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Service Animals

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Assistance or Service Animals?

- "Assistance animals" and "service animals" are canines that are specifically trained or equipped to help a person with a disability that is used by a person with a disability.

Tex. Hum. Res. Code. Ann. § 121.002 (1)





Assistance or Service Animals?

But note:

Animals used solely for emotional support or "comfort" are not considered service animals. *See* 28 C.F.R § 36.104 (stating that "emotional support, well-being, comfort, or companionship is **not** the type of "work tasks" considered in the ADA's definition of service animal).

Cf. Fair Housing Act Amendments

FHAA v. ADA...



- Under the FHAA, emotional support animals are not limited to dogs and can be any species of animal. But **the ADA defines service animals to exclude emotional support animals**. *Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs*, U.S. Department of Housing and Urban Development, FHEO Notice (2013).

- In situations where the ADA and the FHA/Section 504 apply simultaneously, such as in public housing agency, sales or leasing offices, or housing associated with a university or other place of education, housing providers must meet their obligations under both the reasonable accommodation standard of the FHA/Section 504 and the service animal provisions of the ADA.

Disabled persons



"A person who has a mental or physical disability, an intellectual or developmental disability, a hearing impairment, deafness, a speech impairment, a visual impairment, post-traumatic stress disorder, or any health impairment that requires special ambulatory devices or services."

Tex. Hum. Res. Code. Ann. § 121.002 (4);

See also 61 TEX. JUR. PUBLIC AID AND WELFARE § 98

Governmental Requirements

- Title II of the Americans with Disabilities Act (ADA) requires state and local governments to make their programs and services accessible to persons with disabilities.

  42 U.S.C.S § 12181-12189.

- State and local governments must also adhere to Title III of the ADA to avoid discriminating against persons with the aforementioned disabilities.

Discrimination

- Discrimination, according to the ADA, is defined as the failure of any place of public accommodation "to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations.

42 U.S.C.S § 12182(b)(2)(A)(ii).

Place of Public Accommodation

- A place of public accommodation, or a public facility, "includes a street, highway, sidewalk, walkway, common carrier, airplane, motor vehicle, railroad train, motor bus, streetcar, boat, or any other public conveyance or mode of transportation; a hotel, motel, or other place of lodging; a public building maintained by any unit or subdivision of government; a retail business, commercial establishment, or office building to which the general public is invited; a public accommodation, amusement, convenience, or resort to which the general public or any classifications of person from the general public is regularly, normally, or customarily invited."

Tex. Hum. Res. Code § 121.002 (5).

The Fair Housing Act Amendments

- "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling" is prohibited by the Fair Housing Act Amendments.
- 42 U.S.C § 3604 (2006).



The Necessary Steps



- According to the ADA and FHAA, state and local governments cannot discriminate against disabled people who need service dogs. "Generally, a public accommodation shall modify policies, practices, and procedures to permit the use of a service animal by an individual with a disability."

28 C.F.R. § 36.302(c)(1)

The Necessary Steps



Local governments must ensure that the broadest feasible access be provided to service animals in all places of public accommodation.

See Johnson v. Gambrinus Company/Spoetzl Brewery, 116 F.3d 1052, 1055 (5th Cir. 1997)

When are Modifications Not Required?

- Modifications to accommodate service animals at a public place of accommodation may not be required **if** such modifications would either jeopardize the safety of the public accommodations or fundamentally alter the nature of the public accommodation.

See *Johnson v. Gambrinus Company/Spoetzl Brewery*, 116 F.3d 1052, 1055 (5th Cir. 1997) at 1064.

When are Modifications Not Required?

- The disallowance of modifications to accommodate service animals is a very high standard and depends on the facts of each specific case.

  - *Johnson v. Gambrinus Company/Spoetzl Brewery*, 116 F.3d 1052, 1055 (5th Cir. 1997)
  - *Lentini v. California Center of the Arts, Escondido*, 370 F.3d 837 (9th Cir. 2004)

When are Modifications Not Required?

- If a place of public accommodation can prove that a person's use of a service dog is not directly related to the person's disability, then the place can disallow access of the service dog on its premises.

See Tex. Health & Safety Code Ann § 437.023

Tasks performed by a Service Animal



- Guiding a person who has a visual impairment;
- Alerting a person who has a hearing impairment or who is deaf;
- Pulling a wheelchair;
- Alerting and protecting a person who has a seizure disorder;
- Reminding a person who has a mental illness to take prescribed medication; and
- Calming a person who has post-traumatic stress disorder

The Removal of a Service Animal from a Public Place

- A public accommodation can request the removal of a service animal if the animal is not house broken or is out of control and the owner does not take effective action to control it.

28 C.F.R. § 36.302(c)(2)(i)-(ii).

- The owner of the service animal will still be allowed to enter the premises if the service animal is removed or banned.

28 C.F.R. § 36.302(c)(3).

Hotels and Service Animals



- "If a business such as a hotel normally charges guests for damage that they cause, a customer with a disability may also be charged for damage caused by himself or his service animal."

Americans with Disabilities Act Requirements, *Service Animals*, U.S. DEPARTMENT OF JUSTICE, (May 29, 2015, 2:26 PM).

http://www.ada.gov/service_animals_2010.htm

Proving the Service Dog's Authenticity

- If a disabled person is seeking admittance to a food service establishment, retail food store, or physical space occupied by another entity regulated under the Chapter 437 of the Texas Health & Safety Code, a staff member of the establishment, store, or entity may question the person to establish proof that a person's use of a service dog is necessary.
- *See* Tex. Health & Safety Code Ann. § 437.023(b)

Proving the Service Dog's Authenticity

- Although staff members are allowed to ask the aforementioned questions, they cannot require documentation (e.g. proof of certification, training, or licensure), a special identification card or training documentation for the dog, and they cannot ask the dog to demonstrate its ability to perform the work or task to prove that the animal is a service animal.

28 C.F.R. § 36.302(c)(6)

Texas Law and the Blind



- Tex. Hum. Res. Code. Ann. § 121.003 (c): “No person who is blind or physically handicapped may be denied admittance to any public facility in the state because of the blind or handicapped person’s use of a white cane, assistance dog, wheelchair, crutches, or other device of assistance in mobility, or because the person is blind or handicapped”
- See also 28 C.F.R. § 36.302(c)(6) at 1065

Conclusion

- The law gives very broad discretion to the admittance of service dogs in places of public accommodation, and establishes a high standard if attempting to take away this discretion. Generally, service dogs are allowed almost anywhere if the disabled person can prove that the dog is necessary to provide the disabled person the full use and enjoyment of any public facility in the state.

See Tex. Hum. Res. Code. Ann. § 121.003(a), (c), (d)(2) and *Livingston v. Beeman*, 408 S.W.3d 566, 567–68.



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