



MANAGING REQUESTS TO BRING ANIMALS INTO THE WORKPLACE

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This publication is intended for general purposes only and is not intended to provide legal advice. If you have questions about particular legal issues or about the application of the law specific factual situations, CIRMA strongly recommends that you consult your attorney.

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Introduction

Animals have long been used to provide companionship and aid to their owners. In the past decade, this practice has expanded through various programs while, simultaneously, protections have been more clearly defined through legislation.

Specifically, qualifications and regulations concerning service animals have been classified and regulated federally in the Americans with Disabilities Act (ADA). With these developments, there have been several questions amongst municipal and school officials related to accommodations for employees, patrons, and students.

CIRMA understands workplace trends – and the risks they bring – to help you prevent unnecessary liability and protect your entity. The purpose of this whitepaper is to:

- Clearly define the requirements for service animals under the ADA
- Illustrate how the definition of service animals differs from therapy animals and emotional support animals
- Provide recommendations on how to mitigate potential exposures

Background

Service Animals

An easy way to classify a service animal is to identify whether it is owned to assist its handler with a disability. According to the ADA, a person with a disability is someone who:

- Has a physical or mental impairment that substantially limits one or more major life activities
- Has a history or record of such an impairment (such as cancer that is in remission)
- Is perceived by others as having such an impairment (e.g., a person who has scars from a severe burn)¹

If it is apparent that the animal is aiding the handler with a disability, then it is considered to be a service animal.

Service animals are defined federally by the ADA. The Department of Justice published revised final regulations implementing the Americans with Disabilities Act (ADA) for title II

¹ <https://www.ada.gov/topics/intro-to-ada/>

**Pets Not
Permitted Except
Service Animals**



and title III on September 15, 2010 in the Federal Register. These requirements, or rules, contain updated requirements, including the 2010 Standards for Accessible Design.

The *ADA Requirements: Service Animals*² publication provides guidance on the term “service animal” and the service animal provisions in the Department’s regulations.

- Beginning March 15, 2011, only dogs (and miniature horses, when reasonable) are recognized as service animals under titles II and III of the ADA
- A service animal is a dog individually trained to do work or perform tasks for a person with a disability
- Generally, Title II and Title III entities must permit service animals to accompany people with disabilities in all areas where members of the public are allowed

A service dog is trained to help people with disabilities such as visual impairments, mental illnesses, seizure disorders, diabetes, etc.

Service animals are individually trained to do work or perform tasks. Examples include:

- Guiding people who are blind
- Alerting people who are deaf
- Pulling a wheelchair
- Alerting and protecting a person who is having a seizure
- Reminding a person with a mental illness to take prescribed medications
- Calming a person who has endured a Post-Traumatic Stress Incident (PTSI)
- Performing other duties

Under the ADA, local governments, businesses, and non-profit organizations that serve the public, generally must allow service animals to accompany people with disabilities in all areas of a facility where the public is allowed. The service animal must be under the control of its handler and must be harnessed, leashed, or tethered unless the individual’s disability prevents using these devices or these devices interfere with the service animal’s safe, effective performance of tasks.

² <https://www.ada.gov/resources/service-animals-2010-requirements/>

³ <https://adata.org/service-animal-resource-hub/differences>

Some scenarios may exist where it is not apparent if the handler has a disability or if the animal is providing a service.

Therapy Animals

The relationship between a therapy animal and its handler differs from that of a service animal. “A service dog is trained to help people with disabilities such as visual impairments, mental illnesses, seizure disorders, diabetes, etc. A therapy dog is trained to provide comfort and affection to people in hospice, disaster areas, retirement homes, hospitals, nursing homes, schools, and more” (Alt, 2017).

While service animals provide a service for the handler, therapy animals provide comfort for other public members.

Because therapy animals do not assist individuals with disabilities, they are not protected under the ADA and are not covered by federal laws protecting service animals. Thus, therapy animals are not automatically permitted in public areas, as such protections only apply to service animals.

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Emotional Support Animals

According to the U.S. Department of Housing and Urban Development (HUD), an emotional support animal is any animal that provides emotional support, alleviating one or more symptoms or effects of a person’s disability. Emotional support animals provide companionship, relieve loneliness, and sometimes help with depression, anxiety, and specific phobias. Still, they do not have special training to perform tasks that assist people with disabilities.³

Guidance issued by the ADA in 2020 is clear: “Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA.”²



Liability and Recommendations

Service Animals and Members of the Public

According to the ADA, service animals shall be permitted where the general public can go, given that their presence does not compromise a sterile environment or provide some reasonable health risk.⁴ Facilities or events that serve food must allow service animals in public areas.

The only instances where the person with a disability may be asked to remove the service animal from the premises are if the dog is out of control and the handler does not take effective action to control it or if the animal is not housebroken.

Staff is not allowed to require members of the general public to provide training documentation for the animal or ask that the animal demonstrate its services. In the same vein, employers and staff are allowed to ask just two questions:

1. Is the dog a service animal required because of a disability?
2. What work or task has the dog been trained to perform?

⁴ Members may want to consider consulting with their legal counsel on what is considered a reasonable health risk. For instance, human allergies to certain types of animals are not considered a health risk and would not be grounds to ask that the Service Animal be removed; however, the individual who is allergic may also need to be accommodated.

⁵ <https://adata.org/publication/service-animals-booklet>

It must be noted that staff cannot ask about the nature of the individual’s disability.

Service Animals and Students

In educational environments, students with disabilities are permitted to have service animals in schools under the Individuals with Disabilities Education Act (IDEA). If the animal does not meet the ADA definition of a service animal, the student’s Individual Education Plan (IEP) or Section 504 team must decide if the animal is necessary for the student to receive a free and appropriate education.⁵

In educational environments, students with disabilities are permitted to have service animals in schools under the Individuals with Disabilities Education Act (IDEA).

Service Animals and Employees

Under the ADA, employers must provide reasonable accommodations for employees with disabilities. A “reasonable accommodation” is *any change to the job, the way the job is done, or the work environment that allows a person with a disability who is qualified to perform the job’s essential functions and enjoy equal employment opportunities.*⁶



According to the Equal Employment Opportunity Commission (EEOC) and Title I of the ADA, each request for a reasonable accommodation must be considered on a case-by-case basis and interactive, with participation by both the person with the disability and the employer.



Employers are strongly encouraged to review each ADA request with their legal counsel.

An additional value-added resource available to CIRMA Members is the CIRMA Employment Practices Liability

Helpline⁷, in which each member can access experienced partner attorneys who provide expert legal advice on all aspects of employment practices law. Each CIRMA member is provided one hour of advice per month.

When reviewing the ADA request with legal counsel, consider ensuring that the service animal be harnessed, leashed, or tethered unless the individual’s disability prevents using these devices or these devices interfere with the service animal’s safe, effective performance of tasks.

Therapy Animals and Emotional Support Animals

Animals that are **not** service animals, such as therapy and emotional support animals, may not be allotted the same protections as service animals. In other words, the municipality may not be required to permit therapy or emotional support animals access to their buildings. Such requests should be considered on a case-by-case basis.

Employees Requesting to Bring Therapy Animals and Emotional Support Animals to Work

CIRMA-member municipalities and school districts can have a variety of questions regarding whether their employees can bring their therapy animals or an emotional support animal into the workplace.



⁶ <https://adata.org/factsheet/reasonable-accommodations-workplace>

⁷ <https://cirma.ccm-ct.org/employment-practices-liability-helpline>



Liability tends to follow the animal, almost like liability often follows the vehicle in automobile liability. However, when the employer has knowledge of a program and allows the program to exist, the employer may be found liable for damages that result from the program, even if the employer does not endorse or promote the program.

Therefore, if an employee is requesting to bring an animal into the workplace, CIRMA Risk Management recommends that the employer consider the following:

1. Determine if the animal is a service animal. (see *Service Animals and Employees*)
2. Draft a contract / Memo of Understanding (MOU) that states the employer is not endorsing this program and that the program is beyond the scope of the employee's employment or job duties. Consider utilizing the CIRMA Contract Review⁸ program before finalizing any agreements.
3. Require the employee to name the employer (Town of XXXX, XXXX Public Schools, or XXXX School) as an additional insured on the handler's insurance policy and provide the employer a Certificate of Insurance (COI).
 - Please note that most therapy animals have obtained training through a nationally accredited program, many of which provide insurance. Therefore, the therapy animal handler (employee) likely has proof that the animal is insured, and such a policy should be endorsed to name the employer as an additional insured. If the employee does not have such insurance, then the process should be followed with the handler's home-owner's insurance.
4. Obtain and maintain the following documentation:
 - The MOU from Step 2
 - The COI from Step 3
 - A copy of the dog's registration
 - A copy of the dog's therapy dog license
 - A copy of the dog's immunization records
 - A copy of the dog's training records

⁸ <https://cirma.ccm-ct.org/contract-review/>



5. Before permitting the animal into the workplace, it is beneficial to communicate with your staff.
 - Note that allergies (such as an allergy to an animal) are typically covered under the ADA. If a staff member notifies the employer that the individual has an allergy to the animal, the employer would be required by law to begin the interactive process defined under the ADA to determine if there are reasonable accommodations that can be made.
 - Please be aware that some individuals may be afraid of dogs/animals. Some extreme cases of cynophobia (a fear of dogs) may also be covered under the ADA. Therefore, if this case arises, the district may also be required to begin the above interactive process.
 - Neither allergies nor cynophobia are reasons to prohibit a service animal from the workplace.



As with all programs that aim to mitigate liability, the municipality should consult its legal counsel before implementing any program.



Conclusion

While liability and damages stemming from animals tend to follow the animal, municipalities may still have exposure when allowing employees and patrons to bring their furry companions into their facilities. Therefore, the municipality should consider implementing a policy regarding service animals and how they differ from other animals. Such a policy should be communicated to staff to ensure that employees know what to do. This communication may involve regular training and communication of these policies to employees and patrons.

In this program, employees should develop a clear understanding of the municipality's views on therapy animals on the premises and potential questions to ask handlers when assessing if the animal is providing a service. Employers should always work with their legal counsel to ensure compliance with applicable state and federal laws, such as the ADA, when developing policies and procedures. With these aspects in mind, municipalities can further limit their liability while maintaining a welcoming and safe environment for their constituents.

APPENDIX

Table: Classification and key roles of working dogs⁹

| Term | Key Role | Assistance for Disability? | Highly Skilled? | Assists a Professional? | Certification Available? | Access Protections? |
|------------------------------|--|----------------------------|---------------------|-------------------------|--------------------------|---------------------|
| Service Dog | Works or performs tasks for disabled person | Yes | Yes | No | Variable or limited | Yes |
| Public Service Dog | Assists public service personnel (e.g., police) | No | Yes | Yes | Yes | Variable or limited |
| Therapy Dog | Used by health care professional to implement treatment | Variable or limited | Variable or limited | Yes | Yes | No |
| Visitation Dog | Provides comfort support, companionship and social interaction | No | No | No | Yes | No |
| Sporting or Agricultural Dog | Participates in competition, transport, farming, or recreation | No | Variable or limited | No | Yes | No |
| Support Dog | Provides emotional support to individuals primarily in homes | Yes | Variable or limited | No | No | Variable or limited |

⁹ <https://www.mdedge.com/psychiatry/article/82674/practice-management/could-rx-pet-therapy-come-back-bite-you>



About CIRMA

CIRMA was established as a Connecticut Conference of Municipalities (CCM) service program—Connecticut’s association of towns and cities. Today, CIRMA is Connecticut’s number-one municipal risk financing and risk management services provider for Connecticut’s public entities. A member-owned and governed agency, CIRMA provides high-quality, tailored insurance for municipalities, school districts, and local public agencies. CIRMA operates competitive Workers’ Compensation and Liability-Auto-Property pools and provides holistic claims services and risk management solutions exclusively to the Connecticut public sector.



Connecticut Interlocal Risk Management Agency
545 Long Wharf Drive, 8th Floor, New Haven, CT 06511