Chapter 162-04 WAC
GENERAL PROVISIONS

WAC

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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 the 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 person 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 nonroutine 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) **Supersedure.** 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 supersedure 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.]