

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, the Legislature has enacted a broad definition of disability that increases protections for persons with medical, psychological, and other impairments. The Washington definition is different than the definition found in the Americans with Disabilities Act (ADA) – it is broader, covers more medical conditions, and is not restricted to a condition that substantially limits a major life activity. Temporary conditions, including pregnancy related disabilities, can be included under the protections.

This guide will answer questions about the definition of disability, the reasonable accommodation process, essential functions, undue hardship issues, the hiring process, guidance for employees with disabilities, and information for places of public accommodation.

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; if you have a particular situation about which you need legal advice, you should contact your attorney.

The Guide is divided into two sections: a checklist for compliance and best policies, and developing an action plan.

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.

If you need additional information, have additional questions, or wish to have training for your organization, please contact the WSHRC at 360-753-6770 or 800-233-3247 (TTY 800-300-7525). Additional information on this and other civil rights issues can be found on our website at www.hum.wa.gov.

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.

POLICIES AND PROCEDURES

1. It is a violation of the law to discriminate against an individual based on protected class or to harass an employee based on protected class. Our company has a non-discrimination policy and an anti-harassment policy and complaint procedure.

Yes **No** **ACTION TAKEN**

2. One way for a company to facilitate a better workplace and to help protect itself from liability is to make sure that the non-discrimination policy, anti-harassment policy, and complaint procedure are in writing. Our company has such policies in writing.

Yes **No** **ACTION TAKEN**

3. Employers must take prompt and remedial action once a discrimination complaint is made. Our company has a complaint procedure providing for prompt and equitable resolution of employee complaints alleging discrimination based on disability.

Yes **No** **ACTION TAKEN**

4. It is best for a company to institute a centralized complaint procedure, and have one person responsible for receiving complaints. Our company has named a person as the designated person to receive discrimination complaints, an alternate person in the event that the designated person is the subject of the complaint, and has included this information in the written complaint procedure.

Yes **No** **ACTION TAKEN**

Name and title of person designated to receive complaints:

Name of alternate person to receive complaints:

5. It is a violation of the law to discriminate against an individual with a disability due to the disability. Washington's definition of disability differs from the definition found under the ADA. 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**

EMPLOYEE EDUCATION

1. Managers and supervisors often are the first persons to receive notice of discriminatory behavior; their actions (or non-action) could implicate the company in a violation of the law. Managers and supervisors need to be aware of the law in order to comply with it. Have all current managers and supervisors been made aware of their responsibilities under the law and of the Washington State definition of disability?

Yes **No** **ACTION TAKEN**

2. Regular training will help ensure that managers and supervisors react appropriately and according to policy when they receive notice of discriminatory behavior. Our company provides education or training for managers and supervisors including an overview of our non-discrimination policy covering disability, our anti-harassment policy, our complaint procedure, and our reasonable accommodation policy.

Yes **No** **ACTION TAKEN**

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

3. Employees can only avail themselves of the policies and procedures if they know about them. Our company has published the policies and the internal complaint procedures, and has ensured that all employees are aware of the policies and procedures.

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:

4. New employees also should be made aware of anti-discrimination policies and procedures. Our company ensures that new hires are aware of the policies and procedures.

Yes

No

ACTION TAKEN

If **Yes**, how have employees been made aware:

Employee Handbook

New Employee Orientation

Employee Training

Signed Policy

Other - Please list:

5. Our company's human resources department keeps updated policies and procedures, as well as the applicable laws and regulations, as reference for investigating and resolving complaints of discrimination based on disability.

Yes

No

ACTION TAKEN

HIRING and RECRUITMENT

1. Under the law, an employer cannot make negative assumptions about the abilities of a person with a disability. Our company engages in employment practices (hiring, promotion, assignment, training, etc.) that eliminate discrimination on the basis of all protected classes, including disability.

Yes

No

ACTION TAKEN

2. A company will attract a larger and more qualified candidate pool, as well as promote good public relations, if it publicizes its non-discrimination policy. 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**

3. The application and interview process cannot elicit information about a person's disability or if a person has a disability. 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 (questions about illnesses, accidents, prescription medications, workers compensation claims, past medical history, etc.).

Yes **No** **ACTION TAKEN**

REASONABLE ACCOMMODATION

1. Employers are required to make reasonable accommodations for qualified individuals with disabilities, and are required to enter into an interactive process with employees when the employee requests a reasonable accommodation. 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**

2. When required by a medical professional, sometimes medical leave as a reasonable accommodation may extend beyond what the employee is entitled to take under the Family and Medical Leave Act (FMLA) or beyond the employee's accrued sick leave. Our company provides medical leave above and beyond earned/acrued leave from FMLA leave and accrued sick leave when such medical leave is necessary as a reasonable accommodation.

Yes **No** **ACTION TAKEN**

3. A reasonable accommodation process first requires that a reasonable accommodation be found that would allow an employee to stay in their current job; if that is not possible, the company should look for an open position for which the employee is qualified, and that meets their medical needs; if that is not possible, then the company should allow the employee to take medical leave as a reasonable accommodation. Our company's reasonable accommodation process goes through these steps.

Yes **No** **ACTION TAKEN**

4. Medical records and information need to be kept confidential. 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

Persons with disabilities must be able to receive the same services, benefits, and treatment as all other employees or customers.

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

Yes **No** **ACTION TAKEN**

2. When a customer asks for a reasonable accommodation for a disability, we provide the customer with a reasonable accommodation.

Yes **No** **ACTION TAKEN**

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

Yes **No** **ACTION TAKEN**

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

Yes **No** **ACTION TAKEN**

5. 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**

6. Our building has adequate parking for persons with physical disabilities, and has signage pointing out accessible routes and entrances.

Yes **No** **ACTION TAKEN**

7. If our building is not physically accessible to a customer, we find other ways to serve our customer.

Yes **No** **ACTION TAKEN**

WORKPLACE DIVERSITY

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 fostering a diverse workplace and good workplace morale.

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. We have an Employee Assistance Program prepared to assist our employees who have disabilities.

Yes **No** **ACTION TAKEN**

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

Yes **No** **ACTION TAKEN**

PRACTICE CHANGES

1. Our company provided updated staff diversity training to supervisors and managers, including an overview of our company policies and procedures with respect to non-discrimination based on the Washington 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 and the company’s complaint procedure.

Yes **No** **ACTION TAKEN**

3. Our company provided staff with written policies and procedures, including information about our policies regarding non-discrimination and harassment based on disability, our complaint process, 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 Washington 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 an Employee Assistance Program.

Yes **No** **ACTION TAKEN**

END