

**Psychiatric Service and Support Animals:
Current Law, Experiences and Visions of Hope**
Legal protections for people with psychiatric service and emotional support animals

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Psychiatric service animals can offer invaluable, life-changing support to people with psychiatric disabilities. However, understanding the legal rights and responsibilities surrounding their use can be a challenging task. It is a rapidly evolving area of the law, and there is a variety of statutes and regulations that apply in different situations. I will be discussing the laws that apply in public accommodations, state and local government services, employment, housing and air travel.

There are a number of statutes that provide for “reasonable accommodations” for people with disabilities, which encompass service animals, though service animals are not expressly mentioned. The main source of federal protections for the use of service animals in public, in which the term “service animals” is actually defined, is the Americans with Disabilities Act. The Department of Justice recently revised ADA regulations, and the changes came into effect March 15, 2011. Per the new regulations:

Service Animal means “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...” -**28 C.F.R. § 36.104**

- Originally the definition included but was not limited to: dogs that assist people with visual/hearing impairments, provide rescue assistance, pull wheelchairs and fetch dropped items
- Now other species expressly do not qualify (with a narrow exception for miniature horses) e.g.: no monkeys, no birds, no reptiles.
- Emotional support and therapeutic companion animals are also excluded
- **Emotional support animal vs. psychiatric service animal:** Per the DOJ guidance, for a dog to be considered a “service animal” and receive ADA protections, it is not sufficient for it to offer emotional support by way of companionship. It must be specifically trained to recognize and respond to a need and perform work or a task to provide assistance specific to its partner’s disability: e.g., reminding the handler to take medicine, providing safety checks or room searches for persons with PTSD, interrupting impulsive or destructive behaviors, removing disoriented individuals from dangerous situations. - **75 Fed. Reg. 56164, 56195 (Sept. 15, 2010)**

Emotional support animals can provide therapeutic support through companionship, non-judgmental positive regard, affection, and a focus in life. However, because they are not specifically trained to perform a task they are not protected under the ADA. Nevertheless, they can enjoy protections under other statutes.

LOCATION	PROTECTIONS
<p><u>Public Accommodations</u> <i>hotels, restaurants, stores, theaters, gyms, laundromats, etc.</i></p> <p>and</p> <p><u>State and Local Government Services</u> <i>public schools, universities, libraries, parks, etc. and entities that receive federal funding</i></p>	<ul style="list-style-type: none"> - ADA, Title III applies (Public Accommodations) - ADA, Title II applies (State/Local Govt.) - YES, service dogs are protected, including psych service dogs - NO, other service animal species not protected - NO, emotional support animals not protected - NO, service dogs in training not protected - YES, service dogs allowed everywhere general public is allowed 28 C.F.R. §§36.302(c)(7) - Proprietors cannot lawfully ask about the nature of a person’s disability, but can ask if the animal is required because of a disability, and/or what work or task the animal has been trained to perform 28 C.F.R. §§36.302(c)(6); 35.136(f) - Documentation, such as proof that the animal has been certified or trained as a service animal, is not required. 28 C.F.R. §§36.302(c)(6); 35.136(f) - Proprietors can’t charge a surcharge even if people accompanied by pets are required to pay fees. See 28 C.F.R. §§36.302(c)(8), 35.136(h) - EXCEPTIONS: entity can properly exclude an animal that is out of control or not housebroken See 28 C.F.R. §36.302(c)(2); 28 C.F.R. § 35.136 - DEFENSE: making the modifications to accommodate service animals would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations. 36.302(a); 35.130(b)(7) <p>CA SPECIFIC PROTECTIONS- Dogs in training are protected. - Calif. Civ Code 54 Fines are imposed for interfering with disabled person’s ability to exercise their right, or for interfering with, injuring or killing a service animal. Also fines for fraudulently misrepresenting a service dog. - CA Penal Code 365 et seq ID tags are available through county animal control, but no govt. assessment of animal’s training. - Cal. Food & Ag. Code § 30850</p>
<p><u>Employment</u></p>	<ul style="list-style-type: none"> - ADA, Title I applies - NO express right to service animal in the workplace - YES, can request a reasonable accommodation, does not have to follow the Title III definition - YES, psych service and emotional support animals and other species can be requested

	<ul style="list-style-type: none"> - Standard: Does the animal provide a service versus being there just for comfort? Is it necessary for the employee to perform the essential functions of the job? - Employer can ask for documentation in support of need for the service animal, that the service animal is trained, and that the service animal will not disrupt the workplace. - In general, employers should not be involved in employees' personal medical decisions as to the accommodation needed - DEFENSES: Undue hardship or disrupts the workplace BUT the mere presence of the animal is not enough to claim undue hardship - As with all statutes, the animal must be in the control of the handler who is responsible for any damages the animal may cause. If the animal is out of control and/or poses a direct threat to health and safety it can reasonably be excluded. <p>See US Dept of Labor, Office of Disability Employment Policy guidance http://askjan.org/media/servanim.html</p>
<u>Housing</u>	<ul style="list-style-type: none"> - Fair Housing Act Amendments of 1988, Section 504 of the Rehabilitation Act of 1973 apply - "Service animal" not expressly defined - YES, psych service animals, emotional support animals, and other species potentially allowed - No specific training required - Animal must be necessary to afford the individual an equal opportunity to use and enjoy a dwelling or to participate in the housing service or program - Animal must provide a disability-related benefit to the individual with a disability - There must be a relationship, or nexus, between the individual's disability and the assistance the animal provides - A deposit cannot be charged for the animal but the animal owner is responsible for damage outside of normal wear and tear - DEFENSES: The animal can be excluded if it would cause financial or administrative burden, would fundamentally alter the nature of

	<p>the housing program, pose a direct threat to health/safety, cause substantial physical damage to the property of others that cannot be reduced or eliminated by a reasonable accommodation</p> <p>See US Dept of Housing and Urban Development memo 2/17/11 http://www.nacua.org/documents/FHA_Memo_ServiceAnimals.PDF</p>
<p><u>Air Travel</u></p>	<ul style="list-style-type: none"> - Air Carriers Access Act applies - Psych service animals and emotional support animals allowed - NO snakes, other reptiles, ferrets, rodents, and spiders - MAYBE miniature horses, pigs, monkeys 14 CFR 382.117 - Airlines may ask whether the animal is a service animal, and what work or tasks the animal performs for the benefit of the passenger. 68 Fed .Reg. 24875 - Passenger may be required to produce a note that is less than one year old, signed by a licensed mental health professional, stating that s/he has a recognized psychiatric disability that requires an emotional support animal. 14 C.F.R. § 382.117(e) - If the animal is denied, the air carrier must provide a written explanation why within 10 days.

REMEDIES:

Although the general public tends to accept guide dogs for people with visual impairments, many providers of public services are unaware of their responsibilities to people with psychiatric service and emotional support animals. If you and your service animal or emotional support animal are wrongfully discriminated against, you have a number of options: you can file a complaint with the Department of Justice, or in California with the Department of Fair Employment and Housing; you can also file a lawsuit in federal or state court. In the event that you may pursue one of these remedies, it is best to keep a running log of all the training your partner has received to support your claim.

At the time of the incident, you can call the ADA information line for assistance, (800) 514-0301, though they keep fairly standard East Coast business hours. You can call the police to enforce your rights, though sometimes the officers are not fully aware of the law, and it is possible that they may side with the proprietor in removing you from the premises. See *Baughner v. City of Ellensburg*, 2007 U.S. Dist. LEXIS 19073 (E.D. Wash. Mar. 19, 2007). Your best bet is to try to educate the person attempting to exclude you and your canine partner. This, of course, puts you in an extremely emotionally vulnerable position and often, unfortunately, the person you are tangling with will choose to remain steadfast in his or her ignorance of the law. In those cases, you can write a letter to the person’s superiors once you return safely home. This can be a daunting task for anyone, especially for someone struggling with psychiatric disabilities and reeling from the incident. It can also prove empowering, particularly if you see results from your efforts. (See attached sample for a successful letter.)

In the meantime, it is important for us as a community at large to take responsibility to help change the culture. It cannot be the sole burden of the people being discriminated against to educate

the public. As advocates for people with disabilities, we have a responsibility to help educate others and speak up if we witness discrimination. If we all work together, we can turn the wheels of justice more quickly and all benefit from the full and equal participation of our friends, colleagues and loved ones and their animal partners.

Thank you.

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RESOURCES

The Air Carrier Access Act:

<http://airconsumer.ost.dot.gov/rules/Part%20382-2008.pdf>

The Americans with Disabilities Act:

<http://www.ada.gov/>

Americans with Disabilities Act Information Line:

[\(800\) 514-0301](tel:(800)514-0301)

Business Brief from the Department of Justice:

<http://www.usdoj.gov/crt/ada/svcabrpt.pdf>

California state law webpage--check "all" box and search for "service dog":

<http://leginfo.ca.gov/calaw.html>

Housing and Urban Development:

<http://www.hud.gov/>

IRS Letter re medical tax deduction for service animals:

<http://www.irs.gov/pub/irs-wd/10-0129.pdf>

Psychiatric service dog articles:

<http://www.psychdog.org/lifestyle.html>

Psychiatric service dogs FAQ:

<http://www.psychdog.org/faq.html>

The Rehabilitation Act:

<http://www.ed.gov/policy/speced/reg/narrative.html>

State law webpage links and their relevant search terms:

http://www.psychdog.org/lifestyle_statelaws.html

Training resources:

<http://www.psychdog.org/training.html>

Videos geared towards police and business owners:

http://www.calodging.com/products/service_animals.shtml

SAMPLE ADVOCACY LETTER

To: Lucky Supermarket, El Cerrito Plaza
1000 El Cerrito Plaza
El Cerrito, CA 94530

CC: Lucky Supermarkets
Attn: Consumer Relations
P.O. Box 4278
Modesto, CA 95352

To Whom It May Concern:

On the afternoon of May 1st 2011 I visited your Lucky Supermarket located at 1000 El Cerrito Plaza, in El Cerrito, CA. I was accompanied by my well-trained, well-groomed, clearly identified service dog who mitigates my disabilities. Most of our visit in your store was pleasant, however when we approached the butcher counter, it took a very nasty turn.

I had to wait in line, and while waiting I noticed that the person in front of me in line was talking with the butcher about me. They were discussing me and my service dog. I believe they were talking louder than they might normally talk on purpose, so that I might overhear them, since they kept looking pointedly at me during their conversation. The butcher and the customer openly questioned the fact that I have a disability, and complained greatly about my service dog. They essentially said my dog was a health hazard, and that I was faking a disability to bring my pet into the store. There really is no bigger insult to someone with a disability than to be accused of faking a disability.

Overhearing this conversation caused me great upset, so much so that my service dog alerted me to an impending episode (my symptoms are greatly worsened by stress), and I had to leave the line to take care of it. Eventually I returned, and we were helped by a different butcher. By that time, I was having so many symptoms we were unable to look around the store for anything else, and I had to go home and spend the day dealing with my symptoms from this interaction.

I therefore ask that you educate this employee (and any others who might be confused on the matter) on how to interact with people with disabilities using service animals. The California Hotel and Lodging Association has videos and pamphlets that they can be asked to watch or read:

http://www.calodging.com/products/service_animals.shtml

Additionally, they should probably review the Department of Justice's business brief:

<http://www.ada.gov/svcabrpt.pdf>

If you would like, I and other service dog handlers who live in the area would be willing to conduct an informational meeting for any of your employees who are interested.

Please don't hesitate to contact me with any questions or concerns.

Thank you,

Dr. Veronica Morris