

WASHINGTON STATE HUMAN RIGHTS COMMISSION

Regulations — Volume III

PUBLIC ACCOMMODATION, REAL ESTATE AND CREDIT REGULATIONS

Washington Administrative Code Chapters 162-06, -26, -28, -36, -38, -40

WAC 162-26-060 General principles. (1) **Same service preferred.** The purposes of the law against discrimination are best achieved when handicapped persons are treated the same as if they were not handicapped. The legislature expresses this policy in RCW 49.60.215 with the words "regardless of." Persons should, if possible, be treated without regard to their handicap or use of a dog guide. This is called "same service" in this chapter.

(2) **Reasonable accommodation.** In some circumstances, however, treating handicapped persons the same as nonhandicapped persons (same service) will defeat the purposes of the law against discrimination. This would be true if persons in wheelchairs and nonhandicapped persons are equally entitled to use the stairway to reach the second floor of a store. In such circumstances, the operator of the place of public accommodation should if possible use the next best solution: Reasonable accommodation. A reasonable accommodation would be to permit the shopper in the wheelchair to use an elevator to reach the second floor, even though the public in general is not permitted to use the elevator. Reasonable accommodation is explained in WAC 162-26-080.

(3) **Arranged service.** Where same service will not carry out the purposes of the law and where no accommodation is reasonable, the operator of a place of public accommodation should use the third best solution: Arranged service. In the example used in this section, arranged service would be having a store employee bring merchandise of the size and description requested by the wheelchair shopper from the second floor for examination by the customer on the first floor. This would be appropriate if there were no elevator and no other safe and dignified way to transport the customer to the second floor. Arranged service is explained in WAC 162-26-090.

(4) **Overall objective.** In applying RCW 49.60.215, the commission seeks to assure that handicapped persons will have the enjoyment of places of public accommodation to the greatest extent practical. The legislature in RCW 49.60.040 has defined "full enjoyment of" with respect to the civil right set out in places of public accommodation in RCW 49.60.030 as follows:

"Full enjoyment of" includes the right to purchase any service, commodity, or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement, without acts directly or indirectly causing persons . . . with any sensory, mental, or physical handicap, or a blind or deaf person using a trained dog guide, to be treated as not welcome, accepted, desired, or solicited;"

[Statutory Authority: RCW 49.60.120(3). 82-19-086 (Order 41), § 162-26-060, filed 9/22/82.]



Title II Highlights

► State and local governments--

- Must ensure that individuals with disabilities are not excluded from services, programs, and activities because buildings are inaccessible.
- Need not remove physical barriers, such as stairs, in all existing buildings, as long as they make their programs accessible to individuals who are unable to use an inaccessible existing facility.
- Can provide the services, programs, and activities offered in the facility to individuals with disabilities through alternative methods, if physical barriers are not removed, such as --
 - Relocating a service to an accessible facility, e.g., moving a public information office from the third floor to the first floor of a building.
 - Providing an aide or personal assistant to enable an individual with a disability to obtain the service.
 - Providing benefits or services at an individual's home, or at an alternative accessible site.
- May not carry an individual with a disability as a method of providing program access, except in "manifestly exceptional" circumstances.
- Are not required to take any action that would result in a fundamental alteration in the nature of the service, program, or activity or in undue financial and administrative burdens. However, public entities must take any other action, if available, that would not result in a fundamental alteration or undue burdens but would ensure that individuals with disabilities receive the benefits or services.



Title III Highlights

IV. Eligibility for Goods and Services

- In providing goods and services, a public accommodation may not use eligibility requirements that exclude or segregate individuals with disabilities, unless the requirements are "necessary" for the operation of the public accommodation.
 - For example, excluding individuals with cerebral palsy from a movie theater or restricting individuals with Down's Syndrome to only certain areas of a restaurant would violate the regulation.
- Requirements that tend to screen out individuals with disabilities, such as requiring a blind person to produce a driver's license as the sole means of identification for cashing a check, are also prohibited.
- Safety requirements may be imposed only if they are necessary for the safe operation of a place of public accommodation. They must be based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities.
 - For example, an amusement park may impose height requirements for certain rides when required for safety.
- Extra charges may not be imposed on individuals with disabilities to cover the costs of measures necessary to ensure nondiscriminatory treatment, such as removing barriers or providing qualified interpreters.

V. Modifications in Policies, Practices, and Procedures

- A public accommodation must make reasonable modifications in its policies, practices, and procedures in order to accommodate individuals with disabilities.
- A modification is not required if it would "fundamentally alter" the goods, services, or operations of the public accommodation.

- For example, a department store may need to modify a policy of only permitting one person at a time in a dressing room if an individual with mental retardation needs the assistance of a companion in dressing.
- Modifications in existing practices generally must be made to permit the use of guide dogs and other service animals.
- Specialists are not required to provide services outside of their legitimate areas of specialization.
 - For example, a doctor who specializes exclusively in burn treatment may refer an individual with a disability, who is not seeking burn treatment, to another provider. A burn specialist, however, could not refuse to provide burn treatment to, for example, an individual with HIV disease.

VI. Auxiliary Aids

- A public accommodation must provide auxiliary aids and services when they are necessary to ensure effective communication with individuals with hearing, vision, or speech impairments.
- "Auxiliary aids" include such services or devices as qualified interpreters, assistive listening headsets, television captioning and decoders, telecommunications devices for deaf persons (TDD's), videotext displays, readers, taped texts, brailled materials, and large print materials.
- The auxiliary aid requirement is flexible. For example, a brailled menu is not required, if waiters are instructed to read the menu to blind customers.
- Auxiliary aids that would result in an undue burden, (i.e., "significant difficulty or expense") or in a fundamental alteration in the nature of the goods or services are not required by the regulation. However, a public accommodation must still furnish another auxiliary aid, if available, that does not result in a fundamental alteration or an undue burden.

VII. Existing Facilities: Removal of Barriers

- Physical barriers to entering and using existing facilities must be removed when "readily achievable."
- Readily achievable means "easily accomplishable and able to be carried out without much difficulty or expense."
- What is readily achievable will be determined on a case-by-case basis in light of the resources available.
 - The regulation does not require the rearrangement of temporary or movable structures, such as furniture, equipment, and display racks to the extent that it would result in a significant loss of selling or serving space.

- Legitimate safety requirements may be considered in determining what is readily achievable so long as they are based on actual risks and are necessary for safe operation.
- Examples of barrier removal measures include --
 - Installing ramps,
 - Making curb cuts at sidewalks and entrances,
 - Rearranging tables, chairs, vending machines, display racks, and other furniture,
 - Widening doorways,
 - Installing grab bars in toilet stalls, and
 - Adding raised letters or braille to elevator control buttons.
- First priority should be given to measures that will enable individuals with disabilities to "get in the front door," followed by measures to provide access to areas providing goods and services.
- Barrier removal measures must comply, when readily achievable, with the alterations requirements of the ADA Accessibility Guidelines. If compliance with the Guidelines is not readily achievable, other safe, readily achievable measures must be taken, such as installation of a slightly narrower door than would be required by the Guidelines.

VIII. Existing Facilities: Alternatives to Barrier Removal

- The ADA requires the removal of physical barriers, such as stairs, if it is "readily achievable." However, if removal is not readily achievable, alternative steps must be taken to make goods and services accessible.
- Examples of alternative measures include --
 - Providing goods and services at the door, sidewalk, or curb,
 - Providing home delivery,
 - Retrieving merchandise from inaccessible shelves or racks,
 - Relocating activities to accessible locations.
- Extra charges may not be imposed on individuals with disabilities to cover the costs of measures used as alternatives to barrier removal. For example, a restaurant may not charge a wheelchair user extra for home delivery when it is provided as the alternative to barrier removal.



Governor's
Committee
on Disability
Issues and
Employment
Washington

Access Alaska
Voice/TDD:
(907) 248-4777
Alaska

Access Oregon
Voice/TDD:
(503) 230-1225
Oregon

LINC
Living
Independence
Network
Corporation
Voice/TDD:
(208) 336-3335
Idaho

NORTHWEST DISABILITY BUSINESS TECHNICAL ASSISTANCE CENTER

P.O. Box 9046 Mailstop 6000 / Olympia, WA 98507-9046 / Voice: (206) 438-3168 / 1-800-HELP ADA / TDD: (206) 438-3167

RELIABLE INFORMATION

and

PRACTICAL ADVICE

on the

AMERICANS WITH DISABILITIES ACT

The Northwest Disability Business Technical Assistance Center is funded through a grant from the Department of Education, to provide Information, Technical Assistance, Referrals, and Training to those who have responsibilities and those who have rights under the Americans with Disabilities Act.

**1-800-HELP ADA (1-800-435-7232) V/TDD
Anywhere within Alaska, Washington Idaho, or Oregon**

CALL TO:

- Discuss your ADA issues with trained advisors;
- Request copies of the latest explanatory or technical materials which have been approved for accuracy by the relevant enforcement agencies;
- Learn about the tax incentives, federal and state programs and other resources available to assist you in implementing the Act;
- Consult our data base on consultants, assistive aides and devices; or
- Arrange training for your organization.

The services of the Northwest Disability Business Technical Assistance Center extent to all provisions of the ADA, including Employment, State and Local Governments, Public Accommodations, Telecommunications, Public and Private Transportation, Barrier Removal and Barrier Free Design.

ADA INFORMATION SOURCES

Telephone numbers to call to obtain information on the Americans with Disabilities Act:

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC):

1-800-669-3362 (Voice)
1-800-800-3302 (TDD)

U.S. DEPARTMENT OF JUSTICE (DOJ):

ADA HOTLINE (Toll Call)

202-514-0301 (Voice)

202-514-0381
and
202-514-0383

(TDD)

PRESIDENT'S COMMITTEE JOB ACCOMMODATION NETWORK (JAN):

1-800-526-7234 (Outside West Virginia) Voice and TDD
1-800-526-4698 (Inside West Virginia)
1-800-526-4636 (Computer Bulletin Board)

FEDERAL COMMUNICATIONS COMMISSION (FCC):

Common Carriers Bureau:

202-634-1808 (Voice)
202-634-1855 (TDD)

HOUSING AND URBAN DEVELOPMENT (HUD):

Fair Housing Act Info

1-800-669-9777 (Voice)
1-800-927-9275 (TDD)

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD (ATBCB):

1-800-872-2253 (Voice and TDD) 872-2253 = USA-ABLE

GOVERNOR'S COMMITTEE ON DISABILITY ISSUES & EMPLOYMENT (GCDE):

N.W. Disability and Business Technical Assistance Center
1-800-435-7232 (1-800-HELP-ADA)

JOB ACCOMMODATIONS NETWORK (JAN):

ADA Hot Line 1-800-232-9675 (1-800-ADA-WORK)

PJW:lp:I:adainfo

ADA CAP(communications Accommodations Project)

-American Foundation for the Blind (202)-223-0101

-National Center for Law and Deafness (202)-651-5343 (Voice and TDD)