

LAW IN BRIEF

WHAT ARE MY RIGHTS TO USE A SERVICE ANIMAL OR EMOTIONAL SUPPORT ANIMAL FOR MY DISABILITY UNDER THE AMERICANS WITH DISABILITIES ACT?

Introduction to the Americans with Disability Act of 1990

Overview: Disability advocates have long recognized how animals can be beneficial to assisting people with disabilities. Lawmakers, also recognizing these benefits, ensured that individuals who use assistive animals are not discriminated against in housing, governmental spaces, or private businesses because of their animals.

One such law is the Americans with Disabilities Act of 1990 (“ADA”). The ADA is a civil rights law that prohibits discrimination against individuals with disabilities in all areas of public life, including jobs, schools, transportation, and all public and private places that are open to the general public.

The level of protection individuals with assistive animals receive under the ADA depends on the relevant part of the ADA and the type of assistive animal. This is because the ADA is split into different parts; three of which provide protection to assistive animals. How much protection under each part depends on whether the assistive animal is a service animal or an emotional support animal.

Service Animals Compared to Emotional Support Animals

Service Animals: Under the Americans with Disabilities Act, a service animal is an animal that is individually trained to perform a specific task to assist an individual with his or her disability. This includes a physical, sensory, psychiatric, intellectual, or other disability.

The specific task the animal is trained to do must be one the individual with a disability cannot perform for him or herself. Also, it must be directly related to the individual’s disability. Providing comfort or emotional support is not covered. This training can be done by a service animal agency, a private individual or trainer, or the handler/person with a disability. Examples of qualifying tasks include:

- Assisting with finding the way.
- Assisting with balance or standing.
- Alerting to oncoming seizures or asthma attacks.
- Alerting to episodes of hypoglycemia.

- Alerting when sound is made, such as a knock on the door.
- Alerting to the onset of psychiatric episodes and lessening their effects.
- Assisting with stopping distracting movements, such as hand flapping.

Emotional Support Animal: Although the ADA does not directly define an emotional support animal, they are animals that provide emotional support or comfort by just being with the individual handler. They are not trained to perform a specific job or task.

The ADA does not consider providing comfort, emotional support, well-being or companionship as a specific task. Therefore, because the animal has not been trained to perform a specific job or task, it does not qualify as a service animal under the ADA.

Examples of emotional support animals are a cat that provides comfort to relax an individual with anxiety and a dog that provides comfort to a shy individual so he or she can be more social.

The Americans with Disabilities Act's Relevant Titles

Overview: The Americans with Disabilities Act consists of different parts, three of which provide protection to individuals with a service animal.

Title I of the ADA provides protections in the **workplace** of private employers with 15 or more employees, and state and local governments. This part provides protection to service animals and emotional support animals.

Title II applies to all state and local governments and provides protection in all programs, activities, and services of public entities. This part only provides protection to service animals.

Title III provides protections in private entities that are considered places of public accommodation. This part only provides protection to service animals.

Chart – Protection Status:

	Service Animals	Emotional Support Animals
Title I - Employment	Yes, as a reasonable accommodation	Yes, as a reasonable accommodation
Title II – State and Local Government Buildings	Yes	No
Title III – Public Accommodations	Yes	No

Title I Protection - Employment

Reasonable Accommodation: Title I of the ADA does not directly address service animals or emotional support animals. However, it requires employers to provide a reasonable

accommodation to employees with a disability. A reasonable accommodation is assistance or changes to a position or workplace that will enable an employee to do his or her job despite having a disability. Thus, a service animal or emotional support animal could be a reasonable accommodation if the animal's presence enables the employee to do his or her job despite having a disability.

Title I of the ADA does not limit service animals or emotional support animals to a specific species. Whether a certain species would be permitted depends on whether it would cause an undue hardship on the employer.

Interactive Process: An employer is not required to automatically allow employees to bring service animals to work. Instead, the employee must request the reasonable accommodation and the employer must consider the request. This conversation is called the interactive process and required under the ADA.

Under the ADA, employers have the right to request reasonable documentation that an accommodation is needed because of an employee's disability, unless the need for the accommodation is obvious or readily apparent. Also, the ADA does not require employers to make accommodations that would cause them an undue hardship. To show that a particular accommodation would present an undue hardship, an employer would have to demonstrate that it would be too costly, extensive, or disruptive to be adopted in the workplace.

Title II & Title III Protection – State and Local Government and Public Accommodations

Type of Service Animal: Title II and Title III of the ADA only protect service animals, they do not protect emotional support animals. However, they limit the definition of service animals to any breed of dog or certain miniature horses. Municipalities that prohibit specific breeds of dogs must make an exception for a service animal of a prohibited breed.

Covered Entities: Titles II and III provide individuals with disabilities protection in all programs, activities, and services of public entities and in private entities that are considered places of public accommodation. Places covered under the Titles include, but are not limited to:

- Public Schools
- Public Transportation
- Public Pools
- Apartments
- Retail Stores
- Hospitals/ Ambulances
- Local State and Government Buildings
- Grocery Stores
- Restaurants
- Sport Venues
- Federal Facilities
- Universities
- Hotels
- Concert Halls
- Taxis/Uber/Lyft

There are some places that are specifically excluded from the definition of public accommodation. These include aircrafts, railroad locomotives and rail cars, private homes and

property, and private clubs and establishments. Private clubs and establishments include private country clubs that are not open to the public, community association pools and tennis facilities that are not open to the public, and religious organizations (including places of worship).

Identification and Inquiry of Service Animals: Under the ADA, service animals are not required to wear a special vest, patch or harness identifying them as service animals. Also, the staff members of covered entities are not allowed to request any documentation for a service animal, require that a service animal demonstrate its task, or inquire about the nature or extent of the person's disability.

Only two specific questions may be asked of an individual with a service animal when they enter a public facility or place of public accommodation. These are:

- (1) Is the animal a service animal required because of a disability?** and
- (2) What work or task has the animal been trained to perform?**

However, these questions should not be asked if the animal's service tasks are obvious. For example, the questions may not be asked if a dog is observed guiding a person who is blind or has low vision.

Restrictions: The ADA requires covered entities to reasonably modify their policies, practices or procedures to avoid discrimination. This means covered entities must permit a service animal into all areas of the business where customers are normally allowed to go, unless there is an exception. There is an exception if the modification would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations the entity provides.

Generally, the presence of a service animal does not fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations an entity provides. However, there are situations where a service animal can be excluded due to a fundamental alternation.

For example, at a zoo a service animal can be restricted from areas where the animals on display are the natural prey or natural predators of dogs, where the presence of a dog would be disruptive, causing the displayed animals to behave aggressively or become agitated. However, they cannot be restricted from other areas of the zoo.

Depending on the entity, there may be additional restrictions. For example, although a service animal must be permitted on a public pool deck and in other areas where the public is allowed to go, a pool is not required to allow a service animal in the pool. Additionally, restaurants, bars, and other places that serve food or drink are not required to permit service animals to sit or be fed at the table. In fact, generally, a service animal must stay on the floor or be carried by the handler. However, in some situations an exception must be made. For example, if a person with diabetes has a glucose alert dog then he may carry the service animal in a chest pack so it can be close to his face. This allows the dog to smell his breath to alert him of a change in glucose levels.

Allowing a service animal when there is a “no-pets” policy is not considered a fundamental alteration. Service animals are not pets. Further, businesses cannot subject service animals to “pet fees” or segregation in “animal-friendly” areas.

If a service animal behaves in an unacceptable way and the person with a disability does not control the animal, a business or other entity has the right to deny access to the service animal. For example, if a dog barks repeatedly during a movie then the animal can be excluded. Other examples of unacceptable behavior include jumping on other people, making a mess on the floor, and running away from the handler.

Also, a service animal may be excluded when the animal’s behavior poses a direct threat to the health or safety of others. However, the risk must be significant and immediately identified, and must be based on objective medical/factual evidence, not fear or opinions. This must be determined on a case-by-case basis.

If an animal is excluded, the handler should still be given the opportunity to participate without the animal.

Chart - Title II and Title II Protection:

	Service Animal	Emotional Support Animal
Protected in public accommodations and in state & local government buildings	Yes	No
Definition	Individually trained to perform a specific task to assist a person with his or her disability	Undefined
Type of animal permitted	Dog or certain miniature horse	N/A
Must be certified or registered	No	N/A
Must wear identifying tags or vests	No	N/A

Handler’s Responsibilities

Under the ADA, the handler of a service animal or emotional support animal is responsible for the care and supervision of his or her animal. These responsibilities include:

- Having control of the animal.
- Housebreaking the animal and cleaning up after the animal.
- Feeding, grooming and providing veterinary care.
- Following state and local vaccination laws.
- Following local leash laws unless it interferes with the task the animal is trained to do.
- Following state and local muzzle laws unless it interferes with the task the animal is trained to do.

The handler is responsible for property damage to the same extent that other patrons would be held responsible.

Also, a city cannot require the handler to register their animal as a service animal.

Resources

Individuals who believe that they have been illegally denied access or service because they use service animals may file a complaint with the U.S. Department of Justice. Individuals also have the right to file a private lawsuit in federal court charging the entity with discrimination under the ADA. Further, individuals may be able to sue under state law.

Where to file a complaint:

U.S. Dept. of Justice, Civil Rights Division

https://www.ada.gov/filing_complaint.htm

This website explains how to file a complaint online, by mail or fax.

More information about the Americans with Disabilities Act can be found at the following sites:

- www.eeoc.gov
- www.ada.gov
- www.dol.gov
- www.adata.org
- www.adaresources.org
- www.askjan.org