

Insights

Animals Welcome? Legal Protections for Assistance Animals

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"Our perfect companions never have fewer than four feet." ~ Sidonie-Gabrielle Colette

Over time, dogs and other animals have played many roles in society that span beyond being comforting companions in our homes. Of these roles, arguably one of the most important is to provide services and support to those with disabilities or who otherwise need emotional support. These assistance animals are classified into two groups: service animals and emotional support animals.

The Americans with Disabilities Act ("ADA") defines a service animal as 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.^[1] The ADA requires that the work or task performed by a service animal be directly related to the individual's disability. Service animals can guide those who are blind or have low vision, alert individuals who are deaf or hard of hearing, assist an individual during a seizure, and even assist with retrieving items such as medicine or the telephone. The ADA requires State and local governments, and private entities such as businesses and nonprofit organizations that serve the public, to allow service animals to accompany those with disabilities in all areas where members of the public are allowed.^[2] Service animals are also recognized under the Air Carrier Access Act^[3] ("AACA") and Fair Housing Act^[4] ("FHA").

By contrast, an emotional support animal provides comfort to a person who has an emotional or mental health condition, such as anxiety or depression. Unlike service animals, emotional support animals do not have to be certified, and do not perform tasks on behalf of a person, but rather provide therapeutic support to their owner.

Emotional support animals are not recognized under the ADA. As such, businesses are not required to allow them into public places, such as restaurants, shopping malls, and medical offices. Although emotional support animals are not protected under the ADA, they are indeed recognized under the FHA and AACA.

The FHA is a federal law that prohibits discrimination by housing providers, such as landlords and real estate companies, as well as municipalities and lending institutions against tenants with disabilities.^[5] "Disability" is defined under the FHA as mental or physical impairments that substantially limit one or more major life activities. The FHA requires that housing providers make reasonable accommodations and allow emotional support animals, if the accommodation does not create a hardship. Housing providers must make such reasonable accommodations even if the building has a no-pet policy.

Additionally, owners may fly with their emotional support animals under the AACA. A service animal is defined under the AACA as any animal that is individually trained or able to provide assistance to a person with a disability; or any animal that assists persons with disabilities by providing emotional support.^[6] Accordingly, airlines must allow emotional support animals onto aircrafts. However, passengers and their animals must abide by certain rules while onboard an aircraft. In addition to the AACA, different laws may apply if a passenger is traveling outside the United States.

As the use of service animals and emotional support animals has increased, businesses, landlords, and municipalities must understand their legal obligations and limitations under the ADA, AACA, FHA, and other

applicable State law. For example, a business, or other entity subject to the ADA, may ask a person to confirm that his or her animal is a service animal, and what the animal is trained to do.^[7] However, it is impermissible to request the person to produce documentation to certify that the animal is in fact a service animal. The ADA also prohibits requiring the animal to demonstrate a task, or inquiring about the nature of the person's disability. Conversely, with respect to emotional support animals, a landlord is permitted under the FHA to ask for documentation or a letter from a licensed mental health professional that supports the person's need for an emotional support animal.

Businesses may develop policies regarding service animals and emotional support animals; however, such policies must be compliant with federal and State law.

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*If you have questions regarding service animals or emotional support animals, please contact **Shelley M. Jackson** or **Alexandria M. Foster**.*

[1] The United States Department of Justice, *Frequently Asked Questions about Service Animals and the ADA*, available at https://www.ada.gov/regs2010/service_animal_qa.html (last updated July 20, 2015).

[2] *Id.*

[3] The United States Department of Transportation, *Service Animals (Including Emotional Support Animals)*, available at <https://www.transportation.gov/individuals/aviation-consumer-protection/service-animals-including-emotional-support-animals> (last updated April 17, 2020).

[4] The United States Department of Housing and Urban Development, *Assistance Animals*, available at https://www.hud.gov/program_offices/fair_housing_equal_opp/assistance_animals (last accessed November 6, 2020).

[5] The United States Department of Justice, *The Fair Housing Act*, available at <https://www.justice.gov/crt/fair-housing-act-1#:~:text=The%20Act%20defines%20persons%20with,or%20more%20major%20life%20activities.&text=The%20Fair%20>

(last updated Dec. 21, 2017).

[6] The United States of Transportation, *Service Animals (Including Emotional Support Animals)*, available at <https://www.transportation.gov/individuals/aviation-consumer-protection/service-animals-including-emotional-support-animals> (last updated April 17, 2020).

[7] The United States Department of Justice, *Frequently Asked Questions about Service Animals and the ADA*, available at https://www.ada.gov/regs2010/service_animal_qa.html (last updated July 20, 2015).