

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 the category. This flyer discusses three categories of animals:

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

SERVICE ANIMALS

What is a service animal?

These are animals which aid a person with a disability.² It is not enough for a service animal just to offer emotional support. The animal must be trained to do more. The rules regarding these animals are found in Americans with Disabilities Act (ADA) regulations.

- Only dogs and miniature horses may be service animals.³
- To be a service dog, a dog must be specially 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.
- Miniature horses may be service animals if they are trained to perform a specific action, and the business or private entity being asked to accommodate them can withstand the horse’s “type, size, and weight.”⁴

Some specific actions that a service animal can be trained to assist with are:

- Helping individuals who are blind or have low vision with navigation and other tasks.
- Alerting individuals who are deaf or hard of hearing to the presence of people or sounds.

- Providing non-violent protection or rescue work.
- Pulling a wheelchair.
- Assisting an individual during a seizure.
- Alerting individuals to the presence of allergens.
- Retrieving items such as medicine or a telephone.
- Providing physical support and assistance with balance and stability for individuals with mobility disabilities.
- Helping individuals with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors.⁵

Where can a service animal go?

Service dogs may accompany an individual with a disability in

- most residential settings;⁶
- public places and activities;⁷
- air travel (for service dogs trained to aid with psychiatric conditions);⁸
- places of employment if animal is a "reasonable accommodation" (see discussion below);⁹ and
- schools.¹⁰

Is documentation required?

The individual usually 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; then the dog must follow air travel rules (see section below on emotional support animals).¹¹

What are the rules for service animals?

To be qualified as a service dog, the dog must

- be under control and
- be housetrained.¹²

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

QUALIFYING -- a seeing-eye dog who helps a blind person.

QUALIFYING -- 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;¹³
- responding to smoke alarms; OR
- searching a room the disabled person is afraid to enter.

NON-QUALIFYING -- a dog that accompanies a person suffering from agoraphobia and offers comfort, but performs no special task.¹⁴

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?

Emotional support animals have a right to accompany an individual with a disability in

- residential settings¹⁵ and
- air travel.¹⁶

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.¹⁷

The person must also give 48 hours advance notice to the airline.¹⁸

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 [Right to Emotional Support Animals in “No Pet” Housing](#).¹⁹

THERAPY ANIMALS

What is a therapy animal?

Therapy animals are trained or untrained animals (often dogs) that help patients or people with disabilities deal with 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.²⁰

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, service dog owners have rights regarding reasonable accommodation so that the animal may accompany the owner in places of public accommodation.²¹ These rights also apply to owners of miniature horses, but there are a few extra regulations for this type of animal.²²

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, these conditions are potential limitations on the rights discussed above.

Housing

Courts have generally refused to assume that allowing a service animal would have adverse consequences on the landlord.²³ Courts also suggest that a special deposit requirement applicable only to service animals would be improper.²⁴ Courts have not been sympathetic to landlord proposals of alternative accommodations.²⁵ However, in one case the Court did side with the landlord where it had a rule requiring pets to toilet in a specific area.²⁶

Air Travel

There are rules about accommodating service animals in air travel.²⁷ Therefore, the issue of reasonable accommodation has not been much litigated.²⁸

However, Airlines for America, which is an airplane lobbying group, is in talks about limiting service animals allowed on planes to trained animals. This would exclude emotional support animals.²⁹ And, as of 2019, American Airlines, United Airlines, Alaska Air, Delta, Spirit, Allegiant, and Frontier Airlines require an additional form to be filled out by a medical professional to allow service animals on planes. This is in addition to the normally required doctor's note.³⁰

Access to Public Places

Disabled persons have rights to enter public places with their service dogs. This is true even if an owner has a no-pet policy or there is a local ordinance against animals in restaurants.³¹ The owner of the premises may raise a defense that they cannot reasonably accommodate the dog, but this argument generally has not been successful.³²

Additionally, miniature horses that are registered as service animals have the right to enter these premises in certain circumstances.³³

Employment

Employees can request to have a service animal as a reasonable accommodation, subject to certain limitations. Employers may require documentation of the service that the animal provides the employee in relation to the job. Employers may also require documentation of how the animal helps with an employee's disability. In general, a request will be granted as long as:

- The person's disability and the function of the service animal are related;
- The service animal will assist the employee in performing the functions of their job;
- The animal is trained to not disruptive in the workplace;
- The accommodation does not cause undue hardship to the employer.³⁴

There have not been many court cases under these provisions, but employees have been successful in several.³⁵

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 Carriage 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 accommodation." 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 do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition."

³ See 28 CFR § 35.136; reference to miniature horses at 28 CFR § 35.136(i).

⁴ See Disability Issues Brief: Service Animals and the Law, <http://www.adasoutheast.org/ada/publications/legal/Service-Animals-and-the-Law.php>.

⁵ ADA National Network Website, under the section "Definitions" on the Service Dog page, <https://adata.org/factsheet/service-animals>.

⁶ 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.

⁷ 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 private clubs, or to religious organizations. 42 U.S.C. 12187. See regulations under the ADA regarding service animals in public accommodations and commercial facilities at 28 CFR § 36.

⁸ See regulations under the Air Carrier Access Act, 14 CFR 382.

⁹ 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>.

¹⁰ In order to make a claim for this under Section 504 or the ADA, Section 1415 of the Individuals with Disabilities Education Act (IDEA) mandates that "students and their parents work their way through, or exhaust, all the administrative remedies available in the Individuals with Disabilities Education Act (IDEA)." See Disability Brief: Service Animals and the Law, <http://www.adasoutheast.org/ada/publications/legal/Service-Animals-and-the-Law.php>.

¹¹ 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 licensed mental health professional (psychiatrist, psychologist, licensed clinical social worker, including a medical doctor specifically treating the passenger's mental or emotional disability)'s letter to psychiatric service dogs as well as to emotional support animals. Air Carrier Access Act, 14 CFR § 382.117(f) also states that, "You are

never required to accommodate certain unusual service animals (e.g., snakes, other reptiles, ferrets, rodents, and spiders) as service animals in the cabin.”

¹² 28 CFR § 35.136(b).

¹³ An animal satisfying 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).

¹⁴ See extended discussion at service dog website,

<http://servicedogcentral.org?content/node/76>. In their Frequently Asked Questions section, they state that, “The Department is proposing new regulatory text in § 36.104 to formalize its position on emotional support or comfort animals, which is that “[a]nimals whose sole function is to provide emotional support, comfort, therapy, companionship, therapeutic benefits, or promote emotional wellbeing are not service animals.” The Department wishes to underscore that the exclusion of emotional support animals from ADA coverage does not mean that persons with psychiatric, cognitive, or mental disabilities cannot use service animals.”

¹⁵ Two Massachusetts cases reflect the importance of establishing the need for emotional support animals. 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. Other resources include Bazelon Center for Mental Health Law, “Right to Emotional Support Animals in ‘No Pet’ Housing,” available at

<http://www.bazelon.org/LinkClick.aspx?fileticket=mHq8GV0FI4c%3D&tabid=268>;

Majors v. Housing Authority of DeKalb, 652 F.2d 454 (5th Cir. 1981) and Kate A. Brewer, *Emotional Support Animals Excepted From “No Pets” Lease Provisions under Federal Law*, <http://www.animallaw.info/articles/dduspetsandhousinglaws.htm>.

¹⁶ 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 individuals with other disabilities.

¹⁷ See 14 CFR § 382.117(e).

¹⁸ See 14 CFR § 382.27(c)(8).

¹⁹ See Bazelon Center for Mental Health Law, Fair Housing Information Sheet # 6, <http://www.bazelon.org/LinkClick.aspx?fileticket=mHq8GV0FI4c%3D&tabid=2>.

²⁰ 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:

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

²¹ The right to reasonable accommodation for service dog owners can be found in 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).

²² See Southeast ADA Center & Burton Blatt Institute (BBI) at Syracuse University, “Disability Issues Brief: Service Animals and the Law,” available at <http://www.adasoutheast.org/ada/publications/legal/Service-Animals-and-the-Law.php>.

²³ See, e.g., *Whittier Terrace Assoc. v. Hampshire*, 532 N.E.2d. 712 (Mass. App. Ct. 1989).

²⁴ *HUD v. Purkett*, FH.FL Para. 19,372 (HUDAV July 31, 1990).

²⁵ *Green v. Housing Authority of Clackamas*, 994 F. Supp. 1253 (D. Ore. 1998).

²⁶ *Woodside Village v. Hertzmark*, 1993WL 268293 (Conn. Super. Ct. 1993).

²⁷ See federal Department of Transportation regulations implementing the Air Carrier Access Act (ACAA) at 14 CFR 382.

²⁸ A Westlaw search retrieved only one Massachusetts case (involving a wheelchair issue), although there are other cases dealing with mobility, such as *Gilstrap v. United Airlines*, No. 11-55271. 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).

²⁹ See Will 2020 Mark the End of Emotional Support Animals on Airlines?, available at <https://www.forbes.com/sites/michaelgoldstein/2019/12/19/will-2020-mark-the-end-of-emotional-support-animals-on-airlines/#78700e582f7a>.

³⁰ See “US Service Animals,” <https://usserviceanimals.org/esa-letter>.

³¹ See 28 CFR § 36.302(c) (detailing rules for service animals pursuant to Title III of the ADA).

³² 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.).

³³ See U.S. Department of Justice, “ADA Requirements: Service Animals,” available at https://www.ada.gov/service_animals_2010.htm.

³⁴ See Northwest ADA Center, “Service Animals as an Employment Accommodation,” <http://nwadacenter.org/factsheet/service-animals-employment-accommodation>.

³⁵ 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.