

Questions—And Answers

Employers' Legal Obligations to Accommodate Employees with Service Animals in the Workplace

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As the use of service animals by individuals with disabilities becomes more common, so do questions regarding their accommodation. Required accommodations for service animals in public places, including the workplace, are governed by a patchwork of federal, state, and local laws, often resulting in uncertainty for business owners and employers. This Q&A describes employers' legal responsibilities regarding their employees' use of service animals in the workplace, recommends strategies for when an employee makes a request to bring a service animal to work, and details best practices for accommodating employees who require service animals, with minimal disruption to coworkers.

WHICH LAW REGULATES THE USE OF SERVICE ANIMALS IN THE WORKPLACE?

The Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 *et seq.*, is divided into three primary titles: Title I, which prohibits disability discrimination in employment; Title II, which prohibits disability discrimination in the provision of government services, programs, and activities; and Title III, which prohibits disability discrimination in places of public accommodation.¹ Under Title I of the ADA, employers are required to provide reasonable accommodation to employees with disabilities unless the accommodation would result in an undue hardship to the employer.² An employee is considered to have a "disability" if he or she has "a physical or mental impairment that substantially limits one or more major life activities ... a record of such an impairment; or being regarded as having such an impairment[.]"³ Title I describes

that a "reasonable accommodation" made by an employer "may include making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities."⁴

Title III of the ADA defines the term *service animal* 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."⁵ Although dogs are the only species specifically delineated by law as service animals, ADA guidelines were revised in 2010 to include miniature horses within the definition of "service animals" where the use of a miniature horse instead of a dog is reasonable.⁶ Examples of duties that a service animal may perform for a person with a disability include 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, calming a person with posttraumatic stress disorder (PTSD) during an anxiety attack, or performing other duties.⁷ The work or task a service animal has been trained to provide must "directly relate to the person's disability."⁸

ARE EMPLOYERS REQUIRED TO ALLOW EMPLOYEES TO USE SERVICE ANIMALS?

No, but they must consider them as a reasonable accommodation for employees with disabilities. Though Title III of the ADA defines the term *service animal* and requires places of public accommodation to permit the use of a service animal, Title III's requirements do not apply to Title I.⁹ Title I does not, therefore, require employers to automatically permit employees to bring service animals into the workplace. However, Title I does require employers to make reasonable accommodations for employees with disabilities, and service animals may constitute a form of reasonable accommodation.¹⁰ As such, employers are required to consider allowing a disabled employee (including those with physical or mental disabilities of almost any type) to use a service animal in the workplace, unless doing so would cause the employer to suffer an undue hardship.¹¹ Common reasonable accommodations for disabled employees who use service animals include:

- ❑ Providing leave to the employee so that he or she may participate in individualized service animal training;
- ❑ Providing the employee with a private or enclosed workspace;
- ❑ Establishing a designated area where the employee can attend to the service animal's basic needs, such as eating or bodily functions;
- ❑ Allowing the employee to take periodic breaks to care for the service animal's basic needs;
- ❑ Reducing barriers along the employee's path of travel; and
- ❑ Providing a designated area that the service animal can occupy until the employee's shift ends, if the employee only requires the service animal to travel to and from work.¹²

WHAT KINDS OF ANIMALS CAN EMPLOYEES USE AS SERVICE ANIMALS?

Unlike places of public accommodation, employers are not permitted to limit the list of recognized service animals to dogs and miniature horses.¹³ Because many types of service animals could serve as a reasonable accommodation for a disabled employee, a variety of animals might satisfy the definition. Species of animals other than dogs or miniature horses that may serve as effective service animals include sugar gliders,¹⁴ monkeys, goats, parrots, cats, ferrets, pigs, iguanas, and several others.¹⁵

CAN EMPLOYERS ASK FOR DOCUMENTATION THAT A SERVICE ANIMAL IN THE WORKPLACE IS NECESSARY?

Yes. Employers have the right to request reasonable documentation that an accommodation is needed from the employee requesting one if the employee's disability is not obvious.¹⁶ Employers may also request documentation or demonstration that the service animal is trained and will not disrupt the workplace.¹⁷ However, employers are advised to refrain from insisting that the letter come strictly from a health-care professional. Informal EEOC guidance recommends that employers accept documentation from sources beyond health-care professionals, including the individual who trained the service animal in question, as proof that the service animal is both necessary and appropriate for the work setting.¹⁸

Further, employers should avoid asking employees who request the use of a service animal to use a substitute accommodation (for instance, asking a diabetic employee who requests the use of a alert dog to monitor his blood sugar to use electronic means to do so instead).¹⁹ The ADA does not permit employers to require the use of alternative medical procedures to those that

the employee favors; if the use of a service animal is the accommodation that an employee requests and prefers, the employer should attempt to abide by that request unless doing so would impose an undue hardship.²⁰

WHAT IF OTHER EMPLOYEES ARE ALLERGIC TO OR AFRAID OF THE SERVICE ANIMAL?

Animal allergies and phobias are a major concern for employers evaluating an employee's request for the use of a service animal in the workplace.²¹ However, as discussed, employers are required by law to reasonably accommodate disabled employees who request the use of a service animal unless doing so would create an undue hardship for the employer, and there are many potential ways for employers to allow the use of a service animal alongside a disabled employee's coworkers. These options include:

- Allowing the employees to work in different areas of the building or in private offices, or to travel on different paths in the building;
- Implementing flexible scheduling so that the employees do not work together at the same time or do not use common areas at the same time;
- Using portable air purifiers or adding HEPA filters to the existing ventilation system;
- Regularly cleaning the work area, including carpets and window treatments;
- Asking the disabled employee to use dander-care products regularly when cleaning the service animal;
- Arranging alternatives to in-person communication, such as teleworking;
- Allowing allergic coworkers to take periodic rest breaks if needed to take medication.²²

If a disabled employee's coworker is particularly resistant to the use of a service animal in the workplace, a trial period, with specific written arrangements and time frames, may help to ameliorate the coworker's concerns.²³

Alternatively, coworkers may be overly enthusiastic about having a service animal in the workplace, which can be distracting to both the service animal and the disabled employee.²⁴ Employers with disabled employees who use service animals should be sure to conduct periodic disability awareness trainings regarding basic service animal use and etiquette, and remind employees to refrain from activities such as petting or feeding a working service animal.²⁵

WHO IS RESPONSIBLE FOR TAKING CARE OF THE SERVICE ANIMAL AT WORK?

Employees who use service animals are wholly responsible for their care, including grooming the animal, ensuring the animal is up to date on vaccinations and free from parasites, taking the animal outside to relieve itself as needed, and ensuring that the animal is not disruptive in the workplace.²⁶ However, employers may be required to provide accommodations that allow employees to care for a service animal, such as establishing a designated outdoor area where the employee can take the animal to relieve itself.²⁷

WHAT ARE BEST PRACTICES FOR AN EMPLOYER TO FOLLOW WHEN AN EMPLOYEE ASKS TO USE A SERVICE ANIMAL IN THE WORKPLACE?

When a disabled employee requests to use a service animal in the workplace, employers should observe the following general guidelines to avoid incurring potential legal liability for violating the ADA:

- ❑ Understand the specific limitations the employee requesting the service animal is experiencing, including particularly problematic job tasks, to determine whether such problems could be effectively ameliorated through the use of a reasonable accommodation in the form of a service animal.
- ❑ Consult the employee regarding possible accommodations to determine whether a service animal is the best option to accommodate the employee's disability, and whether the employee prefers a service animal to other available options.
- ❑ If the employee's disability is not obvious, consider requiring a note confirming the need for the service animal and the service animal's training and behavioral competencies.
- ❑ Determine whether any of the employee's coworkers may take issue with a service animal, including coworkers with phobias or allergies. A clearly delineated trial period with the service animal in the workplace may be helpful.
- ❑ Implement an effective plan for accommodating the service animal in the workplace, including identifying where the employee's office will be located, what the employee's schedule will be, and how the employee will interact with or avoid coworkers who are uncomfortable with the service animal.
- ❑ Consult with the employee regarding what spaces or tools the employee requires to properly care for the service animal in the workplace.

- ❑ Conduct disability awareness training in the workplace regarding how to effectively interact with the service animal, stressing the importance of not distracting the service animal while it is working. The employee who uses the service animal may wish to be part of the training to communicate his or her preferences and answer any questions coworkers might have.²⁸

WHAT SHOULD EMPLOYERS AVOID WHEN AN EMPLOYEE REQUESTS THE USE OF A SERVICE ANIMAL IN THE WORKPLACE?

While employers have more latitude with respect to permitting the use of service animals than places of public accommodation, there are still certain practices that employers should avoid when faced with a disabled employee's request to use a service animal at work. Specifically, employers should not:

- ❑ Automatically reject an employee's request to use a service animal.
- ❑ Limit the source of a note documenting the employee's need for a service animal to health-care providers or professionals.
- ❑ Request that an employee use an alternative accommodation if the employee prefers the use of a service animal.
- ❑ Reject an employee's request for a service animal because of a coworker's allergies or phobias without thoroughly exploring available alternatives.
- ❑ Prevent the employee from caring for the service animal in the workplace.²⁹

Although employers are not required to automatically permit the use of service animals in the workplace, they are required to reasonably accommodate the use of animals of all shapes and sizes by disabled employees unless such use would pose an undue hardship. Evaluating when and how to allow a disabled employee to use a service animal requires a delicate balance between competing needs, and one that an increasing number of employers will be required to strike. However, by applying the general principles outlined above, employers will be better equipped to make decisions regarding service animals in the workplace without running afoul of the ADA.

NOTES

1. 42 U.S.C. § 12101 et seq.
2. 42 U.S.C. § 12112. An "undue hardship" is defined as "an action requiring significant difficulty of expense, when considered in light of ... (i) the nature and cost of the accommodation needed ... (ii)

the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such a facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility; (iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and (iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.”
42 U.S.C. § 12111.

3. 42 U.S.C. § 12102(1).
4. 42 U.S.C. § 12111(9).
5. 28 C.F.R. § 36.104.
6. 28 C.F.R. § 35.136.
7. James B. Reed, Legal Brief: State Policies on Service Dogs for Military Veterans Nat’l Conference of State Legislatures (Dec. 2015). Available at https://comm.ncsl.org/productfiles/83051020/NCSL_Service_Dogs_for_Veterans.pdf
8. Office of Disability Employment Policy Job Accommodation Network. (2011, June 17). Service animals in the workplace. Available at <http://askjan.org/media/servanim.html>
9. Id.
10. Id.; Society for Human Resource Management. (2012, Dec. 3), Disability accommodations: Must employers allow service animals in the workplace? Available at <https://www.shrm.org/resourcesandtools/tools-and-samples/hr-qa/pages/disabilityaccommodationsmustemployersallowserviceanimalsintheworkplace.aspx>
11. Office of Disability Employment Policy Job Accommodation Network. (2011, June 17). Service animals in the workplace. Available at <http://askjan.org/media/servanim.html>; Pender, K. (May 20, 2016). Where service and support animals are, and aren’t, allowed. S.F. Chronicle. Available at <http://www.sfchronicle.com/business/networthh/article/Where-service-and-support-animals-are-and-7881055-1.php>. Food service employers are not allowed to permit service animals in areas used for food preparation, but may allow them in other areas, such as near cash registers or host stands; Equal Employment Opportunity Commission. (2014, Sept. 29). How to comply with the Americans with Disabilities Act: A guide for restaurants and other food service employers. Available at https://www.eeoc.gov/facts/restaurant_guide.html
12. Office of Disability Employment Policy Job Accommodation Network. (2011, June 17). Service animals in the workplace. Available at <http://askjan.org/media/servanim.html>
13. 28 C.F.R. § 35.136.
14. Von Bergen, C. W., & Bressler, M. (2015) Emotional support animals, service animals, and pets on campus, 83 Association of College Unions International Bulletin, 5, 20. A sugar glider is a small marsupial that can be kept in a pocket to relieve anxiety. Murdock, V. (2016, October 13). U.S. DOT pushes for stricter rules for service pets on planes. CBS. Available at <http://newyork.cbslocal.com/2016/10/13/new-rules-for-service-pets-on-planes/>
15. Skloot, R. (2008, December 31). Creature comforts. NY Times Magazine. Available at <http://www.nytimes.com/2009/01/04/magazine/04Creatures-t.html>

16. Office of Disability Employment Policy Job Accommodation Network, note 13 above.
17. Id.
18. Id.
19. Id.
20. Id.
21. Kelly, K. (2014, August 6). Service dogs in the workplace: How to make it work. Huffington Post. Available at http://www.huffingtonpost.com/kate-kelly/service-dogs-in-the-work_b_5655838.html
22. Office of Disability Employment Policy Job Accommodation Network, note 17 above.
23. Kelly, K., note 22 above.
24. Id.
25. Id.
26. Office of Disability Employment Policy Job Accommodation Network, note 13 above.
27. Id.
28. Id.; Kelly, K., note 22 above.
29. Office of Disability Employment Policy Job Accommodation Network, note 13 above.

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