

Who Let the Dogs In? Legal Requirements for Service Animals in Businesses and the Workplace

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As a proud “dog dad,” I certainly appreciate our furry friends. However, service animals can cause problems in the workplace and leave businesses questioning how to handle the situation. There are two major issues for businesses relating to service animals: (1) accommodation for the general public and (2) accommodation for employees. There is a stark difference between how a business should handle each of these situations. This article discusses the different standards and best practices for handling service animals as it relates both to the general public and employees.

While most people do not think much about having animals wandering around them, businesses certainly do. Service and emotional support animals can expose businesses to liability if they do not handle the situation properly. The main law at issue is the American with Disabilities Act (ADA) which prohibits disability discrimination in the workplace (Title I) and in places of public accommodation (Titles II and III). Florida state law is nearly identical to the ADA. Yet, other states’ and local laws may be more accommodating toward service animals. This general guidance will apply to most private employers, but note that certain industries may have stricter accommodation requirements and must comply with additional laws (*i.e.*, housing, airline, schools).

Accommodation for the General Public

A business’s duty to accommodate service animals for the general public is more defined and straight forward than the duty to accommodate employees. The ADA requires businesses to accommodate service animals—not emotional support or any other animal. For public accommodation, the ADA limits a service animal to either a dog or a miniature horse. An easy threshold consideration is to identify the type of animal the individual is claiming is a service animal, and if it is not a dog or miniature horse, then the business does not need to allow the animal onto its premises.

A service animal must be 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. The service animal must perform tasks that are directly related to its owner’s disability. There are no specific requirements for the type of training or certification needed for the service animal. The handler assumes certain responsibilities when bringing a service animal onto a business’s premises. Those responsibilities include controlling, cleaning up after, and providing care to the animal.

A business is required to modify current policies, practices, and procedures to permit the proper use of a service animal. A business can ask the handler to remove a service animal from the premises if the animal is out of control or the animal is not

housebroken. Complaints from other customers about allergies or phobias do not give the business the right to request removal of the service animal. The business must allow the handler and service animal access to all areas that other members of the public are permitted to go.

If the handler's disability is obvious (*i.e.*, a blind person with a guide dog), then the business should allow the handler and service animal to come on its premises without inquiry or hesitation. When the handler's disability and need for the service animal are not obvious, a business can make an inquiry, but it is only allowed to ask two specific questions: (1) whether the animal is required because of a disability; and (2) what work or task the animal has been trained to perform. It is a violation of the ADA for the business to ask for documentation of the handler's disability, certification or proof of training of the service animal, or for the service animal to perform a demonstration of the task it was trained to perform.

A business must use judgment when determining whether to allow a service animal onto its premises. If the handler does not respond to the two permissible questions appropriately, the business can request that the handler remove the service animal from its property. Ultimately, a business must decide whether to implement a strict or lenient approach to the public accommodation of service animals. The better approach depends on the business's philosophy and circumstances. However, every business should be consistent when handling these situations and educate its leadership of the applicable laws and rules mentioned above.

Accommodation for Employees

Accommodating employees with service animals is more complicated than accommodating the general public. Title I of the ADA is silent on accommodating service animals. Service animals are not just limited to only dogs or miniature horses. Emotional support and other comfort animals are also in the mix for accommodations in the employment context. Unlike public accommodation, there is no requirement that employers must allow employees to use service animals at work. The question of whether or not an employer needs to accommodate an employee's request to bring a service animal to work hinges on the reasonableness of the particular accommodation in the particular employment context.

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. That same rule applies for accommodation requests involving a service animal. The employer must engage in the same interactive process that it would for any disability accommodation request. If the disability is not obvious, an employer has the right to request documentation that the employee needs the service animal as an accommodation to perform his/her job duties. Likewise, an employer can request documentation or demonstration that the service animal is properly trained and will not cause disruption in the workplace.

Other employees' allergies and phobias will not constitute an undue hardship if the employer is capable of effectively addressing the situation. For example, an employer could remedy the situation by moving the disabled/affected employee's work station, changing the disabled/affected employee's schedule, regularly cleaning the work area, allowing the disabled/affected employee to work from home, or any other tactic that resolves the issue. Sometimes, resolving the situation is not possible, which then may create an undue hardship for the employer. In a recent case, a court held that an emotional support dog's presence inside the workplace did impose an undue hardship on the employer because several employees suffered from allergies and there was no way for the employer to remedy the situation.¹ In this case, there was only one room at the employer's facility where employees could effectively perform their job duties. Thus, the employer was not able to set up another work station or do anything else to prevent the affected employees from being exposed to the service animal—resulting in an undue hardship. The court reasoned that another workplace may be able to provide different work areas for the affected and disabled employees and could allow the accommodation without undue hardship, but that was not the case here.

Employers must take requests to bring a service animal to work seriously. An employer should not immediately reject the request or provide alternatives that do not involve the use of a service animal. Remember, an employee is not entitled to his/her preferred accommodation, only a reasonable accommodation. The employer can work with the employee through the interactive process to establish certain procedures and ground rules that will make the accommodation reasonable. If an employer does allow a service animal for a disability accommodation, the disabled employee is responsible for the animal's care, including hygiene, vaccinations, bathroom breaks, and controlling the animal to make sure it does not disrupt operations. An employer may also be required to allow secondary accommodations relating to the care of the service animal, such as allowing the employee to take additional breaks and establishing an area outside for the animal to relieve itself.

Unfortunately, there is no bright line rule for employers to use when evaluating an employee's accommodation request to use a service animal at work. An accommodation request to bring a service or other support animal to work must be determined on a situational basis.

¹ If you have any questions regarding this article please feel free to contact the author, [David Kalteux](mailto:David.Kalteux@fordharrison.com), (813) 261-7848 or dkalteux@fordharrison.com, or the FordHarrison attorney with whom you usually work.

¹ See *Maubach v. City of Fairfax*, No. 1:17-cv-921, 2018 U.S. Dist. LEXIS *16-18 (E.D. Va. April 30, 2018).

