

Accommodations Updates + Service Animals

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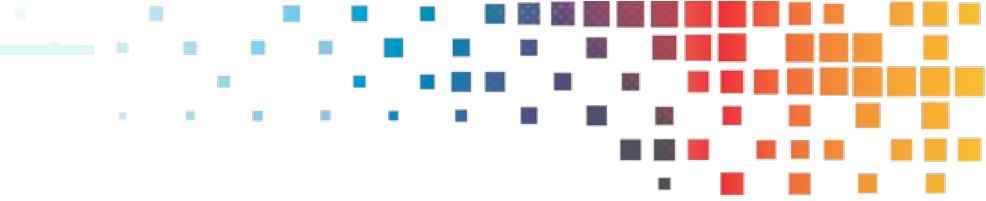
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Service Animals and Guests: Title III



Americans with Disabilities Act Title III

- U.S. Department of Justice has issued regulations.
- Limited to dogs and miniature horses.
- Does not include purely emotional support animals.
- Animal must be trained to perform work or tasks.
- Tasks performed by the animal must directly relate to the individual's disability.
- Service animal must be allowed wherever public is allowed.



What Questions Can You Ask?

- Where it is not obvious that a dog is a service animal, you may ask two questions:
 - 1. Is the service animal required because of a disability?**
 - 2. What work or task has the dog been trained to perform?**
- Service animals need not wear a vest or badge, or carry certification documents.



What You Can't Ask

- According to the Department of Justice, you may **NOT** ask about the nature or extent of the guest's disability, require medical documentation, require a special identification card or training documentation for the animal, or ask that the animal demonstrate its ability to perform the work or task identified.
- Moreover, you may not charge the guest more because she brings a service animal into your establishment.



General Rules Regarding Service Animals

- A person with a disability cannot be asked to remove his service animal from the premises unless:
 - (1) the animal is out of control and the handler does not take effective action to control it, OR
 - (2) the animal is not housebroken, OR
 - (3) the animal poses a threat.

When there is a legitimate reason to ask that a service animal be removed, staff must offer the person with the disability the opportunity to obtain goods or services without the animal's presence.



Are the Animals Under Control?

- A service animal must be under the control of its handler.
- Under the ADA, service animals must be harnessed, leashed, or tethered, *unless* the individual's disability prevents using these devices or these devices interfere with the service animal's safe, effective performance of tasks. In that case, the individual must maintain control of the animal through voice, signal, or other effective controls.



Anticipated Issues

- What if a guest or employee is allergic to dog dander? That would not be enough to deny access. The EEOC and DOJ say that you must try to find a way to accommodate both by having them in separate areas or physically on the other side of the room.
- How many service animals do we have to allow at a time? The requests are becoming frequent. No magic number. This is an issue you will have to assess as an undue hardship and/or fundamental alteration of your program if/when the requests are too frequent.



Anticipated Issues

- What if the dog has an accident inside the premises? You are permitted to tell the guest that they must take the dog out. But tell the guest that they are welcome to return without the dog.
- What if the dog starts barking for a reason unconnected to the human's condition? If the dog makes a disturbance by barking at another dog, or a guest, you can tell the owner to leave (but may return without the animal). But be mindful that the barking could be related to the human's condition and could be part of training.

Is the service animal truly creating a disturbance?



Lentini v. Calif. Center for Arts (9th Cir. 2004)

Theater patron in wheelchair was accompanied by her service animal, a poodle named “Jazz.”

- Jazz barked twice during the performance but no complaints from other attendees.
- Owner was told to leave and not return with dog.
- The court held that a service animal may not be excluded for behavior that would be acceptable for a human, and Jazz’s barking was no louder than a human cough.

Breed of Dog – Don't Make Assumptions



Regulations make it unlawful to exclude a service dog based on assumptions about how its breed might behave.

Where Are Service Animals Allowed?

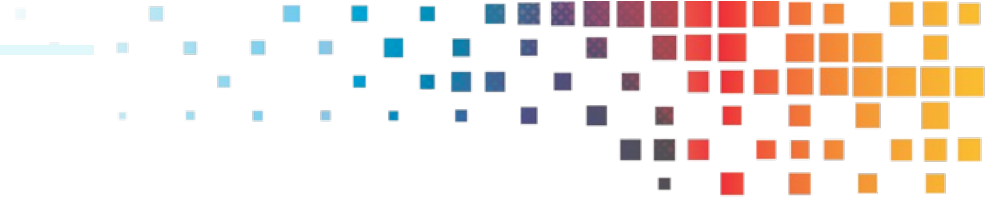
- If there is a request for a service dog to accompany a guest, the service dog can be limited to the public areas of the facility.
 - For example: in hotels, restaurants, or areas where the public can go, the service animal can go too.
- However, the USDA food code does not permit service (or emotional support animals) to be in food preparation areas. This is due to the concern of contamination that could cause serious illness.





General Rules Regarding Service Animals

- People with disabilities who use service animals cannot be isolated from other patrons, treated less favorably than other patrons, or charged fees that are not charged to other patrons without animals.
- In addition, if a business requires a deposit or fee to be paid by patrons with pets, it must *waive the charge* for service animals.
- If a business such as a hotel normally charges guests for damage that they cause, a customer with a disability may also be charged for damage caused by himself or his service animal.
- Service animals may not be left alone in hotel room.
- Staff are not required to provide care for or supervision of a service animal.



Tennessee Law on Service Animals



Interplay Between the ADA and TN Law

- Tennessee’s public accommodations law is less restrictive than the ADA, overall. As an employer, when dealing with federal and state laws, **you must comply with the more restrictive of the two laws.** Therefore, in most cases, you will *focus on complying with the ADA.*
- One difference is that Tennessee law doesn’t use the term “service animal” – it refers only to “dog guides.” But because the ADA recognizes miniature horses as service animals, you violate the ADA if you exclude a miniature horse service animal by relying on Tennessee law.
- Neither the ADA nor Tennessee's service animal law include emotional support animals, therefore owners of public accommodations are **not required to allow emotional support animals or pets into their establishments**, only service animals.



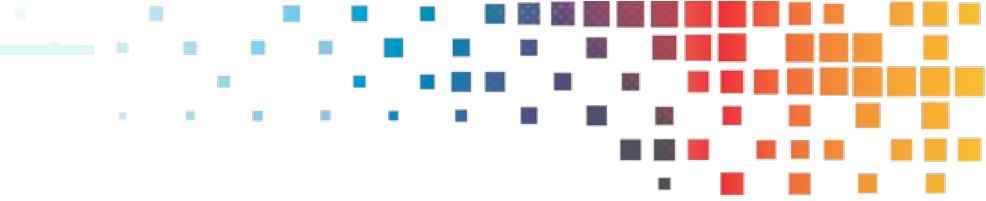
Inquiries

- Note that under both the ADA and Tennessee law, a place of public accommodation cannot require a disabled person to present documentation, such as proof that the animal has been certified, trained or licensed as a dog guide. *See* 28 C.F.R. § 36.302(c) (2011); Tenn. Code Ann. § 62-7-112(a)(1).

Tenn. Code Ann. § 6-54-135



- This past spring, Tennessee Senate Bill SB 1595 was passed into law, amending Tenn. Code Ann. § 6-54-135 to distinguish between service animals and emotional support animals.
- Emotional Support dogs are not considered service animals and may be banned.



Employee Accommodations: Title I



Employee Accommodations - murkier

- No regulations.
- Limited case law.
- General requirement that employers provide reasonable accommodations for employees with disabilities.
- Interactive process is required.
- You may require a certification from a health care provider if the employee's disability or need for a service animal is not clear.



Americans with Disabilities Act Title I

- No restrictions on the *types* of animals that can be service animals (i.e. not necessarily limited to dogs and miniature horses).
- No specific training or certification is required but the animal should be trained to perform specific tasks for owner.
- An accommodation must enable employee to perform the essential functions of the job. Accommodations need not be made for the convenience of the employee.



Americans with Disabilities Act Title I

Employee may be prohibited from bringing a service animal to work if it imposes an **undue hardship**.

- Undue interference with the operation of the business.
- Interference with other employees' ability to perform their job duties.
- Direct threat to health or safety of employees or customers.



FDA Rules

- Restaurant employees may use service animals except in areas where food is prepared.
- Employee must wash hands with soap for 20 seconds after handling service animal in a restaurant.

Emotional Support Animals – Employee Requests



- Under Title III, purely emotional support animals are not “service animals” because they are not trained.
- However, Title I does not define “service animal” and does not have the same limitation.
- This means you have to engage in the interactive process with employee.



Pregnant Workers Fairness Act (PWFA)



Pregnant Workers Fairness Act (PWFA)

- Effective June 27, 2023.
- Covered employer = 15+ employees.
- Employers must engage in the interactive process.
- Requires covered employers to consider accommodation requests for pregnancy, childbirth and related conditions the same as ADA accommodation requests.
- Protects applicants and employees.
- Employers cannot mandate leave when another reasonable accommodation is possible.
- Prohibits retaliation.



Pregnant Workers Fairness Act (PWFA)

- Employees are “qualified” if inability to perform the essential functions of their jobs is “temporary” and can be performed “in the near future”
- A “known limitation” is a physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions that has been communicated to the employer.
- The condition does not have to qualify as a disability under the ADA
- Requests may be denied if they would impose an undue hardship on business operations.



What is an Undue Hardship?

- An accommodation creates an undue hardship if it causes significant difficulty or expense for the employer's operations
- **Factors:**
 - The length of time the employee or applicant will be unable to perform the essential function.
 - Whether there is work for the employee or applicant to accomplish.
 - The nature of the essential function, including its frequency.
 - Whether the company has provided other employees or applicants in similar positions with temporary suspensions of their essential functions and other duties.
 - Whether employees, temporary employees, or third parties can perform or be temporarily hired to perform the essential functions in question.
 - Whether the essential function can be postponed or remain unperformed for any length of time and, if so, for how long.

Possible Reasonable Accommodations

Under the PWFA

- Frequent breaks, sitting or standing;
- Schedule changes, part-time work, and paid and unpaid leave;
- Remote work;
- Parking;
- Light duty, job restructuring;
- Making existing facilities accessible or modifying the work environment;
- Temporarily suspending one or more essential function;
- Acquiring or modifying equipment, uniforms, or devices; and
- Adjusting or modifying policies.



What Should You Do to Comply?

- Expand your accommodations review process to include requests related to pregnancy, childbirth, and related medical conditions;
- While you should already be conducting an interactive process with those employees or applicants who are seeking accommodations as a best practice, the PWFA requires it as a matter of law. So you should certainly fold it into your HR processes.
- Expand mandatory HR trainings to include a discussion of this law.
- Review any written policies related to accommodations and incorporate the new obligations, as necessary.
- Consult your employment attorney.



Resources

- [Fisher Phillips Insights](#)
- [University of Tennessee Institute for Public Service – Pregnant Workers Fairness Act](#)
- [EEOC, “What You Should Know About the Pregnant Workers Fairness Act”](#)
- [Bloomberg Law, “Religious Accommodation in the Workplace”](#)



Thank You!



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