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Service Animals: Rights & Responsibilities



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Service Animals: Rights & Responsibilities



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Today's Presenter



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Basics of Service Animals & Emotional Support Animals

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Topics Overview

- What is the difference between a service animal, an emotional support animal (ESA), and an assistance animal?
- What state and federal laws apply to the use of animals to assist with symptoms of a disability?
- How are these animals addressed in public accommodations, housing, and transportation?
- How can a handler file a complaint if they are discriminated against because of their use of an animal to address disability symptoms?

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What is a Service Animal?



- Definition of a service animal (since 3/15/2011)
- Only dogs are recognized as service animals.
 - (and sometimes miniature horses)
- Individually trained to do work or perform tasks for people with disabilities.
- Generally Title II and Title III entities must permit a service animal to accompany people with disabilities in all areas where members of the public are allowed to go.

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Multiple Statutes Cover Service Animals Used to Address Symptoms of Disabilities

- Title I of the ADA covers employment - employers with 15+ employees
 - https://www.ada.gov/ada_title_1.htm
- Title II of the ADA covers state and local governments
 - Regulations at 28 CFR Part 35
- Title III of the ADA covers public accommodations
 - Regulations at 28 CFR Part 36
- Some states have statutes similar to the ADA.
 - Texas - Chapter 121 of the Texas Human Resources Code
 - Other States - <https://www.animallaw.info/topic/table-state-assistance-animal-laws>



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Multiple Statutes Cover Service Animals Used to Address Symptoms of Disabilities

Section 504 of the Rehabilitation Act 29 USC §794

- Prohibits discrimination by any federal program or activity receiving federal financial assistance.
- Regulations at 40 CFR Part 7

Air Carrier Access Act 49 USC 41705

- Prohibits discrimination by commercial airlines.
- Passenger rights - 14 CFR Part 382

Federal Fair Housing Act 42 USC 3601

- Prohibits discrimination by direct providers of housing such as landlords and real estate companies.
- Some states have comparable fair housing acts.
- Texas Fair Housing Act - Texas Property Code Chapter 301

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Some Examples of Work / Tasks

- Guiding people who are blind.
- Alerting people who are deaf.
- Pulling a wheelchair.
- Alerting & protecting a person with a seizure disorder.
- Reminding individuals with mental illness to take prescribed medications.
- Calming a person with PTSD during an anxiety attack.



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Are Service Animals the Same as Pets?

- **No**, service animals are working animals.
- Often viewed similar to medical equipment.
 - VA Rehabilitation & Prosthetic Services - 38 CFR 17.148
- The work or task the dog has been trained to provide must be directly related to the handler's disability.
- Service animals are not "pets" so "no pets allowed" policies do not apply.

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Are Emotional Support Animals also Service Animals?

- An animal whose sole function is to provide comfort or emotional support, but not trained to perform a specific task, *is **not a service animal.***
- This type of animal may be considered as an Emotional Support Animal (ESA).
- ESAs are recognized under the Fair Housing Act.
- ESA recognition under the Air Carrier Access Act has changed recently and travelers' ESAs are no longer allowed to fly on planes.



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Can Public Accommodation Staff Ask for Documentation or Certification Documents or Charge Extra Fees?

Legally recognized certification identifications or documents proving the dog is a service animal do not really exist.

The ADA does not allow staff to ask for such identification.

There is no federal or state agency authorized to evaluate training and certify that the dog is a trained service dog.

No license required for a person to be a service dog trainer.

Individuals can also train their own service animals.

Cannot charge pet deposit or special pet fees.

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Examples of Public Accommodations

- Grocery Stores & Retail Shops
- Restaurant
- Nightclubs
- Concert Venues
- Doctors' offices
- Lawyers' offices
- Airlines
- Taxi Cabs
- Housing (Addressed by FHA)
- Colleges & Universities
- Hospitals & Medical Clinics
- Movie Theaters

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Does a Service Animal Have to Wear a Service Animal Vest?



- **No requirement** in either state or federal law for the dog to wear a vest or other item identifying it as a service animal.
- Some people with a disability worry they could become a target if people around them see that they have some kind of disability.
- Anyone can sell a vest that includes patches or stitching indicating that the dog is a service animal and there is no requirement that the purchaser provide documentation in order to purchase the vest.
- Handler may voluntarily use a vest to show the dog is working.

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Check Your State Statutes to Compare with Federal Protections

- The Texas statute is in Chapter 121 of the Texas Human Resource Code.
- Service animals are allowed in “public entities” which is equivalent to a “public accommodation.”
- Chapter 121 Tx Human Resources Code include a statement that denying access based on disability is a denial of civil rights.
- Chapter 121 THRC also has a criminal penalty making it a misdemeanor to discriminate based on disability.
- Chapter 121 THRC also has a criminal penalty for falsely claiming a dog is a trained service animal.

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Service Animals Must Be Under Control

- The ADA requires that a service animal be under the control of its handler.
- The service dog must be harnessed, leashed, or tethered to the handler.
- The exception: If the individual's disability prevents using these devices, or the devices interfere with the service animal's performance of tasks.
- If the dog cannot be tethered to the handler, the handler must maintain control of the animal through voice, signal, or other effective controls.



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What if the Person's Disability is Not Visible to Others?

- The representative of the business can ask only **two questions**.
- Staff may ask:
 1. Is the dog a service animal required because of a disability?
 2. What work or task has the dog been trained to perform?

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What if the Person's Disability is Not Visible to Others?

- Staff **CANNOT ASK**:
 1. About the handler's disabilities
 2. For medical documentation
 3. For documentation/certification that dog is a service animal
 4. That the dog demonstrate its ability to work or perform tasks

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What if Someone has an Allergy or is Afraid of Dogs?

- Allergies and fear of dogs are not valid reasons for denying access or refusing service to the handler of a service animal.
- Both individuals should be accommodated such as locating them in separate rooms or separate areas of the facility.



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Can the Public Accommodation ask the Handler to Remove the Dog?

- The handler **cannot** be asked to remove the dog unless:
 - the dog is out of control and the handler does not take effective action to control it;
 - the dog is not housebroken;
 - the dog is aggressive and growls, bites or snaps at people or other dogs;
 - the dog is not clean, smells bad, etc.

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What Should Staff Do if There is a Legitimate Reason to Remove the Dog?



- The handler must be given the option to stay without the dog.
- Staff must offer the handler with a disability the opportunity to obtain the goods or services without the service animal's presence.
- A dog should not be excluded unless there is a significant reason for asking the handler to remove the dog.

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Are They Really Allowed in Restaurants & Grocery Stores?

- Businesses that sell or prepare food must generally allow service animals in the public areas even if state or local health codes prohibit animals on the premises.
- The service animal handler cannot be isolated from other patrons, treated less favorably or charged fees that are not charge to customers without service animals.



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Are They Really Allowed in Hotels/Motels?



The business cannot charge a pet deposit or additional rent or fees for a service animal.



The business cannot charge a surcharge for special cleaning.



The business normally charges guests for damage they cause, the handler may also be charged for damage caused by the handler or by the service dog.

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Are They Really Allowed in Hospitals & Doctors' Offices?

- Service animals are allowed in areas open to the public.
- Examples:
 - Patient rooms
 - Clinics
 - Hospital cafeterias
 - Medical examination rooms
 - **NOT ALLOWED** in places like burn units and operating rooms where a sterile environment must be maintained



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Are ESAs & Service Animals Allowed on Commercial Airlines?



- Service Animals – **YES**
- Emotional Support Animals – **NO**

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Seriously? Miniature Horses Too?

- Miniature horses are an exception to the requirement that the service animal is a dog.
- The miniature horse must be individually trained to do work or perform tasks for people with disabilities.
- Entities must modify their policies to permit miniature horses where reasonable.
- Miniature horses can range in height from 24 – 34 inches.
- Miniature horses range in weight from 70-100 pounds.

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How Do You Determine if it is Reasonable to Allow a Miniature Horse?

- The regulations outline four assessment factors:
 - whether the miniature horse is housebroken;
 - whether the miniature horse is under the owner's control;
 - whether the facility can accommodate the miniature horse's type, size, and weight; and
 - whether the miniature horse's presence will not compromise legitimate safety requirements necessary for the safe operation of the facility.



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Can a Landlord ask for Documentation or Charge Extra Fees?

The handler may have to provide supporting medical documentation that the dog is a service dog or an emotional support animal.

Landlord can ask for documentation that the handler has a disability that substantially limits one or more major life activities and the service animal (or ESA) alleviates symptoms of the handler's disabilities.

Landlord may not charge a pet deposit or an extra monthly rent for the service dog or an ESA.

ESAs are not required to be dogs.

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Are Service Animals Valid Job Accommodations?

- Yes, an employee can ask for a job accommodation of bringing a service animal to work.
- Might also be able to ask to bring an ESA as an accommodation.
- Employer **not limited** to the two questions.
- Employer may ask for documentation that the employee has a disability that significantly limits a major life function and that the service animal or ESA alleviates symptoms of the condition.



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K-12 Education

- Service animals and ESAs may be appropriate accommodations for a school age child who has a disability.
- Covered by both Section 504 of the Rehabilitation Act and the Individuals with Disabilities Education Act (IDEA).
- Should be placed in either the child's Individual Education Plan (IEP under IDEA) or the child's 504 Plan (under 504 of the Rehabilitation Act).



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Filing a Federal Administrative Complaint

- Title II and Title III complaints - File with the Department of Justice (DOJ)
 - <https://www.justice.gov/actioncenter/submit-complaint>
- Hospital complaints - File with the Department of Health and Human Services (HHSC)
 - <https://www.hhs.texas.gov/services/your-rights/civil-rights-office/filing-a-discrimination-complaint>

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Filing a Federal Administrative Complaint

- K-12 schools /colleges/universities - File with the Department of Education (DOE) or with your state education agency
 - <https://www2.ed.gov/about/offices/list/ocr/docs/howto.html>
- Employment complaints – File with Equal Employment Opportunity Commission (EEOC) or with your state employment discrimination agency
 - <https://www.eeoc.gov/filing-charge-discrimination>

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Assistance from State Protection & Advocacy Organization

- National Disability Rights Network (NDRN)
 - Different non-profits or state agencies that advocate for individuals with disabilities.
 - <https://www.ndrn.org/about/ndrn-member-agencies/>

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Continuing Education



This webinar has been approved for the following **continuing education (CE) credits**:

- 1.0 CE from the **University of Texas at Austin, Steve Hicks School of Social Work (Social Work, LPC, LMFT)**.
- 1.0 CE from the **Commission for Case Manager Certification**.
- 1.0 CE from the **Patient Advocate Certification Board to Board Certified Patient Advocates (BCPA)**.
- OneOp **certificate of attendance** available.

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Upcoming Webinar



The Caregiver Conflict: Tips for Providers Working with Families

November 30, 2022, 11 AM – 12 PM ET

Learn why caregivers feel stressed, confused, angry, and overwhelmed by understanding how “who you are as a caregiver” is changing and why it creates stress. More importantly, as professionals, learn how the caregivers and families you work with can manage these changes and reduce stress. **Continuing education credit will be available for this session!**



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