

Commonwealth of Massachusetts
Massachusetts Office On Disability



Service Animals

University of Massachusetts
School of Law

Trainer: Evan C. Bjorklund, General Counsel

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MOD Mission & Duties



“to bring about **full and equal participation** in all aspects of life by all persons with **disabilities** in the commonwealth...in a manner which fosters **dignity and self-determination.**” —*M.G.L. Chp. 6; Sec. 187*

Duties & Functions

- ✓ ADA Coordinator for Executive Branch of State Government (Executive Order 526)
- ✓ Member of Architectural Access Board (MGL Ch. 22, Sec 13A)
- ✓ State Affiliate to New England ADA Center
- ✓ Member of State 9-1-1 Commission (MGL c. 6A, Section 18B)
- ✓ Technical Advisor to Local Commissions on Disability (MGL Ch. 40, Sec. 8J)
- ✓ Maintains Client Assistance Program (CAP) within Client Services Unit
- ✓ Consultant to Supplier Diversity Office





Applicable Laws & Enforcement Agencies: Federal



- ✓ **Americans with Disabilities Act (ADA) & Amendments Act of 2008** – U.S. Department of Justice (DOJ)
 - ✓ **Title II: State and Local Governments**
 - ✓ **Title III: Public accommodations**, commercial facilities, examinations and courses related to licensing or certification, and transportation provided to the public by private entities.
- ✓ **Section 504 of the Rehabilitation Act of 1973** (programs & activities that receive federal funding), designated Office of Civil Rights (OCR)
- ✓ **Air Carrier Access Act** (US DOT)
- ✓ **Fair Housing Act** (HUD)



Applicable Laws & Enforcement Agencies: State



- ✓ **Public Accommodation** (includes state/local government) - MGL Ch. 272, Sec., 92A & Sec. 98- MA Commission Against Discrimination (MCAD)
- ✓ **Employment & Housing**- MGL Ch. 151B - MCAD
- ✓ **Service Animals** - MGL Ch. 272, Sec. 98A – MCAD



Definition of Disability



Physical or mental impairment

that *substantially limits* one or more *major life activities*

No exhaustive list of impairments

Must be broadly applied





Definition of Disability



Major Life Activities:

- ✓ caring for oneself
- ✓ performing manual tasks
- ✓ seeing
- ✓ hearing
- ✓ thinking
- ✓ eating
- ✓ sleeping
- ✓ walking
- ✓ standing
- ✓ sitting
- ✓ working
- ✓ Learning

Includes Major Bodily Functions:

- ✓ immune system
- ✓ cell growth
- ✓ digestive
- ✓ bowel
- ✓ bladder
- ✓ neurological
- ✓ respiratory
- ✓ circulatory
- ✓ cardiovascular

Non-exhaustive list



Obligations



Covered entities **must**:

- ✓ Operate in a nondiscriminatory manner
- ✓ Ensure equal opportunity
- ✓ Permit service animals to accompany people with disabilities in all areas where members of the public are allowed to go.
- ✓ Make reasonable modifications to policies, practices, and procedures



Service Animals





Misconceptions



Airline: 'Emotional support' pig kicked off flight for being disruptive

By Emanuela Grinberg, CNN
Updated 11:36 PM ET, Mon December 1, 2014



More from CNN

Emma Stone, Julianne Moore call on Americans to 'reject the NRA ...

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Passenger Robert Phelps took a picture after this passenger was asked to leave a US Airways flight with

'Emotional support dogs' on planes more scam than therapy?



56



Register Your Dog



Register Service Animal or Emotional Support

1 of 13
Cooper is being trained to help Ret. Navy pilot and Vietnam veteran Tom Vaughan of Yorba Linda. (Photo by Mindy Schauer, Orange County Register/STNG)

By DAVID WHITING | Southern California News Group Columnist
PUBLISHED: September 20, 2017 at 6:27 am | UPDATED: September 22, 2017 at 4:51 am

Debate around emotional support animals intensifies

Boston25News.com
7:02 a.m. Thursday, Sept. 28, 2017 Filed in National news



Boston25News.com





Scope



✓ Places that are open to the public

Not:

- Housing
- Airplanes
- Employment





ADA Definition



Service animals: dogs individually trained to perform tasks for people with disabilities.

“Perform tasks” trained to take a specific action when needed:

- ✓ Guiding people who are blind,
- ✓ Alerting people who are deaf,
- ✓ Pulling wheelchairs,
- ✓ Protecting a person who is having a seizure,
- ✓ Retrieving objects



People with disabilities have the right to train the dog and are not required to use a professional service dog training program.



Psychiatric Service Animals



Psychiatric service animals - considered service animals by DOJ

- ✓ Trained to provide a task or service for an individual with a psychiatric disability.
- ✓ "recognize & respond"
- ✓ Distinct from "emotional support" and "companion" animals
 - ✓ Calming person during panic attack
 - ✓ Reminding person to take medication
 - ✓ Assisting someone with PTSD
 - ✓ Interrupting compulsive behavior



Miniature Horses



- ✓ 24" - 34" in height
- ✓ 70 - 100 lbs.

Covered entities must permit miniature horses based on:

1. whether miniature horse is **housebroken**;
2. whether miniature horse is **under control**;
3. whether the facility can **accommodate** horse's type, size, and weight;
4. whether horse's presence will compromise **legitimate** safety requirements necessary for safe operation of the service.



Image: Google.com



Rights & Responsibilities



- ✓ Permitted anywhere the handler may go: exam rooms, cafeterias, waiting rooms
- ✓ Any breed weight, size
- ✓ Working animals and not pets
- ✓ Under control at all times
- ✓ Housebroken
- ✓ May not pose direct threat to health or safety





FAQ



Q. What does “under control” mean?





FAQ



Q. What does “under control” mean?

A.

- ✓ Harnessed, leashed, or tethered unless these interfere with the animal's work or the person's disability prevents use of these items.
- ✓ Should not bark repeatedly in a quiet place.
- ✓ Barking once or because it has been provoked does not mean dog is out of control.



FAQ



Q: What if someone has an allergy to dogs? Isn't that a disability too?





FAQ



Q: What if someone has an allergy to dogs? Isn't that a disability too?

A: Allergies are not a permissible reason to deny entry to a person with a service animal. BUT places may have to accommodate both parties.

- ✓ Allergies may or may not rise to the level of disability
- ✓ If possible, both parties could be separated without excluding either
- ✓ Educate each party about situation and service animal rights
- ✓ Have literature on hand
- ✓ You may not be able to accommodate everyone in every situation.



FAQ



Q. Do service animals have to wear a vest or patch or special harness identifying them as service animals?





FAQ



Q. Do service animals have to wear a vest or patch or special harness identifying them as service animals?

A. No.

Laws do not require service animals to wear a vest, ID tag, harness, or any other identifying items.

Some individuals choose to use such items even though they are not required.



FAQ



Q. Does the ADA require that service animals be “certified”?



FAQ



Q. Does the ADA require that service animals be “certified”?

A. No. Covered entities may not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal, as a condition for entry into a public place.

- Entities that sell service animal “certification” or “registration” documents
- These documents do not convey any rights under any applicable laws
- Enforcement agencies do not recognize them as proof that the dog is a service animal.



Misconceptions



buy service animal vest



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US Service Cat Registry - #1 US Registry Database.

www.usserviceanimals.org/esa/cats

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Emotional Support Reg. - \$79.95 - Lifetime Registration · More

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#1 Rated ESA Letter Service. Simple Process. Free Evaluation.
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FAQ



Q: How can I tell if an animal is really a service animal and not just a pet?





FAQ



Q: How can I tell if an animal is really a service animal and not just a pet?

A: If you are not sure that a dog is a service animal, you may ask the handler ONLY:

- ✓ if it is a service animal required because of a disability and
- ✓ what work it performs.



FAQ



Q: What if I think the person is lying about the animal being a service animal?

Tightening The Leash On Fake Service Dogs

10/16/2017 10:31 am ET | Updated 2 days ago

Can states stop people from trying to pass off their pets as service animals?



COURTESY OF CHRIS SLAVIN

Chris Slavin of Danvers, Massachusetts, with her 3-year-old service dog, Earle. Massachusetts is considering a bill that would crack down on people who misrepresent their pets as service dogs. Nineteen other states have adopted similar measures.



FAQ



Q: What if I think the person is lying about the animal being a service animal when answering the two questions?

A: The law requires you to take the person at their word.



FAQ



But remember, service animals must be:

- ✓ Under control at all times
- ✓ Housebroken
- ✓ May not pose direct threat to health or safety
- If handler does not correct behavior, you may ask handler to remove the animal.
- You must still provide access & services to the person.



Q. Must a service animal be allowed to ride in an ambulance with its handler?

A. Generally, yes.

However, if ambulance is crowded and dog's presence would interfere with the emergency medical staff's ability to treat the patient, staff should make other arrangements to have the dog transported to the hospital.



Q. Who is responsible for the care and supervision of a service animal?

A. The handler is responsible for caring for and supervising the service animal, which includes toileting, feeding, grooming and veterinary care.

Covered entities are not obligated to supervise or otherwise care for a service animal.



Q. What happens if a person who uses a service animal is unable to care for or supervise their animal?

E.g. after being hospitalized or placed under arrest

A. If person is not able to care for service animal, the person can make arrangements for family member or friend to come to provide these services (in hospital situation), or to take the dog.

If the person is unable to arrange for someone else to take dog, entity may place dog in a boarding facility until person is released, or make other appropriate arrangements.

However, entity must give the person the opportunity to make arrangements for the dog's care before taking such steps



Vaccination, Health Codes, Licensure



- ✓ **State or local health codes** cannot be used as a reason to deny access to a service animal. E.g. in establishments that prepare food
- ✓ **Vaccinations:** Service animals are not exempt from local animal control or public health requirements that dogs be vaccinated.
- ✓ **Licensure:** Service animals are subject to local dog licensing and registration requirements.



FAQ



Q. Is a voluntary registry program for people with service or assistance animals legal under the ADA?



FAQ



A. Yes.

- ✓ Entities, such as local governments, may offer **voluntary** registries.
 - ✓ Many communities maintain a voluntary registry that serves a purpose, for example, to ensure that emergency staff know to look for the animals during an emergency
 - ✓ Registries for purposes like this are permitted under the ADA.
- An entity may not, however, **require** that a dog be registered as a service animal as a condition of being permitted.



Emotional Support Animals



- ✓ not pets
- ✓ provide emotional support that alleviates identified symptom(s) or effect(s) of a person's disability
- ✓ not required to be individually trained or certified
- ✓ commonly dogs but can also be other animals
- ✓ Not specifically defined in ADA or 504
- ✓ Under umbrella of *reasonable modifications*
- ✓ *are* mentioned in Fair Housing Act & Air Carrier Access Act





Fair Housing



- ✓ Housing providers must modify “no pets” policies to allow a resident to have an **assistance animal** needed because of a disability
- ✓ This includes emotional support animals
- ✓ Housing provider can require documentation of disability need **if** not obvious



Overlapping Laws on Campus

Public Places: ADA & Sec. 504

- Recreational facilities
- Lecture halls
- Libraries
- Dining halls
- Book stores

Housing: FHA, ADA & Sec. 504

- Dorms
- Apartments
- Common areas in housing: laundry rooms, rec. room, kitchen, bathroom, etc.

Reasonable accommodations

Service Animals

- Trained to perform task or service
- Dogs or miniature horses only
- Includes psychiatric service animals

Assistance Animals

- Not trained to perform task
- Mere presence provides support
 - Any type of animal

Emotional Support Animals

Reasonable Modifications
Case-by-case modification of policy

Academic Adjustments
individualized modifications



Air Carrier Access Act



- ✓ Airlines must permit passengers to travel with animal needed because of a disability
- ✓ in cabin
- ✓ at no additional cost
- ✓ This includes emotional support animals





Air Carrier Access Act: Proof



- ✓ **service animals:** airline must accept identification cards, other written documentation, harnesses, tags, or “credible verbal assurances”
- ✓ **emotional support or psychiatric service animals:** airline can require current documentation (i.e., no older than one year from date of the flight) on letterhead of a licensed mental health professional (e.g., psychiatrist, psychologist, licensed clinical social worker, including a medical doctor specifically treating the passenger's mental or emotional disability) stating:
 - (1) passenger has mental or emotional disability recognized in the Diagnostic and Statistical Manual of Mental Disorders—Fourth Edition (DSM IV);
 - (2) passenger needs animal as accommodation for air travel or at destination;
 - (3) Individual providing assessment is a licensed mental health professional, passenger is under his or her professional care; and
 - (4) Date and type of mental health professional's license and state or other jurisdiction of issue.



Air Carrier Access Act: Types of Animals



- Airlines are “never required to accommodate certain unusual service animals (e.g., snakes, other reptiles, ferrets, rodents, and spiders)”
- ✓ With respect to all other animals, including unusual or exotic animals (e.g., miniature horses, pigs, monkeys), carrier must determine whether any factors preclude their traveling in the cabin as service animals (e.g., whether animal is too large or heavy to be accommodated, whether animal would pose a direct threat to health or safety, whether it would cause a significant disruption, whether it would be prohibited from entering country that is the flight's destination).
- ✓ If no such factors preclude the animal from traveling in the cabin, carrier must permit it to do so.



Thank You



QUESTIONS?

Contact Us;

The Massachusetts Office On Disability

1 Ashburton Place, Room 1305

Boston, MA 02108

617 727-7440

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