

Taking a Bite Out of Disability Discrimination: Service Animals vs. Assistance Animals



WHO IS A PERSON WITH A DISABILITY?

- An individual with a physical or mental condition that substantially limits a major life activity
- Major life activities = walking, seeing, hearing, caring for oneself, working, learning, breathing. . .
- Episodic impairments are covered (cancer, MS)
- Effects of medication or other remedial measures are generally not taken into consideration
- Very liberally construed
- “Regarded as having a disability” meets the definition, but is not really relevant for animal issues

SERVICE ANIMAL

- Defined in regulations
- As of March 3, 2011 – only dogs qualify (and, in some circumstances, miniature horses)
- Must be individually trained to provide assistance to an individual with a disability (ex. guiding, pulling a wheelchair, alerting to sounds, helping with balance, alerting to a seizure)
- No licensing or certifications required, but *typically* comes from a training organization

ASSISTANCE ANIMAL

- Not defined in regulations, primarily defined by case law and federal administrative guidance
- Primary purpose may be to provide comfort or support or assistance with physical tasks without rising to the level of a service animal – legally termed “ameliorating the effects of a person’s disabilities”
- Not necessarily individually trained or certified, but provides support to that one individual with a disability
- Not a limit on type or number of animal (dog, cat, bird, fish, monkey or two or more of these), though those can be limited by local law or ordinance

GENERAL

- Service and assistance animals are not pets – not subject to pet policies
- Cannot be required to pay additional maintenance or cleaning fees (though can charge for damage if the business ordinarily charges for damages to property)
- Allergens or fear of dogs is generally not a valid reason to deny a service or companion animal

RESPONSIBILITIES OF PERSON WITH A DISABILITY

- Must take care of service or companion animal (food, water and supervision – clean up after your dog!)
- Cannot allow a service or assistance animal to be aggressive or threatening or overly disruptive
- Must harness, leash or tether a service animal in public, unless it would interfere with a person’s disability

PUBLIC ACCOMMODATIONS

- Restaurants, hotels, retail shops, taxi cabs, theaters, concert halls, sports facilities, etc.
- Must allow a *service animal* to any area where customers are generally allowed
- Cannot segregate or give less desirable location to a person with a service animal
- Do not need to allow an assistance animal at all (though can't discriminate)
- An establishment that serves food must allow service animals even if it is against local health code
- Can only ask: "Is the animal required because of your disability?" and "What task does it perform?"
- Cannot require documentation or ask other questions (can't ask any questions if obvious)

HOUSING

- Governed by reasonable accommodation law (Fair Housing Act, § 504, Colorado Anti-Discrimination Act)
- Tenants with disabilities can have service or assistance animals in housing – even "no pet" buildings
- Tenant must prove they have a disability (if not obvious) – this is usually from a medical provider
- Tenant must show that the assistance animal assists them in some way related to their disability (nexus between disability and the need for the animal(s)); This does not need to be from a medical provider
- Federal guidance provides that the need for assistance animals be liberally construed; housing providers can only seek minimal documentation
- A landlord cannot charge extra fees or "pet deposits"

EMPLOYMENT

- Employers must make reasonable accommodations for their employees with disabilities, which includes allowing an employee to bring a service animal to work if the presence of the animal would not:
 - fundamentally alter the operations at the workplace or
 - cause an undue burden or
 - cause a substantial risk of harm to the employee or others in the work place
- *Conceivably* may have to allow an employee to bring an assistance animal
- These determinations are made on an individual basis and focus on reasonableness

CONCLUSION

- Service Animals ≠ Assistance or Companion Animals
- Service animals are allowed almost anywhere as long as they do not pose a threat or danger
- Assistance animals are generally allowed only in housing.
- Administrative complaints (DOJ, HUD, EEOC, CCRD), as well as lawsuits for enforcement

*****DISCLAIMER: This is not intended as legal advice, but rather for informational purposes only. Always consult a lawyer if you have questions about your legal rights.*****

References

Disability Law Colorado – www.disabilitylawco.org
Dept. of Justice Information of the ADA (general info and public accommodation complaints) - www.ada.gov
Equal Employment Opportunity Commission (employment only) - www.eeoc.gov
Colorado Civil Rights Division (housing, employment, public accommodations) - www.dora.state.co.us/civil-rights/
U.S. Department of Housing and Urban Development (subsidized housing) – www.hud.gov