



A Member Benefit

2017 ADA UPDATE ON SERVICE ANIMAL RULES

The California Hotel & Lodging Association receives many questions regarding the rights and obligations of lodging establishments with respect to service animals. This document contains CHLA's updated discussion of this topic.

First, there has been a significant change regarding California law related to service animals. This change, which is discussed below, will make it easier for lodging operators to deal with guests who claim that their pets are service animals.

Here are the basics of California law as it relates to service animals:

- There was a time when the California Department of Fair Employment and Housing, which administers California's Fair Employment and Housing Act (**Act**), took the position that the Act applied to the lodging industry. At that time, there was concern that lodging operators would have to comply with the more stringent requirements of the Act: **(1)** it is not limited to dogs—depending on the circumstances, the FEHA protects other types of animals and treats them as service animals; and **(2)** it provides protections for people who use "comfort" and "companion" animals.

Contrary to the Department's earlier position, however, CHLA was recently advised that the Act only applies to homes, condos, and apartments, and that it does not apply to hotels!

- It is important for lodging operators to bear in mind that although the 2011 revisions to the ADA rules regarding service animals expressly state that **(1)** only dogs qualify as service animals,¹ and that **(2)** "comfort" and "companion" dogs are not service animals,² if a local jurisdiction in California has broader, more stringent rules than the ADA, the local rules must be complied with. See, for example, San Francisco's rules regarding "[Service and Support Animals](#)." Some other local jurisdictions might have more stringent rules as well.³
- California law expressly provides protections for dogs that are "still in training." For example, California Civil Code Section 54.2(b) requires businesses to admit "sight" dogs, "signal" dogs, and "service" dogs in training.⁴ Failure to admit people who are training

service dogs is also a misdemeanor in California.⁵

- The wrongful refusal to accommodate a service dog not only violates the ADA, it is a crime in California.⁶
- In addition, the wrongful refusal to accommodate a service dog is a violation of California's Unruh Civil Right Act and the Disabled Persons Act. These violations can expose lodging operators to substantial financial liability.
- Civil Code Section 54.25 provides that "A peace officer or firefighter assigned to a canine unit or the handler of a search and rescue dog assigned to duty away from his or her home jurisdiction because of a declared federal, state, or local emergency, or an official mutual aid request or training, and in the course and scope of his or her duties shall not be denied service based on the presence of the dog or discriminated against in hotels, lodging establishments, eating establishments, or public transportation by being required to pay an extra charge or security deposit for the dog. However, the peace officer's law enforcement agency, the firefighter's fire agency, or the handler of a search and rescue dog shall be liable for any damages to the premises or facilities caused by the dog."

The U.S. Department of Justice (**DOJ**) issued in 2015 a new document, "Frequently Asked Questions about Service Animals and the ADA," which addresses many of the questions and problems that have continued to plague business owners. DOJ's new FAQs are set out below, along with comments from CHLA giving additional guidance.

Frequently Asked Questions about Service Animals and the ADA

Many people with disabilities use a service animal in order to fully participate in everyday life. Dogs can be trained to perform many important tasks to assist people with disabilities, such as providing stability for a person who has difficulty walking, picking up items for a person who uses a wheelchair, preventing a child with autism from wandering away, or alerting a person who has hearing loss when someone is approaching from behind.

The Department of Justice continues to receive many questions about how the Americans with Disabilities Act (ADA) applies to service animals. The ADA requires State and local government agencies, businesses, and non-profit organizations (covered entities) that provide goods or services to the public to make "reasonable modifications" in their policies, practices, or procedures

when necessary to accommodate people with disabilities. The service animal rules fall under this general principle. Accordingly, entities that have a "no pets" policy generally must modify the policy to allow service animals into their facilities. This publication provides guidance on the ADA's service animal provisions and should be read in conjunction with the publication [ADA Revised Requirements: Service Animals](#).

DEFINITION OF A SERVICE ANIMAL

Q1. What is a service animal?

A. Under the ADA, a service animal is defined as a dog that has been individually trained to do work or perform tasks for an individual with a disability. The task(s) performed by the dog must be directly related to the person's disability.

Q2. What does "do work or perform tasks" mean?

A. The dog must be trained to take a specific action when needed to assist the person with a disability. For example, a person with diabetes may have a dog that is trained to alert him when his blood sugar reaches high or low levels. A person with depression may have a dog that is trained to remind her to take her medication. Or, a person who has epilepsy may have a dog that is trained to detect the onset of a seizure and then help the person remain safe during the seizure.

Q3. Are emotional support, therapy, comfort, or companion animals considered service animals under the ADA?

A. No. These terms are used to describe animals that provide comfort just by being with a person. Because they have not been trained to perform a specific job or task, they do not qualify as service animals under the ADA. However, some State or local governments have laws that allow people to take emotional support animals into public places. (See [San Francisco's rules regarding "Service and Support Animals."](#)) You may check with your State and local government agencies to find out about these laws.

Q4. If someone's dog calms them when having an anxiety attack, does this qualify it as a service animal?

A. It depends. The ADA makes a distinction between psychiatric service animals and emotional support animals. If the dog has been trained to sense that an anxiety attack is about to happen and take a specific action to help avoid the attack or lessen its impact, that would qualify as a service animal.² However, if the dog's mere presence provides comfort, that would not be considered a service animal under the ADA.

Q5. Does the ADA require service animals to be professionally trained?

A. No. People with disabilities have the right to train the dog themselves and are not required to use a professional service dog training program.

Q6. Are service-animals-in-training considered service animals under the ADA?

A. No. Under the ADA, the dog must already be trained before it can be taken into public places. However, some State or local laws cover animals that are still in training.

GENERAL RULES

Q7. What questions can a covered entity's employees ask to determine if a dog is a service animal?

A. In situations where it is not obvious that the dog is a service animal, staff may ask only two specific questions: (1) is the dog a service animal required because of a disability? and (2) what work or task has the dog been trained to perform? Staff are not allowed to request any documentation for the dog, require that the dog demonstrate its task, or inquire about the nature of the person's disability.

Q8. Do service animals have to wear a vest or patch or special harness identifying them as service animals?

A. No. The ADA does not require service animals to wear a vest, ID tag, or specific harness.

CHLA Comment: California law requires the Department of Food and Agriculture to come up with the specifics (size, shape, color, etc.) of tags identifying dogs as service animals. To CHLA's knowledge, the Department has not done so. However, many local animal control agencies provide such tags.

Q9. 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, and grooming and veterinary care. Covered entities are not obligated to supervise or otherwise care for a service animal.

Q10. Can a person bring a service animal with them as they go through a salad bar or other self-service food lines?

A. Yes. Service animals must be allowed to accompany their handlers to and through self-service food lines. Similarly, service animals may not be prohibited from communal food preparation areas, such as are commonly found in shelters or dormitories.

Q11. Can hotels assign designated rooms for guests with service animals, out of consideration for other guests?

A. No. A guest with a disability who uses a service animal must be provided the same opportunity to reserve any available room at the hotel as other guests without disabilities. They may not be restricted to "pet-friendly" rooms.

Q12. Can hotels charge a cleaning fee for guests who have service animals?

No. Hotels are not permitted to charge guests for cleaning the hair or dander shed by a service animal. However, if a guest's service animal causes damages to a guest room, a hotel is permitted to charge the same fee for damages as charged to other guests.

Q13. Can people bring more than one service animal into a public place?

A. Generally, yes. Some people with disabilities may use more than one service animal to perform different tasks. For example, a person who has a visual disability and a seizure disorder may use one service animal to assist with way-finding and another that is trained as a seizure alert dog. Other people may need two service animals for the same task, such as a person who needs two dogs to assist him or her with stability when walking. Staff may ask the two permissible questions (See Question 7) about each of the dogs. If both dogs can be accommodated, both should be allowed in. In some circumstances, however, it may not be possible to accommodate more than one service animal. For example, in a crowded small restaurant, only one dog may be able to fit under the table. The only other place for the second dog would be in the aisle, which would block the space between tables. In this case, staff may request that one of the dogs be left outside.

Q14. Does a hospital have to allow an in-patient with a disability to keep a service animal in his or her room?

A. Generally, yes. Service animals must be allowed in patient rooms and anywhere else in the hospital the public and patients are allowed to go. They cannot be excluded on the grounds that staff can provide the same services.

Q15. What happens if a patient who uses a service animal is admitted to the hospital and is unable to care for or supervise their animal?

A. If the patient is not able to care for the service animal, the patient can make arrangements for a family member or friend to come to the hospital to provide these services, as it is always preferable that the service animal and its handler not be separated, or to keep the dog during the hospitalization. If the patient is unable to care for the dog and is unable to arrange for someone else to care for the dog, the hospital may place the dog in a boarding facility until the patient is released, or make other appropriate arrangements. However, the hospital must give the patient the opportunity to make arrangements for the dog's care before taking such steps.

Q16. Must a service animal be allowed to ride in an ambulance with its handler?

A. Generally, yes. However, if the space in the ambulance is crowded and the 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.

CERTIFICATION AND REGISTRATION

Q17. Does the ADA require that service animals be certified as service animals?

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.

There are individuals and organizations that sell service animal certification or registration documents online. These documents do not convey any rights under the ADA and the Department of Justice does not recognize them as proof that the dog is a service animal.

Q18. My city requires all dogs to be vaccinated. Does this apply to my service animal?

A. Yes. Individuals who have service animals are not exempt from local animal control or public health requirements.

Q19. My city requires all dogs to be registered and licensed. Does this apply to my service animal?

A. Yes. Service animals are subject to local dog licensing and registration requirements.

Q20. My city requires me to register my dog as a service animal. Is this legal under the ADA?

A. No. Mandatory registration of service animals is not permissible under the ADA. However, as stated above, service animals are subject to the same licensing and vaccination rules that are applied to all dogs.

Q21. My city / college offers a voluntary registry program for people with disabilities who use service animals and provides a special tag identifying the dogs as service animals. Is this legal under the ADA?

A. Yes. Colleges and other entities, such as local governments, may offer voluntary registries. Many communities maintain a voluntary registry that serves a public purpose, for example, to ensure that emergency staff know to look for service animals during an emergency evacuation process. Some offer a benefit, such as a reduced dog license fee, for individuals who register their service animals. 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 in public places. This would be a violation of the ADA.

BREEDS

Q22. Can service animals be any breed of dog?

A. Yes. The ADA does not restrict the type of dog breeds that can be service animals.

Q23. Can individuals with disabilities be refused access to a facility based solely on the breed of their service animal?

A. No. A service animal may not be excluded based on assumptions or stereotypes about the animal's breed or how the animal might behave. However, if a particular service animal behaves in a way that poses a direct threat to the health or safety of others, has a history of such behavior, or is not under the control of the handler, that animal may be excluded. If an animal is excluded for such reasons, staff must still offer their goods or services to the person without the animal present.

Q24. If a municipality has an ordinance that bans certain dog breeds, does the ban apply to service animals?

A. No. Municipalities that prohibit specific breeds of dogs must make an exception for a service animal of a prohibited breed, unless the dog poses a direct threat to the health or safety of others. Under the "direct threat" provisions of the ADA, local jurisdictions need to determine, on a case-by-case basis, whether a particular service animal can be excluded based on that particular animal's actual behavior or history, but they may not exclude a service animal because of fears or generalizations about how an animal or breed might behave. It is important to note that breed restrictions differ

significantly from jurisdiction to jurisdiction. In fact, some jurisdictions have no breed restrictions.

EXCLUSION OF SERVICE ANIMALS

Q25. When can service animals be excluded?

A. The ADA does not require covered entities to modify policies, practices, or procedures if it would “fundamentally alter” the nature of the goods, services, programs, or activities provided to the public. Nor does it overrule legitimate safety requirements. If admitting service animals would fundamentally alter the nature of a service or program, service animals may be prohibited. In addition, if a particular service animal is out of control and the handler does not take effective action to control it, or if it is not housebroken, that animal may be excluded.

Q26. When might a service dog's presence fundamentally alter the nature of a service or program provided to the public?

A. In most settings, the presence of a service animal will not result in a fundamental alteration. However, there are some exceptions. For example, at a boarding school, service animals could be restricted from a specific area of a dormitory reserved specifically for students with allergies to dog dander. At a zoo, service animals can be restricted from areas where the animals on display are the natural prey or natural predators of dogs, where the presence of a dog would be disruptive, causing the displayed animals to behave aggressively or become agitated. They cannot be restricted from other areas of the zoo.

Q27. What does under control mean? Do service animals have to be on a leash? Do they have to be quiet and not bark?

A. The ADA requires that service animals be under the control of the handler at all times. In most instances, the handler will be the individual with a disability or a third party who accompanies the individual with a disability. In the school (K-12) context and in similar settings, the school or similar entity may need to provide some assistance to enable a particular student to handle his or her service animal. The service animal must be harnessed, leashed, or tethered while in public places unless these devices interfere with the service animal's work or the person's disability prevents use of these devices. In that case, the person must use voice, signal, or other effective means to maintain control of the animal. For example, a person who uses a wheelchair may use a long, retractable leash to allow her service animal to pick up or retrieve items. She may not allow the dog to wander away from her and must maintain control of the dog, even if it is retrieving an item at a distance from her. Or, a returning veteran who has PTSD and has great difficulty entering unfamiliar spaces may have a dog that is trained to enter a space, check to see that no threats are there, and come back and signal that

it is safe to enter. The dog must be off leash to do its job, but may be leashed at other times. Under control also means that a service animal should not be allowed to bark repeatedly in a lecture hall, theater, library, or other quiet place. However, if a dog barks just once, or barks because someone has provoked it, this would not mean that the dog is out of control.

Q28. What can my staff do when a service animal is being disruptive?

A. If a service animal is out of control and the handler does not take effective action to control it, staff may request that the animal be removed from the premises.

Q29. Are hotel guests allowed to leave their service animals in their hotel room when they leave the hotel?

A. No, the dog must be under the handler's control at all times.

Q30. What happens if a person thinks a covered entity's staff has discriminated against him or her?

A. Individuals who believe that they have been illegally denied access or service because they use service animals may file a complaint with the U.S. Department of Justice. Individuals also have the right to file a private lawsuit in Federal court charging the entity with discrimination under the ADA.

MISCELLANEOUS

Q31. Are stores required to allow service animals to be placed in a shopping cart?

A. Generally, the dog must stay on the floor, or the person must carry the dog. For example, if a person with diabetes has a glucose alert dog, he may carry the dog in a chest pack so it can be close to his face to allow the dog to smell his breath to alert him of a change in glucose levels.

Q32. Are restaurants, bars, and other places that serve food or drink required to allow service animals to be seated on chairs or allow the animal to be fed at the table?

A. No. Seating, food, and drink are provided for customer use only. The ADA gives a person with a disability the right to be accompanied by his or her service animal, but covered entities are not required to allow an animal to sit or be fed at the table.

Q33. Are gyms, fitness centers, hotels, or municipalities that have swimming pools required to allow a service animal in the pool with its handler?

A. No. The ADA does not override public health rules that prohibit dogs in swimming pools. However, service animals must be allowed on the pool deck and in other areas where the public is allowed to go.

Q34. Are churches, temples, synagogues, mosques, and other places of worship required to allow individuals to bring their service animals into the facility?

A. No. Religious institutions and organizations are specifically exempt from the ADA. However, there may be State laws that apply to religious organizations.

Q35. Do apartments, mobile home parks, and other residential properties have to comply with the ADA?

A. The ADA applies to housing programs administered by state and local governments, such as public housing authorities, and by places of public accommodation, such as public and private universities. In addition, the Fair Housing Act applies to virtually all types of housing, both public and privately-owned, including housing covered by the ADA. Under the Fair Housing Act, housing providers are obligated to permit, as a reasonable accommodation, the use of animals that work, provide assistance, or perform tasks that benefit persons with disabilities, or provide emotional support to alleviate a symptom or effect of a disability. For information about these Fair Housing Act requirements see HUD's [Notice on Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-funded Programs](#).

Q36. Do Federal agencies, such as the U.S. Department of Veterans Affairs, have to comply with the ADA?

A. No. Section 504 of the Rehabilitation Act of 1973 is the Federal law that protects the rights of people with disabilities to participate in Federal programs and services. For information or to file a complaint, contact the agency's equal opportunity office.

Q37. Do commercial airlines have to comply with the ADA?

A. No. The Air Carrier Access Act is the Federal law that protects the rights of people with disabilities in air travel. For information or to file a complaint, contact the U.S. Department of Transportation, Aviation Consumer Protection Division, at 202-366-2220.

Members with additional questions on this topic are free to contact Jim Abrams, CHLA's Member Legal Advisor: jim@calodging.com.

¹ Note that "miniature horses" can also qualify as service animals under the ADA.

² [Discussion of the important distinction between psychiatric service dogs and "emotional support" dogs \(e.g., comfort and companion dogs\)](#)

³ [For example, comfort rats are protected in Hesperia, CA.](#)

⁴ (b) Individuals who are blind or otherwise visually impaired and persons licensed to train guide dogs for individuals who are blind or visually impaired pursuant to Chapter 9.5 (commencing with Section 7200) of Division 3 of the Business and Professions Code or as defined in regulations implementing Title III of the Americans with Disabilities Act of 1990 (Public Law 101-336), and individuals who are deaf or hearing impaired and persons authorized to train signal dogs for individuals who are deaf or hearing impaired, and individuals with a disability and persons who are authorized to train service dogs for the individuals with a disability may take dogs, for the purpose of training them as guide dogs, signal dogs, or service dogs in any of the places specified in Section 54.1 without being required to pay an extra charge or security deposit for the guide dog, signal dog, or service dog. However, the person shall be liable for any damage done to the premises or facilities by his or her dog. These persons shall ensure the dog is on a leash and tagged as a guide dog, signal dog, or service dog by an identification tag issued by the county clerk, animal control department, or other agency, as authorized by Chapter 3.5 (commencing with Section 30850) of Title 14 of the Food and Agricultural Code.

A violation of the right of an individual under the Americans with Disabilities Act of 1990 (Public Law 101-336) also constitutes a violation of this section, and nothing in this section shall be construed to limit the access of any person in violation of that act.

⁵ Penal Code Section 365.5(i).

⁶ Penal Code Section 365.6. **(a)** Any person who, with no legal justification, intentionally interferes with the use of a guide, signal, or service dog or mobility aid by harassing or obstructing the guide, signal, or service dog or mobility aid user or his or her guide, signal, or service dog, is guilty of a misdemeanor, punishable by imprisonment in a county jail not exceeding six months, or by a fine of not less than one thousand five hundred dollars (\$1,500) nor more than two thousand five hundred dollars (\$2,500), or both that fine and imprisonment.

(b) As used in this section, the following definitions shall apply:

(1) "Mobility aid" means any device enabling a person with a disability, as defined in subdivision (b) of Section 54 of the Civil Code, to travel independently, including, but not limited to, a guide, signal, or service dog, as defined in Section 54.1 of the Civil Code, a wheelchair, walker or white cane.

(2) "Guide, signal, or service dog" means any dog trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to,

guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, pulling a wheelchair, or fetching dropped items.

(c) Nothing in this section is intended to affect any civil remedies available for a violation of this section.

⁷ ["California Laws on Psychiatric Service Dogs and Emotional Support Animals in Public Places."](#)

Psychiatric Service Dog Requirements

California is one of the states in which a dog that is trained to perform tasks that benefit a person with psychiatric disabilities is considered a "psychiatric service animal." The work performed by the service animal must be identifiable and related directly to an individual's diagnosed psychiatric disability. The dog's trainer or handler is required to teach that animal to recognize and respond to the unique needs of the person with the disability. <http://pets.thenest.com/service-dog-requirements-california-9795.html>.