

Chapter 162-22 WAC

EMPLOYMENT—HANDICAPPED PERSONS

WAC

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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. WSR 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 Repealed by WSR 99-15-025, filed 7/12/99, effective 8/12/99.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. WSR 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 Repealed by WSR 99-15-025, filed 7/12/99, effective 8/12/99.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. WSR 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 Repealed by WSR 99-15-025, filed 7/12/99, effective 8/12/99.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. WSR 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 Repealed by WSR 99-15-025, filed 7/12/99, effective 8/12/99.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. WSR 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 Repealed by WSR 99-15-025, filed 7/12/99, effective 8/12/99.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. WSR 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 Repealed by WSR 99-15-025, filed 7/12/99, effective 8/12/99.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). WSR 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. WSR 98-08-035, § 162-22-010, filed 3/23/98, effective 4/23/98; Order 23, § 162-22-010, filed 7/21/75.]

(7/12/99)

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). WSR 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. WSR 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). WSR 99-15-025, § 162-22-025, filed 7/12/99, effective 8/12/99.]

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

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

WAC 162-22-045 Bona fide occupational qualifications. Under the law against discrimination, there is one exception to the rule that an employer, employment agency, labor union, or other person may not discriminate on the basis of protected status; that is if a bona fide occupational qualification (BFOQ) applies. For a complete discussion of BFOQs, please read WAC 162-16-240.

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

WAC 162-22-065 Reasonable accommodation. (1) Reasonable accommodation means measures that:

- (a) Enable equal opportunity in the application process;
 - (b) Enable the proper performance of the particular job held or desired;
 - (c) Enable the enjoyment of equal benefits, privileges, or terms and conditions of employment.
- (2) Possible examples of reasonable accommodation may include, but are not limited to:
- (a) Adjustments in job duties, work schedules, or scope of work;
 - (b) Changes in the job setting or conditions of work;
 - (c) Informing the employee of vacant positions and considering the employee for those positions for which the employee is qualified.

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

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

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

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

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

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

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

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

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

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

[Statutory Authority: RCW 49.60.120(3). WSR 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. WSR 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.

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(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). WSR 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. WSR 98-08-035, § 162-22-100, filed 3/23/98, effective 4/23/98.]