

Title 162 WAC HUMAN RIGHTS COMMISSION

Chapter 162-22

WAC 162-22-025 Unfair practice

It is an unfair practice for any employer, employment agency, labor union, or other person to:

(1) Refuse to hire, discharge, bar from employment, or otherwise discriminate against an able worker with a disability or because of the use of a trained dog guide or service animal by an able worker with a disability; or

(2) Fail or refuse to make reasonable accommodation for an able worker with a disability or the use of a trained dog guide or service animal by an able worker with a disability, unless to do so would impose an undue hardship (please see WAC [162-22-065](#) and [162-22-075](#)); or

(3) Refuse to hire or otherwise discriminate against an able worker with a disability because the employer would be subject to the requirements of this chapter if the person were hired, promoted, etc.

WAC 162-22-035 Preference for disabled is not an unfair practice

The law protects against discrimination 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. This 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.

WAC 162-22-065 Reasonable accommodation

(1) Reasonable accommodation means measures that:

(a) Enable equal opportunity in the application process;

(b) Enable the proper performance of the particular job held or desired;

(c) Enable the enjoyment of equal benefits, privileges, or terms and conditions of employment.

(2) Possible examples of reasonable accommodation may include, but are not limited to:

(a) Adjustments in job duties, work schedules, or scope of work;

(b) Changes in the job setting or conditions of work;

(c) Informing the employee of vacant positions and considering the employee for those positions for which the employee is qualified.

WAC 162-22-075 Undue hardship exception

An employer, employment agency, labor union, or other person must provide reasonable accommodation unless it can prove that the accommodation would impose

an undue hardship. An accommodation will be considered an undue hardship if the cost or difficulty is unreasonable in view of:

- (1) The size of and the resources available to the employer;
- (2) Whether the cost can be included in planned remodeling or maintenance; and
- (3) The requirements of other laws and contracts, and other appropriate considerations.

WAC 162-22-090 Health care opinions

(1) Employers may seek a health care professional's opinion on whether a person's disability affects the proper performance of a particular job. The employer may also seek a health care professional's opinion on possible effective accommodations that would enable the person with a disability to properly perform the job. The health care professional's opinion will be given due weight in view of all the circumstances, including the extent of the health care professional's knowledge of the particular person and job, and the health care professional's relationship to the parties.

(2) A health care professional'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; and

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

(3) Employers are advised to provide the health care professional with the necessary information about the particular job and to inform the health care professional of the need for an individualized opinion.

(4) Employee health care information shall be kept in a confidential manner, separate from the employee's regular personnel files. The employer may share health care information only on a need to know basis. Supervisors and/or safety personnel may be informed of employee needs only if necessary to make appropriate work assignments or develop appropriate emergency response plans.

WAC 162-22-100 Dog guides and service animals

(1) **General rule.** It is an unfair practice for an employer, employment agency, labor union, or other person to request that a trained dog guide or service animal be removed from the workplace, UNLESS that employer, employment agency, labor union, or other person can show that the presence, behavior or actions of that dog guide or service animal constitutes an unreasonable risk to property or other persons.

It is an unfair practice to remove a trained dog guide or service animal from the entire workplace because the animal presents a risk of injury or harm when in part of the workplace.

(2) **Assessing risk of injury or harm.**

(a) Risk to property or other persons must be immediate or reasonably foreseeable under the circumstances, not remote or speculative. Risk to persons may be given more weight than risk to property. Risk of severe injury or harm may be given more weight than risk of slight injury or harm. For example, a principal excludes a teacher's dog guide because; "A neighborhood dog bit one of our kids last year, so I

don't allow any dogs at school." This is **not** "reasonably foreseeable risk" justifying removal of the dog guide.

(b) 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.

(c) Risk of injury or harm to the dog guide or service animal is not a reason for an employer to remove or exclude the animal. The decision whether to bring the animal to the worksite under such conditions most properly rests with the person with a disability using the dog guide or service animal.

(3) **Reasonable accommodation.** 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.

(4) **Liability.** Law other than the law against discrimination governs liability for injury or harm. Generally, a person with a disability using a dog guide or service animal is responsible for the animal and may be held liable for the behavior and actions of the animal.

Chapter 162-26

162-26-010 Scope of chapter

This chapter interprets and implements the disability discrimination coverage of RCW [49.60.215](#), unfair practices of places of public resort, accommodation, assemblage, and 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.

WAC 162-26-040 Definitions

(1) **Place of public accommodation.** RCW [49.60.040](#) defines and lists examples of a place of public accommodation.

(2) **General 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.

"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.

"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.

"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 disability. 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 person's sensory, mental, or physical disability.

"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, 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.

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.** The law protects against discrimination because of the "presence" of a disability. It does not prohibit treating disabled persons more favorably than nondisabled persons in circumstances where same service will defeat the purposes of the law against discrimination.

For example, 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 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. If there is no elevator and no other safe and dignified way for the customer to reach the second floor, another reasonable accommodation would be to bring merchandise requested by the customer to the first floor. Reasonable accommodations may also include, but are not limited to, providing sign language interpreters and making printed materials available in alternate formats.

(3) **Overall objective.** People with disabilities must be afforded the full enjoyment of places of public accommodation to the greatest extent practical.

WAC 162-26-070 General rules

These rules apply except where exempted by RCW [49.60.215](#) for structural changes or behavior causing risk, 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:

- (1) To refuse to serve a person;
- (2) To charge for reasonably accommodating the special needs of a disabled person;
- (3) 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;
- (4) To treat a disabled person as not welcome, accepted, desired, or solicited the same as a nondisabled person;
- (5) 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; or
- (6) 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](#).

WAC 162-26-080 Reasonable accommodation

(1) **Unfair practice to not accommodate.** It is an unfair practice for a person in the operation of a place of public accommodation to fail or refuse 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) **Determining 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.

(3) **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.

(4) **"Arranged service."** The concept of "arranged service," as formerly defined in commission rules, is incorporated fully within the scope of reasonable accommodation.

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.

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.

WAC 162-26-120 Requirements of other law

(1) **Guidance.** Failure to meet requirements of related law protecting persons with disabilities in places of public accommodation may be evidence of an unfair practice under RCW [49.60.215](#). The commission may refer to standards established in related law for guidance in determining whether an unfair practice under RCW [49.60.215](#) has occurred.

(2) **References to selected laws.** Related law may include, but is not limited to:

- (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;
- (c) Chapter [70.84](#) RCW, the "white cane law";
- (d) Chapter [2.42](#) RCW (Interpreters in legal proceedings);
- (e) The Washington State Building Code;
- (f) The Americans with Disabilities Act of 1990;
- (g) The Individuals with Disabilities Education Act;
- (h) The Air Carriers Access Act;
- (i) The Federal Fair Housing Act.

WAC 162-26-130 Use of trained dog guide or service animal

(1) **Coverage of statute.** RCW [49.60.215](#) requires fair service in a place of public accommodation "regardless of . . . the use of a trained dog guide 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](#).

WAC 162-26-135 Removal of a dog guide or service animal

(1) **General rule.** It is an unfair practice for a place of public accommodation to ask that a trained dog guide or service animal be removed, unless that place of public accommodation can show that the presence, behavior or actions of that dog guide or service animal constitutes an unreasonable risk of injury or harm to property or other persons.

It is an unfair practice to remove a trained dog guide or service animal from the entire place of public accommodation because the dog guide or service animal presents a risk of injury or harm when in part of the place of public accommodation.

(2) Assessing risk of injury or harm.

(a) Risk to property or other persons must be immediate or reasonably foreseeable under the circumstances, not remote or speculative. Risk to persons may be given more weight than risk to property. Risk of severe injury or harm may be given more weight than risk of slight injury or harm. For example, a barber excludes a patron's dog guide because; "It might bite somebody — I don't allow any dogs in here." This is **not** "reasonably foreseeable risk" justifying removal of the dog guide.

(b) Annoyance on the part of staff or other 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.

(c) Risk of injury or harm to the dog guide or service animal is not a reason for a place of public accommodation to exclude the animal. The decision whether to bring the animal into a place of public accommodation under such circumstances most properly rests with the person with a disability using the dog guide or service animal.

(3) Duty to reasonably accommodate. When risk justifies the removal of a dog guide or service animal from the place of public accommodation, efforts must be made to reasonably accommodate the person with the disability.

(4) Liability. Law other than the law against discrimination governs liability for injury or harm. Generally, a person with a disability using a dog guide or service animal is responsible for the animal and may be held liable for the behavior and actions of the animal.

WAC 162-26-140 Unfair to request or require waiver of rights

This section is intended to prohibit waivers on the basis of disability, but is not intended to preclude waivers required on a nondiscriminatory basis.

(1) 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.

(2) 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.