

WAC 162-26-110 Behavior causing risk. (1) Proviso interpreted.

This section interprets the following proviso of RCW 49.60.215:

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

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

(3) **Individual judgment required.** To come within this exception, the denial of service must be based on knowledge of the present behavior or actions of the individual who is not served. It is an unfair practice to exclude all persons who have a disability or who have a particular disability unless the operator of the place of public accommodation can show that all persons with the disability will present a risk to persons or property.

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

(5) **Degree of risk.** Risk of injury to persons may be given more weight than risk of injury to property. Risk of severe injury may be given more weight than risk of slight injury.

(6) **Risk to person with a disability.** Risk to the person with a disability is not a reason to deny service. Law other than the law against discrimination governs liability for injury to customers with a disability. The law against discrimination affects tort liability only insofar as it includes persons with a disability within the public for which public accommodations must be made safe.

(7) **Annoyance to staff or other customers.** Annoyance on the part of staff or customers of the place of public accommodation at the abnormal appearance or behavior of a person with a disability is not a "risk to property or other persons" justifying nonservice.

(8) **Least discriminatory solution required.** It is an unfair practice to deny a person with a disability the enjoyment of an entire place of public accommodation because the person presents a risk of injury when using part of the place. When risk justifies not serving a person with a disability in the same way or same place as other customers, the person should be served through reasonable accommodation (WAC 162-26-060, 162-26-080), if possible.

[Statutory Authority: RCW 49.60.120(3). WSR 99-15-025, § 162-26-110, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3) and 1997 c 271. WSR 98-08-035, § 162-26-110, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3). WSR 82-19-086 (Order 41), § 162-26-110, filed 9/22/82.]