Service Animals and Emotional Support Animals
Who Goes Where – And Why!
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NOTE: The audio for everyone is muted until the session starts. This session will be recorded for future reviewing.

Why Are We Here?

Internal and External?
- The Department of Justice (DOJ) has carefully parsed out rules regarding service animals under the Americans with Disabilities Act (ADA)
- Both Housing and Urban Development (HUD) and the Department of Transportation (DOT) have less specific rules starting to be fleshed out regarding emotional support animals [in housing, under the Fair Housing Amendments Act (FHAA), and for airplanes under the Air Carrier Access Act (ACAA)]
- We are going to review those rules as they pertain both to you, as employees/coworkers, and to the clients you serve.
Clarification

- Service Animal rules come from the Americans with Disabilities Act and DOJ, NOT Section 504 of the Rehabilitation Act. They pertain to service animals EVERYWHERE, and nothing in the FHAA acts change the requirements (and restrictions) concerning service animals (not matter WHAT they call them!)
- ESA rules in housing come from the FHAA and HUD, and apply ONLY to housing
- ESA rules are co-mingled with "service animal" rules in the Air Carrier Access Act, but apply only to airports and airplanes.

“Service Animal”

DOGS!!!
(OK… and sometimes miniature horses!)

- The rules from DOJ sometimes state dogs and sometimes say "animals" – but the rules are built with the understanding that service animals are dogs.

What is a Service Animal?

- “A service animal is a dog that is individually trained to do work or perform tasks for a person with a disability.”
- Used by people with variety of disabilities
- The key points here are DOG, TRAINED, and PERSON WITH A DISABILITY!
- Service animals are always about safety, independence, and dignity
**What’s NOT a Service Animal?**

- “Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA.”
- Pets are not service animals and not protected under these rules.
- “This definition does not affect or limit the broader definition of ‘assistance animal’ under the Fair Housing Act or the broader definition of ‘service animal’ under the Air Carrier Access Act.”
- Wording in SD State statute is “fuzzy,” but suggests the same definition of service animal as is used in ADA. If you want to do what is right, stick to the ADA definition.

**Air Carrier Access Act**

Let’s Get This Out of the Way!

- The Title II and III regs (DOJ) do not pertain to airports and airplanes — they are covered under the ACAA.
- The DOT has used the term “service animal” to mean BOTH (what we call) service animals and ESAs.
- They threw in a few rules, but skipped most of the others that are needed.
- Think about the ACAA as an aberration and don’t abuse it; think about its intent, not its wording.

**Where Can Service Animals Go?**

- (DOJ) "Generally, Title II and Title III entities must permit service animals to accompany people with disabilities in all areas where members of the public are allowed to go."
- FHWA allows for “assistance animals” in housing even in the face of “no pets” rules.
- ACAA allows for “service animals” on airplanes, and in airports getting to and from those airplanes.
Training of Service Animals

- Animals can be self-trained.
- NOT required to be trained formally.
- NOT required to carry any identification.

(OPINION!!!) It is rare for someone to be able to provide credible self-training of a service animal.

To suggest to your clients that they can self-train an animal as a service animal is probably doing a DISSERVICE.

Verifying Status

- "When it is not obvious what service an animal provides, only limited inquiries are allowed. Staff may ask two 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 cannot ask about the person’s disability, require medical documentation, require a special identification card or training documentation for the dog, or ask that the dog demonstrate its ability to perform the work or task."

Verifying Status (PROBLEMS!)

- The FHA details procedures for verifying legitimacy of the animal that work for ESAs, but NOT allowed for service animals, yet their term ("assistance animal") covers both.
- The Air Carrier Access Act uses the term "service animal" to apply to both kinds of animals, and suggests that you can ask for written documentation – which you can’t for (ADA) service animals!
Verifying Status (PROBLEMS!)

- The State of South Dakota is largely silent on the issue of service animals. There are rules suggesting that you may not levy surcharges for participation, and rules that make it a misdemeanor to interfere with someone using a service animal, but nothing specific. In a way, that makes it easier!

Responsibility to Accommodate and Restrictions

- We are stuck with general rules for ALL situations. DOJ has said, "We know some of this is a problem. We're working on it."

- In general, reactions of others (allergies, fears, concerns about costs) are not a reason to limit the presence of a service animal.

- Service animals can be excluded only in limited situations, such areas where their presence would present a danger to others (sterile area).

Responsibility to Accommodate and Restrictions (cont)

- The FHA governs accommodations in housing – KIND OF!

- Not allowed to require registration of service animals

- The dog must be "under handler control" at all times

- Handler/owner is responsible for any damage caused by the service animal

- Handler/owner must clean up after the dog (exceptions)
Responsibility to Accommodate and Restrictions (cont)

- Food service establishments must allow service animals in public areas
- Patrons with service animals cannot be isolated or treated less favorably; no surcharges allowed
- Others NOT required to provide care to a service animal

SPECIAL NOTE: The status of service-animals-in-training is sometimes confusing. Since the State of South Dakota doesn’t say anything about service-animals-in-training one way or another, you can go with the ADA definition. It is NOT (yet) a service animal.

The Dreaded “TWO QUESTIONS”

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QUESTIONS ABOUT SERVICE ANIMALS?
What About ESAs?

- We have some rules provided in haphazard form in the Fair Housing Act. We are fleshing them out as we go, based on some case precedents and logic/common sense.
- Ironically, the only one of the statutes that SPECIFICALLY speaks to “emotional support animals” is the Air Carrier Access Act – from 2003!
- It has become the term in common use, and it is what we will use for this discussion, as distinguished from a therapy animal (different use) and a comfort animal (vague, at best).

ESAs in the Fair Housing Act

- Uses the term “assistance animals” and mixes apples and oranges – service animals and ESAs. The mixture is HUGELY problematic because they give one set of rules for “assistance animals.” Some of those rules apply to service animals and not ESAs. Some of the rules apply to ESAs and not service animals. WE know which ones are which, but only because, FIRST, we understood what a “service animal” was (is!) and can sort out the pieces.

FOR EXAMPLE:

- Can ask for documentation of need from a professional (SA – no; ESA – yes)
- Approved only for housing, may not be out in public (SA – no; ESA – yes)
- Can be left unattended in dwelling (SA – no; ESA – yes)
- Must be trained (SA – yes; ESA – no)
ESAs in the Fair Housing Act

FOR EXAMPLE (cont):

- Must be registered and approved (SA - no; ESA - yes)
- Is necessary for access for the individual with a disability (SA - yes; ESA - no)
- Breed, size, or weight limitations (SA - no; ESA - yes)

  Don’t forget “species!”

- Limited to asking the two questions (SA - yes; ESA - no)

AND MORE…

ESAs in the Fair Housing Act

“(An assistance animal) is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person’s disability. Assistance animals perform many disability-related functions, including but not limited to, guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability-related need for such support.”

What About Animals Outside the Home?

- Q. What are you going to do about animals that are NOT service animals when they are out-and-about instead of in the residence?
- A. You are NOT going to call them ESAs, and you are NOT going to apply the same rules you do to either SAs or ESAs. They do not fit under EITHER category
- They would be evaluated the same way as any other requests for exception to policy (in this case, the “no pets” policy.)
How Will YOU Define ESAs?

- DON'T make the same mistakes that HUD and DOT make.
- Define them separately, and keep them separate in your discussions with clients.

ESAs vs Psychiatric Service Animals

- BY DEFINITION, a psychiatric service animal is a dog that is specifically trained to respond in a consistent manner to the status of their owner; remember, the tasks they are TRAINED to provide have to do with safety, independence, and dignity.
- BY DEFINITION, an ESA can be any species, it is not trained to provide a specific service, it does what animals do naturally to comfort their owners – owners who have mental health disabilities.
- The animal is EITHER an ESA or a psychiatric service animal. NEVER BOTH.

Removal of an ESA

- The landlord may require the individual to remove the animal from housing if:
  1) the animal poses a direct threat to the health or safety of others or causes substantial property damage to the property of others;
  2) the animal’s presence results in a fundamental alteration of the housing setting;
  3) the Owner does not comply with the established rules
  4) the animal or its presence creates an unmanageable disturbance or interference in the housing unit.
IF There Is time…
• ESA documentation for sale!
• Weird animals
• Multiple Animals
• Other questions?

Questions about ESAs?

Questions? Don’t hesitate…
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