

Service vs. Emotional support animals: food establishments/public places

I.E.H.A. NORTHEAST CHAPTER
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Robin Jones, Director
Great Lakes ADA Center
University of Illinois at Chicago

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Various Laws Apply

- Americans with Disabilities Act (ADA) of 1990
 - Title II Section 35.136
 - Title III Section 36.302
- Indiana State Law
- Health Codes



Service Animals vs Emotional Support Animals (ESA)

Service Animals

Dogs generally allowed in all locations accessed by the public (Miniature Horse Exception)

Emotional Support Animals (ESA's)

Animal generally allowed in residential housing and employment settings

Pets

Animal generally only allowed in public areas with some exceptions for private properties

Service Animals

- The definition:
 - Species of service animals limited to **dogs**;
 - Miniature Horse Exception
 - Comfort or emotional support animals are **not** covered; but
 - Continue to be covered under Fair Housing and Air Carrier Access Act
 - Individuals with physical, sensory, psychiatric, or other mental disabilities can use service animals.



Exclusion of Service Animals

- General rule is that covered entities must permit service animals.
- Two specific exceptions for when service animals can be excluded:
 - The animal is out of control and the handler does not take effective action to control it; or
 - The animal is not housebroken.
- The handler should be given the opportunity to participate without the animal.



Requirement: Must be “Under Handler’s Control”

- Must have harness, leash, or other tether.
- If handler is unable to use these because of his or her disability or because use would interfere with the safe and effective performance of work or tasks, then the animal must otherwise be under the handler’s control (i.e., voice control, signals, or other effective means.)



Permissible Inquiries

- Only two inquiries may be made by covered entities:
 - Whether the animal is required because of a disability; and
 - What work or task the animal has been trained to perform.
- Generally, inquiries may not be made when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability.
- Vests, certification cards, etc. are not required



Miscellaneous Provisions

- Covered entities are not responsible for the care or supervision of a service animal.
- Service animals may accompany their handlers to areas of a public accommodation or public entity.
- Covered entities may not require people with disabilities to pay pet fees or surcharges that are not applicable to individuals without pets.



Miniature Horse Exception

- Reasonable modifications to permit a miniature horse that has been individually trained to do work or perform tasks.
- There are assessment factors to assist entities in determining whether reasonable modifications can be made.
 - whether the miniature horse is housebroken;
 - whether the miniature horse is under the owner's control;
 - whether the facility can accommodate the miniature horse's type, size, and weight; and
 - whether the miniature horse's presence will not compromise legitimate safety requirements necessary for safe operation of the facility.



Service Dog Laws – Other than the ADA

- Many state and local jurisdictions have laws pertaining to Service Animals
 - Some provide greater “rights” than the ADA
 - Indiana:
Defines Service animal as (not restricted to dog):
 - a hearing animal;
 - a guide animal;
 - an assistance animal;
 - a seizure alert animal;
 - a mobility animal;
 - a psychiatric service animal; or
 - an autism service animal.
 - Interference/mistreatment of service animal law
 - Harassment of/Interference with Service Dogs law
 - Service Dog in Training is protected by state law
 - Driving Law – Yield Right of Way to person using a service animal
 - Emotional Support dog fraud legislation – Landlords can require written “proof” of need for an emotional support animal
 - Public Accommodation Law – Service animals cannot be denied access to public places and illegal to charge a fee for a service animal

Emotional Support Animals

- ESA's (sometimes referred to as therapy animals or support animals)
 - Dogs, cats, other species (Ferret, Rabbit, Bird, etc.)
 - Provide support, well-being, comfort, aid or calming influence
 - Via companionship, non-judgmental positive regard, affection and as a "focus" in life by being close to their handler
 - Do not receive specific training to perform work or tasks
 - Provide therapeutic nurture and support
 - They are not trained for "behavior" in public spaces the same as a service animal is (no barking, smelling of individuals, begging for food, etc.)
 - Typically indistinguishable from a "pet"



Emotional Support Animals (con't)

- Where are Emotional Support Animals (ESAs) allowed?
 - Residential Housing – Housing intended for long term versus transient use
 - Fair Housing Act requires reasonable modification of policy and procedure to ensure equal access
 - Documentation from medical professional - (1) that the individual is a person with a disability; (2) the need for the animal to assist the individual with that specific disability; and (3) that the animal actually assists the individual with a disability.
 - Entities may require proof that an ESA has any vaccinations required by state or local laws that apply to all animals.



Emotional Support Animals (con't)

- Determining “reasonableness” of an accommodation request for an ESA in housing situations:
 - The size of the animal
 - Whether the animal’s presence would force another individual from individual housing (e.g., serious allergies)
 - Whether the animal’s presence would violate individuals’ rights to peace and quiet enjoyment
 - Whether the animal is housebroken or able to live with others
 - Direct threat (currently or in the past) to the individual or others
 - Past excessive damage to housing caused by the animal.



Employment – Totally different rules!

Title I of the ADA

- Use of a ESA or a Service Animal may be a “reasonable accommodation” for a qualified individual with a disability in the employment setting. Documentation of such need is permitted as with any accommodation request.
- The ADA provisions or limitations related to Service Animals and Emotional Support Animals are contained within Title II and III of the ADA. These provisions do not apply to Title I circumstances
- The EEOC has issued guidance related to reasonable accommodations in the workplace which may include modifying policy and procedure to allow for the presence of an emotional support animal or service animal if necessary to enable a qualified person with a disability to engage in their work related activities/responsibilities.



Commonly Asked Questions: Service Animals

Q. Can a person bring a service animal with them as they go through a salad bar or other self-service food lines?

A. Yes. Service animals must be allowed to accompany their handlers to and through self-service food lines. Similarly, service animals may not be prohibited from communal food preparation areas, such as are commonly found in shelters or dormitories

Q. Are restaurants, bars, and other places that serve food or drink required to allow service animals to be seated on chairs or allow the animal to be fed at the table?

A. No. Seating, food, and drink are provided for customer use only. The ADA gives a person with a disability the right to be accompanied by his or her service animal, but covered entities are not required to allow an animal to sit or be fed at the table

Commonly Asked Questions: Service Animals (Con't)

Q. When can service animals be excluded?

A. If a service animal is out of control and the handler does not take effective action to control it or if it is not housebroken, that animal may be excluded

Q. Can we require someone to register their dog as a service animal. Is this legal under the ADA?

A. No. Mandatory registration of service animals is not permissible under the ADA. However, service animals are subject to the same licensing and vaccination rules that are applied to all dogs in the jurisdiction where they are staying.



Commonly Asked Questions: Service Animals (Con't)

Q. Can individuals with disabilities be refused access to a facility based solely on the breed of their service animal?

A. No. A service animal may not be excluded based on assumptions or stereotypes about the animal's breed or how the animal might behave.

Note: However, if a particular service animal behaves in a way that poses a direct threat to the health or safety of others, has a history of such behavior, or is not under the control of the handler, that animal may be excluded.

Q. What does under control mean? Do service animals have to be on a leash? Do they have to be quiet and not bark?

A. The ADA requires that service animals be under the control of the handler at all times

Q. What can be done when a service animal is being disruptive?

A. If a service animal is out of control and the handler does not take effective action to control it, staff may request that the animal be removed from the premises

Q. A city/county requires all dogs to be vaccinated, does this apply to service animals?

A. Yes. Individuals who have service animals are not exempt from local animal control or public health requirements



Commonly Asked Questions: Service Animals (Con't)

Q. May a request to use a service animal by an employee as a reasonable accommodation be automatically rejected by a restaurant?

A. No. An employer may not automatically reject this request from a person with a disability. The FDA Food Code has special rules for service animals

FDA Food Code:

- Section 2-403.11 prohibits handling of animals, but allows employees to use service animals
- Section 6- 501.115 states that service animals may be permitted in areas not used for food preparation

Questions

Let's talk now.....



Or Contact us at:
Robin Jones or Peter Berg
800-949-4232 (V/TTY)
guinness@uic.edu or adata@adagreatlakes.org

Resources

- Great Lakes ADA Center
- (800) 949-4232
- www.adagreatlakes.org

- U.S. Department of Justice (DOJ)
- (800) 514-0301
- www.ada.gov

- U.S. Equal Employment Opportunity Commission (EEOC)
- (800) 669-4000
- www.eeoc.gov

Technical Assistance Materials

- Revised ADA Requirements: Service Animals
 - http://www.ada.gov/service_animals_2010.htm
- How to Comply with the Americans with Disabilities Act: A Guide for Restaurants and Other Food Service Employers
 - http://www.eeoc.gov/facts/restaurant_guide.html