

HOW TO AVOID ADA CLAIMS AS SERVICE ANIMALS INCREASE IN POPULARITY

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As retailers see an increasing number of customers seeking to bring animals into their stores, they should ensure that they have well-defined policies and train their employees concerning compliance with the ADA's provisions regarding service animals. This is the third in a three-part series addressing ADA compliance. In earlier posts we addressed how to improve accessibility and reduce potential liability for premises barriers and website accessibility.

[Title III](#) of the ADA prohibits discrimination against individuals "on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of any place of public accommodation," which includes retail stores.

Under regulations issued by the Department of Justice, service animals are dogs (or miniature horses, since some people are allergic to dogs) that are individually trained to do work or perform tasks for people with disabilities. Some state laws define service animals more broadly to include other types of animals as well. Service animals are working animals – not pets. Emotional support animals, whose sole function is to provide comfort or emotional support, do not qualify as service animals under the ADA.

Retailers may ask customers two questions to determine if an animal qualifies as a service animal:

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

A retailer may not ask these questions, however, when it is readily apparent that the service animal is performing a task for a customer with a disability (for example, a dog that is guiding a customer who is blind or vision impaired). Employees also must not ask customers about the nature or extent of their disability, or request proof of the service animal's training, licensing, or certification.

The ADA does permit businesses to exclude even bona fide service animals if they are not housebroken, or if they are out of control or pose a threat to other customers. After properly excluding an animal, a business must provide the disabled individual an opportunity to obtain the same goods or services without the animal's presence.

In addition to ensuring that employees are trained in interacting with customers with service animals, retailers may consider posting signage at the entrance essentially stating “no animals allowed, except for service animals.”

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