

SERVICE ANIMALS IN PUBLIC PLACES

Prepared by the Disability Rights Network of Pennsylvania

What laws govern the use of service animals in public accommodations (which include hotels, restaurants, theaters, sports arenas, museums, private schools, and other privately-owned places that are open to the public) in government facilities (which include courthouses and public schools), and in transportation?

There are a variety of federal, state, and local laws that address the use of service animals in public spaces. Different laws cover different types of spaces and may have different definitions of what constitutes a service animal. The relevant laws include:

- The federal Americans with Disabilities Act (ADA). Title II of the ADA governs access to state and local government services, programs, and facilities, including public transportation. Title III of the ADA governs access to public accommodations, including private transportation (such as taxis).
- Section 504 of the federal Rehabilitation Act (Section 504). Section 504 governs federal government services, programs, and activities; state and local government services, programs, and activities that receive federal funding; and privately-owned businesses or schools that receive federal funding. Although there are no specific provisions governing the use of service animals under Section 504, this law is generally construed consistently with the ADA.
- The federal Air Carrier Access Act (ACAA). The ACAA governs the treatment of people with disabilities on airlines and in airports.
- The Pennsylvania Human Relations Act (PHRA). The PHRA governs state and local government activities and many privately-owned public accommodations within Pennsylvania.
- Local Human Relations Acts. Some local Pennsylvania municipalities (including Philadelphia and Pittsburgh) have enacted local laws that may govern service animals in some types of public spaces.
- The Pennsylvania Criminal Code makes it a summary offense for proprietors, managers, or employees of public accommodations to deny access to people with certain types of services animals.

What is a service animal under the ADA?

Recent amendments to the ADA's regulations have narrowed the definition of "service animals" that are protected under the ADA (and, by extension, under Section 504 of the Rehabilitation Act). This new definition (that goes into effect in March 2011) defines 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." The only species other than dogs that the ADA

recognizes as a potential service animal is miniature horses, although they are subject to a somewhat different standard than service dogs.

In addition to the species limitation, the ADA's new definition of service animal also requires that the work or task performed by the service animal must be "directly related" to the individual's disabilities. Some examples of work or activities that a service animal may perform include:

- assisting individuals with visual disabilities to navigate;
- alerting individuals with hearing disabilities to sounds;
- providing non-violent protection or rescue work;
- pulling a wheelchair or retrieving items;
- providing physical support and assistance with balance;
- preventing or interrupting impulsive or destructive behavior.

Are therapy animals considered to be service animals under the ADA?

Generally, no. The ADA's new definition of service animal explicitly states that an animal's provision of emotional support, well-being, comfort, or companionship does not constitute "work or tasks" that will make the animal a "service animal" under the ADA. If, however, the animal is trained to prevent or reduce an individual's impulsive or destructive behavior, it will be deemed to be a service animal.

Is the same definition of "service animal" used under Pennsylvania law as under the ADA?

No. The PHRA does not use the term "service animal," but, "guide or support animal." There is no further definition of what this means. On the surface, it does not appear to be limited to dogs or miniature horses and could, conceivably, include other types of animals. Also, it is arguable that therapy animals are "support animals" that may be protected by the PHRA.

Does the ADA require the service animal be certified or licensed in any specific way?

No. The ADA only requires that a service animal be individually trained to do the required work or tasks, but it does not require the training to be conducted by any recognized organization or authority nor does it require any specific approval, certification, or license to show that the animal has been trained.

Under the ADA, can an owner, manager, or staff of the public space ask about your disability and the service animal's qualifications?

Individuals with disabilities cannot be asked about the nature or extent of their disabilities. Individuals with disabilities also cannot be required to provide a public

space with documentation that an animal has been certified or trained as a service animal.

Owners, managers, or staff of public spaces are permitted to ask only two questions to determine if the animal qualifies as a service animal: (1) whether the animal is required because of a disability; and (2) what work or task the animal has been trained to perform. Even these two inquiries, however, may be inappropriate when it is obvious that an animal is trained to work for a person with a disability (e.g., when the dog is guiding a person who is blind or pulling a person's wheelchair).

Does a facility's "no pets" policy apply to service animals under the ADA?

No. A service animal is not a pet and so even a clearly posted "no pets" rule is not applicable and the individual with a disability can bring her service animal into the facility.

Can a facility exclude a service animal based on local health regulations or concerns?

No. The ADA and PHRA specifically allow individuals with disabilities to use service animals and those laws would trump any inconsistent local health regulations.

Can a service animal be restricted to certain locations in a public space under the ADA?

No. Individuals with disabilities must be permitted to take their service animals in all areas of a public space where other members of the public are allowed to go.

Can a person be required to pay for the use of a service animal in a public space under the ADA?

No. Persons with disabilities cannot be assessed fees or surcharges when their service animals accompany them to public spaces. This applies even if the facility typically charges fees to people who bring their pets because service animals are not pets.

However, if the place typically charges for damage caused by animals or others, then an individual with a disability can be charged for any damage that is caused by her service animal. For example, a hotel can charge a customer with a disability for the cost of cleaning a rug that is soiled by a service animal if it typically would charge other customers for similar cleaning costs.

Under the ADA, can a service animal be allowed to be off-leash in a facility?

Generally, no. The service animal must be under the control of its handler. This typically requires that it be on a leash, harness, or other tether. However, if the handler cannot use a leash, harness, or tether due to his disability or because doing so would interfere with the animal's ability to perform his work or tasks, then the handler must exercise control through other means (such as voice control or signals).

Can a service animal ever be excluded from a facility under the ADA?

Yes. A facility may ask an individual with a disability to remove a service animal from the premises if either: (1) the animal is out of control and the individual does not take effective action to bring it under control; or (2) the animal is not housebroken.

Are miniature horses subject to the same rules as service dogs under the ADA?

Not entirely. A service dog must be admitted to all parts of a public space without charge unless it is out of control or not housebroken. In contrast, facilities may consider other factors in determining whether it is a reasonable accommodation to allow a person with a disability to be accompanied by a miniature horse who is a service animal and, if it is not, then they may be excluded. Those factors are: (1) the type, size, and weight of the miniature horse and whether the facility can accommodate it; (2) whether the handler has sufficient control over the miniature horse; (3) whether the miniature horse is housebroken; and (4) whether the miniature horse's presence in the facility compromises legitimate safety rules that are necessary for safe operation.

Are people who train service dogs protected by these anti-discrimination laws?

People without disabilities are usually used to train service animals before they are placed with a person with a disability. This process often involves socializing the animal by going to public places. The ADA does not require governments or public accommodations to allow persons who do not have disabilities to take these service animals-in-training into their buildings or facilities. The PHRA, however, expressly protects the rights of handlers or trainers of service animals to take the animals into government buildings and public accommodations.

When is it a crime for a person to be denied access to a facility because of a service animal?

Pennsylvania law makes it a summary offense for a public accommodation's owner, manager, or employee to deny access to the accommodation or its benefits to any person who uses a "guide, signal or service dog or other aid animal that has been certified by a recognized authority to assist a person because of the physical disability, blindness, or deafness of the user." The law similarly applies to persons who are training an animal for or from a recognized authority for use by a person with one of the listed disabilities. This law thus is more limited than the PHRA because the animal must be certified by a recognized authority and it plainly excludes animals that assist individuals with non-physical or non-sensory disabilities.

Can I take a service animal onto an airplane?

The ACAA, not the ADA or PHRA, governs service animals on airplanes and the rules are somewhat different. Generally, the ACAA requires airlines to allow passengers with disabilities to be accompanied by service animals. There are, however, some limits, including the following:

- Under the ACAA, airlines can require passengers who travel with animals that provide emotional or psychiatric support to provide current documentation from a licensed mental health professional caring for the passenger that the passenger has a specific mental or emotional disability (though the diagnosis need not be stated) and needs to be accompanied by the animal in question either on the flight or at his or her destination. Generally, airlines cannot require such documentation for other types of service animals.
- An airline can deny the user a seat with his or her service animal if the animal will block a space that, according to safety regulations, must remain unobstructed, though the airline must allow the passenger and service animal to sit elsewhere on the aircraft if an appropriate place exists.
- If a flight segment is scheduled to take 8 hours or more, the airline can require documentation that the service animal will not need to relieve itself or can do so in a way that will not create a health or sanitation issue on the flight.
- The airline can exclude a passenger with a disability whose service animal exhibits behavior problems in the aircraft cabin that result in a direct threat to the health or safety of others or a fundamental alteration in its service. The airline, though, should first permit the passenger to try alternative means to mitigate the issue (e.g., muzzling a barking dog). If a passenger is excluded for this reason, the airline must provide a written explanation of its decision within 10 days.

Who should I contact for help?

If you need more information or help, please contact the Intake Unit of the Disability Rights Network of Pennsylvania (DRN) at 800-692-7443 (voice) or 877-375-7139 (TDD) or intake@drnpa.org.

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