



SERVICE ANIMALS AND EMOTIONAL SUPPORT ANIMALS

GENERAL DISCUSSION

The U.S. Department of Justice issued revised regulations in 2010 governing the Americans with Disability Act ("ADA") Requirements for Service Animals. Publications which explain the ADA requirements include:

ADA National Network's Service Animals and Emotional Support Animals. It can be viewed at <https://adata.org/publication/service-animals-booklet>

U.S. Department of Justice's Frequently Asked Questions About Service Animals and the ADA. It can be viewed at https://www.ada.gov/regs2010/service_animal_qa.html

U.S. Department of Justice's ADA Requirements: Service Animals - ADA.gov. It can be viewed at https://www.ada.gov/service_animals_2010.htm

The ADA defines "individual with a disability" as a person who has a physical or mental impairment that substantially limits one or more major life activities of the individual; has a record of such an impairment; or is regarded as having such an impairment. North Dakota's law is identical. See N.D.C.C. § 14-02.4-02(5) (definition of "disability").

SERVICE ANIMAL:

Under the ADA, a service animal is "any dog 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. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability." 28 C.F.R. §§ 35.104 and 36.104.

However, the ADA also includes miniature horses in the definition of service animals, providing that the horse has been individually trained to do work or perform tasks for the individual with the disability. There is also a maximum

size and weight restriction for a miniature horse that serves as a service animal.

North Dakota's definition of a service animal is more broadly stated. It includes animals other than a dog. The statute defines a service animal as "any guide dog, signal dog, or other animal trained to do work, perform tasks, or provide assistance for the benefit of an individual with a disability.

The term includes an animal trained to provide assistance or protection services to an individual with a disability, pull a wheelchair, lend balance support, retrieve dropped objects, or provide assistance in a medical crisis." N.D.C.C. § 25-13-01.1.

The ADA and North Dakota state law set out this listing as examples of the tasks performed by service animals:

- *Guiding people who are blind or have low vision*
- *Alerting people who are deaf or hard of hearing*
- *Providing non-violent protection or rescue work*
- *Pulling a wheelchair*
- *Assisting an individual during a seizure*
- *Alerting individuals to the presence of allergens*
- *Retrieving items such as medicine or the telephone*
- *Providing physical support and assistance with balance and stability*
- *Helping persons with psychiatric and neurological disability by preventing or interrupting impulsive or destructive behaviors*

The ADA requires state and local governments, including public schools, colleges and universities, public accommodations and commercial facilities to allow service animals to accompany their handlers in all areas where members of the public are allowed to go.

Similarly, North Dakota's law entitles an individual with a disability "to be accompanied by a service animal in places of public accommodations, common carriers, facilities of a health care provider, and all places to which the public is generally invited..." N.D.C.C. § 25-13-02.

Examples of public accommodations are restaurants, theaters, hotels, grocery stores, hospitals and medical offices, department stores, malls, health clubs, parks, zoos, sporting facilities and all public transportation systems such as airports, car rentals, trains/metro systems, buses/shuttles, and demand-response transportation services, such as taxis, limos and rideshare.

The Fair Housing Act prohibits discrimination against an individual who has a service animal in renting or buying residential property, even if the building has a “no pets” policy. A public transportation provider cannot deny access even if there is a “no pets” policy and cannot require the individual to pay additional fees or to sit in a particular area with the service animal.

Allergies and fear of dogs are not valid reasons for denying access or refusing service to people using service animals. A solution to accommodate space for the person with the service animal and other persons who may, for example, have allergies to dogs, must be provided.

The service animal must be under the control of its owner. This can be accomplished by harness, leash or other tether, or by voice control. If it is not and the owner fails to take effective action to control the animal, or the animal poses a direct threat to the health or safety of others, it is permissible to require the removal of the animal from the premises. The animal must be “house broken.” The owner must also comply with local animal control and public health requirements, such as up-to-date vaccinations and licensing.

An owner of a service animal cannot be required to show documentation of the animal’s certification or licensure or training by a state or local government or animal trainer. It’s not required that a service animal is professionally trained. All that can be asked of the owner are two questions:

Is the animal required because of a disability? (This does not mean, however, that the owner must disclose the disability.)

What task or work is the animal trained to perform for you?

EMOTIONAL SUPPORT ANIMAL:

Animals that are identified as emotional support, comfort, companion or therapy animals are not considered service animals under the ADA. This is true even if there is a medical treatment plan that includes the use of such animals. While these animals may provide companionship, relieve loneliness, or help with depression, anxiety and certain phobias, they do not have the specialized training to perform tasks that assist people with disabilities, nor are they limited to working with people with disabilities.

However, protections for people with disabilities who have emotional support animals exist in certain circumstances. The Fair Housing Act’s definition of service animal is broader and includes emotional support or psychiatric service animals. Under this Act, a person who has a disability and who has a disability-related need for an emotional support animal cannot be discriminated against when renting or buying residential property, even if the building has a “no pets” policy.

The Air Carrier Access Act (ACAA) applies to persons with disabilities on aircraft. Airports themselves are generally covered under the Americans with Disabilities Act. The ACAA applies to persons with disabilities with a service animal or with an emotional support animal. 14 C.F.R. § 382. Under the ACAA, a service animal is any animal that is individually trained or able to provide assistance to a person with a disability, or any animal that assists persons with disabilities by providing emotional support. Documentation may be required of passengers needing to travel with an emotional support or psychiatric service animal. See <https://www.transportation.gov/individuals/aviation-consumer-protection/service-animals-including-emotional-support-animals> for further information on required documentation.

In addition, under the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act, a student may be permitted to have an animal in school that does not meet the ADA definition of a service animal, providing that the IEP or Section 504 team has determined that the animal is necessary for the student to receive a free and appropriate education.

WHERE TO GET HELP:

- File a housing discrimination complaint with the ND Department of Labor.
- For legal help, contact North Dakota Legal Services or an attorney in private practice.

FOR MORE INFORMATION, CONTACT:

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