

# Disability Rights Nebraska

Protection and Advocacy for People with Disabilities

This is basic information and does not constitute legal advice.

## Service Animals in Business

### What are the laws that apply to a business or public accommodation?

Under the Americans with Disabilities Act (ADA), privately owned businesses that serve the public are prohibited from discriminating against individuals with disabilities. The ADA requires these businesses to allow individuals with disabilities to bring their service animals onto business premises in whatever area/areas customers without disabilities are generally allowed.

### What if my state law conflicts with the ADA?

Then the ADA prevails unless the state law provides more protection of the individual with a disability than the ADA.

### What is a “service animal”?

The ADA defines a “service animal” as “Any guide dog, signal dog or other animal individually trained to provide assistance to an individual with a disability”. If a service animal meets this definition, the animal is considered a service animal under the ADA regardless of whether they have been licensed or certified by a state or local government. Aside from the obvious guide dog service provided of which most people are aware, there are service animals that provide assistance with numerous day-to-day activities, including, but not limited to:

- Alerting persons with hearing impairments to sounds (warning of danger or alarms);
- Pulling wheelchairs or carrying or picking up things for individuals with mobility impairments; &
- Assisting individuals with mobility issues with balance.

Service animals are trained to perform individual tasks/functions that the individual cannot perform for themselves. In determining if an animal is a service animal, **you may ask:**

- If the animal is a service animal and what task(s) the animal has been trained to perform.

In determining if an animal is a service animal, **you may not ask:**

- Specific information about the individual’s disability.

## **What types of animals can be service animals?**

The original U. S. Department of Justice definition of service animal never specified exactly what kind of animals can be service animals, obviously causing confusion. The newly proposed regulation provides a narrowed definition of a service animal to be, “a dog or other common domestic animal”.

## **What types of services do animals provide?**

- A Guide Animal serves as a travel tool by individuals with blindness.
- A Hearing Animal alerts a person with significant hearing loss or with deafness when a sound occurs, such as a ringing alarm or a knock on the door.
- A Service Animal, also referred to as an Assistance Animal, helps an individual who has a mobility or health disability. Duties may include carrying, fetching, opening doors, ringing doorbells, activating elevator buttons, steadying a person while walking, helping an individual up after a fall, etc.
- A Seizure Response Animal assists an individual with a seizure disorder. The animal's service depends on the individual's needs. The animal may go for help, or may stand guard over the person during a seizure. Some animals have learned to predict a seizure and warn the person.
- A Companion Animal or Emotional Support Animal assists individuals with psychological disabilities. Emotional support animals can help alleviate symptoms such as depression, anxiety, stress, and difficulties regarding social interactions. They allow individuals to live independently.

## **How can I tell if an animal is really a service animal and not just a pet?**

Some, but not all, service animals wear special collars and harnesses. Some, but not all, are licensed or certified and have identification papers. However, there is no legal requirement for service animals to be visibly identified or to have documentation. If you are not certain that an animal is a service animal, you may ask the person who has the animal if it is a service animal required because of a disability and what tasks the service animal performs. However, you may not ask an individual about their specific disability.

The ADA does not instruct that service animals be specifically identified with certification papers, a harness, special collars, or any other form of ID. It only mandates:

- the animal is individually trained; and
- the animal works for the benefit of a person with a disability.

## **What is a disability?**

Any physical or mental impairment that substantially limits one or more major life activities of such individual. Examples of major life activities include walking, seeing, working, etc.

### **What must I do when an individual with a service animal comes to my business?**

The service animal must be permitted to accompany the individual with a disability to all areas of the facility where customers are normally allowed to go. An individual with a service animal may not be segregated from other customers.

### **I have always had a clearly posted “no pets” policy at my establishment. Do I still have to allow service animals in?**

Yes. Service animals are working animals, not Pets!!!  
The ADA requires you to modify your “no pets” policy to allow the use of a service animal by an individual with a disability. This does not mean you must abandon your “no pets” policy altogether but simply that you must make an exception to your general rule for service animals.

### **My County Health Department has told me that only a guide dog has to be admitted. If I follow those regulations, am I violating the ADA?**

Yes. If you refuse to admit any other type of service animal on the basis of local health department regulation or other state or local laws. The ADA provides greater protection for individuals with disabilities which takes priority over the local or state laws or regulations.

### **Can I charge maintenance or cleaning fee for customers who bring service animals into my business?**

No. Neither a deposit nor a surcharge may be imposed on an individual with a disability as a condition to allowing a service animal to accompany the individual with a disability, even if deposits are routinely required for pets. However, a business may charge its customers with disabilities if a service animal causes damage so long as it is the regular practice of the entity to charge non-disabled customers for the same types of damages. For example, a hotel can charge a guest with a disability for the cost of repairing or cleaning furniture damaged by a service animal if it is the hotel’s policy to charge when non-disabled guests cause such damage.

### **I operate a private taxicab and I don’t want animals in my taxi; they smell, shed hair and sometimes have “accidents”. Am I violating the ADA if I refuse to pick up someone with a service animal?**

Yes. Taxicab companies may not refuse to provide services to individuals with disabilities. Private taxicab companies are also prohibited from charging higher fares or fees for transporting individuals with disabilities and their service animals than they charge to other persons for the same or equivalent service.

### **Am I responsible for the animal while the individual with a disability is in my business?**

No. The individual with the service animal has the responsibility to care for and supervise the animal. When in the presence of others, the service animal is expected to be well behaved (not jumping on or nipping at people, not snarling or barking, etc.).

### **What if a service animal barks or growls at other people, or otherwise acts out of control?**

You may exclude any animal, including a service animal, from your facility when that animal's behavior poses a direct threat to the health or safety of others. For example, any service animal that displays vicious behavior towards other guests or customers may be excluded. You may not make assumptions, however, about how a particular animal is likely to behave based on your past experience with other animals. Each situation must be considered individually.

Although a business may exclude any service animal that is out of control, it should give the individual with a disability who uses the service animal the option of continuing to enjoy its goods and services without having the service animal on the premises.

### **What about other individuals who are afraid of or allergic to service animals?**

While some individuals might have a fear of dogs or other animals, this fear does not amount to a disability, so this fear need not be accommodated. For most people with allergies, the presence of a service animal will cause only minor discomfort, such as sneezing or sniffing. Because this reaction does not constitute a disability, no accommodation is necessary for the allergic individual. In very rare cases, an individual's allergy is so severe that service animal contact may cause respiratory distress; in these cases, the individual with the allergy may also request an accommodation (for example, to keep the service animal and the individual with the allergy in separate areas of a building, or different areas of a park or zoo, as much as possible).

### **Can I exclude an animal that doesn't really seem dangerous but is disruptive to my business?**

There may be a few circumstances when a business is not required to accommodate a service animal—that is, when doing so would result in a “fundamental alteration of the nature of the business”. Generally, this is not likely to occur in restaurants, hotels, retail stores, theaters, concert halls, and sports facilities. But when it does, for example, when a dog barks during a movie, the animal can be excluded.

## **Additional Information**

**Regarding service animals in health care facilities**, the U.S. Department of Justice opined, “a service animal may accompany its owner to such areas as admissions and discharge offices, the ER, inpatient and outpatient rooms, examining and diagnostic rooms, clinics, rehabilitation therapy areas, the cafeteria and vending areas, the pharmacy, restrooms, and all other areas of the facility where visitors are permitted...”

**Regarding service animals in “animal contact” areas**, the U. S. Department of Justice opined, that if it can be proven by “demonstrative evidence” that an animal WILL kill itself/themselves with the presence of a service animal, then the service animal can be denied access. The best option is never to try to separate a service animal from the individual with a disability, unless one of the exceptions to bar the service animal has been met.

**Black’s Law Dictionary defines Demonstrative Evidence as:** Evidence other than testimony. Demonstrative evidence includes actual evidence (e.g., bloody gloves from a murder scene) and illustrative evidence (e.g. photographs, charts, and graphs)

## Sources of Information

- United States Department of Justice, Civil Rights Division (DOJ)  
<http://www.usdoj.gov/>
- Americans with Disabilities Act (ADA)  
<http://www.ada.gov/>
- National Disability Rights Network (NDRN)  
<http://ndrn.org/>
- Equip for Equality (Illinois Protection & Advocacy Agency)  
<http://www.equipforequality.org/>
- Centers for Disease Control and Prevention (CDC)  
<http://www.cdc.gov/>
- National Association of Attorneys General, Disability Rights Taskforce  
<http://www.naag.org/>
- Fair Housing Agencies of Washington State  
<http://www.fhcwashington.org/>

If you have further questions about service animals or other requirements of the ADA, you may call:

- U.S. Department of Justice’s toll-free ADA Information Line at:  
800-514-0301 (voice)  
800-514-0383 (TDD)
- You may visit the ADA Business Connection at:  
[www.ada.gov](http://www.ada.gov)
- Disability Rights Nebraska  
134 South 13<sup>th</sup> Street, Suite 600  
Lincoln, NE 68508  
Telephone 402-474-3183 Toll Free 800-422-6691  
Email [info@disabilityrightsnebraska.org](mailto:info@disabilityrightsnebraska.org)  
Website <http://www.disabilityrightsnebraska.org>