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Staying Out of the Doghouse: Addressing Employee Service Animal Accommodation Requests

JOANNE B. LAMBERT, ESQ.
Jackson Lewis P.C. | Orlando
Joanne.Lambert@jacksonlewis.com
407-246-8447



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Orlando Sentinel

Airline won't let passenger board flight with her 'emotional-support peacock'





Photo: Fox Business (@foxbusiness)



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Roadmap

- Navigating federal and state accommodation laws
- What is a service animal?
- Employee requests vs. tenant and customer requests
- What supporting documentation can you require?
- Permissible service animal behavior expectations
- Best practices for addressing co-worker and customer concerns



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ADA Overview

- **ADA Title I – Employee Entitlements**
 - Requires non-discrimination and *reasonable accommodation* for employees and applicants with a disability, which might include service or other animals
 - Employer obligation to accommodate qualified individual with disability up until the point of “*undue hardship*”
 - Must engage in the *interactive process* if an employee with a disability requests to bring a service animal to work
- **ADA Title III - Public Access**
 - Requires public accommodations (businesses and other facilities open to the public) to permit disabled visitors to use service animals

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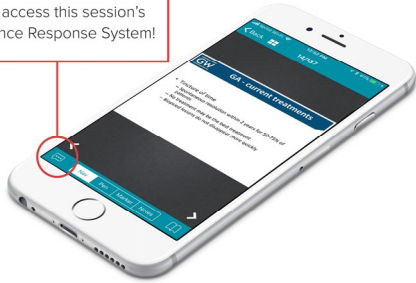
QUESTION:

An employer may require an employee to provide documentation from a certified service animal trainer that the service animal has been formally trained.

TRUE OR FALSE?

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ANSWER:

FALSE

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Reasonable Accommodation



Example: Employee with diabetes requests to bring service animal to work to help monitor blood sugar level

- Employer must determine if permitting the service animal in the employee's work area is a reasonable accommodation
- May request reasonable documentation of a non-obvious disability, that an accommodation is needed, and the animal is trained to assist
 - EEOC informal guidance: appropriate documentation of the animal's training may come from whoever trained the animal
 - No specific training or certification required, employee can self-train

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What Questions May an Employer Ask?


- When not obvious what "service" an animal provides, employer *may* ask
 - Is animal required because of disability?
 - What work or tasks has animal been trained to perform?
 - How will service animal help employee to perform essential functions of her job?
- **Practice tips**
 - *Do* document answers in writing and add them to employee's confidential file.
 - *Do* ask the employee for input on communicating to co-workers about the presence of the service animal and to refrain from interaction
 - *Don't* presume that the animal will disrupt the workplace – but it is okay to confirm with employee that animal will be under control (consider documenting)
 - *Don't* disclose employee's disability to other employees – simply state that the employee has an animal accompanying him to work and to not interact with the animal

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In What Areas Is the Animal Allowed?



- Must allow employees with service animals into work areas:
 - Where employees, customers/clients are generally allowed, even if other animals are not permitted
 - Can't exclude employees w/ service animals from most work areas including, e.g., retail sales areas, patient rooms, clinics, restaurants, cafeterias, or examination rooms
 - But, sterile work locations may be different, e.g., chip manufacturing, hospital operating rooms, food preparation areas



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Handler-Employee Responsibilities

- **Control**
 - Service animals must be leashed/harnessed or tethered unless device interferes with animal's work or individual's disability prevents using these devices
 - If no leash/harness, individual must maintain control with voice, signal, or other effective control



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What is a Service Animal?

"Service Animal!"
Any dog or miniature horse 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


Does not include other species
Note, however, that unlike ADA Title III, (public access) service animal is not defined in ADA Title I (employment) or EEOC guidance so there is an argument that an employer may have to consider allowing an animal not meeting the Title III definition



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What is a Service Animal?

- Work or tasks performed by service animal must be *directly related* to handler's disability
- Crime deterrent effects and provision of emotional support, well-being, comfort, or companionship are not work or tasks under DOJ's ADA definition, but may fall within provisions of the Fair Housing Act
- Breed irrelevant; size irrelevant
- Does **not** have to be professionally trained




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QUESTION:

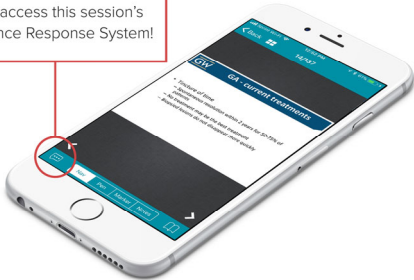
An animal that provides solely emotional support need not be accommodated in the workplace.

TRUE OR FALSE?



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ANSWER:

TRUE
(well, MAYBE)

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Emotional Support v. Service Animal

- **Service animals** – unless animal is formally trained to perform a task, it is a pet or support animal and does not qualify under ADA Title III (public access) definition
 - DOJ: Service Animal is trained for 2 things
 1. **Recognition:** Sensing person is about to have a psychiatric episode
 2. **Response:** Performing a task (e.g., nudging, barking, removing individual to safety)
 - Crime deterrence, safety or provision of comfort do not constitute a “task”
- **Emotional support animals** – not trained to perform work or tasks. Instead, provide benefit just by being present

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Psychiatric Service Dog

- **Psychiatric service dog** – service dog; specifically trained; provides assistance to people with psychiatric disabilities, e.g. severe depression, PTSD
 - Examples of work psychiatric service dogs perform
 - Provide safety check of room
 - Prevent person in dissociative episode from wandering into danger
 - Prevent impulsive / self-destructive behaviors
 - Primary role is **not** providing emotional support / comfort

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How Do Service Animals Help?

Just a few examples:

- Guiding people who are blind
- Alerting individuals who are deaf
- Providing non-violent protection
- Pulling individuals in wheelchairs
- Sensing, alerting, and assisting during seizures or PTSD attacks
- Retrieving medicine and/or items beyond reach
- Preventing or interrupting, impulsive or disruptive behavior
- Assistance with mobility and balance/stability
- Providing non-violent protection or rescue
- Reminding person with mental illness to take prescribed medications
- Alerting individuals to the presence of allergens



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Public Accommodations: Tenant, Customer And Invitee Requests



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Public Accommodation

- Permissible questions
 - (1) Is this animal required because of a disability?
 - (2) What work or task has this animal been trained to perform?
- As under Title I (employment accommodations), if the need for the service animal is obvious (e.g. pulling person's wheelchair), **do not** ask these questions




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Public Accommodation




- Permissible animals: dog & miniature horse
- Permitted locations: can accompany owners anywhere, with a few exceptions
- **Be careful:** some states provide greater protections, policies must comply with both federal and state law
- Examples
 - Some states – not limited to dogs & miniature horses
 - Some states – protect emotional support animals
 - Most states – protect service animals in training (not covered by ADA)




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Public Accommodation - Exclusions





- If admitting service animals would fundamentally alter the nature of a service or program, service animals may be prohibited
 - e.g., can restrict service dog from specific zoo area if certain zoo animals would become agitated or behave aggressively in presence of dog
- Properties/gyms/hotels with pools: must allow service dog on deck, but not required to allow dog in pool
- Restaurants/bars: service animal must be allowed in, but not required to allow animal on chairs or to be fed at table
- Maintenance/cleaning fee: **cannot** ask for deposit or surcharge, but can charge if animal causes damage
- Hospitals: must allow service animal in patient room



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Isolating Individual With Service Animal

- Avoid isolating the individual
 - Movie theater or restaurant – cannot request that the person sit in the back
 - Treat individual the same as others!



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Other Laws...

- In addition to the ADA, other laws may have different and broader requirements related to service animals
- Examples:
 - Fair Housing Act (24 CFR Part 100)
 - § 504 of the Rehabilitation Act (affecting federal government employers and federal financial aid recipients)
 - Air Carrier Access Act, 49 U.S.C. 41705
 - State laws

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Handling Requests: Emotional Support Animal

ADA Title III → Public accommodation: applies only to service animals

ADA Title I → Employment accommodation: Is the emotional support animal a "reasonable accommodation"?

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More Restrictive State Law Examples

- **California:**
 - Residential tenants may not be charged additional fees (e.g. standard pet fees) for assistive animals living in their residence
 - "Interfering" with rights of a disabled person is a criminal misdemeanor punishable by a fine up to \$2500
 - Service animals are not allowed in areas used for food preparation - stricter than federal law.
- **New York:**
 - A public accommodation may not require fees for having a service animal.
 - Disabled employees are specifically entitled to service dog accommodations at work under state law (vs. the ADA's silence on workplace accommodations);
 - New York laws on service animals apply to employers with at least four (4) employees (ADA threshold is 15 employees)

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Managing Employee Compliance With Service Animal Behavior Expectations




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QUESTION:

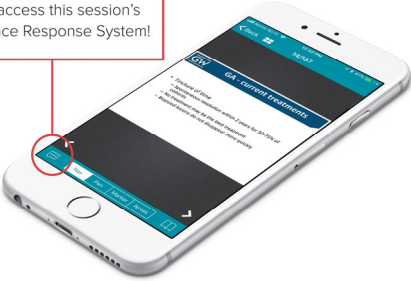
An employee with a service animal accommodation may be entitled to flexible break times to attend to the animal's toileting needs.

TRUE OR FALSE?



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ANSWER:

TRUE

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Animal Care and Relief

Employer NOT required to create relief area for animal – Employee should clean up

- No EEOC formal guidance.
- Many situations, there will be a sidewalk, alley or other readily available location.
- **TIP:** Be flexible, and remember the standard is "reasonable" accommodation – is there a reasonable way to handle the issue?

Employer NOT responsible for care or supervision of animal


- Not required to provide food or water
- Likely would need to allow employee to bring water bowl
- May need to consider adjusting employee's break time to take service animal outside, as further reasonable accommodation

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Compliance Strategy

- Create a written policy and train employees
- Written policy should include
 1. How to address employee request for animal as accommodation
 2. Rules and standards regarding the animal's behavior in the workplace & expectations regarding its care




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Factors to Consider

- Factors to consider when formulating policy
 - The nature of your business – retail, hospitality, healthcare, commercial or residential property? What legal regimes apply?
 - Federal and state law
 - Permissible and impermissible areas of inquiry regarding animal
- Suggested criteria – expectations of service animal handling
 - Animal cleanliness
 - Animal relief expectation
 - Co-worker care/interaction if disabled employee is ever out of office without the animal
 - Rules/expectations regarding barking/noise/disruptive behavior

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Best Practices For Addressing Co-Worker And Customer Concerns


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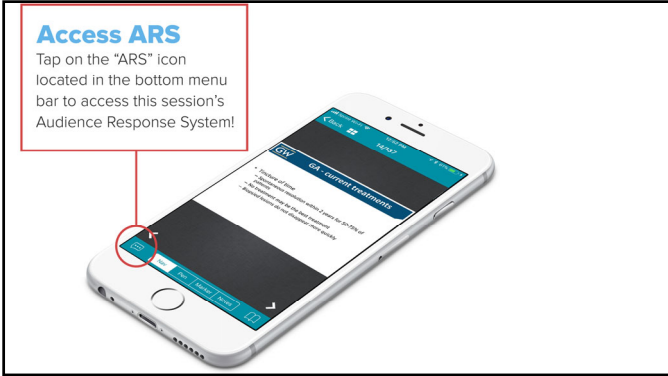
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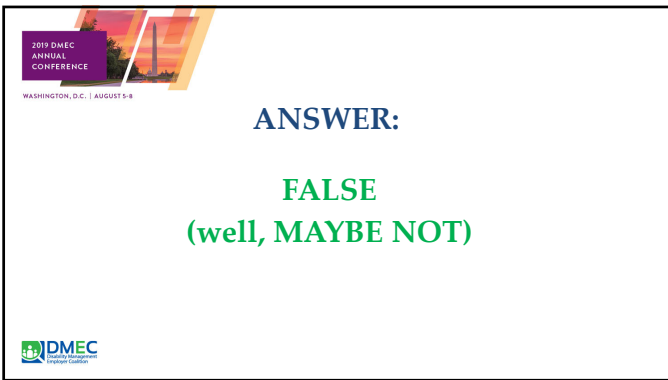
QUESTION:

A service dog accommodation may be denied if co-workers are allergic to dogs.

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Issues Arising from Co-worker's Allergy to a Service Animal

- If reasonable and thus not an undue hardship:
 - Permit employees to work in different areas
 - Provide one or both of the employees with a private work area
 - Provide air filtration in relevant work areas
 - Consider use of HEPA filters
 - Permit flexible scheduling so employees work different hours
 - Provide a schedule for use of common areas, e.g., break and lunch rooms to minimize contact
 - For functions including both employees, ask the employee using the service animal if she/he could temporarily use other accommodations during the function
 - Ask the employee allergic to the service animal if she/he wants and would benefit from an allergen mask
 - Ask the employee using a service animal if she/he is willing to use dander care products regularly on the animal
 - Minimize allergens by regular cleaning and vacuuming of the work area

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Service Animal Workplace Etiquette

- Individuals with disabilities are first people, then people with disabilities
- Focus on and address the person, not on his or her disability or service animal
- Keep in mind service animals are working and not pets
- Train supervisors and co-workers not to touch, feed or pet the service animal without the owner's express permission

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Employee Accommodation Key Practice Tips

- If an employee has an obvious disability, do not inquire about extent of condition – limit inquiry to confirming (1) need for animal and (2) training/control of handler
- Be careful to not apply own standard in determining whether animal is justified
- Create a comprehensive policy on service animals
- Document service animal behavior expectations and consequences for unacceptable behavior
- Train supervisors and security to consult HR before a decision is made to exclude an employee's service animal (except in the most extreme situations)
- Remember the different legal regimes and determine which rules apply in a given situation

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Wednesday Concurrent Session C4




Joanne B. Lambert
407-246-8447
Joanne.Lambert@jacksonlewis.com

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