No. 88062-0

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

JAMES KUMAR, RANVEER SINGH, ASEGEDEW GEFE,
AND ABBAS KOSYMOV,

Plaintiffs/Petitioners,

vs.

GATE GOURMET, INC.

Defendant/Respondent.

BRIEF OF AMICUS CURIAE WASHINGTON STATE ASSOCIATION FOR JUSTICE FOUNDATION

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On Behalf of
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I. IDENTITY AND INTEREST OF AMICUS CURIAE

The Washington State Association for Justice Foundation (WSAJ Foundation) is a not-for-profit corporation organized under Washington law, and a supporting organization to the Washington State Association for Justice (WSAJ). WSAJ Foundation is the new name of the Washington State Trial Lawyers Association Foundation (WSTLA Foundation), a supporting organization to the Washington State Trial Lawyers Association (WSTLA), now renamed WSAJ. WSAJ Foundation, which operates the amicus curiae program formerly operated by WSTLA Foundation, has an interest in the rights of plaintiffs under the civil justice system, including an interest in the rights of employees under the Washington Law Against Discrimination, Ch. 49.60 RCW (WLAD).

II. INTRODUCTION AND STATEMENT OF THE CASE

This review presents the Court with the occasion to determine whether an employment discrimination claim for failure to accommodate religious belief or practice is cognizable under the WLAD. James Kumar, Ranveer Singh, Asegedew Gefe, and Abbas Kosymov (collectively Kumar or employees) filed a class action complaint against their employer, Gate Gourmet, Inc. (Gate), alleging violations of the WLAD, and related common law claims for battery and negligent infliction of emotional distress. The superior court dismissed the amended complaint on Gate's

motion pursuant to CR 12(b)(6), and this Court granted direct review. The underlying facts are drawn from the amended complaint and the briefing of the parties. See CP 13-29 (First Amended Class Action Complaint); Kumar Br. at 6-12; Gate Br. at 6-9; Kumar Reply Br. at 1.

For purposes of this amicus curiae brief, the following facts are relevant: Gate provides food and beverage catering services to airlines throughout the world, including carriers at SeaTac Airport. Gate prohibits employees at the airport from bringing their own food for "security and business reasons." Kumar Br. at 8; Kumar Reply Br. at 1.[1] It also appears that Gate restricts employees from leaving the work site to obtain food during meal times. See Kumar Br. at 8.[2]

Although Gate supplies meals for the employees, the contents and/or preparation of certain meals violate at least some of the employees' religious beliefs. For example, James Kumar is Hindu. See CP 15 (¶ 2.2). Most Hindus do not eat beef because cows are sacred animals in Hinduism, and many Hindus are vegetarian. See CP 17 (¶ 3.6.3). Ranveer Singh is vegetarian for spiritual and philosophical reasons. See CP 15

[1] The amended complaint alleges that the prohibition is based on "safety and quality laws and regulations imposed by federal, state, and local government." CP 16 (¶¶ 3.1-3.2).
[2] The amended complaint alleges that the employees' inability to leave the work site is based on a "business rule." CP 16 (¶ 3.4). It further alleges that, given the time involved in security screening and traveling off site, it would not be feasible for the employees to leave the premises during a standard 30-minute meal break. See CP 16 (¶ 3.3, describing security screening; ¶ 3.4, referring to "distance of travel").

(¶ 2.4). The amended complaint alleges that his beliefs in this regard are essentially equivalent to religious belief. See CP 17-18 (¶ 3.6.4).[3] Asegedew Gefe is Ethiopian Orthodox Christian. See CP 15 (¶ 2.6). Ethiopian Orthodox Christians do not eat pork, and they abstain from meat and dairy products during fasting days that occur periodically throughout the year. See CP 17 (¶ 3.6.1). Abbas Kosymov is Muslim. See CP 15 (¶ 2.8). Muslims do not eat pork, among other things, and food must be prepared in accordance with certain religious requirements. See CP 17 (¶ 3.6.2).

Gate typically offers one meat "entrée" and one "veggie choice" to its employees. CP 18 (¶ 3.10). The meat entrée may include beef, pork or a combination of both. See CP 18 (¶ 3.11). The veggie choice is frequently prepared with animal products, including pork. See CP 18-19 (¶ 3.12). The contents of the meals are not generally labeled or disclosed. See CP 19 (¶ 3.13). None of the meals are prepared in accordance with particular religious requirements. See CP 19 (¶¶ 3.14-3.15).

In the Spring of 2011, Mr. Kumar approached Gate about the pork content of some of its meals. See CP 19-20 (¶¶ 3.16-3.17). Gate temporarily switched from pork to turkey, but then switched back to pork without notice a short time later. See id. According to the allegations of

[3] Gate contends that "vegetarianism" is not a religion, but notes that this issue need not be resolved here, as it was not the basis for its motion to dismiss. See Gate Br. at 7 n.1.

the amended complaint, Gate did not otherwise respond to comments, requests and suggestions regarding the contents and preparation of meals provided to employees that violated the employees' religious beliefs and practices. See CP 20 (¶ 3.17).

The employees subsequently filed suit against Gate on behalf of themselves and "[a]ll employees of Gate Gourmet's SeaTac location who have religious or sincerely held beliefs regarding their diets and whose dietary restrictions imposed by such beliefs have not been accommodated[.]" CP 21 (¶ 4.1). The amended complaint alleges a claim for failure to accommodate religious belief under the WLAD, acknowledging the contrary opinion in Short v. Battle Ground Sch. Dist., 169 Wn. App. 188, 279 P.3d 902 (2012), which was not then final. See CP 24-25 (¶ 5.56). The amended complaint also alleges a claim for disparate impact discrimination under the WLAD, based in part on the relationship between religious belief and national origin, and in part on the failure to accommodate religion. See CP 25 (¶¶ 5.9-5.10).[4] Lastly, the amended complaint alleges common law claims for battery and negligent infliction of emotional distress, both of which also appear to be based at least in part on the failure to accommodate religion. See CP 25-28. Gate moved to

[4] The disparate impact claim further includes an allegation of intentional discrimination, based on Gate's decision not to change its meal policy after learning of its impact on religious employees. See CP 25 (¶ 5.11).

dismiss all claims pursuant to CR 12(b)(6). The superior court granted the motion, and this Court granted direct review on all claims. This brief only addresses the religious accommodation issue.

III. ISSUE PRESENTED

> Whether an employment discrimination claim for failure to accommodate religious belief or practice exists under the WLAD, and, if so, what is the standard for religious accommodation?

IV. SUMMARY OF ARGUMENT

The WLAD prohibits discrimination in the terms or conditions of employment based on protected classifications, including religion. The purpose of this prohibition is to eliminate existing discrimination and prevent future discrimination in the workplace, and it must be liberally construed to accomplish this purpose. Although the word "discrimination" is not defined by the WLAD, several different forms of analysis have been developed by the Court in order to eliminate and prevent discrimination in the workplace, including disparate treatment, disparate impact, harassment, and, where necessary to provide equality of opportunity, failure to accommodate.

While discrimination in the form of failure to accommodate typically arises in the context of a disability discrimination claim, statutory language and regulations addressing the accommodation required in this context suggest a larger duty to accommodate under the WLAD, which

also encompasses religious belief or practice. Just as a disability may limit the disabled employee's ability to perform a job in the absence of an accommodation, so too religious belief or practice may limit the religious employee's ability to perform without accommodation, albeit based on religious belief or practice rather than a physical or mental condition. In either instance, the disabled or religious employee is disadvantaged when the employer fails to account for his or her unique characteristics or needs in setting the terms and conditions of employment.

The same standard of accommodation required by the WLAD for disability, which encourages an interactive process between employer and employee based on principles of reasonableness and undue hardship, should be applied to religious belief or practice, subject to constitutionally based limitations on the establishment of religion. Requiring employers and employees to address accommodation of religious belief or practice through an interactive process will provide the incentive and opportunity for eliminating existing discrimination and preventing future discrimination in the workplace without resort to litigation.

V. ARGUMENT

A. Overview Of The Court's Analysis Of Different Forms Of Discrimination, In Fulfilling The WLAD's Purpose Of Eliminating And Preventing Discrimination.

The WLAD recognizes a civil right to be free from discrimination in employment based on certain protected classifications, including "creed" or religion.[5] RCW 49.60.030(1)(a). It is supported by legislative findings that such discrimination "threatens … the rights and proper privileges of [the State's] inhabitants" and "menaces the institutions and foundation of a free democratic state." RCW 49.60.010. In this regard, the WLAD is said to express "a public policy of the highest priority." International Union of Operating Engineers v. Port of Seattle, 176 Wn.2d 712, 722, 295 P.3d 736 (2013) (internal quotation omitted).

The broad purpose of the WLAD is to eliminate existing discrimination and prevent future discrimination. See RCW 49.60.010. It is governed by an express statutory mandate of liberal construction to ensure that this purpose is accomplished. See RCW 49.60.020. Among other things, the Act prohibits discrimination in the terms or conditions of employment, see RCW 49.60.180(3), and it confers a civil cause of action

[5] This brief uses "religion" as synonymous with "creed." See Short, 169 Wn. App. at n.18 (defining "creed" under the WLAD as "a system of religious beliefs"; internal quotation omitted).

on any person who is victimized by such discrimination, see RCW 49.60.030(2).[6]

Although the word "discrimination" is not specially defined in the WLAD, to date the Court has identified discrimination in several distinct forms: disparate treatment, disparate impact, harassment, and failure to accommodate. None of these forms of analysis is expressly prescribed by the terms of the Act. The words "disparate treatment," "disparate impact" and "harassment" do not appear in the text of the WLAD, and the word "accommodation" appears only in connection with recent amendments to the definition of disability. See Laws of 2007, Ch. 317, § 2 (codified as RCW 49.60.040(7)(d)). Furthermore, none of these forms of analysis, with the exception of failure to accommodate disability, is the subject of Washington State Human Rights Commission (HRC) regulations adopted pursuant to RCW 49.60.120(3). See WAC 162-22-025(2) (requiring reasonable accommodation), -065 (defining reasonable accommodation) & -075 (defining undue hardship).[7]

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[6] The full texts of the current versions of RCW 49.60.010, .020, .030 & .180 are reproduced in the Appendix to this brief.

[7] The full texts of the current versions of WAC 162-22-025, -065 & -075 are reproduced in the Appendix to this brief. Two HRC regulations appear to presume the existence of disparate impact analysis, even though they do not define or prescribe such analysis. WAC 162-12-140(3)(b) & (d) limit pre-employment inquiries regarding arrests or convictions on grounds that statistical studies have shown a disparate impact on some racial and ethnic minorities. WAC 162-30-020(4)(b) prohibits certain employer leave policies on grounds that they would have a disparate impact on female employees. "Disparate treatment" and "harassment" do not appear in Title 162 WAC.

Each of these differing types of analysis represents the Court's interpretation of discrimination in particular factual settings, in keeping with the statutory rule of liberal construction and in furtherance of the purpose of the WLAD to eliminate and prevent discrimination. For example, in Shannon v. Pay 'N Save Corp., 104 Wn.2d 722, 726, 709 P.2d 799 (1985), the Court noted that discrimination in the form of "disparate treatment" and "disparate impact" are cognizable under the WLAD. Discrimination in the form of "disparate treatment" occurs when an employer treats a member of a protected class less favorably than others. See Shannon, 104 Wn.2d at 726; see also WPI 330.01 (stating elements of disparate treatment claim).[8] Discrimination in the form of "disparate impact" occurs when a facially neutral employment practice falls more harshly on a member of a protected class, even in the absence of a discriminatory motive. See Shannon at 727; see also WPI 330.02 & .03 (stating and defining elements of disparate impact claim).[9]

[8] While the analysis of disparate treatment under the WLAD is similar to the analysis of disparate treatment under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.* (Title VII), the use of this type of analysis under the WLAD appears to pre-date Title VII. See e.g. Arnett v. Seattle General Hosp., 65 Wn.2d 22, 395 P.2d 503 (1964) (involving refusal to accept employment application because of race).

[9] Although the analysis of disparate impact under the WLAD is derived from Griggs v. Duke Power Co., 401 U.S. 424 (1971), involving Title VII, the extent to which it corresponds to the analysis under Title VII is unclear. See Shannon at 728-29 (disapproving jury instruction based on U.S. Equal Employment Opportunity Commission [EEOC] Guidelines for disparate impact under Title VII). There have been relatively few WLAD disparate impact cases that have reached this Court, and the text of Title VII has been amended in reaction to post-Griggs developments regarding disparate

In Glasgow v. Georgia-Pacific Corp., 103 Wn.2d 401, 693 P.2d 708 (1985), the Court recognized discrimination in the form of "harassment" under the WLAD. See also WPI 330.21, .22, .23 & .24 (stating and defining elements of harassment claim). While Glasgow involved the protected class of sex, the analysis of discrimination in terms of harassment also applies to other protected classes under the WLAD. See Robel v. Roundup Corp., 148 Wn.2d 35, 45, 59 P.3d 611 (2002) (applying Glasgow analysis to WLAD disability discrimination claim); Fisher v. Tacoma Sch. Dist., 53 Wn. App. 591, 595-96, 769 P.2d 318 (holding Glasgow applies to racial harassment), *review denied*, 112 Wn.2d 1027 (1989); see also WPI 330.21 & Cmt. (indicating harassment applicable to all WLAD protected classifications). Discrimination in the form of harassment typically occurs when unwelcome conduct by (or imputed to) the employer affects the terms or conditions of employment. See Glasgow, 103 Wn.2d at 406-07.[10]

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impact analysis in the federal courts. See Civil Rights Act of 1991, §§ 3(2)-(3) & 105, Pub. L. No. 102-166, 105 Stat. 1071 (amending § 703 of Title VII, 42 U.S.C. § 2000e-2).

[10] In recognizing discrimination in the form of harassment, the Court drew upon Title VII precedent for support. See Glasgow, 103 Wn.2d at 406 n.2. However, as with disparate impact, the extent to which the Court's analysis corresponds to Title VII precedent is unclear, and there appear to be at least some distinctions. For example, the analysis appears to be different under the WLAD depending on whether the harassment is characterized as quid pro quo or hostile work environment. See Antonius v. King County, 153 Wn.2d 256, 261, 103 P.3d 729 (2004). This distinction appears to have been questioned, if not abandoned, under Title VII. See Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 752-54 (1998); see also WPI 330.21 Cmt. (noting difference between WLAD and federal law).

In Holland v. Boeing Co., 90 Wn.2d 384, 388-89, 583 P.2d 521 (1978), the Court recognized discrimination in the form of "failure to accommodate" in the context of disability.[11] This form of discrimination occurs when the work environment fails to take into account the differences between an employee who is a member of the protected class and others who do not belong to the class, when the employee's access to equal employment opportunity is hindered. See id., 90 Wn.2d at 388. The Court read the duty to accommodate into RCW 49.60.180 based upon the strong statement of legislative policy in RCW 49.60.010, coupled with the liberal construction requirement of RCW 49.60.020. See Holland at 388-89. This reading was bolstered, but not dictated, by the HRC's view of the statute, reflected in its regulations addressing a duty to accommodate in the disability context. See id.[12]

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[11] The Court in Holland suggested that discrimination in the form of failure to accommodate would not be implicated where there are no inherent differences between the general public and members of the protected class, e.g., in cases involving sex and race. See 90 Wn.2d at 388; cf. Hegwine v. Longview Fibre Co., 162 Wn.2d 340, 352, 172 P.3d 688 (2007) (declining to apply accommodation analysis to sex discrimination based on pregnancy, given HRC regulations requiring a disparate treatment-type analysis). The Court has not determined whether this form of discrimination applies to religious belief or practice. See Hiatt v. Walker Chevrolet Co., 120 Wn.2d 57, 61 & 63, 837 P.2d 618 (1992) (declining to reach issue because of inadequate briefing).

[12] In Holland, the Court specifically rejected Title VII authority imposing a "de minimis effort" standard of accommodation for religious discrimination claims. See 90 Wn.2d at 390. Holland otherwise acknowledged similarities between the WLAD and the federal Rehabilitation Act of 1973, 29 U.S.C. §§ 701 *et seq.*, but did not base its holding on the federal act. See Holland at 390 & n.4. Holland predated the federal Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et seq.* (ADA), by more than a decade.

The foregoing cases illustrate the Court's ongoing role in defining discrimination under the WLAD, even in the absence of express legislative or regulatory guidance or recognition of a particular form of discrimination.[13] The Court's task in this case is to determine whether the purpose of the WLAD and the required liberal construction warrant recognition of discrimination in the form of failure to accommodate religious belief or practice.

B. The Court Should Recognize Discrimination In The Form Of Failure To Accommodate Religious Belief Or Practice Under the WLAD.

The WLAD specifically prohibits discrimination against any person in terms or conditions of employment because of religion. See RCW 49.60.180(3). This prohibition was adopted in fulfillment of the provisions of the Washington Constitution concerning civil rights. See RCW 49.60.010. Article I, § 11, of the constitution guarantees "[a]bsolute freedom of conscience in all matters of religious sentiment, belief and worship," and provides that "no one shall be molested or disturbed in person or property on account of religion."[14] The prohibition of religious discrimination has been part of the WLAD since its enactment more than 60 years ago. See Laws of 1949, Ch. 183, §§ 2 & 7. Nonetheless, the issue

[13] As the foregoing cases suggest, the Court has often drawn upon Title VII jurisprudence in fulfilling its role. However, it also clear that federal analysis of similar claims is not controlling. See e.g. Martini v. Boeing Co., 137 Wn.2d 357, 372-73, 971 P.2d 45 (1999).
[14] The full text of Wash. Const. Art. I, § 11, is reproduced in the Appendix to this brief.

of failure to accommodate religious belief under the WLAD has not been squarely presented to the Court until now. See Hiatt, 120 Wn.2d at 61 & 63.

The Court should hold that failure to accommodate religious belief or practice is cognizable under the WLAD for reasons analogous to those that led it to recognize a duty to accommodate disability in Holland. The Court stated its rationale in Holland as follows:

> The physically disabled employee is clearly different from the nonhandicapped employee by virtue of the disability. But the difference is a disadvantage only when the work environment *fails* to take into account the unique characteristics of the handicapped person. *See Potluck Protections for Handicapped Discriminatees: The Need to Amend Title VII to Prohibit Discrimination on the Basis of Disability*, 8 Loy.Chi.L.J. 814 (1977). Identical treatment may be a source of discrimination in the case of the handicapped, whereas *different* treatment may eliminate discrimination against the handicapped and open the door to employment opportunities.
>
> RCW 49.60 contains a strong statement of legislative policy. *See* RCW 49.60.010 and .030. When, in 1973, the legislature chose to make this policy applicable to discrimination against the handicapped, we believe it is clear it mandated positive steps be taken. An interpretation to the contrary would not work to eliminate discrimination. It would instead maintain the *status quo* wherein work environments and job functions are constructed in such a way that handicaps are often intensified because some employees are not physically identical to the "ideal employee".
>
> Further, the concept of definitive relief, by means of a *reasonable accommodation* to the handicapped employee, is found in an administrative regulation issued pursuant to RCW 49.60. WAC 162-22-080. The regulation, as the construction of the statute by those whose duty it is to administer its terms, is entitled to be given great weight.

90 Wn. 2d at 388-89 (footnote quoting former WAC 162-22-080 omitted; emphasis in original).

The Court's rationale in Holland applies with equal force to failure to accommodate religion. Similar to a disabled employee, a particular employee's religious belief or practice may cause him or her to be different from other employees who are non-religious or who are adherents of different religious traditions. This may disadvantage the employee when the work environment fails to take his or her differences into account. For example, under the allegations in Kumar's amended complaint, the affected employees may be forced to work hungry in order to avoid violating their religious beliefs by consuming the meals provided by Gate. In this way, identical treatment—in the form of mandatory employer-provided meals that do not account for certain employees' religious dietary restrictions—results in discrimination against such employees in the conditions of their employment. Different treatment is necessary to ensure that they have the same benefit of meal breaks as compared to employees who are non-religious or hold different religious beliefs.[15]

[15] The parties do not appear to contest that meal periods are a condition of employment. See WAC 296-126-092 (regarding employees' legal entitlement to a meal period). The full text of the current version of this regulation is reproduced in the Appendix to this brief.

Relying principally on the Court of Appeals decision in Short, 169 Wn. App. at 202-03, Gate argues that the lack of express recognition of any duty to accommodate religion in the text of the WLAD or HRC regulations forecloses the imposition of such a duty. See Gate Br. at 9-14. At the most basic level, this argument misapprehends the Court's role in interpreting the meaning of discrimination under the WLAD, in keeping with the rule of liberal construction and the purpose of eliminating and preventing discrimination. See Holland, 90 Wn.2d at 388-89.

To the extent Gate's argument requires express recognition of a particular form of discrimination in the text of the WLAD, see Gate Br. at 10, it is refuted by cases recognizing discrimination in the form of disparate treatment, disparate impact, harassment, and failure to accommodate. See § A, supra. There was no express recognition of failure to accommodate disability in the text of the WLAD when Holland was decided in 1978. Gate relies on the current WLAD definition of disability, which refers to "reasonable accommodation," RCW 49.60.040(7)(d), as foreclosing recognition of a duty to accommodate religious belief or practice. This definition was not adopted until 2007, in response to this Court's decision in McClarty v. Totem Electric, 157 Wn.2d 214, 137 P.3d 844 (2006). See Laws of 2007, Ch. 317, § 2 (originally codified as RCW 49.60.040(25)(d)). The purpose of that legislation was not directly related

to the issue of accommodation. See Laws of 2007, Ch. 317, § 1.[16] In any event, the lack of express recognition of a duty to accommodate in the text of the WLAD when Holland was decided did not prevent the Court from recognizing such a claim with respect to disability, nor should it foreclose recognition of such a claim with respect to religion.[17]

Furthermore, Gate's argument reads too much into the language of the current definition of disability, which provides in part: "[*o*]*nly for the purposes of qualifying for reasonable accommodation in employment*, an impairment must be known or shown through an interactive process to exist in fact[,]" as opposed to being perceived to exist. RCW 49.60.040(7)(d) (emphasis added). If anything, the italicized language seems to suggest a *broader* duty of accommodation that applies in the employment context. Although the duty to accommodate is specially addressed with respect to the definition of disability, this should not preclude recognition of a duty to accommodate with respect to religion.

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[16] In the absence of a WLAD definition of disability, the Court in McClarty adopted a definition based upon the ADA, 42 U.S.C. § 12102. See McClarty, 157 Wn.2d at 222 (noting lack of WLAD definition). In response to this decision, the Legislature adopted a broader definition of disability in an effort to restore the independent protections of the WLAD. See Laws of 2007, Ch. 317, § 1; see also Hale v. Wellpinit Sch. Dist., 165 Wn.2d 494, 198 P.3d 1021 (2009) (discussing adoption of WLAD definition in response to McClarty). The full text of the current version of RCW 49.60.040 is reproduced in the Appendix to this brief.

[17] The only other WLAD reference to "reasonable accommodation" of disabilities appears in RCW 49.60.222(2)(b), regarding real estate transactions, facilities and services. The full text of the current version of this statute is reproduced in the Appendix to this brief.

To the extent Gate's argument rests upon the absence of any HRC regulations recognizing a duty to accommodate religion (again following Short), Gate misapprehends the nature of judicial deference to agency interpretations of a statute. The HRC has the power and duty "[t]o adopt, amend, and rescind suitable rules to carry out the provisions of [the WLAD.]" RCW 49.60.120(3). Where an agency does interpret statutory language, such interpretation is entitled to deference. See e.g. Holland, 90 Wn.2d at 389. However, the fact that an agency has *not* addressed implementation of a statute by regulation does not alter the Court's obligation to interpret statutory language. The non-existence of regulations on a particular subject may simply reflect the allocation of limited agency resources.[18] In any event, the HRC's interpretation of the WLAD language prohibiting discrimination as including a duty to accommodate with respect to disability supports the imposition of such a duty with respect to religion, in the absence of any HRC guidance to the contrary.[19]

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[18] See Patten v. Ackerman, 68 Wn. App. 831, 836, 846 P.2d 567 (noting HRC regulations "are limited in application to *public agency enforcement* of RCW 49.60"; emphasis in original), *review denied,* 122 Wn.2d 1004 (1993); see also WAC 162-16-200 (stating "[t]he 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").

[19] Contrast Hegwine, 162 Wn.2d at 352, where the Court declined to apply reasonable accommodation analysis in a case of sex discrimination based on pregnancy, given HRC regulations requiring a disparate treatment-type analysis. See also WAC 162-30-020 (regarding sex discrimination based on pregnancy); Holland, 90 Wn.2d at 388 (suggesting reasonable accommodation analysis would be inapplicable to sex discrimination). Here, unlike Hegwine, there are no HRC regulations either requiring a

C. The Court Should Apply The Same Standard For Accommodating Religion As For Accommodating Disability Under the WLAD.

It may not be necessary to decide what standard of religious accommodation applies under the WLAD, given the procedural posture of this case on review of a CR 12(b)(6) motion, and the lack of argument by the parties on the subject. However, if the Court is inclined to provide guidance regarding the standard of accommodation for religious belief or practice, it should adopt the same standard for accommodating religion as for disability.

In the disability context, the standard of accommodation is based on reasonableness. See Holland, 90 Wn.2d at 389; WAC 162-22-065 & -075. Possible accommodations include "[c]hanges in the … conditions of work" that "[e]nable the enjoyment of equal … conditions of employment." WAC 162-22-065(1)(c) & (2)(b). The employer must make such accommodations unless they would impose an undue hardship, which is described in terms of unreasonable cost or difficulty under the circumstances. See WAC 162-22-075. Reasonable accommodation often entails an *interactive* process between employer and employee that creates an opportunity and incentive for sharing information and solving problems

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particular form of analysis of religious discrimination claims, or otherwise precluding application of reasonable accommodation analysis to religious belief or practice. See Title 162 WAC.

without resort to litigation. See Davis v. Microsoft Corp., 149 Wn.2d 521, 536-37, 70 P.3d 126 (2003) (describing interactive process); Frisino v. Seattle Sch. Dist., 160 Wn.App. 765, 777-83, 249 P.3d 1044 (same), *review denied,* 172 Wn.2d 1013 (2011).

HRC regulations regarding accommodation of disability are not phrased in terms that are specific to disability, and fit religion equally well. See WAC 162-22-065 & -075. If the Court adopts a similar standard, it would provide greater protection for religious employees under the WLAD than Title VII, in keeping with the liberal construction required by the WLAD. See RCW 49.60.020; see also Martini, 137 Wn.2d at 372-73 (noting that unlike the WLAD, Title VII does not contain a directive for liberal interpretation).[20] It would also result in a uniform standard of accommodation under the WLAD. Cf. Mackay v. Acorn Custom Cabinetry, Inc., 127 Wn.2d 302, 308-09, 898 P.2d 284 (1995) (holding substantial factor test of causation applied to WLAD retaliation claims should also apply to WLAD discrimination claims). As in the disability context, requiring employers and employees to address accommodation issues bearing on religious belief or practice through an interactive process will provide them both with the incentive and opportunity to eliminate and

[20] As noted previously, the Court in Holland rejected what it described as the "de minimis effort" standard derived from Title VII jurisprudence regarding accommodation of religion as being insufficient to accomplish the purpose of the WLAD. See 90 Wn.2d at 389-90.

prevent discrimination in the workplace without resort to litigation. Cf. Martini, 137 Wn.2d at 376 (stating "allowing the possibility of damages for back pay where an employer has violated the law against discrimination provides an incentive for *employers* to work with employees in the workplace to eradicate discrimination"; emphasis in original); Glasgow, 103 Wn.2d at 407-08 (recognizing discrimination in the form of harassment because "we view the essential purpose of the cause of action … to be *preventive* in nature"; emphasis in original).[21]

VI. CONCLUSION

The Court should adopt the analysis set forth in this brief, and hold that claims for failure to accommodate religious belief or practice are cognizable under the WLAD.

DATED this 21st day of September, 2013.

George M. Ahrend
GEORGE M. AHREND

George M. Ahrend
FOR BRYAN P. HARNETIAUX, WITH AUTHORITY

On Behalf of WSAJ Foundation

[21] Of course, the duty to accommodate religious belief or practice is subject to the Establishment Clause of the U.S. Const. Amend. I, and similar provisions of Wash. Const. Art. I, § 11. See Hiatt, 120 Wn.2d at 63 n.7; see also RCW 49.60.020 (prohibiting construing the WLAD to endorse any specific belief or practice). However, these potential limitations on the extent of permissible accommodation of religion do not appear to be implicated in this case.

APPENDIX

Wash. Const. Art. 1, § 11

Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment: PROVIDED, HOWEVER, That this article shall not be so construed as to forbid the employment by the state of a chaplain for such of the state custodial, correctional, and mental institutions, or by a county's or public hospital district's hospital, health care facility, or hospice, as in the discretion of the legislature may seem justified. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.

Adopted 1889. Amended by Amendment 4 (Laws 1903, p. 283, § 1, approved Nov. 1904); Amendment 34 (Laws 1957, S.J.R. No. 14, p. 1299, approved Nov. 4, 1958); Amendment 88 (Laws 1993, H.J.R. No. 4200, p. 3062, approved Nov. 2, 1993).

RCW 49.60.010. Purpose of chapter

This chapter shall be known as the “law against discrimination.” It is an exercise of the police power of the state for the protection of the public welfare, health, and peace of the people of this state, and in fulfillment of the provisions of the Constitution of this state concerning civil rights. The legislature hereby finds and declares that practices of discrimination against any of its inhabitants because of race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability are a matter of state concern, that such discrimination threatens not only the rights and proper privileges

of its inhabitants but menaces the institutions and foundation of a free democratic state. A state agency is herein created with powers with respect to elimination and prevention of discrimination in employment, in credit and insurance transactions, in places of public resort, accommodation, or amusement, and in real property transactions because of race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability; and the commission established hereunder is hereby given general jurisdiction and power for such purposes.

[2007 c 187 § 1, eff. July 22, 2007; 2006 c 4 § 1, eff. June 8, 2006; 1997 c 271 § 1; 1995 c 259 § 1; 1993 c 510 § 1; 1985 c 185 § 1; 1973 1st ex.s. c 214 § 1; 1973 c 141 § 1; 1969 ex.s. c 167 § 1; 1957 c 37 § 1; 1949 c 183 § 1; Rem. Supp. 1949 § 7614-20.]

RCW 49.60.020. Construction of chapter--Election of other remedies

The provisions of this chapter shall be construed liberally for the accomplishment of the purposes thereof. Nothing contained in this chapter shall be deemed to repeal any of the provisions of any other law of this state relating to discrimination because of race, color, creed, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability, other than a law which purports to require or permit doing any act which is an unfair practice under this chapter. Nor shall anything herein contained be construed to deny the right to any person to institute any action or pursue any civil or criminal remedy based upon an alleged violation of his or her civil rights. This chapter shall not be construed to endorse any specific belief, practice, behavior, or orientation. Inclusion of sexual orientation in this chapter shall not be construed to modify or supersede state law relating to marriage.

[2007 c 187 § 2, eff. July 22, 2007; 2006 c 4 § 2, eff. June 8, 2006; 1993 c 510 § 2; 1973 1st ex.s. c 214 § 2; 1973 c 141 § 2; 1957 c 37 § 2; 1949 c 183 § 12; Rem. Supp. 1949 § 7614-30.]

RCW 49.60.030. Freedom from discrimination--Declaration of civil rights

(1) The right to be free from discrimination because of race, creed, color, national origin, sex, honorably discharged veteran or military status, sexual orientation, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability is recognized as and declared to be a civil right. This right shall include, but not be limited to:

(a) The right to obtain and hold employment without discrimination;

(b) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement;

(c) The right to engage in real estate transactions without discrimination, including discrimination against families with children;

(d) The right to engage in credit transactions without discrimination;

(e) The right to engage in insurance transactions or transactions with health maintenance organizations without discrimination: PROVIDED, That a practice which is not unlawful under RCW 48.30.300, 48.44.220, or 48.46.370 does not constitute an unfair practice for the purposes of this subparagraph;

(f) The right to engage in commerce free from any discriminatory boycotts or blacklists. Discriminatory boycotts or blacklists for purposes of this section shall be defined as the formation or execution of any express or implied agreement, understanding, policy or contractual arrangement for economic benefit between any persons which is not specifically authorized by the laws of the United States and which is required or imposed, either directly or indirectly, overtly or covertly, by a foreign government or foreign person in order to restrict, condition, prohibit, or interfere with or in order to exclude any person or persons from any business relationship on the basis of race, color, creed, religion, sex, honorably discharged veteran or military status, sexual orientation, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability, or national origin or lawful business relationship: PROVIDED HOWEVER, That nothing herein contained

shall prohibit the use of boycotts as authorized by law pertaining to labor disputes and unfair labor practices; and

(g) The right of a mother to breastfeed her child in any place of public resort, accommodation, assemblage, or amusement.

(2) Any person deeming himself or herself injured by any act in violation of this chapter shall have a civil action in a court of competent jurisdiction to enjoin further violations, or to recover the actual damages sustained by the person, or both, together with the cost of suit including reasonable attorneys' fees or any other appropriate remedy authorized by this chapter or the United States Civil Rights Act of 1964 as amended, or the Federal Fair Housing Amendments Act of 1988 (42 U.S.C. Sec. 3601 et seq.).

(3) Except for any unfair practice committed by an employer against an employee or a prospective employee, or any unfair practice in a real estate transaction which is the basis for relief specified in the amendments to RCW 49.60.225 contained in chapter 69, Laws of 1993, any unfair practice prohibited by this chapter which is committed in the course of trade or commerce as defined in the Consumer Protection Act, chapter 19.86 RCW, is, for the purpose of applying that chapter, a matter affecting the public interest, is not reasonable in relation to the development and preservation of business, and is an unfair or deceptive act in trade or commerce.

[2009 c 164 § 1, eff. July 26, 2009; 2007 c 187 § 3, eff. July 22, 2007; 2006 c 4 § 3, eff. June 8, 2006; 1997 c 271 § 2; 1995 c 135 § 3. Prior: 1993 c 510 § 3; 1993 c 69 § 1; 1984 c 32 § 2; 1979 c 127 § 2; 1977 ex.s. c 192 § 1; 1974 ex.s. c 32 § 1; 1973 1st ex.s. c 214 § 3; 1973 c 141 § 3; 1969 ex.s. c 167 § 2; 1957 c 37 § 3; 1949 c 183 § 2; Rem. Supp. 1949 § 7614-21.]

RCW 49.60.040. Definitions

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) “Aggrieved person” means any person who: (a) Claims to have been injured by an unfair practice in a real estate transaction; or (b) believes

that he or she will be injured by an unfair practice in a real estate transaction that is about to occur.

(2) "Any place of public resort, accommodation, assemblage, or amusement" includes, but is not limited to, any place, licensed or unlicensed, kept for gain, hire, or reward, or where charges are made for admission, service, occupancy, or use of any property or facilities, whether conducted for the entertainment, housing, or lodging of transient guests, or for the benefit, use, or accommodation of those seeking health, recreation, or rest, or for the burial or other disposition of human remains, or for the sale of goods, merchandise, services, or personal property, or for the rendering of personal services, or for public conveyance or transportation on land, water, or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports, or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation, or public purposes, or public halls, public elevators, and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or educational institution, or schools of special instruction, or nursery schools, or day care centers or children's camps: PROVIDED, That nothing contained in this definition shall be construed to include or apply to any institute, bona fide club, or place of accommodation, which is by its nature distinctly private, including fraternal organizations, though where public use is permitted that use shall be covered by this chapter; nor shall anything contained in this definition apply to any educational facility, columbarium, crematory, mausoleum, or cemetery operated or maintained by a bona fide religious or sectarian institution.

(3) "Commission" means the Washington state human rights commission.

(4) "Complainant" means the person who files a complaint in a real estate transaction.

(5) "Covered multifamily dwelling" means: (a) Buildings consisting of four or more dwelling units if such buildings have one or more elevators; and (b) ground floor dwelling units in other buildings consisting of four or more dwelling units.

(6) “Credit transaction” includes any open or closed end credit transaction, whether in the nature of a loan, retail installment transaction, credit card issue or charge, or otherwise, and whether for personal or for business purposes, in which a service, finance, or interest charge is imposed, or which provides for repayment in scheduled payments, when such credit is extended in the regular course of any trade or commerce, including but not limited to transactions by banks, savings and loan associations or other financial lending institutions of whatever nature, stock brokers, or by a merchant or mercantile establishment which as part of its ordinary business permits or provides that payment for purchases of property or service therefrom may be deferred.

(7)(a) “Disability” means the presence of a sensory, mental, or physical impairment that:

(i) Is medically cognizable or diagnosable; or

(ii) Exists as a record or history; or

(iii) Is perceived to exist whether or not it exists in fact.

(b) A disability exists whether it is temporary or permanent, common or uncommon, mitigated or unmitigated, or whether or not it limits the ability to work generally or work at a particular job or whether or not it limits any other activity within the scope of this chapter.

(c) For purposes of this definition, “impairment” includes, but is not limited to:

(i) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitor-urinary, hemic and lymphatic, skin, and endocrine; or

(ii) Any mental, developmental, traumatic, or psychological disorder, including but not limited to cognitive limitation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(d) Only for the purposes of qualifying for reasonable accommodation in employment, an impairment must be known or shown through an interactive process to exist in fact and:

(i) The impairment must have a substantially limiting effect upon the individual's ability to perform his or her job, the individual's ability to apply or be considered for a job, or the individual's access to equal benefits, privileges, or terms or conditions of employment; or

(ii) The employee must have put the employer on notice of the existence of an impairment, and medical documentation must establish a reasonable likelihood that engaging in job functions without an accommodation would aggravate the impairment to the extent that it would create a substantially limiting effect.

(e) For purposes of (d) of this subsection, a limitation is not substantial if it has only a trivial effect.

(8) “Dog guide” means a dog that is trained for the purpose of guiding blind persons or a dog that is trained for the purpose of assisting hearing impaired persons.

(9) “Dwelling” means any building, structure, or portion thereof that is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land that is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(10) “Employee” does not include any individual employed by his or her parents, spouse, or child, or in the domestic service of any person.

(11) “Employer” includes any person acting in the interest of an employer, directly or indirectly, who employs eight or more persons, and does not include any religious or sectarian organization not organized for private profit.

(12) “Employment agency” includes any person undertaking with or without compensation to recruit, procure, refer, or place employees for an employer.

(13) “Families with children status” means one or more individuals who have not attained the age of eighteen years being domiciled with a parent or another person having legal custody of such individual or individuals, or with the designee of such parent or other person having such legal custody, with the written permission of such parent or other person. Families with children status also applies to any person who is pregnant or

is in the process of securing legal custody of any individual who has not attained the age of eighteen years.

(14) "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 of any particular race, creed, color, sex, sexual orientation, national origin, or with any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability, to be treated as not welcome, accepted, desired, or solicited.

(15) "Honorably discharged veteran or military status" means a person who is:

(a) A veteran, as defined in RCW 41.04.007; or

(b) An active or reserve member in any branch of the armed forces of the United States, including the national guard, coast guard, and armed forces reserves.

(16) "Labor organization" includes any organization which exists for the purpose, in whole or in part, of dealing with employers concerning grievances or terms or conditions of employment, or for other mutual aid or protection in connection with employment.

(17) "Marital status" means the legal status of being married, single, separated, divorced, or widowed.

(18) "National origin" includes "ancestry."

(19) "Person" includes one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees and receivers, or any group of persons; it includes any owner, lessee, proprietor, manager, agent, or employee, whether one or more natural persons; and further includes any political or civil subdivisions of the state and any agency or instrumentality of the state or of any political or civil subdivision thereof.

(20) “Premises” means the interior or exterior spaces, parts, components, or elements of a building, including individual dwelling units and the public and common use areas of a building.

(21) “Real estate transaction” includes the sale, appraisal, brokering, exchange, purchase, rental, or lease of real property, transacting or applying for a real estate loan, or the provision of brokerage services.

(22) “Real property” includes buildings, structures, dwellings, real estate, lands, tenements, leaseholds, interests in real estate cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest therein.

(23) “Respondent” means any person accused in a complaint or amended complaint of an unfair practice in a real estate transaction.

(24) “Service animal” means an animal that is trained for the purpose of assisting or accommodating a sensory, mental, or physical disability of a person with a disability.

(25) “Sex” means gender.

(26) “Sexual orientation” means heterosexuality, homosexuality, bisexuality, and gender expression or identity. As used in this definition, “gender expression or identity” means having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to that person at birth.

[2009 c 187 § 3, eff. July 26, 2009. Prior: 2007 c 317 § 2, eff. July 22, 2007; 2007 c 187 § 4, eff. July 22, 2007; 2006 c 4 § 4, eff. June 8, 2006; 1997 c 271 § 3; 1995 c 259 § 2; prior: 1993 c 510 § 4; 1993 c 69 § 3; prior: 1985 c 203 § 2; 1985 c 185 § 2; 1979 c 127 § 3; 1973 c 141 § 4; 1969 ex.s. c 167 § 3; 1961 c 103 § 1; 1957 c 37 § 4; 1949 c 183 § 3; Rem. Supp. 1949 § 7614-22.]

RCW 49.60.180. Unfair practices of employers

It is an unfair practice for any employer:

(1) To refuse to hire any person because of age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, unless based upon a bona fide occupational qualification: PROVIDED, That the prohibition against discrimination because of such disability shall not apply if the particular disability prevents the proper performance of the particular worker involved: PROVIDED, That this section shall not be construed to require an employer to establish employment goals or quotas based on sexual orientation.

(2) To discharge or bar any person from employment because of age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.

(3) To discriminate against any person in compensation or in other terms or conditions of employment because of age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability: PROVIDED, That it shall not be an unfair practice for an employer to segregate washrooms or locker facilities on the basis of sex, or to base other terms and conditions of employment on the sex of employees where the commission by regulation or ruling in a particular instance has found the employment practice to be appropriate for the practical realization of equality of opportunity between the sexes.

(4) To print, or circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment, or to make any inquiry in connection with prospective employment, which expresses any limitation, specification, or discrimination as to age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, or any intent to make any such limitation, specification, or discrimination, unless based upon a bona fide occupational qualification: PROVIDED, Nothing contained herein shall prohibit advertising in a foreign language.

[2007 c 187 § 9, eff. July 22, 2007; 2006 c 4 § 10, eff. June 8, 2006; 1997 c 271 § 10; 1993 c 510 § 12; 1985 c 185 § 16; 1973 1st ex.s. c 214 § 6; 1973 c 141 § 10; 1971 ex.s. c 81 § 3; 1961 c 100 § 1; 1957 c 37 § 9. Prior: 1949 c 183 § 7, part; Rem. Supp. 1949 § 7614-26, part.]

RCW 49.60.222. Unfair practices with respect to real estate transactions, facilities, or services

(1) It is an unfair practice for any person, whether acting for himself, herself, or another, because of sex, marital status, sexual orientation, race, creed, color, national origin, families with children status, honorably discharged veteran or military status, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability:

(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, circulate, post, or 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 a 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; or

(k) To attempt to do any of the unfair practices defined in this section.

(2) For the purposes of this chapter discrimination based on the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person who is blind, deaf, or physically disabled includes:

(a) A refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the dwelling, except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the dwelling to the condition that existed before the modification, reasonable wear and tear excepted;

(b) To refuse to make reasonable accommodation in rules, policies, practices, or services when such accommodations may be necessary to afford a person with the presence of any sensory, mental, or physical disability and/or the use of a trained dog guide or service animal by a person who is blind, deaf, or physically disabled equal opportunity to use and enjoy a dwelling; or

(c) To fail to design and construct covered multifamily dwellings and premises in conformance with the federal fair housing amendments act of 1988 (42 U.S.C. Sec. 3601 et seq.) and all other applicable laws or regulations pertaining to access by persons with any sensory, mental, or physical disability or use of a trained dog guide or service animal. Whenever the requirements of applicable laws or regulations differ, the requirements which require greater accessibility for persons with any sensory, mental, or physical disability shall govern.

Nothing in (a) or (b) of this subsection shall apply to: (i) A single-family house rented or leased by the owner if the owner does not own or have an interest in the proceeds of the rental or lease of more than three such single-family houses at one time, the rental or lease occurred without the use of a real estate broker or salesperson, as defined in *RCW 18.85.010, and the rental or lease occurred without the publication, posting, or mailing of any advertisement, sign, or statement in violation of subsection (1)(g) of this section; or (ii) rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other if the owner maintains and occupies one of the rooms or units as his or her residence.

(3) Notwithstanding any other provision of this chapter, it shall not be an unfair practice or a denial of civil rights for any public or private educational institution to separate the sexes or give preference to or limit use of dormitories, residence halls, or other student housing to persons of one sex or to make distinctions on the basis of marital or families with children status.

(4) Except pursuant to subsection (2)(a) of this section, this section shall not be construed to require structural changes, modifications, or additions to make facilities accessible to a person with a disability except as otherwise required by law. Nothing in this section affects the rights, responsibilities, and remedies of landlords and tenants pursuant to chapter 59.18 or 59.20 RCW, including the right to post and enforce reasonable rules of conduct and safety for all tenants and their guests, provided that chapters 59.18 and 59.20 RCW are only affected to the extent they are inconsistent with the nondiscrimination requirements of this chapter. Nothing in this section limits the applicability of any reasonable federal, state, or local restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

(5) Notwithstanding any other provision of this chapter, it shall not be an unfair practice for any public establishment providing for accommodations offered for the full enjoyment of transient guests as defined by RCW 9.91.010(1)(c) to make distinctions on the basis of families with children status. Nothing in this section shall limit the effect of RCW 49.60.215 relating to unfair practices in places of public accommodation.

(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. Nothing in this chapter authorizes requirements for housing for older persons different than the requirements in 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.

(7) Nothing in this chapter shall apply to real estate transactions involving the sharing of a dwelling unit, or rental or sublease of a portion of a dwelling unit, when the dwelling unit is to be occupied by the owner or subleasor. For purposes of this section, "dwelling unit" has the same meaning as in RCW 59.18.030.

[2007 c 187 § 13, eff. July 22, 2007; 2006 c 4 § 14, eff. June 8, 2006. Prior: 1997 c 400 § 3; 1997 c 271 § 14; 1995 c 259 § 3; prior: 1993 c 510 § 17; 1993 c 69 § 5; 1989 c 61 § 1; 1979 c 127 § 8; 1975 1st ex.s. c 145 § 1; 1973 c 141 § 13; 1969 ex.s. c 167 § 4.]

WAC 162-22-025. Unfair practice.

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

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

(2) Fail or refuse to make reasonable accommodation for an able worker with a disability or the use of a trained dog guide or service animal by an

able worker with a disability, unless to do so would impose an undue hardship (please see WAC 162-22-065 and 162-22-075); or

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

Statutory Authority: RCW 49.60.120(3). 99-15-025, S 162-22-025, filed 7/12/99, effective 8/12/99.

Current with amendments included in the Washington State Register, Issue 2013-16, dated August 21, 2013.

WAC 162-22-065. Reasonable accommodation.

(1) Reasonable accommodation means measures that:

(a) Enable equal opportunity in the application process;

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

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

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

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

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

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

Statutory Authority: RCW 49.60.120(3). 99-15-025, S 162-22-065, filed 7/12/99, effective 8/12/99.

Current with amendments included in the Washington State Register, Issue 2013-16, dated August 21, 2013.

WAC 162-22-075. Undue hardship exception.

An employer, employment agency, labor union, or other person must provide reasonable accommodation unless it can prove that the accommodation would impose an undue hardship. An accommodation will be considered an undue hardship if the cost or difficulty is unreasonable in view of:

(1) The size of and the resources available to the employer;

(2) Whether the cost can be included in planned remodeling or maintenance; and

(3) The requirements of other laws and contracts, and other appropriate considerations.

Statutory Authority: RCW 49.60.120(3). 99-15-025, S 162-22-075, filed 7/12/99, effective 8/12/99.

Current with amendments included in the Washington State Register, Issue 2013-16, dated August 21, 2013.

WAC 296-126-092. Meal periods--Rest periods.

(1) Employees shall be allowed a meal period of at least 30 minutes which commences no less than two hours nor more than five hours from the beginning of the shift. Meal periods shall be on the employer's time when the employee is required by the employer to remain on duty on the premises or at a prescribed work site in the interest of the employer.

(2) No employee shall be required to work more than five consecutive hours without a meal period.

(3) Employees working three or more hours longer than a normal work day shall be allowed at least one 30-minute meal period prior to or during the overtime period.

(4) Employees shall be allowed a rest period of not less than 10 minutes, on the employer's time, for each 4 hours of working time. Rest periods shall be scheduled as near as possible to the midpoint of the work period.

No employee shall be required to work more than three hours without a rest period.

(5) Where the nature of the work allows employees to take intermittent rest periods equivalent to 10 minutes for each 4 hours worked, scheduled rest periods are not required.

[Order 76-15, § 296-126-092, filed 5/17/76.]

Current with amendments included in the Washington State Register, Issue 2013-16, dated August 21, 2013.