

Title 162 WAC

HUMAN RIGHTS COMMISSION

(Formerly: Discrimination, Board Against)

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162-18-050	When programs may be used. [Order 16, § 162-18-050, filed 5/22/74; Order 9, § 162-18-050, filed 9/23/71; Order 8, § 162-18-050, filed 6/22/70.] Repealed by 00-01-177, filed 12/21/99, effective 1/21/00. Statutory Authority: RCW 49.60.120(3).
162-18-060	Termination of programs. [Order 9, § 162-18-060, filed 9/23/71; Order 8, § 162-18-060, filed 6/22/70.] Repealed by 00-01-177, filed 12/21/99, effective 1/21/00. Statutory Authority: RCW 49.60.120(3).
162-18-070	Voluntary programs recommended. [Order 16, § 162-18-070, filed 5/22/74; Order 9, § 162-18-070, filed 9/23/71; Order 8, § 162-18-070, filed 6/22/70.] Repealed by 00-01-177, filed 12/21/99, effective 1/21/00. Statutory Authority: RCW 49.60.120(3).

162-18-080

Commission approval of voluntary programs. [Order 9, § 162-18-080, filed 9/23/71; Order 8, § 162-18-080, filed 6/22/70.] Repealed by 00-01-177, filed 12/21/99, effective 1/21/00. Statutory Authority: RCW 49.60.120(3).

162-18-090

Job orders specifying race, creed, color, national origin, sex, marital status, handicap or age. [Order 16, § 162-18-090, filed 5/22/74; Order 9, § 162-18-090, filed 9/23/71; Order 8, § 162-18-090, filed 6/22/70.] Repealed by 00-01-177, filed 12/21/99, effective 1/21/00. Statutory Authority: RCW 49.60.120(3).

162-18-100

Construction—Relation to preemployment inquiry guide. [Order 16, § 162-18-100, filed 5/22/74; Order 9, § 162-18-100, filed 9/23/71; Order 8, § 162-18-100, filed 6/22/70.] Repealed by 00-01-177, filed 12/21/99, effective 1/21/00. Statutory Authority: RCW 49.60.120(3).

Chapter 162-24

POLICY STATEMENTS

162-24-010

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162-24-020

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162-24-030

De facto school segregation. [Filed 4/29/66.] Repealed by Order 9, filed 9/23/71.

Chapter 162-28

POLICY ON EXCELLENCE IN EDUCATION

162-28-010

Purpose. [Rule (part), filed 6/15/67.] Repealed by Order 9, filed 9/23/71.

162-28-020

Definitions—Policy objectives. [Rule (part), filed 6/15/67.] Repealed by Order 9, filed 9/23/71.

Reviser's note: A new chapter 162-28 WAC was filed in 1974 with the caption Public Schools—Equal Education—Equal Rights—National Origin Minority Group Children.

Chapter 162-04 WAC

GENERAL PROVISIONS

WAC

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WAC 162-04-010 Definitions. In general, words are used with this title in the same meaning as they are used in the law against discrimination, chapter 49.60 RCW. See, in particular, RCW 49.60.040. The following words are used with the meaning given, unless the context clearly indicates another meaning.

"Administrative Procedure Act" means chapter 34.05 RCW.

"Age" means between forty and seventy years of age.

"Chairperson" means the chairperson of the commission. The word "chairperson" is used in the place of "chairman" where that word appears in the law against discrimination.

The chairperson of the commission is the member of the commission designated as chairman by the governor under RCW 49.60.050.

"Civil rule" or "CR" means the superior court civil rules as now or hereafter amended.

"Clerk" means the clerk of the commission appointed pursuant to WAC 162-04-026.

"Commission" means the Washington state human rights commission.

"Complainant" means a person who has filed a complaint under authority of RCW 49.60.230.

"Complaint" means a formal complaint filed with the commission pursuant to RCW 49.60.230 and these rules.

"Executive director" means the executive director of the commission appointed pursuant to RCW 49.60.120(1).

"Handicap" is short for the phrase "the presence of any sensory, mental, or physical handicap" used in the law against discrimination, and means the full phrase. See WAC 162-22-040.

"Law against discrimination" means chapter 49.60 RCW.

"Marital status" refers to the legal status of being married, single, divorced, or widowed.

"Member" means a member of the commission, except where the context indicates another meaning is intended.

"Protected class" means the persons who are members of (or who are treated as members of) one of the groups against whom discrimination is declared to be an unfair practice by the law against discrimination. Protected classes include persons between the ages of forty and seventy, persons of any race, creed, color, national origin, sex, or marital status, and persons who are handicapped.

"Respondent" means one against whom a complaint has been filed under authority of RCW 49.60.230.

[Statutory Authority: RCW 49.60.120(3). 89-23-019, § 162-04-010, filed 11/7/89, effective 12/8/89; Order 37, § 162-04-010, filed 10/27/77; Order 30, § 162-04-010, filed 11/23/76; Order 23, § 162-04-010, filed 7/21/75; Order 16, § 162-04-010, filed 5/22/74; Order 9, § 162-04-010, filed 9/23/71; Order 7 (part), § 162-04-010, filed 1/19/68.]

WAC 162-04-020 Organization and operations. (1)

Membership. The Washington state human rights commission consists of five members, one of whom is designated as chairperson, appointed by the governor for staggered five-year terms.

(2) **Meetings.** The commission holds regular meetings commencing at 9:30 a.m. on the fourth Thursday of each month, except for November and December, at various places throughout the state. No regular meeting is held in August. The place and dates of the meetings can be learned by writing or calling the commission clerk at the Olympia office at (360) 753-6770.

(3) **Quorum.** Three members constitute a quorum. The affirmative vote of a majority of those present is action of the commission when there is a quorum at a meeting.

(4) **Executive director.** The executive director is the commission's chief executive. He or she is responsible for carrying out the commission's programs and directing the commission's staff.

(5) **Authority and duty.** It is the commission's duty to administer the law against discrimination, chapter 49.60

RCW, which has as its purpose the elimination and prevention of discrimination because of race, creed, color, national origin, sex, marital status, age or handicap. The commission has the authority and duty to, among other things:

(a) Study and report on all things having an impact on human rights;

(b) Make recommendations to the governor, legislature, and agencies of state and local government;

(c) Create advisory agencies and conciliation councils;

(d) In the areas of employment, public accommodations, real property transactions, credit transactions and insurance transactions, initiate, receive and process complaints of unfair practices, hold hearings, issue orders, and seek enforcement of the orders in court.

(6) **Offices.** The commission's principal office is 402 Evergreen Plaza Building, Seventh and Capitol Way, Olympia, Washington 98504-3341. Branch offices are maintained at the following locations:

Seattle:	1516 Second Avenue Suite 400 Seattle, Washington 98101
Spokane:	W. 905 Riverside Ave. Suite 416 Spokane, Washington 99201-1099
Tacoma:	Suite 110 Hess Building 901 Tacoma Avenue South Tacoma, Washington 98402-2101
Yakima:	Washington Mutual Bldg. Suite 441 32 No. Third St. Yakima, Washington 98901-2730

(7) **Where to obtain information.** Information on the application of the law against discrimination and related material is available at all offices of the commission. Information that branch offices are not able to supply may be obtained from the clerk at the Olympia office.

(8) **Where to make submissions or requests.** In circumstances where no special provision is made by rule in this Title 162 WAC, submissions or requests to the commission may be directed to the executive director at either the Olympia or Seattle office.

[Statutory Authority: RCW 49.60.120(3). 89-23-019, § 162-04-020, filed 11/7/89, effective 12/8/89; Order 37, § 162-04-020, filed 10/27/77; Order 30, § 162-04-020, filed 11/23/76; Order 16, § 162-04-020, filed 5/22/74; Order 10, § 162-04-020, filed 11/5/71; Order 9, § 162-04-020, filed 9/23/71; Order 7 (part), § 162-04-020, filed 1/19/68.]

WAC 162-04-024 Chairperson pro tem. (1) The commission may designate one of its members as chairperson pro tem for a particular time or for an indefinite time, to serve at the will of the commission. If the commission has not designated a chairperson pro tem and the chairperson is absent from the state, ill, or otherwise unable to carry out the duties of chairperson, then the most senior member of the commission other than the chairperson shall serve as chairperson pro tem until the chairperson is again able to carry out the duties of chairperson.

(2) The chairperson pro tem may exercise all of the powers of the chairperson during the time when the chairperson is

absent, ill, or otherwise unable to carry out the duties of chairperson.

[Statutory Authority: RCW 42.18.250, 49.60.120, and chapter 49.60 RCW. 78-02-065 (Order 39), § 162-04-024, filed 1/23/78. Formerly WAC 162-08-024.]

WAC 162-04-026 Clerk. (1) **Designation.** The executive director with the advice and consent of the chairperson shall designate a staff member to serve as clerk of the commission.

(2) **Qualifications.** The person designated as clerk shall not have any duties involving the investigation or conciliation of complaints or the prosecution of administrative hearings. If the clerk has been actively involved in the investigation or conciliation of a case or the prosecution of an administrative hearing in any capacity other than as clerk, he or she shall not thereafter serve as clerk for that case, and a substitute clerk shall be designated. The purpose of this subsection is to ensure compliance with chapter 34.05 RCW, restricting consultation with hearing officers, and RCW 49.60.250(2).

(3) **Duties.** The clerk shall have the duty and power to:

(a) Attend commission meetings and provide aid and services to the chairperson and commissioners as requested by the executive director.

(b) Assist the chairperson of the commission in requesting appointment of an administrative law judge, issuing notices of hearing and carrying out all other duties of the chairperson under RCW 49.60.250.

(c) Keep custody of the minutes of commission meetings, declaratory rulings, rule-making orders, and the commission's order register, and other records of action by the commissioners.

(d) Keep custody of the file of complaints after they are referred to the commission for action or report of no reasonable cause at a meeting, or upon certification of the file to the chairperson under RCW 49.60.250(1). The clerk shall deliver the investigator's file of cases ready for hearing to the commission's chief counsel at the onset of the contested case process and shall obtain return of the file when litigation is completed.

(e) Respond to requests for information on actions by the commissioners or administrative law judge and furnish copies of records and files in the clerk's possession pursuant to WAC 162-04-030, Public access to records.

(f) Have custody of the commission's seal.

(g) Certify copies of commission records under the commission's seal.

(h) Serve as clerk of administrative hearings. In this capacity, the clerk, subject to the direction of the administrative law judge, shall keep custody of the official file of the administrative hearing, date stamp and file all papers filed in the proceeding when the hearing is not convened, serve all notices and papers required to be served by the administrative law judge, make the physical arrangements for hearings, provide for making and preserving the record of hearings, respond to inquiries about administrative practices and procedures, and generally do all things necessary and appropriate for the clerk of a judicial body to do.

(i) Serve as personal advisor to the chairperson of the commission and administrative law judge on matters relating to the hearing process.

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(j) Perform such other duties as the chairperson of the commission or the administrative law judge shall assign from time to time, consistent with their duties.

(4) Upon direction from the chairperson of the commission, the administrative law judge, or the executive director, whichever is the appropriate authority, the clerk may enter upon his or her own signature, procedural orders, notices of hearing, orders appointing administrative law judges, notices of rule making, and similar items.

(5) **Independence.** The clerk when assisting the chairperson of the commission to carry out the chairperson's duties under RCW 49.60.250 and when serving as clerk of an administrative hearing shall be free from supervision of the executive director and other staff members of the commission to the extent necessary to ensure that the chairperson of the commission and the administrative law judges are free from influence from staff persons having a prosecutorial function.

[Statutory Authority: RCW 49.60.120(3). 89-23-019, § 162-04-026, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 42.18.250, 49.60.120, and chapter 49.60 RCW. 78-02-065 (Order 39), § 162-04-026, filed 1/23/78. Formerly WAC 162-08-026.]

WAC 162-04-030 Public access to records. (1) **Records available.**

(a) **General rule and exceptions.** All public records as defined by chapter 42.17 RCW (this includes photographs, tapes, and other materials as well as written documents) prepared, owned, used or retained by the Washington state human rights commission shall be available for public inspection and copying during normal office hours in the office where they are located, except for the following:

(i) Personal information in files maintained for the commission's employees or members to the extent that disclosure would violate their right to privacy.

(ii) The file, except for the complaint, compiled in investigating a complaint filed under RCW 49.60.230, during the time until a finding as provided by RCW 49.60.240 or settlement is adopted by the commission or the case is referred to the attorney general for preparation for public hearing. Specific records in the file may be kept sealed and not made available after this time if the executive director has issued a protective order which states the general nature of the records and the reason why they are not open to inspection, and the records are exempt from public inspection under RCW 42.17.310.

(iii) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended, except that a specific record shall not be exempt when publicly cited by the commission or another agency in connection with any agency action.

(iv) Records which are relevant to a controversy to which the commission is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(v) Any other information which is exempt from public inspection under RCW 42.17.310 and where disclosure would violate personal privacy or vital government interest.

(b) **Conditions which override the exceptions.** Even where it comes within one of the above exceptions to public

access, a particular record shall nevertheless be available for inspection and copying if:

- (i) Its disclosure would not violate personal privacy or impair a vital governmental interest;
- (ii) The information which would violate personal privacy or impair a vital governmental interest can be deleted from the record; or
- (iii) The record contains statistical information not descriptive of any readily identifiable person or persons.

(2) **Copying.** Persons may copy any record which may be inspected. In offices where a copying machine is kept by the commission, machine copies shall be made available to a person on request. No charge shall be made for up to ten sheets in connection with a single request, but ten cents a sheet shall be charged for each sheet beyond ten. Copying facilities may be denied when making them available would unreasonably disrupt the operation of the office, because of the volume of copying or other valid reasons. The absence or unavailability of agency copying facilities shall be given weight in determining whether there are special circumstances justifying removal of a record from the office as provided in subsection (3) of this section.

(3) **Protection of records.** No record shall be allowed to be removed from a commission office by anyone other than a staff member or other officially authorized person unless special circumstances make the removal necessary or desirable, and protection of the record is reasonably assured. Before such removal is allowed a receipt itemizing the contents of the record and giving the address and telephone number of the place where it will be kept shall be signed by the person taking the record and approved in writing by the person in charge of the office or division responsible for the record.

(4) **Personnel records.** Requests for inspection of materials in the personnel files of commission employees or members shall be referred to the executive director, or in his or her absence, the deputy director, and promptly acted upon by him or her. When inspection is denied, it shall be the responsibility of the person making that decision to issue within twenty-four hours the written statement required by RCW 42.17.310 (4) and 42.17.320 identifying RCW 42.17.310 (1)(b) as the exemption authorizing withholding of the record, and explaining how inspection of the record would violate the employee's or commissioner's right of privacy. The decision of the executive director or deputy director shall be final agency action for purposes of judicial review.

(5) **Other records; review of denial.** Requests for inspection of records not in the personnel files of commission employees or members (that is, not covered by subsection (4) of this section) shall be acted upon immediately by the staff person who has charge of the record at the time the request is made. When that person believes that a request to inspect a record must be denied, he or she shall immediately contact his or her supervisor by telephone and obtain concurrence from the supervisor before denying inspection. The supervisor shall then issue, or cause to be issued, the written statement required by RCW 42.17.310(4) and chapter 42.17 RCW identifying the specific exemption authorizing the withholding of the record (or part) and briefly explaining how the exemption applies to the record withheld. A copy of the state-

ment shall be immediately delivered or mailed to the deputy director.

(6) **Interpretation.** It is the policy of the Washington state human rights commission to carry out the spirit as well as the letter of chapter 42.17 RCW, and thus to afford the public maximum access to its records, subject to necessary respect for the right of individuals to privacy and the need for efficient administration of government. This regulation shall be interpreted in light of that spirit and this policy.

[Statutory Authority: RCW 49.60.120(3), 89-23-019, §162-04-030, filed 11/7/89, effective 12/8/89; Order 13, §162-04-030, filed 2/16/73.]

WAC 162-04-035 Protective orders to seal produced documents. (1) **May be requested.** Any person who is asked or compelled to produce records may request a protective order to have a particular document or part of document that has been produced or will be produced kept confidential for official use only, without public access.

(2) **To whom addressed.** Prior to notice of hearing, a request for a protective order shall be made to the chairperson of the commission pursuant to the procedures established in WAC 162-08-020. After notice of hearing, a request for a protective order shall be made by motion to the administrative law judge, as provided in WAC 162-08-263(3).

(3) **Form of request.** Requests for a protective order shall be in written affidavit form and shall state the requestor's reasons why a protective order should be issued for the documents covered.

(4) **Grounds for issuance.** A protective order may be made only upon findings that:

(a) The document or part of document is exempt from public disclosure under RCW 42.17.260 and 42.17.310 (Initiative 276) and the commission's implementing regulation, WAC 162-04-030, and;

(b) The requestor has shown legitimate need for confidentiality of the document or part of document.

(5) **Form of order.** The protective order shall be in writing and shall bear the caption of the case, date of entry of the order, and signature of the executive director or other authorized staff person or the administrative law judge. The text of the order shall contain:

(a) A description in general terms of each document covered by the order. *Example:* "Report dated of Dr. to respondent on results of physical examination of the complainant, two pages."

(b) A statement of the specific exemption from the disclosure provisions of chapter 42.17 RCW authorizing the withholding of the record or part of record and a brief explanation of how the exemption applies to what is withheld. See RCW 42.17.310(4).

(c) A statement of why there is need for confidentiality of the document or part of document.

(6) **Filing of order.** The protective order shall be affixed to a sealed envelope containing the protected document and both shall be kept in the case file, or, alternatively, the original order and protected document may be kept at another place and a copy of the protective order placed in the case file along with a notation as to where the original order and protected document are kept.

(7) **Effect of order.** Except as may be provided in the protective order, documents covered by the protective order

shall not be revealed to anyone other than commissioners, members of the commission's staff, and the commission's legal counsel for official purposes and shall not become public when the rest of the file becomes public as provided in WAC 162-04-030 (1)(a)(ii), but:

(a) Nothing shall prevent the use of a protected document in an administrative hearing or court case, including admission of the document into the public record of the hearing or case, and;

(b) Nothing herein is intended to prevent a court from ordering production of a protected document under RCW 42.17.310(3) or other authority.

(8) **Other protective orders.** Issuance of other kinds of protective orders concerning discovery is governed by WAC 162-08-096.

[Statutory Authority: RCW 49.60.120(3). 89-23-019, § 162-04-035, filed 11/7/89, effective 12/8/89.]

WAC 162-04-040 State Environmental Policy Act.

Pursuant to RCW 43.21C.120 and the SEPA guidelines, chapter 197-11 WAC, the commission has reviewed its authorized activities and has found them all to be exempt under the provisions of chapter 197-11 WAC.

[Statutory Authority: RCW 49.60.120(3). 89-23-019, § 162-04-040, filed 11/7/89, effective 12/8/89; Order 27, § 162-04-040, filed 5/21/76.]

WAC 162-04-050 Ethics and conflicts of interest. (1)

Purpose. This section is intended to guide the commission's staff and commissioners on official ethics, and to carry out the policies and purposes of chapter 42.18 RCW, the Executive Conflict of Interest Act, as provided in RCW 42.18.250.

(2) **General rule.** It is the duty of all employees of the commission and of all commissioners to maintain the highest standard of ethics in all official actions, and specifically to comply strictly with the requirements of the Executive Conflict of Interest Act, chapter 42.18 RCW.

(3) **Specific matters.** The following applications of the rule are for guidance on common problems and are to serve as examples for extension by analogy; they are not a complete catalog of applications of the general rule:

(a) **Dealing with parties.** No commission employee who has duties with respect to a complaint pending before the commission shall deal in any way with the complainant or respondent, on a business or personal basis, except for routine transactions done on the same basis as other members of the public transact business with the party. An employee may continue to deal privately with a public utility or continue to shop at a party's store, if the employee deals with appropriate customer service representatives or salespersons and does not identify his or her official position or mix official business into the transaction. In circumstances unlike these, employees shall either not deal with parties or shall report the matter to the employee's supervisor, who shall relieve the employee of responsibility for the case. Commissioners who have non-routine dealings with parties shall abstain from voting or other action on the matter.

(b) **Accepting things of value.** No commission employee or commissioner shall accept anything of economic value from a party to a complaint before the commission, or from any other person who is dealing with the commission, except under circumstances permitted in RCW

42.18.190. Permitting another person to pay for an employee's lunch is within the prohibition of this paragraph, but accepting a cup of coffee under normal office hospitality is not. If the coffee is ordered in a restaurant the prohibition of this section applies.

(c) **Honoraria for speaking.** If the speaking engagement is within the course of a person's official duties, acceptance of an honorarium or other compensation is prohibited. RCW 42.18.190. Payment of travel expenses and living expenses while traveling, or reimbursement of the commission for these expenses, is not prohibited, if the trip and payment arrangement have been approved by the employee's supervisor. It is not necessary for a person who is on the program to pay for a meal that is served, or for the price of admission to the seminar, where the custom is to not charge persons on the program for the meal at which they are speaking, or for admission to the seminar. The prohibitions of this subparagraph do not apply to commissioners, because speaking outside of commission meetings is not a duty of commissioners.

(d) **Job offers.** No employee of the commission shall make or continue an application or request for employment with a party to a case or other matter before the commission while the employee has official duties with respect to that case or matter. If any employee is assigned a case or matter while he or she has an application pending for employment with a party to the case or matter, the employee shall either withdraw the application or report the facts to his or her supervisor. The executive director shall determine whether to relieve the employee from further responsibility for the case or matter. If any employee receives and considers a job offer from a party to a case or other matter pending before the commission with which the employee has official responsibilities, the employee shall report the facts to his or her supervisor and the supervisor shall relieve the employee from any further responsibility for the case or matter.

(4) **Indirect transactions.** These rules and the Executive Conflict of Interest Act apply to conflicts of interest and ethical problems whether they come directly or indirectly through members of a person's family, through corporations of which the employee is an officer, director, trustee, partner, or employee, or through other means.

[Statutory Authority: RCW 49.60.120(3). 89-23-019, § 162-04-050, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 42.18.250, 49.60.120, and chapter 49.60 RCW. 78-02-065 (Order 39), § 162-04-050, filed 1/23/78; Order 32, § 162-04-050, filed 3/21/77. Formerly WAC 162-08-050.]

WAC 162-04-060 Executive director may delegate duties. Unless a statute or rule provides otherwise, all duties and powers assigned to the executive director may be delegated by the executive director to other staff persons of the commission, with the executive director remaining responsible. The general practice of the commissioners is to assign all staff duties and powers to the executive director, with the understanding that the executive director will allocate and reallocate the tasks among the staff and see that the tasks are performed.

[Statutory Authority: RCW 49.60.120(3). 89-23-019, § 162-04-060, filed 11/7/89, effective 12/8/89; Order 35, § 162-04-060, filed 9/2/77.]

WAC 162-04-070 Executive director may issue opinions. (1) **Authorization.** The executive director may issue written opinions to persons who request advice as to the application of the law against discrimination or rules or practices of the commission. The opinions shall not be inconsistent with the statute, or the regulations or policies of the commission.

(2) **Review by commission.** The executive director shall send a copy of each opinion to each commissioner before, or promptly after, it is sent to the person requesting it. Any commissioner may have the question of commission approval, disapproval, or revision of an opinion put on the agenda of a commission meeting, and the commission shall then approve, disapprove, or revise the opinion.

(3) **Revocation or revision.** An opinion of the executive director may be revoked or revised at any time by the executive director, or by action of the commissioners at a meeting. The revocation or revision shall not be effective as to the person who requested the opinion until that person has notice of the revocation or revision.

(4) **Supersedure.** An opinion of the executive director is automatically superseded by any material change in the applicable statutes, regulations, or case law. Notice to the person who requested the opinion is not necessary for supersedure under this paragraph.

(5) **Reliance.** When any person has relied in good faith on an opinion of the executive director, the commission will not thereafter assert a contrary position against that person, unless the opinion is revoked or revised, or is superseded by a material change in the applicable statutes, regulations, or case law. This paragraph covers persons other than the person who requested the opinion, if the persons have justifiably relied on the opinion.

(6) **Subdelegation.** The executive director may authorize members of the commission's staff or the commission's legal counsel to issue opinions in the name of the executive director, subject to the supervision of the executive director, and subject to all of the requirements of this section.

(7) **Authentication.** Nothing shall be an opinion of the executive director for purposes of this section unless it is designated as such in its caption or in its text.

[Statutory Authority: RCW 49.60.120(3). 89-23-019, § 162-04-070, filed 11/7/89, effective 12/8/89; Order 35, § 162-04-070, filed 9/2/77.]

Chapter 162-06 WAC RULES OF GENERAL APPLICATION

WAC

162-06-010	Scope of chapter.
162-06-030	Rulings granting exceptions to rules.

WAC 162-06-010 Scope of chapter. This chapter contains rules that apply generally to all of the law against discrimination and all of the commission's functions, including the matters and functions treated elsewhere in this title.

[Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-06-010, filed 9/22/82.]

WAC 162-06-030 Rulings granting exceptions to rules. (1) **Reservation of power.** The commission reserves the power to grant exceptions in specific instances to any rule

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adopted by the commission (that is, to any rule in Title 162 WAC).

(2) **Authority to act.** An exception to a rule may be granted only by action of the commissioners.

(3) **Request from person affected.** Any person may request an exception to a commission rule. The request must be in writing and shall be filed with the clerk.

(4) **Contents of request for exception.** A request for exception shall contain the following:

(a) Name of the person making the request;
(b) Identification of the rule from which the exception is requested;

(c) The exception requested;

(d) A statement of the reasons why the exception is requested;

(e) A statement as to whether any person other than the requesting person will be affected by the exception, and, if so, the name and address of each person. If a class of persons is affected, it will be sufficient to name a representative or representatives of the class;

(f) A statement as to whether or not the subject of the request is included in a lawsuit or administrative complaint, and, if so, an identification of the case or cases;

(g) Any other information the requestor wishes to include.

(5) **Additional information.** The requestor shall provide any additional information with respect to the request that the requestor is asked to provide by the commissioners or staff.

(6) **Exception on own motion or at request of staff.** The commission may make an exception to the application of its rules on its own motion or at the request of its staff when the commissioners are acting on a case, a declaratory ruling, or on any other matter.

(7) **Nature of proceeding.** The commissioners will ordinarily act on the basis of the information in the written request and any additional information reported by its staff. The commission may ask a representative of the requestor to appear and make further explanation. There will be no hearing, and the procedure on a request for an exception is not a "contested case" for purposes of the Administrative Procedure Act, chapter 34.04 RCW. Persons desiring a formal ruling with right of appeal may petition for a declaratory ruling under RCW 34.04.080 and WAC 162-08-700.

(8) **Procedure when complaint is pending.** If the question of an exception arises or is pending while a complaint filed under RCW 49.60.230 is pending, the request for exception will not be considered initially by the commissioners but will be processed by the staff in the course of its work on the complaint. The staff will include a recommended disposition of an exception (whether requested by an interested person or the staff itself) in its recommended finding made under RCW 49.60.240. The recommendation on an exception will be brought especially to the attention of the commissioners at the time the finding comes before the commissioners for action. When the recommendation is in a finding of "reasonable cause," it shall be brought to the commissioners for ruling before the staff commences its endeavors to eliminate the unfair practice by conference, conciliation, and persuasion.

(9) **Grounds for exception.** The commission will grant an exception when in its judgment the reasons for the exception outweigh the adverse effect that the exception will have

on the purposes of the law against discrimination or the administration of the law against discrimination. Reasons for an exception include:

(a) Compliance with the rule would cause unreasonable hardship;

(b) The special circumstances of the requestor are such that literal application of the rule will not carry out the purposes of the law against discrimination, or may work counter to the purposes of the law against discrimination;

(c) The purposes of the law against discrimination will be equally well served and the requestor will be benefitted by application of the rule in a modified form;

(d) Conflict with the purpose or policy of other law.

(10) **Ruling on request for exception.** The commission will grant or deny a request for an exception as a matter of judgment. The commission may decline to rule on a request. A grant of an exception may be subject to conditions set out in the ruling, and it may be limited in time. The ruling will be in writing and copies will be sent to the requesting person and to any other persons who are named in the request as interested persons or who ask for a copy of the ruling.

(11) **Revocation or revision.** A ruling granting an exception may be revoked or revised at any time by the commissioners. The revocation or revision shall take effect when written notice of the revocation or revision is delivered to the requestor, or three days after it is mailed to the last known address of the requestor, whichever is earlier.

[Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-06-030, filed 9/22/82.]

Chapter 162-08 WAC PRACTICE AND PROCEDURE

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

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| 162-08-003 | Definitions. [Rules (part), filed 3/23/62; Rule 1, filed 10/18/61.] Repealed by Order 7, filed 1/19/68. |
| 162-08-004 | Complaint. [Rules (part), filed 3/23/62; Rule 2, filed 10/18/61.] Repealed by Order 7, filed 1/19/68. |
| 162-08-005 | Investigation and conciliation. [Rules (part), filed 3/23/62; Rule 2 (part), filed 10/18/61.] Repealed by Order 7, filed 1/19/68. |
| 162-08-006 | Reconsideration by the board. [Rules (part), filed 3/23/62; Rule 3 (part) and Rule 10, filed 10/18/61.] Repealed by Order 7, filed 1/19/68. |
| 162-08-007 | Hearings. [Rules (part), filed 3/23/62; Rule 5 (part), filed 10/18/61.] Repealed by Order 7, filed 1/19/68. |
| 162-08-008 | Motions—Objections. [Rules (part), filed 3/23/62; Rule 5 (part), filed 10/18/61.] Repealed by Order 7, filed 1/19/68. |
| 162-08-009 | Record. [Rules (part), filed 3/23/62; Rule 6, filed 10/18/61.] Repealed by Order 7, filed 1/19/68. |
| 162-08-010 | Appearance at hearing. [Rules (part), filed 3/23/62; Rules (3c) and (5d), filed 10/18/61.] Repealed by Order 7, filed 1/19/68. |
| 162-08-024 | Chairperson pro tem. [Order 30, § 162-04-024 (codified as WAC 162-08-024), filed 11/23/76.] Repealed by 78-02-065 (Order 39), filed 1/23/78. Statutory Authority: RCW 42.18.250, 49.60.120 and chapter 49.60 RCW. Later promulgation, see WAC 162-04-024. |
| 162-08-026 | Clerk. [Order 30, § 162-04-026 (codified as WAC 162-08-026), filed 11/23/76.] Repealed by 78-02-065 (Order 39), filed 1/23/78. Statutory Authority: RCW 42.18- |

162-08-050	250, 49.60.120 and chapter 49.60 RCW. Later promulgation, see WAC 162-04-026. Ethics and conflicts of interest. [Order 30, § 162-04-050 (codified as WAC 162-08-050), filed 11/23/76.] Repealed by 78-02-065 (Order 39), filed 1/23/78. Statutory Authority: RCW 42.18.250, 49.60.120 and chapter 49.60 RCW. Later promulgation, see WAC 162-04-050.	162-08-278 9/2/77.] Repealed by 89-23-020, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 49.60.120(3). Powers and procedures of hearing tribunal. [Order 35, § 162-08-278, filed 9/2/77.] Repealed by 89-23-020, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 49.60.120(3).
162-08-070	Computation of time. [Rules (part), filed 3/23/62.] Repealed by Order 7, filed 1/19/68.	162-08-281 Consolidation of cases. [Order 7, § 162-08-281, filed 1/19/68.] Repealed by Order 35, filed 9/2/77.
162-08-090	Service of process—By whom served. [Rules (part), filed 3/23/62; Rule (2g), filed 10/18/61.] Repealed by Order 7, filed 1/19/68.	162-08-284 No counterclaims or cross-claims. [Order 35, § 162-08-284, filed 9/2/77.] Repealed by 89-23-020, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 49.60.120(3).
162-08-095	Service of process—Subpoenas. [Rules (part), filed 3/23/62; Rule 7 (part), filed 10/18/61.] Repealed by Order 7, filed 1/19/68.	162-08-295 Consultation on issues. [Order 35, § 162-08-295, filed 9/2/77.] Repealed by 89-23-020, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 49.60.120(3).
162-08-108	Reconsideration of terms of agreement. [Order 35, § 162-08-108, filed 9/2/77.] Repealed by 89-23-020, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 49.60.120(3).	162-08-296 Default by respondent. [Order 35, § 162-08-296, filed 9/2/77.] Repealed by 89-23-020, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 49.60.120(3).
162-08-111	Who may issue subpoenas. [Order 35, § 162-08-111, filed 9/2/77; Order 7, § 162-08-111, filed 1/19/68.] Repealed by 89-23-020, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 49.60.120(3).	162-08-321 Omitted matters. [Order 7, § 162-08-321, filed 1/19/68.] Repealed by Order 35, filed 9/2/77.
162-08-114	Service of subpoenas. [Order 35, § 162-08-114, filed 9/2/77.] Repealed by 89-23-020, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 49.60.120(3).	162-08-370 Official notice—Matters of law. [Rules (part), filed 3/23/62.] Repealed by Order 7, filed 1/19/68.
162-08-116	Witness fees and allowances. [Order 35, § 162-08-116, filed 9/2/77.] Repealed by 89-23-020, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 49.60.120(3).	162-08-380 Official notice—Material facts. [Rules (part), filed 3/23/62.] Repealed by Order 7, filed 1/19/68.
162-08-121	Motions relating to subpoenas. [Order 35, § 162-08-121, filed 9/2/77; Order 7, § 162-08-121, filed 1/19/68.] Repealed by 89-23-020, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 49.60.120(3).	162-08-400 Stipulations of fact admissible. [Rules (part), filed 3/23/62.] Repealed by Order 7, filed 1/19/68.
162-08-131	Discovery. [Order 35, § 162-08-131, filed 9/2/77; Order 7, § 162-08-131, filed 1/19/68.] Repealed by 89-23-020, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 49.60.120(3).	162-08-412 No discussion of proceedings until decision. [Rules (part), filed 3/23/62; Rule 11, filed 10/18/61.] Repealed by Order 7, filed 1/19/68.
162-08-135	Depositions. [Order 35, § 162-08-135, filed 9/2/77.] Repealed by 89-23-020, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 49.60.120(3).	162-08-415 Orders. [Rules (part), filed 3/23/62; Rule 9, filed 10/18/61.] Repealed by Order 7, filed 1/19/68.
162-08-141	Interrogatories to parties. [Order 35, § 162-08-141, filed 9/2/77; Order 7, § 162-08-141, filed 1/19/68.] Repealed by 89-23-020, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 49.60.120(3).	162-08-420 Definition of issues before hearing. [Rules (part), filed 3/23/62.] Repealed by Order 7, filed 1/19/68.
162-08-151	Production of documents and things and entry upon land for inspection and other purposes. [Order 35, § 162-08-151, filed 9/2/77; Order 7, § 162-08-151, filed 1/19/68.] Repealed by 89-23-020, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 49.60.120(3).	162-08-430 Prehearing conference rule. [Rules (part), filed 3/23/62.] Repealed by Order 7, filed 1/19/68.
162-08-155	Physical and mental examination of persons. [Order 35, § 162-08-155, filed 9/2/77.] Repealed by 89-23-020, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 49.60.120(3).	162-08-450 Submission of documentary evidence in advance. [Rules (part), filed 3/23/62.] Repealed by Order 7, filed 1/19/68.
162-08-161	Request for admission. [Order 35, § 162-08-161, filed 9/2/77; Order 7, § 162-08-161, filed 1/19/68.] Repealed by 89-23-020, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 49.60.120(3).	162-08-460 Excerpts from documentary evidence to be introduced at hearing. [Rules (part), filed 3/23/62.] Repealed by Order 7, filed 1/19/68.
162-08-171	Failure to make discovery—Sanctions. [Order 35, § 162-08-171, filed 9/2/77; Order 7, § 162-08-171, filed 1/19/68.] Repealed by 89-23-020, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 49.60.120(3).	162-08-520 Rules of evidence and procedure. [Rules (part), filed 3/23/62; Rule (52), filed 10/18/61.] Repealed by Order 7, filed 1/19/68.
162-08-180	Service of process—Payment of fees. [Rules (part), filed 3/23/62; Rule 7 (part), filed 10/18/61.] Repealed by Order 7, filed 1/19/68.	162-08-535 Amendment, modification, rescission and publication of rules—How rules may be amended. [Rules (part), filed 3/23/62.] Repealed by Order 7, filed 1/19/68.
162-08-212	Compensation and expenses of tribunal members. [Order 37, § 162-08-212, filed 10/27/77; Order 35, § 162-08-212, filed 9/2/77.] Repealed by 89-23-020, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 49.60.120(3).	162-08-540 Amendment, modification, rescission and publication of rules—Petition for rule making, amendment or repeal of rules. [Rules (part), filed 3/23/62.] Repealed by Order 7, filed 1/19/68.
162-08-215	Removal of tribunal members for cause. [Order 35, § 162-08-215, filed 9/2/77; Order 33, § 162-08-215, filed 3/21/77.] Repealed by 89-23-020, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 49.60.120(3).	162-08-580 Declaratory rulings. [Rules (part), filed 3/23/62.] Repealed by Order 7, filed 1/19/68.
162-08-217	Objection to manner of appointment. [Order 33, § 162-08-217, filed 3/21/77.] Repealed by 89-23-020, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 49.60.120(3).	162-08-620 Declaratory rulings. [Order 7, § 162-08-620, filed 1/19/68.] Repealed by Order 35, filed 9/2/77.
162-08-230	Depositions. [Rules (part), filed 3/23/62; Rule 8, filed 10/18/61.] Repealed by Order 7, filed 1/19/68.	162-08-621 Consideration of economic values. [Order 35, § 162-08-621, filed 9/2/77.] Repealed by 89-23-020, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 49.60.120(3).
162-08-275	Powers of tribunal chairperson. [Order 37, § 162-08-275, filed 10/27/77; Order 35, § 162-08-275, filed	

I GENERAL

WAC 162-08-011 Scope of rules. (1) General. These rules (chapter 162-08 WAC) shall govern all practice and procedure before the commission, including practice before administrative law judges.

(2) The commission hereby readopts the rules of practice and procedure contained in chapter 162-08 WAC, as amended herein, except for WAC 162-08-108, 162-08-111, 162-08-114, 162-08-116, 162-08-121, 162-08-131, 162-08-135, 162-08-141, 162-08-151, 162-08-155, 162-08-161, 162-08-171, 162-08-212, 162-08-215, 162-08-217, 162-08-275, 162-08-278, 162-08-284, 162-08-295, and 162-08-296, which are hereby repealed or replaced as shown below.

(3) **Relation to statutes.** These rules supplement the statutory procedures in the Administrative Procedure Act,

chapter 34.05 RCW, and the law against discrimination, chapter 49.60 RCW. Where provisions of the law against discrimination are inconsistent with the Administrative Procedure Act, the Administrative Procedure Act governs. RCW 34.05.030(4).

(4) **Amendments apply to pending cases.** An amendment to this chapter applies to cases pending at the time of the adoption of the amendment, unless the amendment or rule-making order says that it does not apply to pending cases. An amendment to this chapter does not require that anything already done be redone to comply with the amendment, unless the amendment expressly says so.

[Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-011, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-011, filed 9/2/77; Order 7, § 162-08-011, filed 1/19/68.]

WAC 162-08-013 Interpretation—Waiver. (1) **Interpretation.** These rules shall be interpreted liberally to promote justice and to facilitate the decision of cases on the merits.

(2) **Waiver.** The chairperson of the commission or an administrative law judge, on their own initiative or on motion of a party, may waive or alter the procedures in any of these rules and may enlarge or shorten the time within which an act must be done in a particular case, in order to serve the ends of justice.

[Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-013, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-013, filed 9/2/77.]

WAC 162-08-015 Sanctions. (1) **Administrative hearings.** In a case which has been noted for hearing the administrative law judge, on his or her own initiative or on motion of a party, may order a party or counsel who uses these rules for the purpose of delay, or who fails to comply with these rules or other procedures previously ordered, to satisfy terms or pay compensatory damages including attorney's fees to any other person who has been harmed by the delay or the failure to comply. The administrative law judge may condition the right of a party to take specific action or raise specific defenses on satisfaction of the terms of the order or payment of the damages and attorney's fees. The administrative law judge may condition the right of a counsel to participate further in the case upon satisfaction of the terms of an order or payment of the damages and attorney's fees. The administrative law judge shall incorporate in his or her final order any sanctions order which has not been complied with, so that the sanctions order may be enforced as provided in RCW 49.60.260 and 49.60.270 and appealed from as provided in RCW 34.05.514.

(2) **Other proceedings.** In a proceeding not covered by subsection (1) of this section, the chairperson of the commission may order a person or counsel who uses these rules for the purpose of delay, or who fails to comply with these rules or other procedures previously ordered, to satisfy terms, and the chairperson may condition further participation in a proceeding on compliance with these rules or orders imposing terms, but the chairperson of the commission shall not impose sanctions in the form of payment of damages or attorney's fees.

[Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-015, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-015, filed 9/2/77.]

(2009 Ed.)

WAC 162-08-017 Usage and definitions. (1) **Usage.** In this chapter, unless the context indicates otherwise, the following words are used in the senses here expressed:

"Shall" expresses a command.

"May" expresses permission.

"Will" expresses the future occurrence of an event.

"Must" expresses a requirement that has to be met only if a person chooses to do something which the person is free to do or not to do. *Example:* "A respondent who wishes to raise any matter constituting an avoidance or affirmative defense . . . must plead the matter as an affirmative defense . . ."

(2) **Definitions.** In this chapter, unless the context indicates otherwise, the following words are used in the meaning here given:

"Administrative hearing" means a public hearing brought pursuant to RCW 49.60.250.

"Case" means the entire proceeding following from the filing of a complaint under RCW 49.60.230.

"Commission" means the Washington state human rights commission as an institution, whether acting through the commissioners, an administrative law judge, the executive director or staff, its legal counsel, or others, except where the context indicates one of the narrower meanings.

"Conciliation" means the process provided in RCW 49.60.240 for the elimination by conference, conciliation, and persuasion of an unfair practice after a finding has been made that there is reasonable cause for believing that the unfair practice has been or is being committed.

"Person" has the broad meaning given the word in RCW 49.60.040. It includes the commission.

[Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-017, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-017, filed 9/2/77.]

WAC 162-08-019 Procedure when none is specified.

(1) **Any orderly procedure.** To take care of a problem for which no procedure is specified by this chapter, the Administrative Procedure Act, chapter 34.05 RCW, or the law against discrimination, chapter 49.60 RCW, any orderly procedure may be used. Appropriate procedures may be taken from the Washington civil rules for superior courts, the federal rules of civil procedure, or the rules of other administrative agencies of the state of Washington or of the United States.

(2) **By chairperson.** The chairperson of the commission or an administrative law judge may specify the procedure to be used to dispose of any matter not covered by this chapter, or any matter covered by a rule that has been waived or altered in the interest of justice under authority of WAC 162-08-013.

[Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-019, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-019, filed 9/2/77.]

WAC 162-08-021 Who may appear and practice. No person other than the following may appear in a representative capacity before the commission or before an administrative law judge for a human rights hearing:

(1) **Washington lawyer.** An attorney at law entitled to practice before the supreme court of the state of Washington;

(2) **Other lawyer.** An attorney at law entitled to practice before the highest court of record of any other state, if attorneys at law of the state of Washington are permitted to appear in a representative capacity before administrative agencies of

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such other state, and if not otherwise prohibited by Washington law;

(3) **Legal intern.** A legal intern licensed to engage in the practice of law in the state of Washington under admission to practice Rule 9;

(4) **Officer, etc.** A bona fide officer, partner, or full time employee of an association, partnership, or corporation appearing for the association, or one of its members for the partnership, or corporation.

[Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-021, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-021, filed 9/2/77; Order 7, § 162-08-021, filed 1/19/68.]

WAC 162-08-031 Computation of time. In computing any period of time prescribed or allowed by commission rules, by commission order, or by statute, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or a legal holiday, in which event, the period runs until the end of the next day which is neither a Saturday, Sunday nor a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall not be counted.

[Order 35, § 162-08-031, filed 9/2/77; Order 7, § 162-08-031, filed 1/19/68.]

WAC 162-08-041 Service and filing of papers. (1)

How served. Service of papers may be made personally or by first-class mail, registered or certified mail, or telegraph, or by leaving a copy at the principal office or place of business of the person to be served.

(2) **Who serves.** The commission shall cause to be served all orders, notices and other papers issued by it, together with any other papers which it is required by law to serve. Every other paper shall be caused to be served by the party filing it.

(3) **Upon whom served.** All papers served by the commission or any party shall be served at the time of filing upon all counsel of record and upon parties not represented by counsel or upon their agents designated by them or by law. Any counsel entering an appearance subsequent to the initiation of the proceeding shall notify all other counsel then of record and all parties not represented by counsel of such fact.

(4) **Service on commission.** In a matter pending before the commission or an administrative law judge in which the commission is being represented by the attorney general or a staff person other than the clerk, service on the commission shall be made by serving the attorney or staff person who is acting for the commission. In such matters, *filing* a paper with the clerk is *not* service on the commission. Service of a petition for judicial review under the Administrative Procedure Act, chapter 34.05 RCW, is governed by RCW 34.05.542 and not by these rules.

(5) **Service by mail.** If service is made by mail, the papers shall be deposited in the post office addressed to the person on whom they are being served, with the postage prepaid. Unless earlier receipt is shown, service by mail shall be deemed complete upon the third day following the day upon which the papers are placed in the mail, unless the third day falls on a Saturday, Sunday or legal holiday, in which event

service shall be deemed complete on the first day other than a Saturday, Sunday or legal holiday following the third day.

(6) **Filing, generally.** Papers required to be filed with the commission shall be deemed filed on actual receipt at the commission's Olympia or Seattle office, or other place previously specified, accompanied by proof of service on any parties required to be served.

(7) **Filing with administrative law judge.** Papers required to be filed with an administrative law judge shall be filed with the clerk, 402 Evergreen Plaza, Mailstop FJ-41, Olympia, WA 98504, unless otherwise directed. They must be accompanied by proof of service on all parties required to be served. The original of each paper shall be filed, accompanied by two copies.

[Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-041, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-041, filed 9/2/77; Order 7, § 162-08-041, filed 1/19/68.]

WAC 162-08-051 Form of papers. Except for papers filed with an administrative law judge (covered by WAC 162-08-241) and any other papers where the form is specified by rule, papers may be submitted in any form. The commission requests, but does not require, that all papers be type-written on white paper of letter size (8 1/2 x 11").

[Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-051, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-051, filed 9/2/77; Order 7, § 162-08-051, filed 1/19/68.]

WAC 162-08-061 Relationship of commission to complainant. (1) Commission's role and objectives. In investigating cases the commission seeks to ascertain the facts in order to make an impartial finding of "reasonable cause" or "no reasonable cause." It has no predisposition in favor of either complainants or respondents. If "reasonable cause" is found, then the objective of the commission is to obtain the remedy that will best eliminate the unfair practices and prevent their recurrence. The judgment as to what will eliminate an unfair practice for purposes of reaching an agreement under RCW 49.60.240 is made initially by the executive director, or other staff persons pursuant to the executive director's direction, and ultimately by the commissioners. The judgment as to what will eliminate an unfair practice and carry out the purposes of the human rights law after hearing under RCW 49.60.250 is made by the administrative law judge. The commission was not designed to compete with the courts as a forum for the vindication of private rights; its task is to work for the public good of eliminating and preventing discrimination. Although the facts and circumstances giving rise to a claim of discrimination may sometimes give rise to other claims based upon other statutes or principles of common law, the commission will investigate only claims of unfair practices arising under chapter 49.60 RCW et seq. The law against discrimination expressly preserves the right of complainants and/or aggrieved parties to seek other civil or criminal remedies in court or other available forums, either simultaneously with a complaint filed with the commission or in lieu of such a complaint, subject to any limitations or conditions provided in WAC 162-08-062 or elsewhere.

(2) **Independence from complainant.** The commission's primary objective is to eliminate and prevent discrimination, which may or may not be consistent with the goals or

objectives of a particular complainant or aggrieved person. In negotiating a settlement or seeking an order, the commission generally works for provisions restoring the complainant as nearly as possible to the position he or she would be in if he or she had not been discriminated against, because this is usually an effective way to eliminate the discrimination and prevent its recurrence. But where, in the commission's judgment, provisions fully restoring the complainant (for instance, reinstatement to the job with back pay) would be inadequate to eliminate a pattern of discrimination, the commission will hold out for additional terms, even though the respondent is willing to settle on the basis of full relief for the complainant only. Except as may be otherwise provided for complaints alleging unfair practices in real estate transactions, the commission may determine that discrimination will be effectively eliminated and prevented by an order that does not afford the complainant every item of relief to which he or she may have a legal claim. The commission assumes that persons who complain to it are as interested in the elimination and prevention of discrimination in general as in their individual cases. If a person is interested only in relief for himself or herself, he or she is advised to seek his or her remedy directly in court pursuant to RCW 49.60.020, 49.60.030 and/or WAC 162-08-062.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-08-061, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-061, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-061, filed 9/2/77; Order 7, § 162-08-061, filed 1/19/68.]

WAC 162-08-062 Concurrent remedies—Other remedies. Except as otherwise provided by RCW 49.60.-340, the law against discrimination preserves the right of a complainant or aggrieved person to simultaneously pursue other available civil or criminal remedies for an alleged violation of the law in addition to, or in lieu of, filing an administrative complaint of discrimination with the commission, with the following limitations:

(1) **Abeyance—Real estate transactions.** A complaint of an unfair practice in a real estate transaction filed concurrently with the commission and another federal, state or local instrumentality with whom the commission has entered into a cooperative agreement under the terms of RCW 49.60.226 or other provision of law will be held in abeyance during the pendency of the other proceeding unless the other proceeding has been deferred pending state action under the terms of the cooperative agreement.

(2) **Abeyance—General rule.** A complaint of an unfair practice other than in real estate transactions will be held in abeyance during the pendency of a case in federal or state court litigating the same claim, whether under the law against discrimination or a similar law, unless the executive director or the commissioners direct that the complaint continue to be processed. A complaint of an unfair practice other than in real estate transactions will not be held in abeyance during pendency of a federal, state, or local administrative proceeding, unless the executive director or commissioners determine that it should be held in abeyance.

(3) No complainant or aggrieved person may secure relief from more than one governmental agency, instrumentality or tribunal for the same harm or injury.

(4) Where the complainant or aggrieved person elects to pursue simultaneous claims in more than one forum, the factual and legal determinations issued by the first tribunal to rule on the claims may, in some circumstances, be binding on all or portions of the claims pending before other tribunals.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-08-062, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-062, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-062, filed 9/2/77.]

II COMPLAINTS

WAC 162-08-071 Complaints by aggrieved persons.

(1) **Scope of section.** This section applies to complaints by persons claiming to be aggrieved by an alleged unfair practice filed under RCW 49.60.230 (1)(a), to complaints by employers or principals filed under RCW 49.60.230 (1)(c), and to complaints by "aggrieved persons" under RCW 49.60.040(15). Complaints issued by the commission are covered by WAC 162-08-072.

(2) **Signature and oath.** A complaint shall be in writing, signed by the complainant or the complainant's lawyer, and sworn to before a notary public or other person authorized by law to administer oaths, or subscribed and signed under the following declaration: "I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct." Notarial service for this purpose is available without charge at all offices of the commission.

(3) **Contents.** A complaint shall contain the following:

- (a) The name of the person making the complaint;
- (b) The name, address and telephone number, if any, of the person against whom the complaint is made, if known to the complainant;
- (c) A specific charge of an unfair practice(s);
- (d) A clear and concise statement of the facts which constitute the alleged unfair practice(s);

(e) The date or dates of the alleged unfair practice(s), and if the alleged unfair practice is of a continuing nature, the dates between which said continuing acts of discrimination are alleged to have occurred.

(4) **Forms.** Printed complaint forms are available at all commission offices.

(5) **Time for filing.** For claims alleging an unfair practice in a real estate transaction under RCW 49.60.222 through 49.60.225, the complaint must be filed with the commission not later than one year after the alleged unfair practice occurred or was terminated. In all other unfair practice claims, the complaint must be filed within six months after the date of occurrence of the alleged unfair practice(s). RCW 49.60.230. If the alleged unfair practice is of a continuing nature, the date of the occurrence of the unfair practice shall be deemed to be any date subsequent to the commencement of the alleged unfair act up to and including the date when the alleged unfair practice stopped.

(6) **Computation of time.** The one-year period for filing a complaint alleging an unfair practice in a real estate transaction expires at 5:00 p.m. on the day before the corresponding day of the year following the event. The six-month period for filing a complaint alleging any other unfair practice expires at 5:00 p.m. on the day before the corresponding day

of the sixth month following the event. If the last day of the filing period is a Saturday, Sunday, or legal holiday, the time expires at 5:00 p.m. on the next day which is not a Saturday, Sunday, or legal holiday. For example, a complaint of an event occurring on 5 January would ordinarily have to be filed by 5:00 p.m. on 4 July, but since 4 July is a legal holiday, the time for filing the complaint would expire at 5:00 p.m. on 5 July, or at 5:00 p.m. Monday, if 5 July comes on a Saturday or Sunday.

(7) **Technical defects.** A complaint shall not be considered defective if the defect is technical and can be corrected by subsequent amendment. The statutory requirements set forth in RCW 49.60.230, including the requirement of a signature under oath, are jurisdictional and failure to comply cannot be corrected by subsequent amendment.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-08-071, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.-120(3). 89-23-020, § 162-08-071, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 49.60.120(3) and 34.04.020. 79-11-041 (Order 40), § 162-08-071, filed 10/12/79; Order 35, § 162-08-071, filed 9/2/77; Order 7, § 162-08-071, filed 1/19/68.]

WAC 162-08-072 Complaints issued by commission.

(1) **Who may initiate.** Complaints issued by the commission under RCW 49.60.230 (1)(b) may be initiated by the commissioners or by the executive director personally.

(2) **By commissioners.** Initiation of a complaint by the commissioners shall be by motion at a meeting. The executive director shall transcribe a carried motion from the minutes onto a paper designated "complaint," attest it with a signature, and process it.

(3) **By executive director.** The executive director may initiate a commission complaint by personally signing a document saying that the commission has reason to believe that the person shown as respondent has been engaged or is engaged in an unfair practice, identifying the nature of the unfair practice, and the facts on which it is based. The executive director shall notify each commissioner in advance of issuing a complaint, or if advance notice is not possible because of an emergency, or because a commissioner cannot be reached, or for other reason, the executive director shall give the notice as soon after issuing the complaint as possible. Any commissioner may have placed on the agenda of the next commission meeting the question of whether the complaint shall stand. If this is done, the commissioners shall vote to sustain or rescind the complaint, after such debate and deliberation as is appropriate, but without taking testimony, or hearing arguments or reports from anyone but commissioners and staff, except as the commission by vote may direct.

(4) **Basis for commission complaint.** A commission complaint may be issued when the commission "has reason to believe that any person has been engaged in an unfair practice." RCW 49.60.230(2). The basis of belief for a complaint is different from the basis for a finding under RCW 49.60.240 of "reasonable cause for believing that an unfair practice has been or is being committed." The finding of reasonable cause or not is based on the commission's own investigation and ascertainment of facts after receipt of a complaint. The basis of belief for the purpose of initiating a commission complaint is information from any source sufficient, in the judgment of

the commission, to justify an investigation and finding of whether or not there is reasonable cause for believing that an unfair practice has been or is being committed.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-08-072, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.-120(3). 89-23-020, § 162-08-072, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-072, filed 9/2/77.]

WAC 162-08-081 Amendment of complaint prior to notice of hearing. (1) **Scope of section.** This section governs amendments of complaints prior to the time of amendment for the purpose of hearing. Amendment of a complaint for the purpose of hearing is governed by WAC 162-08-201. Amendments after notice of hearing are governed by WAC 162-08-265.

(2) **General rule.** A complaint, or any part thereof, may be fairly and reasonably amended as a matter of right at any time.

(3) **By whom.** The complaint may be amended by any of the following: The complainant, the commissioners, or the executive director or any member of the commission's staff who is authorized by the executive director to amend complaints.

(4) **Form.** Amendment of a complaint may be done by rewriting and superseding the entire text of the complaint or by filing a supplemental paper containing only the amendment.

(5) **Not necessary for finding.** The investigation pursuant to RCW 49.60.240 will cover the factual allegations and unfair practices charged in the complaint, and a reasonable cause finding will apply to all persons affected by the unfair practice(s) that is (are) found. The complainant may or may not be one of those persons. No amendment of the complaint is necessary for such a finding.

(6) **Identification of respondents.** No amendment of a complaint is necessary to make corrections in the identification of respondents in the findings of fact, if the respondents newly designated have notice of the complaint, or are given notice of the complaint, or reasonably should have known of the complaint. The findings of fact may correct the names or identification of respondents by substituting correct names, by adding persons as respondents, or by deleting persons as respondents.

(7) **Findings supersede complaint.** The findings supersede the complaint in identifying the unfair practices and persons before the commission in the case, and continue to do so until and unless an amended complaint for purposes of hearing is filed under WAC 162-08-201.

[Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-081, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-081, filed 9/2/77; Order 7, § 162-08-081, filed 1/19/68.]

WAC 162-08-091 Withdrawal of complaint. (1) **Consent necessary.** A complaint or any part thereof may be withdrawn only with the consent of the commission.

(2) **Form.** A request for withdrawal of a complaint must be in writing and signed by the complainant and must state in full the reasons why withdrawal is requested. Blank forms may be obtained at commission offices.

[Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-091, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-091, filed 9/2/77; Order 7, § 162-08-091, filed 1/19/68.]

III INVESTIGATION OF COMPLAINTS—FINDINGS

WAC 162-08-093 Referral to staff. Unless the chairperson of the commission directs otherwise for a particular complaint, all complaints shall be investigated by the section of the staff designated for that purpose by the executive director, and the executive director shall have full power to assign and reassign cases for investigation by particular staff persons, and to assign and reassign staff persons to the section of the staff that investigates complaints, on a full-time or part-time basis.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-08-093, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60-120(3). 89-23-020, § 162-08-093, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 42.18.250, 49.60.120 and chapter 49.60 RCW. 78-02-065 (Order 39), § 162-08-093, filed 1/23/78; Order 35, § 162-08-093, filed 9/2/77.]

WAC 162-08-094 Investigation. (1) **Copy of complaint to respondent.** Except as may be provided for complaints alleging an unfair practice in a real estate transaction, within a reasonably prompt time after a complaint is filed the staff shall furnish a copy of the complaint to the respondent and shall afford the respondent an opportunity to reply in writing. No error or omission in carrying out this step shall affect the validity of the complaint or prevent further processing of it.

(2) **Preliminary evaluation of complaint.** Whenever the allegations of the complaint, if true, show no basis for commission action, then the staff without further investigation may enter a finding of no reasonable cause or write a recommendation for a finding of no jurisdiction, or other appropriate disposition.

(3) **Scope of investigation.** The investigation is limited to ascertaining the facts concerning the unfair practice(s) alleged in the complaint. RCW 49.60.240.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-08-094, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60-120(3). 89-23-020, § 162-08-094, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-094, filed 9/2/77.]

WAC 162-08-09401 Real estate transactions—Procedures. (1) Upon the filing of a complaint alleging an unfair practice in a real estate transaction, the commission shall serve notice upon the aggrieved person acknowledging such filing and advising the aggrieved person of the time limits and choice of forums provided under RCW 49.60.230 and 49.60.2235.

(2) The staff shall, not later than ten days after such filing or the identification of an additional respondent under this subsection, serve on the respondent(s) a notice identifying the alleged unfair practice and advising such respondent of the procedural rights and obligations of respondents under this chapter, together with a copy of the complaint.

(a) A person who is not named as a respondent in the course of investigation may be joined as an additional or sub-

stitute respondent upon written notice in accordance with subsection (2) of this section.

(b) In addition to meeting the requirements of subsection (2) of this section, such notice shall state the basis for the commission's belief that the person to whom the notice is addressed is properly joined as a respondent.

(3) Each respondent may file an answer to a complaint not later than ten days after receipt of notice from the commission.

(4) Subsequent to the filing of a complaint alleging an unfair practice in a real estate transaction under RCW 49.60-222 through 49.60.225, the commission shall commence proceeding with respect to the complaint within thirty days after receipt of the complaint.

(5) The commission shall complete its investigation of an allegation of an unfair practice in a real estate transaction within one hundred days of filing a duly prepared and signed complaint with the commission, unless it is impracticable to do so.

(6) If the commission is unable to complete the investigation of the complaint within one hundred days of filing, commission staff will advise the parties in writing of the reasons for not completing the investigation in the time allotted.

(7) The commission shall make final administrative disposition of a complaint alleging an unfair practice in a real estate transaction within one year of the date of receipt of the complaint, unless it is impracticable to do so. If the commission is unable to do so, it shall notify the parties in writing of the reasons therefor.

(8) The commission may also investigate unfair practices in a real estate transaction to determine whether a complaint should be brought by the commission itself pursuant to RCW 49.60.230 (1)(b).

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-08-09401, filed 6/13/96, effective 7/14/96.]

WAC 162-08-09501 Methods of obtaining information¹. (1) Pursuant to RCW 49.60.140 and 49.60-240, as part of the investigative process, staff members of the commission may obtain information by one or more of the following methods: Subpoenas, oral questions, written questions and answers, requests for specific documents and records.

(2) Use of these methods is available only to commission staff. Since the investigation is an internal agency process, and not an adversarial proceeding, use of the methods for obtaining information described in subsection (1) of this section are available only to commission staff members.

(3) Scope of inquiry. Commission staff members may obtain information regarding any matter, not privileged, which is relevant to the complaint filed with the commission.

(4) Methods of obtaining information.

(a) **Subpoena and subpoena duces tecum.** Subpoenas may be issued by the chairperson of the commission, any member of the commission designated by the chairperson, the executive director, or any staff member designated by the executive director, to compel the appearance of any person to give information relevant to a complaint which is under investigation.

(i) Subpoenas may be served in any manner authorized by WAC 162-08-041 and RCW 49.60.140 for the service of papers generally.

(ii) Pursuant to RCW 49.60.170, witnesses shall be paid the same fees and mileage as are paid witnesses in the courts of this state, and by the same party who would pay if the proceeding were before a court of this state. Any person authorized to issue subpoenas who desires the attendance of a witness residing outside of the county in which attendance is desired, or more than twenty miles from the place where attendance is desired, may compel the attendance of the witness by subpoena accompanied by ten dollars, tickets or other arrangements for travel, or an appropriate mileage allowance if the witness agrees to travel by automobile, plus not less than one day's per diem at the rate specified by law for witnesses required to attend court proceedings. The executive director may order additional amounts for meals, lodging, and travel as the executive director may deem reasonable for the attendance of the witness, consistent with RCW 5.56.010 and other statutes governing allowances for witnesses in the courts of this state, if the witness objects to the arrangements or amounts provided by the person issuing the subpoena.

(iii) The party who calls an expert witness shall pay the professional fee charged by the expert witness and all other costs of the expert's testimony. If the other party's or parties' questioning of an expert witness exceeds the time taken by the party who requested the expert, they shall reimburse the party who called the expert witness for that portion of the fee charged by the expert witness and the other costs of the expert's testimony.

(iv) Questions relating to subpoenas shall be addressed by the executive director. Motions relating to subpoenas shall be addressed by the executive director or chairperson of the commission pursuant to the procedures set forth in WAC 162-08-019.

(b) **Oral questions and answers.** Oral questions and answers may be taken in any reasonable manner at any time after a complaint has been filed with the commission, provided all parties are notified that the information may be transcribed and used as evidence in any hearing arising out of the matter under investigation.

(i) Oral questions and answers may be taken before a member of the commission's staff who is not involved in the investigation of the complaint or matter, or before a person who has been commissioned to administer oaths by the chairperson of the commission, or before any person who is a notary public.

(ii) Record of examination. Questions and answers may be recorded mechanically or video-taped.

(iii) If signature is not waived, the witness shall have five days after submission of the transcription of their answers to register desired changes and sign it, and if the witness does not sign in the time allowed, the recording official may, the officer may certify the accuracy of the transcription.

(iv) The recording officer shall certify the transcription in the manner provided in CR 30(f) and shall send or deliver the original transcript to the clerk, unsealed. The recording officer need not notify parties of the transmittal.

(v) Upon receipt of a transcription certified as above, the clerk shall examine it to verify that it has been certified, and if it has been, the clerk shall file it. A transcription that has

been so filed is published and is available for any use to which a deposition may be put, except to the extent that use is limited by a protective order (see WAC 162-08-096).

(vi) Transcriptions may be used in the same manner as depositions may be used under the civil rules for superior court, particularly CR 32.

(vii) Errors and irregularities in question and answer procedure are waived unless they substantially prejudice a party and are promptly objected to.

(c) **Written questions and answers.** Any commission staff person may serve written questions and answers on any party to be answered under oath.

(i) Form. Each written question shall be followed by adequate space for the answer.

(ii) Time for answer. Written questions shall be answered within ten days after service, unless their number, together with others served by the commission within the last ten days, exceed twenty questions, in which event they shall be answered within twenty days.

(d) **Production of documents and records.** Any staff member authorized by the commission may request production of documents and records relevant to a matter under investigation and issue a subpoena duces tecum for the same material when not produced upon request.

Time for response. The party upon whom the request for production is served shall serve its written response within ten days, unless the parties have stipulated to, or the commission staff person has specified, a shorter or longer time.

¹ This section is intended to cover informal methods of obtaining information pursuant to RCW 49.60.140 and 49.60.240. When more formal methods of discovery are invoked, WAC 162-08-263 applies.

[Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-09501, filed 11/7/89, effective 12/8/89.]

WAC 162-08-096 Protective orders. (1) Upon motion by a party or by the person from whom information is sought pursuant to WAC 162-08-09501, and for good cause shown, the chairperson of the commission may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense caused by revealing private information, or trade secrets, including all orders a court can make under CR 26(c).

(2) If a motion for a protective order is denied in whole or in part, the chairperson may, on such terms and conditions as are just, order that any party or person provide or permit information to be revealed subject to the provisions of WAC 162-08-097.

(3) The chairperson may, on such terms and conditions as are just, grant a protective order sealing the produced documents pursuant to WAC 162-04-035.

[Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-096, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-096, filed 9/2/77.]

WAC 162-08-097 Failure to provide information. (1) **Order compelling production of information.** The chairperson of the commission is authorized to make any order that a court could make under CR 37(a), including an order awarding expenses of the motion to compel production of information pursuant to WAC 162-08-09501. The executive director, upon reasonable notice to other parties and all persons affected thereby, may obtain an order compelling pro-

duction of information by motion to the chairperson of the commission. The form of the motion and the procedure for its disposition is governed by WAC 162-08-019. When taking testimony under oath, the proponent of the question may either complete or adjourn the examination before moving for an order compelling production of information.

(2) Enforcement of an order compelling production of information. If the party fails to comply with a subpoena compelling production of information, the matter may be turned over to counsel for the commission for enforcement of the order in superior court.

[Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-097, filed 11/7/89, effective 12/8/89.]

WAC 162-08-098 Findings. **(1) General.** The findings document shall contain (a) *findings of fact*, and (b) an *ultimate finding* of reasonable cause or no reasonable cause for believing that an unfair practice has been or is being committed, or a finding on jurisdiction, as provided in (2) of this section.

(2) Jurisdictional dispositions. When the facts found show that the matter is not within the jurisdiction of the commission, the ultimate finding shall be "no jurisdiction" rather than "reasonable cause" or "no reasonable cause." In extraordinary circumstances where the commission technically has jurisdiction but for overriding reasons of law or policy is unable to properly exercise its jurisdiction, the ultimate finding may be "jurisdiction declined." An example of such an extraordinary circumstance is a complaint against the commission itself.

(3) Scope of reasonable cause finding. A finding of reasonable cause shall specify the unfair practice found and, as nearly as possible, the person or persons against whom the unfair practice has been committed. If the facts show an unfair practice against a class of persons, the class shall be indicated to the extent possible.

(4) Action by commissioners. Findings of no reasonable cause shall be reported to the commissioners at a meeting, and shall thereafter stand as the action of the commission unless the commissioners vote to set aside a particular finding. Findings of reasonable cause shall be used by the staff for the purpose of endeavoring to eliminate the unfair practices by conference, conciliation, and persuasion. Proposed findings of "no jurisdiction" or "jurisdiction declined" shall be reported to the commissioners and shall become commission action when approved by vote of the commissioners at a meeting.

(5) Effect of findings. A finding that there is or is not reasonable cause for believing that an unfair practice has been or is being committed is not an adjudication of whether or not an unfair practice has been or is being committed.

[Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-098, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-098, filed 9/2/77.]

WAC 162-08-099 Termination of a case without findings of fact. **(1) Authorized.** The commission in appropriate circumstances may terminate its action on a case without making findings of fact pursuant to RCW 49.60.240. This section provides procedures in some of the circumstances.

(2) Withdrawal of complaint. No findings or other procedures in RCW 49.60.240 and 49.60.250 are necessary

when the complainant has requested withdrawal of the complaint and the commissioners have consented to the withdrawal pursuant to WAC 162-08-091.

(3) Settled before finding. Except as may be otherwise provided for a complaint alleging an unfair practice in a real estate transaction, a complaint may be settled before findings of fact are made, when the commission's staff and a respondent have entered into a written settlement agreement (prefinding settlement). Prefinding settlement agreements shall be presented to the commissioners. The commissioners, if they approve, shall enter an order setting forth the terms of the agreement, using the same procedure as if the agreement were presented to the commissioners under RCW 49.60.240 and WAC 162-08-106 after findings of fact. A prefinding settlement is not binding on the commission until the commissioners vote to accept it and issue their order.

(4) Administrative closure. A case may be administratively closed by vote of the commissioners when the complaint has been resolved informally, or has been adjudicated in another forum, or has become moot, or cannot be investigated because the complainant or respondent cannot be found, or when other circumstances justify administrative closure. Administrative closure is an official termination of work on a complaint prior to completion of the entire statutory process, letting the complaint lie in its present posture. A case that has been administratively closed can be administratively reopened by vote of the commissioners.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-08-099, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-099, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-099, filed 9/2/77.]

WAC 162-08-101 Reconsideration of findings. The commission may reconsider and correct any finding in which errors affecting the result are brought to its attention.

[Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-101, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-101, filed 9/2/77; Order 7, § 162-08-101, filed 1/19/68.]

IV CONCILIATION

WAC 162-08-102 Objective of conciliation. The commission's staff in its endeavors to eliminate an unfair practice by conference, conciliation and persuasion under RCW 49.60.250 shall be guided by the purposes of the law against discrimination and by the policies and objectives of the commission, particularly as expressed in WAC 162-08-061, 162-08-062 and 162-08-298. Elimination of an unfair practice includes elimination of the effects of the unfair practice, as well as assurance of the discontinuance of the unfair practice.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-08-102, filed 6/13/96, effective 7/14/96; Order 35, § 162-08-102, filed 9/2/77.]

WAC 162-08-104 Conciliation negotiations. **(1) Endeavors of staff.** Except as may be otherwise provided for a complaint alleging an unfair practice in a real estate transaction, the task of the commission is to endeavor to eliminate the unfair practice through agreement with the respondent. The extent of effort to be expended toward this end will

depend on the likelihood that agreement on mutually acceptable terms can be reached. If, for example, it is apparent from an exchange of letters that agreement cannot be reached, it is not necessary to hold a conference. If a respondent has been afforded a reasonable opportunity to negotiate, that is sufficient to satisfy the statutory requirements pertaining to conciliation of a complaint brought under chapter 49.60 RCW and this chapter.

(2) **Reopening conciliation.** The making and service of a finding that no agreement can be reached does not preclude renewing negotiations or reaching an agreement at a later time. The finding that no agreement can be reached is not affected by a renewal of negotiations, but it may be superseded by any subsequent agreement which resolves the unfair practices at issue in the complaint filed with the commission.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-08-104, filed 6/13/96, effective 7/14/96; Order 35, § 162-08-104, filed 9/2/77.]

WAC 162-08-106 Approval of agreements. Except as may be otherwise provided for a complaint alleging an unfair practice in a real estate transaction, an agreement reached between the commission's staff and a respondent under RCW 49.60.240 shall be reduced to writing, signed by the respondent and a member of the commission's staff, and presented to the commissioners at a meeting. The agreement is not binding on the commission until the commissioners vote to accept it.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-08-106, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.-120(3). 89-23-020, § 162-08-106, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-106, filed 9/2/77.]

WAC 162-08-107 Real estate transactions—Conciliation. During the period beginning with the filing of a complaint of an unfair practice in a real estate transaction and ending with the filing of a charge or a dismissal by the commission, the commission shall, to the extent feasible, engage in conciliation with respect to the complaint.

(1) An agreement arising out of conciliation efforts under this section shall be an agreement between the respondent and the complainant, and shall be subject to approval by the commission.

(2) Each conciliation agreement shall be made public unless the complainant and respondent agree otherwise and the commission determines that disclosure is not necessary to further the purposes of chapter 49.60 RCW.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-08-107, filed 6/13/96, effective 7/14/96.]

WAC 162-08-109 Breach of conciliated agreement. If an agreement and order for the elimination of an unfair practice made under RCW 49.60.240 is breached, the executive director may take action appropriate in the circumstances, including one or more of the following:

(1) **Specific enforcement.** Bringing an action in superior or district court for specific enforcement of the agreement, or for damages pursuant to the conciliation agreement;

(2) **Setting aside.** Recommending to the commissioners that the agreement and order be set aside, in whole or in part, and that the case be returned to the staff for renewed confer-

ence, conciliation and persuasion, or to be referred to commission counsel for hearing; or

(3) **Report to prosecuting attorney.** Reporting the violation to the appropriate prosecuting attorney for prosecution under RCW 49.60.310.

[Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-109, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-109, filed 9/2/77.]

V ADMINISTRATIVE HEARINGS BEFORE AN ADMINISTRATIVE LAW JUDGE

WAC 162-08-190 Certification of file. (1) **General.** Certification of the file to the chairperson as provided in RCW 49.60.250 in case of failure to reach an agreement under RCW 49.60.240 for the elimination of an unfair practice shall be done in the manner provided in this section.

(2) **Who certifies.** Certification shall be done by the clerk.

(3) **Form of certificate.** The certificate shall be in writing and dated and signed by the clerk and shall be in substantially the following form: "I certify that the attached is the entire file, including the complaint and all findings made, of the Washington state human rights commission staff for the complaint included in the file."

(4) **Custody of file.** The certified file, including the certificate, shall be held in the custody of the clerk, who shall see that it is available for use by the chairperson of the commission and counsel for the commission, and for examination and copying by others.

[Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-190, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-190, filed 9/2/77.]

WAC 162-08-201 Prehearing amendment of complaint. (1) **Required.** Before a case is noted for hearing, counsel for the commission shall prepare an amended complaint as provided in this section in accordance with RCW 49.60.250(1).

(2) **Basis for.** The amended complaint shall be based on the facts as they are believed by the commission's counsel and staff to exist at the time the amended complaint is signed.

(3) **Scope.** The amended complaint shall identify the persons who are proper parties for the hearing and the matters to be heard. It need not be limited to parties or matters mentioned in the complaint filed under RCW 49.60.230, and it need not include all parties or matters mentioned in that complaint.

(4) **Form.** The complaint shall be in the form designated in WAC 162-08-241.

(5) **Contents.** The amended complaint shall contain the following:

(a) Identification of the specific unfair practice or practices alleged.

(b) A short and plain statement of the factual allegations which form the basis for the alleged unfair practices.

(c) A request for relief, setting out the terms or substance of the order which the executive director believes would be appropriate for the administrative law judge to enter if the matters alleged in the complaint are proven to be true.

(6) **Pleading statutory steps.** It is not necessary for counsel for the commission to plead that the statutory steps

prior to the amended complaint have been completed. All statutory steps prior to hearing will be deemed to have been properly completed unless an issue is raised by specific negative averment in an answer as provided in WAC 162-08-251(7).

(7) **Signing.** The amended complaint shall be signed by counsel for the commission and verified by the executive director or a staff member designated by the executive director to verify on behalf of the executive director.

[Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-201, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-201, filed 9/2/77; Order 7, § 162-08-201, filed 1/19/68.]

WAC 162-08-211 Appointment of administrative law judge. When appointed. When the file has been certified (WAC 162-08-190) and counsel for the commission has prepared an amended complaint for hearing (WAC 162-08-201) the chairperson of the commission shall request the appointment of an administrative law judge as provided in RCW 49.60.250 and this section.

[Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-211, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-211, filed 9/2/77; Order 33, § 162-08-211, filed 3/21/77; Order 7, § 162-08-211, filed 1/19/68.]

WAC 162-08-221 Notice of hearing. (1) Applicable statutes. When an administrative law judge has been appointed, the clerk shall give notice of hearing to all parties as provided in RCW 49.60.250 and 34.05.434.

(2) **Indefinite time.** The clerk may, in his or her discretion, omit the time and place of hearing from the notice with the explanation that the time and place will be set by later notice from the administrative law judge, given at least twenty days in advance of the time of hearing.

(3) **Issues.** The notice of hearing shall state that the issues involved in the hearing are (a) whether the respondent committed the unfair practices stated in the amended complaint, and, if so, (b) what order is appropriate. A copy of the amended complaint shall be attached to the notice of hearing.

(4) **Notice of rules.** The notice of hearing shall inform the respondent of the answer rule, WAC 162-08-251, and it shall inform the complainant of a complainant's rights and options under WAC 162-08-261.

(5) **Consolidation of cases.** The administrative law judge may consolidate cases when they involve common questions of law or fact.

[Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-221, filed 11/7/89, effective 12/8/89; Order 37, § 162-08-221, filed 10/27/77; Order 35, § 162-08-221, filed 9/2/77; Order 7, § 162-08-221, filed 1/19/68.]

WAC 162-08-231 Record, pleadings. (1) Record. The record of an administrative hearing shall include the items specified in RCW 34.05.437, including, but not limited to:

(a) All pleadings, motions, briefs, proposed findings of fact and conclusions of law and initial or final orders, objections, but not offers of settlement (RCW 49.60.250(2));

(b) Evidence received or considered;

(c) A statement of matters officially noticed;

(d) Any decision, opinion, or report by the officer presiding at the hearing.

(2) **Pleadings.** Pleadings for an administrative hearing shall include the notice of hearing with amended complaint

attached and any amended complaints subsequently filed, plus any answers or replies filed under WAC 162-08-251, and the original complaint if, but only if, the complainant elects to proceed under it as provided in WAC 162-08-261.

(3) **Proceedings before notice of hearing not part of record.** No findings or other parts of the commission's record of action on the complaint prior to notice of hearing shall be included in the record of the administrative hearing unless the particular document is offered and admitted into evidence.

(4) **Custody.** The clerk shall keep custody of the official record of the administrative hearing as provided in WAC 162-04-026 (3)(h) and shall keep the administrative law judge file separate from the file of the original complaint, investigation, and conciliation, of which the clerk has custody under WAC 162-04-026 (3)(d) and 162-08-190.

(5) **Record for appeal.** The record certified to the court for the purpose of judicial review under RCW 34.05.510 et seq. shall comply with RCW 34.05.566.

(6) **Record for enforcement.** The record to be filed in an enforcement proceeding shall include the final order of the administrative law judge and any other portions of the record required by the court.

[Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-231, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-231, filed 9/2/77; Order 7, § 162-08-231, filed 1/19/68.]

WAC 162-08-241 Form of papers filed with administrative law judge. (1) Caption. The notice of hearing shall include a full caption in substantially the following form:

BEFORE THE ADMINISTRATIVE LAW JUDGE FOR A HUMAN RIGHTS COMMISSION HEARING	}
NO.	
WASHINGTON STATE HUMAN RIGHTS COMMISSION, PRESENTING THE CASE IN SUPPORT OF THE COMPLAINT OF JAMES DOE, complainant, V. ROE ENTERPRISES, INC., PHYLLIS ROE, PRESIDENT, AND RICHARD ROE, SECRETARY, respondent(s).	

Papers filed thereafter may have a short caption in substantially the following form:

BEFORE THE ADMINISTRATIVE LAW JUDGE FOR A HUMAN RIGHTS COMMISSION HEARING	}
NO.	
WASHINGTON STATE HUMAN RIGHTS COM- MISSION <i>EX REL.</i> DOE, complainant, V. ROE ENTERPRISES, INC., <i>ET AL.</i> , respondent(s)	

(2) **Form in general.** Papers filed with an administrative law judge shall be in the form used for superior court practice. See in particular Rule 10, civil rules for superior court.

(3) **Signing.** Every pleading, motion or other paper filed on behalf of a party represented by an attorney shall be dated and signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall similarly date and sign proceedings, motions and other papers and give the party's address. The signature of a party or of an attorney constitutes a certificate by that person in accordance with the provisions of Rule 11, civil rules for superior court.

[Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-241, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-241, filed 9/2/77; Order 7, § 162-08-241, filed 1/19/68.]

WAC 162-08-251 Answer. (1) Required. Every respondent shall file an answer to the amended complaint attached to the notice of hearing, and to any subsequent amendments or complaints that are filed.

(2) **Content.** The answer shall set out and assert every defense, in law or fact, to the claims of the complaint being answered.

(3) **Waiver of defenses not pleaded.** Defenses not pleaded in an answer are waived.

(4) **Time for filing.** An answer shall be filed within twenty days after notice of hearing is served, unless an extension of time is granted in writing by the administrative law judge.

(5) **Form of defenses and denials.** A respondent shall state in short and plain terms its defenses to each claim asserted and shall admit or deny each averment of the amended complaint. If the respondent is without knowledge or information sufficient to form a belief as to the truth of an averment, the respondent shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a respondent intends in good faith to deny only a part or a qualification of an averment, the respondent shall specify so much of it as is true and material and shall deny only the remainder.

(6) **Affirmative defenses.** A respondent who wishes to raise any matter constituting an avoidance or affirmative defense, including those required to be set forth affirmatively by CR 8(c), must plead the matter as an affirmative defense in the respondent's answer. Among the matters which must be pleaded as affirmative defenses are the following:

(a) A bona fide occupational qualification;

(b) Business necessity that justifies a practice that has a discriminatory effect; and

(c) That another statute or rule of law precludes or limits enforcement of the law against discrimination, or regulations or precedents of the commission.

(7) **Statutory steps.** Any defense that the hearing cannot be held because the respondent has been prejudiced because statutory steps prior to hearing have not been taken, or because of some irregularity in statutory procedure, must be pleaded in the answer by specific negative averment, which shall include such supporting particulars as are within the answering respondent's knowledge or could reasonably have been learned by the answering respondent.

(8) **Obligation of good faith.** The assertion of denials and defenses is subject to the obligation of good faith set out in WAC 162-08-241(3) and CR-11.

(9) **Reply.** Unless the administrative law judge orders that a reply to an answer be filed, none shall be necessary. Averments in an answer shall be deemed denied or avoided.

[Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-251, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-251, filed 9/2/77; Order 7, § 162-08-251, filed 1/19/68.]

WAC 162-08-253 No counterclaims or cross claims. Jurisdiction of the administrative law judge is limited to determining whether unfair practices have occurred, and counterclaims and cross claims will not be heard.

[Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-253, filed 11/7/89, effective 12/8/89.]

WAC 162-08-255 Default order. (1) Entry of default order. When a respondent who has been served with a notice of hearing and amended complaint fails to answer in accordance with WAC 162-08-251, and that fact is made to appear by motion and affidavit, a motion for default may be made and served upon respondent requiring an answer within five days. If respondent fails to answer as required in the motion for default, the administrative law judge may enter an order of default providing for the relief requested in the amended complaint upon proof of service of the motion for default as provided in WAC 162-08-041.

(2) **Setting aside default order.** Within ten days of being served, the party against whom a default order is entered may move to have it set aside. The administrative law judge may grant or deny such motion as justice requires.

[Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-255, filed 11/7/89, effective 12/8/89.]

WAC 162-08-261 Complainant's participation. (1) Notice of independent appearance. A complainant or aggrieved person under RCW 49.60.040(15) who desires to submit testimony or otherwise participate in the hearing as a party and not to leave the case in support of the complaint to be presented solely by counsel for the commission, must serve and file a notice of independent appearance within ten days after the notice of hearing is served on that complainant. The notice shall state the address where notices to the complainant shall be sent and it shall state whether the complainant elects to prove additional charges as provided in subsection (2) of this section.

(2) **Election to prove additional charges.** A complainant or aggrieved person under RCW 49.60.040(15) who has filed a notice of independent appearance stating an intention to prove additional charges in accordance with RCW 49.60-250(2), may at the hearing offer proof of averments included in the original complaint or in amendments to the original complaint made by the complainant, whether or not the averments are included in the amended complaint under which counsel for the commission is proceeding. For purposes of this section, the complainant may amend the original complaint without regard to intervening amendments made by the commission. The complainant may serve and file an amended complaint with a notice of independent appearance, or thereafter as provided by these rules. If no amended complaint is

served with a notice of independent appearance that states an intention to prove additional charges, the clerk shall promptly place the original complaint in the file for the administrative law judge. Nothing done by the complainant under this rule shall place any duty on counsel for the commission to seek to prove matters not averred in the amended complaint accompanying the notice of hearing, or subsequent amendments by the commission.

(3) **Appearance without election.** If the complainant or aggrieved person under RCW 49.60.040(15) files a notice of independent appearance which does not state that he or she elects to prove additional charges, then the complainant's participation in the hearing shall be confined to the matters raised by the amended complaint filed with the notice of hearing, and subsequent amendments made by the commission.

(4) **When no independent appearance.** If the complainant or aggrieved person under RCW 49.60.040(15) does not file a notice of independent appearance as provided by this rule, the case in support of the complaint shall be presented solely by counsel for the commission.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-08-261, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.-120(3). 89-23-020, § 162-08-261, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-261, filed 9/2/77; Order 7, § 162-08-261, filed 1/19/68.]

WAC 162-08-263 Discovery—Administrative hearing.

The commission has determined that discovery will be available in adjudicative proceedings in accordance with RCW 34.05.446(2).

(1) **Methods.** Upon certification of the file pursuant to WAC 162-08-190, and request for the appointment of an administrative law judge pursuant to WAC 162-08-211, any party may obtain discovery by the methods provided in CR 26(a). The procedures regarding these methods of discovery are found at CR 28 through 37 as now or hereafter amended and are hereby incorporated in this section.

(2) **Scope of discovery.** Any party may obtain discovery regarding any matter not privileged which is relevant to the amended complaint prepared by counsel for the commission or the additional charges filed by the complainant pursuant to WAC 162-08-261.

(3) **Protective order.** Rulings on motions for protective orders regarding discovery brought under this section shall be made by the administrative law judge pursuant to the provisions of WAC 162-08-271.

(4) **Order compelling discovery.** The administrative law judge is authorized to make any order that a court could make under CR 37(a), including an order awarding expenses of the motion to compel discovery. Motions for an order compelling discovery and the procedure for its disposition are governed by WAC 162-08-271.

[Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-263, filed 11/7/89, effective 12/8/89.]

WAC 162-08-265 Amendment of pleadings.

(1) **Right to amend.** A party to an administrative hearing may amend a pleading once as a matter of course at any time more than twenty days before the date set for hearing. Otherwise, a party may amend a pleading only by leave of the administrative law judge or by written consent of all adverse parties.

(2009 Ed.)

(2) **Action on motions to amend.** The administrative law judge shall freely give leave to amend when justice so requires. The administrative law judge may designate a time for filing an answer to amended pleadings that may be answered, and may reschedule other dates, including the hearing date, if this is necessary to assure that issues for hearing are fully and properly framed.

(3) **Form of amendment.** An amendment other than one made on the record during a hearing must be in writing. A written amendment may be in the form of either a revised pleading superseding the entire text of the amended pleading, or a supplemental paper containing only the amendment.

[Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-265, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-265, filed 9/2/77.]

WAC 162-08-268 Voluntary dismissal.

(1) **Prior to day of hearing.** Except as may be provided for cases alleging unfair practices in real estate transactions, on the day when the hearing of a case commences the commission or any other party on the side supporting the complaint may voluntarily dismiss the party's case or a claim by serving and filing a written notice of dismissal.

(2) **After hearing commenced.** Except as may be provided for cases alleging unfair practices in real estate transactions, after a hearing has commenced the commission or any other party on the side supporting the complaint may move for voluntary dismissal of the party's case or a claim. A motion that is made before the party rests at the conclusion of its opening case shall be granted as a matter of right. A motion made after that time may be granted if good cause is shown, and the grant may be subject to such terms and conditions as the administrative law judge deems proper.

(3) **Effect of dismissal.** A voluntary dismissal concludes the administrative proceeding as to the dismissed party or claim, but is not an adjudication of the merits of the issues before the administrative law judge (that is, the merits may still be adjudicated in another forum if the party has a right to sue in another forum and timely files such claim with the other forum). A voluntary dismissal of one claim does not extinguish any other claim, and a voluntary dismissal by one party does not dismiss any other party. If the commission takes a voluntary dismissal of the case in support of the complaint the entire case is closed, unless the complainant has appeared independently under WAC 162-08-261 or another person has intervened as a party on the side of the complaint pursuant to WAC 162-08-288(4), in which circumstance the hearing shall proceed with the remaining parties.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-08-268, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.-120(3). 89-23-020, § 162-08-268, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-268, filed 9/2/77.]

WAC 162-08-271 Motions before administrative law judge.

(1) **Scope of section.** This section governs all motions made to the administrative law judge except those made orally on the record during an administrative hearing.

(2) **Form.** A motion must be in writing. It must state the order or other relief requested and the grounds for the motion. It may be accompanied by affidavits. It must be supported by legal authorities, set out in the motion or in a supporting brief.

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(3) **Response.** Any party may serve and file a response within five days after the motion has been served on that party.

(4) **Filing.** The original and one copy of every motion and response, with supporting papers, must be filed with the clerk, along with proof of service.

(5) **Ruling.** When the administrative law judge has received a response from all parties, or five days have elapsed since the last party was served, the administrative law judge shall rule on the motion without oral argument, unless the administrative law judge, in his or her discretion, orders that argument be heard.

[Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-271, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-271, filed 9/2/77; Order 7, § 162-08-271, filed 1/19/68.]

WAC 162-08-282 Summary judgment. (1) **Authorized.** At any time prior to the tenth day before the date of a hearing, any party may serve and file a motion for summary judgment in the party's favor as to all or part of the case.

(2) **Procedure.** The usual procedure for motions made before an administrative law judge, WAC 162-08-271, shall apply except where this section provides a different procedure.

(3) **Response.** Any party may serve and file opposing affidavits and a response, or either of these, within seven days after the motion for summary judgment has been served on that party.

(4) **When decided.** The administrative law judge shall decide a motion for summary judgment promptly after ten days have elapsed since the motion was filed with the administrative law judge.

(5) **Oral argument optional.** Oral argument shall be heard only if ordered by the administrative law judge.

(6) **What is decided.** The administrative law judge's final order shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, and other documents and evidence properly before the administrative law judge, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of whether an unfair practice has been committed although there is a genuine issue as to the amount or nature of relief to be ordered. Otherwise, summary judgment shall be denied.

(7) **Orders when case not fully adjudicated on motion.** If summary judgment is not ordered for the whole case or for all of the relief asked and a hearing is necessary, the administrative law judge shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. The administrative law judge may summon counsel for all parties and interrogate them for this purpose. The administrative law judge shall then make an order specifying the facts that appear without substantial controversy, including the extent to which the amount or nature of relief is not in controversy, and directing such further proceedings as are just. At the hearing, the facts so specified shall be deemed established, and the hearing shall be conducted accordingly.

(8) **Form of affidavits; further testimony.** Supporting and opposing affidavits must be made on personal knowl-

edge, must set forth facts that would be admissible in evidence, and must show affirmatively that the affiant is competent to testify to what is stated. Sworn or certified copies of all papers or parts of papers referred to in an affidavit shall be attached to the affidavit or served with it. The administrative law judge may permit affidavits to be supplemented or opposed by depositions or by further affidavits.

(9) **When affidavits are unavailable.** Should it appear from the affidavits of a party opposing the motion that the party cannot, for reasons stated, present by affidavit facts essential to justify the party's opposition, the administrative law judge may refuse the motion, or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had, or the administrative law judge may issue such other order as is just.

(10) **Affidavits made in bad faith.** Should it appear to the satisfaction of the administrative law judge at any time that any of the affidavits were presented in bad faith or solely for the purpose of delay, the administrative law judge shall order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the party to incur, including reasonable attorney's fees. The administrative law judge shall include this order in the final order.

[Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-282, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-282, filed 9/2/77.]

WAC 162-08-286 Prehearing conference. (1) **Conference.** The administrative law judge, as a matter of discretion, with or without a motion from a party, may direct the attorneys for the parties to appear before the administrative law judge for a conference to consider:

- (a) The simplification of the issues;
- (b) The necessity or desirability of amendments to the pleadings;
- (c) The possibility of obtaining admissions of fact and of documents which will be premarked for admission into evidence in order to avoid unnecessary proof;
- (d) The limitation of the number of expert witnesses; and
- (e) Other matters that may aid in the disposition of the case.

(2) **Order.** The administrative law judge shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements of counsel. The order when served and filed controls the subsequent course of the case, unless it is modified at the hearing to prevent manifest injustice.

[Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-286, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-286, filed 9/2/77.]

WAC 162-08-288 Parties. (1) **Who are parties.** The parties to the hearing shall be the commission, through its counsel presenting the case in support of the complaint, a complainant or aggrieved person under RCW 49.60.040(15) who has filed a notice of independent appearance under WAC 162-08-261, the respondent or respondents named in the notice of hearing or an amended notice of hearing, and any other person who moves to intervene and is permitted to do so by order of the administrative law judge.

(2) **Adding parties.** Any party may move to join an additional party or parties. The motion must be directed to the administrative law judge. If the motion is granted, the administrative law judge shall cause to be issued an amended notice of hearing showing the addition of the party or parties and making such other provisions as are appropriate for an orderly hearing.

(3) **Substituting parties.** If death, incompetency, transfer of interest, or other occurrence should make the substitution of parties necessary or desirable, the administrative law judge may make the substitution by order. The administrative law judge may act on his or her own motion, or on motion of a party or of the person asking to be substituted for a party.

(4) **Intervention.** A person claiming an interest in the subject matter of the hearing may move to intervene. The motion must be directed to the administrative law judge. The administrative law judge shall grant or deny the motion as a matter of discretion.

(5) **Factors considered.** The administrative law judge in ruling on a motion to add a party shall be guided by whether the presence of the party will be helpful in carrying out the purposes of the law against discrimination (compare WAC 162-08-061). In addition, the administrative law judge shall consider whether adding the party will cause unnecessary delay or will divert the hearing from the objectives of the statute and of the commission's amended complaint. The administrative law judge need not follow court rules or precedents on the joinder of parties.

(6) **Not class actions.** Hearings under RCW 49.60.250 are not class actions, in the technical sense of that term in court practice. The commission, presenting the case in support of a complaint, may ask that a respondent be ordered to pay back pay or to afford other relief to all persons injured by an unfair practice, and the administrative law judge may issue such an order to carry out the purposes of the law against discrimination (WAC 162-08-298(6)). If such an order is made, the right to have the payments made will belong to the commission, not to the injured persons (WAC 162-08-305). The legal rights of persons of the class alleged to have been injured are not at issue in the case, and those persons are not bound by the administrative law judge's decision unless they accept the benefits of it in full satisfaction of their potential claims. Only the commission and the respondent and other persons named as parties are bound by the order of an administrative law judge.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240, 96-13-045, § 162-08-288, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60-120(3), 89-23-020, § 162-08-288, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-288, filed 9/2/77.]

VI ADMINISTRATIVE HEARING AND DECISION

WAC 162-08-291 Conduct of hearings. (1) **Reference to law.** Hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act, chapter 34.05 RCW, RCW 49.60.250, and these rules.

(2) **Administrative law judge presides.** The administrative law judge shall preside as provided in WAC 162-08-211.

(2009 Ed.)

(3) **Hearings shall be public.** All administrative hearings shall be open to the public. Photographs and recordings of the proceedings may be made, subject to such conditions as the administrative law judge may impose to prevent interference with the orderly conduct of the hearing. Special lighting for photographic purposes may be used only if the administrative law judge has determined in advance that it will not be distracting. The administrative law judge may order news media to use one or more television cameras on a pooling basis if the number of cameras interferes with the conduct of the hearing.

(4) **Record of testimony.** The clerk shall determine whether the record of testimony taken at a hearing shall be made by mechanical means or by a court reporter.

(5) **Copies of record.** When the record has been recorded by mechanical means, rather than by a court reporter, a party ordering a copy of the record or part thereof under RCW 34.05.566 must pay the reasonable cost of transcription, as determined by the clerk, in advance of delivery of the copy. When the record is transcribed and copies of documents are made for transmittal to a reviewing court under RCW 34.05.566, the costs of transcription and copying may be charged to a nonindigent petitioner in accordance with RCW 34.05.566(3).

[Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-291, filed 11/7/89, effective 12/8/89; Order 38, § 162-08-291, filed 10/27/77; Order 35, § 162-08-291, filed 9/2/77; Order 7, § 162-08-291, filed 1/19/68.]

WAC 162-08-292 Evidence. (1) **General rules on admissibility.** Administrative law judges shall admit and give probative effect to evidence that is admissible in the superior courts of the state of Washington in a nonjury trial. In addition, an administrative law judge may admit and give probative effect to other evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. Administrative law judges shall give effect to the rules of privilege recognized in the courts of this state. Administrative law judges may exclude irrelevant, immaterial, and unduly repetitious evidence.

(2) **Identification of exhibits.** All exhibits requested by any party shall be identified by a single series of numbers, in the order that the proposed exhibits are marked for identification. The numbers may be preceded by code letters indicating the acting party, including "C" for the commission, and "R" for a respondent. *Example:* The first exhibit, marked at the request of the commission, is C1. The second exhibit, if offered by a respondent, is R2, whether or not C1 was admitted.

(3) **Stipulations encouraged.** Counsel are requested to mark proposed exhibits in advance of hearing and to stipulate to the admission of all exhibits that will not be objected to.

(4) **Copies of documents and exhibits.** Unless excused from doing so by the administrative law judge, a party offering a document or other exhibit in evidence must furnish copies to all other parties.

(5) **Official notice.** The administrative law judge may take notice of judicially cognizable facts, and in addition may take notice of general, technical, or scientific facts within his or her specialized knowledge. Any party may, by motion, ask the administrative law judge to take official notice of facts or material. When the administrative law judge takes official

notice of any facts or material, the administrative law judge must notify the parties of what is noticed and afford them reasonable opportunity to contest the noticed facts. This may be done at any time before the administrative law judge's order becomes final.

(6) **Evaluation of evidence.** The administrative law judge's findings of fact shall be based exclusively on the evidence presented at the administrative hearing and on matters officially noticed, but the administrative law judge may utilize his or her experience, technical competence, and specialized knowledge in evaluating the evidence.

(7) **Efforts at conciliation excluded.** Any endeavors or negotiations for conciliation made under RCW 49.60.240 shall not be received in evidence as proof of whether or not an unfair practice was committed. RCW 49.60.250(2). If a respondent denies that the statutory step of endeavoring to eliminate the unfair practice by conference, conciliation, and persuasion took place, then evidence of whether such endeavors were made may be admitted, but the contents and details of offers, counteroffers, and discussions shall be excluded to the maximum extent possible. The commission's findings made pursuant to RCW 49.60.240 are *prima facie* evidence that the investigation, conciliation, and other statutory steps have been taken. In addition, offers of settlement or compromise and statements made in settlement or compromise negotiations, at any stage of the case, are privileged from use as proof of whether or not an unfair practice was committed. Evidence of such an offer or statement shall be excluded upon claim of the privilege by the party that made the offer or statement.

[Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-292, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-292, filed 9/2/77.]

WAC 162-08-294 Claims of self incrimination—

Immunity. (1) **How claimed.** A natural person who is testifying under oath, may, instead of answering a question, decline to answer the question on the ground that the testimony or evidence required of him or her may tend to incriminate him or her or subject him or her to a penalty or forfeiture.

(2) **Procedure before compelling testimony.** Before compelling testimony after the privilege against self incrimination has been invoked (and thereby exempting the witness from prosecution) the administrative law judge shall ask examining counsel and also counsel for the commission to state their positions on whether the witness should be ordered to answer. Counsel for the commission may ask that the ruling be deferred for such time as is necessary for counsel for the commission to consult with other public officers before responding. The position of counsel for the commission and other public officers shall be given due weight by the administrative law judge in deciding whether to order the witness to answer.

(3) **Inference from silence after immunity acquired.** If the witness declines to answer the question after acquiring exemption from prosecution, the administrative law judge may consider the silence as evidence and may draw such inferences from it as are warranted by the facts surrounding the incident.

[Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-294, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-294, filed 9/2/77.]

WAC 162-08-298 Remedies. (1) **Power of administrative law judge.** The administrative law judge has the power to exercise the general jurisdiction of the commission to eliminate and prevent discrimination by means of orders to respondents who have been found after hearing to have engaged in an unfair practice or practices.

(2) **General objectives.** An order should generally both eliminate the effects of an unfair practice and prevent the recurrence of the unfair practice. The effects of an unfair practice are eliminated by restoring the victims of the unfair practice as nearly as possible to the position they would have been in if the unfair practice had not occurred. It is appropriate to eliminate the effects of the unfair practice on persons other than the complainant or complainants, and to consider the deterrent effect of an order on persons other than the respondent or respondents. The objective of the law is to eliminate and prevent discrimination, not merely to provide treatment for victims of discrimination.

(3) **Cease and desist.** In every case where the administrative law judge finds that a respondent has engaged in an unfair practice the administrative law judge shall order the respondent to cease and desist from that unfair practice.

(4) **Examples of remedies.** Included among remedies that will effectuate the purposes of the law against discrimination in an appropriate case are the following:

(a) An order to hire persons who have been unfairly denied employment;

(b) An order to reinstate persons who have been unfairly terminated, downgraded, or reclassified;

(c) An order to upgrade persons who have been unfairly denied promotion;

(d) An order to pay back pay to a person or persons who would have had a job but for the unfair practice of the respondent;

(e) An order to pay an amount equal to the difference in pay between the job the persons had and the job they would have had but for the unfair practice of the respondent;

(f) An order restoring employment benefits, such as insurance benefits, retirement contributions, sick leave, vacation benefits, seniority standing, etc., lost or not gained because of an unfair practice;

(g) An order to admit persons to membership in a union which has unfairly excluded the persons and dispatch them to jobs in accordance with uniform rules applicable to all members;

(h) An order to merge or otherwise restructure a seniority system that unfairly disadvantages a protected class of persons;

(i) An order to rent or sell real property to persons who have been unfairly denied the property;

(j) An order to grant credit to persons who have been unfairly denied credit;

(k) An order to reimburse or compensate persons for the excess cost of credit caused by an unfair practice;

(l) An order to issue or renew insurance to persons who have been unfairly denied the insurance;

(m) Except as may be provided for complaints of unfair practices in real estate transactions, an order to pay a sum of money of up to ten thousand dollars to compensate persons for humiliation and mental suffering caused by an unfair practice;

(n) An order assessing a civil penalty against the respondent as authorized by RCW 49.60.225 (1) and (2);

(o) An order to pay interest on money that should have been paid at an earlier time, but for the unfair practice. Interest may be calculated at the current market rate for unsecured personal loans from institutions other than small loan companies licensed under chapter 31.08 RCW;

(p) An order to not retaliate against a complainant, witness, or other person for filing a complaint, testifying, or assisting in any proceeding under chapter 49.60 RCW;

(q) An order to institute affirmative programs, practices, or procedures that will eliminate an unfair practice or its effects, or will prevent the recurrence of the unfair practice;

(r) An order for any other remedy which is available under comparable civil rights laws of the United States or other states, including the federal Fair Housing Amendments Act of 1988, 42 U.S.C. sec. 3601 et seq.

This list is not exhaustive. An administrative law judge may make any order that will effectuate the purposes of the law against discrimination, provided the order is in compliance with the rules of the commission and is not otherwise prohibited by law.

(5) **Remedies not authorized.** Except as may be otherwise provided for a complaint alleging an unfair practice in a real estate transaction, an administrative law judge is not authorized to order:

- (a) The payment of punitive damages;
- (b) The payment of fines payable to the state.

(6) No order effectuating the law against discrimination in real estate transactions shall affect any contract, sale, encumbrance, or lease consummated before the issuance of such order and involving a bona fide purchaser, encumbrancer or tenant without actual notice of the complaint filed under this chapter.

(7) **Treatment of unemployment compensation.** When an order is made for payment of wages lost during a time when the beneficiary of the order was receiving unemployment compensation, the amount of the award shall not be reduced by the amount of unemployment compensation received. The order may make provision for payment of the portion of the award covered by unemployment compensation jointly to the beneficiary and the Washington state department of employment security, or to the department alone. (Under Washington law, it is the duty of the employee to reimburse the department of employment security when back pay is received for a period during which the employee collected unemployment compensation.)

(8) **Persons for whom relief can be ordered.** The administrative law judge may order that remedies for an unfair practice be paid or accorded to the named complainant or complainants, and, in addition, to any other persons identified as having been injured by the unfair practice.

(9) **Nature and purpose of order.** An administrative order is one means of carrying out the public purpose of the law against discrimination: To eliminate and prevent certain discrimination. The administrative law judge in framing its order shall be guided by this public purpose. The administrative law judge's task is not the determination of private rights. See WAC 162-08-061, 162-08-062. The administrative law judge is not required to observe conventional common law or equity principles in fashioning the order. The guiding princi-

ple for the administrative law judge is whether a particular remedy will effectuate the purposes of the law against discrimination. An order requiring a respondent to pay money to a person as back pay, or to compensate for some other loss, is not a private award of damages, but is a public reparation order. Except as may be otherwise provided in RCW 49.60.260 and WAC 162-08-288, only the commission can enforce the order. The beneficiary has no property right in the money until he or she receives it. See WAC 162-08-305.

(10) **Retention of jurisdiction.** In appropriate cases the administrative law judge in his or her order may retain jurisdiction for a reasonable period of time for the purpose of determining compliance with his or her order or issuing orders supplementing or modifying the original order. If the administrative law judge does not retain jurisdiction through a provision of his or her order he or she has no jurisdiction to modify or supplement his or her order, except on reconsideration (WAC 162-08-311). Retention of jurisdiction by the administrative law judge under this subsection does not prevent the administrative law judge's order from being final for the purpose of judicial review or enforcement.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-08-298, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-298, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-298, filed 9/2/77.]

WAC 162-08-301 Findings, conclusions, and order.

(1) **Preliminary decision of administrative law judge.** In every administrative hearing the administrative law judge shall prepare preliminary findings of fact, conclusions of law, and order in accordance with WAC 10-08-210, which shall be mailed to the parties and their counsel for comments, objections, and proposed corrections.

(2) **Final decision of administrative law judge.** After the expiration of thirty days from the receipt of comments upon the preliminary decision, the administrative law judge will issue a final decision which is enforceable in accordance with RCW 49.60.260.

[Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-301, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-301, filed 9/2/77; Order 7, § 162-08-301, filed 1/19/68.]

WAC 162-08-305 Nature of orders—Enforcement.

(1) **Nature of orders.** Orders obtained by counsel for the commission are public reparation orders, not adjudications of private rights between respondents and persons aggrieved by the respondents' unfair practices. When a respondent is ordered to rehire or compensate a person, the person who is the beneficiary of the order has no property right in the job, money, etc., until the person receives it.

(2) **Enforcement of order.** Except as may be otherwise provided in RCW 49.60.260 and WAC 162-08-288, only the commission, through its counsel, has the authority to enforce an order of an administrative law judge. RCW 49.60.260.

(3) **Compromise of order.** Except as may be otherwise provided for a complaint alleging an unfair practice in a real estate transaction, the commission, acting in good faith, may compromise an order of an administrative law judge, with or without the consent of the beneficiaries of the order.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-08-305, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.

120(3). 89-23-020, § 162-08-305, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-305, filed 9/2/77.]

WAC 162-08-311 Reconsideration. (1) **Motion.** Within ten days after being served with the final order of an administrative law judge, any party may serve and file a motion for reconsideration with the commission clerk. The motion shall identify the points that the party desires to have reconsidered and shall fully state the reasons for reconsideration. The motion shall in all other respects proceed as provided in RCW 34.05.470.

(2) **Finality for appeal.** When a motion for reconsideration has been filed, the order of the administrative law judge shall not be deemed final for purposes of appeal until the ruling on the motion has been served.

(3) **Reconsideration not necessary for appeal.** Motions for reconsideration should be made only when a party feels that the administrative law judge has overlooked or misunderstood something. It is not necessary to file a motion for reconsideration in order to appeal. RCW 34.05.470(5).

[Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-311, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-311, filed 9/2/77; Order 7, § 162-08-311, filed 1/19/68.]

VII RULE MAKING

WAC 162-08-600 Requests for advance notice of rule making. (1) **Form.** Requests for advance notice of rule making proceedings, as provided in RCW 34.05.320(3), shall be in writing and shall give the name of the requesting person or organization, and the address to which the notice is to be sent.

(2) **Duration.** Requests for advance notice of rule making proceedings will be honored for a period of three years after the date of the request, and may be renewed by written notice to the commission containing the information required for the original request.

(3) **Where filed.** Requests for advance notice of rule making proceedings should be filed at the Olympia office of the commission, attention rules coordinator.

[Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-600, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-600, filed 9/2/77; Order 7, § 162-08-600, filed 1/19/68.]

WAC 162-08-610 Petitions for rule making. Petitions to the commission for the promulgation, amendment, or repeal of a rule under RCW 34.05.330 shall include a statement of the reasons for the requested action, and may be accompanied by a brief of any applicable law. Petitions for the promulgation of a rule shall set out the full text of the proposed rule. Petitions for the amendment of a rule shall identify the rule by its WAC number, and shall contain the complete text of the rule as proposed to be amended, showing additions by underlining the new words and showing deletions by marking them over with a dotted line. Petitions for repeal of a rule shall identify the rule by WAC number, and may quote its text.

[Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-610, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-610, filed 9/2/77; Order 7, § 162-08-610, filed 1/19/68.]

VIII DECLARATORY ORDERS

WAC 162-08-700 Declaratory orders. (1) **Contents of petition.** A petition for a declaratory order under RCW 34.05.240 shall contain the following in addition to the requirements of RCW 34.05.240(1):

- (a) A statement of the question on which the declaratory order is sought;
- (b) A full statement of the facts giving rise to the question;
- (c) A statement of the basis for the petitioner's interest in the question.

(2) **Form.** A petition for a declaratory order may be in any form, including the form of a letter or a pleading.

(3) **Where filed.** Petitions for declaratory orders shall be filed with the clerk.

(4) **Confirmation, investigation.** In order to determine the full facts giving rise to the question the executive director may require the petitioner to submit additional information, and may make an independent investigation.

(5) **Notice and disposition.** Within fifteen days after receipt of a petition for a declaratory order, the commission will give notice of the petition to all persons to whom notice is required by law. Within thirty days after receipt of a petition for a declaratory order, the commission will:

(a) Enter an order declaring the applicability of the statute, rule, or order in question to the specified circumstances; or

(b) Set the matter for specified proceedings to be held no more than ninety days after receipt of the petition; or

(c) Set a specified time no more than ninety days after receipt of the petition by which it will enter a declaratory order; or

(d) Decline to enter a declaratory order, stating the reasons for its actions. See RCW 34.05.240(5).

(6) **Revocation or revision.** A declaratory order may be revoked or revised at any time by vote of the commissioners at a meeting. The revocation or revision shall not be effective as to the person who requested the declaratory order until that person has notice of the revocation or revision.

(7) **Supersedure.** A declaratory order is automatically superseded, without need for notice, by any material change in the statutes, or by a decision of the Washington supreme court or court of appeals that is contrary to the declaratory order.

(8) **Reliance.** When any person has relied in good faith on a declaratory order of the commission, the commission will not thereafter assert a contrary position against that person, unless the declaratory order is revoked, revised, or superseded under subsection (7) of this section. This paragraph (8) covers persons other than the person to whom the declaratory order was issued, if the persons have justifiably relied on the declaratory order.

(9) **Use of administrative law judge.** The commissioners may direct that a hearing for the purpose of issuing a declaratory order shall be held before a member of the commission, or a panel of members of the commission, or an administrative law judge. The member, panel, or administrative law judge shall hear testimony and argument, receive exhibits and other testimony, evaluate the material, and make

a proposal for decision by the commissioners, to be considered and decided in the manner provided in RCW 34.05.410 through 34.05.494.

[Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-700, filed 11/7/89, effective 12/8/89; Order 37, § 162-08-700, filed 10/27/77; Order 35, § 162-08-700, filed 9/2/77.]

Chapter 162-12 WAC PREEMPLOYMENT INQUIRY GUIDE

WAC

162-12-100	Purpose.
162-12-120	General approach.
162-12-130	Discriminatory inquiries are prohibited.
162-12-135	Bona fide occupational qualifications.
162-12-140	Preemployment inquiries.
162-12-150	Required inquiries.
162-12-160	Data for legitimate purposes.
162-12-170	Conditions for inquiries to applicants.
162-12-180	Post employment records.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

162-12-020,	162-12-030, 162-12-040. [Guide (part), filed 10/22/62.] Repealed by Rule, filed 10/23/67, § 162-12-910.
162-12-050	Preemployment inquiry guide—Bona fide occupational qualification. [Guide (part), filed 10/22/62.] Repealed by Order 8, filed 6/22/70.
162-12-060	Preemployment inquiry guide—Petitioning for a bona fide occupational qualification exemption. [Guide (part), filed 10/22/62.] Repealed by Order 8, filed 6/22/70.
162-12-070	Preemployment inquiry guide—Exemptions based on government security regulations or directives of other government agencies. [Guide (part), filed 10/22/62.] Repealed by Order 8, filed 6/22/70.
162-12-080	[Rule, filed 7/17/64; Guide (part), filed 10/22/62.] Repealed by Rule, filed 10/23/67, § 162-12-910.
162-12-110	Statutes interpreted. [Order 16, § 162-12-110, filed 5/22/74; Order 9, § 162-12-110, filed 9/23/71; § 162-12-110, filed 10/23/67.] Repealed by 96-21-054, filed 10/14/96, effective 11/14/96. Statutory Authority: RCW 49.60.120(3).

WAC 162-12-100 Purpose. (1) These regulations carry out the law against discrimination as stated generally in RCW 49.60.010 and 49.60.030, and interpret RCW 49.60.180 and 49.60.200 which declare certain preemployment inquiries to be unfair practices.

(2) The commission generally follows chapter 49.60 RCW and federal court decisions that interpret comparable statutes and rules. The commission will not follow federal precedents when a different interpretation of state statutes and rules will better carry out the purposes of chapter 49.60 RCW.

(3) This regulation cannot cover every question that might arise in connection with inquiries prior to employment. The commission expects that in most cases these rules, either directly or by analogy, will guide those who are covered by the law.

(4) Definition: In this chapter, the following words are used in the meaning given, unless the context clearly indicates another meaning.

"Protected status" is short for the phrase, "age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person," and means the full phrase (see RCW 49.60.180).

[Statutory Authority: RCW 49.60.120(3). 00-01-177, § 162-12-100, filed 12/21/99, effective 1/21/00; 96-21-054, § 162-12-100, filed 10/14/96, effective 11/14/96; Order 16, § 162-12-100, filed 5/22/74; Order 9, § 162-12-100, filed 9/23/71; § 162-12-100, filed 10/23/67.]

WAC 162-12-120 General approach. (1) Inquiries that convey to a reasonable person that applicants in a protected class will be discriminated against are prohibited whether or not they are connected to a discriminatory purpose.

(2) The commission recognizes the legitimate interests of employers and employment agencies with respect to making preemployment inquiries that are consistent with the purpose of the law against discrimination, or where required by government or to carry out an employer's policy of nondiscrimination. In the absence of safeguards, preemployment inquiries or records of applicants' protected status can be misused for discriminatory purposes. The rules in WAC 162-12-140 identify common fair and unfair preemployment inquiries so that employers and employment agencies do not convey the impression that applicants will be discriminated against based on protected status.

[Statutory Authority: RCW 49.60.120(3). 00-01-177, § 162-12-120, filed 12/21/99, effective 1/21/00; 96-21-054, § 162-12-120, filed 10/14/96, effective 11/14/96; Order 16, § 162-12-120, filed 5/22/74; Order 9, § 162-12-120, filed 9/23/71; § 162-12-120, filed 10/23/67.]

WAC 162-12-130 Discriminatory inquiries are prohibited. Any preemployment inquiry or the keeping of any record of protected status before employment for a discriminatory purpose is prohibited and may be evidence of an unfair practice when connected to the applicant's protected status unless the particular quality inquired about is a bona fide occupational qualification.

[Statutory Authority: RCW 49.60.120(3). 00-01-177, § 162-12-130, filed 12/21/99, effective 1/21/00; 96-21-054, § 162-12-130, filed 10/14/96, effective 11/14/96; Order 16, § 162-12-130, filed 5/22/74; Order 9, § 162-12-130, filed 9/23/71; Order 8, § 162-12-130, filed 6/22/70; § 162-12-130, filed 10/23/67.]

WAC 162-12-135 Bona fide occupational qualifications. Chapter 49.60 RCW recognizes an exception to unfair preemployment inquiries when the inquiries are based upon a "bona fide occupational qualification." (See WAC 162-12-240.)

[Statutory Authority: RCW 49.60.120(3). 00-01-177, § 162-12-135, filed 12/21/99, effective 1/21/00; 96-21-054, § 162-12-135, filed 10/14/96, effective 11/14/96; Order 16, § 162-12-135, filed 5/22/74; Order 9, § 162-12-135, filed 9/23/71; Order 8, § 162-12-135, filed 6/22/70.]

WAC 162-12-140 Preemployment inquiries. (1) The following examples of fair and unfair inquiries apply when made in reference to job application forms, preemployment interviews, or any other type of inquiry made of job applicants. The rules also apply to inquiries made to persons other than an applicant and to inquiries made by third parties such as a credit reporting service. The rules do not apply after a person is employed. See WAC 162-12-180.

(2) Employers and employment agencies shall comply with these rules except where one or more of the following conditions exist:

(a) When there is a "bona fide occupational qualification."

(b) A voluntary affirmative action plan that is in compliance with the requirements of a government agency or other competent authority such as a court, and if made in a manner provided in WAC 162-12-160 and 162-12-170.

(c) A requirement of federal law or regulation, as explained in WAC 162-12-150.

If one or more of the above conditions apply, the inquiries of employers and employment agencies must be accompanied by a written explanation of their purpose. See WAC 162-12-135, 162-12-160 and 162-12-170.

(3) The following examples of fair and unfair preemployment inquiries define what is an unfair practice under RCW 49.60.180(4) and 49.60.200. These examples, however, are not all inclusive. All preemployment inquiries that unnecessarily elicit the protected status of a job applicant are prohibited by these statutes irrespective of whether or not the particular inquiry is covered in this regulation.

SUBJECT	FAIR PREEMPLOYMENT INQUIRIES	UNFAIR PREEMPLOYMENT INQUIRIES	UNFAIR PREEMPLOYMENT INQUIRIES
a. Age	Inquiries as to birth date and proof of true age are permitted by RCW 49.44.090.	Any inquiry not in compliance with RCW 49.44.090 that implies a preference for persons under 40 years of age.	Whether applicant is prevented from lawfully becoming employed in this country because of visa or immigration status. Whether applicant can provide proof of a legal right to work in the United States after hire.
b. Arrests (see also Convictions)	Because statistical studies regarding arrests have shown a disparate impact on some racial and ethnic minorities, and an arrest by itself is not a reliable indication of criminal behavior, inquiries concerning arrests must include whether charges are still pending, have been dismissed, or led to conviction of a crime involving behavior that would adversely affect job performance, and the arrest occurred within the last ten years. Exempt from this rule are law enforcement agencies and state agencies, school districts, businesses and other organizations that have a direct responsibility for the supervision, care, or treatment of children, mentally ill persons, developmentally disabled persons, or other vulnerable adults. See RCW 43.20A.710; 43.43.830 through 43.43.842; and RCW 72.23.035.	Any inquiry that does not meet the requirements for fair preemployment inquiries.	Statistical studies on convictions and imprisonment have shown a disparate impact on some racial and ethnic minority groups. Inquiries concerning convictions (or imprisonment) will be considered to be justified by business necessity if the crimes inquired about relate reasonably to the job duties, and if such convictions (or release from prison) occurred within the last ten years. Law enforcement agencies, state agencies, school districts, businesses and other organizations that have a direct responsibility for the supervision, care, or treatment of children, mentally ill persons, developmentally disabled persons, or other vulnerable adults are exempt from this rule. See RCW 43.20A.710; 43.43.830 through 43.43.842; and RCW 72.23.035.
c. Citizenship			Whether applicant is citizen. Requirement before job offer that applicant present birth certificate, naturalization or baptismal divulge applicant's lineage, ancestry, national origin, descent, or birth place.
d. Convictions (see also Arrests)			Inquiries concerning convictions and imprisonment which either do not relate reasonably to job duties or did not occur within the last ten years will not be considered justified by business necessity.
e. Family			Specific inquiries concerning spouse, spouse's employment or salary, children, child care arrangements, or dependents.
f. Disability			Inquiries about the nature, severity or extent of a disability or whether the applicant requires reasonable accommodation prior to a conditional job offer. Whether applicant has applied for or received worker's compensation. Also any inquiry that is not job related or consistent with business necessity.

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SUBJECT	FAIR PREEMPLOYMENT INQUIRIES	UNFAIR PREEMPLOYMENT INQUIRIES	SUBJECT	FAIR PREEMPLOYMENT INQUIRIES	UNFAIR PREEMPLOYMENT INQUIRIES
g. Height and Weight	Being of a certain height or weight will not be considered to be a job requirement unless the employer can show that all or substantially all employees who fail to meet the requirement would be unable to perform the job in question with reasonable safety and efficiency.	Any inquiry which is not based on actual job requirements and not consistent with business necessity.	p. Relatives	Name of applicant's relatives already employed by this company or by any competitor.	Any other inquiry regarding marital status, identity of one's spouse, or spouse's occupation are considered unfair practices in accordance with WAC 162-12-150.
h. Marital Status (see also Name and Family)	None.	() Mr. () Mrs. () Miss () Ms.	q. Religion or Creed	(While the law does not prohibit company policies governing the employment of relatives, any policy that has the effect of disadvantaging minorities, women, married couples, or other protected classes, would be in violation of the law unless it is shown to serve a necessary business purpose.) See WAC 162-12-150, 162-12-160, and 162-12-170.	Inquiries concerning applicant's religious preference, denomination, religious affiliations, church, parish, pastor, or religious holidays observed.
i. Military	Inquiries concerning education, training, or work experience in the armed forces of the United States.	Whether the applicant is married, single, divorced, separated, engaged, widowed, etc. Type or condition of military discharge. Applicant's experience in military other than U.S. armed forces. Request for discharge papers.	r. Residence	Inquiries about address to the extent needed to facilitate contacting the applicant.	Names or relationship of persons with whom applicant resides. Whether applicant owns or rents own home.
j. Name	Whether applicant has worked for this company or another employer under a different name and, if so, what name. Name under which applicant is known to references if different from present name.	Inquiry into original name where it has been changed by court order or marriage. Inquiries about a name that would divulge marital status, lineage, ancestry, national origin or descent. Inquiries into applicant's lineage, ancestry, national origin, descent, birthplace, or mother tongue. National origin of applicant's parents or spouse.	s. Sex	None.	Any inquiry concerning gender is prohibited.
k. National Origin	Inquiries into applicant's ability to read, write and speak foreign languages, when such inquiries are based on job requirements.	Requirement that applicant list all organizations, clubs, societies, and lodges to which he or she belongs.	[Statutory Authority: RCW 49.60.120(3). 00-01-177, § 162-12-140, filed 12/21/99, effective 1/21/00; 96-21-054, § 162-12-140, filed 10/14/96, effective 11/14/96; Order 19, § 162-12-140, filed 1/20/75; Order 18, § 162-12-140, filed 1/20/75; Order 16, § 162-12-140, filed 5/22/74; Order 9, § 162-12-140, filed 9/23/71; Order 8, § 162-12-140, filed 6/22/70; § 162-12-140 and chart, filed 10/23/67.]		
l. Organizations	Inquiry into organization memberships, excluding any organization the name or character of which indicates the race, color, creed, sex, marital status, religion, or national origin or ancestry of its members.	Request that applicant submit a photograph, mandatorily or optionally, at any time before hiring.	WAC 162-12-150 Required inquiries. An employer or employment agency may ask applicants about protected status to the extent that the employer is required to do so by the Washington state or the United States government or a federal or state court decree. When the applicant data are required by the court or government, the information shall be acquired by means other than inquiry to the applicants, unless the court or government expressly requires the inquiries or unless the inquiries are made in conformity with WAC 162-12-160 and 162-12-170.		
m. Photographs	May be requested <i>after</i> hiring for identification purposes.	All questions as to pregnancy, and medical history concerning pregnancy and related matters.	[Statutory Authority: RCW 49.60.120(3). 00-01-177, § 162-12-150, filed 12/21/99, effective 1/21/00; 96-21-054, § 162-12-150, filed 10/14/96, effective 11/14/96; Order 16, § 162-12-150, filed 5/22/74; Order 9, § 162-12-150, filed 9/23/71; § 162-12-150, filed 10/23/67.]		
n. Pregnancy (see also Disability)	Inquiries as to a duration of stay on job or anticipated absences which are made to males and females alike.	Any inquiry concerning race or color of skin, hair, eyes, etc., not specifically permitted by WAC 162-12-150, 162-12-160, and 162-12-170.	WAC 162-12-160 Data for legitimate purposes. (1) An employer or employment agency may make inquiries as to race, sex, national origin, or disability for purposes of affirmative action, when the inquiries are made in the manner provided in WAC 162-12-170.		
o. Race or Color	None. See WAC 162-150, 162-12-160, and 162-12-170.		(2) Data on protected status shall not be recorded on any record that is kept in the applicant's preemployment file, nor shall such data be kept in any other place or form where it is available to those who process the application. Application records that identify the protected status of a particular person shall be kept confidential, except to the extent necessary to implement an affirmative action program as authorized by law, to permit the compilation of statistics, and to permit ver-		

ification of the statistics by top management of the employer, or by the Washington state human rights commission.

[Statutory Authority: RCW 49.60.120(3). 00-01-177, § 162-12-160, filed 12/21/99, effective 1/21/00; 96-21-054, § 162-12-160, filed 10/14/96, effective 11/14/96; Order 18, § 162-12-160, filed 1/20/75; Order 16, § 162-12-160, filed 5/22/74; Order 9, § 162-12-160, filed 9/23/71; § 162-12-160, filed 10/23/67.]

WAC 162-12-170 Conditions for inquiries to applicants. An employer or employment agency may ask an applicant to voluntarily state his or her protected status for reasons stated in WAC 162-12-150 and 162-12-160 only if it has satisfied all of the following conditions:

(1) The employer shall have adopted a written equal employment policy which authorizes the inquiries as a means of monitoring its enforcement, and which sets out detailed procedures for keeping the responses confidential and separate from other records relating to applicants, in fulfillment of the requirements of WAC 162-12-160(2); and

(2) The form on which the question appears contains statements clearly informing the applicant the information is strictly voluntary, the reasons for asking for the information, the uses to which the information will be put, and the safeguards that will prevent use of the information by those who will process the application.

[Statutory Authority: RCW 49.60.120(3). 00-01-177, § 162-12-170, filed 12/21/99, effective 1/21/00; 96-21-054, § 162-12-170, filed 10/14/96, effective 11/14/96; Order 18, § 162-12-170, filed 1/20/75; Order 16, § 162-12-170, filed 5/22/74; Order 9, § 162-12-170, filed 9/23/71; § 162-12-170, filed 10/23/67.]

WAC 162-12-180 Post employment records. RCW 49.60.180 and 49.60.200 and these rules do not prohibit making or keeping records of the protected status of persons after they are employed, unless the records are used for the purpose of discrimination. To prevent improper use, records of an employee's protected status must be maintained in a manner accessible only on a need to know basis.

[Statutory Authority: RCW 49.60.120(3). 00-01-177, § 162-12-180, filed 12/21/99, effective 1/21/00; 96-21-054, § 162-12-180, filed 10/14/96, effective 11/14/96; Order 16, § 162-12-180, filed 5/22/74; Order 9, § 162-12-180, filed 9/23/71; § 162-12-180, filed 10/23/67.]

Chapter 162-16 WAC EMPLOYMENT

WAC

162-16-200	General purpose and definitions.
162-16-210	Advice of commission.
162-16-220	Jurisdiction—Counting the number of persons employed.
162-16-230	Jurisdiction—Independent contractors.
162-16-240	Bona fide occupational qualification.
162-16-250	Discrimination because of marital status.
162-16-260	Discriminatory language in advertising and recruiting.
162-16-270	Employment agencies.
162-16-280	Newspapers and other advertising media.
162-16-290	Recruiting statements.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

162-16-010	Photographs of prospective employees. [Rule, filed 10/18/61.] Repealed by Order 8, filed 6/22/70.
162-16-020	Bona fide occupational qualification defined. [Order 16, § 162-16-020, filed 5/22/74; Order 9, § 162-16-020, filed 9/23/71; Order 8, § 162-16-020, filed 6/22/70.]

Repealed by 99-15-025, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3).

Advice of commission. [Order 16, § 162-16-030, filed 5/22/74; Order 9, § 162-16-030, filed 9/23/71; Order 8, § 162-16-030, filed 6/22/70.] Repealed by 99-15-025, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3).

Identification in use. [Order 16, § 162-16-040, filed 5/22/74; Order 9, § 162-16-040, filed 9/23/71; Order 8, § 162-16-040, filed 6/22/70.] Repealed by 99-15-025, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3).

Discrimination in employment because of arrests. [Order 19, § 162-16-050, filed 1/20/75.] Repealed by 99-15-025, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3).

Discrimination in employment because of convictions. [Order 19, § 162-16-060, filed 1/20/75.] Repealed by 99-15-025, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3).

Applicability of WAC 162-16-050 and 162-16-060 to nonminorities. [Order 19, § 162-16-070, filed 1/20/75.] Repealed by 99-15-025, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3).

Purpose. [Order 20, § 162-16-080, filed 1/20/75.] Repealed by 99-15-025, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3).

Job titles. [Order 20, § 162-16-090, filed 1/20/75.] Repealed by 99-15-025, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3).

Discriminatory language. [Order 20, § 162-16-100, filed 1/20/75.] Repealed by 99-15-025, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3).

Employment agencies. [Order 20, § 162-16-110, filed 1/20/75.] Repealed by 99-15-025, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3).

Newspapers and other advertising media. [Order 20, § 162-16-120, filed 1/20/75.] Repealed by 99-15-025, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3).

Bona fide occupational qualification. [Order 20, § 162-16-130, filed 1/20/75.] Repealed by 99-15-025, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3).

Affirmative action. [Order 20, § 162-16-140, filed 1/20/75.] Repealed by 99-15-025, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3).

Discrimination because of spouse. [Order 21, § 162-16-150, filed 4/18/75.] Repealed by 99-15-025, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3).

"Employer"—Jurisdictional count of number of persons employed. [Statutory Authority: RCW 49.60.120(3). 82-19-072 (Order 42), § 162-16-160, filed 9/20/82.] Repealed by 99-15-025, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3).

Employee distinguished from independent contractor. [Statutory Authority: RCW 49.60.120(3). 82-19-072 (Order 42), § 162-16-170, filed 9/20/82.] Repealed by 99-15-025, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3).

WAC 162-16-200 General purpose and definitions.

The law against discrimination protects persons from discrimination in employment (RCW 49.60.180, 49.60.190, and 49.60.200). Persons are also protected from discrimination as provided in RCW 49.60.172 (unfair practices with respect to HIV infection), RCW 49.60.174 (actual or perceived HIV infection), and RCW 49.60.210 (unfair to discriminate against person opposing unfair practice).

(1) The commission's first objective in writing the rules in this chapter and in making future decisions on questions not addressed in this chapter is to eliminate and prevent discrimination. This is the overall purpose of the law against discrimination.

(2) Other objectives in writing these rules are:

(a) To be consistent with interpretations of federal anti-discrimination law and the antidiscrimination laws of other states, where these are comparable to Washington law, and where the commission does not find that a different rule would better serve the state of Washington.

(b) To avoid the uncritical adoption of definitions from areas of law other than antidiscrimination law. It is appropriate to define employment differently in different areas of the law to carry out the separate purpose of each area of law.

(c) To give effect to the purposes of the exemption of employers of less than eight from public enforcement of the law against discrimination, as identified in RCW 49.60.040.

(d) The public and commission staff need standards that are certain and that are easy to understand and apply. Therefore we must sometimes simply draw a line, although reasonable persons could differ as to where the line should be drawn.

(3) The state law against discrimination covers employers with eight or more employees. Persons should also educate themselves on relevant local or federal antidiscrimination laws.

(4) **Definition:**

In this chapter, the following words are used in the meaning given, unless the context clearly indicates another meaning.

"Protected status" is short for the phrase, "age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person," and means the full phrase (see RCW 49.60.180).

[Statutory Authority: RCW 49.60.120(3). 99-15-025, § 162-16-200, filed 7/12/99, effective 8/12/99.]

WAC 162-16-210 Advice of commission. (1) When requested to do so, the commission's staff will advise persons on how to meet particular employment needs consistently with the law against discrimination.

(2) Persons may petition the commission for an executive director's opinion determining whether protected status would be a bona fide occupational qualification in particular circumstances, unless the commission or another public agency with comparable jurisdiction has directed or authorized the action. (Please see WAC 162-04-070 on executive director's opinions and WAC 162-16-240 on bona fide occupational qualification.)

[Statutory Authority: RCW 49.60.120(3). 99-15-025, § 162-16-210, filed 7/12/99, effective 8/12/99.]

WAC 162-16-220 Jurisdiction—Counting the number of persons employed. (1) **Purpose and scope.** RCW 49.60.040 defines "employer" for purposes of the law against discrimination in part as "any person. . . who employs eight or more persons." This section establishes standards for determining who is counted as employed when deciding whether a person is an employer. The standards in this section do not define who is entitled to the protection of the law against discrimination.

(2) **Time of calculation.** A person will be considered to have employed eight if the person either:

(a) Had an employment relationship with eight or more persons for any part of the day on which the unfair practice is alleged to have occurred, or did occur; or

(b) Had an employment relationship with an average of eight or more persons over a representative period of time including the time when the unfair practice is alleged to have occurred.

An employment relationship is most readily demonstrated by a person's appearance on the employer's payroll. The representative period of time for (b) of this subsection will ordinarily be the twenty weeks prior to and including the date on which the unfair practice is alleged to have occurred. However, where this period will not accurately reflect the overall employment level, as in a seasonal industry, we will use the month during which the unfair practice is alleged to have occurred plus the preceding eleven months.

(3) **Part-time employees.** A person working part time will be counted the same as a person working full-time. Persons subject to call to work (such as volunteer fire fighters) will be considered to be employed at all times when they are subject to call.

(4) **Area of calculation.** A person who employs eight or more persons is an "employer" for purposes of the law against discrimination even though less than eight of the employees are located in the state of Washington.

(5) **Multiple places of employment.** The count will include all persons employed by the same legal entity, whether or not the persons work in the same place of business or line of business.

(6) **Connected corporations.** Corporations and other artificial persons that are in common ownership or are in a parent-subsidiary relationship will be treated as separate employers unless the entities are managed in common in the area of employment policy and personnel management. In determining whether there is management in common we will consider whether the same individual or individuals do the managing, whether employees are transferred from one entity to another, whether hiring is done centrally for all corporations, and similar evidence of common or separate management.

(7) **Persons on layoff.** Persons on layoff will not be counted.

(8) **Persons on leave.** Persons on paid leave will be counted. Persons on unpaid leave will not be counted.

(9) **Employee or independent contractor.** Independent contractors will not be counted. In determining whether a person is employed or is an independent contractor for the jurisdictional count we will use the same standards that we use for the purpose of determining whether a person comes within the protection of the law against discrimination. These standards are set out in WAC 162-16-230.

(10) **Pay.** Anyone who is paid for work and who otherwise meets the standards in this section will be counted. This includes paid interns and work study program participants. Pay includes compensation for work by the hour, by commission, by piecework, or by any other measure. For the treatment of unpaid persons, see subsection (11) of this section.

(11) **Unpaid persons.** An unpaid person will be counted if he or she is generally treated in the manner that employers treat employees. That is, if management selects the person (particularly if selected in competition with other persons),

assigns work hours, disciplines the unpaid person like an employee, or provides employment benefits such as industrial insurance, then the person will be counted as an employee. The typical volunteer fire fighter would be counted. A person who comes into the food bank when he or she pleases, is put to work if there is anything to do, who leaves when he or she pleases, who has no expectation of paid employment, and who receives no employment benefits, would not be counted.

(12) **Family members.** Because of the definition of "employee" in RCW 49.60.040, we will not count "any individual employed by his or her parents, spouse, or child." Other family members will be counted.

(13) **Domestic help.** Because of the definition of "employee" in RCW 49.60.040, we will not count a person in the domestic service of the employing person.

(14) **Directors.** Directors of corporations, and similar officers of other private or public artificial legal entities, will not be counted simply because they serve in that capacity.

(15) **Officers.** Officers of corporations, and officers of other private or public artificial legal entities, will be counted unless:

(a) They receive no pay from the corporation or other entity; and

(b) They do not participate in the management of the corporation or other entity beyond participation in formal meetings of the officers.

(16) **Partners.** Partners will not be counted as employed by the partnership or by each other.

(17) **Members of a professional service corporation.** All persons who render professional services for a professional service corporation will be counted as employees of the corporation.

(18) **Temporary employee placement services.** Persons placed with an on-site employer by a temporary employee placement service:

(a) Will be counted as employees of the temporary placement service; and

(b) Will also be counted as employees of the on-site employer if the on-site employer generally treat them in the manner that employers treat employees (please see the factors listed in WAC 162-16-230).

[Statutory Authority: RCW 49.60.120(3). 99-15-025, § 162-16-220, filed 7/12/99, effective 8/12/99.]

WAC 162-16-230 Jurisdiction—Independent contractors. (1) **Purpose of section.** RCW 49.60.180 defines unfair practices in employment. A person who works or seeks work as an independent contractor, rather than as an employee, is not entitled to the protection of RCW 49.60.180. This section outlines the standards that we will use to determine whether a person is an employee as distinguished from an independent contractor for the purpose of entitlement to the protection of RCW 49.60.180.

(2) **Rights of independent contractor.** While an independent contractor does not have the protection of RCW 49.60.180, the contractor is protected by RCW 49.60.030(1). The general civil right defined in RCW 49.60.030(1) is enforceable by private lawsuit in court under RCW 49.60.030 (2) but not by actions of the Washington state human rights commission.

(3) **General approach.** We will consider all the relevant facts, particularly those bearing on the following factors. No one factor is determinative, but the most important is the extent to which the purchaser of work controls the manner and means of performance of the work.

(a) **Control of work.** An employment relationship probably exists where the purchaser of work has the right to control and direct the work of the worker, not only as to the result to be achieved, but also as to the details by which the result is achieved.

(b) **Tools and place of work.** Does the purchaser of the work or the worker furnish the equipment used and the place of work? Generally, the purchaser of work furnishes tools and equipment for employees while independent contractors furnish their own. Some employees furnish some of their own tools, however.

(c) **Skill level involved.** The skill required in the particular occupation. Skilled workers are typically less closely supervised than unskilled workers, but they are employees if indicia of employment other than close supervision are present.

(d) **Type of work involved.** The kind of occupation, with reference to whether the work usually is done under the direction of a supervisor or is done by a specialist without supervision. Some persons, such as lawyers or doctors, may be employees even though they are not closely supervised. The test for such specialists is not whether the lawyer or doctor is closely supervised, but whether he or she is treated the way that employed lawyers or doctors are commonly treated. Lawyers and doctors are typically independent contractors, however, with respect to their clients or patients.

(e) **Duration of work.** The length of time during which the person has worked or the length of time that the job will last. Independent contractors typically are hired for a job of relatively short duration, but there are instances of independent contracts for an indefinite period - for example, contracts for janitorial service.

(f) **Method of payment.** The method of payment, whether by time or by the job. Independent contractors are usually paid by the job but are sometimes paid by time. Employees are usually paid by time but are sometimes paid by the job.

(g) **Ending the work relationship.** Whether the work relationship is terminable by one party or both parties, with or without notice and explanation. An employee is usually free to quit and is usually subject to discharge or layoff without breach of the employment contract. An independent contractor usually has more fixed obligations.

(h) **Leave.** Whether annual leave is afforded. Leave with pay is almost exclusively accorded to employees.

(i) **Integration of the work in the purchaser's operations.** Whether the work is an integral part of the business of the purchaser of it. Usually, employees rather than independent contractors do the regular work of a business.

(j) **Accrual of benefits.** Whether the worker accumulates retirement benefits. Retirement benefits are almost exclusively accorded to employees.

(k) **Taxation.** Whether with respect to the worker the purchaser of work pays taxes levied on employers, such as the social security tax, unemployment compensation tax, and worker's compensation tax, or withholds federal income tax.

The tax laws do not have the same purposes as the law against discrimination, so employee status for tax purposes is helpful but not controlling.

(l) **Salary or income.** Whether the worker treats income from the work as salary or as business income. See subsection (3)(k) of this section.

(m) **Employer records.** Whether with respect to the worker the purchaser of work keeps and transmits records and reports required of employers, such as those required under the worker's compensation act. Worker's compensation coverage, like tax coverage, is helpful but not conclusive.

(n) **The intention of the parties.** The fact that a contract says that the worker is an independent contractor will be considered in this respect, but it is not conclusive for the purpose of coverage of RCW 49.60.180.

(4) **Burden of persuasion.** The party asserting that the complainant is an independent contractor has the burden of proving that status.

[Statutory Authority: RCW 49.60.120(3). 99-15-025, § 162-16-230, filed 7/12/99, effective 8/12/99.]

WAC 162-16-240 Bona fide occupational qualification. Under the law against discrimination, there is an exception to the rule that an employer, employment agency, labor union, or other person may not discriminate on the basis of protected status; that is if a bona fide occupational qualification (BFOQ) applies. The commission believes that the BFOQ exception should be applied narrowly to jobs for which a particular quality of protected status will be essential to or will contribute to the accomplishment of the purposes of the job. The following examples illustrate how the commission applies BFOQs:

(1) Where it is necessary for the purpose of authenticity or genuineness (e.g., model, actor, actress) or maintaining conventional standards of sexual privacy (e.g., locker room attendant, intimate apparel fitter) the commission will consider protected status to be a BFOQ.

(2) A 911 emergency response service needs operators who are bilingual in English and Spanish. The job qualification should be spoken language competency, not national origin.

(3) An employer refuses to consider a person with a disability for a receptionist position on the basis that the person's disability "would make customers and other coworkers uncomfortable." This is **not** a valid BFOQ.

(4) A person with a disability applies for promotion to a position at a different site within the firm. The firm does not promote the person because doing so would compel the firm to install an assistive device on equipment at that site to enable the person to properly perform the job. This is **not** a valid BFOQ.

[Statutory Authority: RCW 49.60.120(3). 99-15-025, § 162-16-240, filed 7/12/99, effective 8/12/99.]

WAC 162-16-250 Discrimination because of marital status. (1) **General rule.** It is an unfair practice to discriminate against an employee or job applicant because of marital status. Examples of unfair practices include, but are not limited to:

(a) Refusing to hire a single or divorced applicant because of a presumption that "married persons are more stable."

(b) Refusing to promote a married employee because of a presumption that he or she "will be less willing to work late and travel."

(2) **Exceptions to the rule.** There are narrow exceptions to the rule that an employer, employment agency, labor union, or other person may not discriminate on the basis of marital status:

(a) If a bona fide occupational qualification applies (please see WAC 162-16-240).

(b) If an employer is enforcing a documented conflict of interest policy limiting employment opportunities on the basis of marital status:

(i) Where one spouse would have the authority or practical power to supervise, appoint, remove, or discipline the other;

(ii) Where one spouse would be responsible for auditing the work of the other;

(iii) Where other circumstances exist which would place the spouses in a situation of actual or reasonably foreseeable conflict between the employer's interest and their own; or

(iv) Where, in order to avoid the reality or appearance of improper influence or favor, or to protect its confidentiality, the employer must limit the employment of close relatives of policy level officers of customers, competitors, regulatory agencies, or others with whom the employer deals.

[Statutory Authority: RCW 49.60.120(3). 99-15-025, § 162-16-250, filed 7/12/99, effective 8/12/99.]

WAC 162-16-260 Discriminatory language in advertising and recruiting. (1) **Unfair practice.** The law against discrimination (RCW 49.60.180, 49.60.190 and 49.60.200) makes it an unfair practice for employers, labor unions, employment agencies, or other persons to discriminate on the basis of protected status. An exception is if a bona fide occupational qualification applies (please see WAC 162-16-240). The law against discrimination (RCW 49.60.220) also makes it an unfair practice for any person to aid, abet, encourage, or incite the commission of any unfair practice.

The commission provides the following charts as guidance in avoiding discriminatory language in advertising and recruiting. These are suggested terms only. The commission invites persons who want further assistance to contact commission staff.

(2) **Discriminatory language.** It is an unfair practice to use any word, term, phrase, or expression that tends to influence, persuade or dissuade, encourage or discourage, attract or repel, any person or persons because of protected status. An exception is if a bona fide occupational qualification applies (please see WAC 162-16-240).

DISCRIMINATORY TERMS

IN ADVERTISEMENTS:

Man, woman, girl, boy, lady,
etc.

Cute, handsome, pretty,
clean-cut, attractive

SUGGESTED SUBSTITUTES:

Person, applicant, hiree,
one, trainee, or a sex-neutral
job title

Neat, well-groomed, per-
sonable, professional
appearance

DISCRIMINATORY TERMS**IN ADVERTISEMENTS:**

Married, single
Recent graduate, college student (implies preference for youth)
Mother, housewife
Young

Christian, Jewish, etc.
Interracial, segregated, Black, White, colored, Oriental, Asian, Mexican, minority.

SUGGESTED SUBSTITUTES:

No substitutes
Degree required, Internship

Part-time, short hours
Entry level, beginner, trainee
No substitutes
Person, applicant, etc.

Other nondiscriminatory terms: Reliable, responsible, efficient, minimum wages, long hours, overtime, able to travel, willing to relocate.

(3) Job titles. It is an unfair practice to use a discriminatory job title in any help wanted advertisement, job description, job announcement, or any other notice, statement, or publication, unless the employer has shown that a bona fide occupational qualification applies (please see WAC 162-16-240).

The term "discriminatory job title" includes but is not limited to any job title that contains a gender noun or suffix, such as waitress, foreman, salesman, maid, or counter girl. If the use of a gender neutral job title is not practicable, two alternatives are permissible:

(a) The sex specific job title may be used with its counterpart title (e.g., waiter/waitress);

(b) The sex specific title may be used if accompanied by the designation "man or woman," "male or female," or "M-F" (e.g., foreman, man or woman; tailor, male or female; lineman, M-F).

DISCRIMINATORY JOB**TITLES:**

Barmaid
Busboy, tray girl
Cleaning woman, cleaning lady
Draftsman

Fireman
Fisherman
Foreman
Handyman
Journeyman
Leadman
Longshoreman
Maid

SUGGESTED SUBSTITUTES:

Server, Cocktail Server
Busser, Cafeteria Worker
Cleaning Assistant

Drafter, AutoCAD Specialist
Fire Fighter
Fisher
Supervisor
Miscellaneous Repairer
Journey Level
Crew, Shift, or Team Leader
Longshore Worker
Domestic Helper, Housekeeper

Maintenance man
Policeman
Repairman
Salesman, saleslady, salesgirl

Maintenance Worker
Police Officer
Repairer, Technician
Salesperson, Sales Clerk,
Sales Representative

DISCRIMINATORY JOB**TITLES:**

Stewardess, Steward

SUGGESTED SUBSTITUTES:

Flight Attendant, Cabin Attendant

[Statutory Authority: RCW 49.60.120(3). 99-15-025, § 162-16-260, filed 7/12/99, effective 8/12/99.]

WAC 162-16-270 Employment agencies. (1) It is an unfair practice for any employment agency to:

(a) Handwrite, print, or circulate any interoffice or interagency communication, job order, advertisement, brochure, or notice which expresses overtly or subtly, directly or indirectly a preference, specification or limitation on the basis of protected status. An exception is if a bona fide occupational qualification applies (please see WAC 162-16-240).

(b) Maintain, formally or informally, agency division titles that are not clearly neutral in terms of sex.

(2) It is not an unfair practice for an employment agency to assist an employer in recruiting applicants based on protected status when:

(a) The employer has a documented affirmative action plan; and

(b) The employer's affirmative action plan is authorized or required by a governmental agency or court of competent authority and jurisdiction.

[Statutory Authority: RCW 49.60.120(3). 99-15-025, § 162-16-270, filed 7/12/99, effective 8/12/99.]

WAC 162-16-280 Newspapers and other advertising media. (1) It is an unfair practice for a newspaper or other advertising medium to publish or circulate within the state an employment advertisement under a column heading or designation which segregates or expresses a preference on the basis of protected status. An exception is if a bona fide occupational qualification applies (please see WAC 162-16-240).

(2) It is not an unfair practice for any newspaper or other advertising medium to print, publish, or circulate employment advertisements expressing the wording of the advertisement, or subtly, directly or indirectly a preference, specification or limitation on the basis of protected status, provided the newspaper or other advertising medium furnishes, on request of a duly authorized representative of the commission, the name and address of the person who submitted the advertisement for publication.

(3) The commission encourages advertising media that circulate employment advertisements to:

(a) Maintain lists of discriminatory job titles and terms and suggested substitutes, as compiled by the commission;

(b) Instruct their ad-takers to advise employers and employment agencies of these terms; and

(c) Have copies of this regulation available for distribution to advertisers on request.

[Statutory Authority: RCW 49.60.120(3). 99-15-025, § 162-16-280, filed 7/12/99, effective 8/12/99.]

WAC 162-16-290 Recruiting statements. (1) Employers are encouraged to seek a broad pool of applicants through recruitment efforts. It is permissible to use advertisements that contain nonexclusionary recruitment phrases, such as:

(a) "Equal opportunity employer."

(b) "We encourage workforce diversity."

(2) IT IS NOT PERMISSIBLE, however, to express or exercise a hiring preference based on protected status, UNLESS:

(a) The employer has a court order to do so or an authorization from this commission or another governmental agency of competent authority and jurisdiction; or

(b) The employer can prove that the expression is justified by a bona fide occupational qualification (please see WAC 162-16-240). In the absence of proof, the advertisement will be considered evidence of an unfair practice under the law.

[Statutory Authority: RCW 49.60.120(3), 99-15-025, § 162-16-290, filed 7/12/99, effective 8/12/99.]

Chapter 162-20 WAC AGE DISCRIMINATION IN PUBLIC EMPLOYMENT

WAC

162-20-010	Purpose.
162-20-020	Statutes interpreted.
162-20-030	Jurisdiction of commission.
162-20-040	Complaints concerning public employment.
162-20-050	Duties of staff.
162-20-060	Commission action.
162-20-070	Primary jurisdiction.
162-20-080	Pending complaints covered.

WAC 162-20-010 Purpose. These rules clarify the age discrimination provisions of RCW 49.60.180 and 49.44.090, with respect to candidates for public employment.

[Statutory Authority: RCW 49.60.120(3), 00-01-177, § 162-20-010, filed 12/21/99, effective 1/21/00; Order 9, § 162-20-010, filed 9/23/71; Resolution, § 1, filed 10/18/63.]

WAC 162-20-020 Statutes interpreted. Section 1, chapter 100, Laws of 1961, amended RCW 49.60.180 to add discrimination because of age as an unfair practice of employers.

RCW 49.44.090 reads in part:

"...

"Nothing contained in this section or in RCW 49.60.180 as to age shall be construed . . . ; nor shall anything in this section or in RCW 49.60.180 be deemed to preclude . . . ; nor shall this section be construed . . . as superseding any law fixing or authorizing the establishment of reasonable minimum or maximum age limits with respect to candidates for certain positions in public employment which are of such a nature as to require extraordinary physical effort, or which for other reasons warrant consideration of age factors."

[Statutory Authority: RCW 49.60.120(3), 00-01-177, § 162-20-020, filed 12/21/99, effective 1/21/00; Order 9, § 162-20-020, filed 9/23/71; Resolution, § 2, filed 10/18/63.]

WAC 162-20-030 Jurisdiction of commission. The human rights commission shall not exercise jurisdiction over any alleged unfair practice as to age (over forty) when the respondent is acting under a law, ordinance or valid rule fixing or authorizing the establishment of reasonable minimum or maximum age limits with respect to candidates for public employment.

[Statutory Authority: RCW 49.60.120(3), 00-01-177, § 162-20-030, filed 12/21/99, effective 1/21/00; Order 9, § 162-20-030, filed 9/23/71; Resolution, § 3, filed 10/18/63.]

(2009 Ed.)

WAC 162-20-040 Complaints concerning public employment. Complaints of candidates for public employment will be received in the manner provided by law and rule for the receipt of complaints in general.

[Resolution, § 4, filed 10/18/63.]

WAC 162-20-050 Duties of staff. When a complaint alleging age discrimination concerns a position in public employment, the commission's staff shall take the following steps before investigating and ascertaining the facts of the alleged act of discrimination:

(1) The staff shall determine whether the respondent is acting under a law or ordinance fixing or authorizing the establishment of age limits.

(2) If the staff finds that the respondent is not acting under a law or ordinance fixing or authorizing the establishment of age limits, the commission's staff shall proceed to process the complaint in the same manner as other complaints are processed, and in its findings the staff shall include a finding that the employer was not acting under a law or ordinance fixing or authorizing age limits.

(3) If the staff finds that the respondent had acted under a law or ordinance fixing or authorizing age limits it shall so report at the next commission meeting.

[Order 9, § 162-20-050, filed 9/23/71; Resolution, § 5, filed 10/18/63.]

WAC 162-20-060 Commission action. When the commission has received and accepted a report as provided in WAC 162-20-050(3) it shall dismiss the complaint for lack of jurisdiction.

[Order 9, § 162-20-060, filed 9/23/71; Resolution, § 6, filed 10/18/63.]

WAC 162-20-070 Primary jurisdiction. Unless the human rights commission should for good reason order otherwise, it will not act on any complaint concerning a position in public employment during the time while the complainant has an administrative review proceeding provided for his use by law, ordinance or valid rule by the respondent public agency or another public agency.

[Order 9, § 162-20-070, filed 9/23/71; Resolution, § 7, filed 10/18/63.]

WAC 162-20-080 Pending complaints covered. These rules, being an interpretation of the jurisdiction of the commission, shall apply to pending complaints as well as to complaints filed after the effective date of these rules.

[Order 9, § 162-20-080, filed 9/23/71; Resolution, § 8, filed 10/18/63.]

Chapter 162-22 WAC EMPLOYMENT—HANDICAPPED PERSONS

WAC

162-22-010	Scope of chapter.
162-22-020	Definitions.
162-22-025	Unfair practice.
162-22-035	Preference for disabled is not an unfair practice.
162-22-045	Bona fide occupational qualifications.
162-22-065	Reasonable accommodation.
162-22-075	Undue hardship exception.
162-22-090	Health care opinions.
162-22-100	Dog guides and service animals.

[Title 162 WAC—p. 33]

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

162-22-030	Affirmative action and reporting. [Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-22-030, filed 3/23/98, effective 4/23/98; Order 22, § 162-22-030, filed 5/23/75.] Repealed by 99-15-025, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3).
162-22-040	General approach to enforcement. [Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-22-040, filed 3/23/98, effective 4/23/98; Order 23, § 162-22-040, filed 7/21/75.] Repealed by 99-15-025, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3).
162-22-050	Unfair practice. [Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-22-050, filed 3/23/98, effective 4/23/98; Order 23, § 162-22-050, filed 7/21/75.] Repealed by 99-15-025, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3).
162-22-060	Preference for disabled is not an unfair practice. [Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-22-060, filed 3/23/98, effective 4/23/98; Order 23, § 162-22-060, filed 7/21/75.] Repealed by 99-15-025, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3).
162-22-070	Bona fide occupational qualification. [Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-22-070, filed 3/23/98, effective 4/23/98; Order 23, § 162-22-070, filed 7/21/75.] Repealed by 99-15-025, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3).
162-22-080	Accommodation to employees with disabilities. [Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-22-080, filed 3/23/98, effective 4/23/98; Order 23, § 162-22-080, filed 7/21/75.] Repealed by 99-15-025, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3).

WAC 162-22-010 Scope of chapter. This chapter interprets and implements the disability discrimination coverage of:

- (1) RCW 48.60.174 (unfair practices based on actual or perceived HIV infection);
- (2) RCW 49.60.180 (unfair practices of employers);
- (3) RCW 49.60.190 (unfair practices of labor unions);
- (4) RCW 49.60.200 (unfair practices of employment agencies);
- (5) RCW 49.60.210 (unfair to discriminate against persons opposing unfair practices); and
- (6) RCW 49.60.220 (unfair to aid violation).

[Statutory Authority: RCW 49.60.120(3). 99-15-025, § 162-22-010, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-22-010, filed 3/23/98, effective 4/23/98; Order 23, § 162-22-010, filed 7/21/75.]

WAC 162-22-020 Definitions. In this chapter the following words are used in the meaning given, unless the context clearly indicates another meaning:

- (1) "Disability" is short for the statutory term "the presence of any sensory, mental, or physical disability," except when it appears as part of the full term.
- (2) "The presence of a sensory, mental, or physical disability" includes, but is not limited to, circumstances where a sensory, mental, or physical condition:

- (a) Is medically cognizable or diagnosable;
- (b) Exists as a record or history;
- (c) Is perceived to exist whether or not it exists in fact.

A condition is a "sensory, mental, or physical disability" if it is an abnormality and is a reason why the person having the condition did not get or keep the job in question, or was

denied equal pay for equal work, or was discriminated against in other terms and conditions of employment, or was denied equal treatment in other areas covered by the statutes. In other words, for enforcement purposes a person will be considered to be disabled by a sensory, mental, or physical condition if he or she is discriminated against because of the condition and the condition is abnormal.

(3) An "able worker with a disability" is a person whose disability does not prevent the proper performance, with or without reasonable accommodation, of the particular job in question.

(4) "'Dog guide' means a dog that is trained for the purpose of guiding blind persons or a dog that is trained for the purpose of assisting hearing impaired persons."

(5) "'Service animal' means an animal that is trained for the purpose of assisting or accommodating a disabled person's sensory, mental, or physical disability."

(6) "Health care professional" means a person whose license to practice includes diagnosis and assessment of the particular disability for which she or he issues a health care opinion.

[Statutory Authority: RCW 49.60.120(3). 99-15-025, § 162-22-020, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-22-020, filed 3/23/98, effective 4/23/98; Order 23, § 162-22-020, filed 7/21/75.]

WAC 162-22-025 Unfair practice. It is an unfair practice for any employer, employment agency, labor union, or other person to:

(1) Refuse to hire, discharge, bar from employment, or otherwise discriminate against an able worker with a disability or because of the use of a trained dog guide or service animal by an able worker with a disability; or

(2) Fail or refuse to make reasonable accommodation for an able worker with a disability or the use of a trained dog guide or service animal by an able worker with a disability, unless to do so would impose an undue hardship (please see WAC 162-22-065 and 162-22-075); or

(3) Refuse to hire or otherwise discriminate against an able worker with a disability because the employer would be subject to the requirements of this chapter if the person were hired, promoted, etc.

[Statutory Authority: RCW 49.60.120(3). 99-15-025, § 162-22-025, filed 7/12/99, effective 8/12/99.]

WAC 162-22-035 Preference for disabled is not an unfair practice. The law protects against discrimination because of the presence of any disability or the use of a trained dog guide or service animal by a person with a disability. Discrimination in favor of a person because of the person's disability is not an unfair practice. This is different from the operation of the statutes in all other areas, except for age discrimination. For example, it is an unfair practice for an employer to discriminate either for or against persons of any race or either sex.

[Statutory Authority: RCW 49.60.120(3). 99-15-025, § 162-22-035, filed 7/12/99, effective 8/12/99.]

WAC 162-22-045 Bona fide occupational qualifications. Under the law against discrimination, there is one exception to the rule that an employer, employment agency,

labor union, or other person may not discriminate on the basis of protected status; that is if a bona fide occupational qualification (BFOQ) applies. For a complete discussion of BFOQs, please read WAC 162-16-240.

[Statutory Authority: RCW 49.60.120(3). 99-15-025, § 162-22-045, filed 7/12/99, effective 8/12/99.]

WAC 162-22-065 Reasonable accommodation. (1)

Reasonable accommodation means measures that:

- (a) Enable equal opportunity in the application process;
- (b) Enable the proper performance of the particular job held or desired;
- (c) Enable the enjoyment of equal benefits, privileges, or terms and conditions of employment.

(2) Possible examples of reasonable accommodation may include, but are not limited to:

- (a) Adjustments in job duties, work schedules, or scope of work;
- (b) Changes in the job setting or conditions of work;
- (c) Informing the employee of vacant positions and considering the employee for those positions for which the employee is qualified.

[Statutory Authority: RCW 49.60.120(3). 99-15-025, § 162-22-065, filed 7/12/99, effective 8/12/99.]

WAC 162-22-075 Undue hardship exception. An employer, employment agency, labor union, or other person must provide reasonable accommodation unless it can prove that the accommodation would impose an undue hardship. An accommodation will be considered an undue hardship if the cost or difficulty is unreasonable in view of:

- (1) The size of and the resources available to the employer;
- (2) Whether the cost can be included in planned remodeling or maintenance; and
- (3) The requirements of other laws and contracts, and other appropriate considerations.

[Statutory Authority: RCW 49.60.120(3). 99-15-025, § 162-22-075, filed 7/12/99, effective 8/12/99.]

WAC 162-22-090 Health care opinions. (1) Employers may seek a health care professional's opinion on whether a person's disability affects the proper performance of a particular job. The employer may also seek a health care professional's opinion on possible effective accommodations that would enable the person with a disability to properly perform the job. The health care professional's opinion will be given due weight in view of all the circumstances, including the extent of the health care professional's knowledge of the particular person and job, and the health care professional's relationship to the parties.

(2) A health care professional's conclusion will not be considered to be an opinion on whether the person can properly perform the particular job unless it:

- (a) Is based on the individual capabilities of the particular person, and not on generalizations as to the capabilities of all persons with the same disability; and

(b) Is based on knowledge of the actual sensory, mental, and physical qualifications needed for proper performance of the particular job.

(2009 Ed.)

(3) Employers are advised to provide the health care professional with the necessary information about the particular job and to inform the health care professional of the need for an individualized opinion.

(4) Employee health care information shall be kept in a confidential manner, separate from the employee's regular personnel files. The employer may share health care information only on a need to know basis. Supervisors and/or safety personnel may be informed of employee needs only if necessary to make appropriate work assignments or develop appropriate emergency response plans.

[Statutory Authority: RCW 49.60.120(3). 99-15-025, § 162-22-090, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-22-090, filed 3/23/98, effective 4/23/98; Order 23, § 162-22-090, filed 7/21/75.]

WAC 162-22-100 Dog guides and service animals.

(1) **General rule.** It is an unfair practice for an employer, employment agency, labor union, or other person to request that a trained dog guide or service animal be removed from the workplace, UNLESS that employer, employment agency, labor union, or other person can show that the presence, behavior or actions of that dog guide or service animal constitutes an unreasonable risk to property or other persons.

It is an unfair practice to remove a trained dog guide or service animal from the entire workplace because the animal presents a risk of injury or harm when in part of the workplace.

(2) Assessing risk of injury or harm.

(a) Risk to property or other persons must be immediate or reasonably foreseeable under the circumstances, not remote or speculative. Risk to persons may be given more weight than risk to property. Risk of severe injury or harm may be given more weight than risk of slight injury or harm. For example, a principal excludes a teacher's dog guide because; "A neighborhood dog bit one of our kids last year, so I don't allow any dogs at school." This is **not** "reasonably foreseeable risk" justifying removal of the dog guide.

(b) Annoyance on the part of staff or other customers of the workplace at the presence of the dog guide or service animal is not an unreasonable "risk to property or other persons" justifying the removal of the dog guide or service animal.

(c) Risk of injury or harm to the dog guide or service animal is not a reason for an employer to remove or exclude the animal. The decision whether to bring the animal to the worksite under such conditions most properly rests with the person with a disability using the dog guide or service animal.

(3) **Reasonable accommodation.** When risk justifies the removal of a dog guide or service animal from the workplace, efforts must be made to reasonably accommodate the person with the disability.

(4) **Liability.** Law other than the law against discrimination governs liability for injury or harm. Generally, a person with a disability using a dog guide or service animal is responsible for the animal and may be held liable for the behavior and actions of the animal.

[Statutory Authority: RCW 49.60.120(3). 99-15-025, § 162-22-100, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-22-100, filed 3/23/98, effective 4/23/98.]

[Title 162 WAC—p. 35]

Chapter 162-26 WAC

PUBLIC ACCOMMODATIONS, DISABILITY DISCRIMINATION

WAC

162-26-010	Scope of chapter.
162-26-040	Definitions.
162-26-060	General principles.
162-26-070	General rules.
162-26-080	Reasonable accommodation.
162-26-100	Structural barriers to accessibility.
162-26-110	Behavior causing risk.
162-26-120	Requirements of other law.
162-26-130	Use of trained dog guide or service animal.
162-26-135	Removal of a dog guide or service animal.
162-26-140	Unfair to request or require waiver of rights.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

162-26-020	Purpose of chapter. [Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-26-020, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-26-020, filed 9/22/82.] Repealed by 99-15-025, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3).
162-26-030	Related law. [Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-26-030, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-26-030, filed 9/22/82.] Repealed by 99-15-025, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3).
162-26-035	Concurrent remedy in court. [Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-26-035, filed 9/22/82.] Repealed by 99-15-025, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3).
162-26-050	Who is protected. [Statutory Authority: RCW 49.60.-120(3) and 1997 c 271. 98-08-035, § 162-26-050, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-26-050, filed 9/22/82.] Repealed by 99-15-025, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3).
162-26-090	Arranged service. [Statutory Authority: RCW 49.60.-120(3) and 1997 c 271. 98-08-035, § 162-26-090, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-26-090, filed 9/22/82.] Repealed by 99-15-025, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3).

WAC 162-26-010 Scope of chapter. This chapter interprets and implements the disability discrimination coverage of RCW 49.60.215, unfair practices of places of public resort, accommodation, assemblage, and amusement. This chapter does not define the scope of the civil right to be free from discrimination because of disability declared in RCW 49.60.030 or interpret other statutes.

[Statutory Authority: RCW 49.60.120(3). 99-15-025, § 162-26-010, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-26-010, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-26-010, filed 9/22/82.]

WAC 162-26-040 Definitions. (1) Place of public accommodation. RCW 49.60.040 defines and lists examples of a place of public accommodation.

(2) General definitions special to this chapter. The following words or phrases are used in this chapter in the meaning given, unless the context clearly indicates another meaning.

"Accessible" means usable or understandable by a person with a disability, with reasonable effort and in reasonable safety.

"Disability" is short for the term "the presence of any sensory, mental, or physical disability" used in the law against discrimination, and means the full term.

"Dog guide" means a dog that is trained for the purpose of guiding blind persons or a dog that is trained for the purpose of assisting hearing impaired persons.

"Place of public accommodation" is short for "place of public resort, accommodation, assemblage, or amusement" and means the full term.

"Reasonable accommodation" means action, reasonably possible in the circumstances, to make the regular services of a place of public accommodation accessible to persons who otherwise could not use or fully enjoy the services because of the person's sensory, mental, or physical disability. See WAC 162-26-080.

"Same service" means service without regard to the existence of a disability. See WAC 162-26-060.

"Service" means everything available to persons from a place of public accommodation.

"Service animal" means an animal that is trained for the purpose of assisting or accommodating a person's sensory, mental, or physical disability.

"Structural" means the load-bearing members and essential structure or composition of a place, as distinguished from its finish, decorations, or fittings. Examples of structural components are floors, walls, stairs, door openings, sidewalks, elevators, and escalators. Examples of things that are not structural are moveable walls, bathroom fixtures and partitions, fixtures such as water fountains (whether or not attached to a wall), doors and door hardware, cabinets, counters, handrails, signs (attached or painted), elevator controls, alarm systems, and carpeting or other floor covers.

[Statutory Authority: RCW 49.60.120(3). 99-15-025, § 162-26-040, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-26-040, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-26-040, filed 9/22/82.]

WAC 162-26-060 General principles. (1) Same service preferred. The purposes of the law against discrimination are best achieved when disabled persons are treated the same as if they were not disabled. The legislature expresses this policy in RCW 49.60.215 with the words "regardless of." Persons should, if possible, be treated without regard to their disability or use of a dog guide or service animal. This is called "same service" in this chapter.

(2) Reasonable accommodation. The law protects against discrimination because of the "presence" of a disability. It does not prohibit treating disabled persons more favorably than nondisabled persons in circumstances where same service will defeat the purposes of the law against discrimination.

For example, this would be true if persons in wheelchairs and nondisabled persons are equally entitled to use the staircase to reach the second floor of a store. In such circumstances, the operator of the place of public accommodation should use the next best solution: Reasonable accommodation.

A reasonable accommodation would be to permit the shopper in the wheelchair to use an elevator to reach the second floor, even though the public in general is not permitted

to use the elevator. If there is no elevator and no other safe and dignified way for the customer to reach the second floor, another reasonable accommodation would be to bring merchandise requested by the customer to the first floor. Reasonable accommodations may also include, but are not limited to, providing sign language interpreters and making printed materials available in alternate formats.

(3) **Overall objective.** People with disabilities must be afforded the full enjoyment of places of public accommodation to the greatest extent practical.

[Statutory Authority: RCW 49.60.120(3). 99-15-025, § 162-26-060, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-26-060, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-26-060, filed 9/22/82.]

WAC 162-26-070 General rules. These rules apply except where exempted by RCW 49.60.215 for structural changes or behavior causing risk, or excepted by ruling of the commissioners under WAC 162-06-030. It is an unfair practice under RCW 49.60.215 for any person in the operation of a place of public accommodation, because of disability or use of a trained dog guide or service animal:

(1) To refuse to serve a person;

(2) To charge for reasonably accommodating the special needs of a disabled person;

(3) To require a disabled person accompanied by a trained dog guide or service animal in any of the places listed in RCW 70.84.010(3) to pay an extra charge for the trained dog guide or service animal;

(4) To treat a disabled person as not welcome, accepted, desired, or solicited the same as a nondisabled person;

(5) To segregate or restrict a person or deny a person the use of facilities or services in connection with the place of public accommodation where same service is possible without regard to the disability; or

(6) To fail to reasonably accommodate the known physical, sensory, or mental limitations of a disabled person, when same service would prevent the person from fully enjoying the place of public accommodation, as provided in WAC 162-26-080.

[Statutory Authority: RCW 49.60.120(3). 99-15-025, § 162-26-070, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-26-070, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-26-070, filed 9/22/82.]

WAC 162-26-080 Reasonable accommodation. (1) **Unfair practice to not accommodate.** It is an unfair practice for a person in the operation of a place of public accommodation to fail or refuse to make reasonable accommodation to the known physical, sensory, or mental limitations of a person with a disability or to the use of a trained dog guide or service animal by a disabled person, when same service would prevent the person from fully enjoying the place of public accommodation.

(2) **Determining reasonableness.** Whether a possible accommodation is reasonable or not depends on the cost of making the accommodation, the size of the place of public accommodation, the availability of staff to make the accommodation, the importance of the service to the person with a

disability, and other factors bearing on reasonableness in the particular situation.

(3) **Carrying not favored.** Carrying a mobility-impaired person is not required by law and is not an acceptable accommodation, except in rare circumstances. Carrying should be done only when there is no other way for the mobility-impaired person to use the facility and when it is agreeable to the person with a disability.

(4) **"Arranged service."** The concept of "arranged service," as formerly defined in commission rules, is incorporated fully within the scope of reasonable accommodation.

[Statutory Authority: RCW 49.60.120(3). 99-15-025, § 162-26-080, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-26-080, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3). 83-02-012 (Order 43), § 162-26-080, filed 12/23/82.]

WAC 162-26-100 Structural barriers to accessibility.

(1) **Laws requiring accessibility.** The commission enforces the law against discrimination, chapter 49.60 RCW, not other state or federal laws. The commission provides the following references as guidance to places of public accommodation. The principal laws requiring that places of public accommodation be made accessible include, but are not limited to:

(a) The Washington State Building Code.

(b) Chapter 219, Laws of 1971 ex. sess.

(c) Chapter 35, Laws of 1967.

(d) RCW 35.68.075.

(e) United States law; including The Americans with Disabilities Act of 1990, codified at 42 U.S.C. 12101 et seq., the Rehabilitation Act of 1973, and the Federal Fair Housing Act.

(2) **Practices that are not unfair.** It is not an unfair practice under RCW 49.60.215 to operate a place of public accommodation with structural barriers to accessibility of the person with a disability when the structural barriers:

(a) Were lawful when constructed; and

(b) Are presently lawful under the state building code and other law outside of the law against discrimination.

This exemption does not relieve the operator of a place of public accommodation of the duty to make reasonable accommodation to the needs of disabled persons as described in WAC 162-26-080.

(3) **When required by law.** It is an unfair practice under RCW 49.60.215:

(a) To deny service to any person because of a barrier to accessibility when accessibility is required by law;

(b) To build or remodel in a way that does not comply with requirements of law on accessibility;

(c) To operate a place of public accommodation that is out of compliance with a law requiring accessibility;

(d) To fail to maintain or fail to continue the accessibility of a place of public accommodation that was required by law to be accessible when it was built, remodeled, or rehabilitated.

(4) **Nonstructural changes.** It is an unfair practice under RCW 49.60.215 for a person who is making nonstructural changes in a place of public accommodation to fail to eliminate barriers to same service when this can be done without substantially changing the scope or cost of the

project or requiring structural changes that are not otherwise required by law. Specifically, it is an unfair practice:

(a) When installing a nonstructural fixture or component, to choose and install one that is not accessible to the person with a disability or that makes the place of public accommodation less accessible to the person with a disability.

(b) When replacing a nonstructural fixture or component, to replace it with one that is not accessible to the person with a disability or one that makes the place of public accommodation less accessible to the person with a disability.

(c) When relocating a nonstructural fixture or component, to relocate it to a place that is not accessible to the person with a disability, unless no suitable place is accessible.

(d) When modifying a nonstructural fixture or component, to do so in a way that does not eliminate barriers to the person with a disability, when possible.

[Statutory Authority: RCW 49.60.120(3). 99-15-025, § 162-26-100, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-26-100, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3). 83-02-012 (Order 43), § 162-26-100, filed 12/23/82.]

WAC 162-26-110 Behavior causing risk. (1) Proviso interpreted. This section interprets the following proviso of RCW 49.60.215:

"Provided, That behavior or actions constituting a risk to property or other persons can be grounds for refusal and shall not constitute an unfair practice."

(2) **General rule.** It is not an unfair practice under RCW 49.60.215 to deny a person service in a place of public accommodation because that person's behavior or actions constitute a risk to property or other persons.

(3) **Individual judgment required.** To come within this exception, the denial of service must be based on knowledge of the present behavior or actions of the individual who is not served. It is an unfair practice to exclude all persons who have a disability or who have a particular disability unless the operator of the place of public accommodation can show that all persons with the disability will present a risk to persons or property.

(4) **Likelihood of injury.** Risk to property or other persons must be immediate and likely, not remote or speculative.

(5) **Degree of risk.** Risk of injury to persons may be given more weight than risk of injury to property. Risk of severe injury may be given more weight than risk of slight injury.

(6) **Risk to person with a disability.** Risk to the person with a disability is not a reason to deny service. Law other than the law against discrimination governs liability for injury to customers with a disability. The law against discrimination affects tort liability only insofar as it includes persons with a disability within the public for which public accommodations must be made safe.

(7) **Annoyance to staff or other customers.** Annoyance on the part of staff or customers of the place of public accommodation at the abnormal appearance or behavior of a person with a disability is not a "risk to property or other persons" justifying nonservice.

(8) **Least discriminatory solution required.** It is an unfair practice to deny a person with a disability the enjoyment of an entire place of public accommodation because the

person presents a risk of injury when using part of the place. When risk justifies not serving a person with a disability in the same way or same place as other customers, the person should be served through reasonable accommodation (WAC 162-26-060, 162-26-080), if possible.

[Statutory Authority: RCW 49.60.120(3). 99-15-025, § 162-26-110, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-26-110, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-26-110, filed 9/22/82.]

WAC 162-26-120 Requirements of other law. (1) Guidance. Failure to meet requirements of related law protecting persons with disabilities in places of public accommodation may be evidence of an unfair practice under RCW 49.60.215. The commission may refer to standards established in related law for guidance in determining whether an unfair practice under RCW 49.60.215 has occurred.

(2) **References to selected laws.** Related law may include, but is not limited to:

- (a) Chapter 28A.13 RCW (education for handicapped children);
- (b) Sections 503 and 504 of the United States Rehabilitation Act of 1973, 29 U.S.C. §§793 and 794;
- (c) Chapter 70.84 RCW, the "white cane law";
- (d) Chapter 2.42 RCW (Interpreters in legal proceedings);
- (e) The Washington State Building Code;
- (f) The Americans with Disabilities Act of 1990;
- (g) The Individuals with Disabilities Education Act;
- (h) The Air Carriers Access Act;
- (i) The Federal Fair Housing Act.

[Statutory Authority: RCW 49.60.120(3). 99-15-025, § 162-26-120, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-26-120, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-26-120, filed 9/22/82.]

WAC 162-26-130 Use of trained dog guide or service animal. (1) Coverage of statute. RCW 49.60.215 requires fair service in a place of public accommodation "regardless of . . . the use of a trained dog guide or service animal by a disabled person . . ." as well as because of disability itself.

(2) **Same rules apply.** All of the rules of this chapter with respect to disability itself apply equally to service of a person with a disability who is using a trained dog guide or service animal. See particularly WAC 162-26-060 and 162-26-070.

[Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-26-130, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-26-130, filed 9/22/82.]

WAC 162-26-135 Removal of a dog guide or service animal. (1) General rule. It is an unfair practice for a place of public accommodation to ask that a trained dog guide or service animal be removed, unless that place of public accommodation can show that the presence, behavior or actions of that dog guide or service animal constitutes an unreasonable risk of injury or harm to property or other persons.

It is an unfair practice to remove a trained dog guide or service animal from the entire place of public accommoda-

tion because the dog guide or service animal presents a risk of injury or harm when in part of the place of public accommodation.

(2) Assessing risk of injury or harm.

(a) Risk to property or other persons must be immediate or reasonably foreseeable under the circumstances, not remote or speculative. Risk to persons may be given more weight than risk to property. Risk of severe injury or harm may be given more weight than risk of slight injury or harm. For example, a barber excludes a patron's dog guide because; "It might bite somebody — I don't allow any dogs in here." This is **not** "reasonably foreseeable risk" justifying removal of the dog guide.

(b) Annoyance on the part of staff or other customers of the place of public accommodation at the presence of the dog guide or service animal is not an unreasonable "risk to property or other persons" justifying the removal of the dog guide or service animal.

(c) Risk of injury or harm to the dog guide or service animal is not a reason for a place of public accommodation to exclude the animal. The decision whether to bring the animal into a place of public accommodation under such circumstances most properly rests with the person with a disability using the dog guide or service animal.

(3) **Duty to reasonably accommodate.** When risk justifies the removal of a dog guide or service animal from the place of public accommodation, efforts must be made to reasonably accommodate the person with the disability.

(4) **Liability.** Law other than the law against discrimination governs liability for injury or harm. Generally, a person with a disability using a dog guide or service animal is responsible for the animal and may be held liable for the behavior and actions of the animal.

[Statutory Authority: RCW 49.60.120(3). 99-15-025, § 162-26-135, filed 7/12/99, effective 8/12/99.]

WAC 162-26-140 Unfair to request or require waiver of rights. This section is intended to prohibit waivers on the basis of disability, but is not intended to preclude waivers required on a nondiscriminatory basis.

(1) It is an unfair practice for any person to request or require another person to waive rights or hold anyone harmless as a condition of the use or enjoyment of a place of public accommodation by a disabled person.

(2) It is an unfair practice to request or require another person to waive rights or hold anyone harmless as a condition of the use or enjoyment of a place of public accommodation by a disabled person using a dog guide or service animal.

[Statutory Authority: RCW 49.60.120(3). 99-15-025, § 162-26-140, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-26-140, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3). 83-02-012 (Order 43), § 162-26-140, filed 12/23/82.]

162-28-040 English language limitations and national origin discrimination.

WAC 162-28-030 Schools are places of public accommodation. (1) All public and private schools and other educational facilities in the state of Washington, except those operated or maintained by a bona fide religious or sectarian institution, are "places of public resort, accommodation, assemblage or amusement" for purposes of the Washington state law against discrimination, chapter 49.60 RCW.

(2) Definition: In this chapter, the following words are used in the meaning given, unless the context clearly indicates another meaning.

"Protected status" is short for the phrase, "race, creed, color, national origin, sex, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person," and means the full phrase (see RCW 49.60.215).

(3) Except for conditions and limitations established by law and applicable to all persons, regardless of protected status, it is an unfair practice under RCW 49.60.215 for public and private schools or educational facilities or their agents or employees, on the basis of protected status, to:

(a) Commit any act which directly or indirectly results in any distinction, restriction or discrimination;

(b) Require any person to pay a larger sum than the uniform rates charged other persons;

(c) Refuse or withhold from any person the admission, patronage, custom, presence, frequenting, dwelling, staying, or lodging in a place of public accommodation.

[Statutory Authority: RCW 49.60.120(3). 00-01-177, § 162-28-030, filed 12/21/99, effective 1/21/00; Order 17, § 162-28-030, filed 6/28/74.]

WAC 162-28-040 English language limitations and national origin discrimination. It is an unfair practice for public and private schools to fail or refuse to provide equal educational opportunity to children who are deficient in English language skills because of their national origin. Schools attended by such children shall meet the following standards:

(1) Where inability to speak and understand the English language excludes children based on national origin from effective participation, the district must take steps to ensure all programs and activities do not bar such students from fully participating.

(2) The steps taken under part (1) shall build competency in the English language without detriment to the children's skills in other languages, and without impairing or suppressing the children's cultural identity and heritage. The steps may include bilingual education. The appropriateness of particular steps to be taken will depend in part on the number of children who require this service.

(3) Students who are deficient in English language skills because of their national origin must not be assigned to special education classes for students with mental or other disabilities solely on the basis of criteria which essentially measure or evaluate English language skills; nor may school districts deny children based on their national origin access to college preparatory courses on a basis directly related to the failure of the school system to address English language deficiencies.

Chapter 162-28 WAC

PUBLIC SCHOOLS—EQUAL EDUCATION—EQUAL RIGHTS—NATIONAL ORIGIN MINORITY GROUP CHILDREN

WAC

162-28-030

Schools are places of public accommodation.

(4) Any ability grouping or tracking system employed by the school system to deal with the special language skill needs of children based on their national origin must be designed to meet such language skill needs as soon as possible and must not operate as an educational deadend or permanent track.

(5) School districts have the responsibility to adequately notify parents, regardless of their national origin, of school activities which are called to the attention of other parents. In order to be adequate, such notice may have to be provided in a language other than English.

[Statutory Authority: RCW 49.60.120(3). 00-01-177, § 162-28-040, filed 12/21/99, effective 1/21/00; Order 17, § 162-28-040, filed 6/28/74.]

Chapter 162-30 WAC SEX DISCRIMINATION

WAC

162-30-010	General purpose and scope.
162-30-020	Pregnancy, childbirth, and pregnancy related conditions.

WAC 162-30-010 General purpose and scope. The general purpose of the law against discrimination in employment because of sex is to equalize employment opportunity for men and women. This chapter interprets and implements the sex discrimination protection of RCW 49.60.180, and provides guidance regarding certain specific forms of sex discrimination.

[Statutory Authority: RCW 49.60.120(3). 99-15-025, § 162-30-010, filed 7/12/99, effective 8/12/99; Order 9, § 162-30-010, filed 9/23/71.]

WAC 162-30-020 Pregnancy, childbirth, and pregnancy related conditions. (1) **Purposes.** The overall purpose of the law against discrimination in employment because of sex is to equalize employment opportunity for men and women. This regulation explains how the law applies to employment practices that disadvantage women because of pregnancy or childbirth.

(2) **Findings and definitions.** Pregnancy is an expectable incident in the life of a woman. Discrimination against women because of pregnancy or childbirth lessens the employment opportunities of women.

(a) "Pregnancy" includes, but is not limited to, pregnancy, the potential to become pregnant, and pregnancy related conditions.

(b) "Pregnancy related conditions" include, but are not limited to, related medical conditions, miscarriage, pregnancy termination, and the complications of pregnancy.

(3) Unfair practices.

(a) It is an unfair practice for an employer, because of pregnancy or childbirth, to:

(i) Refuse to hire or promote, terminate, or demote, a woman;

(ii) Impose different terms and conditions of employment on a woman.

(b) The sole exception to (a) of this subsection is if an employer can demonstrate business necessity for the employment action. For example, an employer hiring workers into a training program that cannot accommodate absences for the first two months might be justified in refusing to hire a preg-

nant woman whose delivery date would occur during those first two months.

(c) It is an unfair practice to base employment decisions or actions on negative assumptions about pregnant women, such as:

(i) Pregnant women do not return to the job after childbirth;

(ii) The time away from work required for childbearing will increase the employer's costs;

(iii) The disability period for childbirth will be unreasonably long;

(iv) Pregnant women are frequently absent from work due to illness;

(v) Clients, co-workers, or customers object to pregnant women on the job;

(vi) The terms or conditions of the job may expose an unborn fetus to risk of harm.

(4) Leave policies.

(a) An employer shall provide a woman a leave of absence for the period of time that she is sick or temporarily disabled because of pregnancy or childbirth. Employers must treat a woman on pregnancy related leave the same as other employees on leave for sickness or other temporary disabilities. For example:

(i) If an employer provides paid leave for sickness, or other temporary disabilities, the employer should provide paid leave for pregnancy related sickness or disabilities;

(ii) If the uniform policy requires a physician's statement to verify the leave period, a physician's statement may be required to verify the leave period relating to pregnancy or childbirth.

(iii) If the uniform policy permits the retention and accrual of benefits, such as seniority, retirement, and pension rights, during the leave period for other temporary disabilities, the policy must also permit it during leave for pregnancy related temporary disabilities.

(iv) If the employer permits extensions of leave time (e.g., use of vacation or leave without pay) for sickness or other temporary disabilities, the employer should permit such extensions for pregnancy related sickness or disabilities.

(b) There may be circumstances when the application of the employer's general leave policy to pregnancy or childbirth will not afford equal opportunity for women and men. One circumstance would be where the employer allows no leave for any sickness or other disability by any employee, or so little leave time that a pregnant woman must terminate employment. Because such a leave policy has a disparate impact on women, it is an unfair practice, unless the policy is justified by business necessity.

(c) An employer shall allow a woman to return to the same job, or a similar job of at least the same pay, if she has taken a leave of absence only for the actual period of disability relating to pregnancy or childbirth. Refusal to do so must be justified by adequate facts concerning business necessity.

(d) Employers may be required to provide family medical leave, in addition to leave under this chapter. Please see appropriate federal and state family and medical leave laws and regulations.

(5) **Employee benefits.** Employee benefits provided in part or in whole by the employer must be equal for male and female employees. For example, it is an unfair practice to:

(a) Provide full health insurance coverage to male employees but fail to provide full health insurance coverage, including pregnancy and childbirth, to female employees.

(b) Provide maternity insurance to the wives of male employees but fail to provide the same coverage to female employees.

(6) **Marital status immaterial.** The provisions of this chapter apply irrespective of marital status.

(7) **Labor unions and employment agencies.** The provisions of this chapter apply equally to employers, labor unions, and employment agencies.

[Statutory Authority: RCW 49.60.120(3). 99-15-025, § 162-30-020, filed 7/12/99, effective 8/12/99; Order 15, § 162-30-020, filed 9/28/73; Order 11, § 162-30-020, filed 6/26/72.]

Chapter 162-36 WAC REAL ESTATE TRANSACTIONS

WAC

162-36-001	Definitions.
162-36-005	Discrimination.
162-36-006	Retaliation.
162-36-010	Soliciting buyers from neighbors of listed house.
162-36-020	Content and language of solicitation.

WAC 162-36-001 Definitions. (1) "Brokerage services" means access to or membership or participation in a multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings;

(2) "Dwelling" means any building, structure or portion thereof that is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land that is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof;

(3) "Families with children status" means one or more individuals who have not attained the age of eighteen years being domiciled with a parent or another person having legal custody of such individual or individuals, or with the designee of such parent or other person having such legal custody, with the written permission of such parent or other person. Families with children status also applies to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen years;

(4) "Real estate transaction" includes the sale, appraisal, brokering, exchange, purchase, rental, or lease of real property; transacting or applying for a real estate loan; the provision of brokerage services; or the making or purchasing of loans secured by residential real estate;

(5) "Real property" includes buildings, structures, dwellings, real estate, land, tenements, leaseholds, interests in real estate cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest therein;

(6) "Unfair practices on the basis of creed" or "discrimination on the basis of creed" includes, but is not limited to religious discrimination under the federal Fair Housing Amendments Act of 1988.

(7) "'Dog guide' means a dog that is trained for the purpose of guiding blind persons or a dog that is trained for the purpose of assisting hearing impaired persons."

(2009 Ed.)

(8) "'Service animal' means an animal that is trained for the purpose of assisting or accommodating a disabled person's sensory, mental, or physical disability."

[Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-36-001, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-36-001, filed 6/13/96, effective 7/14/96.]

WAC 162-36-005 Discrimination. (1) It is an unfair practice for any person, whether acting for himself, herself, or another, because of sex, marital status, race, creed, color, national origin, families with children status, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a disabled person:

(a) To refuse to engage in a real estate transaction with a person;

(b) To discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith;

(c) To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person;

(d) To refuse to negotiate for a real estate transaction with a person;

(e) To represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or to fail to bring a property listing to his or her attention, or to refuse to permit the person to inspect real property;

(f) To discriminate in the sale or rental, or to otherwise make unavailable or deny a dwelling, to any person; or to a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or to any person associated with the person buying or renting;

(g) To make, print, publish, circulate, post, mail, or cause to be so made or published a statement, advertisement, or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect thereto;

(h) To offer, solicit, accept, use, or retain listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith;

(i) To expel a person from occupancy of real property;

(j) To discriminate in the course of negotiating, executing, or financing a real estate transaction whether by mortgage, deed of trust, contract, or other instrument imposing a lien or other security in real property, or in negotiating or executing any item or service related thereto including issuance of title insurance, mortgage insurance, loan guarantee, or other aspect of the transaction. Nothing in this section shall limit the effect of RCW 49.60.176 relating to unfair practices in credit transactions;

(k) To attempt to do any of the unfair practices defined in this chapter or chapter 49.60 RCW.

(2) It is an unfair practice for any person, for profit, to induce or attempt to induce any person to sell or rent any real property by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, creed, color, sex, national origin, families

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with children status, or with any sensory, mental or physical disability and/or the use of a trained dog guide or service animal by a disabled person.

(3) It is an unfair practice to insert in a written instrument relating to real property a provision that is void under RCW 49.60.224(1) or to honor or attempt to honor such a provision in the chain of title.

(4) Nothing in this chapter prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, creed, national origin, sex, disability, the use of a trained dog guide or service animal by a disabled person, or families with children status.

(5) Nothing in this chapter limits the applicability of any reasonable federal, state or local restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

(6) Nothing in this chapter prohibiting discrimination based on families with children status applies to housing for older persons as defined by the federal Fair Housing Amendments Act of 1988, 42 U.S.C. sec 3607 (b)(1) through (3), as amended by the Housing for Older Persons Act of 1995, P.L. 104-76, as enacted on December 28, 1995.

[Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-36-005, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-36-005, filed 6/13/96, effective 7/14/96.]

WAC 162-36-006 Retaliation. It is an unlawful practice to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, rights regarding real estate transactions, regardless of the merits of the underlying claim, contentions or allegations at issue.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-36-006, filed 6/13/96, effective 7/14/96.]

WAC 162-36-010 Soliciting buyers from neighbors of listed house. Some real estate firms have a practice of sending letters, post cards or printed circulars to residents of a neighborhood where they have a home listed for sale in order to obtain referrals of prospective buyers of the home. Such a practice does not necessarily discriminate against persons on the basis of race, creed, color, national origin, sex, marital status, families with children status, the presence of a sensory, mental or physical disability or the use of a trained dog guide or service animal by a disabled person. However, the practice can have a discriminatory effect, and thereby constitute an unfair practice in a real estate transaction within the meaning of this chapter, where:

(1) It is used only in neighborhoods occupied entirely or predominantly by persons of a single race, creed, color, national origin, sex, marital status, families with children status, have the presence of a sensory, mental or physical disability, or who use a trained dog guide or service animal as a disabled person, or

(2) Persons of a particular race, creed, color, national origin, sex, marital status, families with children status, have the presence of a sensory, mental or physical disability, or use a

trained dog guide or service animal as a disabled person living in the same neighborhood are not sent solicitations, or

(3) The content or language of the solicitation invites, promotes or perpetuates residential segregation or discrimination on the basis of race, creed, color, national origin, sex, marital status, families with children status, the presence of a sensory, mental or physical disability, or the use of a trained dog guide or service animal by a disabled person.

[Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-36-010, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-36-010, filed 6/13/96, effective 7/14/96; Order 14, § 162-36-010, filed 7/16/73.]

WAC 162-36-020 Content and language of solicitation. Residential segregation on the basis of race, creed, national origin or other ethnic classification is rooted in the history of this country and fixed in the patterns of thought of many people. The content and language of a solicitation of names of prospective purchasers directed to neighbors of a house listed for sale, must be examined in this context in assessing whether the solicitation constitutes an unfair practice within the meaning of RCW 49.60.222 and WAC 162-36-010. A solicitation which indicates that the recipient of the solicitation can control the type of persons who will move into the neighborhood by referring appropriate prospective buyers, is likely to be understood as an invitation to discriminate on the basis of race, creed, color, national origin, sex, marital status, families with children status, the presence of a sensory, mental or physical disability, or the use of a trained dog guide or service animal by a disabled person. Phrases such as "uphold the standards of the community" (when the "standards" are unspecified) are likely to be understood the same way. Accordingly, it is an unfair practice under RCW 49.60.222 and WAC 162-36-010 for the content or language of a neighborhood solicitation to:

(1) Suggest in any way that the solicitor, buyer or seller has the power to control the type or character of the person or persons to whom the property involved may be sold;

(2) Invite or provoke discriminatory feelings, actions, or responses from the person or persons being solicited;

(3) Make reference to an assumed standard of the community which the solicitor, buyer or seller must or will uphold, unless the particular community standard is identified specifically, and the standard does not have the effect of excluding persons of a particular race, creed, color, national origin, sex, marital status, families with children status, the presence of a sensory, mental or physical disability, or the use of a trained dog guide or service animal by a disabled person.

[Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-36-020, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-36-020, filed 6/13/96, effective 7/14/96; Order 14, § 162-36-020, filed 7/16/73.]

Chapter 162-38 WAC REAL ESTATE TRANSACTIONS, DISABILITY DISCRIMINATION

WAC

162-38-010	Scope and purpose of chapter.
162-38-035	Concurrent remedy in court.
162-38-040	Definitions.
162-38-050	Who is protected.
162-38-060	General rules.

162-38-070	Accessibility.
162-38-080	Modifications or additions made by tenants.
162-38-090	Public areas of rental property.
162-38-100	Persons with dog guides or service animals.
162-38-105	Removal of dog guides and service animals.
162-38-110	Inquiries to disabled applicants.
162-38-120	Unfair to request or require waiver of rights.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

162-38-020	Purpose of chapter. [Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-38-020, filed 9/22/82.] Repealed by 96-13-045, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3) and 49.60.240.
162-38-030	Related law. [Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-38-030, filed 9/22/82.] Repealed by 96-13-045, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3) and 49.60.240.
162-38-130	Behavior causing risk. [Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-38-130, filed 3/23/98, effective 4/23/98.] Repealed by 99-15-025, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3).

WAC 162-38-010 Scope and purpose of chapter. (1)

Confined to unfair practices. This chapter interprets and implements the disability discrimination coverage provided by the law against discrimination regarding unfair practices in real estate transactions, RCW 49.60.222 through 49.60.-340. This chapter applies to the unfair practices which the commission is empowered by RCW 49.60.120(4) to eliminate and prevent through the administrative process provided in RCW 49.60.230 through 49.60.270.

(2) **Principal statutes interpreted.** The statutes principally interpreted in this chapter are RCW 49.60.222 through 49.60.225. This chapter does not define the scope of the civil right to be free from discrimination because of a disability declared in RCW 49.60.030 or interpret other statutes.

(3) **Sources of policy guidance.** In applying and interpreting the provisions of the law against discrimination regarding discrimination in real estate transactions based upon the presence of a sensory, mental or physical disability or the use of a trained dog guide or service animal by a disabled person, the commission is guided by the following:

(a) Legislative policy statements found in RCW 49.60.-010, 49.60.030, 70.84.010 and 70.92.100; and

(b) The federal Fair Housing Amendments Act of 1988, 42 U.S.C. 3601, et seq.

(4) **Related statutes and regulations.** Chapter 70.92 RCW (provisions in buildings for aged and disabled persons); chapter 70.84 RCW ("white cane law" for disabled persons); chapter 19.27 RCW (state building code); chapter 162-26 WAC (disability discrimination in public accommodations); chapter 162-22 WAC (disability discrimination in employment); chapter 162-40 WAC (disability discrimination in credit transactions); chapter 162-36 WAC (unfair practices in real estate transactions); and chapter 51-30 WAC (standards for barrier-free facilities).

[Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-38-010, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-38-010, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-38-010, filed 9/22/82.]

WAC 162-38-035 Concurrent remedy in court.

Courts have jurisdiction under RCW 49.60.030(2) to remedy

(2009 Ed.)

violations of RCW 49.60.222, 49.60.223, 49.60.2235 and 49.60.224 as interpreted and implemented by this chapter, concurrently with the commission. When the commission learns that an action on the same facts has been filed in court, the commission will administratively close the case before it in compliance with RCW 49.60.226 and WAC 162-08-062.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-38-035, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.-120(3). 82-19-086 (Order 41), § 162-38-035, filed 9/22/82.]

WAC 162-38-040 Definitions. The following words or phrases are used in this chapter in the meaning given, unless the context clearly indicates another meaning.

"Accessible" means usable or understandable by a person who is disabled, with reasonable effort and in reasonable safety.

"Standards for barrier-free facilities" means standards for making building and facilities accessible to physically disabled persons, pursuant to chapter 51-30 WAC and chapter 70.92 RCW. See WAC 162-38-030(2), 162-38-070.

"Disability" is short for "the presence of a sensory, mental or physical disability."

"Landlord" means anyone other than the occupant of real property who attempts to control use of the property under claim of right arising out of an ownership interest in real property by that person or another person for whom that person acts. The term includes owners of rental property, trustees, receivers, persons controlling the common areas used in connection with condominiums, and agents or others acting in the interest of any such persons.

"Rental property" includes real property that is rented or leased, offered for rental or lease, or built or maintained for rental or lease.

"Structural" means the load-bearing members and essential structure or composition of a place, as distinguished from its finish, decorations or fittings. Examples of structural components are floors, walls, stairs, door openings, sidewalks, elevators, and escalators. Examples of things that are not structural are moveable walls, bathroom fixtures and partitions, fixtures such as water fountains (whether or not attached to a wall), doors and door hardware, cabinets, counters, handrails, signs (attached or painted), elevator controls, alarm systems, and carpeting and other floor covers.

"Tenant" is a person who rents or seeks to rent real property.

"Dog guide" means a dog that is trained for the purpose of guiding blind persons or a dog that is trained for the purpose of assisting hearing impaired persons.

"Service animal" means an animal that is trained for the purpose of assisting or accommodating a disabled person's sensory, mental, or physical disability.

[Statutory Authority: RCW 49.60.120(3). 99-15-025, § 162-38-040, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-38-040, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-38-040, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-38-040, filed 9/22/82.]

WAC 162-38-050 Who is protected. (1) **Scope.** RCW 49.60.222 defines practices in connection with real estate transactions that are unfair when done because of "the presence of any sensory, mental, or physical disability, or the use

of a trained dog guide or service animal by a disabled person." Nothing in this chapter or in chapter 49.60 RCW, however, prohibits treating disabled persons more favorably in a real estate transaction than persons who are not disabled.

(2) **Presence of disability.** The presence of a sensory, mental, or physical disability includes, but is not limited to, an abnormal condition that:

- (a) Is medically cognizable or diagnosable;
- (b) Exists as a record or history; or
- (c) Is perceived to exist, whether or not it exists in fact.

[Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-38-050, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-38-050, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-38-050, filed 9/22/82.]

WAC 162-38-060 General rules. (1) **General principles apply.** The unfair practices in real estate transactions as defined in RCW 49.60.222 through 49.60.225 apply to claims of disability discrimination. This chapter deals with special questions as to the application of the law to disability discrimination. Where no special provision is made by the statute, by this chapter, or by exception by the commissioners under WAC 162-06-030, general principles of nondiscrimination apply.

(2) **Statutory rules.** It is an unfair practice for any person to do any of the acts enumerated in RCW 49.60.222 through 49.60.225 because of the presence of a sensory, mental or physical disability or the use of a trained dog guide or service animal by a disabled person. For purposes of this chapter, an unfair practice in a real estate transaction on the basis of a disability includes discrimination because of a disability of the buyer or renter, a person residing in or intending to reside in that dwelling after it is so sold, rented or made available, or any person associated with that buyer or renter.

[Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-38-060, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-38-060, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-38-060, filed 9/22/82.]

WAC 162-38-070 Accessibility. (1) **Laws requiring accessibility.** The principal laws that require that buildings be made accessible are:

(a) The state building code, chapter 19.27 RCW, which includes the standards for barrier free facilities in chapter 51-30 WAC, promulgated under the authority of chapter 70.92 RCW.

(b) The federal Fair Housing Amendments Act of 1988, codified at 42 U.S.C. 3601, et seq., and accompanying regulations (chapter 24 CFR Part 100).

(c) The Americans With Disabilities Act of 1990, codified at 42 U.S.C. 12101, et seq.

(d) The Rehabilitation Act of 1973, codified at 29 U.S.C. 701, et seq., and accompanying regulations.

(e) The Architectural Barriers Act, codified at 42 U.S.C. 4151, et seq.

(3) **Practices that are not unfair.** It is not an unfair practice under RCW 49.60.222:

(a) To engage in a real estate transaction involving real property with structural barriers that were lawful when constructed and that are presently lawful under the state building

code and other law outside of the law against discrimination; or

(b) To maintain real property with structural barriers to accessibility when the structural barriers were lawful when constructed and are presently lawful under the state building code and other law outside of the law against discrimination.

(4) **Unfair practices.** It is an unfair practice under RCW 49.60.222:

(a) To build or remodel in violation of the standards for barrier free facilities, chapter 51-30 WAC, or other requirement of law on accessibility as defined herein.

(b) To fail to maintain or fail to continue the accessibility of real property that was required by law to be accessible when built, remodeled, or rehabilitated.

(c) To take any action of the types set out in RCW 49.60.222 through 49.60.225 against a disabled person because the real property transaction involves real property that is not accessible.

(d) For an owner of four or more units of rental property who is making nonstructural changes in the rental property to fail to eliminate barriers to accessibility when this can be done without substantially changing the scope or cost of the project or requiring structural changes that are not otherwise required by law. Specifically, it is an unfair practice:

(i) When installing a nonstructural fixture or component, to choose and install one that is not accessible to the disabled or that makes the place of public accommodation less accessible to the disabled.

(ii) When replacing a nonstructural fixture or component, to replace it with one that is not accessible to the disabled or one that makes the place of public accommodation less accessible to the disabled.

(iii) When relocating a nonstructural fixture or component, to relocate it to a place that is not accessible to the disabled, unless no suitable place is accessible.

(iv) When modifying a nonstructural fixture or component, to do so in a way that does not eliminate barriers to the disabled, when possible.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-38-070, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). 82-02-012 (Order 43), § 162-38-070, filed 12/23/82.]

WAC 162-38-080 Modifications or additions made by tenants. (1) **Landlord need not pay.** Except as required by law, a landlord is not required to pay for alterations or additions to real property needed to make it accessible by disabled persons.

(2) **Unfair to unreasonably prohibit modifications needed by disabled tenant.** Whether or not the landlord permits tenants in general to make alterations or additions to a structure, it is an unfair practice under RCW 49.60.222 for a landlord to refuse to allow a disabled tenant to make reasonable alterations or additions to the structure or fixtures under the following conditions:

(a) The alterations or additions are paid for by the tenant; and

(b) The tenant agrees to restore the interior of the dwelling to the condition that existed before the modification, reasonable wear and tear excepted; or

(c) As otherwise required by RCW 49.60.222(2).

(3) Examples of appropriate modifications. The following are examples of alterations or additions commonly needed to make real property accessible to disabled persons:

(a) Ramps for wheelchairs or walkers.

(b) Lights to indicate to a deaf person that the doorbell or telephone is ringing, or for similar purposes.

(c) Grab bars in bathrooms.

(d) Roll-out shelves in kitchens.

(e) Simplified locking systems for use by a person with mental disabilities.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-38-080, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.-120(3). 82-19-086 (Order 41), § 162-38-080, filed 9/22/82.]

WAC 162-38-090 Public areas of rental property. (1)

Are covered as places of public accommodation. RCW 49.60.040 includes the following in its broad definition of place of public accommodation:

"... public halls, public elevators, and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants."

(2) Applicable law. Public areas as defined in this section are governed by the public accommodations coverage of the law against discrimination, RCW 49.60.215, and chapter 162-26 WAC, public accommodations, disability discrimination, as well as by the real estate transaction coverage of the law against discrimination and this chapter of the commission's regulations.

(3) Public areas. "Public" areas for purposes of public accommodations coverage of rental property include all areas intended for use by more than one tenant, or by one or more tenants and the resident owner. The area need not be open to the public at large. The area is covered if it is open to all tenants, or any two tenants, or the owner and one or more tenants. In addition to public halls, public elevators and public washrooms, public areas include garbage disposal facilities, recreation facilities, laundry or other work areas, and open space.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-38-090, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.-120(3). 82-19-086 (Order 41), § 162-38-090, filed 9/22/82.]

WAC 162-38-100 Persons with dog guides or service animals. (1) Are protected. RCW 49.60.222 protects persons with disabilities from discrimination because of their use of a trained dog guide or service animal the same as it protects them from discrimination directly because of disability.

(2) General rule. The same rules that apply to the treatment of persons because of disability under RCW 49.60.222 and this chapter apply to the treatment of persons with disabilities because they use a trained dog guide or service animal.

(3) Landlord's duty. It is an unfair practice for a landlord to refuse to rent to a person with a disability because the person uses a trained dog guide or service animal. A landlord's no-pet policy cannot be applied to the dog guide or service animal of a person with a disability.

(4) Cleaning or damage deposits not unfair. It is not an unfair practice for a landlord to enforce on a tenant with a disability using a dog guide or service animal its standard clean-

ing or damage deposit if the same cleaning or damage deposit is enforced equally on all tenants.

(5) Pet deposits unfair. It is an unfair practice for a landlord to enforce on a tenant with a disability using a dog guide or service animal a pet deposit in addition to any standard cleaning or damage deposit.

[Statutory Authority: RCW 49.60.120(3). 99-15-025, § 162-38-100, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-38-100, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-38-100, filed 9/22/82.]

WAC 162-38-105 Removal of dog guides and service animals. (1) General rule. It is an unfair practice to request that a trained dog guide or service animal be removed, unless the person can show:

(a) That the presence, behavior or actions of that dog guide or service animal constitutes an unreasonable risk of injury or harm to property or other persons; and

(b) A reasonable attempt to eliminate the behavior or actions of that dog guide or service animal that constitutes an unreasonable risk fails.

It is an unfair practice to remove a trained dog guide or service animal from the entire rental property because the animal presents a risk of injury or harm when in part of the rental property.

(2) Assessing risk of injury or harm.

(a) Risk to property or other persons must be immediate or reasonably foreseeable under the circumstances, not remote or speculative. Risk to persons may be given more weight than risk to property. Risk of severe injury or harm may be given more weight than risk of slight injury or harm. For example, an apartment manager excludes a tenant's dog guide because, "a pet dog bit one of the kids here a while back, so now I don't allow any dogs in the complex." This is not "reasonably foreseeable risk" justifying removal of the dog guide.

(b) Annoyance on the part of staff or other tenants of the rental property at the presence of the dog guide or service animal is not an unreasonable "risk to property or other persons" justifying the removal of the dog guide or service animal.

(c) Risk of injury or harm to the dog guide or service animal is not a reason to remove or exclude the animal. The decision whether to bring the animal into the rental property under such circumstances most properly rests with the person with a disability using the dog guide or service animal.

(3) Reasonable accommodation. When risk justifies the removal of a dog guide or service animal from a rental property, efforts must be made to reasonably accommodate the person with the disability.

(4) Liability. Law other than the law against discrimination governs liability for injury or harm. Generally, a person with a disability using a dog guide or service animal is responsible for the animal and may be held liable for the actions or behavior of the animal.

[Statutory Authority: RCW 49.60.120(3). 99-15-025, § 162-38-105, filed 7/12/99, effective 8/12/99.]

WAC 162-38-110 Inquiries to disabled applicants.

Unfair practice. It is an unfair practice under RCW 49.60.-222 (1)(g) for a landlord to inquire into matters personal to a

disabled applicant beyond what is necessary and appropriate to the landlord-tenant relationship. For example, the landlord may inquire as to how many persons will occupy the unit, but ordinarily will have no other reason to know whether an aide assists a person with a disability, and when.

[Statutory Authority: RCW 49.60.120(3). 99-15-025, § 162-38-110, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-38-110, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-38-110, filed 9/22/82.]

WAC 162-38-120 Unfair to request or require waiver of rights. It is an unfair practice for any person as a condition of entering into or continuing a real estate transaction to request or require another person to waive rights or hold anyone harmless because the real property will be occupied by a disabled person or by a person with a disability using a trained dog guide or service animal.

[Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-38-120, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.-120(3) and 49.60.240. 96-13-045, § 162-38-120, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-38-120, filed 9/22/82.]

Chapter 162-40 WAC CREDIT TRANSACTIONS

WAC

- 162-40-010 Scope of chapter.
- 162-40-021 Coordination with federal law.
- 162-40-041 Definitions.

RULES CONCERNING APPLICATIONS

- 162-40-055 Rules concerning applications.

RULES CONCERNING EVALUATION OF APPLICATIONS

- 162-40-065 Rules concerning evaluation of applications.

RULES CONCERNING EXTENSION OF CREDIT

- 162-40-075 Rules concerning extensions of credit.
- 162-40-171 Notifications.
- 162-40-181 Furnishing of credit information.

CONSUMER REPORTING AGENCIES

- 162-40-191 General rule.
- 162-40-201 Rules concerning credit files.

GENERAL PROVISIONS

- 162-40-211 Record retention.
 - 162-40-221 Rules of construction.
- EXEMPTIONS**
- 162-40-231 Exemption for special purpose credit program.
 - 162-40-251 Remedies.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

- 162-40-020 Coordination with federal law. [Order 25, § 162-40-020, filed 4/23/76.] Repealed by Order 34, filed 6/30/77. Later promulgation, see WAC 162-40-021.
- 162-40-030 General rule. [Order 25, § 162-40-030, filed 4/23/76.] Repealed by Order 34, filed 6/30/77. Later promulgation, see WAC 162-40-051.
- 162-40-031 (202.1(d)) Commission review of forms, practices and procedures. [Order 34, § 162-40-031, filed 6/30/77.] Repealed by 00-01-177, filed 12/21/99, effective 1/21/00. Statutory Authority: RCW 49.60.120(3).
- 162-40-040 Definitions. [Order 25, § 162-40-040, filed 4/23/76.] Repealed by Order 34, filed 6/30/77. Later promulgation, see WAC 162-40-041.

- 162-40-050 Discouraging applications. [Order 25, § 162-40-050, filed 4/23/76.] Repealed by Order 34, filed 6/30/77. Later promulgation, see WAC 162-40-061.
- 162-40-051 (202.4) General rule prohibiting discrimination. [Order 34, § 162-40-051, filed 6/30/77.] Repealed by 00-01-177, filed 12/21/99, effective 1/21/00. Statutory Authority: RCW 49.60.120(3).
- 162-40-060 Separate accounts. [Order 25, § 162-40-060, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
- 162-40-061 (202.5(a)) Discouraging applications. [Order 34, § 162-40-061, filed 6/30/77.] Repealed by 00-01-177, filed 12/21/99, effective 1/21/00. Statutory Authority: RCW 49.60.120(3).
- 162-40-070 Inquiries as to marital status. [Order 24, § 162-40-070, filed 2/20/76.] Repealed by Order 34, filed 6/30/77. Later promulgation, see WAC 162-40-101.
- 162-40-071 (202.5 (b)(1)) General rule concerning requests for information. [Order 34, § 162-40-071, filed 6/30/77.] Repealed by 00-01-177, filed 12/21/99, effective 1/21/00. Statutory Authority: RCW 49.60.120(3).
- 162-40-080 Inquiries as to race, creed, color, national origin, or sex. [Order 24, § 162-40-080, filed 2/20/76.] Repealed by Order 34, filed 6/30/77.
- 162-40-081 (202.5(b)) Request for designation of membership in certain protected classes. [Order 34, § 162-40-081, filed 6/30/77.] Repealed by 00-01-177, filed 12/21/99, effective 1/21/00. Statutory Authority: RCW 49.60.120(3).
- 162-40-090 Designation of title and other sex specific terms. [Order 24, § 162-40-090, filed 2/20/76.] Repealed by Order 34, filed 6/30/77.
- 162-40-091 (202.5(d)) Other information a creditor may not request. [Order 34, § 162-40-091, filed 6/30/77.] Repealed by 00-01-177, filed 12/21/99, effective 1/21/00. Statutory Authority: RCW 49.60.120(3).
- 162-40-100 Designation of name. [Order 24, § 162-40-100, filed 2/20/76.] Repealed by Order 34, filed 6/30/77. Later promulgation, see WAC 162-40-091.
- 162-40-101 (202.5(c)) Information about a spouse or former spouse. [Order 34, § 162-40-101, filed 6/30/77.] Repealed by 00-01-177, filed 12/21/99, effective 1/21/00. Statutory Authority: RCW 49.60.120(3).
- 162-40-110 Receipt of child support, alimony, or maintenance payment. [Order 24, § 162-40-110, filed 2/20/76.] Repealed by Order 34, filed 6/30/77. Later promulgation, see WAC 162-40-091.
- 162-40-111 (202.5(e)) Application forms: Special state requirements. [Order 34, § 162-40-111, filed 6/30/77.] Repealed by 00-01-177, filed 12/21/99, effective 1/21/00. Statutory Authority: RCW 49.60.120(3).
- 162-40-120 Designation of spouse's name. [Order 24, § 162-40-120, filed 2/20/76.] Repealed by Order 34, filed 6/30/77. Later promulgation, see WAC 162-40-101.
- 162-40-121 (202.6(a)) General rule concerning use of information. [Order 34, § 162-40-121, filed 6/30/77.] Repealed by 00-01-177, filed 12/21/99, effective 1/21/00. Statutory Authority: RCW 49.60.120(3).
- 162-40-130 Designation of previous names of applicant. [Order 24, § 162-40-130, filed 2/20/76.] Repealed by Order 34, filed 6/30/77.
- 162-40-131 (202.6(b)) Specific rules concerning use of information. [Order 34, § 162-40-131, filed 6/30/77.] Repealed by 00-01-177, filed 12/21/99, effective 1/21/00. Statutory Authority: RCW 49.60.120(3).
- 162-40-135 Commission review of forms and procedures. [Order 24, § 162-40-135, filed 2/20/76.] Repealed by Order 34, filed 6/30/77.
- 162-40-140 Application of community property law. [Order 25, § 162-40-140, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
- 162-40-141 (202.7 (a), (b)) Opening accounts. [Order 34, § 162-40-141, filed 6/30/77.] Repealed by 00-01-177, filed 12/21/99, effective 1/21/00. Statutory Authority: RCW 49.60.120(3).
- 162-40-150 Information about a spouse or former spouse. [Order 25, § 162-40-150, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
- 162-40-151 (202.7(c)) Action concerning existing open end accounts. [Order 34, § 162-40-151, filed 6/30/77.] Repealed by 00-01-177, filed 12/21/99, effective 1/21/00. Statutory Authority: RCW 49.60.120(3).
- 162-40-160 Alimony, child support and maintenance obligations. [Order 25, § 162-40-160, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.

162-40-161	(202.7(d)) Signature of spouse or other person. [Order 34, § 162-40-161, filed 6/30/77.] Repealed by 00-01-177, filed 12/21/99, effective 1/21/00. Statutory Authority: RCW 49.60.120(3).
162-40-170	Income from alimony, child support and maintenance. [Order 25, § 162-40-170, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
162-40-180	Discounting income. [Order 25, § 162-40-180, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
162-40-190	Credit scoring. [Order 25, § 162-40-190, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
162-40-200	Telephone listing in applicant's name. [Order 25, § 162-40-200, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
162-40-210	Continued ability to repay. [Order 25, § 162-40-210, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
162-40-220	Change of name or marital status. [Order 25, § 162-40-220, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
162-40-230	Credit history. [Order 25, § 162-40-230, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
162-40-240	Use and retention of prohibited information. [Order 25, § 162-40-240, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
162-40-241	(202.3) Special treatment for certain classes of transactions. [Order 34, § 162-40-241, filed 6/30/77.] Repealed by 00-01-177, filed 12/21/99, effective 1/21/00. Statutory Authority: RCW 49.60.120(3).
162-40-250	Notification of action taken and reasons for denial. [Order 25, § 162-40-250, filed 4/23/76; Order 24, § 162-40-250, filed 2/20/76.] Repealed by Order 34, filed 6/30/77.
162-40-260	Accounts established on or after 1 June 1977. [Order 29, § 162-40-260, filed 10/29/76; Order 28, § 162-40-260, filed 5/21/76.] Repealed by Order 34, filed 6/30/77.
162-40-270	Accounts established prior to 1 June 1977. [Order 29, § 162-40-270, filed 10/29/76; Order 28, § 162-40-270, filed 5/21/76.] Repealed by Order 34, filed 6/30/77.
162-40-280	General. [Order 25, § 162-40-280, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
162-40-290	Signature of spouse. [Order 25, § 162-40-290, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
162-40-300	Secured credit. [Order 25, § 162-40-300, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
162-40-310	Prohibited information. [Order 25, § 162-40-310, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
162-40-320	Establishing credit files. [Order 25, § 162-40-320, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
162-40-330	Name on credit report. [Order 25, § 162-40-330, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
162-40-340	Public record information. [Order 28, § 162-40-340, filed 5/21/76.] Repealed by Order 34, filed 6/30/77.
162-40-350	Community credit files. [Order 25, § 162-40-350, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
162-40-360	Transfer of joint account information. [Order 25, § 162-40-360, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
162-40-370	Preservation of records. [Order 25, § 162-40-370, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
162-40-380	Exemptions from certain procedural requirements. [Order 25, § 162-40-380, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
162-40-390	Effective date. [Order 25, § 162-40-390, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
162-40-400	Remedies. [Order 25, § 162-40-400, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
162-40-410	Relation between Regulation B and chapter 162-40 WAC. [Order 25, § 162-40-410, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.

WAC 162-40-010 Scope of chapter. This chapter carries out the policies and practices of the commission in connection with the law against discrimination covering credit transactions. The principal statutes involved are RCW 49.60.175, 49.60.176, and 49.60.222 (1)(j).

[Statutory Authority: RCW 49.60.120(3). 00-01-177, § 162-40-010, filed 12/21/99, effective 1/21/00; Order 25, § 162-40-010, filed 4/23/76.]

WAC 162-40-021 Coordination with federal law. (1) It is the policy of the commission to coordinate its enforce-

ment of the Washington state law against discrimination with enforcement of the federal Equal Credit Opportunity Act, Pub. L. 93-495, as amended, and Regulation B Equal Credit Opportunity 12 CFR 202, to the maximum extent possible without diminishing the impact of the state law where the statutes differ. Federal law alters, affects or preempts only those regulations contained in this chapter which are inconsistent with federal law, and then only to the extent of the inconsistency.

(2) Differences between state and federal regulations. The state of Washington is a community property state; therefore, regulations governing community property may define the differences between the federal and state regulations.

[Statutory Authority: RCW 49.60.120(3). 00-01-177, § 162-40-021, filed 12/21/99, effective 1/21/00; Order 34, § 162-40-021, filed 6/30/77.]

WAC 162-40-041 Definitions. For purposes of this regulation, unless the context indicates otherwise, the following definitions apply:

(1) "Account" means an extension of credit. When employed in relation to an account, the word "use" refers only to open end credit.

(2) "Adverse action."

(a) The term means:

(i) A refusal to grant credit in substantially the amount or on substantially the terms requested in an application unless the creditor makes a counteroffer (to grant credit in a different amount or on other terms) and the applicant uses or expressly accepts the credit offered;

(ii) A termination of an account or an unfavorable change in the terms of an account that does not affect all or a substantial portion of a class of a creditor's accounts; or

(iii) A refusal to increase the amount of credit available to an applicant who has made an application for an increase in accordance with procedures established by the creditor.

(b) The term does not include:

(i) A change in the terms of an account expressly agreed to by an applicant;

(ii) Any action or forbearance relating to an account taken in connection with inactivity, default, or delinquency as to that account;

(iii) A refusal or failure to authorize an account transaction at a point of sale or loan, except when the refusal is a termination or an unfavorable change in the terms of an account that does not affect all or a substantial portion of a class of the creditor's accounts, or when the refusal is a denial of an application for an increase in the amount of credit available under the account;

(iv) A refusal to extend credit because applicable law prohibits the creditor from extending the credit requested; or

(v) A refusal to extend credit because the creditor does not offer the type of credit or credit plan requested.

(3) "Applicant" means any person who requests or who has received an extension of credit from a creditor, and includes any person who is or may be contractually liable regarding an extension of credit other than a guarantor, surety, endorser, or similar party.

(4) "Application" means an oral or written request for an extension of credit that is made in accordance with procedures established by a creditor for the type of credit

requested. The term does not include the use of an account or line of credit to obtain an amount of credit that is within a previously established credit limit. A "completed application" means an application in connection with which a creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested (including, but not limited to, credit reports, any additional information requested from the applicant, and any approvals or reports by governmental agencies or other persons that are necessary to guarantee, insure, or provide security for the credit or collateral). The creditor shall exercise reasonable diligence in obtaining such information.

(5) "Community property" means community property as defined in RCW 26.16.030 Community property defined—Management and control.

(6) "Consumer credit" means credit extended to a person primarily for personal, family, or household purposes.

(7) "Consumer reporting agency" means any person which for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purposes of furnishing reports on consumers to third parties.

(8) "Contractually liable" means expressly obligated to repay all debts arising on an account by reason of an agreement to that effect.

(9) "Credit" means the right granted by a creditor to an applicant to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment therefor.

(10) "Credit card" means any card, plate, coupon book, or other single credit device that may be used from time to time to obtain money, property, or services on credit.

(11) "Creditor" means a person who, in the ordinary course of business, regularly participates in the decision of whether or not to extend credit. The term includes the creditor's assignee, transferee, or subrogee who so participates. The term also includes a person who, in the ordinary course of business, regularly refers applicants or prospective applicants to creditors, or selects or offers to select creditors to whom requests for credit may be made. A person is not a creditor regarding any violation committed by another creditor unless the person knew or had reasonable notice of the act, policy, or practice that constituted a violation before becoming involved in the credit transaction. The term does not include a person whose only participation in a credit transaction is to honor a credit card.

(12) "Credit transaction" is defined in RCW 49.60.040.

(13) "Extend credit and extension of credit" mean the granting of credit in any form, including, but not limited to, credit granted in addition to any existing credit or credit limit; credit granted pursuant to an open end credit plan; the refinancing or other renewal of credit, including the issuance of a new credit card in place of an expiring credit card or in substitution for an existing credit card; the consolidation of two or more obligations; or the continuance of existing credit without any special effort to collect at or after maturity.

(14) "Good faith" means honesty in fact in the conduct or transaction.

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(15) "Inadvertent error" means a mechanical, electronic, or clerical error that a creditor demonstrates was not intentional and occurred notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(16) "Marital status" is defined in RCW 49.60.040(7).

(17) "Open end credit" means credit extended under a plan in which a creditor may permit an applicant to make purchases or obtain loans from time to time directly from the creditor or indirectly by use of a credit card, check, or other device. The term does not include negotiated advances under an open end real estate mortgage or letter of credit.

(18) "Person" is defined in RCW 49.60.040.

(19) "Separate property" is defined in RCW 26.16.010 and 26.16.020.

[Statutory Authority: RCW 49.60.120(3). 00-01-177, § 162-40-041, filed 12/21/99, effective 1/21/00; Order 34, § 162-40-041, filed 6/30/77.]

RULES CONCERNING APPLICATIONS

WAC 162-40-055 Rules concerning applications.

Rules concerning applications comply with Regulation B Equal Credit Opportunity 12 CFR 202, Section 202.5, except where community property law is governed by the state of Washington at chapter 26.16 RCW, Husband and wife—Rights and liabilities—Community property.

[Statutory Authority: RCW 49.60.120(3). 00-01-177, § 162-40-055, filed 12/21/99, effective 1/21/00.]

RULES CONCERNING EVALUATION OF APPLICATIONS

WAC 162-40-065 Rules concerning evaluation of applications. Rules concerning evaluation of applications comply with Regulation B Equal Credit Opportunity 12 CFR 202, Section 202.6, except where community property law is governed by the state of Washington at chapter 26.16 RCW, Husband and wife—Rights and liabilities—Community property.

[Statutory Authority: RCW 49.60.120(3). 00-01-177, § 162-40-065, filed 12/21/99, effective 1/21/00.]

RULES CONCERNING EXTENSION OF CREDIT

WAC 162-40-075 Rules concerning extensions of credit. Rules concerning extensions of credit comply with Regulation B Equal Credit Opportunity 12 CFR 202, Section 202.7, except where community property law is governed by the state of Washington at chapter 26.16 RCW, Husband and wife—Rights and liabilities—Community property.

[Statutory Authority: RCW 49.60.120(3). 00-01-177, § 162-40-075, filed 12/21/99, effective 1/21/00.]

WAC 162-40-171 Notifications. Rules concerning notifications comply with Regulation B Equal Credit Opportunity 12 CFR 202, Section 202.9, except where community property law is governed by the state of Washington at chapter 26.16 RCW, Husband and wife—Rights and liabilities—Community property.

[Statutory Authority: RCW 49.60.120(3). 00-01-177, § 162-40-171, filed 12/21/99, effective 1/21/00; Order 34, § 162-40-171, filed 6/30/77.]

WAC 162-40-181 Furnishing of credit information.

Rules concerning furnishing of Credit Information comply with Regulation B Equal Credit Opportunity 12 CFR 202, Section 202.10, except where community property law is governed by the state of Washington at chapter 26.16 RCW, Husband and wife—Rights and liabilities—Community property.

[Statutory Authority: RCW 49.60.120(3). 00-01-177, § 162-40-181, filed 12/21/99, effective 1/21/00; Order 34, § 162-40-181, filed 6/30/77.]

CONSUMER REPORTING AGENCIES

WAC 162-40-191 General rule. A consumer reporting agency shall not report to a creditor any information relating to an applicant's race, creed, color, national origin, sex, or the presence of any sensory, mental, or physical disability or that the applicant uses a trained dog guide or service animal because of a disability.

[Statutory Authority: RCW 49.60.120(3). 00-01-177, § 162-40-191, filed 12/21/99, effective 1/21/00; Order 34, § 162-40-191, filed 6/30/77.]

WAC 162-40-201 Rules concerning credit files. (1) Establishing credit files. A consumer reporting agency shall not refuse to establish a credit file for any person in any name under which an applicant may open or maintain an account. This file may be referenced with the file of the applicant's spouse.

(2) Name on credit report. A consumer reporting agency shall issue credit reports in the name in which the request for the report was received. A credit report may include the name of the spouse or former spouse, if available.

(3) Public record information. If a consumer reporting agency places public record information in credit files and such information contains the names of both spouses, such information shall be referenced so that it is accessible in the name of each spouse.

(a) If a consumer reporting agency places public record information concerning a decree of separation or dissolution of marriage in credit files, it shall place such information in the individual credit file of each spouse.

(4) Community credit files. A consumer reporting agency may reference the credit files of married persons by listing in a spouse's file that the information is contained in the other spouse's file, provided the information is accessible by use of each spouse's name.

(5) Transfer of joint account information. A consumer reporting agency shall, upon request, transfer information from joint credit files to an individual credit file regardless of the name in which the information was originally reported.

[Statutory Authority: RCW 49.60.120(3). 00-01-177, § 162-40-201, filed 12/21/99, effective 1/21/00; Order 34, § 162-40-201, filed 6/30/77.]

GENERAL PROVISIONS

WAC 162-40-211 Record retention. Rules concerning record retention conform to Regulation B Equal Credit Opportunity 12 CFR 202, Section 202.12, except where community property law is governed by the state of Washington at chapter 26.16 RCW, Husband and wife—Rights and liabilities—Community property.

(2009 Ed.)

[Statutory Authority: RCW 49.60.120(3). 00-01-177, § 162-40-211, filed 12/21/99, effective 1/21/00; Order 34, § 162-40-210 (codified as WAC 162-40-211), filed 6/30/77.]

WAC 162-40-221 Rules of construction. Any violation of the provisions of this chapter shall constitute an unfair practice within the meaning of RCW 49.60.175, 49.60.176, and/or 49.60.222 (1)(j).

[Statutory Authority: RCW 49.60.120(3). 00-01-177, § 162-40-221, filed 12/21/99, effective 1/21/00; Order 34, § 162-40-221, filed 6/30/77.]

EXEMPTIONS

WAC 162-40-231 Exemption for special purpose credit program. Any credit program that qualifies as a special purpose credit program under the provisions of 12 C.F.R. § 202.8 is exempt from these regulations to the extent these regulations are inconsistent with the provisions of 12 C.F.R. § 202.8.

[Statutory Authority: RCW 49.60.120(3). 00-01-177, § 162-40-231, filed 12/21/99, effective 1/21/00; Order 34, § 162-40-231, filed 6/30/77.]

WAC 162-40-251 Remedies. An administrative law judge may order, or the commission's staff may propose upon a finding of reasonable cause to believe a violation of chapter 49.60 RCW has occurred, or in prefinding settlement efforts, remedies, including but not limited to:

(1) Requiring the creditor to establish in writing nondiscriminatory criteria for the granting of credit.

(2) Requiring the creditor or consumer reporting agency to conduct training sessions of its employees and agents in order to insure that the employees and agents are aware of their responsibilities and liabilities under the Washington state law against discrimination RCW 49.60.240, 49.60.250, and 49.60.225 and Regulation B of the Equal Credit Opportunity Act, Section 202.14.

(3) Requiring the creditor to pay actual or special damages to aggrieved parties.

(4) Requiring the creditor to submit to the commission proof that it has ceased said discriminatory practices and implemented a policy of nondiscrimination.

(5) Requiring that the creditor conduct remedial advertising.

(6) Requiring the creditor to offer credit to the aggrieved parties.

(7) Requiring the creditor or consumer reporting agency to revise the structure and content of its files to eliminate discrimination and to remove all references to the complaint from the complainant's file.

(8) Requiring the posting of a notice in view of applicants for credit stating that it is an unfair practice for any person furnishing credit to deny or terminate such credit or to adversely affect an individual's credit standing because of such individual's race, creed, color, sex, national origin, or marital status.

(9) Requiring the distribution of these regulations to each of its employees and agents who determine, influence, or effectuate the creditor's policies and practices.

[Statutory Authority: RCW 49.60.120(3). 00-01-177, § 162-40-251, filed 12/21/99, effective 1/21/00; Order 34, § 162-40-251, filed 6/30/77.]