



KNOW THE LAW

ADA UPDATE: CAN THAT ANIMAL COME IN HERE?

BY ELIZABETH STALLARD

AT ITS MOST BASIC, YOUR OBLIGATIONS WITH RESPECT TO ANY ANIMAL (AND NECESSARILY, ITS HUMAN COMPANION) DEPEND UPON WHAT KIND OF ANIMAL IT IS.

An area that often leads to questions, especially given recent efforts by airlines and others to limit animals in their places of business, is what kinds of animals are entitled to legal protection.

A “Service Animal” is a dog that is individually trained to do work or perform tasks for a person with a disability. Examples of the kinds of work and tasks that a service animal may perform 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 prescribed medications; calming a person with Post Traumatic Stress Disorder (PTSD) during an anxiety attack; or performing other duties. The work or task the dog has been trained to perform must be directly related to the person’s disability.

Under the Americans with Disabilities Act (ADA), Service Animals may go all places where the public may go or is invited.

An “Emotional Support Animal,” or ESA, is a companion animal that provides some therapeutic benefit to an individual with a mental or psychiatric disability, but that is not trained to provide any particular tasks

for the disabled person. An ESA can assist with severe depression, generalized anxiety disorder, post-traumatic stress disorder, and many other emotional and psychiatric disabilities. An ESA can also be any kind of animal, but dogs are common.

ESAs have no protection under the ADA. However, they do have certain protections, such as in the areas of employment, housing and air travel, as defined by other laws.

A “Pet” is a domestic or tamed animal kept for companionship or pleasure, and not for utility. Pets have no protections under the ADA. With this background, let’s answer a few common questions about Service Animals.

What kinds of animals can be service animals?

The ADA confirms that only dogs can be true service animals.

However, 2010 ADA amendments provide miniature ponies with essentially the same protections and rights as service animals when they meet certain requirements. The separate category is intended to provide flexibility in situations where admitting a miniature horse might not be appropriate for a public accommodation.

Can a grocery store employee require proof of a customer’s disability before allowing the service animal in the store?

No, you cannot ask for information about the nature of the person’s disability.

The only two questions you are allowed to ask are:

- Is the dog a service animal required because of a disability?
- What work or task has the dog been trained to perform?

Can a grocery store employee require proof of a service animal’s training before allowing the service animal in the store?

No, you cannot ask for documentation proving the service animal’s training or a demonstration of the tasks for which it has been trained.

It is also important to remember that service animals are not required to wear any specific clothing or identification, although individuals with service animals frequently have their dogs wear vests and other identifying apparel.



“UNDER THE AMERICANS WITH DISABILITIES ACT (ADA), SERVICE ANIMALS MAY GO ALL PLACES WHERE THE PUBLIC MAY GO OR IS INVITED.”

Should grocery stores post their policies regarding service animals and ESAs?

Yes. Posting a notice explaining the store’s policy at the entrance is a useful and appropriate way to notify potential patrons. It is also important to make sure that your store policies comply with not just federal and state requirements, but also any applicable local requirements.

Do I have to treat a service animal in training the same way that I would treat a service animal?

Yes. Under California law, service animals in training are entitled to the same protections as service animals. ■



Editor’s Note: Elizabeth Stallard is a partner in the Employment Practice at Downey Brand LLP. She assists retail grocery employers with both employment counseling and litigation.

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