



Service Animal Fact Sheet: **Businesses and Public Spaces**

Introduction

Title II of the ADA prohibits discrimination against people with disabilities by “public entities.”¹ Title III prohibits disability discrimination by “public accommodations.”² Public entities are places operated by a state or local government, such as government buildings, public transportation and public parks, and are referred to here as “public spaces.”³ Public accommodations are places of business that are open to the public, such as restaurants, hotels, movie theatres, stores, medical offices and hospitals,⁴ and are referred to here as “businesses.” California law provides

¹ 42 U.S.C. §§12131-12165; DOJ, Title II Technical Assistance Manual, <https://www.ada.gov/taman2.html>

² 42 U.S.C. §§12181-12189; DOJ, Title III Technical Assistance Manual, <https://www.ada.gov/taman3.html>

³ 35 C.F.R. §35.102. Public entities include: state and local governments; departments, agencies, special purpose districts, and other instrumentality of a state or local government; and public transportation such as railroads and commuter authorities. 28 C.F.R. § 36.104.

⁴ 36 C.F.R. §36.102. ADA regulations define “place of public accommodations” as a “facility operated by a private entity whose operations affect commerce.” 28 C.F.R. § 36.104. This includes places of lodging (such as hotels), establishments serving food or drink, places of entertainment, places for public gathering, sales or rental establishments, professional offices, hospitals, offices of health care providers, stations used for public transportation, museums and libraries, zoos, parks, places of recreation,

similar protections.⁵ Section 504 of the Rehabilitation Act of 1973 provides similar protections for federal agencies such as the U.S. Postal Services, and for state and local government programs and private organizations including schools and universities⁶ that receive federal financial assistance.⁷ Airline travel is governed by its own regulations, which are discussed below.

People with disabilities do not have a right to bring emotional support animals into businesses or public spaces. That right only applies to service animals. Therefore, if you seeking access to these places, it is important to know whether your animal qualifies as a service animal.

Rights to Service Animals in Businesses and Public Spaces

A. What is a Service Animal?

A “service animal” is a dog that is individually trained to perform work or tasks that benefit a person with a disability, including a physical, sensory,

places of exercise, places of education, and social service establishments. 28 C.F.R. § 36.104; 42 U.S.C. § 12181(7).

⁵ Cal. Civ. Code §51 *et seq.* (Unruh Civil Rights Act); Cal. Civ. Code §54 *et seq.* (Disabled Persons Act); Cal. Gov. Code §11135 (for programs operated by the state or businesses receiving state financial assistance). California state law provides an even broader definition of public accommodations than the ADA, requiring reasonable modifications to no-pets policies at any place “to which the general public is invited.” Cal. Civ. Code § 54.1(a)(1).

⁶ Private colleges and universities are covered under Title III of the ADA, and public colleges and universities are covered under Title II. Dormitories and other university housing are also covered under state and federal fair housing laws. For more information on rights to service and emotional support animals, and other forms of reasonable accommodations in higher education, see, Disability Rights California, *Rights of Students with Disabilities in Higher Education* (Pub. #5309.01) and *What are my Rights to Accommodations in Higher Education?* (Pub. #F064.01), at <http://www.disabilityrightscalifornia.org/pubs/PublicationsHigherEducation.htm>.

⁷ 29 U.S.C. § 794.

psychiatric, intellectual, or other type of mental disability.”⁸ Although this definition is limited to dogs, federal regulations provide that miniature horses must be allowed as service animals in businesses and public spaces if they are individually trained to benefit an individual with a disability and can be reasonably accommodated.⁹ An animal is not a service animal if its mere presence benefits the individual with a disability.

Some examples of tasks that service animals perform include: turning on lights, picking up objects, providing stability, tactile stimulation and deep pressure therapy for the handler.¹⁰ If the cue is not an intentional command from the handler, the dog’s recognition and response would be service dog *work*. Examples of service dog work include preventing or interrupting impulsive or destructive behaviors, reminding the individual to take medication, and removing a disoriented individual from a dangerous situations.¹¹ There is no specific legal requirement as to the amount or type of work a service animal must provide for the benefit of the disabled person.

B. How Do I Show That My Dog is a Service Animal?

The only requirement to be a service animal is that the dog be individually trained to benefit the person with a disability. A service animal may be trained by a professional, a friend, a family member, or the person with a disability. Under the ADA, a service dog is not required to be registered as a service dog, or wear a special tag or vest identifying it as a service animal.¹²

⁸ 28 C.F.R. §§ 35.104, 36.104; Cal. Civ. Code § 54.1(b)(6)(C)(iii).

⁹ 28 C.F.R. §§ 36.302(c)(9)(i), 35.136(i).

¹⁰ *Id.*

¹¹ *Id.*; Other examples of work or tasks related to an individual’s physical disability include “assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities.” 28 C.F.R. §§ 36.104, 35.104.

¹² 28 C.F.R. §§ 36.302(c)(6), 35.136(f). See also, DOJ, *Frequently Asked Questions about Service Animals and the ADA*, https://www.ada.gov/regs2010/service_animal_qa.html.

California law provides for local animal control departments to issue identification tags to people who use and train service animals.¹³ However, unless the dog is a service animal in training,¹⁴ the tags are not required and do not establish that an animal is a service animal under the law.

Unless there is a reason to believe that an animal poses a threat to health or safety, a business or government official can ask only two questions to determine whether an animal qualifies as a service animal: 1) Is the animal required because of the handler's disability?; and 2) What work or task the animal has been trained to perform?¹⁵ Misrepresenting that a dog is a trained service animal is a misdemeanor punishable by up to six months imprisonment and/or up to a \$1,000 fine.¹⁶

C. When Can my Service Animal be Denied Access to a Business or Public Space?

Businesses and public spaces are not required to allow access to service animals that pose a direct threat to others,¹⁷ are not under the handler's care and control,¹⁸ or would fundamentally alter the nature of the goods, services or programs provided by the business or government entity.¹⁹

A "direct threat" is a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.²⁰ For example, a dog that bites without provocation may present a direct threat. In determining whether a direct threat exists, an entity must make:

an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: The nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies,

¹³ Cal. Food & Agric. Code §§ 30850 – 30854.

¹⁴ See section IV, C. below.

¹⁵ 28 C.F.R. §§ 36.302(c)(6), 35.136(f).

¹⁶ Cal. Pen. Code § 365.7(a); Cal. Food & Agric. Code § 30850(b).

¹⁷ 28 C.F.R. §§ 36.208, 35.139(a).

¹⁸ 28 C.F.R. §§ 36.302(c)(2), (4), 35.136(d),(e).

¹⁹ 42 U.S.C. § 12182(b)(2)(A)(ii); 28 C.F.R. § 35.130 (b)(7).

²⁰ 28 C.F.R. §§ 35.104, 36.104.

practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.²¹

Excluding a service animal based on a direct threat must be based on the actual behavior of the particular animal, not on assumptions or stereotypes about how the animal, or the animal's breed, might behave.²²

A service animal must always be under the care and control of its handler, or someone designated by the handler. A person with a disability can be asked to remove his or her service animal from the premises if the animal is out of control and the animal's handler does not take effective action to control it, or if the animal is not housebroken.²³ The responsibility to supervise and care for a service animal does not fall on the business or government entity that provides access.²⁴

Generally, a service animal must have a harness, leash or other tether.²⁵ However, if the handler is unable to use a harness, leash or other tether because of disability, or if the use of a tether would interfere with the service animal's safe, effective performance of work or tasks, the handler may use other means to keep the animal under control.²⁶

Service animals may also be denied access to businesses and government buildings if allowing access would fundamentally alter the nature of the goods, services or programs offered at that location.²⁷ For example, a zoo may restrict service animals from areas where the animals on display are the natural prey or natural predators of dogs, or where the presence of the dog would be distracting to the animals on display.²⁸

²¹ 28 C.F.R §§ 35.139(b), 36.208(b).

²² See, DOJ, *Frequently Asked Questions about Service Animals and the ADA*, at https://www.ada.gov/regs2010/service_animal_qa.html.

²³ 28 C.F.R. §§ 35.136(b), 36.302(c)(2).

²⁴ 28 C.F.R. §§ 35.136(e), 36.302(c)(5).

²⁵ 28 C.F.R. §§ 35.136(d), 36.302(c)(4).

²⁶ *Id.*

²⁷ 42 U.S.C. § 12182(b)(2)(A)(ii); 28 C.F.R. § 35.130 (b)(7).

²⁸ DOJ, *Frequently Asked Questions about Service Animals and the ADA*, at https://www.ada.gov/regs2010/service_animal_qa.html.

D. Can I Bring my Service Animal with Me to the Hospital?

Hospitals and other healthcare facilities are treated like other businesses and public spaces for the purposes of service animal access. Service animals must be allowed anywhere in the hospital where healthcare personnel, patients and visitors are allowed to go.²⁹ This includes patient rooms and other public areas of inpatient and outpatient mental health units, including locked mental health facilities.³⁰ Patients must be able to care for the animal, or must arrange for someone else to care for the animal if necessary.³¹ Service animals may be excluded from limited access areas of hospitals that employ general infection-control measures, such as operating rooms and burn units.³² As with other businesses and government spaces, when healthcare workers are not certain that an animal is a service animal, they may ask the handler if it is a service animal required because of a disability, but may not require certification or other documentation of service animal status.³³

E. Can I Bring my Service Animal on an Airplane?

Air travel is governed by the federal Air Carrier Access Act (ACAA) and its implementing regulations.³⁴ Unlike the ADA, the ACAA allows people with disabilities to bring both service and emotional support animals on airlines.³⁵ However, the ACAA also differs from the ADA by treating psychiatric service

²⁹ DOJ, *Frequently Asked Questions about Service Animals and the ADA*, at https://www.ada.gov/regs2010/service_animal_qa.pdf; Healthcare Infection Control Practices Advisory Committee, Centers for Disease Control and Prevention, *Guidelines for Environmental Infection Control in Health-Care Facilities* at 108, http://www.cdc.gov/hicpac/pdf/guidelines/eic_in_hcf_03.pdf.

³⁰ See, *Tamara v. El Camino Hospital*, 964 F.Supp. 2d (2013).

³¹ Healthcare Infection Control Practices Advisory Committee, Centers for Disease Control and Prevention, *Guidelines for Environmental Infection Control in Health-Care Facilities* at 109, at http://www.cdc.gov/hicpac/pdf/guidelines/eic_in_hcf_03.pdf.

³² *Id.*

³³ *Id.* at 110.

³⁴ 14 C.F.R. § 382.117.

³⁵ 14 C.F.R. § 382.117(a)-(c).

animals like emotional support animals, rather than like service animals for people with physical disabilities.³⁶

In order to establish that an animal is a service animal for a passenger with a physical disability, ACAA regulations require airlines to accept “identification cards, other written documentation, presence of harnesses, tags, or the credible verbal assurances of a qualified individual with a disability using the animal.”³⁷ In contrast, passengers who want to bring a psychiatric service animal or emotional support animal onto a flight are required to produce a note, less than one year old, signed by a licensed mental health professional, stating that he or she has a recognized psychiatric disability that requires the use of an emotional support or psychiatric service animal.³⁸ Perhaps because treating psychiatric service animals like emotional support animals rather than like other service animals is arguably inconsistent with the ADA, a U.S. Department of Transportation (DOT) guidance applies the ACAA requirement for additional documentation to emotional support animals only.³⁹

Under the ACAA, any type of animal can be accommodated as a service or emotional support animal, except “certain unusual service animals such as snakes, other reptiles, ferrets, rodents and spiders.”⁴⁰ For other animals, “including unusual or exotic animals that are presented as service animals (e.g., miniature horses, pigs, monkeys),” Airlines must determine “whether any factors preclude their traveling in the cabin as service animals (e.g., whether the animal is too large or heavy to be accommodated in the cabin, whether the animal would pose a direct threat to the health or safety of others, whether it would cause a significant disruption of cabin service, whether it would be prohibited from entering a foreign country that is the flights destination)” before denying access.⁴¹ DOT guidance specifies that for air travel, a service or emotional support animal is “solely the

³⁶ 14 C.F.R. § 382.117(e).

³⁷ 14 C.F.R. § 382.117(d).

³⁸ 14 C.F.R. § 382.117(e).

³⁹ DOT, *Guidance Concerning Service Animals in Air Transportation* (2003), <http://airconsumer.ost.dot.gov/rules/20030509.doc>.

⁴⁰ 14 C.F.R. § 382.117(f).

⁴¹ *Id.*

responsibility of the passenger with a disability whom the animal is accompanying."⁴²

Service animals in training are not covered under ACAA regulations. However, some airlines permit qualified trainers to bring service animals in training aboard an aircraft for training purposes.⁴³

F. Can a Business or Government Entity Charge a Fee for Service Animal Access?

A business or government entity cannot require a person with a disability to pay a deposit or surcharge in order to be accompanied by a service animal, even if that is their policy for pets.⁴⁴ If a public accommodation or public entity ordinarily charges its guests for damage caused to the premises, it may charge the owner of a service animal for similar damage.⁴⁵

G. Can I Bring my Service Animal in Training into a Business or Public Space?

Service animals in training are not covered under the ADA. However, state law allows people with disabilities, and individuals who train service animals, to bring a dog into any public place for the purpose of training the dog to provide a disability-related service.⁴⁶ This includes businesses, public and private transportation, housing accommodations, and other places to which the general public is invited.⁴⁷ The dog must be on a leash, and must wear a county-issued tag that identifies the dog as a service or assistance animal in training.⁴⁸ The dog's handler will be liable for any damage that the dog does to the premises or facilities.⁴⁹

⁴² DOT, *Guidance Concerning Service Animals in Air Transportation* (2003) at 16, <http://airconsumer.ost.dot.gov/rules/20030509.doc>.

⁴³ Jacquie Brennan, *Service Animals and Emotional Support Animals: Where are they allowed and under what conditions?* ADA national network (2014), <https://adata.org/publication/service-animals-booklet>.

⁴⁴ 28 C.F.R. §§ 35.136(h), 36.302 (c)(8)

⁴⁵ *Id.*

⁴⁶ Cal. Civil Code §54.1(c)

⁴⁷ Cal. Civil Code §54.1(a)

⁴⁸ Cal. Civil Code §54.1(c)

⁴⁹ Cal. Civ. Code § 54.2.

Complaints and Lawsuits

If you believe that you have been wrongfully discriminated against because of your service animal by a business or public entity, you can file a complaint with the Department of Justice (DOJ). If the complaint is against the government or a private entity receiving federal funding, then the complaint must be received within 180 days of the discriminatory incident (when the problem occurred). There is no deadline for filing a complaint against a business under the ADA that does not receive federal funding, but it is best to file a complaint as soon as possible. Additional information on how to file a complaint with the Department of Justice can be found at <http://www.ada.gov/t3compfm.htm>, or through the ADA Information Line at (800) 514-0301 (voice); (800) 514-0383 (TTY).

You can also file an administrative complaint for any type of disability discrimination involving your service dog or emotional support animal under California law with the California Department of Fair Employment and Housing (DFEH), within one year of the last date of discrimination. Additional information on how to file a complaint with DFEH can be found at <http://www.dfeh.ca.gov/Complaints/ComplaintProcess.htm>, or by calling (800) 884-1684 (voice) or (800) 700-2320 (TTY).

The U.S. Department of Transportation's form for filing disability-related complaints with air carriers is available at: <http://www.dot.gov/airconsumer/file-consumer-complaint>.

Alternatively or in addition to filing a complaint with the DOJ or DFEH, you can file suit in state or federal court for injunctive and declaratory relief under federal or state law. Money damages may be available under state law, including minimum statutory damages of \$4,000 per incident of discrimination. Civil Code §52. Lawsuits must be filed within two years after the discriminatory incident.

Additionally, the Government Tort Claims Act requires that a government tort claim be filed within six months of a discriminatory incident before bringing a lawsuit for money damages against a state or local governmental entity. More information about tort claims can be found at <http://www.disabilityrightsca.org/pubs/522901.htm>. Please note that this website links to the form for claims against the state or a state agency or employee, which may not be applicable in your case. Other public entities may have their own tort claims form available on their website. If you are

interested in pursuing litigation, you should consult with an attorney as soon as possible.

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