

Draft Rule

AMENDATORY SECTION (Amending WSR 00-01-177, filed 12/21/99, effective 1/21/00)

WAC 162-12-100 Purpose. (1) These regulations carry out the law against discrimination as stated generally in RCW 49.60.010 and 49.60.030, and interpret RCW 49.60.180 and 49.60.200 which declare certain preemployment inquiries to be unfair practices.

(2) The commission generally follows chapter 49.60 RCW and federal court decisions that interpret comparable statutes and rules. The commission will not follow federal precedents when 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 that 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.

(4) Definition: In this chapter, the following words are used in the meaning given, unless the context clearly indicates another meaning.

"Protected status" is short for the phrase, "age, sex, sexual orientation, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person," and means the full phrase (see RCW 49.60.180).

AMENDATORY SECTION (Amending WSR 00-01-177, filed 12/21/99, effective 1/21/00)

WAC 162-12-140 Preemployment inquiries. (1) The following examples of fair and unfair inquiries apply when made in reference to job application forms, preemployment interviews, or any other type of inquiry made of job applicants. 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 comply with these rules except where one or more of the following conditions exist:

(a) When there is a "bona fide occupational qualification."

(b) A voluntary 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 requirement of federal law or regulation, as explained in WAC 162-12-150.

If one or more of the above conditions apply, the inquiries of employers and employment agencies must be accompanied by a written explanation of their purpose. See WAC 162-12-135, 162-12-160 and 162-12-170.

(3) The following examples of fair and unfair preemployment inquiries 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 that unnecessarily elicit the protected status of a

job applicant 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 that 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 been dismissed, or led to conviction of a crime involving behavior that would adversely affect job performance, and the arrest occurred within the last ten years. Exempt from this rule are law enforcement agencies and 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. See RCW 43.20A.710; 43.43.830 through 43.43.842; and RCW 72.23.035.	Any inquiry that does not meet the requirements for fair preemployment inquiries.
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 job offer that applicant present birth certificate, naturalization or baptismal divulge applicant's lineage, ancestry, national origin, descent, or birth place.

SUBJECT	FAIR PREEMPLOYMENT INQUIRES	UNFAIR PREEMPLOYMENT INQUIRES
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, <u>spouse's gender</u> , spouse's employment or salary, children, child care arrangements, or dependents.
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 prior to a conditional job offer. Whether applicant has applied for or received worker's compensation. Also any inquiry that is not job related or consistent with business necessity.

SUBJECT	FAIR PREEMPLOYMENT INQUIRES	UNFAIR PREEMPLOYMENT INQUIRES
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.
h. Marital Status (see also Name and Family)	None.	<input type="checkbox"/> Mr. <input type="checkbox"/> Mrs. <input type="checkbox"/> Miss <input type="checkbox"/> Ms. Whether the applicant is married, single, divorced, separated, engaged, widowed, <u>has a same sex spouse</u> , etc.
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.
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 that would divulge marital status, lineage, ancestry, national origin or descent.
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.
l. Organizations	Inquiry into organization memberships, excluding any organization the name or character of which indicates the race, color, creed, sex, <u>sexual orientation</u> , 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.
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.
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.

SUBJECT	FAIR PREEMPLOYMENT INQUIRES	UNFAIR PREEMPLOYMENT INQUIRES
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.
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.

(While the law does not prohibit company policies governing the employment of relatives, any policy that 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.	Inquiries concerning applicant's religious preference, denomination, religious affiliations, church, parish, pastor, or religious holidays observed.
r. Residence	Inquiries about address to the extent needed to facilitate contacting the applicant.	Names or relationship of persons with whom applicant resides. Whether applicant owns or rents own home.
s. Sex	None.	Any inquiry concerning gender is prohibited.
t. <u>Sexual Orientation</u>	<u>None.</u>	<u>Any inquiry concerning sexual orientation is prohibited.</u>

WAC 162-16-200 General purpose and definitions. The law against discrimination protects persons from discrimination in employment (RCW 49.60.180, 49.60.190, and 49.60.200). Persons are also protected from discrimination as provided in RCW 49.60.172 (unfair practices with respect to HIV infection), RCW 49.60.174 (actual or perceived HIV infection), and RCW 49.60.210 (unfair to discriminate against person opposing unfair practice).

(1) The commission's first objective in writing the rules in this chapter and in making future decisions on questions not addressed in this chapter is to eliminate and prevent discrimination. This is the overall purpose of the law against discrimination.

(2) Other objectives in writing these rules are:

(a) To be consistent with interpretations of federal antidiscrimination law and the antidiscrimination laws of other states, where these are comparable to Washington law, and where the commission does not find that a different rule would better serve the state of Washington.

(b) 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 to carry out the separate purpose of each area of law.

(c) 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 RCW 49.60.040.

(d) The public and commission 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.

(3) The state law against discrimination covers employers with eight or more employees. Persons should also educate themselves on relevant local or federal antidiscrimination laws.

(4) Definition:

In this chapter, the following words are used in the meaning given, unless the context clearly indicates another meaning.

"Protected status" is short for the phrase, "age, sex, sexual orientation, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person," and means the full phrase (see RCW 49.60.180).

Chapter 162-32 WAC
SEXUAL ORIENTATION AND GENDER IDENTITY

NEW SECTION

WAC 162-32-010 General purpose and scope. This chapter interprets and implements the sexual orientation discrimination protections of RCW 49.60.030, 49.60.180, and 49.60.215 and provides guidance regarding certain specific forms of sexual orientation discrimination.

NEW SECTION

WAC 162-32-020 Leave policies and reasonable accommodation. (1) **Leave.** When an employer grants leave or time off of work to employees for medical or health reasons, the employer shall treat leave requests to address medical or health care needs related to an individual's sexual orientation or gender identity in the same manner as requests for all other medical conditions. For example:

(a) If an employer provides paid sick leave for periods of disability that require medical leave, the employer should provide paid sick leave for periods of disability related to an individual's sexual orientation or gender identity that require medical leave;

(b) If the employer's policy requires a medical provider's statement to verify the leave period as a reasonable accommodation, a medical provider's statement may be required to verify the leave period as a reasonable accommodation for the disabling condition related to the individual's sexual orientation or gender identity;

(c) If the employer's policy permits the retention and accrual of benefits, such as seniority, retirement, and pension rights, during the leave period for other disabilities, the policy must also permit such accrual of benefits during leave for disabling conditions related to an individual's sexual orientation or gender identity;

(d) If an employer allows an employee to use shared leave for disabling conditions, the employer must apply the same policies and procedures for disabling conditions related to an individual's sexual orientation or gender identity.

(2) **Reasonable accommodation.** An employer shall provide reasonable accommodation for a disability when the disability is related to the individual's sexual orientation or gender identity, absent undue hardship to the employer. Such reasonable accommodation includes, but is not limited to, medical leave for medical and counseling appointments, surgery, and recovery from surgery that are related to gender reassignment procedures and treatments. An undue hardship as a reason for denying an accommodation in situations involving disabilities relating to sexual orientation and gender identity shall be analyzed in the same manner as with accommodations for any other disability.

(3) Nothing in this section is intended to suggest that a person's sexual orientation or gender identity itself is a disabling condition.

NEW SECTION

WAC 162-32-030 Employee benefits and privileges. (1) **Consistent and equal basis.** Employee benefits provided in whole or in part by an employer must be consistent between all employees and equal for all employees, regardless of the employee's sexual orientation. For example, it is an unfair practice to:

(a) Provide health insurance coverage to an employee's opposite sex spouse but to fail to provide health insurance coverage to an employee's same sex spouse (except in situations where such a rule is prohibited or pre-empted by federal law.)

(b) Provide paternity leave or bonding time for the father of a child newly born or adopted into a heterosexual relationship, but fail to provide the same paternity leave or bonding time to the parent of a child newly born or adopted into a same-sex relationship.

(2) **Other benefits and privileges of employment.** All other employee benefits, provided formally or informally including, but not limited to, health club memberships, discount programs, training, staff retreats, company gatherings and parties, and use of company vehicles or other company services, shall be provided on an equal basis to all employees regardless of the employee's sexual orientation. If the benefit or privilege is extended to the employee's opposite sex spouse, it must be extended to an employee's same sex spouse as well.

NEW SECTION

WAC 162-32-040 Harassment. (1) **Harassment.** Harassment based on an individual's sexual orientation or gender identity is prohibited. Sexual orientation harassment in employment is offensive and unwelcome behavior serious enough to affect the terms and conditions of employment and which occurred because of an individual's sexual orientation or gender identity and can be imputed to the employer.

(2) **Prohibited conduct.** Prohibited conduct may include, but is not limited to, the following:

(a) Asking unwelcome personal questions about an individual's sexual orientation, gender identity or gender transition;

(b) Intentionally causing distress to an individual by disclosing the individual's sexual orientation against his or her wishes;

(c) Using offensive names, slurs, jokes, or terminology regarding an individual's sexual orientation;

(d) The deliberate misuse of an individual's preferred name, form of address, or gender-related pronoun (except on official documentation, if the individual has not officially obtained a name change);

(e) Posting offensive pictures or sending offensive electronic or other communications;

(f) Unwelcome physical conduct.

(3) **Harassment in a place of public accommodation.** Sexual orientation harassment in a place of public accommodation is offensive and unwelcome behavior serious enough to alter the individual's experience at the place of public accommodation, or severe enough that the individual has no choice but to leave the place of public accommodation, due to the individual's sexual orientation, and perpetrated by the place of public accommodation.

NEW SECTION

WAC 162-32-050 Dress and grooming standards. (1) **Standards allowed.** Covered entities may require standards of dress or grooming that serve a reasonable business or institutional purpose, such as promoting safety, developing a company identity, or projecting a professional, positive public image.

(2) **Prohibited standards.** Covered entities cannot require an individual to dress or groom in a manner that is not consistent with that individual's gender identity.

NEW SECTION

WAC 162-32-060 Gender segregated facilities. (1) **Facility use.** All covered entities, except school districts or other primary and secondary schools, shall allow individuals the use of gender-segregated facilities, such as restrooms, locker rooms, dressing rooms, and homeless shelters, that are consistent with that individual's gender identity.

In such facilities where undressing in the presence of others occurs, covered entities, except for school districts and other primary or secondary schools, shall allow access to and use of a facility consistent with that individual's gender identity.

(2) **Cannot require use inconsistent with gender identity.** A covered entity shall not request or require an individual to use a gender-segregated facility that is inconsistent with that individual's gender identity, or request or require an individual to use a separate or gender-neutral facility.

(a) If another person expresses concern or discomfort about a person who uses a facility that is consistent with the person's gender identity, the person expressing discomfort should be directed to a separate or gender neutral facility, if available.

(b) Any action taken against a person who is using a restroom, such as removing a person, should be taken due to that person's actions or behavior while in the restroom, and must be unrelated to gender identity. The same standards of conduct and behavior must be consistently applied to all restroom users, regardless of gender identity.

(3) **Schools.** School districts and other primary and secondary schools should allow students to use the restroom that is consistent with their gender identity consistently asserted at school. School districts and other primary and secondary schools should assess the use of locker rooms by transgendered students on a case-by-case basis, with the goals of maximizing the student's social integration and equal opportunity, ensuring the student's safety and comfort, and minimizing the stigmatization of the student. In most cases, transgender students should have access to the locker room that corresponds to their gender identity consistently asserted at school.

(4) **Provision of options encouraged.** Whenever feasible, covered entities are encouraged to provide options for privacy, such as single-use gender-neutral bathrooms or private changing areas, that are available to any individual desiring privacy.

AMENDATORY SECTION (Amending WSR 98-08-035, filed 3/23/98, effective 4/23/98)

WAC 162-36-005 Discrimination. (1) It is an unfair practice for any person, whether acting for himself, herself, or another, because of sex, sexual orientation, 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;

(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, sexual orientation, 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, sexual orientation, 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. ((see)) 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.

AMENDATORY SECTION (Amending WSR 98-08-035, filed 3/23/98, effective 4/23/98)

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, sexual orientation, 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, sexual orientation, 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, sexual orientation, 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, sexual orientation, 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.

AMENDATORY SECTION (Amending WSR 98-08-035, filed 3/23/98, effective 4/23/98)

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 origin, sex, sexual orientation, 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, sexual orientation, 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.

Kirschbaum, Pamela

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From: OTS
Sent: Wednesday, February 11, 2015 1:56 PM
To: 'llindstrand@hum.wa.gov'
Cc: Kirschbaum, Pamela
Subject: RE: OTS document

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Barbara Campbell

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http://www.leg.wa.gov/codereviser/pages/washington_state_register.aspx

From: Kirschbaum, Pamela
Sent: Monday, January 12, 2015 9:09 AM
To: llindstrand@hum.wa.gov
Subject: OTS document

<< File: OTS-6883.1Draft.doc >> << File: OTS-6883.1Final.pdf >>

Hi Linda,

Attached is OTS-.6883.1 Please review it carefully and let us know if you have any questions. If you have any additional changes, please make them on the Word copy using Track Changes (with color) and return to the OTS inbox.

Thank you,

Pam Kirschbaum
Supervisor/editor
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Lindstrand, Laura (HUM)

From: Lindstrand, Laura (HUM)
Sent: Wednesday, February 11, 2015 1:46 PM
To: 'Campbell, Barbara'
Subject: FW: Word and PDF

Hello,

I am following up on the message below.

I originally sent the request for 4 documents in on 1/8/15, and 3 of the 4 were sent back to me within two weeks. The 4th, referenced below and attached, was not with them. Then I sent the request below and to the OTS email address almost a month ago, but have not yet gotten anything back. I am getting a little nervous, as we have a hearing scheduled for the end of March, and need to get this filed by February 18. Thank you for your assistance.

Laura Lindstrand

From: Lindstrand, Laura (HUM)
Sent: Thursday, January 15, 2015 11:56 AM
To: 'Campbell, Barbara'
Subject: RE: Word and PDF

Thank you. Is chapter 162-16 still being worked on? In case it was an oversight, I re-sent it to the OTS inbox.

From: Campbell, Barbara [mailto:Barbara.Campbell@leg.wa.gov]
Sent: Monday, January 12, 2015 1:30 PM
To: Lindstrand, Laura (HUM)
Subject: Word and PDF

Hi, Laura . Attached are OTS-6882.1, 6884.1, and 6885.1. Please review them carefully and let us know if you have any questions. If you have any additional changes, please make them on the Word copy using Track Changes (with color) and return to the OTS inbox.

Thank You,

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When we receive your document, we format the CR form into our publishing system and pull a copy of the OTS document from the OTS data base using the OTS number that is supplied on the OTS pdf copy you filed – not the actual copy you provided. The copy you supplied to us will be the same as the copy in the OTS data base – *unless you have made a change to it*. The copy you provided is not proofed against the copy in the OTS data base. By using the OTS service, you can file any size OTS document on the cut-off date for filing and your filing will not be held over to another issue (unless you have a substantial number of attachment pages). The reason for this is that the OTS document has been processed in our office using the editing, typing and proofing protocol to protect the integrity of the WAC data base. Once your document is filed with the Register, we just pull in a copy from the OTS data base and it is not retyped or reproofed. If there are changes, there is a good chance we would not find these differences.

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Lindstrand, Laura (HUM)

From: Lindstrand, Laura (HUM)
Sent: Wednesday, February 11, 2015 1:43 PM
To: 'OTS@leg.wa.gov'
Subject: FW: resending ch 162-16
Attachments: ch162-16miscPublic.xml

Hi,

I am following up on the inquiry below. I originally sent the request for 4 documents in on 1/8/15, and 3 of the 4 were sent back to me within two weeks. The 4th, attached, was not with them. Then I sent the request below almost a month ago, but have not yet gotten anything back. I am getting a little nervous, as we have a hearing scheduled for the end of March, and need to get this filed by February 18. Thank you for your assistance.

Laura Lindstrand

From: Lindstrand, Laura (HUM)
Sent: Thursday, January 15, 2015 11:58 AM
To: 'OTS@leg.wa.gov'
Subject: resending ch 162-16

Hi,

I originally sent this directly to Barbara Campbell on 1/8/16, along with 3 other requests. My other requests were completed, and sent back to me, but this one was not. I am not sure if it is still being working on, or if it didn't actually get there, or if there was an oversight, so I am sending it again. Thank you!

Laura Lindstrand
Policy Analyst
Washington State Human Rights Commission
711 S. Capitol Way, Ste. 402, PO Box 42490
Olympia, WA 98504
(360) 359-4923
(800) 233-3247

This e-mail and related attachments and any response may be subject to public disclosure under state law.

Lindstrand, Laura (HUM)

From: OTS [OTS@leg.wa.gov]
Sent: Wednesday, February 11, 2015 1:43 PM
To: Lindstrand, Laura (HUM)
Subject: Thank You

OTS received your e-mail.

Lindstrand, Laura (HUM)

From: OTS [OTS@leg.wa.gov]
Sent: Thursday, January 15, 2015 11:58 AM
To: Lindstrand, Laura (HUM)
Subject: Thank You

OTS received your e-mail.

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Lindstrand, Laura (HUM)

From: Lindstrand, Laura (HUM)
Sent: Thursday, January 15, 2015 11:56 AM
To: Campbell, Barbara
Subject: RE: Word and PDF

Thank you. Is chapter 162-16 still being worked on? In case it was an oversight, I re-sent it to the OTS inbox.

From: Campbell, Barbara [mailto:Barbara.Campbell@leg.wa.gov]
Sent: Monday, January 12, 2015 1:30 PM
To: Lindstrand, Laura (HUM)
Subject: Word and PDF

Hi, Laura . Attached are OTS-6882.1, 6884.1, and 6885.1. Please review them carefully and let us know if you have any questions. If you have any additional changes, please make them on the Word copy using Track Changes (with color) and return to the OTS inbox.

Thank You,

Barbara Campbell

OTS Assistant Editor

(360) 786-7564

Barbara.Campbell@leg.wa.gov

OTS@leg.wa.gov

http://www.leg.wa.gov/codereviser/pages/washington_state_register.aspx

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Sent: Monday, January 12, 2015 1:30 PM
To: Lindstrand, Laura (HUM)
Subject: Word and PDF
Attachments: OTS-6882.1Draft.doc; OTS-6884.1Draft.doc; OTS-6885.1Draft.doc; OTS-6882.1Final.pdf; OTS-6884.1Final.pdf; OTS-6885.1Final.pdf

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AMENDATORY SECTION (Amending WSR 00-01-177, filed 12/21/99, effective 1/21/00)

WAC 162-12-100 Purpose. (1) These regulations carry out the law against discrimination as stated generally in RCW 49.60.010 and 49.60.030, and interpret RCW 49.60.180 and 49.60.200 which declare certain preemployment inquiries to be unfair practices.

(2) The commission generally follows chapter 49.60 RCW and federal court decisions that interpret comparable statutes and rules. The commission will not follow federal precedents when 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 that 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.

(4) Definition: In this chapter, the following words are used in the meaning given, unless the context clearly indicates another meaning.

"Protected status" is short for the phrase, "age, sex, sexual orientation, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person," and means the full phrase (see RCW 49.60.180).

AMENDATORY SECTION (Amending WSR 00-01-177, filed 12/21/99, effective 1/21/00)

WAC 162-12-140 Preemployment inquiries. (1) The following examples of fair and unfair inquiries apply when made in reference to job application forms, preemployment interviews, or any other type of inquiry made of job applicants. 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 comply with these rules except where one or more of the following conditions exist:

(a) When there is a "bona fide occupational qualification."

(b) A voluntary 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 requirement of federal law or regulation, as explained in WAC 162-12-150.

If one or more of the above conditions apply, the inquiries of employers and employment agencies must be accompanied by a written explanation of their purpose. See WAC 162-12-135, 162-12-160 and 162-12-170.

(3) The following examples of fair and unfair preemployment inquiries 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 that unnecessarily elicit the protected status of a

job applicant 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 that 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 been dismissed, or led to conviction of a crime involving behavior that would adversely affect job performance, and the arrest occurred within the last ten years. Exempt from this rule are law enforcement agencies and 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. See RCW 43.20A.710; 43.43.830 through 43.43.842; and RCW 72.23.035.	Any inquiry that does not meet the requirements for fair preemployment inquiries.
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 job offer that applicant present birth certificate, naturalization or baptismal divulge applicant's lineage, ancestry, national origin, descent, or birth place.

SUBJECT	FAIR PREEMPLOYMENT INQUIRES	UNFAIR PREEMPLOYMENT INQUIRES
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 gender, spouse's employment or salary, children, child care arrangements, or dependents.
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 prior to a conditional job offer. Whether applicant has applied for or received worker's compensation. Also any inquiry that is not job related or consistent with business necessity.

SUBJECT	FAIR PREEMPLOYMENT INQUIRES	UNFAIR PREEMPLOYMENT INQUIRES
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.
h. Marital Status (see also Name and Family)	None.	<input type="checkbox"/> Mr. <input type="checkbox"/> Mrs. <input type="checkbox"/> Miss <input type="checkbox"/> Ms. Whether the applicant is married, single, divorced, separated, engaged, widowed, <u>has a same sex spouse</u> , etc.
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.
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 that would divulge marital status, lineage, ancestry, national origin or descent.
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.
l. Organizations	Inquiry into organization memberships, excluding any organization the name or character of which indicates the race, color, creed, sex, <u>sexual orientation</u> , 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.
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.
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.

SUBJECT	FAIR PREEMPLOYMENT INQUIRES	UNFAIR PREEMPLOYMENT INQUIRES
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.
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.

(While the law does not prohibit company policies governing the employment of relatives, any policy that 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.	Inquiries concerning applicant's religious preference, denomination, religious affiliations, church, parish, pastor, or religious holidays observed.
r. Residence	Inquiries about address to the extent needed to facilitate contacting the applicant.	Names or relationship of persons with whom applicant resides. Whether applicant owns or rents own home.
s. Sex	None.	Any inquiry concerning gender is prohibited.
<u>t. Sexual Orientation</u>	<u>None.</u>	<u>Any inquiry concerning sexual orientation is prohibited.</u>

Chapter 162-32 WAC
SEXUAL ORIENTATION AND GENDER IDENTITY

NEW SECTION

WAC 162-32-010 General purpose and scope. This chapter interprets and implements the sexual orientation discrimination protections of RCW 49.60.030, 49.60.180, and 49.60.215 and provides guidance regarding certain specific forms of sexual orientation discrimination.

NEW SECTION

WAC 162-32-020 Leave policies and reasonable accommodation. (1) **Leave.** When an employer grants leave or time off of work to employees for medical or health reasons, the employer shall treat leave requests to address medical or health care needs related to an individual's sexual orientation or gender identity in the same manner as requests for all other medical conditions. For example:

(a) If an employer provides paid sick leave for periods of disability that require medical leave, the employer should provide paid sick leave for periods of disability related to an individual's sexual orientation or gender identity that require medical leave;

(b) If the employer's policy requires a medical provider's statement to verify the leave period as a reasonable accommodation, a medical provider's statement may be required to verify the leave period as a reasonable accommodation for the disabling condition related to the individual's sexual orientation or gender identity;

(c) If the employer's policy permits the retention and accrual of benefits, such as seniority, retirement, and pension rights, during the leave period for other disabilities, the policy must also permit such accrual of benefits during leave for disabling conditions related to an individual's sexual orientation or gender identity;

(d) If an employer allows an employee to use shared leave for disabling conditions, the employer must apply the same policies and procedures for disabling conditions related to an individual's sexual orientation or gender identity.

(2) **Reasonable accommodation.** An employer shall provide reasonable accommodation for a disability when the disability is related to the individual's sexual orientation or gender identity, absent undue hardship to the employer. Such reasonable accommodation includes, but is not limited to, medical leave for medical and counseling appointments, surgery, and recovery from surgery that are related to gender reassignment procedures and treatments. An undue hardship as a reason for denying an accommodation in situations involving disabilities relating to sexual orientation and gender identity shall be analyzed in the same manner as with accommodations for any other disability.

(3) Nothing in this section is intended to suggest that a person's sexual orientation or gender identity itself is a disabling condition.

NEW SECTION

WAC 162-32-030 Employee benefits and privileges. (1) **Consistent and equal basis.** Employee benefits provided in whole or in part by an employer must be consistent between all employees and equal for all employees, regardless of the employee's sexual orientation. For example, it is an unfair practice to:

(a) Provide health insurance coverage to an employee's opposite sex spouse but to fail to provide health insurance coverage to an employee's same sex spouse (except in situations where such a rule is prohibited or pre-empted by federal law.)

(b) Provide paternity leave or bonding time for the father of a child newly born or adopted into a heterosexual relationship, but fail to provide the same paternity leave or bonding time to the parent of a child newly born or adopted into a same-sex relationship.

(2) **Other benefits and privileges of employment.** All other employee benefits, provided formally or informally including, but not limited to, health club memberships, discount programs, training, staff retreats, company gatherings and parties, and use of company vehicles or other company services, shall be provided on an equal basis to all employees regardless of the employee's sexual orientation. If the benefit or privilege is extended to the employee's opposite sex spouse, it must be extended to an employee's same sex spouse as well.

NEW SECTION

WAC 162-32-040 Harassment. (1) **Harassment.** Harassment based on an individual's sexual orientation or gender identity is prohibited. Sexual orientation harassment in employment is offensive and unwelcome behavior serious enough to affect the terms and conditions of employment and which occurred because of an individual's sexual orientation or gender identity and can be imputed to the employer.

(2) **Prohibited conduct.** Prohibited conduct may include, but is not limited to, the following:

(a) Asking unwelcome personal questions about an individual's sexual orientation, gender identity or gender transition;

(b) Intentionally causing distress to an individual by disclosing the individual's sexual orientation against his or her wishes;

(c) Using offensive names, slurs, jokes, or terminology regarding an individual's sexual orientation;

(d) The deliberate misuse of an individual's preferred name, form of address, or gender-related pronoun (except on official documentation, if the individual has not officially obtained a name change);

(e) Posting offensive pictures or sending offensive electronic or other communications;

(f) Unwelcome physical conduct.

(3) **Harassment in a place of public accommodation.** Sexual orientation harassment in a place of public accommodation is offensive and unwelcome behavior serious enough to alter the individual's experience at the place of public accommodation, or severe enough that the individual has no choice but to leave the place of public accommodation, due to the individual's sexual orientation, and perpetrated by the place of public accommodation.

NEW SECTION

WAC 162-32-050 Dress and grooming standards. (1) **Standards allowed.** Covered entities may require standards of dress or grooming that serve a reasonable business or institutional purpose, such as promoting safety, developing a company identity, or projecting a professional, positive public image.

(2) **Prohibited standards.** Covered entities cannot require an individual to dress or groom in a manner that is not consistent with that individual's gender identity.

NEW SECTION

WAC 162-32-060 Gender segregated facilities. (1) **Facility use.** All covered entities, except school districts or other primary and secondary schools, shall allow individuals the use of gender-segregated facilities, such as restrooms, locker rooms, dressing rooms, and homeless shelters, that are consistent with that individual's gender identity.

In such facilities where undressing in the presence of others occurs, covered entities, except for school districts and other primary or secondary schools, shall allow access to and use of a facility consistent with that individual's gender identity.

(2) **Cannot require use inconsistent with gender identity.** A covered entity shall not request or require an individual to use a gender-segregated facility that is inconsistent with that individual's gender identity, or request or require an individual to use a separate or gender-neutral facility.

(a) If another person expresses concern or discomfort about a person who uses a facility that is consistent with the person's gender identity, the person expressing discomfort should be directed to a separate or gender neutral facility, if available.

(b) Any action taken against a person who is using a restroom, such as removing a person, should be taken due to that person's actions or behavior while in the restroom, and must be unrelated to gender identity. The same standards of conduct and behavior must be consistently applied to all restroom users, regardless of gender identity.

(3) **Schools.** School districts and other primary and secondary schools should allow students to use the restroom that is consistent with their gender identity consistently asserted at school. School districts and other primary and secondary schools should assess the use of locker rooms by transgendered students on a case-by-case basis, with the goals of maximizing the student's social integration and equal opportunity, ensuring the student's safety and comfort, and minimizing the stigmatization of the student. In most cases, transgender students should have access to the locker room that corresponds to their gender identity consistently asserted at school.

(4) **Provision of options encouraged.** Whenever feasible, covered entities are encouraged to provide options for privacy, such as single-use gender-neutral bathrooms or private changing areas, that are available to any individual desiring privacy.

AMENDATORY SECTION (Amending WSR 98-08-035, filed 3/23/98, effective 4/23/98)

WAC 162-36-005 Discrimination. (1) It is an unfair practice for any person, whether acting for himself, herself, or another, because of sex, sexual orientation, 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;

(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, sexual orientation, 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, sexual orientation, 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. ((see)) 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:

AMENDATORY SECTION (Amending WSR 98-08-035, filed 3/23/98, effective 4/23/98)

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, sexual orientation, 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, sexual orientation, 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, sexual orientation, 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, sexual orientation, 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.

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 origin, sex, sexual orientation, 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, sexual orientation, 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.

Lindstrand, Laura (HUM)

From: Lindstrand, Laura (HUM)
Sent: Thursday, January 08, 2015 9:49 AM
To: Campbell, Barbara
Subject: RE: WAC sections from WAC base
Attachments: ch162-12miscPublic.xml; ch162-16miscPublic.xml

Here you go. Each chapter is a separate attachment. Let me know if I need to do something differently.

From: Campbell, Barbara [mailto:Barbara.Campbell@leg.wa.gov]
Sent: Wednesday, January 07, 2015 1:26 PM
To: Lindstrand, Laura (HUM)
Subject: WAC sections from WAC base

Hi, Laura, here are the WAC sections you need for your rulemaking. I do need to point out that each chapter will have its own OTS doc, so when you get ready to file with the state Register, you will need to attach the 4 OTS documents we will be creating. So, chapter 162-12, 162-16, 162-32, and 162-36 WAC will each have their own OTS. We do not combine chapters on one OTS. The new chapter 162-32 WAC needs to be sent over as a separate attachment. Please call me or Pam at any time for questions or concerns.

**When making changes to rules please strike the entire RCW or WAC number, rather than just the section number. For example:

RCW ((46.19.010)) 46.19.020 RIGHT

VERSUS

RCW 46.19.((010)) 020 WRONG

The RCW and WAC numbers are basically treated as regular words, in that an entire word is stricken when changing the tense or meaning, as in:

((including)) include RIGHT

VERSUS

Includ((ing))e WRONG

If you need further clarification or have any questions, please don't hesitate to contact us.

Thank You,

Barbara Campbell

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http://www.leg.wa.gov/codereviser/pages/washington_state_register.aspx

WAC 162-12-100 Purpose. (1) These regulations carry out the law against discrimination as stated generally in RCW 49.60.010 and 49.60.030, and interpret RCW 49.60.180 and 49.60.200 which declare certain preemployment inquiries to be unfair practices.

(2) The commission generally follows chapter 49.60 RCW and federal court decisions that interpret comparable statutes and rules. The commission will not follow federal precedents when 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 that 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.

(4) Definition: In this chapter, the following words are used in the meaning given, unless the context clearly indicates another meaning.

"Protected status" is short for the phrase, "age, sex, sexual orientation, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use

of a trained dog guide or service animal by a disabled person," and means the full phrase (see RCW 49.60.180).

[Statutory Authority: RCW 49.60.120(3). WSR 00-01-177, § 162-12-100, filed 12/21/99, effective 1/21/00; WSR 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 162-12-140 Preemployment inquiries. (1) The following examples of fair and unfair inquiries apply when made in reference to job application forms, preemployment interviews, or any other type of inquiry made of job applicants. 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 comply with these rules except where one or more of the following conditions exist:

(a) When there is a "bona fide occupational qualification."

(b) A voluntary 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 requirement of federal law or regulation, as explained in WAC 162-12-150.

If one or more of the above conditions apply, the inquiries of employers and employment agencies must be accompanied by a written explanation of their purpose. See WAC 162-12-135, 162-12-160 and 162-12-170.

(3) The following examples of fair and unfair preemployment inquiries 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 that unnecessarily elicit the protected status of a job applicant 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 that 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.)

SUBJECT	FAIR PREEMPLOYMENT INQUIRES	UNFAIR PREEMPLOYMENT INQUIRES
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 been dismissed, or led to conviction of a crime involving behavior that would adversely affect job performance, and the arrest occurred within the last ten years. Exempt from this rule are law enforcement agencies and 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. See RCW 43.20A.710; 43.43.830 through 43.43.842; and RCW 72.23.035.	Any inquiry that does not meet the requirements for fair preemployment inquiries.
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 job offer 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.

SUBJECT	FAIR PREEMPLOYMENT INQUIRES	UNFAIR PREEMPLOYMENT INQUIRES
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, <u>spouse's gender</u> , spouse's employment or salary, children, child care arrangements, or dependents.
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 prior to a conditional job offer. Whether applicant has applied for or received worker's compensation. Also any inquiry that is not job related or consistent with business necessity.
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.
h. Marital Status (see also Name and Family)	None.	() Mr. () Mrs. () Miss () Ms. Whether the applicant is married, single, divorced, separated, engaged, widowed, <u>has a same sex spouse</u> , etc.
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.
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 that would divulge marital status, lineage, ancestry, national origin or descent.

SUBJECT	FAIR PREEMPLOYMENT INQUIRES	UNFAIR PREEMPLOYMENT INQUIRES
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.
l. Organizations	Inquiry into organization memberships, excluding any organization the name or character of which indicates the race, color, creed, sex, <u>sexual orientation</u> , 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.
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.
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.
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.
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.
<p>(While the law does not prohibit company policies governing the employment of relatives, any policy that 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.</p>		
q. Religion or Creed	None.	Inquiries concerning applicant's religious preference, denomination, religious affiliations, church, parish, pastor, or religious holidays observed.
r. Residence	Inquiries about address to the extent needed to facilitate contacting the applicant.	Names or relationship of persons with whom applicant resides. Whether applicant owns or rents own home.
s. Sex	None.	Any inquiry concerning gender is prohibited.
t. <u>Sexual Orientation</u>	<u>None</u>	<u>Any inquiry concerning sexual orientation is prohibited.</u>

[Statutory Authority: RCW 49.60.120(3). WSR 00-01-177, § 162-12-140, filed 12/21/99, effective 1/21/00; WSR 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 162-16-200 General purpose and definitions. The law against discrimination protects persons from discrimination in employment (RCW 49.60.180, 49.60.190, and 49.60.200). Persons are also protected from discrimination as provided in RCW 49.60.172 (unfair practices with respect to HIV infection), RCW 49.60.174 (actual or perceived HIV infection), and RCW 49.60.210 (unfair to discriminate against person opposing unfair practice).

(1) The commission's first objective in writing the rules in this chapter and in making future decisions on questions not addressed in this chapter is to eliminate and prevent discrimination. This is the overall purpose of the law against discrimination.

(2) Other objectives in writing these rules are:

(a) To be consistent with interpretations of federal antidiscrimination law and the antidiscrimination laws of other states, where these are comparable to Washington law, and where the commission does not find that a different rule would better serve the state of Washington.

(b) To avoid the uncritical adoption of definitions from areas of law other than antidiscrimination law. It is appropriate to define em-

ployment differently in different areas of the law to carry out the separate purpose of each area of law.

(c) 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 RCW 49.60.040.

(d) The public and commission 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.

(3) The state law against discrimination covers employers with eight or more employees. Persons should also educate themselves on relevant local or federal antidiscrimination laws.

(4) Definition:

In this chapter, the following words are used in the meaning given, unless the context clearly indicates another meaning.

"Protected status" is short for the phrase, "age, sex, sexual orientation, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person," and means the full phrase (see RCW 49.60.180).

[Statutory Authority: RCW 49.60.120(3). WSR 99-15-025, § 162-16-200,
filed 7/12/99, effective 8/12/99.]

Lindstrand, Laura (HUM)

From: Lindstrand, Laura (HUM)
Sent: Thursday, January 08, 2015 9:50 AM
To: Campbell, Barbara
Subject: RE: WAC sections from WAC base
Attachments: ch162-36miscPublic.xml; New chapter 162 32.docx

Sorry, I accidentally clicked on send instead of attach. Here are the other two.

From: Campbell, Barbara [mailto:Barbara.Campbell@leg.wa.gov]
Sent: Wednesday, January 07, 2015 1:26 PM
To: Lindstrand, Laura (HUM)
Subject: WAC sections from WAC base

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If you need further clarification or have any questions, please don't hesitate to contact us.

Thank You,

Barbara Campbell

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http://www.leg.wa.gov/codereviser/pages/washington_state_register.aspx

WAC 162-36-005 Discrimination. (1) It is an unfair practice for any person, whether acting for himself, herself, or another, because of sex, sexual orientation, 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 of 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;

(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 insur-

ance, 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, sexual orientation, 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, sexual orientation, 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. WSR 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. WSR 96-13-045, § 162-36-005, 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, sexual orientation, 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, sexual orientation, 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, sexual orientation, 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, sexual orientation, 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. WSR 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. WSR 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 origin, sex, sexual orientation, 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, sexual orientation, 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. WSR 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. WSR 96-13-045, § 162-36-020, filed 6/13/96, effective 7/14/96; Order 14, § 162-36-020, filed 7/16/73.]

The following is a new chapter and sections:

WAC 162-32

Sexual Orientation and Gender Identity

WAC Sections

- 162-32-010 General purpose and scope
- 162-32-020 Leave policies and reasonable accommodation
- 162-32-030 Employee benefits
- 162-32-040 Harassment
- 162-32-050 Dress and grooming standards
- 162-32-060 Gender segregated facilities

162-32-010

General purpose and Scope

This chapter interprets and implements the sexual orientation discrimination protections of RCW 49.60.030, 49.60.180, and 49.60.215, and provides guidance regarding certain specific forms of sexual orientation discrimination.

162-32-020

Leave policies and reasonable accommodation

(1)**Leave.** When an employer grants leave or time off of work to employees for medical or health reasons, the employer shall treat leave requests to address medical or health care needs related to an individual's sexual orientation or gender identity in the same manner as requests for all other medical conditions. For example:

(a)if an employer provides paid sick leave for periods of disability that require medical leave, the employer should provide paid sick leave for periods of disability related to an individual's sexual orientation or gender identity that require medical leave;

(b)if the employer's policy requires a medical provider's statement to verify the leave period as a reasonable accommodation, a medical provider's statement may be required to verify the leave period as a reasonable accommodation for the disabling condition related to the individual's sexual orientation or gender identity;

(c)if the employer's policy permits the retention and accrual of benefits, such as seniority, retirement, and pension rights, during the leave period for other disabilities, the policy must also

permit such accrual of benefits during leave for disabling conditions related to an individual's sexual orientation or gender identity;

(d) if an employer allows an employee to use shared leave for disabling conditions, the employer must apply the same policies and procedures for disabling conditions related to an individual's sexual orientation or gender identity.

(2) **Reasonable accommodation.** An employer shall provide reasonable accommodation for a disability when the disability is related to the individual's sexual orientation or gender identity, absent undue hardship to the employer. Such reasonable accommodation includes but is not limited to medical leave for medical and counseling appointments, surgery, and recovery from surgery that are related to gender reassignment procedures and treatments. An undue hardship as a reason for denying an accommodation in situations involving disabilities relating to sexual orientation and gender identity shall be analyzed in the same manner as with accommodations for any other disability.

(3) Nothing in this section is intended to suggest that a person's sexual orientation or gender identity itself is a disabling condition.

162-32-030

Employee benefits and privileges

(1) **Consistent and equal basis.** Employee benefits provided in whole or in part by an employer must be consistent between all employees and equal for all employees, regardless of the employee's sexual orientation. For example, it is an unfair practice to:

(a) Provide health insurance coverage to an employee's opposite sex spouse but to fail to provide health insurance coverage to an employee's same sex spouse (except in situations where such a rule is prohibited or pre-empted by federal law.)

(b) Provide paternity leave or bonding time for the father of a child newly born or adopted into a heterosexual relationship, but fail to provide the same paternity leave or bonding time to the parent of a child newly born or adopted into a same-sex relationship.

(2) **Other benefits and privileges of employment.** All other employee benefits, provided formally or informally, including but not limited to health club memberships, discount programs, training, staff retreats, company gatherings and parties, and use of company vehicles or other company services, shall be provided on an equal basis to all employees regardless of the employee's sexual orientation. If the benefit or privilege is extended to the employee's opposite sex spouse, it must be extended to an employee's same sex spouse as well.

162-32-040

Harassment

(1)**Harassment.** Harassment based on an individual's sexual orientation or gender identity is prohibited.

(a) sexual orientation harassment in employment is offensive and unwelcome behavior serious enough to affect the terms and conditions of employment and which occurred because of an individual's sexual orientation or gender identity and can be imputed to the employer.

(2)**Prohibited conduct.** Prohibited conduct may include, but is not limited to, the following:

(a) asking unwelcome personal questions about an individual's sexual orientation, gender identity or gender transition.

(b) intentionally causing distress to an individual by disclosing the individual's sexual orientation against his or her wishes

(c) using offensive names, slurs, jokes, or terminology regarding an individual's sexual orientation

(d) the deliberate misuse of an individual's preferred name, form of address, or gender-related pronoun (except on official documentation, if the individual has not officially obtained a name change).

(e) posting offensive pictures or sending offensive electronic or other communications

(f) unwelcome physical conduct

(3) **Harassment in a place of public accommodation.** Sexual orientation harassment in a place of public accommodation is offensive and unwelcome behavior serious enough to alter the individual's experience at the place of public accommodation, or severe enough that the individual has no choice but to leave the place of public accommodation, due to the individual's sexual orientation, and perpetrated by the place of public accommodation.

162-32-050

Dress and Grooming Standards

(1)**Standards allowed.** Covered entities may require standards of dress or grooming that serve a reasonable business or institutional purpose, such as promoting safety, developing a company identity, or projecting a professional, positive public image,

(2)**Prohibited standards.** Covered entities cannot require an individual to dress or groom in a manner that is not consistent with that individual's gender identity.

162-32-060

Gender Segregated Facilities

(1)**Facility use.** All covered entities, except school districts or other primary and secondary schools, shall allow individuals the use of gender-segregated facilities, such as restrooms, locker rooms, dressing rooms, and homeless shelters, that are consistent with that individual's gender identity. *

(a)In such facilities where undressing in the presence of others occurs, covered entities, except for school districts and other primary or secondary schools, shall allow access to and use of a facility consistent with that individual's gender identity.*

(2) **Cannot require use inconsistent with gender identity.** A covered entity shall not request or require an individual to use a gender-segregated facility that is inconsistent with that individual's gender identity, or request or require an individual to use a separate or gender-neutral facility. *

(b)If another person expresses concern or discomfort about a person who uses a facility that is consistent with the person's gender identity, the person expressing discomfort should be directed to a separate or gender neutral facility, if available. *

(c)Any action taken against a person who is using a restroom, such as removing a person, should be taken due to that person's actions or behavior while in the restroom, and must be unrelated to gender identity. The same standards of conduct and behavior must be consistently applied to all restroom users, regardless of gender identity.

(3)**Schools.** School districts and other primary and secondary schools should allow students to use the restroom that is consistent with their gender identity consistently asserted at school. School districts and other primary and secondary schools should assess the use of locker rooms by transgendered students on a case-by-case basis, with the goals of maximizing the student's social integration and equal opportunity, ensuring the student's safety and comfort, and minimizing the stigmatization of the student. In most cases, transgender students should have access to the locker room that corresponds to their gender identity consistently asserted at school.

(4)**Provision of options encouraged.** Whenever feasible, covered entities are encouraged to provide options for privacy, such as single-use gender-neutral bathrooms or private changing areas, that are available to any individual desiring privacy.

Lindstrand, Laura (HUM)

From: Campbell, Barbara [Barbara.Campbell@leg.wa.gov]
Sent: Wednesday, January 07, 2015 1:26 PM
To: Lindstrand, Laura (HUM)
Subject: WAC sections from WAC base
Attachments: ch162-12miscPublic.doc; ch162-16miscPublic.doc; ch162-36miscPublic.doc

Hi, Laura, here are the WAC sections you need for your rulemaking. I do need to point out that each chapter will have its own OTS doc, so when you get ready to file with the state Register, you will need to attach the 4 OTS documents we will be creating. So, chapter 162-12, 162-16, 162-32, and 162-36 WAC will each have their own OTS. We do not combine chapters on one OTS. The new chapter 162-32 WAC needs to be sent over as a separate attachment. Please call me or Pam at any time for questions or concerns.

**When making changes to rules please strike the entire RCW or WAC number, rather than just the section number. For example:

RCW ((46.19.010)) 46.19.020 RIGHT

VERSUS

RCW 46.19.((010)) 020 WRONG

The RCW and WAC numbers are basically treated as regular words, in that an entire word is stricken when changing the tense or meaning, as in:

((including)) include RIGHT

VERSUS

Includ((ing))e WRONG

If you need further clarification or have any questions, please don't hesitate to contact us.

Thank You,

Barbara Campbell

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http://www.leg.wa.gov/codereviser/pages/washington_state_register.aspx

WAC 162-12-100

Purpose.

(1) These regulations carry out the law against discrimination as stated generally in RCW 49.60.010 and 49.60.030, and interpret RCW 49.60.180 and 49.60.200 which declare certain preemployment inquiries to be unfair practices.

(2) The commission generally follows chapter 49.60 RCW and federal court decisions that interpret comparable statutes and rules. The commission will not follow federal precedents when 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 that 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.

(4) Definition: In this chapter, the following words are used in the meaning given, unless the context clearly indicates another meaning.

"Protected status" is short for the phrase, "age, sex, sexual orientation, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person," and means the full phrase (see RCW 49.60.180).

WAC 162-12-140

Preemployment inquiries.

(1) The following examples of fair and unfair inquiries apply when made in reference to job application forms, preemployment interviews, or any other type of inquiry made of job applicants. 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 comply with these rules except where one or more of the following conditions exist:

(a) When there is a "bona fide occupational qualification."

(b) A voluntary 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 requirement of federal law or regulation, as explained in WAC 162-12-150.

If one or more of the above conditions apply, the inquiries of employers and employment agencies must be accompanied by a written explanation of their purpose. See WAC 162-12-135, 162-12-160 and 162-12-170.

(3) The following examples of fair and unfair preemployment inquiries 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 that unnecessarily elicit the protected status of a job applicant are prohibited by these statutes irrespective of whether or not the particular inquiry is covered in this regulation.

SUBJECT	fair preemployment inquiries	UNFAIR PREEMPLOYMENT INQUIRES
a. Age	Inquiries as to birth date and proof of true age are permitted by RCW <u>49.44.090</u> .	Any inquiry not in compliance with RCW <u>49.44.090</u> that 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 been dismissed, or led to conviction of a crime involving behavior that would adversely affect	Any inquiry that does not meet the requirements for fair preemployment inquiries.
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SUBJECT	fair preemployment inquires	UNFAIR PREEMPLOYMENT INQUIRES
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job performance, and the arrest occurred within the last ten years. Exempt from this rule are law enforcement agencies and 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. See RCW 43.20A.710; 43.43.830 through 43.43.842; and RCW 72.23.035.

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 job offer 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

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.

SUBJECT	fair preemployment inquires	UNFAIR PREEMPLOYMENT INQUIRES
	other vulnerable adults are exempt from this rule. See RCW <u>43.20A.710</u> ; 43.43.830 through 43.43.842; and RCW <u>72.23.035</u> .	
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, <u>spouse's gender</u> , spouse's employment or salary, children, child care arrangements, or dependents.
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 prior to a conditional job offer. Whether applicant has applied for or received worker's compensation. Also any inquiry that is not job related or consistent with business necessity.
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.

SUBJECT	fair preemployment inquires	UNFAIR PREEMPLOYMENT INQUIRES
h. Marital Status (see also Name and Family)	None.	<input type="checkbox"/> Mr. <input type="checkbox"/> Mrs. <input type="checkbox"/> Miss <input type="checkbox"/> Ms. Whether the applicant is married, <u>has a same sex spouse</u> , single, divorced, separated, engaged, widowed, etc.
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.
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 that would divulge marital status, lineage, ancestry, national origin or descent.
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.
l. Organizations	Inquiry into organization memberships, excluding any organization the name or character of which indicates the race, color, creed, sex, <u>sexual orientation</u> , 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.
m. Photographs	May be requested <i>after</i> hiring for identification purposes.	Request that applicant submit a photograph, mandatorily or

	fair	UNFAIR
SUBJECT	preemployment inquires	PREEMPLOYMENT INQUIRES
		optionally, at any time before hiring.
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.
o. Race or Color	None. See WAC <u>162-12-150</u> , <u>162-12-160</u> , and <u>162-12-170</u> .	Any inquiry concerning race or color of skin, hair, eyes, etc., not specifically permitted by WAC <u>162-12-150</u> , <u>162-12-160</u> , and <u>162-12-170</u> .
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 <u>162-12-150</u> .

(While the law does not prohibit company policies governing the employment of relatives, any policy that 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.	Inquiries concerning applicant's religious preference, denomination, religious affiliations, church, parish, pastor, or religious holidays observed.
r. Residence	Inquiries about address to the extent needed to facilitate contacting the applicant.	Names or relationship of persons with whom applicant resides. Whether applicant owns or rents own home.
s. Sex	None.	Any inquiry concerning gender is prohibited.

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	fair	UNFAIR
SUBJECT	preemployment inquires	PREEMPLOYMENT INQUIRES
<u>t. Sexual Orientation</u>	<u>None</u>	<u>Any inquiry concerning sexual orientation is prohibited.</u>

WAC 162-16-200

General purpose and definitions.

The law against discrimination protects persons from discrimination in employment (RCW 49.60.180, 49.60.190, and 49.60.200). Persons are also protected from discrimination as provided in RCW 49.60.172 (unfair practices with respect to HIV infection), RCW 49.60.174 (actual or perceived HIV infection), and RCW 49.60.210 (unfair to discriminate against person opposing unfair practice).

(1) The commission's first objective in writing the rules in this chapter and in making future decisions on questions not addressed in this chapter is to eliminate and prevent discrimination. This is the overall purpose of the law against discrimination.

(2) Other objectives in writing these rules are:

(a) To be consistent with interpretations of federal antidiscrimination law and the antidiscrimination laws of other states, where these are comparable to Washington law, and where the commission does not find that a different rule would better serve the state of Washington.

(b) 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 to carry out the separate purpose of each area of law.

(c) 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 RCW 49.60.040.

(d) The public and commission 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.

(3) The state law against discrimination covers employers with eight or more employees. Persons should also educate themselves on relevant local or federal antidiscrimination laws.

(4) Definition:

In this chapter, the following words are used in the meaning given, unless the context clearly indicates another meaning.

"Protected status" is short for the phrase, "age, sex, sexual orientation, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person," and means the full phrase (see RCW 49.60.180).

WAC 162-32

Sexual Orientation and Gender Identity

WAC Sections

- 162-32-010 General purpose and scope
- 162-32-020 Leave policies and reasonable accommodation
- 162-32-030 Employee benefits
- 162-32-040 Harassment
- 162-32-050 Dress and grooming standards
- 162-32-060 Gender segregated facilities

162-32-010

General purpose and Scope

This chapter interprets and implements the sexual orientation discrimination protections of RCW 49.60.030, 49.60.180, and 49.60.215, and provides guidance regarding certain specific forms of sexual orientation discrimination.

162-32-020

Leave policies and reasonable accommodation

(1)**Leave.** When an employer grants leave or time off of work to employees for medical or health reasons, the employer shall treat leave requests to address medical or health care needs related to an individual's sexual orientation or gender identity in the same manner as requests for all other medical conditions. For example:

(a)if an employer provides paid sick leave for periods of disability that require medical leave, the employer should provide paid leave for periods of disability related to an individual's sexual orientation or gender identity that require medical leave;

(b)if the employer's policy requires a medical provider's statement to verify the leave period as a reasonable accommodation, a medical provider's statement may be required to verify the leave period as a reasonable accommodation for the disabling condition related to the individual's sexual orientation or gender identity;

(c)if the employer's policy permits the retention and accrual of benefits, such as seniority, retirement, and pension rights, during the leave period for other disabilities, the policy must also permit such accrual of benefits during leave for disabling conditions related to an individual's sexual orientation or gender identity;

(d)if an employer allows an employee to use shared leave for disabling conditions, the employer must apply the same policies and procedures for disabling conditions related to an individual's sexual orientation or gender identity.

(2) **Reasonable accommodation.** An employer shall provide reasonable accommodation for a disability when the disability is related to the individual's sexual orientation or gender identity, absent undue hardship to the employer. Such reasonable accommodation includes but is not limited to medical leave for medical and counseling appointments, surgery, and recovery from surgery that are related to gender reassignment procedures and treatments. An undue hardship as a reason for denying an accommodation in situations involving disabilities relating to sexual orientation and gender identity shall be analyzed in the same manner as with accommodations for any other disability.

(3) Nothing in this section is intended to suggest that a person's sexual orientation or gender identity itself is a disabling condition.

162-32-030

Employee benefits and privileges

(1)**Consistent and equal basis.** Employee benefits provided in whole or in part by an employer must be consistent between all employees and equal for all employees, regardless of the employee's sexual orientation. For example, it is an unfair practice to:

(a)Provide health insurance coverage to an employee's opposite sex spouse but to fail to provide health insurance coverage to an employee's same sex spouse (except in situations where such a rule is prohibited or pre-empted by federal law.)

(b)Provide paternity leave or bonding time for the father of a child newly born or adopted into a heterosexual relationship, but fail to provide the same paternity leave or bonding time to the parent of a child newly born or adopted into a same-sex relationship.

(2) **Other benefits and privileges of employment.** All other employee benefits, provided formally or informally, including but not limited to health club memberships, discount programs, training, staff retreats, company gatherings and parties, and use of company vehicles or other company services, shall be provided on an equal basis to all employees regardless of the employee's sexual orientation. If the benefit or privilege is extended to the employee's opposite sex spouse, it must be extended to an employee's same sex spouse as well.

162-32-040

Harassment

(1)**Harassment.** Harassment based on an individual's sexual orientation or gender identity is prohibited.

(a) sexual orientation harassment in employment is offensive and unwelcome behavior serious enough to affect the terms and conditions of employment and which occurred because of an individual's sexual orientation or gender identity and can be imputed to the employer.

(2)**Prohibited conduct.** Prohibited conduct may include, but is not limited to, the following:

(a) asking unwelcome personal questions about an individual's sexual orientation, gender identity or gender transition.

(b) intentionally causing distress to an individual by disclosing the individual's sexual orientation against his or her wishes

(c) using offensive names, slurs, jokes, or terminology regarding an individual's sexual orientation

(d) the deliberate misuse of an individual's preferred name, form of address, or gender-related pronoun (except on official documentation, if the individual has not officially obtained a name change).

(e) posting offensive pictures or sending offensive electronic or other communications

(f) unwelcome physical conduct

(3) **Harassment in a place of public accommodation.** Sexual orientation harassment in a place of public accommodation is offensive and unwelcome behavior serious enough to alter the individual's experience at the place of public accommodation, or severe enough that the individual has no choice but to leave the place of public accommodation, due to the individual's sexual orientation, and perpetrated by the place of public accommodation.

162-32-050

Dress and Grooming Standards

(1)**Standards allowed.** Covered entities may require standards of dress or grooming that serve a reasonable business or institutional purpose, such as promoting safety, developing a company identity, or projecting a professional, positive public image,

(2)**Prohibited standards.** Covered entities cannot require an individual to dress or groom in a manner that is not consistent with that individual's gender identity.

162-32-060

Gender Segregated Facilities

(1)**Facility use.** All covered entities, except school districts or other primary and secondary schools, shall allow individuals the use of gender-segregated facilities, such as restrooms, locker

rooms, dressing rooms, and homeless shelters, that are consistent with that individual's gender identity. *

(a) In such facilities where undressing in the presence of others occurs, covered entities, except for school districts and other primary or secondary schools, shall allow access to and use of a facility consistent with that individual's gender identity.*

(2) **Cannot require use inconsistent with gender identity.** A covered entity shall not request or require an individual to use a gender-segregated facility that is inconsistent with that individual's gender identity, or request or require an individual to use a separate or gender-neutral facility. *

(b) If another person expresses concern or discomfort about a person who uses a facility that is consistent with the person's gender identity, the person expressing discomfort should be directed to a separate or gender neutral facility, if available. *

(c) Any action taken against a person who is using a restroom, such as removing a person, should be taken due to that person's actions or behavior while in the restroom, and must be unrelated to gender identity. The same standards of conduct and behavior must be consistently applied to all restroom users, regardless of gender identity.

(3) **Schools.** School districts and other primary and secondary schools should allow students to use the restroom that is consistent with their gender identity consistently asserted at school. School districts and other primary and secondary schools should assess the use of locker rooms by transgendered students on a case-by-case basis, with the goals of maximizing the student's social integration and equal opportunity, ensuring the student's safety and comfort, and minimizing the stigmatization of the student. In most cases, transgender students should have access to the locker room that corresponds to their gender identity consistently asserted at school.

(4) **Provision of options encouraged.** Whenever feasible, covered entities are encouraged to provide options for privacy, such as single-use gender-neutral bathrooms or private changing areas, that are available to any individual desiring privacy.

*San Francisco's regulations have some interesting language that we might consider using. The language would read:

(1) **Facility use.** All covered entities, except school districts, shall allow individuals the use of gender-segregated facilities, such as restrooms, locker rooms, dressing rooms, and homeless shelters, that are consistent with that individual's gender identity which is publicly and exclusively asserted.

(a) In such facilities where undressing in the presence of others occurs, covered entities, except for school districts, shall allow access to and use of a facility consistent with that individual's gender identity which is publicly and exclusively asserted.

(2) **Cannot require use inconsistent with gender identity.** A covered entity shall not request or require an individual to use a gender-segregated facility that is inconsistent with that individual's gender identity which is publicly and exclusively asserted, or request or require an individual to use a separate or gender-neutral facility.

(b) If another person expresses concern or discomfort about a person who uses a facility that is consistent with the person's gender identity which is publicly and exclusively asserted, the person expressing discomfort should be directed to a separate or gender neutral facility, if available.

WAC 162-36-005

Discrimination.

(1) It is an unfair practice for any person, whether acting for himself, herself, or another, because of sex, sexual orientation, 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 of 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;

(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, sexual orientation, 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, sexual orientation, 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.

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, sexual orientation, 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, sexual orientation, 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, sexual orientation, 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, sexual orientation, 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.

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 origin, sex, sexual orientation, 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, sexual orientation, 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.

162-32 Sexual Orientation and Gender Identity

Medical Leave

(1) When an employer grants leave or time off of work to employees for medical reasons, the employer shall treat leave requests to address health care needs related to an individual's sexual orientation or gender identity in the same manner as requests for all other medical conditions.

(a) if an employer provides paid sick leave for periods of disability that require medical leave, the employer should provide paid leave for periods of disability related to an individual's sexual orientation or gender identity that require medical leave

(b) if the uniform policy requires a medical provider's statement to verify the leave period, a medical provider's statement may be required to verify the leave period relating to the disabling condition related to the individual's sexual orientation or gender identity.

(c) if the uniform policy permits the retention and accrual of benefits, such as seniority, retirement, and pension rights, during the leave period for other disabilities, the policy must also permit such accrual of benefits during leave for disabling conditions related to an individual's sexual orientation or gender identity.

(d) if an employer allows an employee to use shared leave for disabling conditions, the employer must apply the same policies and procedures for disabling conditions related to an individual's sexual orientation or gender identity.

(2) An employer shall provide reasonable accommodation for a disability when the disability is related to the individual's sexual orientation or gender identity. Such reasonable accommodation includes but is not limited to medical leave for medical and counseling appointments, surgery, recovery from surgery that are related to gender reassignment procedures and treatments.

Pre-employment Inquiries

An employer is prohibited from inquiring as to an applicant's sexual orientation or gender identity.

Sexual Orientation Harassment

(1) Harassment based on an individual's sexual orientation or gender identity is prohibited

(a) sexual orientation harassment in employment is offensive and unwelcome behavior serious enough to affect the terms and conditions of employment and which occurred because of an individual's sexual orientation or gender identity and can be imputed to the employer. Prohibited conduct may include, but is not limited to, the following:

(i) asking unwelcome personal questions about an individual's sexual orientation, gender identity or gender transition.

(ii) intentionally causing distress to an individual by disclosing the individual's sexual orientation

(iii) using offensive names or terminology regarding an individual's sexual orientation

(iv) the deliberate misuse of an individual's preferred name, form of address, or gender-related pronoun (except on official documentation, if the individual has not officially obtained a name change).

(v) posting offensive pictures or sending offensive electronic or other communications

(vi) unwelcome physical conduct

(b) sexual orientation harassment in a place of public accommodation is offensive and unwelcome behavior serious enough to alter the individual's experience at the place of public accommodation, or severe enough so that they have no choice but to leave the place of public accommodation, due to the individual's sexual orientation.

Dress and Grooming Standards

Covered entities may prescribe standards of dress or grooming that serve a reasonable business or institutional purpose, such as promoting safety, developing a company identity, or projecting a professional, positive public image, cannot require an individual to dress or groom in a manner that is not consistent with that individual's gender identity.

Gender Segregated Facilities

(1) All covered entities shall allow individuals the use of gender-segregated facilities, such as restrooms, locker rooms, dressing rooms, and homeless shelters, that are consistent with that individual's gender identity.

(a) In such facilities where undressing in the presence of others occurs, covered entities, except for school districts, shall allow access to and use of a facility consistent with that individual's gender identity.

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(b) School districts should assess the use of locker rooms by transgendered students on a case-by-case basis, with the goals of maximizing the student's social integration and equal opportunity, ensuring the student's safety and comfort, and minimizing the stigmatization of the student. In most cases, transgender students should have access to the locker room that corresponds to their gender identity consistently asserted at school.

Chapter 162-32 WAC
Sexual Orientation and Gender Identity

WAC Sections

- 162-32-010 General purpose and scope
- 162-32-020 Leave policies and reasonable accommodation
- 162-32-030 Employee benefits
- 162-32-040 Harassment
- 162-32-050 Dress and grooming standards
- 162-32-060 Gender segregated facilities

162-32-010
General purpose and Scope

This chapter interprets and implements the sexual orientation discrimination protections of RCW 49.60.030, 49.60.180, and 49.60.215, and provides guidance regarding certain specific forms of sexual orientation discrimination.

162-32-020
Leave policies and reasonable accommodation

(1) **Leave.** When an employer grants leave or time off of work to employees for medical reasons, the employer shall treat leave requests to address health care needs related to an individual's sexual orientation or gender identity in the same manner as requests for all other medical conditions. For example:

(a) if an employer provides paid sick leave for periods of disability that require medical leave, the employer should provide paid leave for periods of disability related to an individual's sexual orientation or gender identity that require medical leave;

(b) if the employer's policy requires a medical provider's statement to verify the leave period, a medical provider's statement may be required to verify the leave period relating to the disabling condition related to the individual's sexual orientation or gender identity;

(c) if the employer's policy permits the retention and accrual of benefits, such as seniority, retirement, and pension rights, during the leave period for other disabilities, the policy must also permit such accrual of benefits during leave for disabling conditions related to an individual's sexual orientation or gender identity;

(d)if an employer allows an employee to use shared leave for disabling conditions, the employer must apply the same policies and procedures for disabling conditions related to an individual's sexual orientation or gender identity.

(2) **Reasonable accommodation.** An employer shall provide reasonable accommodation for a disability when the disability is related to the individual's sexual orientation or gender identity, *absent u.h.* Such reasonable accommodation includes but is not limited to medical leave for medical and counseling appointments, surgery, *v* recovery from surgery that are related to gender reassignment procedures and treatments. *u H analyzed same*

(3) Nothing in this section is intended to suggest that a person's sexual orientation or gender identity itself is a disabling condition.

162-32-030

Employee benefits and privileges

(1)**Consistent and equal basis.** Employee benefits provided in whole or in part by an employer must be consistent between all employees and equal for all employees, regardless of the employee's sexual orientation. For example, it is an unfair practice to:

(a)Provide health insurance coverage to an employee's opposite sex spouse but to fail to provide health insurance coverage to an employee's same sex ~~registered domestic partner~~ *spouse* (except in situations where such a rule is prohibited or pre-empted by federal law.)

(b)Provide paternity leave or bonding time for the father of a child newly born or adopted into a heterosexual relationship, but fail to provide the same paternity leave or bonding time to the parent of a child newly born or adopted into a ~~homosexual~~ *same sex* relationship.

(2) **Other benefits and privileges of employment.** All other employee benefits, provided formally or informally, including but not limited to health club memberships, discount programs, training, staff retreats, company gatherings and parties, and use of company vehicles or other company services, shall be provided on an equal basis to all employees regardless of the employee's sexual orientation. If the benefit or privilege is extended to the employee's opposite sex spouse, it must be extended to an employee's same sex ~~domestic partner~~ *spouse* as well.

162-32-040

Harassment

(1)**Harassment.** Harassment based on an individual's sexual orientation or gender identity is prohibited.

(a) sexual orientation harassment in employment is offensive and unwelcome behavior serious enough to affect the terms and conditions of employment and which occurred because of an individual's sexual orientation or gender identity and can be imputed to the employer.

(2) **Prohibited conduct.** Prohibited conduct may include, but is not limited to, the following:

(a) asking unwelcome personal questions about an individual's sexual orientation, gender identity or gender transition.

(b) intentionally causing distress to an individual by disclosing the individual's sexual orientation

(c) using offensive names, ^{slurs, jokes} or terminology regarding an individual's sexual orientation

(d) the deliberate misuse of an individual's preferred name, form of address, or gender-related pronoun (except on official documentation, if the individual has not officially obtained a name change).

(e) posting offensive pictures or sending offensive electronic or other communications

(f) unwelcome physical conduct

(3) **Harassment in a place of public accommodation.** Sexual orientation harassment in a place of public accommodation is offensive and unwelcome behavior serious enough to alter the individual's experience at the place of public accommodation, or severe enough that the individual has no choice but to leave the place of public accommodation, due to the individual's sexual orientation, and perpetrated by the place of public accommodation.

162-32-050

Dress and Grooming Standards

(1) **Standards allowed.** Covered entities may require standards of dress or grooming that serve a reasonable business or institutional purpose, such as promoting safety, developing a company identity, or projecting a professional, positive public image,

(2) **Prohibited standards.** Covered entities cannot require an individual to dress or groom in a manner that is not consistent with that individual's gender identity.

162-32-060

Gender Segregated Facilities

(1) **Facility use.** All covered entities, except school districts, shall allow individuals the use of gender-segregated facilities, such as restrooms, locker rooms, dressing rooms, and homeless shelters, that are consistent with that individual's gender identity.

(a) In such facilities where undressing in the presence of others occurs, covered entities, except for school districts, shall allow access to and use of a facility consistent with that individual's gender identity.

(2) **Cannot require use inconsistent with gender identity.** A covered entity shall not request or require an individual to use a gender-segregated facility that is inconsistent with that individual's gender identity, or request or require an individual to use a separate or gender-neutral facility.

(b) If another person expresses concern or discomfort about a person who uses a facility that is consistent with the person's gender identity, the person expressing discomfort should be directed to a separate or gender neutral facility, if available.

(c) School districts should assess the use of locker rooms by transgendered students on a case-by-case basis, with the goals of maximizing the student's social integration and equal opportunity, ensuring the student's safety and comfort, and minimizing the stigmatization of the student. In most cases, transgender students should have access to the locker room that corresponds to their gender identity consistently asserted at school.

(3) **Provision of options encouraged.** Whenever feasible, covered entities are encouraged to provide options for privacy that are available to any individual desiring privacy.



such a single-use gender neutral bathrooms

★ use of facility that is consistent with that individual's gender id which is publicly & exclusively asserted.