



The Americans with Disabilities Act (ADA) and Service Animals

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Summary

The Americans with Disabilities Act (ADA) has as its purpose providing “a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” In order to effectuate this purpose, the ADA and its regulations require reasonable accommodation or modifications in policies, practices, or procedures when such modifications are necessary to render the goods, services, facilities, privileges, advantages, or accommodations accessible to individuals with disabilities. The reasonable accommodation or modification requirement has been interpreted to allow the use of service animals, even in places where animals are generally not permitted.

The Department of Justice (DOJ) has promulgated regulations containing specific details about service animals, and this report focuses on these regulatory requirements. Generally, a public entity (ADA title II) or a place of public accommodation (ADA title III) must modify its policies, practices, and procedures to allow an individual with a disability to use a service animal. The regulations also define service animals. A service animal is “any **dog** that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.” (emphasis added). However, despite the regulatory limitation of the definition to dogs, miniature horses may be allowed in certain circumstances. A service animal does not need to be allowed when the animal is out of control or the animal is not housebroken. In addition, a public entity or place of public accommodation may not ask about the nature or extent of an individual’s disability but may ask two questions to determine if the animal is a service animal when it is not readily apparent. These questions are, if the animal is required because of a disability, and what work or task the animal is trained to do.

Several issues remain unresolved by the DOJ regulations. For example, the relationship between the ADA and Fair Housing Act in some situations is unclear. In addition, there is considerable ambiguity concerning how potentially conflicting claims for accommodations relating to service animals should be addressed.

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Introduction

The Americans with Disabilities Act (ADA)¹ has often been described as the most sweeping nondiscrimination legislation since the Civil Rights Act of 1964. It provides broad nondiscrimination protection in employment, public services, public accommodations, and services operated by private entities, transportation, and telecommunications for individuals with disabilities. As stated in the act, its purpose is “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.”²

The ADA and its regulations require reasonable accommodation or modifications in policies, practices, or procedures when such modifications are necessary to render the goods, services, facilities, privileges, advantages, or accommodations accessible to individuals with disabilities. This concept is found in title I, regarding employment,³ title II, regarding public entities,⁴ and title III, regarding public accommodations.⁵ The reasonable accommodation or modification requirement has been interpreted to allow the use of service animals, even in places where animals are generally not permitted. Recently, the Department of Justice (DOJ) promulgated regulations containing specific details about service animals, including when they may be denied access, and defining service animals as trained dogs.⁶ This report focuses on these regulatory requirements.

Definition of Service Animal

Species Limitation

Currently, the DOJ regulations for titles II and III of the ADA define service animal as “any **dog** that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.”⁷ Previously, the DOJ regulations had defined service animal as a dog or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability;⁸ however,

¹ 42 U.S.C. §§12101 et seq. For a more detailed discussion of the ADA see CRS Report 98-921, *The Americans with Disabilities Act (ADA): Statutory Language and Recent Issues*, by (name redacted).

² 42 U.S.C. §12101(b)(1).

³ 42 U.S.C. §12111(9)(defining reasonable accommodation); 42 U.S.C. §12112(b)(5)(discrimination defined as not making a reasonable accommodation unless the covered entity can demonstrate that the accommodation would impose an undue hardship).

⁴ 28 C.F.R. §130(b)(7).

⁵ 42 U.S.C. §12182(b)(2)(A)(ii).

⁶ 75 FED. REG. 56164 (September 15, 2010) (title II); 75 FED. REG. 56236 (September 15, 2010) (title III). For a discussion of the changes made by these new regulations see CRS Report R41376, *The Americans with Disabilities Act (ADA): Final Rule Amending Title II and Title III Regulations*, by (name redacted).

⁷ 35 C.F.R. §35.104, 75 FED. REG. 56177 (September 15, 2010) (title II); 36 C.F.R. §36.104, 75 FED. REG. 56250 (September 15, 2010) (title III)(emphasis added).

⁸ 28 C.F.R. §36.104 (July 1, 2010)(title III). Previously, title II had no specific language regarding service animals but DOJ had interpreted title II as having the same service animal requirements as title III. 75 FED. REG. 56191 (September 15, 2010).

the variety of animal species promoted as service animals led to DOJ's limitation of the definition. The regulations specifically exclude other species of animals whether or not they are wild or domestic or trained or untrained.⁹ DOJ notes that, at the time of the promulgation of the original regulations, "few anticipated the variety of animals that would be promoted as service animals in the years to come, which ranged from pigs, and miniature horses to snakes, iguanas, and parrots."¹⁰ Arguments were made by commentators on the proposed regulations for the inclusion of monkeys, particularly capuchin monkeys, who were trained to provide in-home services to individuals with paraplegia and quadriplegia. However, DOJ rejected these arguments noting the potential for disease transmission and unpredictable aggressive behavior.¹¹

Work or Tasks Performed by Service Animals

The DOJ regulations specifically define a service animal as "any dog that is individually trained **to do work or perform tasks** for the benefit of an individual with a disability."¹² The regulations elaborate on the meaning of this requirement mandating that the "work or tasks performed by a service animal must be directly related to the handler's disability."¹³ Examples of work or tasks are provided and include the following:

- Assisting individuals who are blind or have low vision with navigation
- 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 to individuals with mobility disabilities
- Helping individuals with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors¹⁴

However, the fact that the presence of an animal may deter crime or provide emotional support does not constitute work or a task.¹⁵ DOJ emphasizes the importance of the concept of doing work or performing tasks and states that "unless the animal is individually trained to do

⁹ 35 C.F.R. §35.104, 75 FED. REG. 56177 (September 15, 2010) (title II); 36 C.F.R. §36.104, 75 FED. REG. 56250 (September 15, 2010) (title III).

¹⁰ 75 FED. REG. 56193 (September 15, 2010)(title II); 75 FED. REG. 56267 (September 15, 2010)(title III).

¹¹ 75 FED. REG. 56194 (September 15, 2010) (title II); 75 FED. REG. 56267 (September 15, 2010) (title III).

¹² 35 C.F.R. §35.104, 75 FED. REG. 56177 (September 15, 2010) (title II); 36 C.F.R. §36.104, 75 FED. REG. 56250 (September 15, 2010) (title III)(emphasis added).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

something that qualifies as work or a task, the animal is a pet or support animal and does not qualify for coverage as a service animal.”¹⁶ The process for determining if an animal is doing work or performing a task is described as two-part: first, the animal must recognize the problem, and second, the animal must respond. An example would be recognition by a service animal that a person is about to have a psychiatric episode, and a response to this recognition by nudging, barking, or removing the individual to a safe location.¹⁷

Whether or not to include “comfort animals” in the definition of service animals was controversial. DOJ recognizes that the Fair Housing Act (FHA)¹⁸ and the Air Carriers Access Act (ACAA)¹⁹ may create legal obligations for an entity to allow a comfort animal and that this difference from the ADA requirements could lead to confusion.²⁰ However, DOJ notes that its distinction between a service animal and a comfort animal is based on differences in the covered entities; ADA titles II and III govern a broader range of public settings than either the FHA or the ACAA.

Miniature Horses

Despite the regulatory limitation in the definition to dogs, miniature horses may be allowed in certain circumstances. Although they are not included in the definition of service animal, the regulations specifically provide that a public entity (title II) or public accommodation (title III) “shall make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability.”²¹ DOJ notes that this provision for miniature horses was made since miniature horses are a viable alternative to dogs for individuals with allergies or who have religious beliefs that preclude the use of dogs. In addition, the longer life span of miniature horses reduces the replacement cost of an animal.²²

In order to determine whether the modifications required for a miniature horse are “reasonable,” the regulations provide that public entities or public accommodations shall consider four factors:

- The type, size, and weight of the miniature horse and whether the facility can accommodate these features
- Whether the handler has sufficient control over the miniature horse
- Whether the miniature horse is house broken

¹⁶ 75 FED. REG. 56193 (September 15, 2010)(title II); 75 FED. REG. 56267 (September 15, 2010)(title III).

¹⁷ *Id.*

¹⁸ 42 U.S.C. §§3601 *et seq.* For a general discussion of this law see CRS Report 95-710, *The Fair Housing Act (FHA): A Legal Overview*, by (name redacted).

¹⁹ 49 U.S.C. §§41705 *et seq.* For a general discussion of this law see CRS Report RL34047, *Overview of the Air Carrier Access Act (ACAA)*, by (name redacted).

²⁰ 75 FED. REG. 56195 (September 15, 2010)(title II); 75 FED. REG. 56269 (September 15, 2010)(title III).

²¹ 35 C.F.R. §35.136(i) 75 FED. REG. 56178 (September 15, 2010) (title II); 36 C.F.R. §36.302(c)(9), 75 FED. REG. 56251 (September 15, 2010) (title III).

²² 75 FED. REG. 56198 (September 15, 2010)(title II); 75 FED. REG. 56272 (September 15, 2010)(title III).

- Whether the miniature horse's presence compromises legitimate safety requirements²³

The specific times when a service animal may be properly excluded,²⁴ discussed *infra*, are applicable to miniature horses. In addition, ponies and full sized horses are not covered and miniature horses may be excluded if their presence results in “a fundamental alteration to the nature of the programs, activities, or services provided.”²⁵

Required Modification of Policies, Practices, and Procedures and Exceptions

Generally, a public entity (title II) or a place of public accommodation (title III) must modify its policies, practices, and procedures to allow an individual with a disability to use a service animal.²⁶ More specifically, individuals with disabilities must be permitted to be accompanied by their service animal in areas where other members of the public, or participants in programs or activities are allowed.²⁷ A public entity or place of public accommodation may not ask or require a surcharge for a service animal, even if people with pets must pay an additional fee.²⁸

However, there are certain limitations on these requirements, and, as noted previously, these limitations also apply to miniature horses. The animal must be under its handler's control and the public entity or place of public accommodation is not responsible for the care or supervision of the animal.²⁹ The regulations specifically allow a public entity or a place of public accommodation to ask an individual with a disability to remove a service animal from the premises when

- the animal is out of control and its handler does not take effective action to control it, or
- the animal is not housebroken.³⁰

In its discussion of these exceptions, DOJ observes that an animal may misbehave when provoked or injured. If there is reason to suspect this has occurred, a public entity or a place of public accommodation should determine the facts and, if provocation or injury has occurred, take

²³ *Id.*

²⁴ 35 C.F.R. §35.136(c)-(h) 75 FED. REG. 56178 (September 15, 2010) (title II); 36 C.F.R. §36.302(c)(3)-(8), 75 FED. REG. 56251 (September 15, 2010) (title III).

²⁵ 75 FED. REG. 56199 (September 15, 2010)(title II); 75 FED. REG. 56273 (September 15, 2010)(title III).

²⁶ 35 C.F.R. §35.136(a) 75 FED. REG. 56178 (September 15, 2010) (title II); 36 C.F.R. §36.302(c)(1), 75 FED. REG. 56251 (September 15, 2010) (title III).

²⁷ 35 C.F.R. §35.136(g) 75 FED. REG. 56178 (September 15, 2010) (title II); 36 C.F.R. §36.302(c)(7), 75 FED. REG. 56251 (September 15, 2010) (title III).

²⁸ 35 C.F.R. §35.136(h) 75 FED. REG. 56178 (September 15, 2010) (title II); 36 C.F.R. §36.302(c)(8), 75 FED. REG. 56251 (September 15, 2010) (title III).

²⁹ 35 C.F.R. §35.136(d)-(e), 75 FED. REG. 56178 (September 15, 2010) (title II); 36 C.F.R. §36.302(c)(4)-(5), 75 FED. REG. 56251 (September 15, 2010) (title III).

³⁰ 35 C.F.R. §35.136(b) 75 FED. REG. 56178 (September 15, 2010) (title II); 36 C.F.R. §36.302(c)(2), 75 FED. REG. 56251 (September 15, 2010) (title III).

steps to prevent any similar actions.³¹ When the service animal is properly excluded, the public entity or a place of public accommodation must give the individual with a disability the opportunity to participate in the service, program, or activity without the animal.³²

A public entity or place of public accommodation may not ask about the nature or extent of an individual's disability but may ask two questions to determine if the animal is a service animal, when it is not readily apparent. These two questions are

- if the animal is required because of a disability, and
- what work or task the animal is trained to do.³³

Other Issues Relating to Service Animals

Although the DOJ title II and III regulations provide significant guidance regarding service animals, there are still some issues remaining. For example, the exact interaction between the ADA's requirements and those of other statutes, such as the Fair Housing Act, is somewhat uncertain. When a facility has a mixed use—such as a hotel which allows both residential and short-term stays but does not allocate space for these different uses in separate, discrete units—both the ADA and the Fair Housing Act may apply to the facility.³⁴ Exactly how the differing service animal requirements would apply in this situation is unclear and will most likely await judicial determinations.

Similarly, DOJ regulations do not address the issues involved when an individual with allergies to dogs and an individual with a disability using a service animal both attempt to use a place of public accommodation. This situation, which may occur more often given the more expansive definition of disability provided in ADA Amendments Act,³⁵ was at issue in *Lockett v. Catalina Channel Express, Inc.*³⁶ In *Lockett*, Catalina Channel Express (CCE), which operates a ferry between Long Beach and Catalina Island, instituted a policy of excluding animals from part of the ferry because of a request by a frequent passenger for an area free of animal dander. When an individual with a visual impairment and a guide dog attempted to buy a ticket for this part of the ferry, the CCE refused, although it changed its policy two weeks later. The court of appeals found that the CCE had made a “one-time reasonable judgment . . . while it investigated the competing interests” and emphasized the narrowness of its holding. Thus, there is considerable ambiguity concerning how potentially conflicting claims for accommodations relating to service animals should be addressed.

³¹ 75 FED. REG. 56197 (September 15, 2010)(title II); 75 FED. REG. 56272 (September 15, 2010)(title III).

³² 35 C.F.R. §35.136(c) 75 FED. REG. 56178 (September 15, 2010) (title II); 36 C.F.R. §36.302(c)(3), 75 FED. REG. 56251 (September 15, 2010) (title III).

³³ 35 C.F.R. §35.136(f) 75 FED. REG. 56178 (September 15, 2010) (title II); 36 C.F.R. §36.302(c)(6), 75 FED. REG. 56251 (September 15, 2010) (title III).

³⁴ 56 Fed. Reg. 35,552 (July 26, 1991).

³⁵ For a more detailed discussion of this act see, CRS Report RL34691, *The ADA Amendments Act: P.L. 110-325*, by (name redacted).

³⁶ 496 F.3d 1061 (9th Cir. 2007).

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