

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

- (a) The Washington State Building Code.
- (b) Chapter 219, Laws of 1971 ex. sess.
- (c) Chapter 35, Laws of 1967.
- (d) RCW 35.68.075.

(e) United States law; including The Americans with Disabilities Act of 1990, codified at 42 U.S.C. 12101 et seq., the Rehabilitation Act of 1973, and the Federal Fair Housing Act.

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

(a) Were lawful when constructed; and

(b) Are presently lawful under the state building code and other law outside of the law against discrimination.

This exemption does not relieve the operator of a place of public accommodation of the duty to make reasonable accommodation to the needs of disabled persons as described in WAC 162-26-080.

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

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

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

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

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

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

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

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

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

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

[Statutory Authority: RCW 49.60.120(3). WSR 99-15-025, § 162-26-100, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW

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