

YOUR RIGHTS REGARDING SERVICE ANIMALS, EMOTIONAL SUPPORT ANIMALS, AND THERAPY ANIMALS IN MASSACHUSETTS¹

Prepared by the Mental Health Legal Advisors Committee
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INTRODUCTION

There are different categories of animals that help people with disabilities in their daily life. The rights regarding these animals vary depending on what category the animal falls into. This flyer discusses three categories of animals:

- service animals;
- emotional support animals;
- therapy animals.

SERVICE ANIMALS

What is a service animal?

These are animals (typically dogs) which aid a person with a disability.²

- The reason that this flyer focuses on dogs is that recently revised Americans with Disabilities Act (ADA) regulations regarding service animals limited the scope of recognized service animals under the ADA to dogs and miniature horses.³

These regulations also require that a dog, to be a service dog, be specially trained. A service dog is trained to aid a person with “a physical, sensory, psychiatric, intellectual, or other mental disability” *which restricts the person’s ability to engage in one or more major life activities*.

It is not enough for a service animal just to offer emotional support. The animal must be trained to do more.

Where can a service animal go?

Service dogs may accompany an individual with a disability in

- most residential settings,⁴
- public places and activities,⁵
- air travel (for service dogs trained to aid with psychiatric conditions),⁶ and

- place of employment if animal is a "reasonable accommodation" (see discussion below).⁷

Is documentation required?

The individual does not have to provide proof of the animal's status as a service animal. (An exception to this rule is for a psychiatric service dog travelling on an airplane, in which case the dog must follow the air travel rules in the section below on **emotional support animals**.)⁸

What are the rules for service animals?

To be qualified as a service dog, the dog must

- be under control and
- be housetrained.⁹

What are some examples of qualifying and non-qualifying dogs?

YES -- a seeing-eye dog who helps a blind person

YES -- a service dog trained to help a person with psychiatric problems by doing such activities as

- warning the disabled person about an impending panic attack,¹⁰
- being trained to respond to smoke alarms,
- being trained to search a room the disabled person is afraid to enter.

NO -- a dog who accompanies a person suffering from agoraphobia and offering comfort, but performs no special task.¹¹

EMOTIONAL SUPPORT ANIMALS

What is an emotional support animal?

Emotional support animals are animals, not limited to dogs but including other household animals, which provide "necessary" emotional support to an individual with a disability.

Where can an emotional support animal go?

Federal law provides that emotional support animals have a right to accompany an individual with a disability in

- residential settings,¹² and
- air travel.¹³

Is documentation required?

Persons must have a recent (with the preceding 12 months) letter from a recognized mental health professional confirming the status of the person living or traveling with the emotional support animal as disabled and the necessity for the emotional support the animal provides in dealing with a disability.¹⁴

The person must also give 48 hours advance notice to the airline.¹⁵

More information about emotional service animals, as well as a sample letter for a service provider to complete to request that such an animal be allowed in a residential setting, is available in the publication [Right to Emotional Support Animals in “No Pet” Housing](#).¹⁶

THERAPY ANIMALS

What is a therapy animal?

Therapy animals are trained or untrained animals (often dogs) that help patients or people with disabilities moderate anxiety and other psychic conditions.

Where can a therapy animal go?

Such dogs or other animals generally have no legal status which permits them entry to a location otherwise prohibited to animals.¹⁷

However, there are organizations that promote the role of such animals to provide comfort to individuals in a variety of settings such as hospitals and retirement homes. These animals might accompany a psychiatric patient to a therapy session, and some therapists will have a therapy dog available in their offices to provide support as needed.

REASONABLE ACCOMMODATION

In most cases, the rights of the service dog owner under both Title I (nondiscrimination in employment) and Title III (access to public places) of the ADA, the Fair Housing Act, and the Air Carrier Access Act (ACAA) all operate under the general rules governing reasonable accommodation.

In cases in which the owner of the premises could establish that the exception for service dogs would substantially change the character of his premises or impose significant additional cost the accommodation would likely not be deemed reasonable. Thus proof of these conditions are potential limitations on the rights discussed above.

Housing

In a series of housing cases, the courts have generally refused to assume that allowing an animal would have adverse consequences on the landlord.¹⁸ The courts further suggest that a special deposit requirement applicable only to service animals also would be

improper.¹⁹ The courts have not been sympathetic to landlord proposals of alternative accommodations.²⁰ However, in one case the Court did side with the landlord where it had a rule requiring pets to be bathroomed in a specific area.²¹

Air Travel

The federal Department of Transportation has well spelled out specifics about accommodation in air travel.²² Therefore, the issue of reasonable accommodation has not been much litigated in respect of the ACAA.²³

Access to Public Places

Title III of the ADA specifically grants disabled persons rights to enter public places with their service dogs notwithstanding an owner-established no-pet policy or a local ordinance against animals in restaurants.²⁴ Reasonable accommodation thus becomes a defense to be raised by the owner of the premises, and it generally has not been successful.²⁵

Employment

An employee's rights under Title I of the ADA arise only as a matter of reasonable accommodation²⁶ and the burden of showing that the accommodation requested is reasonable is on the employee in the first instance.²⁷ However, once this burden has been met, the employer must show either undue burden or that the alternative accommodation it is proposing is equally reasonable.²⁸ There have not been many court cases under these provisions but employees have been successful in several.²⁹

ENDNOTES

¹ Below is a brief listing of key federal and state nondiscrimination laws.

Federal Law:

Housing – The Fair Housing Act prohibits discrimination against the handicapped in housing. 42 U.S.C. 3604(f). *See* 24 CFR 100.24 defining reasonable accommodation to include seeing-eye dogs. Discrimination on basis of disability by federally funded programs is prohibited under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 701, and Title II of the ADA, 42 U.S.C. 12101.

Privately owned public places – Title III of the ADA, 42 U.S.C. 12181 (a)(2), prohibits discrimination unless the change in the facility needed to accommodate the disability would alter the fundamental nature of the facility or pose an undue burden. Regulations under this provision regarding service animals are found at 28 CFR 36, including 28 CFR 36.104 (defining service animal).

Employment – The principle source of federal law is Title I of the ADA. 42 U.S.C. 12101, but Sections 501 and 504 of the Rehabilitation Act of 1973 also prohibit employment discrimination in federal agencies and federally supported enterprises. Federal regulations are issued by the EEOC. *See* 29 CFR 1630. *See*

also detailed discussion at EEOC, Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, <http://www.eeoc.gov/policy/docs/accommodation.html>.

Air Travel – Discrimination in air carriage on the basis of disability is prohibited under the Air Carrier Access Act, 49 U.S.C. 41705. Detailed regulations of the Department of Transportation are set forth at 14 CFR 382.

Massachusetts Law:

The principle provision is Mass. Gen. L. ch. 272, § 98A - "...any physically handicapped person accompanied by a dog guide shall be entitled to any and all accommodations, advantages and privileges of all ... places of public accommodations." This was applied to mental disabilities in *Low v. Costco Wholesale Corp.*, MCAD Docket 04 BPA 00422.

² See 28 CFR 36.104: "Service animal means any dog that is individually trained to dog work ... Other species of animals are not service animals"

³ Reference to miniature horses at 28 CFR 35.136(i).

⁴ In residential settings rental units which are owner occupied and have less than 4 units may maintain a no-pets policy. 42 U.S.C. 3603(b)(2); 24 CFR 100.60.

⁵ The ADA defines the public places in which these dogs may enter notwithstanding either public or private rules against animals to exclude private clubs and religious organizations. 42 U.S.C. 12187. Obligations of employers to accommodate service dogs do not apply to employers of less than 15 persons, to private clubs, or to religious organizations. 29 CFR 1630.2 9(e)(i)(2). See regulations under the ADA regarding service animals in public accommodations and commercial facilities at 28 CFR 26.

⁶ See regulations under the Air Carrier Access Act, 14 CFR 382.

⁷ Title I of the ADA, 42 U.S.C. 12101. For more information regarding service animals in places of business, see Department of Justice, Commonly Asked Questions About Service Animals in Places of Business, <http://www.ada.gov/qasrvc.htm>.

⁸ The general rule against requiring documentation is found at 28 CFR 36.302(c)(6) ("A public accommodation shall not require documentation, such as proof that the animal has been certified, trained or licensed as a service animal.") But see the most recent DOT regulation under the Air Carrier Access Act, 14 CFR 382.117(e), which applies the requirement of a therapist's letter to psychiatric service dogs as well as to emotional support animals.

⁹ 28 CFR 36.202(c)(2)(b).

¹⁰ An animal corresponding to the first example was recognized in *Mytchell Low v. Costco Wholesale Corporation*, Docket No. 04-BPA-00422 (awarding damages to a disabled person denied entry to a Costco warehouse when accompanied by his trained service dog).

¹¹ See extended discussion at service dog website, <http://servicedogcentral.org?content/node/76>.

¹² Two Massachusetts cases reflect the importance of establishing the need for the emotional support animal. In *Nason v. Storm Hill Realty Ass'n*, 1996 WL 1186942, the tenant failed to show the need for her cat, while in *Whittier Terrace Ass'n v. Hampshire*,

532 N.E.2d 712 (Mass. App. Ct. 1989), the need for a cat was established. See also extended discussion in Bazelon Center for Mental Health Law, Right to Emotional Support Animals in “No Pet” Housing, [http://www.bazelon.org/LinkClick.aspx?fileticket=mHq8GV0FI4c%3d&tabid=268](http://www.bazelon.org/LinkClick.aspx?fileticket=mHq8GV0FI4c%3d&tabid=268;); *Majors v. Housing Authority of DeKalb*, 652 F.2d 454 (5th Cir. 1981); see generally Kate A. Brewer, *Emotional Support Animals Excepted From “No Pets” Lease Provisions under Federal Law*, <http://www.animallaw.info/articles/dduspetsandhousinglaws.htm>.

¹³ The exception for emotional support animals traveling by air is limited to airplanes and does not apply to other modes of commercial transportation. Hawaii’s rules on quarantine of dogs arriving by air are subject to qualification for passengers arriving by air. The foregoing reflects a settlement of a lawsuit involving a guide dog. It is unclear what the outcome means for service dogs for other than blind persons.

¹⁴ See 14 CFR 382.117(e).

¹⁵ See 14 CFR 382.27(c)(8).

¹⁶ Bazelon Center for Mental Health Law, Fair Housing Information Sheet # 6, <http://www.bazelon.org/LinkClick.aspx?fileticket=mHq8GV0FI4c%3D&tabid=2>. <http://www.bazelon.org/LinkClick.aspx?fileticket=mHq8GV0FI4c%3D&tabid=2>.

¹⁷ See discussion at service dog website, What is a Therapy Dog?, <http://servicedogcentral.org/content/node/158>. Therapy dogs also are discussed in the following websites:

- o The Delta Society, <http://deltasociety.org>;
- o Therapy Dogs International, <http://tdi-dog.org>;
- o Therapy Dogs Incorporated, <http://therapydogs.com>.

¹⁸ See, e.g., *Whittier Terrace Assoc. v. Hampshire*, 532 N.E.2d. 712 (Mass. App. Ct. 1989).

¹⁹ *HUD v. Purkett*, FH.FL Para. 19,372 (HUDAV July 31, 1990).

²⁰ *Green v. Housing Authority of Clackamas*, 994 F. Supp. 1253 (D. Ore. 1998).

²¹ *Woodside Village v. Hertzmark*, 1993WL 268293 (Conn. Super. Ct. 1993).

²² See 14 CFR 382.

²³ A Westlaw search retrieved only one Massachusetts case, that involving a wheelchair issue. See *Deterra v. American West Airline, Inc.*, 226 F. Supp. 2d. 298 (D. Mass. 2009); 49 U.S.C. 41705; Curtis D. Edmonds, *When Pigs Fly: Litigation Under the Air Carrier Access Act*, 78 NDLR 687 (2002).

²⁴ See 28 CFR 36.302(c) (detailing rules for service animals).

²⁵ See, e.g., *Lentini v. California Center for the Arts, Escondido*, 370 F.3d 837 (C.A. 9 2004) (service dog’s yipping not basis for exclusion from concert). However, courts have been more accepting of hospitals’ concerns about service dogs. See, e.g., *Day v. Summer Regional Health System*, 2007 WL4570810 (M.D. Tenn.).

²⁶ See EEOC, Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, at 3, <http://www.eeoc.gov/policy/docs/accommodation.html>.

²⁷ See EEOC, Enforcement Guidance, *supra*, at 29.

²⁸ See EEOC, Enforcement Guidance, *supra*, at 29.

²⁹ On very strong facts the employee prevailed in *Branson v. West*, 1999 WL 1186420 (N.D. Ill. 1999) (rejecting employer’s proposal of accommodation with a motorized

wheelchair). *See also McDonald v. Dept. of Environmental Quality*, 351 Mont. 243, 214 P.3d 749 (2009). The employer prevailed in *Edwards v. USEPA*, 456 F.Supp.2d 72 (D.D.C. 2006) where the employee's evidence was a somewhat less than definite doctor's letter.