

# Chapter 162-26 WAC

## PUBLIC ACCOMMODATIONS, DISABILITY DISCRIMINATION

### WAC

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### 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. WSR 98-08-035, § 162-26-020, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3). WSR 82-19-086 (Order 41), § 162-26-020, filed 9/22/82.] Repealed by WSR 99-15-025, filed 7/12/99, effective 8/12/99.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. WSR 98-08-035, § 162-26-030, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3). WSR 82-19-086 (Order 41), § 162-26-030, filed 9/22/82.] Repealed by WSR 99-15-025, filed 7/12/99, effective 8/12/99.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). WSR 82-19-086 (Order 41), § 162-26-035, filed 9/22/82.] Repealed by WSR 99-15-025, filed 7/12/99, effective 8/12/99.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. WSR 98-08-035, § 162-26-050, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3). WSR 82-19-086 (Order 41), § 162-26-050, filed 9/22/82.] Repealed by WSR 99-15-025, filed 7/12/99, effective 8/12/99.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. WSR 98-08-035, § 162-26-090, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3). WSR 82-19-086 (Order 41), § 162-26-090, filed 9/22/82.] Repealed by WSR 99-15-025, filed 7/12/99, effective 8/12/99.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). WSR 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. WSR 98-08-035, § 162-26-010, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3). WSR 82-19-086 (Order 41), § 162-26-010, filed 9/22/82.]

(7/12/99)

**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, side-walks, 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). WSR 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. WSR 98-08-035, § 162-26-040, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3). WSR 82-19-086 (Order 41), § 162-26-040, filed 9/22/82.]

**WAC 162-26-060 General principles.** (1) **Same service preferred.** The purposes of the law against discrimination are best achieved when disabled persons are treated the same as if they were not disabled. The legislature expresses

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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). WSR 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. WSR 98-08-035, § 162-26-060, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3). WSR 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). WSR 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. WSR 98-08-035, § 162-26-070, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3). WSR 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). WSR 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. WSR 98-08-035, § 162-26-080, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3). WSR 83-02-012 (Order 43), § 162-26-080, filed 12/23/82.]

**WAC 162-26-100 Structural barriers to accessibility. (1) Laws requiring accessibility.** The commission enforces the law against discrimination, chapter 49.60 RCW, not other state or federal laws. The commission provides the following references as guidance to places of public accommodation. The principal laws requiring that places of public accommodation be made accessible include, but are not limited to:

- (a) The Washington State Building Code.
- (b) Chapter 219, Laws of 1971 ex. sess.
- (c) Chapter 35, Laws of 1967.
- (d) RCW 35.68.075.
- (e) United States law; including The Americans with Disabilities Act of 1990, codified at 42 U.S.C. 12101 et seq., the Rehabilitation Act of 1973, and the Federal Fair Housing Act.

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

- (a) Were lawful when constructed; and
- (b) Are presently lawful under the state building code and other law outside of the law against discrimination.

This exemption does not relieve the operator of a place of public accommodation of the duty to make reasonable

accommodation to the needs of disabled persons as described in WAC 162-26-080.

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

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

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

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

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

(4) **Nonstructural changes.** It is an unfair practice under RCW 49.60.215 for a person who is making nonstructural changes in a place of public accommodation to fail to eliminate barriers to same service when this can be done without substantially changing the scope or cost of the project or requiring structural changes that are not otherwise required by law. Specifically, it is an unfair practice:

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

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

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

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

[Statutory Authority: RCW 49.60.120(3). WSR 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. WSR 98-08-035, § 162-26-100, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3). WSR 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.

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(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). WSR 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. WSR 98-08-035, § 162-26-110, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3). WSR 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). WSR 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. WSR 98-08-035, § 162-26-120, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3). WSR 82-19-086 (Order 41), § 162-26-120, filed 9/22/82.]

**WAC 162-26-130 Use of trained dog guide or service animal.** (1) **Coverage of statute.** RCW 49.60.215 requires fair service in a place of public accommodation "regardless of . . . the use of a trained dog guide or service animal by a disabled person . . ." as well as because of disability itself.

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(2) **Same rules apply.** All of the rules of this chapter with respect to disability itself apply equally to service of a person with a disability who is using a trained dog guide or service animal. See particularly WAC 162-26-060 and 162-26-070.

[Statutory Authority: RCW 49.60.120(3) and 1997 c 271. WSR 98-08-035, § 162-26-130, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3). WSR 82-19-086 (Order 41), § 162-26-130, filed 9/22/82.]

**WAC 162-26-135 Removal of a dog guide or service animal.** (1) **General rule.** It is an unfair practice for a place of public accommodation to ask that a trained dog guide or service animal be removed, unless that place of public accommodation can show that the presence, behavior or actions of that dog guide or service animal constitutes an unreasonable risk of injury or harm to property or other persons.

It is an unfair practice to remove a trained dog guide or service animal from the entire place of public 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). WSR 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 harm-

less as a condition of the use or enjoyment of a place of public accommodation by a disabled person.

(2) It is an unfair practice to request or require another person to waive rights or hold anyone harmless as a condition of the use or enjoyment of a place of public accommodation by a disabled person using a dog guide or service animal.

[Statutory Authority: RCW 49.60.120(3). WSR 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. WSR 98-08-035, § 162-26-140, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3). WSR 83-02-012 (Order 43), § 162-26-140, filed 12/23/82.]