Service Animals and the ADA

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Mid-Atlantic ADA Update Conference
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Reasonable Modification

• Legal Basis: General Rule in ADA regulation: “A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.”
SERVICE ANIMALS and the ADA

Basic Provision: A public entity shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability.

Rule of Thumb: Allow service animal to go anywhere members of public go.
Service Animal: definition

A dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, psychiatric, sensory, intellectual or other mental disability.
What does this definition mean?

- Limits the species of service animals to dogs for the ADA
- Comfort or emotional support animals are not covered
- Those with psychiatric, intellectual, or other mental disabilities can use service dogs
We love pets - but they can’t shop at IKEA.

Unfortunately, we cannot allow pets inside the IKEA store due to public health codes.

We welcome ADA-qualified service animals that are specifically trained to work or perform tasks for people with disabilities.
Examples of Tasks (1)

• Guiding or wayfaring for persons who are blind or have low vision
• Alerting persons who are deaf or hard of hearing to sounds
• Pulling a wheelchair
• Retrieving items for persons who use wheelchairs
Examples of tasks (2)

• Detect the onset of a seizure and assist during seizure
• Remind person with a disability to take medication or retrieve medicine or other items
• Enter and examine unfamiliar space and come back and signal it is safe to enter
• Help individual with dissociative identity disorder to remain grounded
Examples of tasks (3)

• Prevent/interrupt impulsive or destructive behavior
• Assist with balance, stability
• Provide non-violent protection or rescue work
Emotional support/comfort?

The provision of emotional support, comfort, or companionship are not considered work or tasks.

Animals performing only such tasks are not considered service animals for the ADA.
What Can I Ask? May Ask for a Demonstration?

Permissible Inquiries: Can ask only two questions (when it’s not obvious)

1. Whether dog is required because of a disability
2. What work or tasks the dog is trained to perform

Cannot ask for demonstration
Exclusion of Service Dogs

• General Rule: Covered entities must permit service animals to enter all areas where members of the public go

• Two specific exceptions:
  – When the animal is out of control and the handler does not take effective action to control it
  – The animal is not housebroken
What is Handler’s Control?

• Must have harness, leash, or other tether

• If handler is unable to use these because of disability, animal must otherwise be under the handler’s control: voice control, signals, or other effective means
General: Limitations

• Entity not required to take steps that:
  – “fundamentally alter” the nature of the program or activity.
  – result in a direct threat to the health or safety of others.

• Rare that presence of service dog meets these limitations
General: Direct Threat

– A direct threat is a significant risk that cannot be eliminated or reduced to an acceptable level by the modification of its policies, practices, or procedures, or by the provision of auxiliary aids or services.

– The public entity's determination that a person poses a direct threat to the health or safety of others may not be based on generalizations or stereotypes about the effects of a particular disability.
Other issues

• Entity is not responsible for care or supervision of the dog
• No “service animal” license or documentation required.
• No deposits or pet fees
• Cannot exclude service dog because of the allergies or religious beliefs of others, including employees, but may consider these issues in how access is provided
• No exclusion of certain breeds of dogs
• Dog not required to wear vest, patch, or special harness
Issues Recently Addressed by Department of Justice

- Hotels: no fee, can’t leave dog in room
- Ambulances, Arrest vehicles: can take dog or make arrangements for pick-up and care
- Local ordinances: local dog licensing and vaccination requirement are ok, special registration of service dogs is not
- Pools: no dogs in pool, but can wait at edge
- Multiple service dogs allowed
- Hospitals: dog can join patient in room
Issues in Health Care Facilities

- Controlling infection and ensuring health and safety of patients with health conditions, health care workers, and other individuals.

- Centers for Disease Control and Prevention has issued guidelines which are instructive: *Guidelines for Environmental Infection Control in Health Care Facilities (CDC Guidelines)* (2003).
CDC Guidelines:
Health Risks Posed by Service Animals

No evidence exists that animals pose a more significant risk of transmitting infection than people.

Therefore, a service animal should not be excluded from an area in a health care facility unless a patient’s situation or a particular animal poses a greater risk that cannot be mitigated through reasonable measures.
CDC Guidelines: General Principle

Wherever health care personnel, visitors, and patients are permitted to enter care areas of a health care facility without taking additional precautions to prevent transmission of infection, an individual with a disability may be accompanied by his or her service animal.
What Health Care Providers Are Covered?

- Hospitals
- Nursing homes
- Doctors’ offices
- Pharmacies
- Home health agencies
- Community health centers and health clinics
- Alcohol and drug treatment centers
What Health Care Activities Are Covered?

- All treatment, including surgery, and diagnostic and testing procedures and examinations
- Emergency room care
- Admission and discharge activities
- Outpatient services
- Physical and mental therapy
- Business activities, such as discussions of insurance, payment, and records
- Visiting health care providers as a companion or family member of a patient or member of the public
- Public education events
- Activities in all parts of a health provider’s facility, including cafes, gift shops, waiting areas, lobbies, and restrooms
Where May a Service Animal Go?

**Generally, Yes**
- Emergency room
- Patient rooms
- Radiology unit
- Treatment rooms
- Allergy clinic
- Cafeteria
- Waiting areas
- Nursing homes

**Generally, No**
- Operating room
- Areas treating immunocompromised patients
- Some ICUs
- Burn units
- Isolation rooms
- Rooms requiring special ventilation

The focus is on the use of the particular area.
Other Disability Rights Laws

• Remember other disability rights laws may also apply to entities covered by the ADA
• And these laws may have different, more extensive coverage of service animals
  – Fair Housing Act covers emotional support animals and covers more than dogs
  – Air Carrier Access Act allows more questions to be asked
  – State and local laws may provide different provisions
• Federal Agencies are covered by Section 504, not the ADA
Resources

- [www.ADA.gov](http://www.ADA.gov)
- Frequently Asked Questions about Service Animals and the ADA on ADA.gov
- Revised ADA Requirements: Service Animals on ADA.gov
- ADA National Network
  - 800-949-4232
  - [wwwadata.org](http://wwwadata.org)
- ADA Information Line
  - 800-514-0301
  - 800-514-0383 (tty)