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Service Animals 101: Keep Your Business Out of the Legal Doghouse

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QUESTION:

What are “Service Animals”, and to what extent:

1. Must they be allowed on business premises?
2. Can they be refused or removed from premises?

ANSWER:

Under the Americans with Disabilities Act (ADA), "Service Animals" are defined as dogs that are individually trained to do work or perform tasks for people with disabilities. This means the dog must be trained to take a specific action when needed to assist the person with a disability (e.g., a dog which is trained to guide a blind person, alert a deaf person, pull a wheelchair, alert a person with diabetes that his or her blood sugar is too high or too low).

The ADA also recognizes that, in some instances, a person with a disability may use a miniature horse that has been trained to do work or perform tasks for people with disabilities as a service animal. Under the ADA, service animals must be harnessed, leashed, or tethered, unless these devices interfere with the service animal's work or the individual's disability prevents using these devices. However, the ADA does not require service animals to wear a vest, ID tag, or specific harness.

Emotional support, therapy, comfort, or companion animals ("Emotional Support Animals") are not considered service animals under the ADA (and therefore are not protected under the public accommodation provision of the ADA), because such animals have not been trained to perform a specific job or task; they provide comfort just by being with a person. Emotional Support Animals can be most any type of animal within reason. A physician or therapist can determine that a patient needs an emotional support animal. Two federal regulations protect Emotional Support Animals in connection with housing and transportation: the Fair Housing Act, which prohibits a property management company from denying housing to someone with an Emotional Support Animal; and the Transportation Act, which allows Emotional Support Animals on airplanes.

The ADA requires state and local government agencies, businesses, and non-profit organizations (covered entities) that provide goods or services to the public to allow service animals to accompany people with disabilities in

all areas of the facility where the public is normally allowed to go.

Accordingly, service animals are allowed in the facilities of these organizations under the ADA as long as their presence does not pose a threat or danger and does not impede operations of fundamental services and functions.

A business may only ask the service animal's owner two questions regarding the service animal:

1. Is the dog a service animal required because of a disability?
2. What work or task has the dog been trained to perform?

Staff cannot:

- Require a special identification card or training documentation for the dog or otherwise require proof that the animal has been certified, trained, or licensed as a service animal as a condition for entry;
- Ask the dog to demonstrate its ability to perform the work or task, or ask about the person's disability or require medical documentation of the disability; or
- Impose a surcharge on an individual with the disability to cover the costs associated with measures and modifications taken in order to provide the individual with nondiscriminatory treatment (e.g., charge a cleaning fee because a client brought his or her service animal to an appointment).

Under certain circumstances, a service animal may be prohibited from entering the premises, and a person with a disability may be asked to remove his or her service animal from the premises if:

- The dog is out of control and the handler does not take effective action to control it;
- The dog is not housebroken;
- (For miniature horses), the facility cannot accommodate the service animal's type, size, and weight;
- Admitting the service animal would fundamentally alter the nature of a service or program; and
- The service animal's presence will compromise legitimate safety requirements necessary for safe operation of the facility, or poses a legitimate safety concern or direct threat to the health and safety of patients, visitors, and staff that cannot be eliminated (see Roe v Providence Health Sys. – Or., 655 E. Supp. 2d 1164 (D. Or. 2009) (citing 42 U.S.C. § 12182).

The ADA website (see here) provides, with respect to service animals, the following guidelines:

- Service dogs can be any type of dog breed.
- Allergies and fear of dogs are not valid reasons for denying access or refusing service to people using service animals.

- Staff are not required to provide care or food for a service animal.
- The ADA does not require service animals to be professionally trained; people with disabilities may train the dog themselves and are not required to use a professional service dog training program.
- A service dog must already be trained before it can be taken into public places (note that state law may vary). For example, Idaho Public Accommodation Act, Idaho Code § 56-704A, does allow an "assistance dog" in training to accompany a person with a physical disability into a public accommodation, provided that the person must carry and upon request display an identification card issued by a recognized school for assistance dogs or organization which serves disabled persons.
- The handler is responsible for caring for and supervising the service animal.
- Individuals who have service animals are not exempt from (1) local animal control or public health requirements, or (2) local dog licensing and registration requirements, however, mandatory registration of service animals is not permissible under the ADA.

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