; submitted after the hearing.
- ▶ **Oral Arguments:** Allowed if the examiner permits.

Purpose

- ▶ Summarize the facts presented during the hearing.
- ▶ Explain how these facts fit the legal standards for the ULP claim(s).


Closing arguments are not evidence.

Formatting & Deadlines

- ▶ The examiner will set due dates for the briefs.
 - ◆ Typically, all parties will have the same deadline for their briefs.
- ▶ Briefs must be **25 pages or less** (double-spaced, 12-point font).
- ▶ A party that wants more pages or an extended deadline must request permission from the examiner and show **good cause**.

Tips for Written Briefs

- ▶ Use **PERC's Decisia database** to reference past decisions.
- ▶ Cite PERC decisions using the **official citation** found at the top of the decision (e.g., *City of Mountlake Terrace*, Decision 11831-A (PECB, 2014)).
- ▶ Refer to the **hearing transcript** by page number when referencing testimony.

Transcript



Parties can order a copy of the hearing transcript from the court reporter.



The court reporter will charge a fee, and PERC cannot waive it.

Record Closed After Hearing

 **Rule to Review:** [WAC 391-45-270](#)

- ▶ After both sides finish presenting evidence and the hearing is closed, no additional evidence will be accepted.
- ▶ The record can only reopen with a motion showing new evidence that could not have been discovered earlier.



Decision of the Examiner

Timeline

- ▶ PERC strives to issue a written decision within **90 days** after briefs are filed.
- ▶ PERC cannot disclose the case outcome before the written decision is issued.

Contents of the Decision

- ▶ Findings of fact and conclusions of law.
- ▶ Whether a ULP was committed.
- ▶ Any actions the respondent(s) must take to fix the violation(s).

Public Access

- ▶ Decisions are posted publicly on PERC's website and include relevant names and facts.
-  PERC cannot redact or remove decisions once issued.

Compliance with Examiner's Order

 **Rule to Review:** [WAC 391-45-400](#)

An agency compliance officer will work with the parties to take any action identified in the examiner's order.

Appeals

Certain decisions issued by PERC's ULP administrators and examiners can be appealed to the commission. This section contains an overview of the appeal process and answers to common questions.

 **Rule to Review:** [WAC 391-45-350](#)

What Does the Commission Do?

- ▶ Reviews appeals of agency staff decisions.
- ▶ Has rule-making authority over the agency.

What Is the Process for Appeals?

The process for appeals to the commission has three key steps:

1. A party files a **notice of appeal**.
 - ▶ The notice must be filed within **20 days** of the order of dismissal or examiner decision.
 - ▶ Deadlines cannot be extended.
2. Both parties file briefs.
 - ▶ **First**, the appealing party files their brief.
 - ▶ **Then**, the responding party files their brief.
3. The **commission** reviews the **record** and briefs and issues a decision.

About the Commission



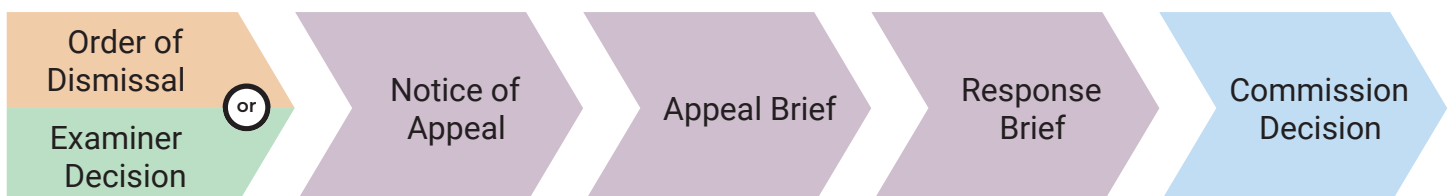
The commission is made up of three citizens, who you can read about on our [website](#).



Commissioners are appointed by the governor and confirmed by the Washington State Senate.



Commissioners serve five-year terms.



Filing a Notice of Appeal

 **Rules to Review:** [WAC 391-45-110](#) and [-350](#)

A notice of appeal informs PERC and the parties involved about an appeal. Factual or legal arguments about why the order or decision should be overturned should be addressed in the appeal brief.

Requirements

- ▶ A notice of appeal must be filed within **20 days** of the order of dismissal or examiner decision.
 - ◆ **No extensions** are allowed.
- ▶ Clearly identify the specific findings of fact, conclusions of law, or orders that are being appealed. ([WAC 391-45-350\(3\)](#))
- ▶ Appeal documents must be served on other parties as outlined in [WAC 391-08-120](#).

Filing a Notice of Cross-Appeal

 **Rule to Review:** [WAC 391-45-350](#)

A notice of cross-appeal is filed when one party has filed an appeal and the other party also wants to appeal.

Requirements

- ▶ A notice of cross-appeal must be submitted within **7 days** after the deadline for filing a notice of appeal.
 - ◆ **No extensions** are allowed.
- ▶ Appeal documents must be served on other parties as outlined in [WAC 391-08-120](#).

Filing Appeal and Response Briefs

 **Rule to Review:** [WAC 391-45-350](#)

Appeal Brief

- ▶ **Who can file?** The party appealing an order of dismissal or decision.
- ▶ **Purpose:** Explain what is being appealed and why.
- ▶ **Content:** Factual and legal arguments supporting why the order or decision should be overturned.

Response Brief

- ▶ **Who can file?** The opposing party in response to an appeal or cross-appeal.
- ▶ **Purpose:** Explain the opposing party's position and provide supporting arguments.

Requirements for Appeal and Response Briefs



Deadline

14 days after notice of appeal/cross-appeal or after service of appeal/cross-appeal brief.



Format

- ▶ Maximum 25 pages
 - ▶ 12-point font
 - ▶ Double-spaced



Service

Appeal documents must be served on other parties as outlined in [WAC 391-08-120](#).

Document Submission Rules

 **Rule to Review:** [WAC 391-45-350\(4\)](#)

-  Do not attach previously filed documents to the appeal or response brief.
-  Instead, reference them by
 - ◆ exhibit number (if a hearing took place), or
 - ◆ document title (if no hearing took place).

Can I Add New Evidence or Witnesses?

Generally, **no**. Appeals are decided based on the **existing case record**. In limited cases, a party can submit a motion to offer new evidence.

New Evidence Exception

Rule to Review: [WAC 391-45-270\(2\)](#)

- ▶ A party can file a motion to reopen the hearing where new evidence is discovered that could not reasonably have been discovered and produced at hearing.
- ▶ Instructions:
 -  File a motion to reopen the hearing.
 -  Await approval before filing any additional evidence.

Commission Standards for Reviewing an Appeal

Appeals of Examiner Decisions

The commission reviews the record that was before the examiner, including the following:

- ▶ For **decisions with a hearing**: transcript, admitted exhibits, and briefs.
- ▶ For decisions without a hearing (**summary judgment**): motion briefs, declarations, affidavits, and exhibits.

The commission reviews findings of fact to determine if they are supported by “substantial evidence.”

- ▶ Substantial evidence exists if the record contains enough proof to persuade a fair-minded, rational person of the truth.
- ▶ The commission gives weight to
 - ◆ factual findings made by the examiner, and
 - ◆ credibility determinations and inferences drawn by the examiner.
- ▶ Legal conclusions are reviewed to ensure they are backed by factual findings.

Appeals of Orders of Dismissal

The commission reviews the complaint, amended complaint, notice of appeal, and briefs.

- ▶ An appeal from a dismissal is not a chance for a party to rewrite its complaint, assert new facts, or cure deficiencies it should have corrected before the complaint was dismissed.
- ▶ The commission does not consider new allegations on appeal.

The commission reviews whether the complaint states a valid cause of action.

- ▶ The review assumes that the alleged facts are true and provable based on the record.

Commission's Timeline for Deciding Appeals

The commission aims to issue a decision within 90 days after receiving the last brief.

How You'll Learn the Outcome

- ▶ The commission's decision will be
 - ◆ mailed or emailed to all parties, and
 - ◆ publicly posted on PERC's website.



Can I Appeal a Commission Decision?

You may appeal the decision to Superior Court. ([RCW 34.05.542\(2\)](#))

Role of the Appeals Administrator

The appeals administrator is a PERC employee who assists with processing appeals.

-  Can: Answer procedural questions about appeals.
-  Cannot:
 - ◆ Provide legal advice.
 - ◆ Share the outcome before the commission issues its decision.

Appendix A: Glossary

Learn definitions for legal terms used in this guide.

Answer

A document filed by a party charged with ULPs that responds to the allegations of the complaint and states any defenses the party will argue in the case.

Appeal

A process in which the commission reviews the evidence, case record, and parties' arguments to decide whether a decision by a PERC staff member like a ULP administrator or an examiner was correctly issued. The commission can affirm (uphold), modify, or reverse the decision on appeal.

Burden of proof

The responsibility placed upon a party to prove its claims or its defenses by a "preponderance of evidence."

Cause of action statement

A notice issued by a PERC ULP administrator after reviewing a complaint. A cause of action statement tells parties that the complaint has properly alleged ULP(s) that PERC can process and identifies the types of ULPs.

Commission

A three-member body appointed by the governor and confirmed by the Washington State Senate. The commission decides appeals from agency staff decisions and has rule-making authority over the agency.

Complainant / charging party

The party that files a ULP complaint.

Continuance

The postponement or extension of a hearing or deadline in a ULP case. Continuances typically require "good cause."

Deficiency notice

A letter sent to all parties in a ULP case that points out defects in the complaint and gives a deadline for the party to fix those defects by filing an amended complaint.

Derivative interference

This violation will automatically be found if

- ▶ an employer committed a domination, discrimination, or refusal to bargain violation, or
- ▶ a union committed a discrimination or refusal to bargain violation.

Dismissal

A decision and order issued by a PERC ULP administrator after reviewing a complaint previously found to be deficient. A dismissal tells the parties that the complaint(s) did not properly allege any ULPs that PERC can process and closes the ULP case(s). Dismissals can be appealed to the commission.

Evidence

The witness testimony and documents presented in a ULP hearing to prove the disputed facts in the case.

Ex parte communication

Improper communication between one party to a ULP case and the examiner when the other party is not present/included. It is important not to engage in ex parte communication.

Examiner

A PERC staff member who holds a hearing and issues a written decision in a ULP case.

Filing

Officially submitting documents to PERC through one of the ways written in [WAC 391-08-120](#): E-Filing on PERC's [website](#); emailing to filing@perc.wa.gov; sending by first class, registered, or certified mail to PERC's Olympia mailing address; hand-delivering to PERC's Olympia office; or any other method posted on the agency's website.

Motion

A formal request by a party for some type of ruling or order in a legal case.

Notice of appeal

A notice that informs PERC and the other parties to a case that a party is appealing an order of dismissal from a ULP administrator or a decision issued by an examiner.

Opening statement

A statement made by a party advocate at the start of a hearing outlining the case to be presented. Opening statements are not themselves evidence but set the scene for the case and give the examiner a roadmap for what they will learn through the evidence.

Rebuttal	A chance for a complainant at hearing to put on additional evidence (witnesses and documents) responding to evidence raised by the respondent in their defense. The examiner may then allow the respondent to take another turn and put on surrebuttal evidence.
Record	The agency's official file of the documents submitted by the parties, issued by the agency, and created at hearing in a case.
Respondent / charged party	The party accused of violating state law by committing a ULP.
Service	Officially providing copies of documents filed with PERC to another participant in a case through one of the ways written in WAC 391-08-120 : through PERC's E-Filing system, by email, through the U.S. mail, by commercial parcel delivery company, or by hand-delivery. Do not forget to complete and file a certificate of service telling PERC how the documents were served.
Statement of facts	Something a person filing a ULP complaint must write and file with the complaint form. The statement of facts explains the events alleged to be ULP violations, including specific actions, times, dates, places, and participants. The statement of facts should be in numbered paragraphs, should tell whether any union contract grievance related to the ULP allegations has been filed, and should state the remedies the party filing the complaint requests that PERC order.
Status quo	The way things were before a ULP was committed. PERC may order a party to take actions to return conditions to the status quo to remedy a ULP.
Statute of limitations	The deadline for filing a legal claim. By law, the statute of limitations for ULPs at PERC is six months.
Subpoena	A formal order directing a person to give testimony or provide documents at a hearing.
Summary judgment	A ruling that there are no factual disputes for which a hearing is needed and that one side is entitled to legal judgment in their favor based on the undisputed facts of a case.

Appendix B:

Laws Administered by PERC

Learn which laws apply to certain groups of employees.

Employer Type	Employees	Applicable ULP Law
Cities	All	RCW 41.56.045 & .047
Colleges and universities (4-year)	Academic employees, faculty	RCW 41.76.050
	Classified employees	RCW 41.80.110
	UW printing craft employees	RCW 41.56.045 & .047
	Exempt employees, graduate teaching assistants and post-doctoral fellows	
Community and technical colleges	Academic employees, faculty	RCW 28B.52.073
	Classified and exempt employees	For Community Colleges: RCW 41.80.110 For Technical Colleges: RCW 41.56.045 & .047
Counties	All	RCW 41.56.045 & .047
Energy Northwest	All	RCW 41.56.045 & .047
Ferry system (WA State, Marine Department of the Washington State Department of Transportation)	All	RCW 47.64.130
Ferry system	Passenger only ferries	RCW 41.56.111
Fire districts	All	RCW 41.56.045 & .047
Other local government (cemetery, health, hospital, irrigation, library, sewer, and water districts; dispatch centers)	All	RCW 41.56.045 & .047

Employer Type	Employees	Applicable ULP Law
Port districts	All except managerial, administrative and confidential assistants	RCW 41.56.045 & .047 ; see also chapter 53.18 RCW
Public utility districts	All	RCW 41.56.045 & .047 ; see also chapter 54.04 RCW
School districts and Charter schools	Certificated employees, teachers	RCW 41.59.140
School districts, educational service districts, and charter schools	Classified employees	RCW 41.56.045 & .047
Symphony orchestras with gross annual revenue of more than \$300,000, not meeting NLRB jurisdictional standards	Symphony musicians	RCW 49.39.120 & .130
Transit (public)	All	RCW 41.56.045 & .047
Washington State – general government	Classified employees	RCW 41.80.110
Washington State – adult family home	Adult family home providers	RCW 41.56.045 & .047 ; see chapter 70.128 RCW
Washington State – child care	Child care providers	RCW 41.56.045 & .047 ; see chapter 74.15 RCW
Washington State – home care	Individual providers	RCW 41.56.045 & .047 ; see chapter 74.39A RCW
Washington State – language access providers	Language access providers	RCW 41.56.045 & .047
Washington State Cannabis Producers	Cannabis Agricultural employees	Title 49 RCW
Washington State Fish and Wildlife	Commissioned	RCW 41.56.045 & .047
Washington State Legislative Employees	Certain employees	RCW 44.90.080
Washington State Patrol	Commissioned	RCW 41.56.045 & .047

Appendix C1:

ULP Violations An Employee Can File Against An Employer

This list includes the elements within each violation. You must include facts related to all the elements for each violation alleged in your complaint.



Interference Violations

See also definition for '[derivative interference](#).'

Independent

An employer official made a statement or took action which one or more employees reasonably perceived to be a threat of reprisal or force, or promise of benefit, associated with activity protected by an applicable collective bargaining law (protected activity).

Weingarten Rights

- ▶ The employer compelled an employee to attend an interview, and
- ▶ A significant purpose of the interview was (or became) investigatory—to obtain facts which might support disciplinary action, and
- ▶ The employee reasonably believed that discipline might result from the interview, and
- ▶ The employee requested the presence of a union representative, and
- ▶ The employer rejected the employee's request and went ahead with the investigative interview without a union representative present OR the employer required the union representative to remain a passive or silent observer, to prevent the representative from assisting the employee.

Improper Unit Placement

- ▶ Existence of an agreement between their employer and one or more unions concerning composition of a bargaining unit, and
- ▶ The agreement
 - ◆ included the position occupied by the complainant in the bargaining unit contrary to some recognized right or status; or
 - ◆ excluded the position occupied by the complainant from the bargaining unit contrary to some recognized right or status, and thereby stranded the employee.



Discrimination Violations

For Engaging in Protected Union Activity

- ▶ One or more employees exercised rights protected by applicable collective bargaining statute (protected activity) or communicated to the employer an intent to do so, and
- ▶ One or more employees were deprived of some ascertainable right, status, or benefit, and
- ▶ A causal connection exists between the protected union activity and the action claimed to be discriminatory.

For Filing a Complaint/ Testifying before PERC

- ▶ The employee filed a ULP complaint with PERC (protected activity) or gave testimony before PERC (protected activity), or communicated to the employer an intent to do so, and
- ▶ One or more employees were deprived of some ascertainable right, status, or benefit, and
- ▶ A causal connection exists between the protected union activity and the action claimed to be discriminatory.



Domination Violations

The employer

- ▶ intended to control or interfere with the formation or administration of a union, or
- ▶ intended to dominate the internal affairs of a union (potentially including selection of officers, policy decisions, or ratification of collective bargaining agreements), or
- ▶ intended to contribute financial or other support to a union (potentially including cash, use of office space or facilities, paid release time for union officials), or
- ▶ recognized or bargained with a union that had not established that it had the support of a majority of the employees involved, or
- ▶ showed a preference between unions competing to represent particular employees.



Refusal to Bargain

An employee cannot allege this type of violation against an employer.

Appendix C2:

ULP Violations An Employee Can File Against A Union

This list includes the elements within each violation. You must include facts related to all the elements for each violation alleged in your complaint.



Interference Violations

See also definition for [‘derivative interference.’](#)

Independent

- ▶ Applicable collective bargaining statute covers the employee(s) involved, and
- ▶ Union or its agent(s) made some statement or took some action, and
- ▶ Employee(s) reasonably perceived the union actions as a threat of reprisal or force, or a promise of benefit, associated with their exercise of rights protected by the applicable collective bargaining law.

Duty of Fair Representation

- ▶ Applicable collective bargaining statute covers the employee(s) involved, and
- ▶ The employee(s) involved are in a bargaining unit represented by the union, and
- ▶ The union or its agent(s) took some action aligning itself against bargaining unit employees on an improper or invidious basis, such as union membership (or lack thereof), race, creed, sex, national origin, etc.



Discrimination Violations

For Employee Filing a Complaint/Testifying Before PERC

- ▶ The employee filed a ULP complaint with PERC (protected activity) or gave testimony before PERC (protected activity), or communicated to the union an intent to do so, and
- ▶ One or more employees were deprived of some ascertainable right, status, or benefit, and
- ▶ A causal connection exists between the protected activity and the action claimed to be discriminatory.

For Union Inducing Employer to Commit Violation/Discrimination

- ▶ The employee(s) involved is/are covered by a collective bargaining statute administered by PERC, and
- ▶ The union requested that the employer take some action that is unlawful.



Domination

An employee cannot allege this type of violation against a union.



Refusal to Bargain

An employee cannot allege this type of violation against a union.

Appendix D:

Sample Statement of Facts

You must number each paragraph and describe the facts that led to the alleged violations, remembering to include dates, participants involved, and a clear description of the events that occurred and remedies requested.

Example Format of Statement of Facts

1. [employer's name] is a public employer as defined by [statute] and employs [description of employees] working for the employer.
2. [union's name] is a bargaining representative of [identify the title of the employees] working for the [employer name].
3. I, [complainant's name], [am/was] a bargaining unit member in [union's name].
4. The union and employer are parties to a collective bargaining agreement effective [dates].
5. Continue numbering each paragraph and describing the facts (e.g., on [date], [something happened]) and the requested remedies.

Example of Format with Sample Details

1. The City of Rose (employer) is a public employer as defined by chapter 41.56 RCW and employs assistants in the city.
2. The Rose Employees Association (union) is a bargaining representative as defined by chapter 41.56 RCW and represents the assistants working for the employer.
3. I, [name], worked as an assistant and was a bargaining unit member in the union.
4. The union and employer are parties to a collective bargaining agreement effective January 1, 2017, through December 31, 2020.
5. I was hired as an assistant in January 2010.
6. On, July 7, 2017, I filed with the Public Employment Relations Commission an unfair labor practice complaint against the employer.
7. On July 17, 2017, I was called into my manager's office and was questioned about why I had filed the unfair labor practice complaint. My manager, Adrian Jones, also told me that because I had filed a complaint I was being terminated, effective immediately.