

State Department of Information Services, c/o Public Records Officer, Jefferson Building, 1110 Jefferson Street S.E., Olympia, Wash. 98504.

[Statutory Authority: Chapter 42.17 RCW. 00-01-028, § 143-06-140, filed 12/7/99, effective 1/7/00; 88-21-029 (Order 88-1), § 143-06-140, filed 10/11/88. Statutory Authority: Chapter 43.105 RCW. 81-07-004 (Order 004), § 143-06-140, filed 3/6/81; Order 0002, § 143-06-140, filed 9/12/73.]

WAC 143-06-150 Repealed. See Disposition Table at beginning of this chapter.

WAC 143-06-160 Records in possession of data processing service centers. No public records of users of department services shall be made available for public inspection or copying by the department without the express written authorization of the user.

Requests for inspection or copying of public records of the user, held or maintained by the center, shall be referred to the user for determination as to the right of public access to such records, pursuant to chapter 42.17 RCW. Costs incurred by the department in providing access to or copies of public records of the user pursuant to chapter 42.17 RCW shall be paid by the user.

[Statutory Authority: Chapter 42.17 RCW. 00-01-028, § 143-06-160, filed 12/7/99, effective 1/7/00; Order 0005, § 143-06-160, filed 4/17/75.]

Title 162 WAC

HUMAN RIGHTS COMMISSION

(Formerly: Discrimination, Board Against)

Chapters

162-12	Preemployment inquiry guide.
162-16	Employment.
162-18	Corrective employment programs.
162-20	Age discrimination in public employment.
162-22	Employment—Handicapped persons.
162-26	Public accommodations, disability discrimination.
162-28	Public schools—Equal education—Equal rights—National origin minority group children.
162-30	Sex discrimination.
162-38	Real estate transactions, disability discrimination.
162-40	Credit transactions.

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.

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 162-16-240.)

[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 INQUIRES	UNFAIR PREEMPLOYMENT INQUIRES
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.

(For age discrimination, RCW 49.44.090 must be read in conjunction with RCW 49.60.180 and 49.60.200. RCW 49.44.090 limits age discrimination coverage to persons 40 years of age and older, and makes other limitations and exceptions to the age discrimination law.)

SUBJECT	FAIR PREEMPLOYMENT INQUIRES	UNFAIR PREEMPLOYMENT INQUIRES
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.
c. Citizenship	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.	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)	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 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; have a direct responsibility 43.43.830 through 43.43.842; and RCW 72.23.035.	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.

SUBJECT	FAIR PREEMPLOYMENT INQUIRES	UNFAIR PREEMPLOYMENT INQUIRES	SUBJECT	FAIR PREEMPLOYMENT INQUIRES	UNFAIR PREEMPLOYMENT INQUIRES
e. Family	Whether applicant can meet specified work schedules or has activities, commitments or responsibilities that may prevent him or her from meeting work attendance requirements.	Specific inquiries concerning spouse, spouse's employment or salary, children, child care arrangements, or dependents.	k. National Origin	Inquiries into applicant's ability to read, write and speak foreign languages, when such inquiries are based on job requirements.	Inquiries into applicant's lineage, ancestry, national origin, descent, birthplace, or mother tongue. National origin of applicant's parents or spouse.
f. Disability	Whether applicant is able to perform the essential functions of the job for which the applicant is applying, with or without reasonable accommodation. Inquiries as to how the applicant could demonstrate or describe the performance of these specific job functions with or without reasonable accommodation. Note: Employers are encouraged to include a statement on the application form apprising applicants that if they require accommodation to complete the application, testing or interview process, to please contact the employment office, personnel or human resources department or other office as may be able to assist them.	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.	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.	Requirement that applicant list all organizations, clubs, societies, and lodges to which he or she belongs.
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.	m. Photographs	May be requested <i>after</i> hiring for identification purposes.	Request that applicant submit a photograph, mandatorily or optionally, at any time before hiring.
h. Marital Status (see also Name and Family)	None.	() Mr. () Mrs. () Miss () Ms. Whether the applicant is married, single, divorced, separated, engaged, widowed, etc.	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.	All questions as to pregnancy, and medical history concerning pregnancy and related matters.
i. Military	Inquiries concerning education, training, or work experience in the armed forces of the United States.	Type or condition of military discharge. Applicant's experience in military other than U.S. armed forces. Request for discharge papers. 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.	o. Race or Color	None. See WAC 162-12-150, 162-12-160, and 162-12-170.	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.
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.		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
					(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
			q. Religion or Creed	None.	Inquiries concerning applicant's religious preference, denomination, religious affiliations, church, parish, pastor, or religious holidays observed.
			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.
			s. Sex	None.	Any inquiry concerning gender is prohibited.

[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.]

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.

[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.]

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.

(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 verification 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 mak-

ing 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

162-16-020	Repealed.
162-16-030	Repealed.
162-16-040	Repealed.
162-16-050	Repealed.
162-16-060	Repealed.
162-16-070	Repealed.
162-16-080	Repealed.
162-16-090	Repealed.
162-16-100	Repealed.
162-16-110	Repealed.
162-16-120	Repealed.
162-16-130	Repealed.
162-16-140	Repealed.
162-16-150	Repealed.
162-16-160	Repealed.
162-16-170	Repealed.
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

162-16-020	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).
162-16-030	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).
162-16-040	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).
162-16-050	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).
162-16-060	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).
162-16-070	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).
162-16-080	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).
162-16-090	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).

162-16-100	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).
162-16-110	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).
162-16-120	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).
162-16-130	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).
162-16-140	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).
162-16-150	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).
162-16-160	"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).
162-16-170	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 162-16-020 Repealed. See Disposition Table at beginning of this chapter.

WAC 162-16-030 Repealed. See Disposition Table at beginning of this chapter.

WAC 162-16-040 Repealed. See Disposition Table at beginning of this chapter.

WAC 162-16-050 Repealed. See Disposition Table at beginning of this chapter.

WAC 162-16-060 Repealed. See Disposition Table at beginning of this chapter.

WAC 162-16-070 Repealed. See Disposition Table at beginning of this chapter.

WAC 162-16-080 Repealed. See Disposition Table at beginning of this chapter.

WAC 162-16-090 Repealed. See Disposition Table at beginning of this chapter.

WAC 162-16-100 Repealed. See Disposition Table at beginning of this chapter.

WAC 162-16-110 Repealed. See Disposition Table at beginning of this chapter.

WAC 162-16-120 Repealed. See Disposition Table at beginning of this chapter.

WAC 162-16-130 Repealed. See Disposition Table at beginning of this chapter.

WAC 162-16-140 Repealed. See Disposition Table at beginning of this chapter.

WAC 162-16-150 Repealed. See Disposition Table at beginning of this chapter.

WAC 162-16-160 Repealed. See Disposition Table at beginning of this chapter.

WAC 162-16-170 Repealed. See Disposition Table at beginning of this chapter.

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 profes-

sional 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 treated 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.

tion (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:	SUGGESTED SUBSTITUTES:
Man, woman, girl, boy, lady, etc.	Person, applicant, hiree, one, trainee, or a sex-neutral job title
Cute, handsome, pretty, clean-cut, attractive	Neat, well-groomed, personable, professional appearance
Married, single	No substitutes
Recent graduate, college student (implies preference for youth)	Degree required, Internship
Mother, housewife	Part-time, short hours
Young	Entry level, beginner, trainee
Christian, Jewish, etc.	No substitutes
Interracial, segregated, Black, White, colored, Oriental, Asian, Mexican, minority.	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; line-man, M-F).

DISCRIMINATORY JOB TITLES:	SUGGESTED SUBSTITUTES:
Barmaid	Server, Cocktail Server
Busboy, tray girl	Busser, Cafeteria Worker
Cleaning woman, cleaning lady	Cleaning Assistant
Draftsman	Drafter, AutoCAD Specialist
Fireman	Fire Fighter
Fisherman	Fisher
Foreman	Supervisor
Handyman	Miscellaneous Repairer
Journeyman	Journey Level
Leadman	Crew, Shift, or Team Leader
Longshoreman	Longshore Worker
Maid	Domestic Helper, Housekeeper
Maintenance man	Maintenance Worker
Policeman	Police Officer
Repairman	Repairer, Technician
Salesman, saleslady, salesgirl	Salesperson, Sales Clerk, Sales Representative
Stewardess, Steward	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 inter-agency 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 162-18 WAC
CORRECTIVE EMPLOYMENT PROGRAMS**

WAC 162-18-010 through 162-18-100 Repealed.

**DISPOSITION OF SECTIONS FORMERLY
CODIFIED IN THIS CHAPTER**

162-18-010	Corrective employment program defined. [Order 16, § 162-18-010, filed 5/22/74; Order 9, § 162-18-010, filed 9/23/71; Order 8, § 162-18-010, filed 6/22/70.] Repealed by 00-01-177, filed 12/21/99, effective 1/21/00. Statutory Authority: RCW 49.60.120(3).
162-18-020	Purpose and policy. [Order 9, § 162-18-020, filed 9/23/71; Order 8, § 162-18-020, filed 6/22/70.]

- 162-18-030 Repealed by 00-01-177, filed 12/21/99, effective 1/21/00. Statutory Authority: RCW 49.60.120(3).
Corrective employment programs are lawful. [Order 9, § 162-18-030, filed 9/23/71; Order 8, § 162-18-030, filed 6/22/70.] Repealed by 00-01-177, filed 12/21/99, effective 1/21/00. Statutory Authority: RCW 49.60.120(3).
- 162-18-040 Permissible components of program. [Order 16, § 162-18-040, filed 5/22/74; Order 9, § 162-18-040, filed 9/23/71; Order 8, § 162-18-040, filed 6/22/70.] Repealed by 00-01-177, filed 12/21/99, effective 1/21/00. Statutory Authority: RCW 49.60.120(3).
- 162-18-050 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).

WAC 162-18-010 through 162-18-100 Repealed. See Disposition Table at beginning of this chapter.

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.

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.]

Chapter 162-22 WAC

EMPLOYMENT—HANDICAPPED PERSONS

WAC

- 162-22-010 Scope of chapter.
- 162-22-020 Definitions.
- 162-22-025 Unfair practice.
- 162-22-030 Repealed.
- 162-22-035 Preference for disabled is not an unfair practice.
- 162-22-040 Repealed.
- 162-22-045 Bona fide occupational qualifications.
- 162-22-050 Repealed.
- 162-22-060 Repealed.
- 162-22-065 Reasonable accommodation.
- 162-22-070 Repealed.
- 162-22-075 Undue hardship exception.
- 162-22-080 Repealed.
- 162-22-090 Health care opinions.
- 162-22-100 Dog guides and service animals.

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 162-22-030 Repealed. See Disposition Table at beginning of this chapter.

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 162-22-040 Repealed. See Disposition Table at beginning of this chapter.

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 162-22-050 Repealed. See Disposition Table at beginning of this chapter.

WAC 162-22-060 Repealed. See Disposition Table at beginning of this chapter.

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 162-22-070 Repealed. See Disposition Table at beginning of this chapter.

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 162-22-080 Repealed. See Disposition Table at beginning of this chapter.

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.

(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.

[2000 WAC Supp—page 214]

(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.]

Chapter 162-26 WAC
PUBLIC ACCOMMODATIONS, DISABILITY
DISCRIMINATION

WAC

162-26-010	Scope of chapter.
162-26-020	Repealed.
162-26-030	Repealed.
162-26-035	Repealed.
162-26-040	Definitions.
162-26-050	Repealed.
162-26-060	General principles.
162-26-070	General rules.
162-26-080	Reasonable accommodation.
162-26-090	Repealed.
162-26-100	Structural barriers to accessibility.
162-26-110	Behavior causing risk.
162-26-120	Requirements of other law.
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 162-26-020 Repealed. See Disposition Table at beginning of this chapter.

WAC 162-26-030 Repealed. See Disposition Table at beginning of this chapter.

WAC 162-26-035 Repealed. See Disposition Table at beginning of this chapter.

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 162-26-050 Repealed. See Disposition Table at beginning of this chapter.

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 stairway 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. Stat-

utory 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 162-26-090 Repealed. See Disposition Table at beginning of this chapter.

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 162-26-135 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 accommodation 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.

[2000 WAC Supp—page 218]

[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.]

Chapter 162-28 WAC

PUBLIC SCHOOLS—EQUAL EDUCATION—EQUAL RIGHTS—NATIONAL ORIGIN MINORITY GROUP CHILDREN

WAC

162-28-030
162-28-040

Schools are places of public accommodation.
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 suppress-

ing 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.

(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 pregnant 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 162-38 WAC

REAL ESTATE TRANSACTIONS, DISABILITY DISCRIMINATION

WAC

162-38-040	Definitions.
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.
162-38-130	Repealed.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

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).
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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 162-38-100 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 cleaning 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 162-38-130 Repealed. See Disposition Table at beginning of this chapter.

**Chapter 162-40 WAC
CREDIT TRANSACTIONS**

WAC

162-40-010	Scope of chapter.
162-40-021	Coordination with federal law.
162-40-031	Repealed.
162-40-041	Definitions.
162-40-051	Repealed.
162-40-055	Rules concerning applications.
162-40-061	Repealed.
162-40-065	Rules concerning evaluation of applications.
162-40-071	Repealed.
162-40-075	Rules concerning extensions of credit.
162-40-081	Repealed.
162-40-091	Repealed.
162-40-101	Repealed.
162-40-111	Repealed.
162-40-121	Repealed.
162-40-131	Repealed.
162-40-141	Repealed.
162-40-151	Repealed.
162-40-161	Repealed.
162-40-171	Notifications.
162-40-181	Furnishing of credit information.
162-40-191	General rule.
162-40-201	Rules concerning credit files.
162-40-211	Record retention.
162-40-221	Rules of construction.
162-40-231	Exemption for special purpose credit program.
162-40-241	Repealed.
162-40-251	Remedies.

**DISPOSITION OF SECTIONS FORMERLY
CODIFIED IN THIS CHAPTER**

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).
162-40-051	(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).
162-40-061	(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).
162-40-071	(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).
162-40-081	(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).
162-40-091	(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).
162-40-101	(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).
162-40-111	(202.5(e)) Application forms: Special state requirements. [Order 34, § 162-40-111, filed 6/30/77.]

162-40-121	Repealed by 00-01-177, filed 12/21/99, effective 1/21/00. Statutory Authority: RCW 49.60.120(3). (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).
162-40-131	(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).
162-40-141	(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).
162-40-151	(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).
162-40-161	(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).
162-40-241	(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).

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 enforcement 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 162-40-031 Repealed. See Disposition Table at beginning of this chapter.

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.

(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.]

WAC 162-40-051 Repealed. See Disposition Table at beginning of this chapter.

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.]

WAC 162-40-061 Repealed. See Disposition Table at beginning of this chapter.

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.]

WAC 162-40-071 Repealed. See Disposition Table at beginning of this chapter.

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 162-40-081 Repealed. See Disposition Table at beginning of this chapter.

WAC 162-40-091 Repealed. See Disposition Table at beginning of this chapter.

WAC 162-40-101 Repealed. See Disposition Table at beginning of this chapter.

WAC 162-40-111 Repealed. See Disposition Table at beginning of this chapter.

WAC 162-40-121 Repealed. See Disposition Table at beginning of this chapter.

WAC 162-40-131 Repealed. See Disposition Table at beginning of this chapter.

WAC 162-40-141 Repealed. See Disposition Table at beginning of this chapter.

WAC 162-40-151 Repealed. See Disposition Table at beginning of this chapter.

WAC 162-40-161 Repealed. See Disposition Table at beginning of this chapter.

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.]

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.]

[2000 WAC Supp—page 224]

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.

[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.]

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 162-40-241 Repealed. See Disposition Table at beginning of this chapter.

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.]

Title 173 WAC

ECOLOGY, DEPARTMENT OF

Chapters

173-153	Water conservancy boards.
173-224	Wastewater discharge permit fees.
173-230	Certification of operators of wastewater treatment plants.
173-325	Low-level radioactive waste disposal.
173-422	Motor vehicle emission inspection.
173-495	Weather modification.
173-532	Water resources program for the Walla Walla River basin, WRIA-32.

Chapter 173-153 WAC

WATER CONSERVANCY BOARDS

WAC

173-153-010	Purpose and authority.
173-153-020	Applicability.
173-153-030	Definitions.
173-153-040	Creation of a water conservancy board.
173-153-050	Training requirements.
173-153-060	Scope of authority of water conservancy boards.
173-153-070	Application for transfer of a water right.
173-153-080	Public notice.
173-153-090	Protests.
173-153-110	Examination of application.
173-153-120	Interventions and protests.
173-153-130	Conditional decision by water conservancy board.
173-153-140	Notification of conditional decision.
173-153-150	Ecology's review of the board's conditional decision.
173-153-160	Perfection of a transfer approval.
173-153-170	Reporting requirements.
173-153-180	Appeals.
173-153-190	Existing rights not affected.
173-153-200	Review of chapter.

WAC 173-153-010 Purpose and authority. The purpose of this chapter is to establish procedures the department of ecology (ecology) and water conservancy boards (conservancy boards) will follow in implementing chapter 90.80 RCW, and in implementing RCW 90.03.380, 90.03.390, and 90.44.100, which govern the granting of water right transfers. Chapter 90.80 RCW authorizes establishment of water conservancy boards and vests them with certain powers relating to water right transfers.

[Statutory Authority: Chapter 90.80 RCW, 99-23-101 (Order 98-11), § 173-153-010, filed 11/17/99, effective 12/18/99.]

WAC 173-153-020 Applicability. These procedures apply to the establishment of water conservancy boards (established in accordance with chapter 90.80 RCW) and to

how applications to transfer water rights that are filed with a water conservancy board will be processed.

[Statutory Authority: Chapter 90.80 RCW, 99-23-101 (Order 98-11), § 173-153-020, filed 11/17/99, effective 12/18/99.]

WAC 173-153-030 Definitions. For the purposes of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Application" means an application for a transfer of a water right, including those proposed under authority of RCW 90.03.380, 90.03.390 and 90.44.100. Application generally refers to filings made on an ecology form titled "application for change/transfer of water right," number 040-1-97, or as that form may be amended by ecology in the future.

(2) "Conditional decision" means the conclusion reached by an individual conservancy board regarding approval or denial of an application to transfer an existing water right.

(3) "Consumptive use" means use of water whereby there is a diminishment of the water source.

(4) "Source" means the water body from which water is or would be diverted or withdrawn under an existing water right which an applicant has proposed to be transferred.

(5) "Transfer" means an alteration, in whole or in part, in the point of diversion or withdrawal, purpose of use, place of use, or change or amendment of a water right, or other limitation or circumstance of water use approved in accordance with RCW 90.03.380, 90.03.390 or 90.44.100.

[Statutory Authority: Chapter 90.80 RCW, 99-23-101 (Order 98-11), § 173-153-030, filed 11/17/99, effective 12/18/99.]

WAC 173-153-040 Creation of a water conservancy board. Counties are encouraged to consult with ecology when considering formation of a water conservancy board.

(1) Creation of a water conservancy board is accomplished by the following steps:

(a) A resolution or petition must be submitted to the county legislative authority calling for formation of a water conservancy board. The resolution or petition may be initiated by:

- (i) The county legislative authority;
- (ii) The legislative authority of an irrigation district, a public utility district that operates a public water system, a reclamation district, a city operating a public water system, or a water-sewer district that operates a public water system;
- (iii) The governing body of a cooperative or mutual corporation that operates a public water system serving one hundred or more accounts;

(iv) Five or more water rights holders who divert water for use in the county; or

(v) Any combination of the above;

(b) The resolution or petition must include:

- (i) A statement of the need for the board;
- (ii) Proposed bylaws that will govern the operation of the board;

(iii) An identification of the geographic boundaries where there is an initial interest in transacting water sales or transfers; and

(iv) A description of the proposed method(s) for funding the operation of the board;