

Proliferation Of Service And Support Animals Presenting Quandaries For Retailers And Employers

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There has no doubt been an increase in the number of consumers and employees using service or support animals when they patron public accommodations or go to work, with United Airlines recently saying they've seen a 75% year-over-year increase in the number of passengers utilizing support animals. How should employers or retailers handle this oftentimes delicate issue?

First, there are important distinctions between service animals and emotional support animals (ESAs). Under the ADA, "service animals" are defined as dogs that are individually trained to do work or perform tasks for people with disabilities (although there are also certain exceptions for miniature horses as well). When broken down, that is a fairly limited definition only applying to (1) specially-trained (2) dogs for (3) people with disabilities. It does not include ESAs that are used to provide a sense of safety, comfort, or that reduce anxiety for those that have emotional issues that don't meet the definition of a disability. The reason that is an important distinction is because federal law only provides accommodations to service animals, although many state and local jurisdictions have regulations that pertain to emotional support animals. And practically speaking, many retailers and employers avoid questioning the owner for fear of violating the law or alienating a customer or valued employee.

So what questions can be asked and what must be permitted?

Employers and places of public accommodation are precluded from asking questions about a service animals certification or qualifications, including a demand that the pet owner produce papers or documents evidencing training or designation as a service animal. If the disability is not outwardly apparent, the inquiries should be limited to (1) whether the animal is a service animal, and (2) what work the animal is trained to do. The animal must be permitted to accompany the owner to all areas of the facility where the public is permitted to normally go, which would exclude--for example--kitchen areas in restaurants or sterile environments in health care facilities. And the service animal must be harnessed, leashed, or tethered, unless that interferes with the individual's condition or the animal's work, in which case the owner must maintain control through voice, signal, or other effective means of control.

If the animal poses a threat to the health and safety of others, it can be removed from the premises. This is typically limited to situations where the animal is not housebroken or is outwardly aggressive towards others and the owner does not remedy the situation. Restaurants must permit service animals in public areas even where state or local health codes otherwise prohibit animals. And having another patron or co-worker with pet or dander allergies is not sufficient to require removal of the animal; in that situation, the employer or retailer should take steps to separate the individuals as much as possible.

Emotional support animals (ESAs) can be precluded from public places. However, there are specific laws that prohibit refusal or discrimination in the airline and housing industries for people wanting to travel with or own ESAs. And businesses are cautioned against assuming an animal is an ESA, because someone could have a psychiatric condition

(i.e., PTSD) that rises to the level of a disability, and the animal could therefore be a service animal even though the owner does not have an outwardly apparent disability.

At the end of the day, businesses should be pragmatic about the situation. If the animal is not being disruptive or creating other issues, then perhaps the better policy is to avoid creating an issue. If the business chooses to make inquiries, the inquiries should be limited to whether the animal is a service animal versus an ESA and the work that the animal does to assist the owner.

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