

A Turn of the Paw

The Legal Interface Between Individuals with Disabilities, and the
Animals that Serve Them, and the "Public" Around Them
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**If You Are Not Confused,
Then You Are Not Breathing.**

- Just like everybody else, individuals with disabilities use many different tools to make their way through their lives. Often, however, the tools that are used by individuals with disabilities are not the same tools used by individuals without disabilities.
- This is not because the tools used are "designed" to address the issues created by the disability. These tools are not "special privileges;" rather, they are liberating devices which function to overcome the confinement created by the disability.

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- Just like for individuals without disabilities, the same tool can serve different functions, depending on the circumstances. Understanding when and how a tool works, and when it does not, is part of comprehending the function of the tool.
- When talking about individuals with disabilities, animals can be another tool in the box used by that individual to overcome the impact of the disability on the life of the individual. Instead of focusing on whether the animal is a "pet," focus on whether the animal is being used as an appropriate tool.

If You Are Not Confused, Then You Are Not Breathing

- Whether an animal can function as a tool for the individual with disability depends on the circumstances (where) that the animal is being used.
- Whether that animal is provided legal protection is dependent upon the circumstances (where) that animal is being used.
- Understand that there is a difference between function and legal protection, and the fact that these two aspects do not absolutely line up, is part of the reason that the “animal” issue is so confusing.

It’s The Law, But Which Law Is It?

- Different situations give rise to different legal protections regarding individuals with disabilities and animals. Whether legal protection exists depends on the situation, and what law applies to that situation.
 - Americans with Disabilities Act (ADA)
 - Fair Housing Act (FHA)
 - Air Carrier Access Act (ACAA).
 - Section 504 of the Rehabilitation Act (Section 504)
- Often, the term used to reference the animal is a reflection of the statutory provision being applied. The term “service animal” can apply to all of the above-mentioned provision, but “emotional support animal” does not apply to the ADA and may not apply to Section 504.

It’s The Law, But Which Law Is It?

- Part of the problem stems from the history related to animals and individuals with disabilities, and expectations raised by that history, and when the law was written.
- This issue has been made more murky because of the different focus of statutes and the history behind them. For example, the interpretation under the ADA, FHA, and ACAA all refer to “service animals,” but how that term is defined within the context of these statutes is different.

What is in a term? A relevant history of the concept of "Service Animal" and the ADA

- Department of Justice's ADA guidance regarding "service animals" originally did not specifically identify what animals could qualify under the term.
- The general expectation was along the line of the "seeing eye dog" for a person who was clearly visually impaired, but the language was not specific.
- The concept of a "service animal" under the ADA was broader than that initial expectation, partly because of changes in the concept of "living with disabilities" and partly because of changes of what could be done.

What is in a term? A relevant history of the concept of "Service Animal" and the ADA

- These changes meant that individuals not previously using "service animals," and who did not have clearly visible disabilities, were using "service animals." E.g., Dogs who alerted to onset for epileptic incidents.
- These changes also meant that animals not previously used as "service animals" were being trained to provide for the needs of the individual with the disability. E.g., Capuchin monkeys assisting individuals with physical limitations.
- This resulted in new Department of Justice guidance defining what could be considered a "service animal" under the ADA: Dogs and small ponies.

Service Animal v. Emotional Support Animal

- The ADA does not recognize protection for an "emotional support animal," even if it is a dog/pony, and Section 504 tends to rely on ADA guidance, but under the FHA and the ACAA "emotional support animals" are protected.
- "Emotional support animal" is not limited to dogs and ponies like with the ADA. As such, a cat would not qualify for protection under the ADA, but could be covered under the FHA and/or ACAA.
- Neither a "service animal" nor an "emotional support animal" is merely a "pet," as the individual must have a disability and the animal must address some need related to the disability.

Regardless Of The Applicable Law, What Not To Do.

- Certification: Neither “service animals” or “emotional support animals” require any specific “certification.” The person with the disability does not have to show a “card,” or have their animal wear a vest/harness, or otherwise “prove” the status of the animal.
- Demand a statement of training: “Service animals” under the ADA and the ACAA need to be trained to meet at least one specific need of the individual, but that training can be done by anybody, including the owner. You can ask what the animal does for the individual, but you cannot demand that you be shown what the animal does. “Emotional support animals” do not require training, because their mere presence provides the support.

Regardless Of The Applicable Law, What Not To Do.

- Demand specific information about the individual’s disability (unless/except):
 - The fact that an individual indicates that they have a disability for which they use a “service animal” or an “emotional support animal” does not give free rein to explore details of the individual’s disability.
 - You may have the right to obtain medical verification that the person has a disability for which the animal provides assistance, but the doctor is not required to provide beyond that verification. Asking for medical verification of an obvious condition may be a violation.
 - When in doubt about whether you can inquire, do not inquire. The “need” to know is not license to know everything.

Regardless Of The Applicable Law, What Not To Do.

- Do not assume, because that can spell doom:
 - There are locations where all animals can be excluded: Service animals can be locations “you” might think should not be allowed. This includes restaurants, hospitals, and even ambulances.
 - There is no way you can control that animal: The individual with a disability must control the animal, but do not assume inability to control because the size or breed of the animal. That “huge Maine coon” cat may seem big for the efficiency apartment, but it can still be a perfectly permissible “emotional support animal.”

Regardless Of The Applicable Law, What Not To Do.

- "Fear" by others does not drive status of the animal.
 - That a person asserts that they are "allergic to cats" does not mean that their neighbor cannot have a cat for an emotional assistance animal.
 - "That Irish Wolf Hound is so big and scary looking that you cannot have it at this public property" is an invitation for disaster
 - Although actual danger can be a defense to excluding a service animal, the mere assertion of danger is not sufficient to exclude. (Better approach would be to point out the danger and permit the individual to make a decision about "assuming the risk.")

Defenses, At A Risk

- Entities can exclude an animal if allowing the presence of the animal would constitute a "fundamental alteration."
 - This defense does not mean every alteration is fundamental. The alteration must go to the very core of the business impacted by the presence of the animal.
 - "But others might want to bring in animals" is not a fundamental alteration.
- Entities can exclude an animal if allowing the presence of the animal would create an "undue burden."
 - Not every burden is undue. Generally this defense only is permitted if the presence creates a financial burden which cannot be readily absorbed by the business.
 - The claim must be real and actual, not merely supposition.

Obligations Of The Individual With A Disability Regarding Their Animal

- The individual with a disability ultimately remains responsible for exercising control over the animal, although it is possible for the individual with the disability to utilize another person to achieve this requirement.
- The individual with a disability can be required to show that the animal is properly vaccinated and licensed.
- Genuine failure to meet these obligations can be the basis for denying the presence of the animal.

Resources

- Federal Government Resources
 - U.S. Department of Justice ADA Guidelines which applies to service animals only.
 - U.S. Department of Housing and Urban Development has letters relative to both service animals and emotional support animals.
 - U.S. Department of Transportation has extensive information regarding both service animals and emotional support animals.
 - U.S. Department of Education has information regarding service animals and, for college settings (residences), emotional support animals.

Resources

- Other Resources
 - Midwest ADA Center (specific for Nebraska) and other ADA Centers
 - Regional Fair Housing Authority Office (Omaha)
 - State Protection and Advocacy Agency (Disability Rights Nebraska)
 - Academic Resources (Animal Legal and Historical Center with Michigan State University)
