

# WASHINGTON STATE HUMAN RIGHTS COMMISSION

## GUIDE TO DISABILITY and WASHINGTON STATE NONDISCRIMINATION LAWS

SELF-ASSESSMENT CHECKLIST FOR COMPLIANCE  
and SUGGESTED BEST PRACTICES FOR EMPLOYMENT



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In Washington State, there have been significant changes to disability discrimination law from July 2006 to July 2007. On July 6, 2006, in *McClarty v. Totem Electric*, 157 Wn.2d 214 (2006), the Supreme Court of the State of Washington, in a 5 – 4 ruling, adopted the Americans with Disabilities Act (ADA) definition of disability. In doing so, the Court dispensed with its earlier decision regarding the definition, as well as with the Washington Administrative Code (WAC) regulation that had served as the Washington State Human Rights Commission’s (WSHRC) definition of disability.

In response to this decision, the Washington Legislature enacted SB 5340, which effectively overturns the *McClarty* decision. This new statute, which was signed by Governor Gregoire, rejects that ADA definition of disability, returns the State to a broad definition of disability, and increases protections for persons with medical and psychological impairments.

This *Self-Assessment Checklist for Compliance and Suggested Best Practices* is a practical tool to help businesses, employers, and other covered entities deal with these changes in the law. By following this Guide and developing and implementing appropriate policies and procedures, you can help prevent confusion and discrimination in the workplace, foster an inclusive environment and limit the likelihood that a discrimination complaint is filed against you. If you have questions about aspects of the information in this Checklist, or need training, please contact the Washington State Human Rights Commission.

This Guide is not intended to take the place of professional legal advice. Neither the State of Washington nor any agency shall be held liable for any losses caused by reliance on the accuracy, reliability or timeliness of such information.

The Guide is divided into two sections: policies and actions required for compliance, and policies and actions suggested for compliance.

Note: This Guide is specific to employers, business owners, human resource managers, and other entities who want concrete information about how to comply with the law. Where “Company” is referred to, we mean all covered entities that employ eight or more people in the State of Washington.

Name of Company or Business:

Person/Title Completing Evaluation

Date     /     /

Directions: Please complete this form by checking either Yes or No. Responses should be based on supporting documentation that your company or business keeps on file.

## SECTION 1: CHECKLIST FOR COMPLIANCE

Note: Where applicable, the policies and actions are required for compliance.

### HIRING and RECRUITMENT

1. Our company lists disability\* as part of our non-discrimination policy, and includes the Washington State definition of disability, and not just the Americans with Disabilities Act (ADA) definition of disability.

\*Note: Disability is defined in RCW 49.60.040 as the presence of a sensory, mental, or physical impairment that is medically cognizable or diagnosable, or exists as a record or history, or is perceived to exist. Impairment includes 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 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.

Yes      No     ACTION TAKEN

2. Our company engages in employment practices (e.g. hiring, promotion, assignment, training, etc.) that eliminate discrimination on the basis of all protected classes, including disability.

Yes      No     ACTION TAKEN

3. Our company includes disability as part of our non-discrimination policy when publicizing information about our company, including in languages other than English.

Yes      No     ACTION TAKEN

4. Our company has reviewed our standard employment interview questions and application forms and removed any biased questions, as well as questions that might be used in a discriminatory way (e.g. questions about illnesses, accidents, prescription medications, workers compensation claims, and past medical history).

Yes                      No                      ACTION TAKEN

#### EMPLOYEE EDUCATION

1. Have all current employees been made aware of the current Washington State definition of disability?

Yes                      No                      ACTION TAKEN

If Yes, how have employees been made aware:

Announcement in Company Newsletter

Announcement Posting

Announcement in Staff Meeting

Employee Training

Website

Other - Please list:

2. Our company has a published internal grievance procedure providing for prompt and equitable resolution of employee complaints alleging discrimination based on disability.

Yes                      No                      ACTION TAKEN

#### HUMAN RESOURCES

1. Our company's human resources department has updated policies and procedures for investigating and resolving complaints of discrimination based on disability.

Yes                      No                      ACTION TAKEN

2. Our company has a written reasonable accommodation\* policy and reasonable accommodation interactive process in place.

\*Note: RCW 49.60.040 (25)(d) states that for the purposes of qualifying for reasonable accommodation in employment, an impairment must be known or shown through an interactive process to exist and (i) to have a substantially limiting effect on the employee's ability to perform the job or apply for a job, or on the employee's access to equal benefits, privileges or terms or conditions of employment; or (ii) that if the impairment is not accommodated there is a reasonable likelihood that engaging in a job function would aggravate the impairment to the extent that the impairment would have a substantially limiting effect.

Yes                      No                      ACTION TAKEN

3. Our company provides education or training for managers and supervisors including an overview of our non-discrimination policy covering disability and our reasonable accommodation policy.

Yes                      No                      ACTION TAKEN

Date of Last Training:        /        /                      Date of Next Training:        /        /

4. Our company provides medical leave above and beyond earned/accrued leave and Family and Medical Leave Act (FMLA) leave when such medical leave is necessary as a reasonable accommodation.

Yes                      No                      ACTION TAKEN

5. Our company has a process that keeps medical records confidential and apart from the employee's regular personnel file.

Yes                      No                      ACTION TAKEN

#### COMPARABLE COMPENSATION, TERMS, AND CONDITIONS

1. Our company policies provide equally effective services to all customers or clients regardless of disability.

Yes                      No                      ACTION TAKEN

2. Our company policies and actions allow for equal promotion and compensation of employees regardless of disability.

Yes                      No                      ACTION TAKEN

3. Our company does not take disability into account when determining a reduction in hours, lay-off, or termination of employment.

Yes                      No                      ACTION TAKEN

4. Our company has a policy to avoid the creation of a hostile work environment, including harassment based on a person's disability.

Yes                      No                      ACTION TAKEN

5. Our company solicited feedback from employees with disabilities and incorporated their ideas into our implementation plan.

Yes                      No                      ACTION TAKEN

6. Our workplace is physically accessible as required under the building code. (There are special rules about architectural accessibility. For further information, consult the Washington State Building Code at WAC 51-40, WAC 38-97-410, RCW 35.68.075, the Americans with Disabilities Act at 42 U.S.C. 12101 et. seq.)

Yes                      No                      ACTION TAKEN

7. Customers and clients with disabilities can gain ready access to our facilities and services as required under the building code.

Yes                      No                      ACTION TAKEN

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## SECTION 2: CHECKLIST FOR SUGGESTED BEST PRACTICES

Note: Companies have the opportunity to go beyond strict compliance. Doing so can help create a diverse, open work environment, limit claims of discrimination, and foster good relations with employees and the community. The policies and actions below are recommended for compliance.

### WORKPLACE DIVERSITY

8. Our company routinely disseminates information regarding our nondiscrimination policies.

Yes                      No                      ACTION TAKEN

9. Our company's policies and culture reflect an open, welcoming environment and organizational culture.

Yes                      No                      ACTION TAKEN

10. Our company's policies and culture are such that the company respects the differences between people.

Yes                      No                      ACTION TAKEN

11. Our Employee Assistance Program is prepared to assist our employees who have disabilities..

Yes                      No                      ACTION TAKEN

12. Our company has an alternative dispute resolution model in place should employees need to resolve a workplace dispute, including disputes regarding reasonable accommodation issues.

Yes                      No                      ACTION TAKEN

13. Our company's mediator(s) are sensitive to the needs and concerns of persons with disabilities in the workplace.

Yes                      No                      ACTION TAKEN

14. Our workplace is physically accessible even if not required under the building code.

Yes                      No                      ACTION TAKEN

15. Customers and clients with disabilities can gain ready access to our facilities even if not required under the building code. (There are special rules about architectural accessibility. For further information, consult the Washington State Building Code at WAC 51-40, WAC 38-97-410, RCW 35.68.075, the Americans with Disabilities Act at 42 U.S.C. 12101 et. seq.)

Yes                      No                      ACTION TAKEN

16. Our website is accessible to the blind who use screen readers.

Yes                      No                      ACTION TAKEN



## PRACTICE CHANGES

1. Our company provided updated staff diversity training to upper level management, including an overview of our company policies and procedures with respect to non-discrimination based on the current definition of disability and on our reasonable accommodation process.

Yes                      No                      ACTION TAKEN

2. Our company provided updated staff diversity training to all employees and volunteers, including an overview of our company policies and procedures with respect to non-discrimination based on disability.

Yes                      No                      ACTION TAKEN

3. Our company provided staff with a revised policy and procedure manual, including information about our policies regarding non-discrimination based on disability and on our reasonable accommodation process.

Yes                      No                      ACTION TAKEN

## MONITOR INTERNAL COMPLIANCE

1. Our company tracks complaints of discrimination.

Yes                      No                      ACTION TAKEN

2. Our company handles all complaints of discrimination promptly and fairly.

Yes                      No                      ACTION TAKEN

3. Our company has explicit policies that allow employees to make complaints without fear of retaliation. In addition, the employee can go outside his or her chain of command to make complaints in order to feel more secure.

Yes                      No                      ACTION TAKEN

## EVALUATE SUCCESS

1. Our employees, from senior management to new hires, are made aware of and agree to adhere to our non-discrimination policy that includes the current definition of disability.

Yes                      No                      ACTION TAKEN

2. Since implementing this plan, our company feels better able to handle any challenges, claims of discrimination, or concerns regarding the disabilities of our employees, as well as reasonable accommodation requests.

Yes                      No                      ACTION TAKEN

3. Our company has received few internal complaints of discrimination based on disability or on failure to reasonably accommodate a disability.

Yes                      No                      ACTION TAKEN

4. When complaints arise, employees have several avenues of redress, including accessing support through the Employee Assistance Program.

Yes                      No                      ACTION TAKEN

END