

AMENDATORY SECTION (Amending WSR 03-03-064, filed 1/14/03, effective 2/14/03)

**WAC 391-45-001 Scope—Contents—Other rules.** This chapter governs unfair labor practice proceedings ((before the public employment relations commission on complaints charging unfair labor practices)) under all chapters of the Revised Code of Washington (RCW) administered by the ((commission. The provisions of this chapter should be read in conjunction with:

(1) Chapter 10-08 WAC, which contains the model rules of procedure promulgated by the chief administrative law judge to regulate adjudicative proceedings under chapter 34.05 RCW, except:

(a) WAC 10-08-035, which is replaced by detailed requirements in WAC 391-45-050;

(b) WAC 10-08-050, which relates to office of administrative hearings procedures inapplicable to proceedings before the public employment relations commission;

(c) WAC 10-08-211, which is replaced by detailed requirements in WAC 391-45-350 and 391-45-390; and

(d) WAC 10-08-230, which is replaced by detailed requirements in WAC 391-45-070, 391-45-090, and 391-45-260.

(2) Chapter 391-08 WAC, which contains rules of practice and procedure applicable to all types of proceedings before the public employment relations commission, and which also replaces some provisions of chapter 10-08 WAC.

(3) Chapter 391-25 WAC, which regulates representation proceedings.

(4) Chapter 391-35 WAC, which regulates unit clarification proceedings and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.

(5) Chapter 391-55 WAC, which regulates the resolution of impasses in collective bargaining.

(6) Chapter 391-65 WAC, which regulates grievance arbitration and grievance mediation proceedings.

(7) Chapter 391-95 WAC, which regulates union security nonassociation proceedings)) agency. To the extent these rules of practice and procedure differ from the model rules in chapter 10-08 WAC or this agency's general rules of practice and procedure in chapter 391-08 WAC, these special rules prevail.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

**WAC 391-45-010 Complaint charging unfair labor practices—Who may file.** A complaint charging that ((a person)) an employer or employee organization has engaged in or is engaging in an unfair labor practice may be filed by any employee, employee organization, employer, or their agents.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

**WAC 391-45-030 Complaint** (~~(in writing—Number of copies—Filing)~~)  
~~—Filing and service.~~ ((Each)) A complaint charging unfair labor practices (~~shall~~) may be filed through the agency's online e-filing system, by email, or in writing(~~(, and shall be filed at)~~) to the (~~commission's~~) agency's Olympia office, as required by WAC 391-08-120 (1) and (2). The party filing the complaint shall serve a copy on each party named as a respondent, as required by WAC 391-08-120 (3) and (4).

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

**WAC 391-45-050 Contents of complaint filing forms**~~—Contents of complaint.~~ ((Each complaint charging unfair labor practices shall contain, in separate numbered paragraphs:))

(1) Each completed unfair labor practice complaint filing form, whether obtained from the agency's website or through the agency's e-filing system, must include all of the following:

(a) Information identifying the parties and (~~(if known)~~) their representatives (if know), including:

~~((a))~~ (i) The name, email address, mailing address, and telephone number of the employer(~~(, and the name, address, telephone number, fax number, and email address of its principal)~~) and of the employer's representative;

~~((b))~~ (ii) The name, email address, mailing address, address and telephone number of the entity (employer or employee organization) accused of committing unfair labor practices (the respondent)(~~(, and the name, address, telephone number, fax number, and email address of its principal)~~) and of the respondent's representative; and

~~((c))~~ (iii) The name, email address, mailing address, and telephone number(~~(, fax number, and email address)~~) of the party filing the complaint (the complainant)(~~(, and the name, address, telephone number, fax number, and email address of its principal)~~) and of the complainant's representative.

~~((2) Clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences.~~

~~(3) A statement of the remedy sought by the complainant.~~

~~(4) The name, signature and, if any, title of the person filing the complaint, and the date of the signature.~~

~~((5))~~ (b) Information concerning the parties' relationships, including:

~~((a) The employer's principal business;~~

~~((b))~~ (i) Identification of the employer department or division (~~(in which)~~) where the dispute (~~(arises)~~) arose; and

~~((c))~~ (ii) The parties' contractual relationship, indicating that:

~~((i))~~ (A) The parties have never had a contract; or

~~((ii))~~ (B) The parties have had a contract, and a copy of the current ~~((+))~~ or most recent ~~((+))~~ collective bargaining agreement is attached ~~((+))~~

~~(d) The status of related grievance proceedings between the parties, indicating that:~~

~~(i) No grievance has been filed on the dispute involved; or  
(ii) A grievance on the dispute is being processed under the parties' collective bargaining agreement; or  
(iii) An arbitration award has been issued on a related grievance;~~

~~(e) A description of the bargaining unit involved, specifying inclusions and exclusions; and~~

~~(f) The number of employees in the bargaining unit.~~

~~(6) Indication of the sections of the Revised Code of Washington (RCW) alleged to have been violated).~~

(c) Job titles of bargaining unit employees who are the subject of the complaint.

(d) The name, signature, and title, if any, of the person filing the complaint as well as the date of the signature.

(e) Any other information requested in the unfair labor practice complaint filing form found on the agency's website at [www.perc.wa.gov](http://www.perc.wa.gov) or as required through the agency's e-filing system.

(2) Each complaint must contain in separate numbered paragraphs:

(a) Clear and concise statements of the facts constituting the alleged unfair labor practices, including the times, dates, and places of occurrences and the names of the participants; and

(b) A statement of the remedy sought by the complainant.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

**WAC 391-45-070 Amendment.** (1) A complaint may be amended upon motion made by the complainant ~~((+))~~ if:

(a) The proposed amendment only involves the same parties as the original complaint;

(b) The proposed amendment is timely under any statutory limitation as to new facts;

(c) The subject matter of the proposed amendment is germane to the subject matter of the complaint as originally filed or previously amended; and

(d) Granting the amendment will not cause undue delay of the proceedings.

(2) A motion ~~((s))~~ to amend a complaint ~~((s shall be))~~ is subject to the following limitations:

(a) ~~((Prior to))~~ Before the appointment of an examiner, amendment ~~((shall be))~~ is freely allowed upon motion ~~((to the agency official responsible for making preliminary rulings under WAC 391-45-110));~~

(b) After the appointment of an examiner but ~~((prior to))~~ before the opening of ~~((an evidentiary))~~ a hearing, amendment may be allowed upon motion to the examiner and subject to due process requirements;

(c) After the opening of ~~((an evidentiary))~~ a hearing, amendment may only be allowed to conform the pleadings to evidence received without objection, upon motion made ~~((prior to))~~ before the close of the ~~((evidentiary))~~ hearing.

(3) ~~((Where))~~ If a motion for amendment is denied, the proposed amendment ~~((shall))~~ will be processed as a separate case.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

**WAC 391-45-090 Withdrawal.** (1) A complaint may be withdrawn by the complainant~~((r))~~ through an email to the examiner or by a written request filed as required by WAC 391-08-120 before issuance of a decision by an examiner.

(2) A withdrawal "without prejudice" ~~((shall))~~ does not vary any statutory time limitation for filing of unfair labor practice complaints~~((, unless the parties file a written agreement for a different arrangement prior to the expiration of the applicable statutory period))~~.

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

**WAC 391-45-110 Deficiency notice—~~((Preliminary ruling)) Cause of action statement—Deferral to arbitration.~~** The executive director ~~((or a designated staff member))~~, the executive director's designee, or an examiner shall determine whether the facts alleged in the complaint may constitute an unfair labor practice within the meaning of the applicable statute.

(1) If the facts alleged do not, as a matter of law, constitute a violation, a deficiency notice ~~((shall be issued and served on all parties,))~~ identifying the defects and specifying a due date for the filing and service of an amended complaint will be issued and served on all parties. If the defects are not cured within ~~((twenty-one))~~ 21 days, an order ~~((shall be issued and served,))~~ dismissing the defective allegation(s) and stating the reasons for that action must be issued and served on all parties. Unless appealed to the commission under WAC 391-45-350, an order of dismissal issued under this subsection ~~((shall be))~~ is the final order of the agency on the defective allegation(s)~~((r))~~ with the same force and effect as if issued by the commission.

(2) If one or more allegations state a cause of action for unfair labor practice proceedings before the ~~((commission))~~ agency, a ~~((preliminary ruling))~~ cause of action statement summarizing the allegation(s) ~~((shall))~~ will be issued and served on all parties.

(a) A ~~((preliminary ruling))~~ cause of action statement forwarding a case for further proceedings is an interim order ~~((which))~~ that may only be appealed to the commission by a notice of appeal filed after issuance of an examiner decision under WAC 391-45-310~~(2)~~.

(b) The ~~((preliminary ruling))~~ cause of action statement limits the ~~((causes))~~ cause(s) of action before an examiner and the commission. A complainant who claims that the ~~((preliminary ruling))~~ cause of action statement failed to address one or more causes of action ~~((it))~~ the complainant sought to advance in the complaint ~~((must, pri-~~

~~or to~~) may, before the issuance of a notice of hearing, seek clarification from the person ~~((that))~~ who issued the ~~((preliminary ruling))~~ cause of action statement.

(c) The ~~((preliminary ruling shall))~~ cause of action statement must establish the due date for the respondent to file its answer.

(3) The agency may defer the processing of allegations which state a cause of action under subsection (2) of this section~~((r))~~ pending the outcome of related contractual dispute resolution procedures, but ~~((shall))~~ the agency retains jurisdiction over those allegations.

(a) Deferral to arbitration may be ordered ~~((where))~~ if:

(i) Employer conduct alleged to constitute an unlawful unilateral change of employee wages, hours, or working conditions is arguably protected or prohibited by a collective bargaining agreement in effect between the parties at the time of the alleged unilateral change;

(ii) The parties' collective bargaining agreement provides for final and binding arbitration of grievances concerning its interpretation or application; and

(iii) There are no procedural impediments to a determination on the merits of the contractual issue through proceedings under the contractual dispute resolution procedure.

(b) Processing of the unfair labor practice allegations under this chapter ~~((shall))~~ must be resumed following issuance of an arbitration award or resolution of the grievance, and the contract interpretation made in the contractual proceedings ~~((shall be))~~ is considered binding, except ~~((where))~~ if:

(i) The contractual procedures were not conducted in a fair and orderly manner; or

(ii) The contractual procedures have reached a result ~~((which))~~ that is repugnant to the purposes and policies of the applicable collective bargaining statute.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

**WAC 391-45-130 Examiner—Who may act.** The executive director or ~~((a designated staff member))~~ designee shall assign an examiner to conduct further proceedings in the matter~~((r))~~ and shall notify the parties of that assignment. ~~((The examiner may be a member of the agency staff or any other individual designated by the commission or executive director.))~~ Upon notice to all parties, an examiner may be substituted for the examiner previously ~~((presiding))~~ assigned.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

**WAC 391-45-170 Notice of hearing.** The ~~((examiner shall issue a))~~ notice of hearing ~~((and have it))~~ will be issued and served on the parties. ~~((Attached to the notice of hearing shall be))~~ A copy of the ~~((preliminary ruling))~~ cause of action statement issued under WAC

391-45-110 must be attached to the notice of hearing. A notice of hearing may be amended or withdrawn before the close of the hearing.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

**WAC 391-45-190 Answer—Filing and service.** An answer to a complaint charging unfair labor practices (~~shall~~) must be in writing. The respondent shall file and serve its answer as required by WAC 391-08-120 (~~(1)~~, and shall serve a copy on the complainant, as required by WAC 391-08-120 (3) and (4)).

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

**WAC 391-45-210 Answer—Contents—Amendment—Effect of failure to answer.** (1) An answer filed by a respondent (~~shall~~) must specifically admit, deny, or explain each fact alleged in the portions of a complaint found to state a cause of action under WAC 391-45-110. A statement by a respondent that it is without knowledge of an alleged fact (~~, shall~~) operates as a denial. An answer (~~shall~~) must assert any affirmative defenses that are claimed to exist.

(2) Counterclaims by a respondent against a complainant (~~shall~~) must be filed and processed as separate cases, subject to procedures for consolidation of proceedings.

(3) Motions to amend answers (~~shall~~) must be acted upon by the examiner, subject to the following limitations:

(a) Amendment (~~shall be~~) is allowed (~~whenever~~) if a motion to amend the complaint has been granted;

(b) Amendment may be allowed prior to the opening of (~~an evidentiary~~) a hearing, subject to due process requirements;

(c) After the opening of (~~an evidentiary~~) a hearing, amendment may only be allowed to conform the pleadings to evidence received without objection, upon motion made (~~prior to~~) before the close of the (~~evidentiary~~) hearing.

(4) If a respondent fails to file a timely answer or (~~fails~~) to specifically deny or explain a fact alleged in the complaint, the facts alleged in the complaint (~~shall be~~) are deemed to be admitted as true, and the respondent (~~shall be~~) is deemed to have waived its right to a hearing as to the facts so admitted. A motion for acceptance of an answer after its due date (~~shall only~~) may be granted for good cause, unless the complainant can show that it would be prejudiced by such action in accordance with WAC 391-08-003.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

**WAC 391-45-250 Motion to make complaint more definite and detailed.** The examiner may direct that the complaint be made more definite and detailed, upon motion of the respondent, if the examiner is satisfied that the complaint is so indefinite as to hamper the respondent in the preparation of its answer.

(1) The respondent shall file its motion (~~(on or before)~~) by the date specified for the filing of an answer. The motion (~~(shall)~~) must be filed and served as required by WAC 391-08-120.

(2) The filing of a motion under this section (~~(shall)~~) extends the due date for the respondent's answer until a date set by the examiner.

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

**WAC 391-45-260 Settlement (~~(conference)~~) mediation.** (~~(Separate from any prehearing conference concerning procedural matters held by the examiner under WAC 10-08-130, a settlement conference)~~) A settlement mediation concerning substantive issues may be held under WAC 10-08-200(15).

(1) A (~~(separate)~~) different case number (~~(shall be)~~) is assigned, and all (~~(files and papers)~~) documents for the settlement (~~(conference shall be)~~) mediation are kept in a case separate from the (~~(files and papers for)~~) documents in the unfair labor practice proceedings.

(2) (~~(A commission)~~) An agency staff member other than the assigned examiner (~~(shall be)~~) is assigned to explore settlement between the parties on the substantive issues.

(3) (~~(Any settlement conference shall be held in advance of the scheduled hearing date on)~~) A settlement mediation may be held at any time before issuance of a decision by an examiner in the underlying unfair labor practice proceedings.

(4) During a settlement (~~(conference)~~) mediation, the parties will be encouraged, on factual and legal grounds including precedent on the particular subject, to resolve the unfair labor practice dispute.

(5) Participation in a settlement (~~(conference)~~) mediation is voluntary and nothing in this rule prohibits parties from exploring settlement on their own. Refusal by a party to participate in a voluntary settlement (~~(conference shall)~~) mediation does not prejudice that party in any manner.

(6) Conversations had and offers made in a settlement (~~(conference shall not be)~~) mediation are not admissible (~~(in)~~) into evidence at a hearing.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

**WAC 391-45-270 Hearings—Reopening of hearing.** (1) Hearings ~~((shall be))~~ are public, ~~((except where))~~ unless a protective order is issued under WAC 10-08-200(7), and ~~((shall be))~~ are limited to the portions of a complaint found to state a cause of action under WAC 391-45-110.

(a) The complainant ~~((shall be))~~ is responsible for the presentation of its case~~((r))~~ and ~~((shall have))~~ has the burden of proof.

(b) The respondent ~~((shall be))~~ is responsible for the presentation of its defense~~((r))~~ and ~~((shall have))~~ has the burden of proof as to any affirmative defenses.

~~((c) The examiner's authority under WAC 10-08-200 (8) and (9) shall not be construed as authorizing or requiring the examiner to undertake the responsibilities of the complainant or respondent under this subsection.))~~

(2) Once a hearing has been declared closed, it may be reopened only upon the timely motion of a party ~~((upon discovery of))~~ that discovered new evidence which could not with reasonable diligence have been discovered and produced at the hearing.

AMENDATORY SECTION (Amending WSR 08-04-058, filed 1/31/08, effective 4/1/08)

**WAC 391-45-290 Posthearing briefs.** (1) Any party ~~((shall be entitled))~~ may, upon request made before the close of the hearing, ~~((to))~~ file a posthearing brief.

(2) The examiner may direct the filing of briefs as to any or all of the issues in a case.

(3) Arrangements and due dates for briefs ~~((shall be))~~ are established by the examiner.

(4) Any brief ~~((shall))~~ must be filed ~~((with the examiner))~~ and served as required by WAC 391-08-120~~((1), and copies shall be served on all other parties to the proceeding as required by WAC 391-08-120 (3) and (4)).~~

~~((2))~~ (5) A party filing a brief under this section must limit ~~((its))~~ the brief's total length to ~~((twenty-five))~~ 25 pages (double-spaced, ~~((twelve-point))~~ 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief ~~((in order))~~ to address novel or complex ~~((legal and/or factual issues raised by the objections))~~ issues; and

(b) The ~~((hearing))~~ examiner grants ~~((such a))~~ the motion for good cause shown~~((; and))~~.

~~((c))~~ (6) A motion for permission to file a longer brief may be made orally to the ~~((hearing))~~ examiner at the end of the ~~((administrative))~~ hearing, and the ~~((hearing officer))~~ examiner has the authority to orally grant ~~((such))~~ the motion at ~~((such))~~ that time.

**WAC 391-45-310 Motions for discretionary review—Examiner decisions.** (1)(a) A party seeking review by the commission of an interlocutory decision of the executive director, ~~((his or her))~~ the executive director's designee, or ~~((a hearing))~~ an examiner must file a motion for discretionary review with the commission and a copy with the ~~((executive director, his or her designee, or a hearing examiner,))~~ person who issued the interlocutory decision within seven days after the decision is issued.

(b) Discretionary review of an interlocutory decision issued by the executive director, ~~((his or her))~~ the executive director's designee, or ~~((a hearing))~~ an examiner will be accepted by the commission only:

(i) If the executive director, ~~((his or her))~~ the executive director's designee, or ~~((a hearing))~~ the examiner has committed an obvious error ~~((which))~~ that would render further proceedings useless; ~~((or))~~

(ii) If the executive director, ~~((his or her))~~ the executive director's designee, or ~~((a hearing))~~ the examiner has committed probable error and the ~~((decision of the))~~ interlocutory decision ~~((of the hearing examiner))~~ substantially alters the status quo or substantially limits the freedom of a party to act; or

(iii) If the executive director, ~~((his or her))~~ the executive director's designee, or ~~((a hearing))~~ the examiner has so far departed from the accepted and usual course of administrative proceedings as to call for ~~((the exercise of revisory jurisdiction))~~ immediate review by the commission.

(c) The commission will not accept motions for discretionary review of:

(i) The scope of proceedings issued in a ~~((preliminary ruling by the executive director or his or her designee or a hearing examiner))~~ cause of action statement under WAC 391-45-110; ~~((or))~~

(ii) Application of the six-month statute of limitations; or

(iii) Any evidentiary ruling by ~~((a hearing))~~ an examiner during the course of ~~((an administrative))~~ a hearing.

(d) If a motion for discretionary review is filed, the due date for any response is seven days following the date on which a party wishing to file a response is served with the motion. Responses must be filed and served as required by WAC 391-08-120.

(e) A motion for discretionary review ~~((under this rule)),~~ and any response, should not exceed ~~((fifteen))~~ 15 pages (double-spaced, 12-point type) excluding appendices.

~~((e))~~ (f) Denial of discretionary review of a decision does not affect the right of a party to obtain later review of the ~~((executive director's, his or her designee's, or hearing examiner's))~~ interlocutory decision or the issues pertaining to that decision.

(2) After the close of ~~((the))~~ a hearing and the filing of all briefs, ~~((the))~~ an examiner shall issue a decision containing findings of fact, conclusions of law, and an order. Unless appealed to the commission under WAC 391-45-350, a decision issued under this section ~~((shall be))~~ is the final order of the agency~~((r))~~ with the same force and effect as if issued by the commission.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

**WAC 391-45-330 Withdrawal or modification of examiner decision.**

The examiner may set aside, modify, change, or reverse any findings of fact, conclusions of law, or order((~~r~~)) if any mistake is discovered in the decision.

(1) Action may be taken under this section on the examiner's own motion((~~r~~)) or on a written motion filed and served by any party as required by WAC 391-08-120.

(2) Action may only be taken under this section within ((~~ten~~)) 10 days following issuance of the decision.

(3) This section ((~~shall be~~)) is inoperative after the filing of an appeal to the commission.

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

**WAC 391-45-350 Appeals.** An order issued under WAC 391-45-110(1) or 391-45-310 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission as follows:

(1) The due date for a notice of appeal ((~~shall be twenty~~)) is 20 days following the date of issuance of the order being appealed. The time for filing a notice of appeal cannot be extended.

(2) ((~~Where~~)) If an order has been appealed, the due date for a notice of cross-appeal by other parties ((~~shall be~~)) is seven days after the last date on which a notice of appeal could be timely. The time for filing a notice of cross-appeal cannot be extended.

(3) A notice of appeal or notice of cross-appeal ((~~shall~~)) must identify, in separate numbered paragraphs, the specific rulings, findings of fact, conclusions of law, or orders claimed to be in error.

(4) A party ((~~which~~)) that desires to cite or reassert a document previously filed in the matter ((~~shall~~)) must do so by reference to the document already on file((~~r~~)) and shall not file or attach another copy of the document to ((~~papers~~)) documents filed regarding an appeal.

(5) A notice of appeal or notice of cross-appeal ((~~shall~~)) must be filed ((~~at the commission's Olympia office~~)) and served as required by WAC 391-08-120((~~(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4)~~)).

(6) The due date for any appeal brief ((~~which~~)) that the party filing an appeal or cross-appeal desires to have considered by the commission ((~~shall be fourteen~~)) is 14 days following the filing of its notice of appeal or notice of cross-appeal. Any brief ((~~shall~~)) must be filed ((~~at the commission's Olympia office~~)) and served as required by WAC 391-08-120((~~(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4)~~)).

(7) The due date for any responsive brief ((~~which~~)) that a party desires to have considered by the commission ((~~shall be fourteen~~)) is 14 days following the date on which that party is served with an appeal brief. Any brief ((~~shall~~)) must be filed ((~~at the commission's Olympia office~~)) and served as required by WAC 391-08-120((~~(1), and~~

~~copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4)).~~

(8) The executive director or designee may extend the due date for an appeal brief or responsive brief. ~~((Such))~~ Requests ~~((shall))~~ to extend the due date may only be considered if made ~~((on or before))~~ by the date the brief is due~~((7))~~ and in compliance with WAC 391-08-180. Extensions of time ~~((shall))~~ may not be routine or automatic.

(9) A party filing a brief under this section must limit ~~((its))~~ the brief's total length to ~~((twenty-five))~~ 25 pages (double-spaced, 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief ~~((in order))~~ to address novel or complex issues raised by the appeal; and

(b) The commission or its designee grants ~~((such-a))~~ the motion for good cause shown.

(10) Any motion filed under ~~((this))~~ subsection ~~((shall))~~ (9) of this section tolls the due date for briefs under subsections (1) and (2) of this section until the commission or its designee responds to ~~((such))~~ the motion.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

**WAC 391-45-390 Commission action on appeals.** If an order is appealed under WAC 391-45-350, the entire record in the proceedings ~~((shall))~~ must be transmitted to the commission ~~((members))~~. The commission may request the parties to appear before it to make oral argument as to any or all of the issues in the matter. The commission shall, on the basis of the entire record ~~((and any briefs or arguments submitted))~~ transmitted to it, determine the appeal~~((7))~~ and ~~((shall))~~ issue appropriate orders.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

**WAC 391-45-410 Unfair labor practice remedies—Back pay.** If an unfair labor practice is found to have been committed, the commission or an examiner shall issue a remedial order. In calculating back pay orders, the following ~~((shall apply))~~ applies:

(1) Individuals reinstated to employment with back pay ~~((shall))~~ must have deducted from any amount due an amount equal to any earnings the employee may have received during the period of the violation in substitution for the terminated employment, calculated on a quarterly basis.

(2) Individuals reinstated to employment with back pay ~~((shall))~~ must have deducted from any amount due an amount equal to any unemployment compensation benefits the employee may have received during the period of the violation, and the employer shall provide evidence to the ~~((commission))~~ agency that the deducted amount has been repaid

to the Washington state department of employment security as a credit to the benefit record of the employee.

(3) Money amounts due (~~shall be~~) are subject to interest at the rate (~~which~~) that would accrue on a civil judgment of the Washington state courts(~~(r)~~) from the date of the violation to the date of payment.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

**WAC 391-45-430 Motion for temporary relief.** In addition to the remedies available under WAC 391-45-410, a complainant in an unfair labor practice proceeding may make a motion requesting that the commission seek appropriate temporary relief through the superior court(~~(, and)~~). All such motions ((shall)) must be processed as provided in this section.

(1) When the complaint is filed, or as soon thereafter as facts giving rise to the request for temporary relief become known, the complainant shall file and serve written notice of its intent to make a motion for temporary relief with the executive director as required by WAC 391-08-120(~~((1), and shall serve a copy of the notice on each of the other parties to the proceedings as required by WAC 391-08-120 (3) and (4))~~).

(2) Upon the filing of a notice of intent to make a motion for temporary relief, the processing of the matter (~~shall~~) must be expedited under WAC 391-45-110.

(3) After a determination that the complaint states a cause of action under WAC 391-45-110, the complainant may file and serve, as required by WAC 391-08-120, a motion for temporary relief together with affidavits as to the risk of irreparable harm and the adequacy of legal remedies.

(4) If (~~there is~~) a motion for temporary relief is filed, the due date for counter-affidavits (~~from other parties~~) is seven days following the date on which (~~that party~~) a party wishing to file counter-affidavits is served with a motion for temporary relief. (~~The~~) Counter-affidavits ((shall)) must be filed and served as required by WAC 391-08-120.

(5) The executive director shall forward all motions and affidavits to the commission, which shall determine whether an injunction (~~pendente lite~~) for temporary relief should be sought. In making its determination, the commission (~~shall~~) must adhere to the following policy:

(~~u~~)The name and authority of the public employment relations commission (~~shall~~) may not be invoked in connection with a request for temporary relief (~~prior to~~) before the completion of administrative proceedings under (~~WAC 391-45-010, et seq.~~) this chapter, unless it appears that one or more of the allegations in the complaint (~~of unfair labor practices~~) is of such a nature that, if sustained, the complainant would have no fair or adequate remedy and (~~the complainant~~) would suffer irreparable harm (~~unless~~) if the status quo (~~be preserved~~) is not returned pending the completion of administrative proceedings. (~~u~~)

(a) If the commission concludes that temporary relief should be sought, the executive director, acting in the name and on behalf of

the commission and with the assistance of the attorney general, shall petition the superior court of the county in which the main office of the employer is located or wherein the person who is alleged to be engaging in unfair labor practices resides or transacts business for an injunction (~~(pendente lite)~~) for temporary relief.

(b) Whenever temporary relief has been procured, the complaint (~~(which)~~) that has been the basis for the temporary relief (~~(shall)~~) must be heard expeditiously, and the case (~~(shall)~~) must be given priority over all other cases except cases of like character.

(c) A determination by the commission that temporary relief should not be sought at a particular time (~~(shall)~~) does not bar renewal of the motion for temporary relief following the completion of administrative proceedings in which unfair labor practice violations have been found to exist.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

**WAC 391-45-550 Collective bargaining—(~~(Policy)~~) Agency determines mandatory subjects.** It is the policy of the (~~(commission)~~) agency to promote (~~(bilateral)~~) collective bargaining negotiations between employers and the exclusive representatives of their employees. Parties are encouraged to engage in free and open exchange of proposals and positions on all matters coming into the dispute between them. (~~(The commission deems the determination as to)~~) Whether a particular subject is mandatory or nonmandatory (~~(to be)~~) is a question of law and fact to be determined by the (~~(commission, and which)~~) agency and is not subject to waiver by the parties by their action or inaction. It is the policy of the (~~(commission)~~) agency that a party which engages in collective bargaining with respect to a particular issue does not and cannot confer the status of a mandatory subject on a nonmandatory subject.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- |                |   |
|----------------|---|
| WAC 391-45-002 | Sequence and numbering of rules—Special provisions. |
| WAC 391-45-019 | Special provision—Private sector employees.         |
| WAC 391-45-394 | Special provision—Marine employees.                 |
| WAC 391-45-552 | Special provision—Educational employees.            |