



Individuals with Disabilities and the Animals Providing Them Services

The following Article for the Voice is an update of one previously [published](#), and reflects the ever-changing rules and regulations with respect to service animals and emotional support animals, particularly: the Americans With Disabilities Act, the U.S. Dept. of Transportation regulations, the U.S. Dept. of Housing and Urban Development rules, and the Fair Housing Act.

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The use of animals to augment the lives of those with disabilities is long-standing, evolving, and growing. Along with the growth in use is confusion with respect to the rights of the owners of these animals in different locations. This article addresses issues relating to service animals, and assistance animals in various locales, and provides links to additional resources for those readers interested in going deeper into this topic.

The Americans with Disabilities Act defines service animals as “any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition.” Examples of the services that these dogs perform include, but are not strictly limited to guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take a prescribed medication and calming a person with PTSD during an anxiety attack. It is important to note, however, that there must be specific trained responses directly related to the disability for the dog to meet the definition of service animal.

Under the ADA, States and local governments, businesses, and nonprofit organizations that serve the public generally must allow access to service animals, unless it would result in a fundamental alteration or would jeopardize safe operation. This would not, for example, allow a restaurant to prohibit entry of a service animal due to health codes, which are preempted by these provisions of the ADA. Instead, an example of jeopardizing safe

operation in which entry of a service animal could be disallowed would be denying entry into the burn unit of a hospital because of risk of infection for patients. Service animals must be harnessed, leashed, or tethered, unless the individual's disability prevents using these devices or these devices interfere with the service animals safe, effective performance of tasks.

When it is not obvious that the dog is a service animal or what service an animal provides, only limited inquiries may be put to the service animal owner. Staff may ask two questions: Is the dog a service animal required because of a disability, and what work or task has the dog been trained to perform? If the owner states that they are disabled and the tasks the service animal performs are directly related to the owner's disability, then the animal is a service animal and must be treated as such. Staff cannot ask about the person's disability, require medical documentation, require a special identification card or training documentation for the dog, or ask that the dog demonstrate its ability to perform the work or task.

Traveling with a service animal, especially with respect to air travel, requires specific attention. On December 2, 2020, the US Department of Transportation issued final rules on Traveling by Air with Service Animals. These rules reaffirm that a service animal is a dog that is individually trained to do work or perform tasks for the benefit of a person with a disability and go further to require that the airlines, in most cases, allow the service animal to travel with the disabled individual. The rules allow airlines to require a [form](#) developed by the Department of Transportation, attesting to a service animal's, health, behavior, and training, and if taking a long flight, that the service animal will not need to relieve itself or can relieve itself in a sanitary manner. The airline may require this attestation up to 48 hours in advance of the date of travel if the ticket was purchased prior to that time. Importantly, the regulations state that "as evidence that an animal is a service animal, [the airline] must accept identification cards, other written documentation, presence of harnesses, tags, or the credible verbal assurances of a qualified individual with a disability using the animal" as proof that the animal is a service animal.

With respect to airline travel with emotional support animals that do not qualify as service animals, the regulations are more stringent on the animal owner. The airlines are not required to allow a passenger to travel with an emotional support animal unless the passenger provides documentation one year old or less on letterhead of a licensed mental health professional, which states: (1) the passenger has a mental or emotional disability recognized by the DSM IV, (2) needs the emotional support animal as an accommodation for either the airline travel or an activity at the destination, (3) is under the care of the mental health professional, and (4) the professional licenses and the jurisdiction under

which the license was granted. Importantly, the airline is never required to accommodate exotic/unusual service animals (including miniature horses, which actually qualify under the definition of service animal).

Beyond air travel, another important locale for animals is housing. The US Department of Housing and Urban Development defines an assistance animal “an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or that provides emotional support that alleviates one or more identified effects of a person’s disability. An assistance animal is not a pet.” Thus, the HUD’s definition is a broader definition than that of service animal under the ADA. This makes for a significantly different analysis with respect to these animals and housing.

The Fair Housing Act requires a housing provider to make a reasonable accommodation for an assistance animal where (1) a request is made by or for a person with a disability, (2) the request is supported by reliable disability-related information if the need is not readily apparent, and (3) there is no undue hardship on the housing provider such that it would impose an undue financial/administrative burden, alter the essential nature of the operations, pose a threat to health and safety of residents, or result in significant damage to the property. Consequently, tenants have greater latitude with respect to the type of animal and the purpose of the animal when seeking housing accommodations than that which is provided under the ADA. If someone believes that they have been denied an accommodation unreasonably they can file a complaint with HUD [here](#).

The workplace is another evolving area with respect service animals and assistance animals. Interestingly, the ADA’s employment section does not define service animals specifically. As a result, employees are able to request the use of a service animal, or an assistance animal that is not trained for a specific task. Like the rule related to housing, the standard requires that “reasonable accommodations” are made for the individual with a disability. This is a grey-area for employers and employees to navigate, as it is possible for the employer to opt for another reasonable accommodation other than the animal. Service animals allow for a more clear-cut determination of a reasonable accommodation. It will be difficult for the employer to opt to exclude the animal where the animal falls into the definition of service animal, will improve productivity of the employee, is trained to not be a distraction, and does not cause an undue hardship on the employer. There are no precisely defined criteria for assistance animals and thus more room for interpretation and discussion between employer and employee in coming to a reasonable accommodation.

There are a number of great online resources for more information, which I will summarize here. For a great user-friendly resource on service animals, assistance animals and the legal rights surrounding the services these animals provide, go to [this source](#), which I credit

with a significant portion of the information provide in this article. The ADA National Network, funded by the National Institute on Disability, Independent Living, and Rehabilitation Research, provides information, guidance and training on how to implement the ADA in order to support the mission of the ADA to “assure equality of opportunity, full participations, independent living, and economic self-sufficiency for individuals with disabilities.” For a good summary on Service Animal requirements visit www.ada.gov and review the publication by U.S. Department of Justice, Civil Rights Divisions, Disability Rights Section, “ADA Requirements, Service Animals.” For a good summary of the rules regarding air transportation with service animals see [this site](#). For rules related to fair housing [visit this site](#).

As there are non-attorney readers to this publication, we have provided free online versions of laws and regulations related to this topic. You can find the full text of the ADA and corresponding regulations at https://www.ada.gov/2010_regs.htm. For the Air Carrier Access Act text see <https://www.law.cornell.edu/uscode/text/49/41705>. For the regulations on the same see <https://www.law.cornell.edu/cfr/text/14/part-382>. For the Fair Housing Act <https://www.law.cornell.edu/uscode/text/42/chapter-45>.

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