

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARY FLORES,

Complainant,

vs.

WASHINGTON STATE DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES,

Respondent.

CASE 134669-U-21

DECISION 13465 - PSRA

ORDER OF DISMISSAL

Mary Flores, Complainant.

Janelle Peterson, Assistant Attorney General, Attorney General Robert W. Ferguson for the Washington State Department of Children, Youth, and Families.

On December 3, 2021, Mary Flores (complainant) filed an unfair labor practice complaint against the Washington State Department of Children, Youth, and Families (employer). The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice issued on December 14, 2021, notified Flores that a cause of action could not be found at that time. Flores was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

No further information has been filed by Flores. The Unfair Labor Practice Administrator dismisses the complaint for timeliness.

¹ At this stage of the proceedings, all of the facts alleged in the complaint or amended complaint are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaint states a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

ISSUES

The complaint alleges the following:

Employer discrimination in violation of RCW 41.80.110(1)(c) [and if so derivative interference in violation of RCW 41.80.110(1)(a)] outside the six month statute of limitations, by terminating Mary Flores for unidentified protected activity.

Employer refusal to bargain in violation of RCA 41.80.110(1)(e) [and if so derivative interference in violation of RCW 41.80.110(1)(a)] outside the six month statute of limitations, for unidentified actions.

The complaint is untimely filed and must be dismissed.

BACKGROUND

Mary Flores was employed by the Washington State Department of Children, Youth, and Families (employer) from February 5, 2008, to February 28, 2019, and was represented by the Washington Federation of State Employees (union).

In December 2012 Flores was involved in a workplace investigation. The issue was resolved, and Flores was able to return to work. On February 2, 2015, Flores received a written reprimand. Flores had a union representative involved in the matter. On November 7, 2016, Flores received another written reprimand. Flores had a union representative involved in the matter. On May 24, 2018, Flores met with the employer and a union representative to discuss alleged negative statements made by the employer representative to Flores. The employer representative denied making the statements and continued to supervise Flores. On July 26, 2018, Flores was placed on alternate assignment because of a workplace investigation. The union represented Flores in the matter.

On February 28, 2019, Flores notified the employer of her absence for the day. Later that morning the employer asked Flores to contact the area administrator at a certain time. Flores contacted the area administrator, and the area administrator terminated Flores effective that day. On an unidentified date, Flores reached out to the union for representation. The union advised Flores that

it would not move forward to arbitration on the grievance due to the history of progressive discipline. The union did represent Flores in settlement discussions with the employer. On an unidentified date, the union drafted a settlement agreement. In April 2019, Flores received the proposed settlement agreement. Flores did not agree to the settlement agreement. Although Flores had several workplace investigations and the union represented Flores in those investigations, Flores did not believe the union advocated for Flores to receive the appropriate assistance to catch up on her work.

On September 5, 2021, Flores learned about the ability to file a complaint with the Public Employment Relations Commission (PERC). Flores had not previously been told by the union or employer that she could file a complaint with PERC.

ANALYSIS

Timeliness

Applicable Legal Standard

There is a six-month statute of limitations for unfair labor practice complaints. RCW 41.80.120(1)² governs the time for filing complaints:

The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission. This power shall not be affected or impaired by any means of adjustment, mediation, or conciliation in labor disputes that have been or may hereafter be established by law.

The Commission has ruled multiple times on statute of limitations questions involving unfair labor practice complaints. The six-month statute of limitations begins to run when the complainant knows, or should have known, of the violation. *State – Corrections*, Decision 11025 (PSRA, 2011) (citing *City of Bremerton*, Decision 7739-A (PECB, 2003)).

² Although the complaint alleges violations of various statutes, this case involves a bargaining unit of state employees that fall under the jurisdiction of chapter 41.80 RCW.

The only exception to the strict enforcement of the six-month statute of limitations is when the complainant had no actual or constructive notice of the acts or events which are the basis of the charges. *City of Renton*, Decision 12563-A (PECB, 2016) (citing *City of Pasco*, Decision 4197-A (PECB, 1994)). Under the “discovery rule,” the statute of limitations does not begin to run until the complainant, using reasonable diligence, would have discovered the cause of action. *U.S. Oil & Refining Co. v. State Department of Ecology*, 96 Wn.2d 85, 92 (1981). The doctrine of equitable tolling requires the exercise of reasonable diligence on the part of the complainant. *Adult Residential Care, Inc.*, 344 NLRB 826 (2005). The party asserting equitable tolling should apply bears the burden of proof. *Nickum v. City of Bainbridge Island*, 153 Wn. App. 366, 379 (2009). To prove that the statute should be tolled, the complainant would need to show deception or concealment of the facts forming the basis of the unfair labor practice complaint and the exercise of diligence by the complainant. *City of Renton*, Decision 12563-A (citing *Millay v. Cam*, 135 Wn.2d 193, 206 (1998)).

The Commission has also ruled that the statute of limitations begins to run when an adverse employment action is communicated to employees and where the employer does not attempt to conceal its actions, even if the exclusive bargaining representative did not have actual notice of the alleged violation. *State – Corrections*, Decision 11025 (citing *City of Chehalis*, Decision 5040 (PECB, 1995)).

Application of Standard

To determine timeliness, the Commission looks at the dates of events in the complaint in relation to the filing date. The complaint was filed on December 3, 2021. In order to be timely, the complainant would have needed to describe events that took place on or after June 3, 2021. According to the complaint, the complainant’s termination occurred on February 28, 2019, and all other events occurred prior to that date. The complainant was aware of the termination on February 28, 2019. The complainant explains that she did not learn of PERC and its services until recently. Learning of PERC’s services does not create a new violation and a new filing timeline.

Unfortunately, chapter 41.80 RCW does not allow for the statute of limitations to be extended because an individual or organization did not know about their statutory rights.

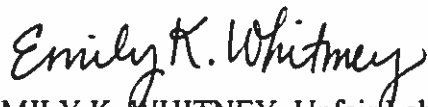
The allegations arising out of interactions between Flores and the employer concerning the termination and related grievance occurred more than six months before the complaint was filed with the Commission. The allegations of the complaint concerning violations of chapter 41.80 RCW are not timely filed. Flores was notified of the deficiency and provided an opportunity to correct the deficiency. Flores did not file an amended complaint or withdraw the complaint. Thus the complaint must be dismissed.

ORDER

The complaint charging unfair labor practices in the above-captioned matter is DISMISSED for timeliness.

ISSUED at Olympia, Washington, this 13th day of January, 2022.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



EMILY K. WHITNEY, Unfair Labor Practice Administrator

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.



RECORD OF SERVICE

ISSUED ON 01/13/2022

DECISION 13465 - PSRA has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: DEBBIE BATES

CASE 134669-U-21

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