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Disability Rights Ohio FACT SHEET:

Service Animals

Many people with disabilities require the use of a service animal throughout their daily lives. Fortunately, both federal and state laws offer protections for the use of service animals in various situations, including places of public accommodation, employment, housing, education, transportation and air travel, and state and local governments. This fact sheet provides an overview of a person's rights and responsibilities under certain state and federal laws.

Laws

Depending on the context of the situation, a person's rights and responsibilities for the use of a service animal may be covered under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973 ("Section 504"), the Fair Housing Act, the Individuals with Disabilities Education Improvement Act (IDEA), the Air Carrier Access Act of 1986, the Ohio Revised Code, and the Ohio Administrative Code, all of which provide varying standards for the use of service animals.

Notably, before a person who needs a service animal can have any of the legal protections described in this fact sheet, he or she must have a disability, which is defined by each of the pertinent laws. For example, under the ADA (which was recently amended to provide much broader coverage to qualify for protection under the law), the term "disability" is defined as "a physical or mental impairment that substantially limits one or more major life activities of [an] individual." "Major life activities" can include caring for oneself, performing manual tasks, seeing, hearing, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working as well as the operation of a major bodily function, such as the functions of the immune system, normal cell growth, and so forth. Section 504, the Fair Housing Act, the Air Carrier Access Act, and state law provide similar definitions of the term "disability."

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Places of public accommodation

Under Title III of the ADA, a private business or entity that provides services to the public must modify its policies, practices, or procedures (such as a prohibition on the presence of animals) to permit the use of a service animal by a person with a disability. A person with a disability must be permitted to be accompanied by his or her service animal in all areas of the place of public accommodation where members of the public and others are permitted to go. Examples of places of public accommodation are hotels, restaurants, bars, movie theaters, sports stadiums, grocery stores and other retail stores, hospitals and offices of health care providers, laundromats, gas stations, banks, stations used for public transportation, museums, libraries, private schools and other places of education, and places of recreation or exercise.

What is the definition of a service animal under Title III of the ADA?

A service animal is a working animal, not a pet. Regulations under Title III of the ADA, which were recently updated by the U.S. Department of Justice, define 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, including a physical, sensory, psychiatric, intellectual, or other mental disability.

Other species of animals, whether wild or domestic, trained or untrained, are not considered service animals under Title III of the ADA. In some circumstances, the use of a miniature horse must be allowed if it has been individually trained to do work or perform tasks for the benefit of a person with a disability.

What are considered acceptable work or tasks of a service animal under Title III of the ADA?

Under Title III of the ADA, the work or tasks performed by a service animal must be directly related to the person's disability. Some examples of work or tasks include, but are not limited to:

- Assisting a person who is blind or has low vision with navigation and other tasks;
- Alerting a person who is deaf or hard of hearing to the presence of people or sounds;
- Providing non-violent protection or rescue work;
- Pulling a wheelchair;
- Assisting a person during a seizure;
- Alerting a person to the presence of allergens;
- Retrieving items, such as medicine or the telephone;

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- Providing physical support and assistance with balance and stability to a person with a mobility disability; and
- Helping a person with a psychiatric or neurological disability by preventing or interrupting impulsive or destructive behaviors.

The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort or companionship are not work or tasks protected by Title III of the ADA.

Can a place of public accommodation ask an individual with a disability to remove a service animal from the premises?

Yes, but only if the animal is out of control and the animal's handler does not take effective action to control it or if the animal is not housebroken. If properly excluded for one of these reasons, a place of public accommodation must give the person with a disability the opportunity to obtain its goods, services, and accommodations without having the service animal on the premises.

What types of information can a place of public accommodation request regarding a person's disability and his or her need for the use of a service animal?

Under Title III of the ADA, a place of public accommodation cannot require a person with a service animal to produce documentation, such as medical documentation or proof that the animal has been certified, trained or licensed as a service animal. It also cannot inquire about the nature or extent of a person's disability, although it may make two inquiries to determine whether an animal qualifies as a service animal:

- Is the animal required because of a disability?
- What work or task has the animal been trained to perform?

However, a place of public accommodation may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability; for example, a dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to a person with a mobility disability.

What are the responsibilities of a person who uses a service animal in a place of public accommodation?

Under Title III of the ADA, the service animal's handler must maintain control of the animal, and the animal must have a harness, leash or other tether. However, if a disability prevents the person from using a harness, leash or other tether or if a harness, leash or other tether would interfere with the service animal's safe, effective performance of work or tasks, then the animal's handler must maintain control of the service animal through other effective means, such as voice control or signals.

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A place of public accommodation is not responsible for the care or supervision of a service animal.

Can a place of public accommodation charge a fee for a service animal?

No. A place of public accommodation cannot ask or require a person with a disability to pay a surcharge for using a service animal, even if other people accompanied by pets are required to pay a fee. But if a place of public accommodation ordinarily charges people for damage caused by an animal, a person with a disability can be charged for damage caused by his or her service animal.

Does Ohio law protect the rights of people who need service animals in places of public accommodation?

Yes. Ohio Administrative Code § 4112-5-06 prohibits a place of public accommodation from discriminating against a person with a disability, including denying him or her “the attendance of an animal assistant” or requiring him or her “to pay an extra charge for the attendance of the animal assistant.” In fact, Ohio Administrative Code § 4112-5-02, which defines animal assistants, does not limit protections solely to animal assistants that are dogs. It defines an “animal assistant” as “any animal which aids” a person with a disability, which may include a dog which alerts a person with a hearing impairment to sounds, a dog which guides a person with a visual impairment, or a monkey which collects or retrieves items for a person with a mobility impairment. Thus, if an individual needs a service animal other than a dog in a place of public accommodation, he or she should be protected by this provision of Ohio law.

Another provision of Ohio law causes some confusion because it pertains only to service dogs. Ohio Revised Code § 955.43 covers “assistance dogs” and states that a person who is blind, deaf or hearing impaired, or mobility impaired and who is accompanied by an assistance dog is entitled to the “full and equal accommodations, advantages, facilities, and privileges of all ... hotels, lodging place, all places of public accommodation, amusement, or resort, ... and other places to which the general public is invited.” The trainer of an assistance dog is entitled to the same rights, and no charge or fee can be charged for the presence of the dog. Furthermore, any dog in training to become an assistance dog must be covered by a liability insurance policy provided by the nonprofit special agency which is training the dog.

An “assistance dog” is narrowly defined under Ohio Revised Code § 955.011 as a guide dog that has been trained or is training to assist a person who is blind; a hearing dog that has been trained or is training to assist a person who is deaf or hearing impaired; or a service dog that has been trained or is in training to assist a person who is mobility-impaired. The dog must also have been trained by a nonprofit special agency. Furthermore, “blind” and “mobility impaired” contain precise definitions, and “mobility impaired” was very recently amended to include a person diagnosed with autism.

Any requirement under the Ohio Revised Code or the Ohio Administrative Code which

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conflicts with the ADA is very likely preempted by the ADA. Thus, a strict requirement that an assistance dog must be leashed is probably superseded by the ADA's more flexible standard described above. Furthermore, the requirement under Ohio Revised Code § 955.011 that an assistance dog be trained by a nonprofit special agency is also likely superseded by the ADA, which does not require any level of formal training. Also, if a person needs an service animal that is not included within the definition of Ohio Revised Code § 955.011, he or she can simply assert his or her rights under Title III of the ADA or Ohio Administrative Code 4112-5-06.

State and local governments

What obligations do state and local governments have under the ADA?

Title II of the ADA contains requirements for state and local governments which are identical to those that apply to places of public accommodation under Title III of the ADA. Thus, a person with a disability has the same rights and responsibilities in using his or her service animal in the services, programs or activities of a state or local government, including any department, agency, or other instrumentality. For example, an individual with a disability may use his or her service animal in courthouses throughout the state and other governmental buildings.

Housing

Does a person have a right to use a service animal in his or her apartment or home, even if a landlord or other housing provider forbids pets?

Yes. The Fair Housing Amendments Act of 1988 prohibits discrimination against people with disabilities in the terms, conditions, or privileges of the sale or rental of housing and in the provision of services or facilities of the housing. Discrimination includes 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,” including public and common areas. Thus, if a tenant has a disability and needs a service animal to afford him or her “equal opportunity to use and enjoy a dwelling,” then a landlord generally must grant permission, even if pets are restricted or prohibited in the apartment.

Other federal laws may apply as well, including Section 504 of the Rehabilitation Act of 1973, which requires any program receiving federal assistance to provide reasonable accommodations to persons with disabilities, such as public or subsidized housing, although not a landlord who only accepts Section 8 rental assistance. Regardless, the Fair Housing Act applies to virtually all forms of housing.

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Does the Fair Housing Act permit only service animals which are dogs?

No. Although there is no explicit definition of service animals under the Fair Housing Act, administrative agency and court decisions as well as interpretations by the U.S. Department of Housing and Urban Development (HUD) have concluded that its protections are much broader than those under the ADA. Thus, service animals are not limited merely to dogs and do not need to have been trained or certified. Also, emotional support animals can be considered a reasonable accommodation for a person's disability under the Fair Housing Act; for example, an individual who has depression or post-traumatic stress disorder may need the therapeutic nurturing and support of an animal.

What must a tenant do if he or she needs a service animal in his or her apartment?

As opposed to Titles II and III of the ADA in which the animal need only meet the definition of a service animal to be covered by the law, and no further reasonable accommodation analysis should be applied, the Fair Housing Act requires that a person affirmatively notify the landlord (preferably in writing) that he or she has a disability, that he or she needs a service animal to afford equal opportunity to use and enjoy the apartment, and that he or she therefore requires a modification to the landlord's policies prohibiting or restricting pets as a reasonable accommodation for his or her disability.

It is also strongly advisable that the individual submit a letter from his or her doctor, therapist or other medical provider verifying the need for the service animal. It is not necessary to disclose a detailed, comprehensive medical history. The landlord or other provider of housing is entitled to obtain only that information necessary to determine whether the requested accommodation is necessary because of a disability.

Can a landlord refuse a request to use a service animal in an apartment?

Yes, but only under certain circumstances. A landlord can refuse this requested accommodation if it would constitute an undue financial or administrative burden or would fundamentally alter the nature of the housing; for example, if the animal is disruptive to other tenants, or if the animal poses a direct threat to the health, safety, or property of others.

Can a landlord charge a fee or deposit for a service animal?

No. HUD regulations explicitly exempt people living in HUD-assisted public housing and multi-family housing projects for the elderly and persons with disabilities from any obligation to pay pet deposits or fees for service animals. Although there is no similar exemption for private housing, HUD and the U.S. Department of Justice have concluded that requiring a tenant to pay a deposit or fee for a service animal is illegal, although a tenant may be charged for the cost of repairing damage caused by the animal.

Does Ohio law protect the right of a person with a disability to keep a service animal in his or her housing?

Yes. As stated before, Ohio law defines an "animal assistant" as "any animal which aids" a person with a disability, including a dog which alerts a person with a hearing impairment to sounds, a dog which guides a person with a visual impairment, or a monkey which collects

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or retrieves items for a person with a mobility impairment. Ohio law provides that a person with a disability who has or obtains an animal assistant “shall be entitled to keep the animal assistant on the premises purchased, leased, rented, assigned or subleased” by such person. Furthermore, he or she “shall not be required to pay an extra charge for such animal assistant but shall be liable for damage done by the animal assistant to the premises.”

Employment

Does a person have a right to use a service animal at his or her workplace?

Yes. Title I of the ADA prohibits covered employers from refusing to grant reasonable accommodations to the known disability of an employee. A reasonable accommodation is any change to the work environment or in the policies or practices of an employer which enable a qualified employee with a disability to perform the essential functions of his or her position or apply for a job.

Unlike Titles II and III of the ADA, Title I of the ADA does not provide any explicit rights to a service animal. But if an employee needs his or her service animal to be able to perform his or her job, the employer must treat a request to use a service animal as any other request for a reasonable accommodation for an employee’s disability. Furthermore, because Title I of ADA does not contain the same restrictions on service animals as those contained in Titles II and III of the ADA, service animals in the workplace are not limited merely to dogs and may even include emotional support animals in certain circumstances.

The employee is responsible for the care and monitoring of his or her service animal. However, the employer may need to provide the employee enough flexibility to be able to take the animal outside to relieve itself during the workday or otherwise care for the animal’s needs.

How does a person with a disability request to use his or her service animal on the job?

A person with a disability must first notify the employer that he or she has a disability and that he or she needs a service animal as a reasonable accommodation to enable him or her to perform the essential functions of the job. This can be accomplished orally or in writing, although in writing is preferable. Unless the disability is obvious, the employer could require additional information about the employee’s disability as well as the relationship between the employee’s disability and his or her need for a service animal to be able to perform the job duties. It is important to have the support of the person’s doctor or other medical professional to demonstrate the necessity of a service animal.

Are there any limits on the use of service animals in the workplace?

Yes. An employer may refuse any request for an accommodation that is unreasonable or that would impose an undue hardship on the operations of its business. Moreover, as long as it is equally effective, an employer may choose to provide an accommodation other than the one requested by the employee, so it is important to demonstrate that the service animal is the only effective accommodation available.

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What other laws protect an employee who needs a service animal in the workplace?

Title I of the ADA applies to employers which have 15 or more employees, but the Ohio Revised Code provides virtually identical protections to people with disabilities who need reasonable accommodations to perform their jobs and whose employers have four or more employees. Also, Section 504 of the Rehabilitation Act of 1973 obligates employers who receive federal funding to provide reasonable accommodations to people with disabilities, including those who need service animals, and Section 501 of the Rehabilitation Act of 1973 gives similar rights to federal employees who have disabilities.

Schools

Is a student who needs a service animal protected by federal law?

Yes. Public schools, universities, and school districts in Ohio as well as any “nursery, elementary, secondary, undergraduate, or postgraduate private school or other place of education” are bound by Titles II and III of the ADA, which are discussed above.

Service animals can provide invaluable assistance to students who attend school and who have one of a variety of disabilities. For example, a teenager with social phobia and separation anxiety disorder may need a service animal as transitional support so that he or she can leave home and go to school; a young student with diabetes may need a dog to alert him or her if blood sugar levels become too high or low; and a student with cerebral palsy may need a dog to assist him or her in opening doors, picking up objects, or otherwise helping him or her in the school environment.

Furthermore, Section 504 of the Rehabilitation Act of 1973 prohibits disability discrimination in schools and may contain broader protections than the ADA for students who need service animals in schools. The Office for Civil Rights of the U.S. Department of Education, which ensures that school districts comply with Section 504, has determined that a school violates this federal law when it does not allow the use of a service animal and this decision effectively denies a student with a disability the equal opportunity to participate or benefit from an educational program. School districts are permitted to offer alternative modifications to the use of a service animal, but it must be equally as effective as the functions the service animal would perform.

Finally, the IDEA may require a school district to permit a child to bring a service animal to school as part of its obligation to provide him or her a free appropriate public education (FAPE), which is defined as special education and supportive services that allow a child with a disability to benefit from his or her education. For some children with disabilities, a service animal is an integral part of a FAPE. A determination of whether a service animal is necessary for a FAPE requires an individualized assessment by the child’s education team.

Is a student who needs a service animal in school also protected by Ohio law?

Yes. Ohio Revised Code § 955.43 provides that an individual who is blind, deaf or hearing-impaired, or mobility impaired and who is accompanied by an assistance dog is entitled to the “full and equal accommodations, advantages, facilities, and privileges of ... all institutions of education,” which includes a state university or college, a private college or university, any

elementary or secondary school operated by a board of education, any chartered or nonchartered nonpublic elementary or secondary school, and any school issued a certificate of registration by the state board of career colleges and schools. The trainer of an assistance dog is entitled to the same rights, and no charge or fee can be charged for the presence of the dog. Furthermore, any dog in training to become an assistance dog must be covered by a liability insurance policy provided by the nonprofit special agency which is training the dog.

As stated above, an assistance dog is defined as a guide dog that has been trained or is training to assist a person who is blind; a hearing dog that has been trained or is training to assist a person who is deaf or hearing impaired; or a service dog that has been trained or is in training to assist a person who is mobility-impaired. “Blind” and “mobility-impaired” contain precise definitions, and the latter was very recently amended to include a person diagnosed with autism. The dog must also have been trained by a nonprofit special agency, although, as stated above, this is likely preempted by the ADA, when applicable.

Importantly, Titles II and III of the ADA and Section 504 provide a broader definition of service animals than Ohio law, so a student may need to assert his or her rights under federal law.

See also Disability Rights Ohio’s online publication: Use of Service Dogs in School, disabilityrightsohio.org/faq-service-dogs

Transportation

Is a person with a disability permitted to bring his or her service animal on public transportation or other modes of transportation?

Yes. The U.S. Department of Transportation has issued regulations governing both public and private entities which provide transportation services and which are covered by Titles II and III of the ADA, including buses, taxi cabs, and so forth. Such entities must permit service animals to accompany people with disabilities in vehicles and facilities. A service animal is currently defined in this context as “any guide dog, signal dog, or other animal individually trained to work or perform tasks for an individual with a disability.” Examples include “guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.”

Furthermore, Ohio law states that a “public conveyance by air, land, or water” cannot deny a person with a disability the attendance of an animal assistant or require him or her to pay an extra charge for the attendance of the animal assistant. An animal assistant, as described above, is “any animal which aids” a person with a disability, and specific examples include a dog which alerts a person with a hearing impairment to sounds, a dog which guides a person with a visual impairment, or a monkey which collects or retrieves items for a person with a mobility impairment.

Also, Ohio Revised Code § 955.43 covers “assistance dogs” and states that a person who is blind, deaf or hearing-impaired, or mobility-impaired and who is accompanied by an assistance dog is entitled to the “full and equal accommodations, advantages, facilities, and privileges of all public conveyances” The trainer of an assistance dog is entitled to the same rights, and no charge or fee can be charged for the presence of the dog. However, there are certain

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limitations. The dog may not occupy a seat in any public conveyance; the dog must be leashed while using the facilities of a common carrier; and any dog in training to become an assistance dog must be covered by a liability insurance policy provided by the nonprofit special agency which is training the dog.

Does a person have a right to have his or her service animal accompany him or her on flights on commercial airlines?

Yes. Under the Air Carrier Access Act of 1986, commercial airlines must permit a service animal to accompany a passenger with a disability, even if it “may offend or annoy carrier personnel or persons traveling on the aircraft.” The service animal must be permitted to accompany the passenger at any seat in which he or she sits, unless the animal obstructs an aisle or other area that must remain clear for potential emergency evacuations, in which case the passenger must be offered the opportunity to move to another seat location.

Is any evidence or documentation required before a service animal may accompany a passenger?

Yes, but the Air Carrier Access Act provides a variety of ways in which a passenger can present evidence that an animal is a service animal, including identification cards or other written documentation as well as the “presence of harnesses, tags, or the credible verbal assurances of a qualified individual with a disability using the animal.” Furthermore, on flights which are scheduled to last 8 hours or more, a commercial airline may require the passenger to “provide documentation that the animal will not need to relieve itself on the flight or that the animal can relieve itself in a way that does not create a health or sanitation issue on the flight.”

If a passenger seeks to travel with an emotional support animal or psychiatric service animal, a commercial airline may require the passenger to provide current documentation on the letterhead of a licensed mental health professional (for example, a psychiatrist, psychologist, licensed clinical social worker, or medical doctor treating the passenger’s mental or emotional disability) which states the following:

- the passenger has a mental or emotional disability recognized in the Diagnostic and Statistical Manual of Mental Disorders - Fourth Edition;
- the individual needs the emotional support or psychiatric animal as an accommodation for air travel or for activity at the passenger’s destination;
- the individual providing the assessment is a licensed mental health professional and the passenger is under his or her professional care; and
- the date and type of the mental health professional’s license and the state or other jurisdiction in which it was issued.

Are there any limitations on the type of service animals which must be permitted on commercial flights?

Yes. A commercial airline is never required to permit “certain unusual service animals (e.g. snakes, other reptiles, ferrets, rodents and spiders) as service animals in the cabin.” With respect to all other animals, “including unusual or exotic animals that are presented as service

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animals (e.g., miniature horses, pigs, monkeys),” a commercial airline must determine whether any factors exist which should preclude their presence in the cabin. Factors could include the following: whether the animal is too large or heavy to be accommodated in the cabin; whether it would pose a direct threat to the health or safety of others or cause a significant disruption to cabin service; and whether it would be prohibited from entering a foreign country which is the flight’s destination. If none of these factors preclude the animal from traveling in the cabin, the commercial airline must permit it to do so, although a foreign carrier is not required to permit service animals that are not dogs.

Registration

Under Ohio law, when an application is made for registration of an assistance dog as defined by Ohio Revised Code § 955.011, and the owner can demonstrate proof by certificate or other means that the dog is an assistance dog, its owner is then exempt from any registration fees that otherwise apply. Furthermore, the registration is permanent and no annual renewal is necessary as long as the dog is an assistance dog, and the owner is issued certificates and tags which are stamped “Ohio Assistance Dog - Permanent Registration” and which contain a registration number.

This does not mean that a service animal must be registered or trained to be protected under the ADA, but it merely exempts the owner of the animal from registration fees and annual renewal requirements applicable to other dogs.

Resources

Commonly Asked Questions About Service Animals in Places of Business (U.S. Department of Justice): ada.gov/qasrvc.htm

Psychiatric Service Animals - Policy Documents (Bazelon Center): bazelon.org/Where-We-Stand/Community-Integration/Psychiatric-Service-Animals-and-Civil-Rights/Psychiatric-Service-Animals-Policy-Documents.aspx

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