

**WAC 192-500-035 Interested parties.**

(1) In all determinations, cases, and appeals adjudicated under Title [50A](#) RCW the employment security department is an "interested party."

(2) Other interested parties in paid family or medical leave determinations related to the state plan, [complaints under chapter 50A.40 RCW](#), and appeals include:

(a) The employee or former employee; and

(b) An employer or former employer of that employee that is required to provide information to the department related to the determination or appeal in question.

(3) Other interested parties in paid family or medical leave determinations related to an approved voluntary plan include:

(a) The employer or former employer; and

(b) An employee or former employee.

(4) The department may designate an employee or employer as an interested party in other determinations made by the department.

NEW SECTION

**WAC 192-570-030 What is the process for an employee to file a complaint alleging that an employer committed unlawful acts?**

(1) Any employee as defined in RCW 50A.05.010 may file a complaint with the department alleging one or more violations of RCW 50A.40.010. A complaint must be submitted on a form provided by the department, or in another format approved by the department.

(2) An employee may alternatively seek a private right of action under chapter 50A.40 RCW to recover damages described in RCW 50A.40.030. A private right of action is only available to an employee who has:

(a) Not filed a complaint with the department;

(b) Withdrawn a filed complaint under subsection (4) of this section; or

(c) Resolved a complaint under subsection (5) of this section.

(3) All complaints alleging a violation of RCW 50A.40.010, whether filed with the department or through a private right of action, must be filed within three years of the date the violation is alleged to have occurred.

(4) An employee who has filed a complaint with the department may withdraw the complaint by providing written notice to the department within ten days from the date the department acknowledges receipt of the complaint. A withdrawal of a complaint terminates the department's administrative action, including investigation of the complaint.

(5) If a resolution is reached between the employee and the employer during the course of the investigation, a statement of resolution must be signed by the employee and the employer and provided to the department. Resolution between the employee and the employer terminates the department's administrative action, including investigation of the complaint.

#### NEW SECTION

#### **WAC 192-570-040 What happens when the department receives a complaint alleging unlawful acts by an employer?**

1) Upon receipt of a complaint, the department will investigate allegations of an employer committing unlawful acts as described in RCW 50A.40.010. Unlawful acts include, but are not limited to:

(a) Denying an employee the ability to take paid family or medical leave;

(b) Requiring an employee to use paid time off, such as sick leave, prior to using any benefit under Title 50A RCW; and

(c) Incorrectly reporting hours and wages for employees resulting in a reduced benefit amount.

(2) The department may request additional information from other parties, including but not limited to, employees, employers, and potential witnesses.

(3) If the department finds a violation did not occur, the complaint will be closed and a determination will be sent to all interested parties.

(4) If the department finds one or more violations occurred, the department will determine the monetary amount of all damages the employer owes to the employee as referenced in WAC 192-570-050, and a determination will be sent to all interested parties.

(5) Under chapter 50A.05 RCW, the department may subpoena potential witnesses, compel their attendance for deposition, and require production for examination of any books, papers, correspondence, memoranda, and any other records deemed necessary as evidence in order to make a determination and assess all damages.

(6) Any aggrieved party may file an appeal of the department's determination under chapter 50A.50 RCW.

(7) The department may consider any information obtained in the investigation under this chapter as cause to initiate audits for employer files and records.

#### NEW SECTION

**WAC 192-570-050 How are damages and liquidated damages assessed by the department, awarded, and paid?**

(1) If the department finds the employer has violated RCW 50A.40.010, the department will assess applicable monetary damages referenced in RCW 50A.40.030 plus any interest accrued on the assessed damages.

(2) If the department finds that the employer has committed a violation of RCW 50A.40.010 that is willful as defined in RCW 50A.40.030(4), additional liquidated damages will be added equal to the sum of the assessed damages plus any interest accrued on the liquidated damages.

(3) Damages and liquidated damages must be paid by the employer directly to the employee.

(4) If liquidated damages are assessed, the employer must pay all damages owed directly to the employee within thirty calendar days from the day the determination is issued, unless the employer files an appeal under chapter 50A.50 RCW.

(5) The department is not responsible for collection action against an employer that defaults on the payment of all damages awarded. A collection action may be initiated by the employee against the employer by filing a warrant with the clerk of any county within the state.