
Coates' Canons Blog: Service Animals in Government Buildings

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Article: <https://canons.sog.unc.edu/service-animals-in-government-buildings/>

This entry was posted on December 14, 2015 and is filed under Animal Law, Animal Services, Miscellaneous

Several federal and state laws address service animals in government buildings and public accommodations. I included a brief chapter on the topic in my 2008 animal control law book. Since then, there have been some important revisions to the regulations implementing the Americans with Disabilities Act. Below is a review of how these revised ADA regulations apply to service animals in government buildings.

The ADA is a complex body of law. Potential violations of Title III are often in the news because that part of the law addresses places of public accommodation, such as restaurants and hotels. Title II is the focus of this post because it applies directly to “public entities,” which include state and local governments as well as departments, agencies, special districts or other “instrumentalities” of the government. The implementing regulations for Title II are found in Title 28, Part 35 of the Code of Federal Regulations.

Must a local government allow service animals in all public buildings?

Yes, a local government is required to modify its policies, practices, and procedures to allow a person with a disability to be accompanied by a service animal wherever members of the public, invitees, or program participants are allowed to go (28 C.F.R. § 35.136(g)), unless the government can demonstrate that doing so will require the government to “fundamentally alter” the nature of the service, program, or activity” provided to the public. (28 C.F.R. 35.130(b)(7)). Guidance from the U.S. Department of Justice explains that “[i]n most settings, the presence of a service animal will not result in a fundamental alteration.”

The general requirement stems from the following general rule:

No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

28 C.F.R. 35.130(a). By allowing the person to be accompanied by a service animal, the government is ensuring that the person has access to the same services and benefits as others who are not disabled.

The local government may ask that the animal be removed from the property in only two circumstances:

- Animal is out of control: If an animal is out of control and the handler does not take effective action to control it, the animal may be excluded. In general, a service animal must be on a harness, leash, or other tether, unless the person’s disability prevents it. In those instances, the person must be able to control the animal with voice, signals, or other means.
- Animal is not housebroken: No further details required.

If the government excludes the animal, it must find an alternative way to allow the person to participate in the service, program, or activity.

What type of animal qualifies as a service animal?

Under the previous version of the regulation, almost any kind of animal could qualify as a service animal, including primates, reptiles, and pigs. In 2010, the regulations were amended to narrow the definition of service animal to include only dogs and miniature horses.

Dogs

In order for a dog to be considered a service animal under the ADA, it must be “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.... The crime deterrent effects of an animal’s presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.” 28 CFR § 35.104. The regulation offers several examples of the types of work that a service animal can do that is directly related to the individual’s disability, such as assisting with navigation, pulling a wheelchair, assisting during a seizure, retrieving items, providing physical support and assistance, and helping persons with psychiatric and neurological disabilities.

The exclusion of emotional support and comfort animals was one of the more controversial issues that came up during the public comment period for the revisions to the regulations. Other federal laws, such as those governing public housing and transportation, include some protections for animals used for those purposes (see this chapter in my book for citations to other federal laws). The US Department of Justice explained that because the ADA regulations applied to a wider range of public places than the other laws, it was not appropriate to extend the scope of the regulations to include emotional support or comfort animals. In a guidance document accompanying the final rule, the agency noted “that the exclusion of emotional support animals from coverage in the final rule does not mean that individuals with psychiatric or mental disabilities cannot use service animals that meet the regulatory definition.”

Miniature horses

When the ADA regulations were amended to exclude animals other than dogs, a curious exception was created for miniature horses. In general, public entities must allow these horses to perform work as service animals. But the specific provision about horses allows the entity to evaluate the circumstance and decide not to allow the horse if its “presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.” 28 CFR 35.136(i). This type of “safety” analysis does not apply to dogs.

May local governments require proof of training as a service animal?

No. If the role of an animal assisting a person with a disability is not otherwise obvious (such as pulling a wheelchair), a local government official is allowed to ask the person two questions:

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

The official must not inquire about the person’s disability, ask for the person to have animal demonstrate the work or task it is trained to do, or ask who trained the animal. The official must also not ask for written proof of training or documentation of the animal’s training or skills. Under state law, the North Carolina Department of Health and Human Services is authorized to issue tags for service animals but these are not required and should not be requested as proof of the animal’s status. G.S. 168-4.2.

May local governments require owners or handlers to register service animals?

No, a local government may not require owners or handlers to register service animals. Local governments may, however, create a voluntary registry of service animals. These voluntary registries may be helpful, for example, if emergency responders are called to a person’s home. By checking the registry, they will be able to confirm that the person has a service animal and make appropriate accommodations, such as bringing the animal in an ambulance.

Service animals are still required to comply with state laws governing rabies vaccinations and with any local laws related to animal licensing. Some local governments offer a reduced licensing fee to service animals included in a voluntary registry.

Do all of the same rules apply to service animals in training?

The ADA regulations do not apply to service animals in training but the comparable state law does. Trainers may be

accompanied by such animals in all the places service animals are allowed but the animal must wear a leash, harness, or cape identifying it as a service animal in training. G.S. 168-4.2

What might happen if a local government fails to comply?

Several possible consequences could follow if a local government refuses to allow for a service animal in violation of the ADA or state law. For example:

- A person could file a complaint with the U.S. Department of Justice which could result a federal investigation or enforcement action. 28 C.F.R. Part 35, Subpart F.
- A person could also file a private lawsuit against the government in limited circumstances. See, e.g., *Alboniga v. School Bd. of Broward County Fla.*, 87 F.Supp.3d 1319 (S.D. Fla. 2015) (recognizing a student's ADA claim against a school for failing to accommodate needs related to a service animal).
- A person can be charged with a Class 3 misdemeanor under state law for depriving "a person with a disability or a person training a service animal of any rights granted the person [under the state assistance animal law] or of any rights or privileges granted the general public with respect to being accompanied by animals or to charge any fee for the use of the service animal." G.S. 168-4.5.

Links

- www.sog.unc.edu/resources/microsites/animal-control-law/north-carolina-guide-animal-control-law
- www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm#a35136
- www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm#subpartf
- www.ada.gov/regs2010/service_animal_qa.pdf
- www.iog.unc.edu/pubs/electronicversions/ncacl/documents/ch09.pdf
- www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_168/GS_168-4.2.pdf
- www.ecfr.gov/cgi-bin/text-idx?SID=e0952a4ad762f81b359c8d9c9415ecf5&mc=true&node=sp28.1.35.f&rgn=div6
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