

Title 162 WAC

HUMAN RIGHTS COMMISSION

(Formerly: Discrimination, Board Against)

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

Chapter 162-04 WAC

GENERAL PROVISIONS

WAC

- 162-04-010 Definitions.
- 162-04-020 Organization and operations.
- 162-04-024 Chairperson pro tem.
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WAC 162-04-010 Definitions. In general, words are used with this title in the same meaning as they are used in the law against discrimination, chapter 49.60 RCW. See, in particular, RCW 49.60.040. The following words are used with the meaning given, unless the context clearly indicates another meaning.

"Administrative Procedure Act" means chapter 34.05 RCW.

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

"Chairperson" means the chairperson of the commission. The word "chairperson" is used in the place of "chairman" where that word appears in the law against discrimination. The chairperson of the commission is the member of the commission designated as chairman by the governor under RCW 49.60.050.

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

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

"Commission" means the Washington state human rights commission.

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

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

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

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

"Law against discrimination" means chapter 49.60 RCW.

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

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

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

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

[Statutory Authority: RCW 49.60.120(3), 89-23-019, § 162-04-010, filed 11/7/89, effective 12/8/89; Order 37, § 162-04-010, filed 10/27/77; Order 30,

§ 162-04-010, filed 11/23/76; Order 23, § 162-04-010, filed 7/21/75; Order 16, § 162-04-010, filed 5/22/74; Order 9, § 162-04-010, filed 9/23/71; Order 7 (part), § 162-04-010, filed 1/19/68.]

WAC 162-04-020 Organization and operations. (1) Membership. The Washington state human rights commission consists of five members, one of whom is designated as chairperson, appointed by the governor for staggered five-year terms.

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

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

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

(5) **Authority and duty.** It is the commission's duty to administer the law against discrimination, chapter 49.60 RCW, which has as its purpose the elimination and prevention of discrimination because of race, creed, color, national origin, sex, marital status, age or handicap. The commission has the authority and duty to, among other things:

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

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

(c) Create advisory agencies and conciliation councils;

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

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

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

(7) **Where to obtain information.** Information on the application of the law against discrimination and related

material is available at all offices of the commission. Information that branch offices are not able to supply may be obtained from the clerk at the Olympia office.

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

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

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

(2) The chairperson pro tem may exercise all of the powers of the chairperson during the time when the chairperson is absent, ill, or otherwise unable to carry out the duties of chairperson.

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

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

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

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

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

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

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

(d) Keep custody of the file of complaints after they are referred to the commission for action or report of no reasonable cause at a meeting, or upon certification of the file to

chairperson under RCW 49.60.250(1). The clerk shall deliver the investigator's file of cases ready for hearing to the commission's chief counsel at the onset of the contested case process and shall obtain return of the file when litigation is completed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) **Conditions which override the exceptions.** Even where it comes within one of the above exceptions to public access, a particular record shall nevertheless be available for inspection and copying if:

(i) Its disclosure would not violate personal privacy or impair a vital governmental interest;

(ii) The information which would violate personal privacy or impair a vital governmental interest can be deleted from the record; or

(iii) The record contains statistical information not descriptive of any readily identifiable person or persons.

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

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

son in charge of the office or division responsible for the record.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WAC 162-04-040 State Environmental Policy Act. Pursuant to RCW 43.21C.120 and the SEPA guidelines, chapter 197-11 WAC, the commission has reviewed its authorized activities and has found them all to be exempt under the provisions of chapter 197-11 WAC.

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

WAC 162-04-050 Ethics and conflicts of interest. (1) **Purpose.** This section is intended to guide the commission's staff and commissioners on official ethics, and to carry out

the policies and purposes of chapter 42.18 RCW, the Executive Conflict of Interest Act, as provided in RCW 42.18.250.

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

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

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

(b) **Accepting things of value.** No commission employee or commissioner shall accept anything of economic value from a party to a complaint before the commission, or from any other person who is dealing with the commission, except under circumstances permitted in RCW 42.18.190. Permitting another person to pay for an employee's lunch is within the prohibition of this paragraph, but accepting a cup of coffee under normal office hospitality is not. If the coffee is ordered in a restaurant the prohibition of this section applies.

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

(d) **Job offers.** No employee of the commission shall make or continue an application or request for employment with a party to a case or other matter before the commission while the employee has official duties with respect to that case or matter. If any employee is assigned a case or matter while he or she has an application pending for employment with a party to the case or matter, the employee shall either withdraw the application or report the facts to his or her

supervisor. The executive director shall determine whether to relieve the employee from further responsibility for the case or matter. If any employee receives and considers a job offer from a party to a case or other matter pending before the commission with which the employee has official responsibilities, the employee shall report the facts to his or her supervisor and the supervisor shall relieve the employee from any further responsibility for the case or matter.

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

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

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

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

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

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

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

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

(5) **Reliance.** When any person has relied in good faith on an opinion of the executive director, the commission will not thereafter assert a contrary position against that person,

unless the opinion is revoked or revised, or is superseded by a material change in the applicable statutes, regulations, or case law. This paragraph covers persons other than the person who requested the opinion, if the persons have justifiedly relied on the opinion.

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

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

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

Chapter 162-06 WAC

RULES OF GENERAL APPLICATION

WAC

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

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

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

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

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

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

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

- (a) Name of the person making the request;
- (b) Identification of the rule from which the exception is requested;
- (c) The exception requested;
- (d) A statement of the reasons why the exception is requested;
- (e) A statement as to whether any person other than the requesting person will be affected by the exception, and, if so, the name and address of each person. If a class of persons is affected, it will be sufficient to name a representative or representatives of the class;
- (f) A statement as to whether or not the subject of the request is included in a lawsuit or administrative complaint, and, if so, an identification of the case or cases;
- (g) Any other information the requestor wishes to include.

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

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

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

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

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

- (a) Compliance with the rule would cause unreasonable hardship;
- (b) The special circumstances of the requestor are such that literal application of the rule will not carry out the purposes of the law against discrimination, or may work counter to the purposes of the law against discrimination;
- (c) The purposes of the law against discrimination will be equally well served and the requestor will be benefitted by application of the rule in a modified form;
- (d) Conflict with the purpose or policy of other law.

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

(11) **Revocation or revision.** A ruling granting an exception may be revoked or revised at any time by the commissioners. The revocation or revision shall take effect when

written notice of the revocation or revision is delivered to the requestor, or three days after it is mailed to the last known address of the requestor, whichever is earlier.

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

Chapter 162-08 WAC PRACTICE AND PROCEDURE

WAC

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162-08-003	Definitions. [Rules (part), filed 3/23/62; Rule 1, filed 10/18/61.] Repealed by Order 7, filed 1/19/68.
162-08-004	Complaint. [Rules (part), filed 3/23/62; Rule 2, filed 10/18/61.] Repealed by Order 7, filed 1/19/68.
162-08-005	Investigation and conciliation. [Rules (part), filed 3/23/62; Rule 2 (part), filed 10/18/61.] Repealed by Order 7, filed 1/19/68.
162-08-006	Reconsideration by the board. [Rules (part), filed 3/23/62; Rule 3 (part) and Rule 10, filed 10/18/61.] Repealed by Order 7, filed 1/19/68.
162-08-007	Hearings. [Rules (part), filed 3/23/62; Rule 5 (part), filed 10/18/61.] Repealed by Order 7, filed 1/19/68.
162-08-008	Motions—Objections. [Rules (part), filed 3/23/62; Rule 5 (part), filed 10/18/61.] Repealed by Order 7, filed 1/19/68.
162-08-009	Record. [Rules (part), filed 3/23/62; Rule 6, filed 10/18/61.] Repealed by Order 7, filed 1/19/68.
162-08-010	Appearance at hearing. [Rules (part), filed 3/23/62; Rules (3c) and (5d), filed 10/18/61.] Repealed by Order 7, filed 1/19/68.
162-08-024	Chairperson pro tem. [Order 30, § 162-04-024 (codified as WAC 162-08-024), filed 11/23/76.] Repealed by 78-02-065 (Order 39), filed 1/23/78. Statutory Authority: RCW 42.18.250, 49.60.120 and chapter 49.60 RCW. Later promulgation, see WAC 162-04-024.
162-08-026	Clerk. [Order 30, § 162-04-026 (codified as WAC 162-08-026), filed 11/23/76.] Repealed by 78-02-065 (Order 39), filed 1/23/78. Statutory Authority: RCW 42.18.250, 49.60.120 and chapter 49.60 RCW. Later promulgation, see WAC 162-04-026.
162-08-050	Ethics and conflicts of interest. [Order 30, § 162-04-050 (codified as WAC 162-08-050), filed 11/23/76.] Repealed by 78-02-065 (Order 39), filed 1/23/78. Statutory Authority: RCW 42.18.250, 49.60.120 and chapter 49.60 RCW. Later promulgation, see WAC 162-04-050.
162-08-070	Computation of time. [Rules (part), filed 3/23/62.] Repealed by Order 7, filed 1/19/68.
162-08-090	Service of process—By whom served. [Rules (part), filed 3/23/62; Rule (2g), filed 10/18/61.] Repealed by Order 7, filed 1/19/68.
162-08-095	Service of process—Subpoenas. [Rules (part), filed 3/23/62; Rule 7 (part), filed 10/18/61.] Repealed by Order 7, filed 1/19/68.
162-08-108	Reconsideration of terms of agreement. [Order 35, § 162-08-108, filed 9/2/77.] Repealed by 89-23-020, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 49.60.120(3).
162-08-111	Who may issue subpoenas. [Order 35, § 162-08-111, filed 9/2/77; Order 7, § 162-08-111, filed 1/19/68.] Repealed by 89-23-020, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 49.60.120(3).
162-08-114	Service of subpoenas. [Order 35, § 162-08-114, filed 9/2/77.] Repealed by 89-23-020, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 49.60.120(3).
162-08-116	Witness fees and allowances. [Order 35, § 162-08-116, filed 9/2/77.] Repealed by 89-23-020, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 49.60.120(3).
162-08-121	Motions relating to subpoenas. [Order 35, § 162-08-121, filed 9/2/77; Order 7, § 162-08-121, filed 1/19/68.] Repealed by 89-23-020, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 49.60.120(3).

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

I GENERAL

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

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

(3) **Relation to statutes.** These rules supplement the statutory procedures in the Administrative Procedure Act, chapter 34.05 RCW, and the law against discrimination, chapter 49.60 RCW. Where provisions of the law against discrimination are inconsistent with the Administrative Procedure Act, the Administrative Procedure Act governs. RCW 34.05.030(4).

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

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

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

(2) **Waiver.** The chairperson of the commission or an administrative law judge, on their own initiative or on motion of a party, may waive or alter the procedures in any of these rules and may enlarge or shorten the time within which an act

must be done in a particular case, in order to serve the ends of justice.

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

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

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

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

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

"Shall" expresses a command.

"May" expresses permission.

"Will" expresses the future occurrence of an event.

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

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

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

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

"Commission" means the Washington state human rights commission as an institution, whether acting through the commissioners, an administrative law judge, the executive

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director or staff, its legal counsel, or others, except where the context indicates one of the narrower meanings.

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

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

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

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

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

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

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

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

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

(2) **Other lawyer.** An attorney at law entitled to practice before the highest court of record of any other state, if attorneys at law of the state of Washington are permitted to appear in a representative capacity before administrative agencies of such other state, and if not otherwise prohibited by Washington law;

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

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

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

WAC 162-08-031 Computation of time. In computing any period of time prescribed or allowed by commission rules, by commission order, or by statute, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or a legal holiday, in which event, the period runs until the

end of the next day which is neither a Saturday, Sunday nor a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall not be counted.

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

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

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

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

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

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

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

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

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

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

WAC 162-08-051 Form of papers. Except for papers filed with an administrative law judge (covered by WAC

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162-08-241) and any other papers where the form is specified by rule, papers may be submitted in any form. The commission requests, but does not require, that all papers be typewritten on white paper of letter size (8 1/2 x 11").

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

WAC 162-08-061 Relationship of commission to complainant. (1) Commission's role and objectives.

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

(2) **Independence from complainant.** The commission's primary objective is to eliminate and prevent discrimination, which may or may not be consistent with the goals or objectives of a particular complainant or aggrieved person. In negotiating a settlement or seeking an order, the commission generally works for provisions restoring the complainant as nearly as possible to the position he or she would be in if he or she had not been discriminated against, because this is usually an effective way to eliminate the discrimination and prevent its recurrence. But where, in the commission's judgment, provisions fully restoring the complainant (for instance, reinstatement to the job with back pay) would be inadequate to eliminate a pattern of discrimination, the commission will hold out for additional terms, even though the respondent is willing to settle on the basis of full relief for the complainant only. Except as may be otherwise provided for complaints alleging unfair practices in real estate transactions, the commission may determine that discrimination will be effectively eliminated and prevented by an order that does not afford the complainant every item of relief to which he or she may have a legal claim. The commission assumes that persons who complain to it are as interested in the elimination and preven-

tion of discrimination in general as in their individual cases. If a person is interested only in relief for himself or herself, he or she is advised to seek his or her remedy directly in court pursuant to RCW 49.60.020, 49.60.030 and/or WAC 162-08-062.

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

WAC 162-08-062 Concurrent remedies—Other remedies. Except as otherwise provided by RCW 49.60.340, the law against discrimination preserves the right of a complainant or aggrieved person to simultaneously pursue other available civil or criminal remedies for an alleged violation of the law in addition to, or in lieu of, filing an administrative complaint of discrimination with the commission, with the following limitations:

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

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

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

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

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

II COMPLAINTS

WAC 162-08-071 Complaints by aggrieved persons.

(1) **Scope of section.** This section applies to complaints by persons claiming to be aggrieved by an alleged unfair practice filed under RCW 49.60.230 (1)(a), to complaints by employers or principals filed under RCW 49.60.230 (1)(c), and to complaints by "aggrieved persons" under RCW

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49.60.040(15). Complaints issued by the commission are covered by WAC 162-08-072.

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

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

(a) The name of the person making the complaint;

(b) The name, address and telephone number, if any, of the person against whom the complaint is made, if known to the complainant;

(c) A specific charge of an unfair practice(s);

(d) A clear and concise statement of the facts which constitute the alleged unfair practice(s);

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

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

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

(6) **Computation of time.** The one-year period for filing a complaint alleging an unfair practice in a real estate transaction expires at 5:00 p.m. on the day before the corresponding day of the year following the event. The six-month period for filing a complaint alleging any other unfair practice expires at 5:00 p.m. on the day before the corresponding day of the sixth month following the event. If the last day of the filing period is a Saturday, Sunday, or legal holiday, the time expires at 5:00 p.m. on the next day which is not a Saturday, Sunday, or legal holiday. For example, a complaint of an event occurring on 5 January would ordinarily have to be filed by 5:00 p.m. on 4 July, but since 4 July is a legal holiday, the time for filing the complaint would expire at 5:00 p.m. on 5 July, or at 5:00 p.m. Monday, if 5 July comes on a Saturday or Sunday.

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

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-08-071, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-071, filed 11/7/89, effective 12/8/89.

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Statutory Authority: RCW 49.60.120(3) and 34.04.020. 79-11-041 (Order 40), § 162-08-071, filed 10/12/79; Order 35, § 162-08-071, filed 9/2/77; Order 7, § 162-08-071, filed 1/19/68.]

WAC 162-08-072 Complaints issued by commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III

INVESTIGATION OF COMPLAINTS—FINDINGS

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

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-08-093, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-093, filed 11/7/89, effective 12/8/89. Statutory Authority: RCW 42.18.250, 49.60.120 and chapter 49.60 RCW.

78-02-065 (Order 39), § 162-08-093, filed 1/23/78; Order 35, § 162-08-093, filed 9/2/77.]

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

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

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

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

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

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

(a) A person who is not named as a respondent in the course of investigation may be joined as an additional or substitute respondent upon written notice in accordance with subsection (2) of this section.

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

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

(4) Subsequent to the filing of a complaint alleging an unfair practice in a real estate transaction under RCW 49.60.222 through 49.60.225, the commission shall commence proceeding with respect to the complaint within thirty days after receipt of the complaint.

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

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

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

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

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

WAC 162-08-09501 Methods of obtaining information¹. (1) Pursuant to RCW 49.60.140 and 49.60.240, as part of the investigative process, staff members of the commission may obtain information by one or more of the following methods: Subpoenas, oral questions, written questions and answers, requests for specific documents and records.

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

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

(4) Methods of obtaining information.

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

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

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

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nesses in the courts of this state, if the witness objects to the arrangements or amounts provided by the person issuing the subpoena.

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

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

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

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

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

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

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

(v) Upon receipt of a transcription certified as above, the clerk shall examine it to verify that it has been certified, and if it has been, the clerk shall file it. A transcription that has been so filed is published and is available for any use to which a deposition may be put, except to the extent that use is limited by a protective order (see WAC 162-08-096).

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

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

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

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

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

ten days, exceed twenty questions, in which event they shall be answered within twenty days.

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

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

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

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

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

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

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

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

WAC 162-08-097 Failure to provide information. (1) **Order compelling production of information.** The chairperson of the commission is authorized to make any order that a court could make under CR 37(a), including an order awarding expenses of the motion to compel production of information pursuant to WAC 162-08-09501. The executive director, upon reasonable notice to other parties and all persons affected thereby, may obtain an order compelling production of information by motion to the chairperson of the commission. The form of the motion and the procedure for its disposition is governed by WAC 162-08-019. When taking testimony under oath, the proponent of the question may either complete or adjourn the examination before moving for an order compelling production of information.

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

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

WAC 162-08-098 Findings. (1) **General.** The findings document shall contain (a) *findings of fact*, and (b) an *ulti-*

mate finding of reasonable cause or no reasonable cause for believing that an unfair practice has been or is being committed, or a finding on jurisdiction, as provided in (2) of this section.

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

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

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

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

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

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

(2) **Withdrawal of complaint.** No findings or other procedures in RCW 49.60.240 and 49.60.250 are necessary when the complainant has requested withdrawal of the complaint and the commissioners have consented to the withdrawal pursuant to WAC 162-08-091.

(3) **Settled before finding.** Except as may be otherwise provided for a complaint alleging an unfair practice in a real estate transaction, a complaint may be settled before findings of fact are made, when the commission's staff and a respondent have entered into a written settlement agreement (prefinding settlement). Prefinding settlement agreements shall be presented to the commissioners. The commissioners, if they approve, shall enter an order setting forth the terms of the agreement, using the same procedure as if the agreement were presented to the commissioners under RCW 49.60.240 and WAC 162-08-106 after findings of fact. A prefinding set-

tlement is not binding on the commission until the commissioners vote to accept it and issue their order.

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

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

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

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

IV CONCILIATION

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

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

WAC 162-08-104 Conciliation negotiations. (1) **Endeavors of staff.** Except as may be otherwise provided for a complaint alleging an unfair practice in a real estate transaction, the task of the commission is to endeavor to eliminate the unfair practice through agreement with the respondent. The extent of effort to be expended toward this end will depend on the likelihood that agreement on mutually acceptable terms can be reached. If, for example, it is apparent from an exchange of letters that agreement cannot be reached, it is not necessary to hold a conference. If a respondent has been afforded a reasonable opportunity to negotiate, that is sufficient to satisfy the statutory requirements pertaining to conciliation of a complaint brought under chapter 49.60 RCW and this chapter.

(2) **Reopening conciliation.** The making and service of a finding that no agreement can be reached does not preclude renewing negotiations or reaching an agreement at a later time. The finding that no agreement can be reached is not affected by a renewal of negotiations, but it may be super-

seded by any subsequent agreement which resolves the unfair practices at issue in the complaint filed with the commission.

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

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

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

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

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

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

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

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

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

(2) **Setting aside.** Recommending to the commissioners that the agreement and order be set aside, in whole or in part, and that the case be returned to the staff for renewed conference, conciliation and persuasion, or to be referred to commission counsel for hearing; or

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

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

[Title 162 WAC—p. 16]

V

ADMINISTRATIVE HEARINGS BEFORE AN ADMINISTRATIVE LAW JUDGE

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) **Pleading statutory steps.** It is not necessary for counsel for the commission to plead that the statutory steps prior to the amended complaint have been completed. All statutory steps prior to hearing will be deemed to have been properly completed unless an issue is raised by specific negative averment in an answer as provided in WAC 162-08-251(7).

(7) **Signing.** The amended complaint shall be signed by counsel for the commission and verified by the executive

director or a staff member designated by the executive director to verify on behalf of the executive director.

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

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

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

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

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

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

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

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

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

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

- (a) All pleadings, motions, briefs, proposed findings of fact and conclusions of law and initial or final orders, objections, but not offers of settlement (RCW 49.60.250(2));
- (b) Evidence received or considered;
- (c) A statement of matters officially noticed;
- (d) Any decision, opinion, or report by the officer presiding at the hearing.

(2) **Pleadings.** Pleadings for an administrative hearing shall include the notice of hearing with amended complaint attached and any amended complaints subsequently filed, plus any answers or replies filed under WAC 162-08-251, and the original complaint if, but only if, the complainant elects to proceed under it as provided in WAC 162-08-261.

(3) **Proceedings before notice of hearing not part of record.** No findings or other parts of the commission's

record of action on the complaint prior to notice of hearing shall be included in the record of the administrative hearing unless the particular document is offered and admitted into evidence.

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

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

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

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

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

BEFORE THE ADMINISTRATIVE LAW JUDGE
FOR A HUMAN RIGHTS COMMISSION HEARING

WASHINGTON STATE HUMAN RIGHTS
COMMISSION, PRESENTING THE CASE
IN SUPPORT OF THE COMPLAINT OF
JAMES DOE, complainant,

v.

ROE ENTERPRISES, INC., PHYLLIS
ROE, PRESIDENT, AND RICHARD
ROE, SECRETARY, respondent(s).

NO.

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

BEFORE THE ADMINISTRATIVE LAW JUDGE
FOR A HUMAN RIGHTS COMMISSION HEARING

WASHINGTON STATE HUMAN RIGHTS
COMMISSION *EX REL.* DOE, complainant,

v.

ROE ENTERPRISES, INC., *ET AL.*,
respondent(s)

NO.

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

(3) **Signing.** Every pleading, motion or other paper filed on behalf of a party represented by an attorney shall be dated and signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who

is not represented by an attorney shall similarly date and sign proceedings, motions and other papers and give the party's address. The signature of a party or of an attorney constitutes a certificate by that person in accordance with the provisions of Rule 11, civil rules for superior court.

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

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

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

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

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

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

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

(a) A bona fide occupational qualification;

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

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

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

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

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

[Title 162 WAC—p. 18]

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

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

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

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

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

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

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

(2) **Election to prove additional charges.** A complainant or aggrieved person under RCW 49.60.040(15) who has filed a notice of independent appearance stating an intention to prove additional charges in accordance with RCW 49.60.250(2), may at the hearing offer proof of averments included in the original complaint or in amendments to the original complaint made by the complainant, whether or not the averments are included in the amended complaint under which counsel for the commission is proceeding. For purposes of this section, the complainant may amend the original complaint without regard to intervening amendments made by the commission. The complainant may serve and file an amended complaint with a notice of independent appearance, or thereafter as provided by these rules. If no amended complaint is served with a notice of independent appearance that states an intention to prove additional charges, the clerk shall promptly place the original complaint in the file for the administrative law judge. Nothing done by the complainant under this rule shall place any duty on counsel for the com-

mission to seek to prove matters not averred in the amended complaint accompanying the notice of hearing, or subsequent amendments by the commission.

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

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

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

WAC 162-08-263 Discovery—Administrative hearing. The commission has determined that discovery will be available in adjudicative proceedings in accordance with RCW 34.05.446(2).

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

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

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

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

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

WAC 162-08-265 Amendment of pleadings. (1) **Right to amend.** A party to an administrative hearing may amend a pleading once as a matter of course at any time more than twenty days before the date set for hearing. Otherwise, a party may amend a pleading only by leave of the administrative law judge or by written consent of all adverse parties.

(2) **Action on motions to amend.** The administrative law judge shall freely give leave to amend when justice so requires. The administrative law judge may designate a time for filing an answer to amended pleadings that may be

answered, and may reschedule other dates, including the hearing date, if this is necessary to assure that issues for hearing are fully and properly framed.

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

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

WAC 162-08-268 Voluntary dismissal. (1) **Prior to day of hearing.** Except as may be provided for cases alleging unfair practices in real estate transactions, on the day when the hearing of a case commences the commission or any other party on the side supporting the complaint may voluntarily dismiss the party's case or a claim by serving and filing a written notice of dismissal.

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

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

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

WAC 162-08-271 Motions before administrative law judge. (1) **Scope of section.** This section governs all motions made to the administrative law judge except those made orally on the record during an administrative hearing.

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

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

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

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

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

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

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

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

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

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

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

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

(8) **Form of affidavits; further testimony.** Supporting and opposing affidavits must be made on personal knowledge, must set forth facts that would be admissible in evidence, and must show affirmatively that the affiant is compe-

tent to testify to what is stated. Sworn or certified copies of all papers or parts of papers referred to in an affidavit shall be attached to the affidavit or served with it. The administrative law judge may permit affidavits to be supplemented or opposed by depositions or by further affidavits.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VI

ADMINISTRATIVE HEARING AND DECISION

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

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

(1999 Ed.)

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

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

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

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

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

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

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

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

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

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

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

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

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

WAC 162-08-294 Claims of self incrimination—Immunity. (1) **How claimed.** A natural person who is testifying under oath, may, instead of answering a question, decline to answer the question on the ground that the testimony or evidence required of him or her may tend to incriminate him or her or subject him or her to a penalty or forfeiture.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The payment of punitive damages;

(b) The payment of fines payable to the state.

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

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

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

(9) **Nature and purpose of order.** An administrative order is one means of carrying out the public purpose of the law against discrimination: To eliminate and prevent certain

discrimination. The administrative law judge in framing its order shall be guided by this public purpose. The administrative law judge's task is not the determination of private rights. See WAC 162-08-061, 162-08-062. The administrative law judge is not required to observe conventional common law or equity principles in fashioning the order. The guiding principle for the administrative law judge is whether a particular remedy will effectuate the purposes of the law against discrimination. An order requiring a respondent to pay money to a person as back pay, or to compensate for some other loss, is not a private award of damages, but is a public reparation order. Except as may be otherwise provided in RCW 49.60.260 and WAC 162-08-288, only the commission can enforce the order. The beneficiary has no property right in the money until he or she receives it. See WAC 162-08-305.

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

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

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

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

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

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

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

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

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

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

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-08-305, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). 89-23-020, § 162-08-305, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-305, filed 9/2/77.]

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

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

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

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

VII RULE MAKING

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

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

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

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

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

tions by marking them over with a dotted line. Petitions for repeal of a rule shall identify the rule by WAC number, and may quote its text.

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

VIII DECLARATORY ORDERS

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

(a) A statement of the question on which the declaratory order is sought;

(b) A full statement of the facts giving rise to the question;

(c) A statement of the basis for the petitioner's interest in the question.

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

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

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

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

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

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

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

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

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

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

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

declaratory order was issued, if the persons have justifiedly relied on the declaratory order.

(9) **Use of administrative law judge.** The commissioners may direct that a hearing for the purpose of issuing a declaratory order shall be held before a member of the commission, or a panel of members of the commission, or an administrative law judge. The member, panel, or administrative law judge shall hear testimony and argument, receive exhibits and other testimony, evaluate the material, and make a proposal for decision by the commissioners, to be considered and decided in the manner provided in RCW 34.05.410 through 34.05.494.

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

Chapter 162-12 WAC

PREEMPLOYMENT INQUIRY GUIDE

WAC

162-12-100	Purpose.
162-12-120	General approach.
162-12-130	Inquiries for purposes of discrimination prohibited.
162-12-135	Bona fide occupational qualifications.
162-12-140	Preemployment inquiries.
162-12-150	Inquiries required by United States.
162-12-160	Data for legitimate purposes.
162-12-170	Conditions for inquiries to applicants.
162-12-180	Post employment records.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

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

WAC 162-12-100 Purpose. (1) These regulations are intended to carry out the purposes of the law against discrimination as stated generally in RCW 49.60.010 and 49.60.030, and to inform employers, employment agencies, and the public of the commission's interpretation of RCW 49.60.180 and 49.60.200 which declare certain preemployment inquiries to be unfair practices.

(2) The commission will generally follow, in its interpretation of statutory provisions in chapter 49.60 RCW and rules contained in Title 162 WAC, federal court decisions interpreting comparable statutes and rules. The commission will not follow such federal precedents, however, where it believes that a different interpretation of state statutes and rules will better carry out the purposes of chapter 49.60 RCW.

(3) This regulation cannot cover every question which might arise in connection with inquiries prior to employment. The commission expects that in most cases these rules, either directly or by analogy, will guide those who are covered by the law. Employers and employment agencies that have questions are invited to call the commission's staff for advice and assistance, or, if necessary, to petition the commission for a declaratory ruling under RCW 34.05.240 and WAC 162-08-700 concerning the application of the law to particular facts.

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

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

(2) The commission recognizes the legitimate interests of employers with respect to the protected class status of applicants which are consistent with the purpose of the law against discrimination, or where required by government or to carry out an employer's policy of nondiscrimination. However, the commission also recognizes that in the absence of safeguards, the records of race, sex, etc., can be misused for discriminatory purposes. To address this conflict, the commission has established fixed rules in WAC 162-12-140 which characterize particular preemployment inquiries as fair or unfair in such a way that employers and employment agencies who intend to make legitimate use of such data have maximum freedom to do so without conveying the impression that protected class applicants will be discriminated against.

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

WAC 162-12-130 Inquiries for purposes of discrimination prohibited. It is an unfair practice to make any inquiry or keep any record of race, creed, color, national origin, age, sex, marital status, or disability, before, during, or after employment, for the purpose of discriminating on these grounds, unless the particular quality inquired about is a bona fide occupational qualification.

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

WAC 162-12-135 Bona fide occupational qualifications. The statutes construed in this chapter recognize an exception when inquiries are based upon a "bona fide occupational qualification." For guidance on the meaning of that term see WAC 162-16-020. The provisions of this preemployment guide do not apply where age, sex, race, creed, color, marital status, national origin, or freedom from a disability is a bona fide occupational qualification and is identified as such to the applicant or other person. See WAC 162-16-040.

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

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

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

(a) A "bona fide occupational qualification" as explained in chapter 162-16 WAC.

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

(c) A contrary requirement of federal law, as explained in WAC 162-12-150. If one or more of the above conditions apply, the employer or employment agency may use appropriate inquiries that would otherwise be unfair. Inquiries made under these exceptions must always be accompanied by a written explanation of their purpose. See WAC 162-12-135, 162-12-170, and 162-16-040.

(3) The examples in the following chart of fair and unfair preemployment inquiries are intended to define what is an unfair practice under RCW 49.60.180(4) and 49.60.200. These examples, however, are not all inclusive. All preemployment inquiries which unnecessarily elicit the race, sex, or membership in other protected classes are prohibited by these statutes irrespective of whether or not the particular inquiry is covered in this regulation.

SUBJECT	FAIR PREEMPLOYMENT INQUIRES	UNFAIR PREEMPLOYMENT INQUIRES
a. Age	Inquiries as to birth date and proof of true age are permitted by RCW 49.44.090.	Any inquiry not in compliance with RCW 49.44.090 which implies a preference for persons under 40 years of age.
(For age discrimination, RCW 49.44.090 must be read in conjunction with RCW 49.60.180 and 49.60.200. RCW 49.44.090 limits age discrimination coverage to persons 40 years of age and older, and makes other limitations and exceptions to the age discrimination law.)		
b. Arrests (see also Convictions)	Because statistical studies regarding arrests have shown a disparate impact on some racial and ethnic minorities, and an arrest by itself is not a reliable indication of criminal behavior, inquiries concerning arrests must include whether charges are still pending, have	Any inquiry which does not meet the requirements for fair preemployment inquiries.

SUBJECT	FAIR PREEMPLOYMENT INQUIRES	UNFAIR PREEMPLOYMENT INQUIRES
c. Citizenship	Whether applicant is prevented from lawfully becoming employed in this country because of visa or immigration status. Whether applicant can provide proof of a legal right to work in the United States after hire.	Whether applicant is citizen. Requirement before hiring that applicant present birth certificate, naturalization or baptismal divulge applicant's lineage, ancestry, national origin, descent, or birth place.
d. Convictions (see also Arrests)	Statistical studies on convictions and imprisonment have shown a disparate impact on some racial and ethnic minority groups. Inquiries concerning convictions (or imprisonment) will be considered to be justified by business necessity if the crimes inquired about relate reasonably to the job duties, and if such convictions (or release from prison) occurred within the last ten years. Law enforcement agencies, state agencies, school districts, businesses and other organizations that have a direct responsibility for the supervision, care, or treatment of children, mentally ill persons, developmentally disabled persons, or other vulnerable adults are exempt from this rule. See RCW 43.20A.710; 43.43.830 through 43.43.842; and RCW 72.23.035.	Inquiries concerning convictions and imprisonment which either do not relate reasonably to job duties or did not occur within the last ten years will not be considered justified by business necessity.
e. Family	Whether applicant can meet specified work schedules or has activities, commitments or responsibilities that may prevent him or her from meeting work attendance requirements.	Specific inquiries concerning spouse, spouse's employment or salary, children, child care arrangements, or dependents.

SUBJECT	FAIR PREEMPLOYMENT INQUIRES	UNFAIR PREEMPLOYMENT INQUIRES	SUBJECT	FAIR PREEMPLOYMENT INQUIRES	UNFAIR PREEMPLOYMENT INQUIRES
f. Disability	Whether applicant is able to perform the essential functions of the job for which the applicant is applying, with or without reasonable accommodation. Inquiries as to how the applicant could demonstrate or describe the performance of these specific job functions with or without reasonable accommodation. Note: Employers are encouraged to include a statement on the application form apprising applicants that if they require accommodation to complete the application, testing or interview process, to please contact the employment office, personnel or human resources department or other office as may be able to assist them.	Inquiries about the nature, severity or extent of a disability or whether the applicant requires reasonable accommodation. Whether applicant has applied for or received worker's compensation. Also any inquiry that is not job related or consistent with business necessity.	1. Organizations	Inquiry into organization memberships, excluding any organization the name or character of which indicates the race, color, creed, sex, marital status, religion, or national origin or ancestry of its members.	Requirement that applicant list all organizations, clubs, societies, and lodges to which he or she belongs.
g. Height and Weight	Being of a certain height or weight will not be considered to be a job requirement unless the employer can show that all or substantially all employees who fail to meet the requirement would be unable to perform the job in question with reasonable safety and efficiency.	Any inquiry which is not based on actual job requirements and not consistent with business necessity.	m. Photographs	May be requested <i>after</i> hiring for identification purposes.	Request that applicant submit a photograph, mandatorily or optionally, at any time before hiring.
h. Marital Status (see also Name and Family)	None.	() Mr. () Mrs. () Miss () Ms. Whether the applicant is married, single, divorced, separated, engaged, widowed, etc.	n. Pregnancy (see also Disability)	Inquiries as to a duration of stay on job or anticipated absences which are made to males and females alike.	All questions as to pregnancy, and medical history concerning pregnancy and related matters.
i. Military	Inquiries concerning education, training, or work experience in the armed forces of the United States.	Type or condition of military discharge. Applicant's experience in military other than U.S. armed forces. Request for discharge papers.	o. Race or Color	None. See WAC 162-12-150, 162-12-160, and 162-12-170.	Any inquiry concerning race or color of skin, hair, eyes, etc., not specifically permitted by WAC 162-12-150, 162-12-160, and 162-12-170.
j. Name	Whether applicant has worked for this company or another employer under a different name and, if so, what name. Name under which applicant is known to references if different from present name.	Inquiry into original name where it has been changed by court order or marriage. Inquiries about a name which would divulge marital status, lineage, ancestry, national origin or descent.	p. Relatives	Name of applicant's relatives already employed by this company or by any competitor.	Any other inquiry regarding marital status, identity of one's spouse, or spouse's occupation are considered unfair practices in accordance with WAC 162-12-150.
k. National Origin	Inquiries into applicant's ability to read, write and speak foreign languages, when such inquiries are based on job requirements.	Inquiries into applicant's lineage, ancestry, national origin, descent, birthplace, or mother tongue. National origin of applicant's parents or spouse.	(While the law does not prohibit company policies governing the employment of relatives, any policy which has the effect of disadvantaging minorities, women, married couples, or other protected classes, would be in violation of the law unless it is shown to serve a necessary business purpose.) See WAC 162-12-150, 162-12-160, and 162-12-170.	q. Religion or Creed	None.
			r. Residence	Inquiries about address to the extent needed to facilitate contacting the applicant.	Inquiries concerning applicant's religious preference, denomination, religious affiliations, church, parish, pastor, or religious holidays observed.
			s. Sex	None.	Names or relationship of persons with whom applicant resides. Whether applicant owns or rents own home.

[Statutory Authority: RCW 49.60.120(3). 96-21-054, § 162-12-140, filed 10/14/96, effective 11/14/96; Order 19, § 162-12-140, filed 1/20/75; Order 18, § 162-12-140, filed 1/20/75; Order 16, § 162-12-140, filed 5/22/74; Order 9, § 162-12-140, filed 9/23/71; Order 8, § 162-12-140, filed 6/22/70; § 162-12-140 and chart, filed 10/23/67.]

WAC 162-12-150 Inquiries required by United States. Because of the supremacy of federal law over state law, an employer or employment agency may ask applicants to state their race, creed, color, age, sex, marital status, disability, or national origin to the extent that the employer is required to do so by the United States government or a federal or state court decree. When the United States government asks only for data on race, creed, color, national origin, age, marital status, disability, or sex of applicants, the infor-

mation shall be acquired by means other than inquiry to the applicants, unless the United States expressly requires the inquiries or unless the inquiries are made in conformity with WAC 162-12-160 and 162-12-170.

[Statutory Authority: RCW 49.60.120(3), 96-21-054, § 162-12-150, filed 10/14/96, effective 11/14/96; Order 16, § 162-12-150, filed 5/22/74; Order 9, § 162-12-150, filed 9/23/71; § 162-12-150, filed 10/23/67.]

WAC 162-12-160 Data for legitimate purposes. (1) It is not an unfair practice to make inquiries as to race, sex, or disability for purposes of affirmative action to correct or prevent discrimination against persons in protected classes, when the inquiries are made in the manner provided in WAC 162-12-170.

(2) Data on race, creed, color, national origin, sex, age, disability, or marital status shall not be recorded on any record which is kept in the applicant's preemployment file, nor shall such data be kept in any other place or form where it is available to those who process the application. Records which identify the race, etc., of a particular person shall be kept confidential, except to the extent necessary to implement an affirmative action program as authorized by law, to permit the compilation of statistics, and to permit verification of the statistics by top management of the employer, or by the Washington state human rights commission or other concerned governmental agencies.

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

WAC 162-12-170 Conditions for inquiries to applicants. An employer or employment agency may ask an applicant to voluntarily state his or her race, creed, color, national origin, sex, marital status, age, or disability for a nondiscriminatory purpose, and then only if it has satisfied all of the following conditions:

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

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

(3) The written policy and proposed form shall have been submitted to and have been approved by the executive director of the commission or his or her designate, or they have been required or approved by an agency of the United States government which has jurisdiction to do so.

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

WAC 162-12-180 Post employment records. RCW 49.60.180 and 49.60.200 and these rules do not prohibit mak-

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ing or keeping records of the race, creed, color, national origin, sex, marital status, disability or age of persons after they are employed, unless the records are used for the purpose of discrimination. To prevent improper use, records of an employee's race, color, or disability must be kept separate from the employee's personnel file.

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

Chapter 162-16 WAC EMPLOYMENT

WAC

162-16-020	Bona fide occupational qualification defined.
162-16-030	Advice of commission.
162-16-040	Identification in use.
162-16-050	Discrimination in employment because of arrests.
162-16-060	Discrimination in employment because of convictions.
162-16-070	Applicability of WAC 162-16-050 and 162-16-060 to nonminorities.
162-16-080	Purpose.
162-16-090	Job titles.
162-16-100	Discriminatory language.
162-16-110	Employment agencies.
162-16-120	Newspapers and other advertising media.
162-16-130	Bona fide occupational qualification.
162-16-140	Affirmative action.
162-16-150	Discrimination because of spouse.
162-16-160	"Employer"—Jurisdictional count of number of persons employed.
162-16-170	Employee distinguished from independent contractor.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

162-16-010	Photographs of prospective employees. [Rule, filed 10/18/61.] Repealed by Order 8, filed 6/22/70.
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WAC 162-16-020 Bona fide occupational qualification defined. (1) RCW 49.60.180 says:

"It is an unfair practice for any employer: (1) To refuse to hire any person because of such person's age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental or physical handicap, *unless based upon a bona fide occupational qualification: Provided,* That the prohibition against discrimination because of such handicap shall not apply if the particular disability prevents the proper performance of the particular worker involved.["] (Emphasis added.)

RCW 49.60.180(4) and 49.60.200, which declare that certain preemployment inquiries and specifications are unfair practices of employers and employment agencies, respectively, contain the same exception for bona fide occupational qualifications.

(2) The term "bona fide occupational qualification" has not been defined by the legislature. Its meaning must be worked out through experience in administering the law and with reference to the general purposes of the law against discrimination and other expressions of public policy. The commission has so far recognized two areas where race, creed, color, national origin, age, sex, marital status, or handicap may be a bona fide occupational qualification:

(a) Where a person's race, creed, color, national origin, age, sex, marital status or handicap will be essential to, or

will contribute to, the accomplishment of the purposes for which the person is hired.

(b) When race, creed, color, national origin, age, sex, marital status, or handicap must be considered in order to correct a condition of unequal employment opportunity.

(3) Part (2)(b) is explained in chapter 162-18 WAC, Corrective employment practices. Part (2)(a) may be illustrated by the following examples:

(a) The commission's policy on excellence in education emphasizes the goal of multiracial education for a multiracial world. The commission has said that where distance and the ethnic composition of a community prevent integration of a student body, multiracial education can be achieved through integration of the staff of the school. The race, creed, color or national origin of applicants for jobs at such a school is relevant to the accomplishment of a proper educational purpose, and is therefore a bona fide occupational qualification.

(b) An airline carrying passengers between the United States and Japan needs Japanese-speaking cabin attendants. The job qualification should be competency in spoken Japanese, not Japanese national origin, unless the airline is prepared to show that no one except persons of Japanese ancestry can properly serve the airline's Japanese clientele.

(c) An antipoverty program seeks to reach rural Spanish speaking families that do not come in contact with ordinary social agencies. In order to establish the desired rapport with such families, it may be necessary to employ workers who not only speak Spanish but who come from the same background. Being a Spanish-American may be a bona fide occupational qualification for such a job.

[Order 16, § 162-16-020, filed 5/22/74; Order 9, § 162-16-020, filed 9/23/71; Order 8, § 162-16-020, filed 6/22/70.]

WAC 162-16-030 Advice of commission. When requested to do so, the commission's staff will advise persons on how to meet particular employment needs consistently with the law against discrimination. In order to be safe, persons are advised to petition the commission for a declaratory ruling (see WAC 162-08-620) before proceeding to consider race, creed, color, national origin, age, sex, marital status, or handicap to be a bona fide occupational qualification in particular circumstances, unless the commission or another public agency with comparable jurisdiction has directed or authorized the action.

[Order 16, § 162-16-030, filed 5/22/74; Order 9, § 162-16-030, filed 9/23/71; Order 8, § 162-16-030, filed 6/22/70.]

WAC 162-16-040 Identification in use. Inquiries or specifications of race, creed, color, national origin, age, sex, marital status or handicap should always be accompanied by a statement that one or more of these qualities is a bona fide occupational qualification for the job, along with a reference to the source of that conclusion. In the absence of such a statement, the commission will consider the inquiry or specification to be evidence of an unfair practice.

[Order 16, § 162-16-040, filed 5/22/74; Order 9, § 162-16-040, filed 9/23/71; Order 8, § 162-16-040, filed 6/22/70.]

WAC 162-16-050 Discrimination in employment because of arrests. (1) It is an unfair practice for any

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employer, employment agency or labor union to refuse to hire or otherwise discriminate against a person in employment because he or she has been arrested.

(2) An arrest, without more, is no indication of guilt, and historically minorities have suffered from unequal law enforcement. See *Carter v. Gallagher*, 451 F.2d 315 (8th Cir. 1971); *Gregory v. Litton Systems, Inc.*, 316 F. Supp. 401 (C. Dist. Cal. 1970). The U.S. Department of Labor has also recognized the potential for discrimination in consideration of arrest records. See § 60-2.24 (d)(3) of Revised Order No. 4, which establishes standards and guidelines for the affirmative action programs required of government contractors.

(3) Preemployment inquiries as to arrests are an unfair practice. See WAC 162-12-140.

(4) Law enforcement agencies are exempt from this regulation at this time; however, nothing in this regulation precludes a law enforcement agency in its discretion from adopting the policy set forth herein.

[Order 19, § 162-16-050, filed 1/20/75.]

WAC 162-16-060 Discrimination in employment because of convictions. (1) It is an unfair practice for an employer, employment agency or labor union to refuse to hire or otherwise discriminate against a person simply because he or she has been convicted of a crime, but the conviction may be considered to the extent that it reveals the current presence of absence of specific qualifications for a job and

(a) All applicants are evaluated alike for the qualifications under consideration; and

(b) The date of the conviction or prison release, whichever is more recent, is less than 7 years old.

(2) For rules on preemployment inquiries as to convictions, see WAC 162-12-140.

(3) To the extent that an employment practice automatically excludes persons with convictions, it has the potential for discrimination because of race and ethnic origin. See *Carter v. Gallagher*, 451 F.2d 315 (8th Cir. 1971). This is because minority groups in our society have experienced unequal law enforcement. On the other hand, an employer should have the right to exclude persons who have been convicted of *certain* offenses from consideration for *certain* kinds of jobs, at least if the conviction is relatively recent and the exclusion is done on a carefully considered basis. Each person who will evaluate information concerning criminal records should be given careful instructions as to confidentiality and proper use of the information.

(4) In determining the extent to which a conviction or convictions reveals a person's current job qualifications, the employer, employment agency or labor union should consider such factors as the recentness or remoteness of the conviction, and available data on the extent to which persons convicted of that crime are likely to repeat it.

(5) This regulation takes into account the public policy of the state to rehabilitate felons through open job opportunity, expressed in chapter 9.96A RCW, as well as the purposes and policies of the law against discrimination.

(6) Public employers should follow the requirements of RCW 9.66A.020 [9.96A.020] to the extent that it is inconsis-

tent with this regulation. RCW 9.66A.020 [9.96A.020] provides:

"Notwithstanding any other provisions of law to the contrary, a person shall not be disqualified from employment by the state of Washington or any of its agencies or political subdivisions, nor shall a person be disqualified to practice, pursue or engage in any occupation, trade, vocation, or business for which a license, permit, certificate or registration is required to be issued by the state of Washington or any of its agencies or political subdivisions solely because of a prior conviction of a felony: *Provided*, This section shall not preclude the fact of any prior conviction of a crime from being considered. However, a person may be denied employment by the state of Washington or any of its agencies or political subdivisions, or a person may be denied a license, permit, certificate or registration to pursue, practice or engage in an occupation, trade, vocation, or business by reason of the prior conviction of a felony if the felony for which he was convicted directly relates to the position of employment sought or to the specific occupation, trade, vocation, or business for which the license, permit, certificate or registration is sought, and the time elapsed since the conviction is less than ten years."

(7) Law enforcement agencies are exempt from this regulation at this time; however, nothing in this regulation or chapter 9.66A [9.96A] RCW precludes a law enforcement agency in its discretion from adopting the policy set forth herein.

[Order 19, § 162-16-060, filed 1/20/75.]

WAC 162-16-070 Applicability of WAC 162-16-050 and 162-16-060 to nonminorities. The protection from discrimination because of arrest or conviction records under the law and this regulation is not confined to minority group members, but applies to anyone, in order to afford equal treatment without respect to race.

[Order 19, § 162-16-070, filed 1/20/75.]

WAC 162-16-080 Purpose. This regulation is issued to inform employers, employment agencies, and newspapers of specific interpretations given by the Washington state human rights commission to the following parts of the law against discrimination:

(1) RCW 49.60.180 and 49.60.200 make it an unfair practice for employers of eight or more employees and employment agencies "to print, or circulate, or cause to be printed or circulated any statement, advertisement or publication in connection with prospective employment which expresses any limitation, specification or discrimination as to age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental or physical handicap, or any intent to make any such limitation, specification, or discrimination, unless based upon a bona fide occupational qualification: *Provided*, Nothing contained herein shall prohibit advertising in a foreign language."

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(2) RCW 49.60.220. "It is an unfair practice for any person to aid, abet, encourage, or incite the commission of any unfair practice, or to attempt to obstruct or prevent any other person from complying with the provisions of this chapter or order issued thereunder."

[Order 20, § 162-16-080, filed 1/20/75.]

WAC 162-16-090 Job titles. (1) It is an unfair practice for an employer of 8 or more or an employment agency to use a sex specific job title in any help wanted advertisement, job or position description, job announcement, or any other notice, statement, or publication, unless the employer has shown the applicability of a bona fide occupational qualification (BFOQ) exception as provided for in WAC 162-16-130 below.

The term "sex specific job titles" shall include any job title which contains a gender noun or suffix, such as waitress, foreman, salesman, maid, counter girl, as exemplified in the chart below in this subsection.

If the use of a neutral job title is not practicable, two alternatives are permissible: (1) The sex specific job title may be hyphenated to its counterpart title (e.g., waiter/waitress); (2) the sex specific title may be used if accompanied by the designation "man or woman," "male or female," or "M-F" (e.g., foreman, man or woman; tailor, male or female; lineman, M-F).

The following chart may be revised from time to time by the commission staff. It should be noted that the sex neutral terms in the right column are suggested only. Employers who wish further assistance are invited to call the commission staff.

EXAMPLES OF SEX SPECIFIC JOB TITLES:	SUGGESTED SUBSTITUTES:
Auto partsman	Auto parts worker, parts specialist
Barmaid	Bar helper, cocktail server, table server
Bell boy (bellman)	Bell hop, luggage handler, hotel assistant
Body man	Body work specialist, auto repairer
Busboy, tray girl	Busser, dish bussing, cafeteria worker
Camera man	Camera technician, camera operator, camera sales
Cleaning woman, cleaning lady	Cleaning assistant, room cleaner
Corpsman	Paramedic, medical assistant
Counter girl, counter boy	Counter clerk, counter attendant
Credit girl	Credit clerk, credit analyst
Doorman	Door attendant
Draftsman	Drafter, drafting specialist (technician)
Farm man	Farm worker, farm hand
Foreman	Supervisor
Girl Friday	General office worker
Handyman	Miscellaneous repairer
Janitor, janitress	Custodian, maintenance assistant worker
Journeyman	Journey level
Layman	Layout specialist
Leadman	Crew leader, shift leader, leader
Maid	Domestic helper, housekeeper, room cleaner
Maintenance man	Maintenance worker
Partsman	Parts worker
Phone girls	Phone worker, telephone sales agent
Repairman	Repairer, repairworker

EXAMPLES OF SEX SPECIFIC JOB TITLES:

SUGGESTED SUBSTITUTES:

-ess or -ette titles (e.g., waitress, seamstress, janitress, hostess, usherette, etc.)

(1) If practicable, change the title completely (e.g., change "waiter/waitress" to "meal attendant, table server, etc."). "seamstress" to "sewing specialist", "usher/usherette" to "guide." (2) Use the counterpart title with a male-female designation to counteract any connotations of gender (e.g., "tailor, male or female"; "janitor (or custodian), male or female"). (3) Use the sex specific title and its counterpart hyphenated (e.g., "waiter/waitress").

Salad girl Salad maker
 Salesman, saleslady, saleswomen Salesperson, sales clerk, sales representative
 Sheet metal man Sheet metal worker
 Warehouseman Fork lift operator, warehouse worker

(2) The commission encourages the use of "male or female," "man or woman" or "M-F" in all help wanted advertisements. This is because most job titles, through long practice and association, have acquired the connotation of one gender or the other. Titles such as secretary, nurse, housekeeper, teacher, bookkeeper, and sales clerk have become associated with "women's work," while titles such as manager, doctor, mechanic, superintendent, accountant, and custodian have become associated with "men's work." An equal opportunity employer should attempt to counteract connotations of sex preference.

[Order 20, § 162-16-090, filed 1/20/75.]

WAC 162-16-100 Discriminatory language. Any word, term, phrase, or expression which tends to influence, persuade or dissuade, encourage or discourage, attract or repel, any person or persons because of race, color, creed, sex, marital status, age, national origin, or the presence of any physical, mental or sensory handicap, shall be considered discriminatory advertising in violation of the law, unless the language in questions is justified by a BFOQ, as provided for in WAC 162-16-070, or a purpose of affirmative action, as provided for in WAC 162-16-080 below.

In the absence of a BFOQ or purpose of affirmative action, the commission will consider the following language (left column) discriminatory and therefore unacceptable in job advertisements or notices. (See acceptable substitutes at right.) The following chart may be revised from time to time by the commission staff. Employers who wish further assistance in developing nondiscriminatory language are invited to call the commission staff.

DISCRIMINATORY:

SUGGESTED SUBSTITUTES:

Man, woman, girl, gal, boy, lady, etc. Person, applicant, hiree, one, trainee, or a sex-neutral job title
 Cute, glamorous, pretty, cleancut, handsome, attractive Neat, well-groomed, personable, good public relations appearance
 He-man, husky, brawny Specify the lifting required
 Married, single No substitutes
 Gal Friday Assistant, secretary, clerk, office manager

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DISCRIMINATORY:

SUGGESTED SUBSTITUTES:

Recent graduate, new graduate, college student (implies preference for youth) Degree required
 Mother, housewife Part-time, short hours
 Vivacious Enthusiastic, alert, attentive, intelligent
 Young Entry level, beginner, trainee, minimum wage
 Christian, Jewish, etc. No substitutes
 Interracial, segregated, Black, Negro, White, colored, Oriental, Asian, minority, restricted No substitutes
 Other nondiscriminatory terms: minimum wages; stable, responsible, able to travel, long hours, overtime, willing to relocate

[Order 20, § 162-16-100, filed 1/20/75.]

WAC 162-16-110 Employment agencies. It is an unfair practice for any employment agency to:

(1) Handwrite, print, or circulate any interoffice or inter-agency communication, job order, advertisement, brochure, or notice which expresses overtly or subtly, directly or indirectly a preference, specification or limitation on the basis of race, color, creed, national origin, sex, marital status, age, or the presence of any sensory, mental or physical handicaps, unless the expression is based on a BFOQ as provided for in WAC 162-16-030, or a purpose of affirmative action, as provided for in WAC 162-16-040 below.

(2) Maintain, formally or informally, agency division titles which are not clearly neutral in terms of sex. The commission will consider the following division titles discriminatory: (See nondiscriminatory titles at right).

DISCRIMINATORY:

NONDISCRIMINATORY:

Female division, career girl division; male division Office services division; secretary-clerical division; professional division; technical division; sales division; administrative division

The commission recommends that employment agency names be neutral in terms of sex. Names or titles which include a gender noun, such as "career girl services," tend to deter and therefore deny employment opportunities unnecessarily to one sex or the other. Recognizing that it takes time to change a business title, the commission will reconsider the matter no sooner than July 1975, to determine if a formal regulation on employment agency names is still needed.

Nothing in the law or this regulation shall prohibit any employment agency from maintaining an affirmative action file or giving special assistance to help employers recruit minorities, female, or handicapped applicants. (See WAC 162-16-080 below.)

[Order 20, § 162-16-110, filed 1/20/75.]

WAC 162-16-120 Newspapers and other advertising media. (1) It is an unfair practice for a newspaper or other advertising medium to publish or circulate within the state an employment advertisement under a column heading or designation which segregates or expresses a preference on the

basis of race, color, creed, national origin, sex, marital status, age, or the presence of any sensory, mental or physical handicap, unless the heading designation or segregation relates solely to employment for which a BFOQ applies as provided for in WAC 162-16-130 below.

(2) It is not an unfair practice for any newspaper or other advertising medium to print, publish, or circulate employment advertisements expressing the wording of the advertisement, or subtly, directly or indirectly a preference, specification or limitation on the basis of race, color, creed, national origin, sex, marital status, age, or the presence of any sensory, mental, or physical handicap, provided the newspaper or other advertising medium furnishes, on request of a duly authorized representative of the commission, the name and address of the person who submitted the advertisement for publication.

(3) The commission encourages advertising media which circulate employment advertisements to maintain lists of discriminatory job titles and terms and suggested substitutes, as compiled by the commission, to instruct their ad-takers to advise employers and employment agencies of these terms and to have copies of this regulation available for distribution to advertisers on request.

[Order 20, § 162-16-120, filed 1/20/75.]

WAC 162-16-130 Bona fide occupational qualification. The commission believes that the BFOQ should be applied narrowly to jobs for which a particular quality of sex, race, age, etc. . . ., is essential to the accomplishment of the purposes of the job.

Where it is necessary for the purpose of authenticity or genuineness (e.g., model, actor, actress) or maintaining conventional standards of sexual privacy (e.g., lockerroom attendant, intimate apparel fitter), the commission will consider sex to be a BFOQ. Any other type of BFOQ should be very carefully considered. To be safe, the employer should request a BFOQ ruling from the Washington state human rights commission and cite the ruling in the employment advertisement.

Anytime that an employment advertisement or notice expresses a preference, limitation, or discrimination based on sex, marital status, race, color, creed, age, national origin, or the presence of any physical, sensory, or mental handicaps, the burden shall be on the employer to prove that the expression is justified by a BFOQ. In the absence of proof, the advertisement will be considered an unfair practice under the law. (For further guidance on the meaning of BFOQ, see WAC 162-16-020.)

[Order 20, § 162-16-130, filed 1/20/75.]

WAC 162-16-140 Affirmative action. Employers should encourage minorities, women and the handicapped, to apply for jobs where they have been traditionally excluded or where they are currently underrepresented in the employer's business. Such a recruitment effort is called "affirmative action."

Advertisements used to accomplish affirmative action may contain nonexclusionary phrases, such as: "Minorities, women, and/or handicapped persons are encouraged to apply."

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IT IS NOT PERMISSIBLE, however, to express or exercise a hiring preference based on sex, race, handicap, etc. . . ., unless the employer has a court order to do so or an authorization from the Washington state human rights commission or another governmental agency of competent authority and jurisdiction.

Anytime an advertisement or notice encourages minorities, women, or handicapped persons to apply, the burden shall be on the employer to prove that the purpose is to accomplish affirmative action. Employers and employment agencies are encouraged to seek advice from the commission staff before placing affirmative action advertisements.

[Order 20, § 162-16-140, filed 1/20/75.]

WAC 162-16-150 Discrimination because of spouse.

(1) **Authority.** This section implements RCW 49.60.180, 49.60.190 and 49.60.200, which declare that discrimination because of marital status or sex is an unfair practice of employers, labor unions, and employment agencies, respectively.

(2) **General rule and exception.** In general, discrimination against an employee or applicant for employment because of (a) what a person's marital status is; (b) who his or her spouse is; or (c) what the spouse does, is an unfair practice because the action is based on the person's marital status. It may also be an unfair practice because of sex, where it burdens women much more than men, or men much more than women. However, there are certain circumstances where business necessity may justify action on the basis of what the spouse does, and where this is so the action will be considered to come within the bona fide occupational qualification exception to the general rule of nondiscrimination. "Business necessity" for purposes of this section includes those circumstances where an employer's actions are based upon a compelling and essential need to avoid business-related conflicts of interest, or to avoid the reality or appearance of improper influence or favor.

(3) **Examples.**

(a) The following are examples of actions which are unfair practices within the general rule against discrimination because of marital status or sex:

(i) Refusal to hire a person because her or his spouse has a job and is "making good money."

(ii) Refusal to hire a person because his or her spouse is already employed by the same employer, except for particular positions where business necessity requires exclusion of relatives, consistently with this section.

(iii) Discharge of a person because he or she has married another employee of the same employer, unless the spouses occupy positions where business necessity requires the exclusion of relatives, consistent with this regulation, and neither spouse can be transferred to a position where the business necessity reason doesn't apply.

(b) The following are examples of business necessity situations where it is not an unfair practice for an employer to impose rules limiting the employment of spouses:

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

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

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

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

(4) **Least discriminatory practice required.** Where business necessity requires the limitation of employment opportunity of spouses, the means chosen to meet the business necessity shall be those which have the least adverse impact on spouses or members of either sex. For example:

(i) The exclusion should be limited to the job, work crew, shop, or unit where the reason for the exclusion exists, and should not bar the person from the whole work force, unless the reason applies to the whole work force;

(ii) When it is necessary to exclude a person because of what his or her spouse does, then the employer, employment agency, or labor organization should not determine which spouse shall keep the job.

(5) **Limitations on duty.** Except in the special circumstances covered in subsection (4), an employer, employment agency, or labor union has no duty under the law against discrimination to give special treatment to spouses. For example, the employer of both spouses has no duty to schedule their working hours or vacations simultaneously, or to take the spouses preferences on these points into account beyond what is done for employees whose spouses work elsewhere. And, of course, an employer may refuse to hire an applicant spouse for any reason other than marital status, sex, or other unfair practices under the law against discrimination. However, mixed fair and unfair motives are not a defense to a charge of discrimination, so the identity or status of a spouse must be given *no weight at all* in the employment decision unless the business necessity exception applies.

(6) **Burden of justification.** Since the bona fide occupational qualification is an exception to the general rule of non-discrimination, the burden is on the employer, employment agency, or labor organization to show that the discrimination is justified. (See *Weeks v. Southern Bell Telephone and Telegraph Company*, 408 F.2d 228 (5th Cir. 1969)). Employers, employment agencies, and labor organizations should therefore inform themselves of the circumstances before concluding that the exclusion of a spouse is justified, and be prepared to furnish that justification to the commission in case a complaint is filed or other investigation is made.

(7) **Relative other than spouses.** Spouses are within a protected class under the law against discrimination (marital status); other relatives are not. The commission therefore has no role in regulating an employer's treatment of relatives other than spouses, unless discrimination because of sex, race, etc. should be involved. However, a business necessity justification for treating spouses adversely would almost always apply with equal force to other close relatives. Therefore, any employment actions that are taken against spouses but not against other close relatives will be considered to be

prima facie discriminatory for lack of business necessity justification.

(8) **Advice of commission.** The commission's staff will give informal advice on compliance with this regulation to persons who request it. Persons who want formal advice may petition the commission for a declaratory ruling under RCW 34.04.080 and WAC 162-08-620.

[Order 21, § 162-16-150, filed 4/18/75.]

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 anti-discrimination 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 [or] 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 162-18 WAC

CORRECTIVE EMPLOYMENT PROGRAMS

WAC

162-18-010	Corrective employment program defined.
162-18-020	Purpose and policy.
162-18-030	Corrective employment programs are lawful.
162-18-040	Permissible components of program.
162-18-050	When programs may be used.
162-18-060	Termination of programs.
162-18-070	Voluntary programs recommended.
162-18-080	Commission approval of voluntary programs.
162-18-090	Job orders specifying race, creed, color, national origin, sex, marital status, handicap or age.
162-18-100	Construction—Relation to preemployment inquiry guide.

WAC 162-18-010 Corrective employment program defined. As use in this chapter, the term "corrective employment program" means a program designed to increase the

number of employees of a particular protected class in an industry, occupation or place of work in order to correct a condition of underrepresentation of such employees caused by present or past practices, customs or usages of the employer or others that have limited employment opportunities for members of the affected group.

[Order 16, § 162-18-010, filed 5/22/74; Order 9, § 162-18-010, filed 9/23/71; Order 8, § 162-18-010, filed 6/22/70.]

WAC 162-18-020 Purpose and policy. (1) It is the purpose of the law against discrimination to eliminate as well as prevent discrimination in employment. RCW 49.60.010. Where there has been a pattern of exclusion of a class of persons from a job or workforce, an employer's decision to adopt a posture of neutrality for the future may not eliminate the pattern; it may in fact assure that the pattern will continue. In such a situation, corrective steps to employ members of the excluded class equalize employment opportunity by offsetting advantages already enjoyed by others.

(2) The purposes of this regulation are to establish guidelines for corrective employment programs and to declare that:

(a) It is the policy of the Washington state human rights commission to encourage corrective employment programs where they are appropriate.

(b) The Washington state human rights commission interprets the law against discrimination to mean that corrective employment programs are not prohibited by the law and in some circumstances are required by it.

(c) The commission will closely monitor the adoption and implementation of corrective employment programs to see that they operate consistently with the purposes of the law against discrimination.

[Order 9, § 162-18-020, filed 9/23/71; Order 8, § 162-18-020, filed 6/22/70.]

WAC 162-18-030 Corrective employment programs are lawful. It is not an unfair practice for purposes of RCW 49.60.180 (employers), RCW 49.60.190 (labor unions) or RCW 49.60.200 (employment agencies) for a person to adopt and use corrective employment programs which comply with the requirements of this chapter or which have been individually approved by the commission.

[Order 9, § 162-18-030, filed 9/23/71; Order 8, § 162-18-030, filed 6/22/70.]

WAC 162-18-040 Permissible components of program. (1) A corrective employment program may include provisions for:

(a) Ascertaining the race, creed, color, national origin, age, sex, marital status, or handicap of applicants.

(b) Use of knowledge of the applicant's race, creed, color, national origin, age, sex, marital status, or handicap in the selection process, or for referral or dispatching.

(c) Use of procedural devices such as special files of applications submitted by members of the affected protected class to assure contact with members of the affected class when employment opportunities become available.

(d) Use of specially qualified persons or organizations to reach persons of the affected protected class.

(e) Special rules for retention of persons of the affected protected class in case of layoff.

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(f) Use of other procedures that are appropriate to correct the particular conditions at which the program is directed.

(2) The purpose of a corrective employment program is to include persons of the underrepresented protected class into the employment process; not to exclude others from it. Ordinarily, therefore, it will not be acceptable for a corrective employment program to provide for hiring only applicants from the underrepresented protected class. Persons reached by the corrective employment program should be considered along with those who have applied through normal employment channels, and the employer's normal business judgment should determine who is hired. It is permissible for the employer to give weight to the fact that an applicant is from a class of persons which is underrepresented because practices, customs or usages have limited opportunities for members of the class in the industry, occupation, or place of work. It is permissible to ask for applicants of only the underrepresented protected class of persons from a particular source, or at a particular time, if other applicants are not excluded from the total hiring process but have access from another source, or are considered at another time. It shall not be permissible to discharge any employee to implement a corrective employment program.

[Order 16, § 162-18-040, filed 5/22/74; Order 9, § 162-18-040, filed 9/23/71; Order 8, § 162-18-040, filed 6/22/70.]

WAC 162-18-050 When programs may be used. (1) An employer or labor union may use a corrective employment program:

(a) When ordered to do so by a court or administrative body of competent jurisdiction.

(b) When it consents to carry out the program in settlement of a complaint pending before the Washington state human rights commission or other public agency with comparable powers.

(c) When it voluntarily has determined for itself that employees of one or more of the protected classes are underrepresented in its workforce or in an occupation or place of work because present or past practices, customs or usages have limited opportunities for them, and it has voluntarily adopted a corrective employment program and, when necessary, has obtained the approval of this commission pursuant to WAC 162-18-080.

[Order 16, § 162-18-050, filed 5/22/74; Order 9, § 162-18-050, filed 9/23/71; Order 8, § 162-18-050, filed 6/22/70.]

WAC 162-18-060 Termination of programs. The special treatment accorded to particular groups by a corrective employment program is justified only so long as it is necessary to achieve equality of opportunity for all classes of employees. Every corrective employment program should provide for its own termination when the effects of inequality of opportunity have been eliminated.

[Order 9, § 162-18-060, filed 9/23/71; Order 8, § 162-18-060, filed 6/22/70.]

WAC 162-18-070 Voluntary programs recommended. The Washington state human rights commission urges every employer and every labor union operating a hiring hall to determine whether its workforce is imbalanced in view of the composition of the community, and whether the

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imbalance has been caused by practices, customs or usages of the employer, the union or others that have limited employment opportunities for members of any protected class. When these two circumstances are found to exist, the employer or union should institute a corrective employment program. For example, where the employer does no recruiting but relies on walk-in applicants who have learned of vacancies by word-of-mouth from present employees who are all white, the ordinary result is a perpetuation of the all-white composition of his work-force. In such a situation, the employer should adopt a corrective employment program. The commission's staff will help draw up the program if requested to do so.

[Order 16, § 162-18-070, filed 5/22/74; Order 9, § 162-18-070, filed 9/23/71; Order 8, § 162-18-070, filed 6/22/70.]

WAC 162-18-080 Commission approval of voluntary programs. A voluntary corrective employment program may depart from the general standards of the preemployment inquiry guide, chapter 162-12 WAC, only if it has been approved in advance by the executive secretary of the commission, or his designate. Programs that do not depart from the standards of the preemployment inquiry guide need not be so approved, but may be submitted for approval if the employer or labor union chooses to do so. Approval will be granted subject to revocation in the event that the plan in its practical operation does not conform to the law against discrimination and this chapter. Application for approval may be made by letter. The application should contain a fully detailed description of the proposed program, including the provisions for termination in compliance with WAC 162-18-060.

[Order 9, § 162-18-080, filed 9/23/71; Order 8, § 162-18-080, filed 6/22/70.]

WAC 162-18-090 Job orders specifying race, creed, color, national origin, sex, marital status, handicap or age. (1) Where an employer specifies that some or all applicants for jobs be of a particular race, creed, color, national origin, sex, marital status, handicap, or age pursuant to a corrective employment program that has been ordered, agreed to in settlement of a case, or voluntarily undertaken with approval of the commission, the specification shall be a bona fide occupational qualification for purposes of RCW 49.60.180(4), 49.60.200 and WAC 162-12-140, and shall not be an unfair practice. Any specification shall be accompanied by a notation that membership in the particular protected class or classes is a bona fide occupational qualification for the job and shall refer to the case providing for the corrective employment program or the commission's approval of the program.

(2) When an employer is authorized or directed to use a corrective employment program, an employment agency acting for it, including a labor union which refers workmen to the employer, may do all things the employer is authorized or directed to do, and the actions of the employment agency or union shall not be an unfair practice for purposes of RCW 49.60.200 or 49.60.190 or WAC 162-12-140. The employment agency or labor union shall identify any such specification as a bona fide occupational qualification and shall refer to its source, the same as the employer is required to do.

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[Order 16, § 162-18-090, filed 5/22/74; Order 9, 162-18-090, filed 9/23/71; Order 8, § 162-18-090, filed 6/22/70.]

WAC 162-18-100 Construction—Relation to preemployment inquiry guide. In adopting this chapter it is not the intention of the commission to supersede the preemployment inquiry guide, chapter 162-12 WAC. The preemployment inquiry guide shall continue to apply to all employers and employment agencies including those with corrective employment programs except to the extent the corrective employment program departs from it. When a corrective employment program which has been ordered, agreed to in settlement of a case, or voluntarily undertaken with approval of the commission, makes provisions for ascertaining and using knowledge of race, creed, color, sex, marital status, handicap, age, or national origin, the specific provisions establish a bona fide occupational qualification for purposes of WAC 162-12-140.

[Order 16, § 162-18-100, filed 5/22/74; Order 9, § 162-18-100, filed 9/23/71; Order 8, § 162-18-100, filed 6/22/70.]

Chapter 162-20 WAC

AGE DISCRIMINATION IN PUBLIC EMPLOYMENT

WAC

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

WAC 162-20-010 Purpose. These rules are adopted for the purpose of clarifying the jurisdiction of the Washington state human rights commission in enforcement of the age discrimination provisions of RCW 49.60.180 and 49.44.090, with respect to candidates for public employment.

[Order 9, § 162-20-010, filed 9/23/71; Resolution, § 1, filed 10/18/63.]

WAC 162-20-020 Statutes interpreted. Section 1, chapter 100, Laws of 1961, amended RCW 49.60.180 to add discrimination because of age, as an unfair practice of employers. RCW 49.60.180 is part of the law against discrimination and originally covered only discrimination because of race, creed, color or national origin.

RCW 49.60.010, which gives the human rights commission general jurisdiction and powers "... with respect to elimination and prevention of discrimination in employment ... because of race, creed, color, or national origin ..." was not amended.

RCW 49.60.120, which sets out the powers and duties of the commission, was not amended. It still reads that the commission has the power and duty to "... receive, investigate and pass upon complaints alleging unfair practices as defined in this chapter because of race, creed, color, or national origin."

RCW 49.44.090, a new section originating in chapter 100, Laws of 1961, reads in part:

"...

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

[Order 9, § 162-20-020, filed 9/23/71; Resolution, § 2, filed 10/18/63.]

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

[Order 9, § 162-20-030, filed 9/23/71; Resolution, § 3, filed 10/18/63.]

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

[Resolution, § 4, filed 10/18/63.]

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

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

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

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

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

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

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

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

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

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

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

Chapter 162-22 WAC

EMPLOYMENT—HANDICAPPED PERSONS

WAC

162-22-010	Scope of chapter.
162-22-020	Definitions.
162-22-030	Affirmative action and reporting.
162-22-040	General approach to enforcement.
162-22-050	Unfair practice.
162-22-060	Preference for disabled is not an unfair practice.
162-22-070	Bona fide occupational qualification.
162-22-080	Accommodation to employees with disabilities.
162-22-090	Physician's opinions.
162-22-100	Behavior causing risk.

WAC 162-22-010 Scope of chapter. This chapter interprets and implements the disability discrimination coverage of RCW 49.60.180 (unfair practices of employers), RCW 49.60.190 (unfair practices of labor unions), and RCW 49.60.200 (unfair practices of employment agencies).

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

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

"Disability" is short for the statutory term "the presence of any sensory, mental, or physical disability," see WAC 162-04-010, except when it appears as part of the full term.

An "able worker with a disability" is a person whose disability does not prevent the proper performance of the particular job in question.

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

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

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

WAC 162-22-030 Affirmative action and reporting.

(1) The commission will recognize a different definition of disability for purposes of affirmative action and reporting than for purposes of law enforcement. The emphasis in law enforcement is to leave no one out. The emphasis in affirmative action must be to avoid including in so many persons that statistics become meaningless. None of us is a perfect sensory, mental, or physical specimen. Theoretically, every person faces the possibility of being discriminated against because of disability—although some very remotely. It is therefore necessary to restrict the definition of disability for purposes of affirmative action and reports on the use of

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workers with disabilities to disabilities that are significant and permanent.

(2) An appropriate definition of disability for affirmative action and reporting purposes is the following, which is already in use by the Washington state department of personnel:

"Disabled: Persons with physical, mental, or sensory impairments that would impede that individual in obtaining and maintaining permanent employment and promotional opportunities. The impairments must be material rather than slight; static and permanent in that they are seldom fully corrected by medical replacement, therapy, or surgical means."

[Statutory Authority: RCW 49.60.120(3) and 1997 c 271, 98-08-035, § 162-22-030, filed 3/23/98, effective 4/23/98; Order 22, § 162-22-030, filed 5/23/75.]

WAC 162-22-040 General approach to enforcement.

(1) For the purpose of determining whether an unfair practice under RCW 49.60.180, 49.60.190, or 49.60.200 has occurred:

(a) A condition is a "sensory, mental, or physical disability" if it is an abnormality and is a reason why the person having the condition did not get or keep the job in question, or was denied equal pay for equal work, or was discriminated against in other terms and conditions of employment, or was denied equal treatment in other areas covered by the statutes. In other words, for enforcement purposes a person will be considered to be *disabled* by a sensory, mental, or physical condition if he or she is *discriminated against because of the condition* and the condition is abnormal.

(b) "The presence of a sensory, mental, or physical disability" includes, but is not limited to, circumstances where a sensory, mental, or physical condition:

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

(2) An example of subsection (1)(b)(ii) is a medical record showing that the worker had a heart attack five years ago. An example of subsection (1)(b)(iii) is rejection of a person for employment because he had a florid face and the employer thought that he had high blood pressure, but in fact he did not have high blood pressure.

[Statutory Authority: RCW 49.60.120(3) and 1997 c 271, 98-08-035, § 162-22-040, filed 3/23/98, effective 4/23/98; Order 23, § 162-22-040, filed 7/21/75.]

WAC 162-22-050 Unfair practice. (1) RCW 49.60.180 says: "It is unfair practice for any employer:

"(1) To refuse to hire a person because of . . . the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person. . . . *Provided*, That the prohibition against discrimination because of such disability shall not apply if the particular disability prevents the proper performance of the particular worker involved."

(2) An unfair practice has been committed when both of the following have occurred:

(a) An employer, employment agency, or labor union has refused to hire or has otherwise discriminated against a person because the person has a disability or because of the use

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of a trained dog guide or service animal by a person with a disability, and

(b) The disability or the use of a trained dog guide or service animal by a person with a disability does not prevent the person from properly performing the particular job.

(3) While the proviso on ability to do the job appears only in paragraph (1) of RCW 49.60.180, it logically applies to all circumstances where ability to do the job is material. The rule of the proviso will therefore be applied when appropriate in cases arising under other paragraphs of RCW 49.60.180, and also in cases under RCW 49.60.190 (labor unions), and RCW 49.60.200 (employment agencies).

[Statutory Authority: RCW 49.60.120(3) and 1997 c 271, 98-08-035, § 162-22-050, filed 3/23/98, effective 4/23/98; Order 23, § 162-22-050, filed 7/21/75.]

WAC 162-22-060 Preference for disabled is not an unfair practice.

The law against discrimination says that it is an unfair practice to discriminate *against* a person because of the presence of any disability or the use of a trained dog guide or service animal by a person with a disability. Discrimination *in favor of* a person because of the person's disability is not an unfair practice. Stating the same thing inversely, discrimination *against* a person because the person is *not disabled* is not an unfair practice. This nonreciprocal operation is different from the operation of the statutes in all other areas, except for age discrimination. For example, it is an unfair practice for an employer to discriminate either for or against persons of any race or either sex.

[Statutory Authority: RCW 49.60.120(3) and 1997 c 271, 98-08-035, § 162-22-060, filed 3/23/98, effective 4/23/98; Order 23, § 162-22-060, filed 7/21/75.]

WAC 162-22-070 Bona fide occupational qualification.

(1) The special rules in this section supplement the general rules on bona fide occupational qualification in WAC 162-16-020, 162-16-030, and 162-16-040.

(2) No bona fide occupational qualification question is raised by preferential treatment of disabled persons, since such treatment is not an unfair practice. See WAC 162-22-060.

(3) A bona fide occupational qualification differs from the statutory requirement that the disabled individual be able to properly perform the job. The determination of ability to do the job is made on an individual basis, for each person for each job. A bona fide occupational qualification is a requirement that must be met by all persons whether or not they can do the job. Ability to do the job is part of the definition of disability discrimination; a bona fide occupational qualification is an exception to the rule of nondiscrimination because of disability.

(4) The following job requirements are bona fide occupational qualifications:

(a) Any specific requirement set out in a statute of the United States or the state of Washington, or an authorized regulation of an agency of the United States government.

(b) Any specific requirement set out in an authorized regulation of an agency of the state of Washington, or in an ordinance, authorized rule, or other official act of a unit of local government of the state of Washington, unless the

human rights commission finds that the state or local requirement is not consistent with the law against discrimination.

(5) The following are not bona fide occupational qualifications:

(a) Preferences or objections of co-workers, the employer, clients, or customers.

(b) Physical obstacles or inadequacies at work facilities that reasonably can be corrected as provided in WAC 162-22-080.

[Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-22-070, filed 3/23/98, effective 4/23/98; Order 23, § 162-22-070, filed 7/21/75.]

WAC 162-22-080 Accommodation to employees with disabilities. (1) It is an unfair practice for an employer to fail or refuse to make reasonable accommodations to the sensory, mental, or physical limitations of employees, or the use of a trained dog guide or service animal by a disabled person, unless the employer can demonstrate that such an accommodation would impose an undue hardship on the conduct of the employer's business.

(2) It is an unfair practice for an employer to refuse to hire or otherwise discriminate against an able worker with a disability because the employer will be subject to the requirements of this section if the worker is hired, promoted, etc.

(3) The cost of accommodating an able worker with a disability or the use of a trained dog guide or service animal by a disabled person will be considered to be an undue hardship on the conduct of the employer's business only if it is unreasonably high in view of the size of the employer's business, the value of the employee's work, whether the cost can be included in planned remodeling or maintenance, the requirements of other laws and contracts, and other appropriate considerations.

[Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-22-080, filed 3/23/98, effective 4/23/98; Order 23, § 162-22-080, filed 7/21/75.]

WAC 162-22-090 Physician's opinions. (1) A physician's opinion on whether a disability prevents a person from properly performing a particular job will be given due weight in view of all the circumstances, including the extent of the physician's knowledge of the particular person and job, and the physician's relationship to the parties.

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

(a) Is based on the individual capabilities of the particular person, and not on generalizations as to the capabilities of all persons with the same disability, unless the disability is invariable in its disabling effect; and

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

(3) Employers who choose to rely on a physician's opinion in determining that a person cannot properly perform the particular job are advised to provide the physician with the necessary information about the job and to inform the physician of the need for an individualized opinion.

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

WAC 162-22-100 Behavior causing risk. Behavior or actions of a dog guide or service animal that constitutes an unreasonable risk to property or other persons can be grounds to request that a dog guide or service animal be removed, and shall not constitute an unfair practice.

(1) **General rule.** It is not an unfair practice under RCW 49.60.180 to request that a dog guide or service animal be removed from the workplace because the behavior or actions of that dog guide or service animal constitutes an unreasonable risk to property or other persons.

(2) **Individual judgment required.** To come within this exception, the removal of a dog guide or service animal must be based on knowledge of the present behavior or actions of the dog guide or service animal. It is an unfair practice to exclude all of the particular dog guides or service animals unless the employer can show that all of the particular dog guides or service animals will present an unreasonable risk to persons or property.

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

(4) **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.

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

(6) **Least discriminatory solution required.** It is an unfair practice to remove a dog guide or service animal from the entire workplace because the dog guide or service animal presents a risk of injury when in part of the workplace. When risk justifies the removal of a dog guide or service animal from the workplace, efforts must be made to reasonably accommodate the person with the disability.

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

Chapter 162-26 WAC

PUBLIC ACCOMMODATIONS, DISABILITY DISCRIMINATION

WAC

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WAC 162-26-010 Scope of chapter. (1) **Confined to unfair practice.** This chapter interprets and implements the disability 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 disability declared in RCW 49.60.030 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.** This chapter interprets and implements RCW 49.60.215, Unfair practices of places of public resort, accommodation, assemblage, and amusement, as amended by chapter 271, Laws of 1997.

(3) **Related regulations.** Regulations of the commission on disability discrimination in real estate transactions are in chapter 162-38 WAC. Commission regulations governing disability 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) and 1997 c 271. 98-08-035, § 162-26-010, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-26-010, filed 9/22/82.]

WAC 162-26-020 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 disability 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 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

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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) and 1997 c 271. 98-08-035, § 162-26-020, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-26-020, filed 9/22/82.]

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 disability or the use of a trained dog guide or service animal by a disabled person 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) **Other laws.** Other state laws define rights of the persons with disabilities 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, and the Americans with Disabilities Act of 1990, codified at 42 U.S.C. 12101, et seq.

[Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-26-030, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-26-030, filed 9/22/82.]

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:

"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."

(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 with a disability, with reasonable effort and in reasonable safety.

"Arranged service" means making the services or goods of a place of public accommodation available to a person with a disability 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 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.

"Fair service" means the service required by RCW 49.60.215 for disabled 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 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 disabled person's sensory, mental, or physical disability.

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

WAC 162-26-050 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 disability, or the use of a trained dog guide or service animal by a disabled person . . ."

(2) **What is a disability.** A person's condition is a "sensory, mental, or physical disability" if it is abnormal and is a reason why the person was not fairly served in a place of public accommodation. A person is *disabled* 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 disability, whether the disability is severe or slight.

(3) **When disability is present.** The presence of a sensory, mental, or physical disability includes, but is not limited to, circumstances where a sensory, mental, or physical condition:

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

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

(5) **Nondisabled not protected.** The law protects against discrimination because of the "presence" of a disability. It does not prohibit treating disabled persons more favorably than nondisabled persons. Compare WAC 162-22-060 (employment).

[Statutory Authority: RCW 49.60.120(3) and 1997 c 271, 98-08-035, § 162-26-050, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3), 82-19-086 (Order 41), § 162-26-050, filed 9/22/82.]

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

(2) **Reasonable accommodation.** In some circumstances, however, treating disabled persons the same as non-disabled persons (same service) will defeat the purposes of the law against discrimination. 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 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 disabled 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 disability, or the use of a trained dog guide or service animal by a disabled person, to be treated as not welcome, accepted, desired, or solicited."

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

WAC 162-26-070 General rules. (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 disability or use of a trained dog guide or service animal:

(a) To refuse to serve a person;

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

(c) 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;

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

(e) 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;

(f) 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; or

(g) 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 disabled 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) and 1997 c 271. 98-08-035, § 162-26-070, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-26-070, filed 9/22/82.]

WAC 162-26-080 Reasonable accommodation. (1) **Unfair 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 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) **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 person with a disability, 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 person with a disability.

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

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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 person with a disability or a person with a disability using a trained dog guide or service animal 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 person with a disability or a person with a disability using a trained dog guide or service animal 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 person with a mental disability 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.

(e) In a hospital setting, during surgery, a person with a disability might be asked to leave their trained dog guide or service animal outside the operating room while the person with the disability is individually assisted by hospital staff through the surgical procedure.

[Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-26-090, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3), 82-19-086 (Order 41), § 162-26-090, filed 9/22/82.]

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 disabled 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 persons with physical disabilities, for toilet facilities designed for use by the persons with physical disabilities, 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 disabled persons.

(f) The Americans with Disabilities Act of 1990, codified at 42 U.S.C. 12101 et seq.

(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 person with a disability 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 disabled 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 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 handicapped 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.

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

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

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

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

To come within this exception, the removal of a trained dog guide or service animal must be based on knowledge of the present behavior or actions of the dog guide or service animal. It is an unfair practice to exclude all of the particular dog guides or service animals unless the place of public accommodation can show that all of the particular dog guides or service animals will present an unreasonable risk to property or other persons.

(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

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severe injury may be given more weight than risk of slight injury.

(6) **Risk to person with a disability or trained dog guide or service animal.** Risk to the person with a disability or trained dog guide or service animal is not a reason to deny service. Liability for injury to customers with a disability is governed by law other than the law against discrimination. 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. Annoyance on the part of staff or 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.

(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, 161-26-080 [162-26-080]) or arranged service (WAC 162-26-060, 162-260-090), if possible. When risk justifies removal of a dog guide or service animal from the place of public accommodation, efforts must be made to reasonably accommodate the person with a disability.

[Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-26-110, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3), 82-19-086 (Order 41), § 162-26-110, filed 9/22/82.]

WAC 162-26-120 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 persons with disabilities 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) and 1997 c 271. 98-08-035, § 162-26-120, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3), 82-19-086 (Order 41), § 162-26-120, filed 9/22/82.]

WAC 162-26-130 Use of trained dog guide or service animal. (1) **Coverage of statute.** RCW 49.60.215 requires

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fair service in a place of public accommodation "regardless of . . . the use of a trained dog guide or service animal by a disabled person . . ." as well as because of disability itself.

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

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

WAC 162-26-140 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 disabled person. 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. This section is intended to prohibit waivers on the basis of disability, but is not intended to preclude waivers required on a nondiscriminatory basis.

[Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-26-140, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3), 83-02-012 (Order 43), § 162-26-140, filed 12/23/82.]

Chapter 162-28 WAC

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

WAC

162-28-030	Schools are places of public accommodation.
162-28-040	Equal educational opportunity for children who are limited in English language skills because of national origin.

WAC 162-28-030 Schools are places of public accommodation. All schools and other educational facilities in the state of Washington, public or private, except those operated or maintained by a bona fide religious or sectarian institution, are "places of public resort, accommodation, assemblage or amusement" for purposes of the Washington state law against discrimination, chapter 49.60 RCW. See the definition of the quoted term in RCW 49.60.040.

(2) This means that it is an unfair practice under RCW 49.60.215 for nonexempt schools or educational facilities or their agents or employees

"to commit any 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 . . . except for conditions and limitations established by law and applicable to all persons, regardless of race, creed, color, or national origin."

(3) This public accommodations section of the law against discrimination applies to schools in their relationship with students and potential students and their parents, and with members of the public who seek to use school facilities or who have an interest in how school facilities are used. Other sections of the law against discrimination govern schools in their relationship to employees (e.g. RCW 49.60.180), to those with whom schools have real estate transactions (e.g. RCW 49.60.222), and to others. RCW 49.60.030 declares a general civil right to be free from discrimination because of race, creed, color, national origin, sex, or the presence of any sensory, mental or physical handicap. Public schools are governed by Article IX, section 1 (equal education) and Article XXXI (Amendment 61) (equal rights) of the Washington constitution and various federal and state statutes on equal treatment of the races and sexes, in addition to the law against discrimination.

[Order 17, § 162-28-030, filed 6/28/74.]

WAC 162-28-040 Equal educational opportunity for children who are limited in English language skills because of national origin. (1) It is an unfair practice under RCW 49.60.215 for a school or educational institution covered by that section to fail or refuse to provide equal educational opportunity to children who are deficient in English language skills because of their national origin. Schools attended by such children shall meet the following standards:

(a) Where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.

(b) The affirmative steps taken under part (a) shall build competency in the English language without detriment to the children's skills in other languages, and without impairing or suppressing the children's cultural identity and heritage. The steps may include bilingual-bicultural education. The appropriateness of particular action will depend in part on whether the school or educational institution has many children or only a few children who require the steps. Nothing in this section is intended to preclude inclusion in the program of children who are deficient in the English language for reasons other than their national origin where that is compatible with the purposes of this section.

(c) School districts must not assign national origin-minority group students to classes for the mentally retarded on the basis of criteria which essentially measure or evaluate English language skills; nor may school districts deny national origin-minority group children access to college preparatory courses on a basis directly related to the failure of the school system to inculcate English language skills.

(d) Any ability grouping or tracking system employed by the school system to deal with the special language skill needs of national origin-minority group children must be designed to meet such language skill needs as soon as possible and must not operate as an educational deadend or permanent track.

(e) School districts have the responsibility to adequately notify national origin-minority group parents of school activ-

ities which are called to the attention of other parents. Such notice in order to be adequate may have to be provided in a language other than English.

(2) This section is intended to be consistent with the requirements of section 601 the United States Civil Rights Act of 1964, 42 USC section 2000d, and the regulations of the United States Department of Health, Education and Welfare, 45 CFR Part 80, and HEW guidelines to selected school districts dated 10 July 1970, 35 Fed. Reg. 11595, as interpreted in *Lau v. Nichols*, 39 L. ed 2d 1, 94 S. Ct. . . . , (1974). Parts (a), (c), (d), and (e) of paragraph (1) are taken verbatim from the 10 July 1970 HEW guideline.

[Order 17, § 162-28-040, filed 6/28/74.]

Chapter 162-30 WAC SEX DISCRIMINATION

WAC

162-30-010	General approach.
162-30-020	Maternity.

WAC 162-30-010 General approach. In the interest of consistency and to avoid confusion on the part of persons governed by both the state and federal sex discrimination laws, the commission will generally follow interpretations of the sex discrimination provisions of Title VII of the United States Civil Rights Act of 1964, 42 USC § 2000e and following, where the federal act is comparable to the state act. See in particular part 1604 of the regulations of the United States Equal Employment Opportunity Commission, 42 [29] CFR Part 1604. The commission will not follow federal precedents where it believes that a different interpretation will better carry out the purposes of the state act.

[Order 9, § 162-30-010, filed 9/23/71.]

WAC 162-30-020 Maternity. (1) **Findings.** Pregnancy is an expectable incident in the life of a woman. Many women of childbearing age depend on their jobs for economic support. Practices such as terminating pregnant women, refusing to grant leave or accrued sick pay for disabilities relating to pregnancy, or refusing to hire women for responsible jobs because they may become pregnant, impair the opportunity of women to obtain employment and to advance in employment on the same basis as men. Such practices discriminate against women because of their sex.

(2) **Purposes.** The purpose of the law against discrimination in employment because of sex (chapter 49.60 RCW) is to equalize employment opportunity for men and women. This regulation explains how the law applies to practices which disadvantage women because of pregnancy or childbirth.

(3) **Hiring pregnant women.** It is an unfair practice for an employer to refuse to hire a qualified woman because of pregnancy unless doing so would be unreasonable in view of the necessities of the business. The burden shall be on the employer to show that a decision not to hire a pregnant woman was based on adequate facts concerning her individual ability to perform the job or adequate facts concerning business necessity. For example, an employer hiring workers into a training program that cannot accommodate absences

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for the first two months might be justified in refusing to hire a pregnant woman whose delivery date would occur during those first two months. On the other hand, negative assumptions about pregnant women in employment must not influence the hiring decision. Such assumptions include but are not limited to:

(a) That pregnant women do not return to the job after childbirth;

(b) That the time away from work required for childbearing will increase the employer's costs;

(c) That the disability period for childbirth will be unreasonably long;

(d) That pregnant women are frequently absent from work due to illness;

(e) That clients, co-workers, or customers object to pregnant women on the job.

(4) **Treatment of employed women.** It is an unfair practice for an employer to discharge a woman, penalize her in terms or conditions of employment, or in any way limit the job opportunities of a woman because she is pregnant or may require time away from work for childbearing.

(5) **Leave for temporary disability.**

(a) An employer shall provide a woman a leave of absence for the period of time that she is sick or temporarily disabled because of pregnancy or childbirth. A leave in excess of the actual period of sickness or disability is not required by the law or this regulation. The terms and conditions of the leave shall be determined by the employer's policy on temporary disability, unless the policy conflicts with this regulation. For example:

(i) If advance notice is required for a leave for planned surgeries, or other anticipated disabilities, it may be required also for a leave for childbirth;

(ii) If the uniform policy requires a physician's statement to verify the leave period for other disabilities, a physician's statement may be required to verify the leave period for disabilities relating to pregnancy or childbirth.

(b) While application of the employer's general leave policy to disability because of pregnancy or childbirth will ordinarily afford equal opportunity for women and men, there may be circumstances when this is not so. One circumstance would be where the employer allows no leave for any sickness or other disability by any employee, or so little leave time that a pregnant woman must terminate employment. Because such a leave policy has a disparate impact on women, it is an unfair practice, unless the policy is justified by business necessity.

(c) An employer shall allow a woman to return to the same job, or a similar job of at least the same pay, if she has taken a leave of absence only for the actual period of disability relating to pregnancy or childbirth. Refusal to do so must be justified by adequate facts concerning business necessity.

(6) **Disability benefits.** Illness or disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are temporary disabilities and must be treated as such under any sick leave plan or temporary disability benefit plan provided in whole or in part by the employer. All written and unwritten policies and practices concerning disabilities must be applied to disabilities resulting from pregnancy or childbirth on the same terms and con-

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ditions as they are applied to other temporary disabilities. For example, if the following benefits or privileges are available for other temporary disabilities, then they must be available also for disabilities resulting from pregnancy or childbirth:

(a) Payment in lieu of wages under a sick leave plan or temporary disability benefit plan. (If no leave pay is granted for other temporary disabilities, then it need not be granted for disabilities relating to pregnancy or childbirth.)

(b) Extensions of leave time (e.g., use of vacation or leave without pay);

(c) Retention and accrual of benefits, such as seniority, retirement, and pension rights, during the leave period.

(7) **Insurance benefits.** Insurance benefits provided by the employer must be equal for male and female employees. For example:

(a) If full health insurance coverage is provided for male employees, then full coverage, including maternity and abortion, must be provided for female employees;

(b) If maternity insurance is provided for the wives of male employees, then the same coverage must be provided for the female employees.

Subsection 7 applies only if the employer pays the premium in whole or in part or has participated in negotiating the terms of the insurance policy.

(8) **Marital status immaterial.** Discrimination because of marital status is an unfair practice. An employer's leave policies and benefits, including health insurance, must apply equally to married and unmarried employees.

(9) **Labor unions and employment agencies.** It is an unfair practice for a labor union or employment agency to conduct its own affairs so as to deny anyone his or her rights under the law and this regulation.

(10) **Commission rulings.** Any person in doubt as to the application of this regulation to a particular set of facts may request an opinion letter from the executive secretary of the Washington state human rights commission or a declaratory ruling of the commission under WAC 162-08-620.

(11) **Construction with federal law.** This regulation is intended to be consistent with Title VII of the United States Civil Rights Act of 1964 and the United States Equal Employment Opportunity Commission Employment Policies Relating to Pregnancy and Childbirth, 29 CFR § 1604.10, and shall be construed accordingly.

[Order 15, § 162-30-020, filed 9/28/73; Order 11, § 162-30-020, filed 6/26/72.]

Chapter 162-36 WAC

REAL ESTATE TRANSACTIONS

WAC

162-36-001	Definitions.
162-36-005	Discrimination.
162-36-006	Retaliation.
162-36-010	Soliciting buyers from neighbors of listed house.
162-36-020	Content and language of solicitation.

WAC 162-36-001 Definitions. (1) "Brokerage services" means access to or membership or participation in a multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings;

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(2) "Dwelling" means any building, structure or portion thereof that is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land that is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof;

(3) "Families with children status" means one or more individuals who have not attained the age of eighteen years being domiciled with a parent or another person having legal custody of such individual or individuals, or with the designee of such parent or other person having such legal custody, with the written permission of such parent or other person. Families with children status also applies to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen years;

(4) "Real estate transaction" includes the sale, appraisal, brokering, exchange, purchase, rental, or lease of real property; transacting or applying for a real estate loan; the provision of brokerage services; or the making or purchasing of loans secured by residential real estate;

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

(6) "Unfair practices on the basis of creed" or "discrimination on the basis of creed" includes, but is not limited to religious discrimination under the federal Fair Housing Amendments Act of 1988.

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

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

[Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-36-001, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-36-001, filed 6/13/96, effective 7/14/96.]

WAC 162-36-005 Discrimination. (1) It is an unfair practice for any person, whether acting for himself, herself, or another, because of sex, marital status, race, creed, color, national origin, families with children status, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a disabled person:

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

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

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

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

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

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(f) To discriminate in the sale or rental, or to otherwise make unavailable or deny a dwelling, to any person; or to a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or to any person associated with the person buying or renting;

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

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

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

(j) To discriminate in the course of negotiating, executing, or financing a real estate transaction whether by mortgage, deed of trust, contract, or other instrument imposing a lien or other security in real property, or in negotiating or executing any item or service related thereto including issuance of title insurance, mortgage insurance, loan guarantee, or other aspect of the transaction. Nothing in this section shall limit the effect of RCW 49.60.176 relating to unfair practices in credit transactions;

(k) To attempt to do any of the unfair practices defined in this chapter or chapter 49.60 RCW.

(2) It is an unfair practice for any person, for profit, to induce or attempt to induce any person to sell or rent any real property by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, creed, color, sex, national origin, families with children status, or with any sensory, mental or physical disability and/or the use of a trained dog guide or service animal by a disabled person.

(3) It is an unfair practice to insert in a written instrument relating to real property a provision that is void under RCW 49.60.224(1) or to honor or attempt to honor such a provision in the chain of title.

(4) Nothing in this chapter prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, creed, national origin, sex, disability, the use of a trained dog guide or service animal by a disabled person, or families with children status.

(5) Nothing in this chapter limits the applicability of any reasonable federal, state or local restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

(6) Nothing in this chapter prohibiting discrimination based on families with children status applies to housing for older persons as defined by the federal Fair Housing Amendments Act of 1988, 42 U.S.C. sec 3607 (b)(1) through (3), as amended by the Housing for Older Persons Act of 1995, P.L. 104-76, as enacted on December 28, 1995.

[Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-36-005, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-36-005, filed 6/13/96, effective 7/14/96.]

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WAC 162-36-006 Retaliation. It is an unlawful practice to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, rights regarding real estate transactions, regardless of the merits of the underlying claim, contentions or allegations at issue.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-36-006, filed 6/13/96, effective 7/14/96.]

WAC 162-36-010 Soliciting buyers from neighbors of listed house. Some real estate firms have a practice of sending letters, post cards or printed circulars to residents of a neighborhood where they have a home listed for sale in order to obtain referrals of prospective buyers of the home. Such a practice does not necessarily discriminate against persons on the basis of race, creed, color, national origin, sex, marital status, families with children status, the presence of a sensory, mental or physical disability or the use of a trained dog guide or service animal by a disabled person. However, the practice can have a discriminatory effect, and thereby constitute an unfair practice in a real estate transaction within the meaning of this chapter, where:

(1) It is used only in neighborhoods occupied entirely or predominantly by persons of a single race, creed, color, national origin, sex, marital status, families with children status, have the presence of a sensory, mental or physical disability, or who use a trained dog guide or service animal as a disabled person, or

(2) Persons of a particular race, creed, color, national origin, sex, marital status, families with children status, have the presence of a sensory, mental or physical disability, or use a trained dog guide or service animal as a disabled person living in the same neighborhood are not sent solicitations, or

(3) The content or language of the solicitation invites, promotes or perpetuates residential segregation or discrimination on the basis of race, creed, color, national origin, sex, marital status, families with children status, the presence of a sensory, mental or physical disability, or the use of a trained dog guide or service animal by a disabled person.

[Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-36-010, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-36-010, filed 6/13/96, effective 7/14/96; Order 14, § 162-36-010, filed 7/16/73.]

WAC 162-36-020 Content and language of solicitation. Residential segregation on the basis of race, creed, national origin or other ethnic classification is rooted in the history of this country and fixed in the patterns of thought of many people. The content and language of a solicitation of names of prospective purchasers directed to neighbors of a house listed for sale, must be examined in this context in assessing whether the solicitation constitutes an unfair practice within the meaning of RCW 49.60.222 and WAC 162-36-010. A solicitation which indicates that the recipient of the solicitation can control the type of persons who will move into the neighborhood by referring appropriate prospective buyers, is likely to be understood as an invitation to discriminate on the basis of race, creed, color, national ori-

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gin, sex, marital status, families with children status, the presence of a sensory, mental or physical disability, or the use of a trained dog guide or service animal by a disabled person. Phrases such as "uphold the standards of the community" (when the "standards" are unspecified) are likely to be understood the same way. Accordingly, it is an unfair practice under RCW 49.60.222 and WAC 162-36-010 for the content or language of a neighborhood solicitation to:

(1) Suggest in any way that the solicitor, buyer or seller has the power to control the type or character of the person or persons to whom the property involved may be sold;

(2) Invite or provoke discriminatory feelings, actions, or responses from the person or persons being solicited;

(3) Make reference to an assumed standard of the community which the solicitor, buyer or seller must or will uphold, unless the particular community standard is identified specifically, and the standard does not have the effect of excluding persons of a particular race, creed, color, national origin, sex, marital status, families with children status, the presence of a sensory, mental or physical disability, or the use of a trained dog guide or service animal by a disabled person.

[Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-36-020, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-36-020, filed 6/13/96, effective 7/14/96; Order 14, § 162-36-020, filed 7/16/73.]

Chapter 162-38 WAC

REAL ESTATE TRANSACTIONS, DISABILITY DISCRIMINATION

WAC

162-38-010	Scope and purpose of chapter.
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162-38-040	Definitions.
162-38-050	Who is protected.
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162-38-120	Unfair to request or require waiver of rights.
162-38-130	Behavior causing risk.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

162-38-020	Purpose of chapter. [Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-38-020, filed 9/22/82.] Repealed by 96-13-045, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3) and 49.60.240.
162-38-030	Related law. [Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-38-030, filed 9/22/82.] Repealed by 96-13-045, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3) and 49.60.240.

WAC 162-38-010 Scope and purpose of chapter. (1) **Confined to unfair practices.** This chapter interprets and implements the disability discrimination coverage provided by the law against discrimination regarding unfair practices in real estate transactions, RCW 49.60.222 through 49.60.340. This chapter applies to the unfair practices which the commission is empowered by RCW 49.60.120(4) to

eliminate and prevent through the administrative process provided in RCW 49.60.230 through 49.60.270.

(2) **Principal statutes interpreted.** The statutes principally interpreted in this chapter are RCW 49.60.222 through 49.60.225. This chapter does not define the scope of the civil right to be free from discrimination because of a disability declared in RCW 49.60.030 or interpret other statutes.

(3) **Sources of policy guidance.** In applying and interpreting the provisions of the law against discrimination regarding discrimination in real estate transactions based upon the presence of a sensory, mental or physical disability or the use of a trained dog guide or service animal by a disabled person, the commission is guided by the following:

(a) Legislative policy statements found in RCW 49.60.010, 49.60.030, 70.84.010 and 70.92.100; and

(b) The federal Fair Housing Amendments Act of 1988, 42 U.S.C. 3601, et seq.

(4) **Related statutes and regulations.** Chapter 70.92 RCW (provisions in buildings for aged and disabled persons); chapter 70.84 RCW ("white cane law" for disabled persons); chapter 19.27 RCW (state building code); chapter 162-26 WAC (disability discrimination in public accommodations); chapter 162-22 WAC (disability discrimination in employment); chapter 162-40 WAC (disability discrimination in credit transactions); chapter 162-36 WAC (unfair practices in real estate transactions); and chapter 51-30 WAC (standards for barrier-free facilities).

[Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-38-010, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-38-010, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-38-010, filed 9/22/82.]

WAC 162-38-035 Concurrent remedy in court.

Courts have jurisdiction under RCW 49.60.030(2) to remedy violations of RCW 49.60.222, 49.60.223, 49.60.2235 and 49.60.224 as interpreted and implemented by this chapter, concurrently with the commission. When the commission learns that an action on the same facts has been filed in court, the commission will administratively close the case before it in compliance with RCW 49.60.226 and WAC 162-08-062.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-38-035, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-38-035, filed 9/22/82.]

WAC 162-38-040 Definitions. The following words or phrases are used in this chapter in the meaning given, unless the context clearly indicates another meaning.

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

"Standards for barrier-free facilities" means standards for making building and facilities accessible to physically disabled persons, pursuant to chapter 51-30 WAC and chapter 70.92 RCW. See WAC 162-38-030(2), 162-38-070.

"Disability" is short for "the presence of a sensory, mental or physical disability."

"Landlord" means anyone other than the occupant of real property who attempts to control use of the property under claim of right arising out of an ownership interest in real property by that person or another person for whom that per-

son acts. The term includes owners of rental property, trustees, receivers, persons controlling the common areas used in connection with condominiums, and agents or others acting in the interest of any such persons.

"Rental property" includes real property that is rented or leased, offered for rental or lease, or built or maintained for rental or lease.

"Structural" means the load-bearing members and essential structure or composition of a place, as distinguished from its finish, decorations or fittings. Examples of structural components are floors, walls, stairs, door openings, 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 and other floor covers.

"Tenant" is a person who rents or seeks to rent real property.

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

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

[Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-38-040, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-38-040, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-38-040, filed 9/22/82.]

WAC 162-38-050 Who is protected. (1) **Scope.** RCW 49.60.222 defines practices in connection with real estate transactions that are unfair when done because of "the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a disabled person." Nothing in this chapter or in chapter 49.60 RCW, however, prohibits treating disabled persons more favorably in a real estate transaction than persons who are not disabled.

(2) **Presence of disability.** The presence of a sensory, mental, or physical disability includes, but is not limited to, an abnormal condition that:

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

[Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-38-050, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-38-050, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-38-050, filed 9/22/82.]

WAC 162-38-060 General rules. (1) **General principles apply.** The unfair practices in real estate transactions as defined in RCW 49.60.222 through 49.60.225 apply to claims of disability discrimination. This chapter deals with special questions as to the application of the law to disability discrimination. Where no special provision is made by the statute, by this chapter, or by exception by the commissioners under WAC 162-06-030, general principles of nondiscrimination apply.

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(2) **Statutory rules.** It is an unfair practice for any person to do any of the acts enumerated in RCW 49.60.222 through 49.60.225 because of the presence of a sensory, mental or physical disability or the use of a trained dog guide or service animal by a disabled person. For purposes of this chapter, an unfair practice in a real estate transaction on the basis of a disability includes discrimination because of a disability of the buyer or renter, a person residing in or intending to reside in that dwelling after it is so sold, rented or made available, or any person associated with that buyer or renter.

[Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-38-060, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-38-060, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-38-060, filed 9/22/82.]

WAC 162-38-070 Accessibility. (1) **Laws requiring accessibility.** The principal laws that require that buildings be made accessible are:

(a) The state building code, chapter 19.27 RCW, which includes the standards for barrier free facilities in chapter 51-30 WAC, promulgated under the authority of chapter 70.92 RCW.

(b) The federal Fair Housing Amendments Act of 1988, codified at 42 U.S.C. 3601, et seq., and accompanying regulations (chapter 24 CFR Part 100).

(c) The Americans With Disabilities Act of 1990, codified at 42 U.S.C. 12101, et seq.

(d) The Rehabilitation Act of 1973, codified at 29 U.S.C. 701, et seq., and accompanying regulations.

(e) The Architectural Barriers Act, codified at 42 U.S.C. 4151, et seq.

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

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

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

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

(a) To build or remodel in violation of the standards for barrier free facilities, chapter 51-30 WAC, or other requirement of law on accessibility as defined herein.

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

(c) To take any action of the types set out in RCW 49.60.222 through 49.60.225 against a disabled person because the real property transaction involves real property that is not accessible.

(d) For an owner of four or more units of rental property who is making nonstructural changes in the rental property to fail to eliminate barriers to accessibility when this can be done without substantially changing the scope or cost of the

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

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

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

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

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

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-38-070, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). 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, a landlord is not required to pay for alterations or additions to real property needed to make it accessible by disabled persons.

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

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

(b) The tenant agrees to restore the interior of the dwelling to the condition that existed before the modification, reasonable wear and tear excepted; or

(c) As otherwise required by RCW 49.60.222(2).

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

(a) Ramps for wheelchairs or walkers.

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

(c) Grab bars in bathrooms.

(d) Roll-out shelves in kitchens.

(e) Simplified locking systems for use by a person with mental disabilities.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-38-080, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-38-080, filed 9/22/82.]

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

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

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

(3) **Public areas.** "Public" areas for purposes of public accommodations coverage of rental property include all areas intended for use by more than one tenant, or by one or more tenants and the resident owner. The area need not be open to the public at large. The area is covered if it is open to all tenants, or any two tenants, or the owner and one or more tenants. In addition to public halls, public elevators and public washrooms, public areas include garbage disposal facilities, recreation facilities, laundry or other work areas, and open space.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-38-090, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-38-090, filed 9/22/82.]

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

(2) **General rule.** The same rules that apply to the treatment of persons because of disability under RCW 49.60.222 and this chapter apply to the treatment of persons with disabilities because they use a trained dog guide or service animal.

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

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

[Statutory Authority: RCW 49.60.120(3), 1997 c 271, 98-08-035, § 162-38-100, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-38-100, filed 9/22/82.]

WAC 162-38-110 Inquiries to disabled applicants. (1) **Unfair practice.** It is an unfair practice under RCW 49.60.222 (1)(g) for a landlord to inquire into matters personal to a disabled applicant beyond what is necessary and appropriate to the landlord-tenant relationship. For example, the landlord may inquire as to how many persons will occupy the unit, but ordinarily will have no other reason to know whether a disabled person is assisted by an aide, and when.

(2) **Reference to employment rules.** The commission's rules on pre-employment inquiries, chapter 162-12 WAC,

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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) and 49.60.240. 96-13-045, § 162-38-110, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3), 82-19-086 (Order 41), § 162-38-110, filed 9/22/82.]

WAC 162-38-120 Unfair to request or require waiver of rights. It is an unfair practice for any person as a condition of entering into or continuing a real estate transaction to request or require another person to waive rights or hold anyone harmless because the real property will be occupied by a disabled person or by a person with a disability using a trained dog guide or service animal.

[Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-38-120, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3) and 49.60.240. 96-13-045, § 162-38-120, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3), 82-19-086 (Order 41), § 162-38-120, filed 9/22/82.]

WAC 162-38-130 Behavior causing risk. Behavior or actions of a dog guide or service animal that constitutes an unreasonable risk to property or other persons can be grounds to request that a dog guide or service animal be removed, and shall not constitute an unfair practice.

(1) **General rule.** If a reasonable attempt to eliminate the behavior or actions of a dog guide or service animal that constitutes an unreasonable risk to property or other persons fails, it is not an unfair practice under RCW 49.60.222 to request that the dog guide or service animal be removed from a housing unit.

(2) **Individual judgment required.** To come within this exception, the removal of a dog guide or service animal must be based on knowledge of the present behavior or actions of the dog guide or service animal. It is an unfair practice to exclude all of the particular dog guides or service animals unless the property owner can show that all of the particular dog guides or service animals will present an unreasonable risk to persons or property.

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

(4) **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.

(5) **Annoyance to staff or other tenants.** Annoyance on the part of staff or other tenants of a rental property at the presence of the dog guide or service animal is not an unreasonable "risk to property or other persons" justifying the removal of the dog guide or service animal.

(6) **Least discriminatory solution required.** When risk justifies the removal of a dog guide or service animal from a rental property, efforts must be made to reasonably accommodate the person with the disability.

[Statutory Authority: RCW 49.60.120(3) and 1997 c 271. 98-08-035, § 162-38-130, filed 3/23/98, effective 4/23/98.]

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Chapter 162-40 WAC CREDIT TRANSACTIONS

WAC

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(202.5(d)) Other information a creditor may not request.

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162-40-020

Coordination with federal law. [Order 25, § 162-40-020, filed 4/23/76.] Repealed by Order 34, filed 6/30/77. Later promulgation, see WAC 162-40-021.

162-40-030

General rule. [Order 25, § 162-40-030, filed 4/23/76.] Repealed by Order 34, filed 6/30/77. Later promulgation, see WAC 162-40-051.

162-40-040

Definitions. [Order 25, § 162-40-040, filed 4/23/76.] Repealed by Order 34, filed 6/30/77. Later promulgation, see WAC 162-40-041.

162-40-050

Discouraging applications. [Order 25, § 162-40-050, filed 4/23/76.] Repealed by Order 34, filed 6/30/77. Later promulgation, see WAC 162-40-061.

162-40-060

Separate accounts. [Order 25, § 162-40-060, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.

162-40-070

Inquiries as to marital status. [Order 24, § 162-40-070, filed 2/20/76.] Repealed by Order 34, filed 6/30/77. Later promulgation, see WAC 162-40-101.

162-40-080

Inquiries as to race, creed, color, national origin, or sex. [Order 24, § 162-40-080, filed 2/20/76.] Repealed by Order 34, filed 6/30/77.

162-40-090

Designation of title and other sex specific terms. [Order 24, § 162-40-090, filed 2/20/76.] Repealed by Order 34, filed 6/30/77.

162-40-100

Designation of name. [Order 24, § 162-40-100, filed 2/20/76.] Repealed by Order 34, filed 6/30/77. Later promulgation, see WAC 162-40-091.

162-40-110

Receipt of child support, alimony, or maintenance payment. [Order 24, § 162-40-110, filed 2/20/76.] Repealed by Order 34, filed 6/30/77. Later promulgation, see WAC 162-40-091.

- 162-40-120 Designation of spouse's name. [Order 24, § 162-40-120, filed 2/20/76.] Repealed by Order 34, filed 6/30/77. Later promulgation, see WAC 162-40-101.
- 162-40-130 Designation of previous names of applicant. [Order 24, § 162-40-130, filed 2/20/76.] Repealed by Order 34, filed 6/30/77.
- 162-40-135 Commission review of forms and procedures. [Order 24, § 162-40-135, filed 2/20/76.] Repealed by Order 34, filed 6/30/77.
- 162-40-140 Application of community property law. [Order 25, § 162-40-140, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
- 162-40-150 Information about a spouse or former spouse. [Order 25, § 162-40-150, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
- 162-40-160 Alimony, child support and maintenance obligations. [Order 25, § 162-40-160, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
- 162-40-170 Income from alimony, child support and maintenance. [Order 25, § 162-40-170, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
- 162-40-180 Discounting income. [Order 25, § 162-40-180, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
- 162-40-190 Credit scoring. [Order 25, § 162-40-190, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
- 162-40-200 Telephone listing in applicant's name. [Order 25, § 162-40-200, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
- 162-40-210 Continued ability to repay. [Order 25, § 162-40-210, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
- 162-40-220 Change of name or marital status. [Order 25, § 162-40-220, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
- 162-40-230 Credit history. [Order 25, § 162-40-230, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
- 162-40-240 Use and retention of prohibited information. [Order 25, § 162-40-240, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
- 162-40-250 Notification of action taken and reasons for denial. [Order 25, § 162-40-250, filed 4/23/76; Order 24, § 162-40-250, filed 2/20/76.] Repealed by Order 34, filed 6/30/77.
- 162-40-260 Accounts established on or after 1 June 1977. [Order 29, § 162-40-260, filed 10/29/76; Order 28, § 162-40-260, filed 5/21/76.] Repealed by Order 34, filed 6/30/77.
- 162-40-270 Accounts established prior to 1 June 1977. [Order 29, § 162-40-270, filed 10/29/76; Order 28, § 162-40-270, filed 5/21/76.] Repealed by Order 34, filed 6/30/77.
- 162-40-280 General. [Order 25, § 162-40-280, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
- 162-40-290 Signature of spouse. [Order 25, § 162-40-290, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
- 162-40-300 Secured credit. [Order 25, § 162-40-300, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
- 162-40-310 Prohibited information. [Order 25, § 162-40-310, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
- 162-40-320 Establishing credit files. [Order 25, § 162-40-320, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
- 162-40-330 Name on credit report. [Order 25, § 162-40-330, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
- 162-40-340 Public record information. [Order 28, § 162-40-340, filed 5/21/76.] Repealed by Order 34, filed 6/30/77.
- 162-40-350 Community credit files. [Order 25, § 162-40-350, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
- 162-40-360 Transfer of joint account information. [Order 25, § 162-40-360, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
- 162-40-370 Preservation of records. [Order 25, § 162-40-370, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
- 162-40-380 Exemptions from certain procedural requirements. [Order 25, § 162-40-380, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
- 162-40-390 Effective date. [Order 25, § 162-40-390, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
- 162-40-400 Remedies. [Order 25, § 162-40-400, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.
- 162-40-410 Relation between Regulation B and chapter 162-40 WAC. [Order 25, § 162-40-410, filed 4/23/76.] Repealed by Order 34, filed 6/30/77.

WAC 162-40-010 Scope of chapter. This chapter contains regulations carrying out the purposes of the provisions of the law against discrimination covering credit transactions,

and carrying out the policies and practices of the commission in connection therewith. The principal statutes involved are RCW 49.60.175, 49.60.176, and 49.60.222(9).

[Order 25, § 162-40-010, filed 4/23/76.]

WAC 162-40-021 (202.11) Coordination with federal law. (1) Equal Credit Opportunity Act. It is the policy of the commission to coordinate its enforcement of the Washington state law against discrimination with enforcement of the federal Equal Credit Opportunity Act, Pub. L. 93-495, as amended Pub. L. 94-239, 15 USC § 1691 *et seq.*, to the maximum extent possible without diminishing the impact of the state law where the two statutes differ. Most persons will be covered by both statutes. However, the coverage of the federal statute is broader than the state statute. Federal law alters, affects or preempts only those regulations contained in this chapter which are inconsistent with federal law, and then only to the extent of the inconsistency. The regulations contained in this chapter are not inconsistent with federal law if the creditor can comply with such regulations without violating federal law.

(2) Differences between state and federal regulations. The following sections should be closely reviewed, in that these sections contain provisions unique to the state regulation or are different due to the effect of Washington state community property law, chapter 26.16 RCW: WAC 162-40-031; 162-40-041 (5), (7), (12), (18), (20), (21), (22); 162-40-071; 162-40-081; 162-40-101; 162-40-111; 162-40-131 (2)(c), (4)(a), (5)(c), (6); 162-40-161; 162-40-171(5); 162-40-191; 162-40-201; 162-40-231; 162-40-241(2); 162-40-251.

(3) Informal advice. In addition to following the procedures outlined in WAC 162-40-030, persons may seek informal advice from the commission's staff on the differences between the state and federal regulations. Such inquiries should be directed to the commission's credit review officer.

[Order 34, § 162-40-021, filed 6/30/77.]

WAC 162-40-031 (202.1(d)) Commission review of forms, practices and procedures. (1) When requested to do so, the executive secretary or another person designated by the executive secretary to carry out the task will review forms, procedures or practices of persons subject to this chapter and will respond in writing saying that the form, procedure, or practice is in compliance with this chapter and the law against discrimination, or identifying in what respect the form, procedure, or practice is not in compliance.

(2) Requests for review of forms, procedures, or practices should be in writing, preferably in the form of a letter, and shall have attached a complete copy of the form or a precise statement of the procedure or practice to be reviewed.

(3) Requests for review of forms, procedures, or practices may be addressed to the credit review officer at the Seattle office of the commission.

(4) Commission responses can be withdrawn, revised, or modified at any time: *Provided*, That such withdrawal, revision, or modification shall not be deemed effective until the commission shall have given notice of the withdrawal, revision, or modification to the person who requested the commission response. Responses will be made in terms of com-

pliance with statutes, regulations, commission rulings, and case law at the time of the writing. Responses shall be deemed to be superseded to the extent of any material change in the statutes, regulations, or case law.

(5) When a person has relied in good faith on a commission response under this section, the commission will not thereafter assert against that person a contrary position on compliance of that form, procedure or practice with the law and this chapter until such time as the response is withdrawn, revised, or modified, unless the statutes, regulations, or case law have changed in a material respect. The commission's response shall have no effect on charges of unfair practices involving conduct other than use of the reviewed form, procedure, or practice except that the content of the response or the fact that it was requested is material to prove or disprove some issue concerning those charges.

(6) In addition to the provisions of this section, a creditor may request a declaratory ruling, pursuant to WAC 162-08-620.

[Order 34, § 162-40-031, filed 6/30/77.]

WAC 162-40-041 (202.2) Definitions. For purposes of this regulation, unless the context indicates otherwise, the following definitions and rules of construction shall apply:

(1) "Account" means an extension of credit. When employed in relation to an account, the word "use" refers only to open end credit.

(2) "Adverse action."

(a) For the purposes of notification of action taken, statement of reasons for denial, and record retention, the term means:

(i) A refusal to grant credit in substantially the amount or on substantially the terms requested by an applicant unless the creditor offers to grant credit other than in substantially the amount or on substantially the terms requested by the applicant and the applicant uses or expressly accepts the credit offered; or

(ii) A termination of an account or an unfavorable change in the terms of an account that does not affect all or a substantial portion of a classification of a creditor's accounts; or

(iii) A refusal to increase the amount of credit available to an applicant when the applicant requests an increase in accordance with procedures established by the creditor for the type of credit involved.

(b) The term does not include:

(i) A change in the terms of an account expressly agreed to by an applicant; or

(ii) Any action or forbearance relating to an account taken in connection with inactivity, default, or delinquency as to that account; or

(iii) A refusal to extend credit at a point of sale or loan in connection with the use of an account because the credit requested would exceed a previously established credit limit on the account; or

(iv) A refusal to extend credit because applicable law prohibits the creditor from extending the credit requested; or

(v) A refusal to extend credit because the creditor does not offer the type of credit or credit plan requested.

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(3) "Applicant" means any person who requests or who received an extension of credit from a creditor, and includes any person who is or may be contractually liable regarding an extension of credit other than a guarantor, surety, endorser, or similar party.

(4) "Application" means an oral or written request for an extension of credit that is made in accordance with procedures established by a creditor for the type of credit requested. The term does not include the use of an account or line of credit to obtain an amount of credit that does not exceed a previously established credit limit. A "completed application for credit" means an application in connection with which a creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested (including, but not limited to, credit reports, any additional information requested from the applicant, and any approvals or reports by governmental agencies or other persons that are necessary to guarantee, insure, or provide security for the credit or collateral); provided, however, that the creditor has exercised reasonable diligence in obtaining such information. Where an application is incomplete respecting matters that the applicant can complete, a creditor shall make a reasonable effort to notify the applicant of the incompleteness and shall allow the applicant a reasonable opportunity to complete the application.

(5) "Community property" means community property under the law of the state of Washington. RCW 26.16.030.¹ See companion definition of separate property, *infra*.

(6) "Consumer credit" means credit extended to a natural person in which the money, property or service that is the subject of the transaction is primarily for personal, family, or household purposes.

(7) "Consumer reporting agency" means any person which for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purposes of furnishing reports on consumers to third parties. For purposes of this regulation this definition shall not include creditors who report only their own transactions or experiences between the consumer and the person making the report.

(8) "Contractually liable" means expressly obligated to repay all debts arising on an account by reason of an agreement to that effect.

(9) "Credit" means the right granted by a creditor to an applicant to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment therefor.

(10) "Credit card" means any card, plate, coupon book, or other single credit device existing for the purpose of being used from time to time upon presentation to obtain money, property, or services on credit.

(11) "Creditor" means a person who, in the ordinary course of business, regularly participates in the decision of whether or not to extend credit. The term includes an assignee, transferee, or subrogee of an original creditor who so participates; but an assignee, transferee, subrogee, or other creditor is not a creditor regarding any violation of chapter 49.60 RCW or this chapter committed by the original or

another creditor unless the assignee, transferee, subrogee, or other creditor knew or had reasonable notice of the act, policy, or practice that constituted the violation before its involvement with the credit transaction. The term does not include a person whose only participation in a credit transaction is to honor a credit card.

(12) "Credit transaction" is defined in RCW 49.60.040.² Consistent with Regulation B, "credit transaction" may also mean every aspect of an applicant's dealings with a creditor regarding an application for, or an existing extension of, credit including, but not limited to, information requirements; investigation procedures; standards of creditworthiness; terms of credit; furnishing of credit information; revocation, alteration, or termination of credit; and collection procedures.

(13) "Extend credit and extension of credit" mean the granting of credit in any form and include, but are not limited to, credit granted in addition to any existing credit or credit limit; credit granted pursuant to an open end credit plan; the refinancing or other renewal of credit, including the issuance of a new credit card in place of an expiring credit card or in substitution for an existing credit card; the consolidation of two or more obligations; or the continuance of existing credit without any special effort to collect at or after maturity.

(14) "Good faith" means honesty in fact in the conduct or transaction.

(15) "Inadvertent error" means a mechanical, electronic, or clerical error that a creditor demonstrates was not intentional and occurred notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(16) "Marital status" means the state of being unmarried, married, or separated, as defined by applicable state law. For the purposes of this regulation, the term "unmarried" includes persons who are single, divorced, or widowed.

(17) "Open end credit" means credit extended pursuant to a plan under which a creditor may permit an applicant to make purchases or obtain loans from time to time directly from the creditor or indirectly by use of a credit card, check, or other device as the plan may provide. The term does not include negotiated advances under an open end real estate mortgage or letter of credit.

(18) "Person" is defined in RCW 49.60.040.³ Consistent with Regulation B, "person" may also mean a natural person, corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(19) "Prohibited basis" means race, color, creed, national origin, sex and marital status.

(20) "Separate property" is defined in RCW 26.16.010 and 26.16.020.⁴

Notes:

¹RCW 26.16.030. Community property defined—Management and control. Property not acquired or owned, as prescribed in RCW 26.16.010 and 26.16.020, acquired after marriage by either husband or wife or both, is community property. Either spouse, acting alone, may manage and control community property, with a like power of disposition as the acting spouse has over his or her separate property, except:

(1) Neither spouse shall devise or bequeath by will more than one-half of the community property.

(2) Neither spouse shall give community property without the express or implied consent of the other.

(3) Neither spouse shall sell, convey, or encumber the community real property without the other spouse joining in the execution of the deed or

other instrument by which the real estate is sold, conveyed, or encumbered, and such deed or other instrument must be acknowledged by both spouses.

(4) Neither spouse shall purchase or contract to purchase community real property without the other spouse joining in the transaction of purchase or in the execution of the contract to purchase.

(5) Neither spouse shall create a security interest other than a purchase money security interest as defined in RCW 62A.9-107 in, or sell, community household goods, furnishings, or appliances unless the other spouse joins in executing the security agreement or bill of sale, if any.

(6) Neither spouse shall acquire, purchase, sell, convey, or encumber the assets, including real estate, or the good will of a business where both spouses participate in its management without the consent of the other: *Provided*, That where only one spouse participates in such management the participating spouse may, in the ordinary course of such business, acquire, purchase, sell, convey or encumber the assets, including real estate, or the good will of the business without the consent of the nonparticipating spouse. (1972 ex.s. c 108 § 3; Code 1881 § 2409; RRS § 6892.)

Notes:

²RCW 49.60.040: "Credit transaction" includes any open or closed end credit transaction, whether in the nature of a loan, retail installment transaction, credit card issue or charge, or otherwise, and whether for personal or for business purposes, in which a service, finance, or interest charge is imposed, or which provides for repayment in scheduled payments, when such credit is extended in the course of the regular course of any trade or commerce, including but not limited to transactions by banks, savings and loan associations or other financial lending institutions of whatever nature, stock brokers, or by a merchant or mercantile establishment which as part of its ordinary business permits or provides that payment for purchases of property or service therefrom may be deferred.

³RCW 49.60.040: "Person" includes one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees and receivers or any group of persons; it includes any owner, lessee, proprietor, manager, agent or employee, whether one or more natural persons; and further includes any political or civil subdivisions of the state and any agency or instrumentality of the state or of any political or civil subdivision thereof.

⁴RCW 26.16.010. Separate property of husband. Property and pecuniary rights owned by the husband before marriage and that acquired by him afterwards by gift, bequest, devise or descent, with the rents, issues and profits thereof, shall not be subject to the debts or contracts of his wife, and he may manage, lease, sell, convey, encumber or devise by will such property without the wife joining in such management, alienation or encumbrance, as fully and to the same effect as though he were unmarried.

RCW 26.16.020 Separate property of wife. The property and pecuniary rights of every married woman at the time of her marriage or afterwards acquired by gift, devise or inheritance, with the rents, issues and profits thereof, shall not be subject to the debts or contracts of her husband, and she may manage, lease, sell, convey, encumber or devise by will such property to the same extent and in the same manner that her husband can, property belonging to him.

[Order 34, § 162-40-041, filed 6/30/77.]

WAC 162-40-051 (202.4) General rule prohibiting discrimination. A creditor shall not discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction.

[Order 34, § 162-40-051, filed 6/30/77.]

RULES CONCERNING APPLICATIONS

WAC 162-40-061 (202.5(a)) Discouraging applications. A creditor shall not make any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application.

[Order 34, § 162-40-061, filed 6/30/77.]

WAC 162-40-071 (202.5 (b)(1)) General rule concerning requests for information. Except as otherwise provided in this chapter, a creditor may request any information in connection with an application unless such information is used to discriminate against an applicant or a prospective applicant on a prohibited basis.

[Order 34, § 162-40-071, filed 6/30/77.]

WAC 162-40-081 (202.5(b)) Request for designation of membership in certain protected classes. Except as otherwise provided in this chapter, a creditor shall not inquire about the race, creed, color, national origin or sex of an applicant in connection with any aspect of a credit transaction. Some exceptions are:

(1) A creditor may obtain such information as may be required by a regulation, order, or agreement issued by, or entered into with, a court or an enforcement agency to monitor or enforce compliance with this statute, or other federal and state statute or regulation.

(2) The Executive Secretary (or his/her designate) may authorize specific creditors to obtain and/or retain information concerning membership in protected classes for purposes which will aid in carrying forth the law against discrimination.

(3) A creditor may inquire as to an applicant's permanent residence or whether the applicant is a permanent resident of the United States. If the creditor determines that the applicant is not a permanent resident of the United States, the creditor may then inquire as to the applicant's immigration status and additional information, as may be necessary to ascertain its rights and remedies regarding repayment.

[Order 34, § 162-40-081, filed 6/30/77.]

WAC 162-40-091 (202.5(d)) Other information a creditor may not request. (1) A creditor shall not inquire whether any income stated in an application is derived from alimony, child support, or separate maintenance payments, unless the creditor appropriately discloses to the applicant that such income need not be revealed if the applicant does not desire the creditor to consider such income in determining the applicant's creditworthiness. Since a general inquiry about income, without further specification, may lead an applicant to list alimony, child support, or separate maintenance payments, a creditor shall provide an appropriate notice to an applicant before inquiring about the source of an applicant's income, unless the terms of the inquiry (such as an inquiry about salary, wages, investment income, or similarly specified income) tend to preclude the unintentional disclosure of alimony, child support, or separate maintenance payments.

(2) A creditor shall not request information about birth control practices, intentions concerning the bearing or rearing of children, or capability to bear children. This does not preclude a creditor from inquiring about the number and ages of an applicants' dependents or about dependent related financial obligations or expenditures, provided such information is requested without regard to sex, marital status, or any other prohibited basis.

(3) An application form shall use only terms that are neutral as to sex. An applicant may be requested to designate a

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title on an application form (such as Ms., Miss, Mr., or Mrs.) if the form appropriately discloses that the designation of such a title is optional.

(4) A creditor shall not request an applicant's marital status other than by use of the terms "married," "unmarried," and "separated." A creditor may explain that the category "unmarried" includes single, divorced and widowed persons.

[Order 34, § 162-40-091, filed 6/30/77.]

WAC 162-40-101 (202.5(c)) Information about a spouse or former spouse. (1) Subject to subsection (2) below, a creditor may request any information concerning an applicant's spouse (or former spouse under (e) below) that may be requested about the applicant if:

(a) The spouse will be permitted to use the account; or

(b) The spouse will be contractually liable upon the account; or

(c) The applicant is relying upon the spouse's income as a basis for repayment of the credit requested; or

(d) The applicant resides in Washington or another community property state or property upon which the applicant is relying as a basis for repayment of the credit requested is located in such a state; or

(e) The applicant is relying on alimony, child support, or separate maintenance payments from a spouse or former spouse as a basis for repayment of the credit requested.

(2) A creditor may assume that a married applicant who resides in a community property state is incurring a community obligation and will be relying upon community property for repayment: *Provided*, If an applicant demonstrates that he/she is relying solely on the applicant's separate property as a basis for repayment of the credit requested, a creditor may not request information about such applicant's spouse or former spouse except in accordance with subsection 1(a), 1(b) or 1(e) above.

(3) A creditor may request an applicant to list any account upon which the applicant is liable and to provide the name and address in which such account is carried. A creditor may also ask the names in which an applicant has previously received credit.

[Order 34, § 162-40-101, filed 6/30/77.]

WAC 162-40-111 (202.5(e)) Application forms: Special state requirements. A creditor need not use written application forms. If a creditor chooses to use a written form, it must comply with the provisions of 12 C.F.R. §202.5(e), and

(1) If the form inquires about the name of the applicant's spouse, the form shall provide space for the first and last names of the spouse;

(2) If the form inquires about an applicant's credit references, the form shall also inquire if the applicant's credit references and/or credit history may be verified in any other name(s).

(3) If the form inquires about an applicant's income, it shall provide space in which the applicant may list income derived from child support, alimony or separate maintenance payments.

[Order 34, § 162-40-111, filed 6/30/77.]

RULES CONCERNING EVALUATION OF APPLICATIONS

WAC 162-40-121 (202.6(a)) General rule concerning use of information. Except as otherwise provided in this chapter, a creditor may consider in evaluating an application any information that the creditor obtains, so long as the information is not used to discriminate against an applicant on a prohibited bases.

[Order 34, § 162-40-121, filed 6/30/77.]

WAC 162-40-131 (202.6(b)) Specific rules concerning use of information. (1) Except as provided in this chapter, a creditor shall not take a prohibited basis into account in any system of evaluating the creditworthiness of applicants.

(2) A creditor shall not use, in evaluating the creditworthiness of an applicant, assumptions or aggregate statistics relating to the likelihood that any group of persons will bear or rear children or, for that reason, will receive diminished or interrupted income in the future.

(3) A creditor shall not take into account the existence of a telephone listing in the name of an applicant for consumer credit. A creditor may take into account the existence of a telephone in the residence of such an applicant.

(4) A creditor shall not discount or exclude from consideration the income of an applicant or the spouse of the applicant because of a prohibited basis or because the income is derived from part time employment, but a creditor may consider the amount and probable continuance of any income in evaluating an applicant's creditworthiness. Where an applicant relies on alimony, child support, or separate maintenance payments in applying for credit, a creditor shall consider such payments as income to the extent that they are likely to be consistently made. Factors that a creditor may consider in determining the likelihood of consistent payments include, but are not limited to, whether the payments are received pursuant to a written agreement or court decree; the length of time that the payments have been received; the regularity of receipt, the availability of procedures to compel payment; and the creditworthiness of the payor, including the credit history of the payor where available under the Fair Credit Reporting Act or other applicable laws.

(a) None of the factors permitted to be considered by a creditor by this subsection in determining the likelihood of consistent alimony, child support or maintenance payments shall be used by a creditor as a subterfuge for routinely erecting unreasonable or insurmountable barriers to applicants relying on such payments to establish creditworthiness.

(5) To the extent that a creditor considers credit history in evaluating the creditworthiness of similarly qualified applicants for a similar type and amount of credit, in evaluating an applicant's creditworthiness, a creditor shall consider (unless the failure to consider results from inadvertent error):

(a) The creditor history, when available, of accounts designated as accounts that the applicant and a spouse are permitted to use or for which both are contractually liable;

(b) On the applicant's request, any information that the applicant may present tending to indicate that the credit history being considered by the creditor does not accurately reflect the applicant's creditworthiness; and

(c) On the applicant's request, the credit history, when available, of any account reported in the name of the applicant's spouse or former spouse for which the applicant was obligated by operation of the community property law or which an applicant can demonstrate reflects accurately the applicant's willingness or ability to repay.

(6) A creditor may consider whether an applicant is a permanent resident of the United States. If the applicant is not a permanent resident, the creditor may consider the applicant's immigration status and additional information, as such may be necessary to ascertain its rights and remedies regarding repayment.

[Order 34, § 162-40-131, filed 6/30/77.]

RULES CONCERNING EXTENSION OF CREDIT

WAC 162-40-141 (202.7 (a), (b)) Opening accounts. (1) Individual accounts. A creditor shall not refuse to grant an individual account to a creditworthy applicant on the basis of sex, marital status, or any other prohibited basis.

(2) Name on account. A creditor shall not prohibit an applicant from opening or maintaining an account in a birth-given first name and a surname that is the applicant's birth-given surname, the spouse's surname, or a combined surname.

[Order 34, § 162-40-141, filed 6/30/77.]

WAC 162-40-151 (202.7(c)) Action concerning existing open end accounts. (1) In the absence of evidence of inability or unwillingness to repay, a creditor shall not take any of the following actions regarding an applicant who is contractually liable on an existing open end account on the basis of a change in the applicant's name or marital status:

- (i) Require a reapplication; or
- (ii) Change the terms of the account; or
- (iii) Terminate the account.

(2) A creditor may require a reapplication regarding an open end account on the basis of a change in an applicant's marital status where the credit granted was based on income earned by the applicant's spouse if the applicant's income alone at the time of the original application would not support the amount of credit currently extended.

[Order 34, § 162-40-151, filed 6/30/77.]

WAC 162-40-161 (202.7(d)) Signature of spouse or other person. (1) Except as provided in this section, a creditor shall not require the signature of an applicant's spouse or other person, other than a joint applicant, on any credit instrument if the applicant qualifies under the creditor's standards of creditworthiness for the amount and terms of the credit requested.

(2) If an applicant requests unsecured credit and relies in part upon property to establish creditworthiness, a creditor may consider state law; the form of ownership of the property, its susceptibility to attachment, execution, severance, and partition; and other factors that may affect the value to the creditor of the applicant's interest in the property. If necessary to satisfy the creditor's standards of creditworthiness, the creditor may require the signature of the applicant's spouse or other person on any instrument necessary, or rea-

sonably believed by the creditor to be necessary, under applicable state law to make the property relied upon available to satisfy the debt in the event of default.

(3) If an applicant requests secured credit, a creditor may require the signature of the applicant's spouse or other person on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the property being offered as security available to satisfy the debt in the event of default, for example, any instrument to create a valid lien, pass clear title, waive inchoate rights, or assign earnings.

(4) If, under a creditor's standards of creditworthiness, the personal liability of an additional party is necessary to support the extension of the credit requested, a creditor may request that the applicant obtain a co-signer, guarantor, or the like. The applicant's spouse may serve as an additional party, but a creditor shall not require that the spouse be the additional party. For the purposes of this section, a creditor shall not impose requirements upon an additional party that the creditor may not impose upon an applicant.

[Order 34, § 162-40-161, filed 6/30/77.]

WAC 162-40-171 (202.9) Notifications. (1) Notification of action taken. A creditor shall notify an applicant of action taken within:

(a) 30 days after receiving a completed application concerning the creditor's approval of, or adverse action regarding, the application (notification of approval may be express or by implication, where, for example, the applicant receives a credit card, money, property, or services in accordance with the application);

(b) 30 days after taking adverse action on an uncompleted application;

(c) 30 days after taking adverse action regarding an existing account; and

(d) 90 days after the creditor has notified the applicant of an offer to grant credit other than in substantially the amount or on substantially the terms requested by the applicant if the applicant during those 90 days has not expressly accepted or used the credit card.

(2) Content of notification. Any notification given to an applicant against whom adverse action is taken shall be in writing and shall contain: A statement of the action taken; a statement that the Washington state human rights commission administers compliance with the Washington state law against discrimination; and

(a) A statement of specific reasons for the action taken; or

(b) A disclosure of the applicant's right to a statement of reasons within 30 days after receipt by the creditor of a request made within 60 days of such notification, the disclosure to include the name, address, and telephone number of the person or office from which the statement of reasons can be obtained. If the creditor chooses to provide the statement of reasons orally, the notification shall also include a disclosure of the applicant's right to have any oral statement of reasons confirmed in writing within 30 days after a written request for confirmation is received by the creditor.

(3) Multiple applicants. If there is more than one applicant, the notification need only be given to one of them, but

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must be given to the primary applicant where one is readily apparent.

(4) Multiple creditors. If a transaction involves more than one creditor and the applicant expressly accepts or uses the credit offered, this section does not require notification of adverse action by any creditor. If a transaction involves more than one creditor and either no credit is offered or the applicant does not expressly accept or use any credit offered, then each creditor taking adverse action must comply with this section. The required notification may be provided indirectly through a third party which may be one of the creditors, provided that the identity of each creditor taking adverse action is disclosed. Whenever the notification is to be provided through a third party, a creditor shall not be liable for any act or omission of the third party that constitutes a violation of this section if the creditor accurately and in a timely manner provided the third party with the information necessary for the notification and was maintaining procedures reasonably adapted to avoid any such violation.

(5) Form of notice and statement of specific reasons.

(a) A creditor satisfies the requirements of subsection (2) above if it provides the following notice or one substantially similar:

"Washington state law against discrimination prohibits discrimination in credit transactions because of race, creed, color, national origin, sex or marital status. The Washington state human rights commission administers compliance with this law."

The above notice may be combined with or follow the notice required by 12 C.F.R. §202.9.

(b) Statement of specific reasons. A statement of reasons for adverse action shall be sufficient if it is specific and indicates the principal reason(s) for the adverse action. A creditor may formulate its own statement of reasons in checklist or letter form or may use all or a portion of the sample form printed below, which, if properly completed, satisfies the requirements of subsection (2)(a). Statements that the adverse action was based on the creditor's internal standards or policies or that the applicant failed to achieve the qualifying score on the creditor's credit scoring system are insufficient.

STATEMENT OF CREDIT DENIAL,
TERMINATION, OR CHANGE

Date

Applicant's name:

Applicant's address:

Description of account, transaction, or requested credit:

Description of adverse action taken:

PRINCIPAL REASON(S) FOR ADVERSE ACTION CONCERNING CREDIT

- Credit application incomplete
- Insufficient credit references
- Unable to verify credit references
- Temporary or irregular employment
- Unable to verify employment
- Length of employment
- Insufficient income
- Excessive obligations

- Unable to verify income
- Inadequate collateral
- Too short a period of residence
- Temporary residence
- Unable to verify residence
- No credit file
- Insufficient credit file
- Delinquent credit obligations
- Garnishment, attachment, foreclosure, repossession, or suit
- Bankruptcy
- We do not grant credit to any applicant on the terms and conditions you request.
- Other, specify:

DISCLOSURE OF USE OF INFORMATION OBTAINED FROM AN OUTSIDE SOURCE

- Disclosure inapplicable
- Information obtained in a report from a consumer reporting agency.
 - Name:
 - Street address:
 - Telephone number:
- Information obtained from an outside source other than a consumer reporting agency.

Under the Fair Credit Reporting Act, you have the right to make a written request, within 60 days of receipt of this notice, for disclosure of the nature of the adverse information.

 - Creditor's name:
 - Creditor's address:
 - Creditor's telephone number: ..

(6) Other information. The notification required by subsection (1) may include other information so long as it does not detract from the required content. This notification may also be combined with any disclosures required under any other law, provided that all requirements for clarity and placement are satisfied; and it may appear on either or both sides of the paper if there is a clear reference on the front to any information on the back.

(7) Oral notifications. The applicable requirements of this section are satisfied by oral notifications (including statements of specific reasons) in the case of any creditor that did not receive more than 150 applications during the calendar year immediately preceding the calendar year in which the notification of adverse action is to be given to a particular applicant.

(8) Withdrawn applications. Where an applicant submits an application and the parties contemplate that the applicant will inquire about its status, if the creditor approves the application and the applicant has not inquired within 30 days after applying, then the creditor may treat the application as withdrawn and need not comply with subsection (1).

(9) Failure of compliance. A failure to comply with this section shall not constitute a violation when caused by an inadvertent error; provided that, on discovering the error, the creditor corrects it as soon as possible and commences compliance with the requirements of this section.

(10) Notification. A creditor notifies an applicant when a writing addressed to the applicant is delivered or mailed to the applicant's last known address or, in the case of an oral

notification, when the creditor communicates with the applicant.

[Order 34, § 162-40-171, filed 6/30/77.]

WAC 162-40-181 (202.10) Furnishing of credit information. (1) Accounts established on or after June 1, 1977.

(a) For every account established on or after June 1, 1977, a creditor that furnishes credit information shall:

(i) Determine whether an account offered by the creditor is one that an applicant's spouse is permitted to use or upon which the spouses are contractually liable other than as guarantors, sureties, endorsers, or similar parties; and

(ii) Designate any such account to reflect the fact of participation of both spouses.

(b) Except as provided in subsection (3), if a creditor furnishes credit information concerning an account designated under this section (or designated prior to the effective date of this regulation) to a consumer reporting agency, it shall furnish the information in a manner that will enable the agency to provide access to the information in the name of each spouse.

(c) If a creditor furnishes credit information concerning an account designated under this section (or designated, prior to the effective date of this regulation) in response to an inquiry regarding a particular applicant, it shall furnish the information in the name of the spouse about whom such information is requested.

(2) Accounts established prior to June 1, 1977. For every account established prior to and in existence on June 1, 1977, a creditor that furnishes credit information shall either:

(a) Not later than June 1, 1977

(i) Determine whether the account is one that an applicant's spouse, if any, is permitted to use or upon which the spouses are contractually liable other than as guarantors, sureties, endorsers, or similar parties;

(ii) Designate any such account to reflect the fact of participation of both spouses; and

(iii) Comply with the reporting requirements of subsections (1)(b) and (1)(c); or

(b) Mail or deliver to all account holders or all married account holders in whose name the account is carried the notice required by 12 C.F.R. §202.10 (b)(2).

(3) Requests to change manner in which information is reported. Within 90 days after receipt of a properly completed request to change the manner in which information is reported to consumer reporting agencies and others regarding an account described in subsection (2), a creditor shall designate the account to reflect the fact of participation of both spouses. When furnishing information concerning any such account, the creditor shall comply with the reporting requirements of subsection (1)(b) and (1)(c). The signature of an applicant or the applicant's spouse on a request to change the manner in which information concerning an account is furnished shall not alter the legal liability of either spouse upon the account or require the creditor to change the name in which the account is carried.

(4) Inadvertent errors. A failure to comply with this section shall not constitute a violation when caused by an inadvertent error; provided that, on discovering the error, the

creditor corrects it as soon as possible and commences compliance with the requirements of this section.

[Order 34, § 162-40-181, filed 6/30/77.]

CONSUMER REPORTING AGENCIES

WAC 162-40-191 General rule. A consumer reporting agency shall not report to a creditor any information relating to an applicant's race, creed, color, national origin or sex.

[Order 34, § 162-40-191, filed 6/30/77.]

WAC 162-40-201 Rules concerning credit files. (1) Establishing credit files. A consumer reporting agency shall not refuse to establish a credit file for any person in any name under which an applicant may open or maintain an account pursuant to WAC 162-40-140. This file may be referenced with the file of the applicant's spouse.

(2) Name on credit report. A consumer reporting agency shall issue credit reports in the name in which the request for the report was received. A credit report may include the name of the spouse or former spouse, if available.

(3) Public record information. If a consumer reporting agency places public record information in credit files and such information contains the names of both spouses, such information shall be referenced so that it is accessible in the name of each spouse.

(a) If a consumer reporting agency places public record information concerning a decree of separation or dissolution of marriage in credit files, it shall place such information in the individual credit file of each spouse.

(4) Community credit files. A consumer reporting agency may reference the credit files of married persons by listing in a spouse's file that the information is contained in the other spouse's file, provided the information is accessible by use of each spouse's name.

(5) Transfer of joint account information. A consumer reporting agency shall, upon request, transfer information from joint credit files to an individual credit file regardless of the name in which the information was originally reported.

[Order 34, § 162-40-201, filed 6/30/77.]

GENERAL PROVISIONS

WAC 162-40-211 (202.12) Record retention. (1) Retention of prohibited information. Retention in a creditor's files of any information, the use of which is prohibited by these regulations, shall not constitute a violation of these regulations where such information was obtained:

(a) From any source prior to June 1, 1976;

(b) At any time from consumer reporting agencies, and;

(c) At any time from an applicant or others without the specific request of the creditor; or

(d) At any time as required to monitor compliance with this statute, or other federal or state statute or regulation.

(2) Preservation of records.

(a) For 25 months after the date that a creditor notifies an applicant of action taken on an application, the creditor shall retain as to that application in original form or a copy thereof:

(1999 Ed.)

(i) Any application form that it receives, any information required to be obtained concerning characteristics of an applicant to monitor compliance with any other written or recorded information used in evaluating the application and not returned to the applicant at the applicant's request;

(ii) A copy of the following documents if furnished to the applicant in written form (or, if furnished orally, any notation or memorandum with respect thereto made by the creditor):

(A) The notification of action taken; and

(B) The statement of specific reasons for adverse action; and

(iii) Any written statement submitted by the applicant alleging a violation of this regulation.

(b) For 25 months after the date that a creditor notifies an applicant of adverse action regarding an account, other than in connection with an application, the creditor shall retain as to that account, in original form or a copy thereof:

(i) Any written or recorded information concerning such adverse action; and

(ii) Any written statement submitted by the applicant alleging a violation of this regulation.

(c) In addition to the requirements of subsections (a) and (b), any creditor that has actual notice that a complaint has been filed against it under chapter 49.60 RCW and these regulations shall retain the information required in subsections (a) and (b) until notified of final disposition of the matter by the Washington state human rights commission.

(d) In any transaction involving more than one creditor, any creditor not required to comply with WAC 162-40-180 (notifications) shall retain for the time period specified in subsection (2) all written or recorded information in its possession concerning the applicant, including a notation of action taken in connection with any adverse action.

(3) Failure of compliance. A failure to comply with this section shall not constitute a violation when caused by an inadvertent error.

[Order 34, § 162-40-210 (codified as WAC 162-40-211), filed 6/30/77.]

WAC 162-40-221 Rules of construction. (1) Any violation of the provisions of this chapter shall constitute an unfair practice within the meaning of RCW 49.60.175, 49.60.176, and/or 49.60.222(9).

(2) Captions, catchlines and parenthetical references to Regulation B, 12 C.F.R. pt. 202 are intended solely as aids to convenient reference, and no inference as to the substance of any provision of these regulations may be drawn from them.

[Order 34, § 162-40-221, filed 6/30/77.]

EXEMPTIONS

WAC 162-40-231 (202.8) Exemption for special purpose credit program. Any credit program that qualifies as a special purpose credit program under the provisions of 12 C.F.R. §202.8 is exempt from the operation of these regulations to the extent these regulations are inconsistent with the provisions of 12 C.F.R. §202.8.

[Order 34, § 162-40-231, filed 6/30/77.]

WAC 162-40-241 (202.3) Special treatment for certain classes of transactions. (1) Classes of transactions afforded special treatment. The following classes of transactions are afforded specialized treatment:

(a) Extensions of credit relating to transactions under public utility tariffs involving services provided through pipe, wire, or other connected facilities if the charges for such public utility services, the charges for delayed payment, and any discount allowed for early payment are filed, with, or reviewed or regulated by, an agency of the federal government, a state, or a political subdivision thereof;

(b) Extensions of credit subject to regulation under section 7 of the Securities and Exchange Act of 1934 or extensions of credit by a broker or dealer subject to regulation as a broker or dealer under the Securities and Exchange Act of 1934;

(c) Extensions of incidental consumer credit, other than the types described in subsections (a) and (b):

(i) That are not made pursuant to the terms of a credit card account;

(ii) On which no finance charge as defined in 12 C.F.R. §226.4 (Regulation Z) is or may be imposed; and

(iii) that are not payable by agreement in more than four installments;

(d) Extensions of credit primarily for business or commercial purposes, including extensions of credit primarily for agricultural purposes, but excluding extensions of credit of the types described in subsections (a) and (b); and

(e) Extensions of credit made to governments or governmental subdivisions, agencies, or instrumentalities.

(2) Public utilities credit. The following provisions of these regulations shall not apply to extensions of credit of the type described in subsection (1)(a):

(a) WAC 162-40-181 relating to furnishing of credit information; and

(b) WAC 162-40-211 relating to record retention.

(3) Securities credit. The following provisions of these regulations shall not apply to extensions of credit of the type described in subsection (1)(b):

(a) WAC 162-40-101 concerning information about a spouse or former spouse;

(b) WAC 162-40-091(4) concerning information about marital status;

(c) WAC 162-40-081 concerning information about the sex of an applicant;

(d) WAC 162-40-141(2) relating to designation of name, but only to the extent necessary to prevent violation of rules regarding an account in which a broker or dealer has an interest, or rules necessitating the aggregation of accounts of spouses for the purpose of determining controlling interests, beneficial interests, beneficial ownership, or purchase limitations and restrictions;

(3) WAC 162-40-151 relating to action concerning open end accounts;

(f) WAC 162-40-161 relating to signatures of spouse or other person;

(g) WAC 162-40-181 relating to furnishing of credit information; and

(h) WAC 162-40-211 relating to record retention.

(4) Incidental credit. The following provisions of these regulations shall not apply to extensions of credit of the type described in subsection (1)(c):

(a) WAC 162-40-101 concerning information about a spouse or former spouse;

(b) WAC 162-40-091(4) concerning information about marital status;

(c) WAC 162-40-091(1) concerning information about income derived from alimony, child support, separate maintenance payments;

(d) WAC 162-40-081 concerning information about the sex of an applicant to the extent necessary for medical records or similar purposes;

(e) WAC 162-40-161 relating to signatures of spouse or other person;

(f) WAC 162-40-171 relating to notifications;

(g) WAC 162-40-181 relating to furnishing of credit information; and

(h) WAC 162-40-211 relating to record retention.

(5) Business credit. The following provisions of these regulations shall not apply to extensions of credit of the type described in subsection (1)(d):

(a) WAC 162-40-091(4) concerning information about marital status;

(b) WAC 162-40-171 relating to notifications, unless an applicant, within 30 days after oral or written notification that adverse action has been taken, requests in writing the reasons for such action;

(c) WAC 162-40-181 relating to furnishing of credit information;

(d) WAC 162-40-211 relating to record retention, unless an applicant, within 90 days after adverse action has been taken, requests in writing that the records relating to the application be retained.

(6) Governmental credit. Except for WAC 162-40-010 relating to the authority and scope, WAC 162-40-041 relating to definitions, WAC 162-40-051 relating to the general rule prohibiting discrimination, WAC 162-40-071 relating to the general rule concerning requests for information, WAC 162-40-121 relating to the general rule concerning use of information, and WAC 162-40-211(1) relating to the retention of prohibited information, the provisions of these regulations shall not apply to extensions of credit of the type described in subsection (1)(e).

[Order 34, § 162-40-241, filed 6/30/77.]

WAC 162-40-251 Remedies. A hearing tribunal may order, or the commission's staff may propose upon a finding of reasonable cause to believe a violation of chapter 49.60 RCW has occurred, or in prefinding settlement efforts, remedies, including but not limited to:

(1) Requiring the creditor to establish in writing nondiscriminatory criteria for the granting of credit.

(2) Requiring the creditor or consumer reporting agency to conduct training sessions of its employees and agents in order to insure that discriminatory practices cease.

(3) Requiring the creditor to pay actual or special damages to aggrieved parties.

(4) Requiring the creditor to submit to the commission proof that it has ceased said discriminatory practices and implemented a policy of nondiscrimination.

(5) Requiring that the creditor conduct remedial advertising.

(6) Requiring the creditor to offer credit to the aggrieved parties.

(7) Requiring the creditor or consumer reporting agency to revise the structure and content of its files to eliminate discrimination and to remove all references to the complaint from the complainant's file.

(8) Requiring the posting of a notice in view of applicants for credit stating that it is an unfair practice for any person furnishing credit to deny or terminate such credit or to adversely affect an individual's credit standing because of such individual's race, creed, color, sex, national origin, or marital status.

(9) Requiring the distribution of these regulations to each of its employees and agents who determine, influence, or effectuate the creditor's policies and practices.

[Order 34, § 162-40-251, filed 6/30/77.]