

**Title 162 WAC**  
**HUMAN RIGHTS COMMISSION**  
 (Formerly: Discrimination, Board Against)

**Chapters**

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**Chapter 162-06 WAC**  
**RULES OF GENERAL APPLICATION**

**WAC**

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

**WAC 162-06-010 Scope of chapter.** This chapter contains rules that apply generally to all of the law against discrimination and all of the commission's functions, including the matters and functions treated elsewhere in this title. [Statutory Authority: RCW 49.60.120(3), 82-19-086 (Order 41), § 162-06-010, filed 9/22/82.]

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

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

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

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

- (a) Name of the person making the request;
- (b) Identification of the rule from which the exception is requested;
- (c) The exception requested;
- (d) A statement of the reasons why the exception is requested;

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

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

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

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

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

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

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

(9) **Grounds for exception.** The commission will grant an exception when in its judgment the reasons for the exception outweigh the adverse effect that the exception will have on the purposes of the law against discrimination or the administration of the law against discrimination. Reasons for an exception include:

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

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

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

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

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

(11) **Revocation or revision.** A ruling granting an exception may be revoked or revised at any time by the

commissioners. The revocation or revision shall take effect when written notice of the revocation or revision is delivered to the requestor, or three days after it is mailed to the last known address of the requestor, whichever is earlier. [Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-06-030, filed 9/22/82.]

### Chapter 162-16 WAC EMPLOYMENT

#### WAC

- 162-16-160 "Employer"—Jurisdictional count of number of persons employed.  
162-16-170 Employee distinguished from independent contractor.

**WAC 162-16-160 "Employer"—Jurisdictional count of number of persons employed.** (1) **Purpose and scope of section.** This section implements RCW 49.60-.040, which 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 under the quoted language. The standards in this section do not define who is entitled to the protection of the law against discrimination (for example, a part-time employee who does not work enough hours to be counted under subsection (5) of this section is entitled to the protection of the law against discrimination).

(2) **Purposes of exemption.** The principal purposes of exempting persons who employ less than eight from the enforcement authority of the commission are:

(a) To relieve small businesses of a regulatory burden; and

(b) In the interest of cost effectiveness, to confine public agency enforcement of the law to employers whose practices affect a substantial number of persons.

(3) **General approach.** Our objectives in choosing the standards in this section and in making future decisions on questions not addressed in this section are:

(a) To eliminate and prevent discrimination — the overall purpose of the law against discrimination.

(b) 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 subsection (2) of this section.

(c) To be consistent with interpretations of federal antidiscrimination law and the antidiscrimination laws of other states, where these are comparable to Washington law, and where we do not feel that a different rule would better serve the state of Washington.

(d) 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 in order to carry out the separate purpose of each area of law.

(e) Administrative convenience. The public and our 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.

#### (4) Time of calculation.

(a) A person will be considered to have employed eight if the person either:

(i) Employed eight or more persons for any part of the day on which the unfair practice is alleged to have occurred, or did occur; or

(ii) Employed 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.

(b) The representative period of time for (a) (ii) of this subsection will ordinarily be the month during which the unfair practice is alleged to have occurred plus the preceding two months, but where this period will not accurately reflect the overall employment level, as in a seasonal industry, we will use the month during which the alleged unfair practice is alleged to have occurred plus the preceding eleven months.

(c) An average of eight persons employed will be found for (a) (ii) of this subsection if:

(i) The total hours worked by all employees during the examined period equals or exceeds sixty-four times the number of working days (the equivalent of eight persons working eight-hour days); or

(ii) The total of all persons employed full time or part time during the period exceeds seven on more days than it is seven or less.

#### (5) Part-time employees.

(a) A person working part time will be counted as employed on the day on which the unfair practice is alleged to have occurred, or did occur, if the person worked any part of that day.

(b) A person working part time will be counted as employed for purposes of averaging under subsection (c) (ii) of this section if the person worked one-fifth of full time.

(c) 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.

(6) **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.

(7) **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.

(8) **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.

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

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

(11) **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 162-16-170.

(12) **Pay.** Anyone who is paid for work and who otherwise meets the standards in this section will be counted. Pay includes compensation for work by the hour, by commission, by piecework, or by any other measure. For the treatment of unpaid persons, see volunteers, subsection (13) of this section.

(13) **Volunteers.** A volunteer will be counted if the volunteer is generally treated in the manner that employers treat employees. That is, if the volunteer is selected by management (particularly if selected in competition with other persons), works hours assigned by management, is subject to discipline like an employee, or receives 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.

(14) **Family members.** Because of the definition of "employ" 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.

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

(16) **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.

(17) **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.

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

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

(20) **Interns.** Interns and persons on work-study programs will be counted if they are paid by the person whose employees are being counted; they will not be counted if they are not paid or are paid by another entity. [Statutory Authority: RCW 49.60.120(3). 82-19-072 (Order 42), § 162-16-160, filed 9/20/82.]

**WAC 162-16-170 Employee distinguished from independent contractor.** (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) from discrimination because of race, creed, color, national origin, sex, handicap, or foreign boycotts. 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 determine whether a person is an employee or an independent contractor on the basis of general common law principles, taking into account the economic realities of the situation and the purposes of the law against discrimination.

(4) Working presumptions. When any two of the following indications of employment are present, the worker will be presumed to be an employee unless the person who claims that the worker is not an employee presents evidence requiring the consideration of other factors:

(a) The purchaser of work in fact controls the manner and means of performance of the work.

(b) The worker is paid on the basis of time worked (hourly, monthly, etc.).

(c) The worker is treated as an employee for tax purposes.

(5) Full analysis. When a full analysis is required, 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. 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) 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.

(c) 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) Whether the purchaser of the work or the worker furnishes 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.

(e) 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) 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 sometime paid by the job.

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

(i) Whether the work is an integral part of the business of the purchaser of it. Usually, the regular work of a business is done by employees rather than independent contractors.

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

(k) 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) Whether the worker treats income from the work as salary or as business income. See Part 5(k) of this section.

(m) 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.

(6) Burden of persuasion. The burden of persuasion that a person claiming the protection of RCW 49.60.180 is or would be an independent contractor is on the person making the claim. [Statutory Authority: RCW 49.60.120(3), 82-19-072 (Order 42), § 162-16-170, filed 9/20/82.]

## Chapter 162-26 WAC

### PUBLIC ACCOMMODATIONS, HANDICAP DISCRIMINATION

#### WAC

162-26-010	Scope of chapter.
162-26-020	Purpose of chapter.
162-26-030	Related law.
162-26-035	Concurrent remedy in court.
162-26-040	Definitions.
162-26-050	Who is protected.
162-26-060	General principles.
162-26-070	General rules.
162-26-080	Reasonable accommodation.
162-26-090	Arranged service.
162-26-100	Structural barriers to accessibility.
162-26-110	Behavior causing risk.
162-26-120	Failure to meet requirements of other law.
162-26-130	Use of dog guide.
162-26-140	Unfair to request or require waiver of rights.

**WAC 162-26-010 Scope of chapter.** (1) **Confined to unfair practice.** This chapter interprets and implements the handicap discrimination coverage of RCW 49.60.215, Unfair practices of places of public resort, accommodation, assemblage, amusement. This chapter does not define the scope of the civil right to be free from discrimination because of handicap declared in RCW 49.60.030 (quoted below in WAC 162-26-030) or interpret other statutes. This chapter applies to the unfair practices which the commission is empowered by RCW 49.60.120 to eliminate and prevent through the administrative process provided in RCW 49.60.230 through 49.60.270.

(2) **Language interpreted.** The language of RCW 49.60.215 that is interpreted and implemented by this chapter is:

"It shall be an unfair practice for any person or his agent or employee to commit an act which directly or indirectly results in any distinction, restriction, or discrimination, or the requiring of any person to pay a larger sum than the uniform rates charged other persons, or the refusing or withholding from any person the admission, patronage, custom, presence, frequenting, dwelling, staying, or lodging in any place of public resort, accommodation, assemblage, or amusement, except for conditions and limitations established by law and applicable to all persons, regardless of . . . the presence of any sensory, mental, or physical handicap, or the use of a trained dog guide by a blind or deaf person: *Provided*, That this section shall not be construed to require structural changes, modifications, or additions to make any place accessible to a handicapped person except as otherwise required by law: *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."

(3) **Related regulations.** Regulations of the commission on handicap discrimination in real estate transactions are in chapter 162-38 WAC. Commission regulations governing handicap discrimination in employment are in chapter 162-22 WAC and in other regulations governing employment. General regulations of the commission governing schools are in chapter 162-28

WAC. [Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-26-010, filed 9/22/82.]

**WAC 162-26-020 Purpose of chapter.** (1) **Purpose.** The purpose of this chapter is to specify how the interpreted statute applies to specific circumstances and to established principles of interpretation that will guide in other circumstances.

(2) **Sources of policy.** The commission is guided by the policy of the legislature expressed in the statute being interpreted and in related statutes, particularly RCW 49.60.010, 49.60.030, and chapter 70.04 RCW, the "White Cane Law." The commission is also guided by the specialized knowledge and experience of its staff, particularly its disability specialists, and by the commissioners' own knowledge of the nature of handicap discrimination and the practical needs of the disabled. This includes the information gathered at hearings held in Spokane, Yakima, Lacey, and Seattle prior to the preparation of the first draft of these rules, and the written and oral comments received after circulation of proposed rules.

(3) **Legislative policy.** The principal expressions of legislative policy outside of the language being interpreted are the following:

RCW 49.60.010: "The legislature hereby finds and declares that practices of discrimination against any of its inhabitants because of . . . the presence of any sensory, mental, or physical handicap are a matter of state concern, that such discrimination threatens not only the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state. A state agency is herein created with powers with respect to elimination and prevention of discrimination in . . . places of public resort, accommodation, or amusement . . . because of . . . the presence of any sensory, mental, or physical handicap; and the board (Human Rights Commission) established hereunder is hereby given general jurisdiction and power for such purposes."

RCW 70.84.010: "The legislature declares:

"(1) It is the policy of this state to encourage and enable the blind, the visually handicapped, the hearing impaired, and the otherwise physically disabled to participate fully in the social and economic life of the state, and to engage in remunerative employment.

"(2) As citizens, the blind, the visually handicapped, the hearing impaired, and the otherwise physically disabled have the same rights as the able-bodied to the full and free use of the streets, highways, walkways, public buildings, public facilities, and other public places.

"(3) The blind, the visually handicapped, the hearing impaired, and the otherwise physically disabled are entitled to full and equal accommodations, advantages, facilities, and privileges on common carriers, airplanes, motor vehicles, railroad trains, motor buses, street cars, boats, and all other public conveyances, as well as in hotels, lodging places, places of public resort, accommodation, assemblage or amusement, and all other places to which the general public is invited, subject only to the

conditions and limitations established by law and applicable alike to all persons."

RCW 28A.13.005: "It is the purpose of this chapter (certain education statutes) to ensure that all handicapped children . . . shall have the opportunity for an appropriate education at public expense as guaranteed to them by the Constitution of this state." [Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-26-020, filed 9/22/82.]

**WAC 162-26-030 Related law.** (1) **General civil right.** RCW 49.60.030 provides:

"(1) The right to be free from discrimination because of . . . the presence of any sensory, mental, or physical handicap is recognized as and declared to be a civil right. This right shall include, but not be limited to:

"(b) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement;"

This right is enforceable through lawsuits in court (RCW 49.60.030(2)) but not through the administrative process of the human rights commission.

(2) **The "White Cane Law."** Chapter 70.84 RCW prohibits the refusal of service to or the exaction of an extra charge from any blind or hearing impaired person because the person is accompanied by a guide dog. RCW 70.84.030. The chapter imposes special duties on a driver who approaches a blind pedestrian with a white cane or a blind or hearing impaired pedestrian using a guide dog. RCW 70.84.040. Blind, partially blind, and hearing impaired pedestrians are declared to have all the rights and privileges conferred by law on other persons in any of the places, accommodations, or conveyances listed in RCW 70.84.010 (quoted above in WAC 162-26-020(2)). RCW 70.84.050.

(3) **Other laws.** Other state laws define rights of the handicapped in particular circumstances. Some are referred to elsewhere in this chapter. Some accommodations are subject to United States law, particularly sections 503 and 504 of the Rehabilitation Act of 1973, 29 U.S.C. §§ 793, 794. [Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-26-030, filed 9/22/82.]

**WAC 162-26-035 Concurrent remedy in court.** Courts have jurisdiction under RCW 49.60.030(2) to remedy violations of RCW 49.60.215 as interpreted and implemented by this chapter, concurrently with the commission. When the commission learns that an action on the same facts has been filed in court, the commission will ordinarily administratively close the case before it, as provided in WAC 162-08-062(3). [Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-26-035, filed 9/22/82.]

**WAC 162-26-040 Definitions.** (1) **Place of public accommodation.** RCW 49.60.040 gives the following definition:

"Any place of public resort, accommodation, assemblage, or amusement' includes, but is not limited to, any place, licensed or unlicensed, kept for gain, hire, or reward, or where charges are made for admission, service, occupancy, or use of any property or facilities, whether conducted for the entertainment, housing, or lodging of transient guests, or for the benefit, use, or accommodation of those seeking health, recreation, or rest, or for the burial or other disposition of human remains, or for the sale of goods, merchandise, services, or personal property, or for the rendering of personal services, or for public conveyance or transportation on land, water, or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports, or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation, or public purposes, or public halls, public elevators, and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or educational institution, or schools of special instruction, or nursery schools, or day care centers or children's camps: *Provided*, That nothing contained in this definition shall be construed to include or apply to any institute, bona fide club, or place of accommodation, which is by its nature distinctly private, including fraternal organizations, though where public use is permitted that use shall be covered by this chapter; nor shall anything contained in this definition apply to any educational facility, columbarium, crematory, mausoleum, or cemetery operated or maintained by a bona fide religious or sectarian institution."

(2) **General definitions.** General definitions applicable throughout the commission's regulations are set out in WAC 162-04-010. These include the following:

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

(3) **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 who is handicapped, with reasonable effort and in reasonable safety.

"Arranged service" means making the services or goods of a place of public accommodation available to a handicapped person at a place or in a way that is different from the place or way that the service is offered to the public in general in order to serve the person. See WAC 162-26-090.

"Dog guide" means a trained dog guide used by a blind or deaf person. See WAC 162-26-130.

"Fair service" means the service required by RCW 49.60.215 for handicapped persons in places of public accommodation. Depending on the circumstances, fair service may be in the form of (a) same service, (b) reasonable accommodation, or (c) arranged service. These

terms are defined in this chapter. See also "service" and "fairly serve."

"Fairly serve" means to provide fair service.

"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 limitations. See WAC 162-26-080.

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

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

"Structural" is defined in WAC 162-26-100(5).

"Unfair service" means service not in compliance with RCW 49.60.215. See "fair service." [Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-26-040, filed 9/22/82.]

**WAC 162-26-050 Who is protected.** (1) **Statute.** RCW 49.60.215 requires service in places of public accommodation "regardless of . . . the presence of any sensory, mental, or physical handicap, or the use of a trained dog guide by a blind or deaf person. . ."

(2) **What is a handicap.** A person's condition is a "sensory, mental, or physical handicap" if it is abnormal and is a reason why the person was not fairly served in a place of public accommodation. A person is *handicapped* by a sensory, mental, or physical condition if she or he is not fairly served because of the condition. The law protects all persons from unfair service because of handicap, whether the handicap is severe or slight.

(3) **When handicap is present.** The presence of a sensory, mental, or physical handicap 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; or

(c) Is perceived to exist, whether or not it exists in fact.

(4) **Person using dog guide.** WAC 162-26-130 defines who is protected as a person using a trained dog guide.

(5) **Nonhandicapped not protected.** The law protects against discrimination because of the "presence" of a handicap. It does not prohibit treating handicapped persons more favorably than nonhandicapped persons. Compare WAC 162-22-060 (employment). [Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-26-050, 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 handicapped persons are treated the same as if they were not handicapped. 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 handicap or use of

a dog guide. This is called "same service" in this chapter.

(2) **Reasonable accommodation.** In some circumstances, however, treating handicapped persons the same as nonhandicapped persons (same service) will defeat the purposes of the law against discrimination. This would be true if persons in wheelchairs and nonhandicapped 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 if possible 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. Reasonable accommodation is explained in WAC 162-26-080.

(3) **Arranged service.** Where same service will not carry out the purposes of the law and where no accommodation is reasonable, the operator of a place of public accommodation should use the third best solution: Arranged service. In the example used in this section, arranged service would be having a store employee bring merchandise of the size and description requested by the wheelchair shopper from the second floor for examination by the customer on the first floor. This would be appropriate if there were no elevator and no other safe and dignified way to transport the customer to the second floor. Arranged service is explained in WAC 162-26-090.

(4) **Overall objective.** In applying RCW 49.60.215, the commission seeks to assure that handicapped persons will have the enjoyment of places of public accommodation to the greatest extent practical. The legislature in RCW 49.60.040 has defined "full enjoyment of" with respect to the civil right set out in places of public accommodation in RCW 49.60.030 as follows:

"Full enjoyment of" includes the right to purchase any service, commodity, or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement, without acts directly or indirectly causing persons . . . with any sensory, mental, or physical handicap, or a blind or deaf person using a trained dog guide, to be treated as not welcome, accepted, desired, or solicited;" [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.** (1) **Rules.** Except where exempted by RCW 49.60.215 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 handicap or use of a dog guide:

(a) To refuse to serve a person;

(b) To charge for reasonably accommodating the special needs of a handicapped person, or for arranged service as defined in this chapter;

(c) To treat a handicapped person as not welcome, accepted, desired, or solicited the same as a nonhandicapped person;

(d) 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 handicap;

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

(f) To fail to arrange service under the rules in WAC 162-26-090 when reasonable accommodation is not possible and same service treatment would prevent the handicapped person from fully enjoying the place of public accommodation.

(2) **Exceptions may be granted.** The commission will grant exceptions to the rules of this chapter under the standards set out in WAC 162-06-030. [Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-26-070, filed 9/22/82.]

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

(2) **Defined.** "Reasonable accommodation" is 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 limitations.

(3) **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 handicapped person, and other factors bearing on reasonableness in the particular situation.

(4) **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 handicapped person.

(5) **Reference to employment standard.** The concept of reasonable accommodation is also used in the employment context. The commission will rely on its interpretations of WAC 162-22-080 and on *Holland v. Boeing Co.*, 90 Wn.2d 384, 583 P.2d 621 (1978) for guidance in applying this section. [Statutory Authority: RCW 49.60.120(3). 83-02-012 (Order 43), § 162-26-080, filed 12/23/82.]

**WAC 162-26-090 Arranged service.** (1) **Unfair to deny.** No person shall be denied the enjoyment of a place

of public accommodation because the facilities are not accessible to the person and cannot be made accessible with reasonable accommodation, when the desired service can be made available under the standards for arranged service that are specified in this section.

(2) **Defined.** "Arranged service" means making the services or goods of a place of public accommodation available to a handicapped person at a place or in a way that is different from the place or way that the service is offered to the public in general, in order to serve the person.

(3) **Limitation on use.** Arranged service is fair only when neither same service nor reasonable accommodation is possible, and the choice is between arranged service and no service.

(4) **Choice of means of arranged service.** The operator of a place of public accommodation may choose the place and means of providing arranged service so long as the operator gives reasonable weight to the convenience, needs, and dignity of the handicapped person seeking service. Among available means or places, the one that most closely approximates service to the general public should be chosen. There is no need for the operator to deliver the services away from the place of public accommodation if the services can be made available somewhere at the place of public accommodation.

(5) **Examples.**

(a) In a retail setting, goods can be carried from an inaccessible location to an accessible location, as described in WAC 162-26-060(3).

(b) In an office setting, interviewers and forms could be brought to an accessible office or conference room in the building or at another place, although the particular business would ordinarily be done at an inaccessible location.

(c) In an office setting, arrange to interview a mentally handicapped person in place of requiring a written application or report.

(d) In an entertainment setting, seating areas made available for patrons in wheelchairs would be arranged service. [Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-26-090, filed 9/22/82.]

**WAC 162-26-100 Structural barriers to accessibility.** (1) **Statute.** RCW 49.60.215 says that it

"shall not be construed to require structural changes, modifications, or additions to make any place accessible to a handicapped person except as otherwise required by law. . . ."

(2) **Laws requiring accessibility.** The principal laws requiring that places be made accessible are:

(a) The state building code, chapter 19.27 RCW, which includes the barrier free design standards adopted in chapter 51-10 WAC under authority of chapter 70.92 RCW. The barrier free design standards apply with some exceptions to "buildings, structures, or portions thereof, . . . which are constructed, substantially remodeled, or substantially rehabilitated after October 1, 1976." WAC 51-10-003.

(b) Chapter 219, Laws of 1971 ex. sess., in effect from August 9, 1971, through June 30, 1976. This statute required that plans and specifications for the erection or remodeling of any public accommodation must provide for access by physically handicapped persons, for toilet facilities designed for use by the physically handicapped, and for additional facilities specified in a national standard.

(c) Chapter 35, Laws of 1967, in effect from June 8, 1967, through June 30, 1976. This statute was substantially the same as the 1971 statute described in paragraph (b) of this subsection, but was limited in its coverage to public buildings.

(d) RCW 35.68.075, requiring curb ramps in sidewalks constructed or replaced after June 7, 1973.

(e) United States law; particularly 45 CFR § 84.23 implementing section 504 of the rehabilitation act of 1973 (29 U.S.C. § 794), which requires that facilities constructed after April 28, 1977 with federal assistance be readily accessible to and usable by handicapped persons.

(3) **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 handicapped when the structural barriers were lawful when constructed and are presently lawful under the state building code and other law outside of the law against discrimination. This exemption does not relieve the operator of a place of public accommodation of the duty to make reasonable accommodation to the needs of handicapped persons as described in WAC 162-26-080, or to provide arranged service as described in WAC 162-26-090.

(4) **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.

(5) **Nonstructural changes.** After January 1, 1983, 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 handicapped or that makes the place of public accommodation less accessible to the handicapped.

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



(c) When relocating a nonstructural fixture or component, to relocate it to a place that is not accessible to the handicapped, 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 handicapped, when possible.

(6) **What is "structural."** "Structural" for purposes of RCW 49.60.215 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). 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 handicap or who have a particular handicap unless the operator of the place of public accommodation can show that all persons with the handicap 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 handicapped person.** Risk to the handicapped person is not a reason to deny service. Liability for injury to handicapped customers is governed by law other than the law against discrimination. The law against discrimination affects tort liability only insofar as it includes handicapped persons 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 handicapped person is not a "risk to property or other persons" justifying nonservice.

(8) **Least discriminatory solution required.** It is an unfair practice to deny a handicapped person 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 handicapped person in the same way or same place as other customers, the person should be served through reasonable accommodation (WAC 162-26-060, 161-26-080) or arranged service (WAC 162-26-060, 162-260-090), if possible. [Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-26-110, filed 9/22/82.]

**WAC 162-26-120 Failure to meet requirements of other law.** (1) **Unfair practice.** It is an unfair practice under RCW 49.60.215 for the operator of a place of public accommodation to refuse or fail to comply with any specific requirement of law for the benefit of handicapped persons applicable to the place of public accommodation.

(2) **All sources of law covered.** This section applies to all requirements imposed by or authorized by any law of the United States, the state of Washington, or any ordinance of a unit of local government within the state of Washington.

(3) **References to selected laws.** Some of the laws to which this section applies are:

(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, and all regulations of agencies of the United States government issued pursuant to them;

(c) Chapter 70.84 RCW, the "White Cane Law." [Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-26-120, filed 9/22/82.]

**WAC 162-26-130 Use of dog guide.** (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 by a blind or deaf person . . ." as well as because of handicap itself.

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

(3) **Standards of "White Cane Law" apply.** It is an unfair practice under RCW 49.60.215 for the operator of a place of public accommodation to deny any person the following rights set out in the "White Cane Law," RCW 70.84.030:

"Every totally or partially blind or hearing impaired person shall have the right to be accompanied by a guide dog in any of the places listed in RCW 70.84.010(3) without being required to pay an extra charge for the guide dog. It shall be unlawful to refuse service to a blind or hearing impaired person in any such place solely because he is accompanied by a guide dog."

(4) **"Dog guide" defined.** For purposes of RCW 49.60.215 the term "dog guide" means a trained dog guide used by a blind or deaf person. It has the same meaning as "guide dog" in RCW 70.84.020:

". . . the term 'guide dog' shall mean a dog which is in working harness and is trained or approved by an accredited school engaged in training dogs for the purpose of guiding blind persons or a dog which is trained or approved by an accredited school engaged in training dogs for the purpose of assisting hearing impaired persons."

(5) **Identification of trained dog guide.** A trained dog guide used by a blind person is identified by the harness with rigid stirrup for the hand of the guided person that such dogs wear when in service. A trained dog guide used by a deaf person shall be identified by a credential presented by the deaf person on request, or by a tag or other identifying device that is adopted and promulgated so as to become generally known. [Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-26-130, filed 9/22/82.]

**WAC 162-26-140 Unfair to request or require waiver of rights.** 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 handicapped person. This section is intended to prohibit waivers on the basis of handicap, but is not intended to preclude waivers required on a nondiscriminatory basis. [Statutory Authority: RCW 49.60.120(3). 83-02-012 (Order 43), § 162-26-140, filed 12/23/82.]

### Chapter 162-38 WAC

#### REAL ESTATE TRANSACTIONS, HANDICAP DISCRIMINATION

##### WAC

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162-38-120	Unfair to request or require waiver of rights.

**WAC 162-38-010 Scope of chapter.** (1) **Confined to unfair practice.** This chapter interprets and implements the handicap discrimination coverage of the sections of the law against discrimination governing unfair practices in real estate transactions, RCW 49.60.222, 49.60.223, 49.60.224, 49.60.225, and 49.60.226. This chapter does not define the scope of the civil right to be free from discrimination because of handicap declared in RCW 49.60.030 (quoted in WAC 162-38-030) or interpret other statutes. This chapter applies to the unfair practices which the commission is empowered by RCW 49.60.120(4) to eliminate and prevent through the administrative process provided in RCW 49.60.230 through 49.60.270.

(2) **Principal statute interpreted.** The legislation principally interpreted in this chapter is the following portion of RCW 49.60.222:

"It is an unfair practice for any person, whether acting for himself or another, because of . . . the presence of any sensory, mental, or physical handicap, or the use of a trained dog guide by a blind or deaf person:

"(1) To refuse to engage in a real estate transaction with a person;

"(2) To discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith;

"(3) To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person;

"(4) To refuse to negotiate for a real estate transaction with a person;

"(5) To represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or to fail to bring a property listing to his attention, or to refuse to permit him to inspect real property;

"(6) To print, circulate, post, or mail, or cause to be so published a statement, advertisement, or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect thereto;

"(7) To offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith;

"(8) To expel a person from occupancy of real property;

"(9) To discriminate in the course of negotiating, executing, or financing a real estate transaction whether by mortgage, deed of trust, contract, or other instrument imposing a lien or other security in real property, or in negotiating or executing any item or service related thereto including issuance of title insurance, mortgage insurance, loan guarantee, or other aspect of the transaction. . . . ; or

"(10) To attempt to do any of the unfair practices defined in this section.

". . . .  
"This section shall not be construed to require structural changes, modifications, or additions to make facilities accessible to a handicapped person except as otherwise required by law. Nothing in this section affects the rights and responsibilities of landlords and tenants pursuant to chapter 59.18 RCW."

(3) **Related regulations.** Regulations of the commission on handicap discrimination in public accommodations are in chapter 162-26 WAC. Commission regulations governing handicap discrimination in employment are in chapter 162-22 WAC and other regulations governing employment. General regulations governing unfair practices in real estate transactions are

in chapter 162-36 WAC. Regulations governing credit transactions are in chapter 162-40 WAC. [Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-38-010, filed 9/22/82.]

**WAC 162-38-020 Purpose of chapter.** (1) **Purpose.** The purpose of this chapter is to specify how the interpreted statutes apply to specific circumstances and to established principles of interpretation that will guide in other circumstances.

(2) **Sources of policy.** The commission is guided by the policy of the legislature expressed in the statute being interpreted and in related statutes, particularly RCW 49.60.010, 49.60.030 and 70.92.100, quoted below in subsection (3) of this section.

(3) **Legislative policy.** The principal expressions of legislative policy outside of the language being interpreted are the following:

RCW 49.60.010: "The legislature hereby finds and declares that practices of discrimination against any of its inhabitants because of . . . the presence of any sensory, mental, or physical handicap are a matter of state concern, that such discrimination threatens not only the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state. A state agency is herein created with powers with respect to elimination and prevention of discrimination in . . . real property transactions because of . . . the presence of any sensory, mental, or physical handicap; and the board (human rights commission) established hereunder is hereby given general jurisdiction and power for such purposes."

RCW 70.92.100 (effective July 1, 1976): "It is the intent of the legislature that, notwithstanding any law to the contrary, plans and specifications for the erection of buildings through the use of public or private funds shall make special provisions for elderly or physically disabled persons." [Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-38-020, filed 9/22/82.]

**WAC 162-38-030 Related law.** (1) **General civil right.** RCW 49.60.030 provides:

"(1) The right to be free from discrimination because of . . . the presence of any sensory, mental, or physical handicap is recognized as and declared to be a civil right. This right shall include, but not be limited to:

"(c) The right to engage in real estate transactions without discrimination;"

(2) **State building code.** The state building code, chapter 19.27 RCW, includes by reference the barrier free design standards, chapter 51-10 WAC. RCW 19.27.030(5). These standards were established under authority of chapter 70.92 RCW. With some exceptions, they apply to "buildings, structures, or portions thereof, . . . which are constructed, substantially remodeled, or substantially rehabilitated after October 1, 1976." WAC 51-10-003. [Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-38-030, filed 9/22/82.]

**WAC 162-38-035 Concurrent remedy in court.** Courts have jurisdiction under RCW 49.60.030(2) to remedy violations of RCW 49.60.222, 49.60.223, and 49.60.224 as interpreted and implemented by this chapter, concurrently with the commission. When the commission learns that an action on the same facts has been filed in court, the commission will administratively close the case before it in compliance with RCW 49.60.226 and WAC 162-08-062(2). [Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-38-035, filed 9/22/82.]

**WAC 162-38-040 Definitions.** (1) **Real estate transaction.** RCW 49.60.040 gives the following definitions:

"Real property" includes buildings, structures, real estate, lands, tenements, leaseholds, interests in real estate cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest therein;

"Real estate transaction" includes the sale, exchange, purchase, rental, or lease of real property."

(2) **General definitions.** General definitions applicable throughout the commission's regulations are set out in WAC 162-04-010. These include the following:

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

(3) **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 who is handicapped, with reasonable effort and in reasonable safety.

"Barrier free design standards" means chapter 51-10 WAC, setting of barrier free design standards making building and facilities accessible to physically disabled persons, a component of the state building code. See WAC 162-38-030(2), 162-38-070.

"Dog guide" means a trained dog guide used by a blind or deaf person. See WAC 162-38-100.

"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" is defined in WAC 162-38-070(5).

"Tenant" is a person who rents or seeks to rent real property. [Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-38-040, filed 9/22/82.]

**WAC 162-38-050 Who is protected.** (1) **Statutes.** RCW 49.60.222 defines practices in connection with

real estate transactions that are unfair when done because of "the presence of any sensory, mental, or physical handicap, or the use of a trained dog guide by a blind or deaf person." RCW 49.60.223 and 49.60.224 are worded similarly with respect to handicap.

(2) **What is a handicap.** A person's condition is a "sensory, mental, or physical handicap" if it is abnormal and is a reason why the person was not treated fairly in a real estate transaction. A person is *handicapped* by a sensory, mental, or physical condition if she or he is *discriminated against* because of the condition. The law protects all persons from discrimination because of handicap, whether the handicap is severe or slight.

(3) **When handicap present.** The presence of a sensory, mental, or physical handicap 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; or
- (c) Is perceived to exist, whether or not it exists in fact.

(4) **Person using dog guide.** WAC 162-38-100 defines who is protected as a person using a trained dog guide.

(5) **Nonhandicapped not protected.** The law protects against discrimination because of the "presence" of a handicap. It does not prohibit treating handicapped persons more favorably than nonhandicapped persons. Compare WAC 162-22-060 (employment). [Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-38-050, filed 9/22/82.]

**WAC 162-38-060 General rules.** (1) **General principles apply.** The unfair practices in real estate transactions defined in RCW 49.60.222 apply to race discrimination, sex discrimination, and other kinds of discrimination as well as handicap discrimination. This chapter deals with special questions as to the application of the law to handicap discrimination. Where no special provision is made by the statute, by this chapter, or by exception by the commissioners under WAC 162-06-030, general principles of nondiscrimination apply.

(2) **Statutory rules.** It is an unfair practice under RCW 49.60.222 for any person to do any of the following things because of handicap or the use of a trained dog guide by a blind or deaf person:

"(1) To refuse to engage in a real estate transaction with a person;

"(2) To discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith;

"(3) To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person;

"(4) To refuse to negotiate for a real estate transaction with a person;

"(5) To represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or to fail to bring a property listing to his attention, or to refuse to permit him to inspect real property;

"(6) To print, circulate, post, or mail, or cause to be so published a statement, advertisement, or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect thereto;

"(7) To offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith;

"(8) To expel a person from occupancy of real property;

"(9) To discriminate in the course of negotiating, executing, or financing a real estate transaction whether by mortgage, deed of trust, contract, or other instrument imposing a lien or other security in real property, or in negotiating or executing any item or service related thereto including issuance of title insurance, mortgage insurance, loan guarantee, or other aspect of the transaction. . . .

"(10) To attempt to do any of the unfair practices defined in this section."

(3) **Exceptions may be granted.** The commission will grant exceptions to the rules of this chapter under the standards set out in WAC 162-06-030. [Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-38-060, filed 9/22/82.]

**WAC 162-38-070 Structural barriers to accessibility.** (1) **Statute.** RCW 49.60.222 says:

"This section shall not be construed to require structural changes, modifications, or additions to make facilities accessible to a handicapped person except as otherwise required by law."

(2) **Laws requiring accessibility.** The principal laws that require that buildings be made accessible are:

(a) The state building code, chapter 19.27 RCW, which includes the barrier free design standards adopted in chapter 51-10 WAC under authority of chapter 70.92 RCW. The barrier free design standards apply with some exceptions to "buildings, structures, or portions thereof, . . . which are constructed, substantially remodeled, or substantially rehabilitated after October 1, 1976." WAC 51-10-003.

(b) Chapter 219, Laws of 1971 1st ex. sess., in effect from August 9, 1971, through June 30, 1976. This statute required that plans and specifications for the erection or remodeling of any public accommodation must provide for access by physically handicapped persons, for toilet facilities designed for use by the physically handicapped, and for additional facilities specified in a national standard.

(c) Chapter 35, Laws of 1967, in effect from June 8, 1967, through June 30, 1976. This statute was substantially the same as the 1971 statute described in paragraph (b) of this subsection, but was limited in its coverage to public buildings.

(d) RCW 35.68.075, requiring curb ramps in sidewalks constructed or replaced after June 7, 1973.

(e) United States law; particularly 45 CFR § 8423, implementing section 504 of the rehabilitation act of 1973 (29 USC § 794), which requires that facilities constructed after April 28, 1977 with federal assistance be readily accessible to and usable by handicapped persons.

(3) **Practices that are not unfair.** It is not an unfair practice under RCW 49.60.222:

(a) To engage in a real estate transaction involving real property with structural barriers that were lawful when constructed and that are presently lawful under the state building code and other law outside of the law against discrimination; or

(b) To maintain real property with structural barriers to accessibility when the structural barriers were lawful when constructed and are presently lawful under the state building code and other law outside of the law against discrimination.

(4) **Unfair practices.** It is an unfair practice under RCW 49.60.222:

(a) To build or remodel in violation of the barrier free design standards, chapter 51-10 WAC, or other requirement of law on accessibility.

(b) To fail to maintain or fail to continue the accessibility of real property that was required by law to be accessible when built, remodeled, or rehabilitated.

(c) To take any action of the types set out in RCW 49.60.222 (1) through (10) against a handicapped person because the real property transaction involves real property that is not accessible.

(d) For an owner of ten or more units of rental property who is making nonstructural changes in the rental property to fail to eliminate barriers to accessibility when this can be done without substantially changing the scope or cost of the project or requiring structural changes that are not otherwise required by law. Specifically, it is an unfair practice:

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

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

(iii) When relocating a nonstructural fixture or component, to relocate it to a place that is not accessible to the handicapped, unless no suitable place is accessible.

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

(5) **What is "structural."** "Structural" for purposes of RCW 49.60.222 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.

(6) **Modifications by tenant.** Rules with respect to allowing tenants to make structural or other changes in order to achieve or improve accessibility are set out in WAC 162-38-080. [Statutory Authority: RCW 49.60.120(3). 83-02-012 (Order 43), § 162-38-070, filed 12/23/82.]

**WAC 162-38-080 Modifications or additions made by tenants.** (1) **Landlord need not pay.** Except as required by law (explained in WAC 162-38-070) a landlord is not required to pay for alterations or additions to real property needed to make it accessible by handicapped persons.

(2) **Unfair to unreasonably prohibit modifications needed by handicapped tenant.** Whether or not the landlord permits tenants in general to make alterations or additions to a structure, it is an unfair practice under RCW 49.60.222 for a landlord to refuse to allow a handicapped tenant to make alterations or additions to the structure or fixtures under the following conditions:

(a) The alterations or additions are paid for by the tenant.

(b) The landlord may reserve the right to approve the design, quality, and construction of the alterations or additions in order to minimize damage to the building and enforce standards of quality and architectural compatibility.

(3) **Examples of appropriate modifications.** The following are examples of alterations or additions commonly needed to make real property usable by handicapped persons:

(a) Ramps for wheelchairs or walkers.

(b) Lights to indicate to a deaf person that the doorbell or telephone is ringing, or for similar purposes.

(c) Grab bars in bathrooms.

(d) Roll-out shelves in kitchens.

(e) Simplified locking systems for use by a mentally handicapped person. [Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-38-080, filed 9/22/82.]

**WAC 162-38-090 Public areas of rental property.** (1) **Are covered as places of public accommodation.** RCW 49.60.040 includes the following in its broad definition of place of public accommodation:

" . . . public halls, public elevators, and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants."

(2) **Applicable law.** Public areas as defined in this section are governed by the public accommodations coverage of the law against discrimination, RCW 49.60.215, and chapter 162-26 WAC, public accommodations, handicap discrimination, as well as by the real estate transaction coverage of the law against discrimination and this chapter of the commission's regulations.

(3) **Public areas.** "Public" areas for purposes of public accommodations coverage of rental property include all areas intended for use by more than one tenant, or by one or more tenants and the resident owner. The area

need not be open to the public at large. The area is covered if it is open to all tenants, or any two tenants, or the owner and one or more tenants. In addition to public halls, public elevators and public washrooms, public areas include garbage disposal facilities, recreation facilities, laundry or other work areas, and open space. [Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-38-090, filed 9/22/82.]

**WAC 162-38-100 Persons with dog guides.** (1) **Are protected.** RCW 49.60.222 protects blind or deaf persons from discrimination because of their use of a trained dog guide the same as it protects them from discrimination directly because of handicap.

(2) **General rule.** The same rules that apply to the treatment of persons because of handicap under RCW 49.60.222 and this chapter apply to the treatment of blind or deaf persons because they use a trained dog guide.

(3) **Landlord's duty.** It is an unfair practice for a landlord to refuse to rent to a blind or deaf person because the person uses a trained dog guide. A landlord's no-pet policy cannot be applied to the dog guide of a blind or deaf person.

(4) **Cleaning or damage deposits not unfair.** It is not an unfair practice for a landlord to enforce on a blind or deaf tenant its standard cleaning or damage deposit for dogs. It is not an unfair practice for a landlord who otherwise doesn't allow dogs in the rented property to require a reasonable cleaning or damage deposit for the dog when renting to a deaf or blind person using a trained dog guide.

(5) **"Dog guide" defined.** For purposes of RCW 49.60.222 the term "dog guide", means a trained dog guide used by a blind or deaf person. It has the same meaning as "guide dog" in RCW 70.84.020:

"The term 'guide dog' shall mean a dog which is in working harness and is trained or approved by an accredited school engaged in training dogs for the purpose of guiding blind person or a dog which is trained or approved by an accredited school engaged in training dogs for the purpose of assisting hearing impaired persons."

(6) **Identification of trained dog guide.** A trained dog guide used by a blind person is identified by the harness with rigid stirrup for the hand of the guided person that such dogs wear when in service. A trained dog guide used by a deaf person shall be identified by a credential presented by the deaf person on request, or by a tag or other identifying device that is adopted and promulgated so as to become generally known. [Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-38-100, filed 9/22/82.]

**WAC 162-38-110 Inquiries to handicapped applicants.** (1) **Statute.** RCW 49.60.222 includes the following as an unfair practice with respect to handicap:

"(6) To . . . make a . . . inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect thereto;"

(2) **Unfair practice.** It is an unfair practice under RCW 49.60.222(6) for a landlord to inquire into matters personal to a handicapped 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 a handicapped person is assisted by an aide, and when.

(3) **Reference to employment rules.** The commission's rules on pre-employment inquiries, chapter 162-12 WAC, implement a parallel statute and furnish analogies for the application of this portion of the real estate transactions law. [Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-38-110, filed 9/22/82.]

**WAC 162-38-120 Unfair to request or require waiver of rights.** It is an unfair practice for any person as a condition of entering into or continuing a real estate transaction to request or require another person to waive rights or hold anyone harmless because the real property will be occupied by a handicapped person. [Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-38-120, filed 9/22/82.]

## Title 172 WAC

### EASTERN WASHINGTON UNIVERSITY

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#### Chapter 172-114 WAC

### CONSTITUTION OF ASSOCIATED STUDENTS

#### WAC

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172-114-020	Article I—Name, definitions, and membership.
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172-114-060	Article V—Judicial.
172-114-070	Article VI—Rescind, recall, initiative, referendum, and inspection of records.
172-114-080	Article VII—Parliamentary authority.
172-114-090	Article VIII—Amendments.
172-114-100	Repealed.
172-114-110	Repealed.

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

172-114-100	Parliamentary authority. [Order 72-9, § 172-114-100, filed 9/20/72.] Repealed by 81-03-012 (Order 12-18-80), filed 1/9/81. Statutory Authority: RCW 28B.35.10[28B.35.120].
172-114-110	Amendments. [Statutory Authority: RCW 28B.40.120(11). 78-09-029 (Resolution 78-03), § 172-114-110, filed 8/16/78; Order 74-5, § 172-114-