

Managing Service Animals and Emotional Support Animals



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Managing Service and Emotional Support Animals

Today's Objectives

1. Clearly Identify a Service Animal
2. Clearly understand DOJ guidance for Service Animals
3. Clearly identify an Emotional Support Animal (Assistance Animal under HUD)
4. Understand the differences between the two.
5. Understand HUD guidelines for ESA's

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Service Animals

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Service Animals

Definition:

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.

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Service Animals

Definition of a “task”:

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.

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Miniature Horses?

- Addition of Miniature Horses resulted from entreaties and public comments, as well as DOJ's own casework.
- Determined that a miniature horse was a reasonable accommodation under ADA.

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Is calming someone who is having a panic attack a “Task”?

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.

However, if the dog's mere presence provides comfort, that would not be considered a service animal under the ADA.

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Where can Service Animals be Taken?

- Service Animals can be taken into any area or facility that is open and accessible to the general public.
- This includes all government buildings and offices.

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Remember, the need for a Service Animal may not be visibly obvious!

If the need is obvious, such as for a blind person needing it for guidance, then you may not ask any questions of the student or restrict their activity.

If the need for the Service Animal is not obvious, you may ask two questions of the individual:

1. Do you have the animal because of a disability?
2. What TASK is it trained to do?

If they answer yes and give you a specific task, that is all the information that you can legally ask for. If they state it is in training, it may be removed.

Service Animals in training are NOT service animals.

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Service Animals in Training under ADA

- Under the ADA, the dog must already be trained before it can be taken into public places.
- However, some States (including Georgia) and/or local laws cover animals that are still in training.

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The ADA does not require that service animals be certified as service animals!

- 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.
- 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.

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Can an Individual Buy a Certification?

- 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.

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Other Important Regulations!

1. The ADA does not require service animals to wear a vest, ID tag, or specific harness identifying them as a Service Animal.
2. People with disabilities have the right to train the dog themselves and are not required to use a professional service dog training program.
3. Individuals who have service animals are NOT exempt from local animal control or public health requirements. Service animals are subject to local dog licensing and registration requirements.
4. Mandatory registration of service animals is not permissible under the ADA. 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.

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More Important Regulations

1. ****The ADA requires that service animals be under the full control of the handler at all times.**
2. 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.

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Examples

1. A person who uses a wheelchair may use a long, retractable leash to allow her service animal to pick up or retrieve items. They may not allow the dog to wander away from them and must maintain control of the dog, even if it is retrieving an item at a distance from them.
2. 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 must be leashed all other times.

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- If a service animal is out of control and the handler does not take effective action to control it, or if it is not housebroken, you may request that the animal be removed from the premises.
- Service Animals must be allowed access to any areas that are available to the general public, including academic buildings on campus and government buildings.

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Service Animals in Restaurants, Labs and Clinics

Under guidance from the Department of Justice and the Center for Disease Control...

“Service animals are considered no more of a health risk than a human. Therefore, unless there is a requirement for face coverings and foot coverings, service animals must be allowed into any setting people are permitted into.”

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Service Animals in Dining & Residence Hall Facilities

This is the same guiding principle that allows Service Animals into:

1. All dining and food facilities.
2. Bathrooms and common living areas.
3. Lobbies and recreation facilities.

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Other Important Points

- The ADA does not restrict the type of dog breeds that can be service animals.
- A service animal may not be excluded based on assumptions or stereotypes about the animal's breed or how the animal might behave.

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Breeds of Dogs

- 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.

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DOJ's General Rules for Denial of Service Animals

1. Would allowing the Service Animal fundamentally alter the nature of the program?
2. Does the Service Animal pose a direct threat to the health and safety of others?
3. Is it out of control?
4. Is it housebroken?

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Bennett vs Hurley Medical Center

- Mia Bennett (“Bennett”) is paired with her service dog, Pistol, due to a panic disorder. Bennett completed a clinical rotation at Hurley Medical Center (Hurley) as part of her nursing student education. Before beginning the rotation, she requested Pistol be permitted to accompany her at work, and Hurley agreed.
- On the first day Pistol was at the hospital, a patient and a staff member both reported experiencing allergic reactions. After this, Hurley re-evaluated and cancelled Bennett’s accommodation to always have Pistol with her in the hospital. Hurley offered alternative accommodations of keeping Pistol in a crate on a separate floor of the hospital and allowing Bennett to take necessary breaks to be with him. Bennett filed suit claiming Hurley denied the Service Animal because of her panic attacks.
- The court decided under the DOJ regulations that service animals are generally allowed in areas open to the public, including healthcare facilities. However, the regulations also state that they can be kept out if the animal poses a direct threat to the health or safety of others. To decide if Pistol was a direct threat, the court judged the nature, duration, and severity of the risk, the likelihood that a potential injury will actually occur, and whether reasonable modifications of policies, practices, or procedures will reduce the risk.
- The court decided that Pistol was a direct threat because two people had allergic reactions. The court said that there was a risk of future allergic reactions in staff members and patients and the risk could be severe.
- The Sixth Circuit Court ruled that Bennett did not show the hospital stopped Pistol from accompanying her on her rotations because of her panic disorder. Because of this, she failed to show intentional discrimination.

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Local Breed Restrictions

- 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. An individualized threat assessment of the specific dog in question can be made, but not of a specific breed.

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Where Can They be Excluded?

- 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.

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Where Can They be Excluded?

- 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.

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Service Animals in Hotels

- Hotel guests may not go off and leave a service animal in the hotel room.
- The dog must be under the handler's control at all times so they cannot be left alone.

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Q&A Resource

- Below is the link to the U.S. Department of Justice's page for Q&A's. Printed copies are good to have to hand for individuals who do not want to answer any questions or do not want to maintain control of their animal.
- <https://www.ada.gov/resources/service-animals-faqs/>

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Emotional Support Animals

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What is an Assistance, or Emotional Support Animal?

An Assistance, or emotional support animal, is an animal companion that offers some type of benefit to an individual with some form of disability. The animal is intended to provide companionship and support that will help alleviate at least one aspect of the disability.

They provide:

- Anxiety relief
- Trauma support
- Reciprocal love and support

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- Emotional Support Animals are NOT considered service animals under the ADA.
- 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.
- They ARE however, covered under the Fair Housing Act as a reasonable housing accommodation.

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Emotional Support Animals on College Campuses

Legal Precedent

U.S. vs University of Nebraska at Kearney (2011)

Key points of the ruling:

1. Campus housing on a public institution is subject to the Fair Housing Act
2. Cited HUD rules that necessitate the accommodation of an ESA for “full enjoyment and use” of the dwelling.
3. UNK case also established the requirement that institutions have a process in place for processing requests for ESA's.

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Requirements for eligibility for an ESA

- Documentation from a qualified mental health professional clearly stating the need for the ESA.
- Documentation from an online website is generally not acceptable and is not recognized by HUD or DOJ.
- Not sufficient to establish an individual has a non-observable disability or a disability-related need for an ESA.
- Tele-health assessments are recognized.
- A reliable form of documentation is a note from a person's health provider that confirms a person's need for an ESA and the provider has **personal knowledge** of the individual.

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Documentation Guidelines

- Documentation can not require a specific diagnosis of a disability, but should tie the need for an ESA to the disability itself.
- Needs to follow published guidelines for documentation, including:
 1. On official letterhead.
 2. Completed by a licensed mental health professional.
 3. Completed or updated within the past year

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Warning for Colleges!!

- Documentation for ESA's is NOT the same as for classroom accommodations!
- Make SURE you do not use the same requirements for ESA's as you do for classroom accommodations!
- Academic requirements can be VERY different.
 - (Full Diagnosis, functional limitations, etc.)

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General HUD Guidelines for ESA's

- A housing provider may not charge a fee for processing the ESA request
- A housing provider may not charge a pet fee or deposit. They can charge for damage.
- **A reasonable accommodation may include alterations to a HOA rule, or zoning laws.**
- Entities are not required to provide an ESA accommodation if it constitutes a direct threat to other tenants and/or property damage.

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What animals can be an ESA?

Based on guidance from HUD in 2020:

- Dog, cat, small bird, rabbit, hamster, gerbil, other rodent, fish, turtle, or other small, domesticated animal that is traditionally kept in the home for pleasure.
- Reptiles (except turtles), barnyard animals, monkeys, kangaroos, and other non-domesticated animals are not considered common household pets.

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Unique Animals

- Animals not commonly kept as a household pet. Requestor has substantial burden of proof of a disability-related therapeutic need for the specific animal or specific type of animal.
- ESA's should be in compliance with community ordinances for pets. Any animal that is not allowed within a community due to city health ordinances, typically wild animals, would not normally be eligible as an ESA as a unique animal. (Ex., Skunks, Racoons, Opossums)

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Unique Animal Documentation

If a person is requesting a unique animal, the specific type of animal should be stated clearly in their documentation and the reason for the need:

- History of the animal with the individual
- Specific need for the unique animal
- Date of last consultation

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Unique Animals

Examples:

- The animal is individually trained to do work or perform a task that cannot be performed by a dog. (capuchin monkey)
- Allergies prevent the person from using a dog.
- The individual seeks to keep the animal outdoors at a house with a fenced yard where the animal can be appropriately maintained. (donkey)

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How Many ESA's Can an Individual Have?

- In general, an individual is entitled to a single ESA. However, in some cases an individual may request two ESA's.
- A request for more than one ESA needs to be supported by clear documentation from the mental health provider stating specifically the reasoning for needing more than one.
- **If more than one is supported by documentation, then size of the ESA can be considered.**

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Emotional Support Animals

- Individuals with both ESA's and Service Animals are fully responsible for their maintenance, including care, feeding, and all required vaccinations when applicable.
- Individuals are fully responsible for cleaning up any areas where their animals relieve themselves.
- Individuals are also fully responsible for any damage caused by the ESA or Service Animal on campus.

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Other HUD directives:

- Can recommend spay and neutering of animals, but you cannot require it!
- Can recommend animal size based on room, but must consider any animal.
- Can only REQUIRE rabies, but not full vaccinations.
- Can require unique or potentially dangerous animals to be crated.

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2020 HUD Guidance

Below is the link to the 2020 HUG Guidance for Public Housing and Apartment Complexes:

<https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf>

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A Side-By-Side Comparison of Service Animals and ESA's

Service Animal

A Dog

Trained to do a task

Permitted anywhere
on campus or in public

Assistance/ESA

Common Household Pets,
including dogs and cats

Not trained, is just present
for comfort

Only permitted in the
immediate living area

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What Would You Do?

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What would you do?

Let's look at some scenarios and see if you can determine if it is a Service Animal or an Emotional Support Animal.

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Scenario 1

At a baseball game, a family is in attendance with a large dog that is wandering around the stadium, licking other patrons and being generally friendly.

However, after a complaint you ask the family if this is a service animal and they say yes, its for their daughter's anxiety and it is their right to have it there. What do you do?

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Scenario 2

An individual has requested an ESA for their apartment. The individual cites that the request is for a cat but once they arrive to the dorm, it is a large tarantula. What do you do?

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Scenario 3

An employee brings a dog to the staff meeting, holding the dog in her arms and as she sits down, the dog remains in her lap. She claims this is her service animal. What do you do?

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Scenario 4

An individual brings their service animal, which is a 60 pound pit bull, into your office and explains that this is their service animal.

They answer the question, yes, the dog is for my disability, and the dog makes me feel better. What do you do?

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Scenario 5

You have an individual who brings a service animal on to the office on its leash, but several times a day they take it to the middle of the grounds, unleash it and let it run and chase squirrels for awhile as its reward.

When it does, it also relieves itself on the grass. What do you do?

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Q&A