

**THE ADA, SERVICE ANIMALS AND COMMUNITY COLLEGES**  
**North Carolina Association of Community College Attorneys September 6, 2018**

THE AMERICANS WITH DISABILITIES ACT (ADA) is a comprehensive Federal civil rights law that prohibits discrimination against people with disabilities. Under this law, people with disabilities are entitled to all of the rights, privileges, advantages and opportunities that others have when participating in civic activities. It was signed into law in 1990, and was expanded under the ADA Amendments Act of 2008, and again in 2010 when Department of Justice revised regulations for service animals.

**I. Who is protected by the ADA?**

The ADA protects the rights of people who have a physical or mental impairment that substantially limits their ability to perform one or more major life activities, such as breathing, walking, reading, thinking, seeing, hearing or working. It does not apply to people whose impairment is unsubstantial, such as someone who is slightly nearsighted. However, it does apply to people whose disability is substantial, but can be moderated or mitigated..... such as someone who uses leg braces to walk, as well as people who are temporarily substantially limited in their ability to perform a major life activity. The ADA also applies to people who have a record of having substantial impairment (a person with cancer that is in remission) or regarded as having such impairment (a person who has scars from a severe burn). (ADA.gov)

**II. Title II and Title III of the ADA**

Title II of the ADA applies to all State and local governments (“public entities”). It applies to all programs, services, or activities of public entities. Title II entities that contract with other entities to provide public services also have an obligation to ensure that their contractors do not discriminate against people with disabilities. The regulations for Title II are located at ADA.gov at 28 C.F.R. Part 35. Title III of the ADA applies to public accommodations and private businesses, including merchants and establishments. Title III regulations are found at ADA.gov at 28 CFR Part 36.

Equal treatment is a fundamental purpose of the ADA. People with disabilities must not be treated in a different or inferior manner. The integration of people with disabilities into the mainstream of American life is a fundamental purpose of the ADA. Historically, public entities provided separate programs for people with disabilities, and denied them the right to participate in the programs provided to everyone else.

ADA prohibits public entities from isolating, separating or denying people with disabilities the opportunity to participate in the programs that are offered to others. Programs, activities, and services must be provided to people with disabilities in integrated settings. The ADA neither requires nor prohibits programs specifically for people with disabilities. But, when a public entity offers a special program as an alternative, individuals with disabilities have the right to choose whether to participate in the special program or in the regular program. (ADA.gov).

As you can readily ascertain, this topic would easily cover an entire seminar. Today we are going to focus on service animals under the ADA. In late 2017, the Department of Justice withdrew numerous guidance documents related to disabilities it considered improper or unnecessary. The guidance documents for service animals currently recognized by our government and State of North Carolina are:

1. **“Frequently asked questions about service animals and the ADA” published July 2015;**
2. **“ADA 2010 revised requirements service animals” published July 2011; and**
3. **North Carolina Department of Health and Human Services (NC DHHS) Welcoming your customers who use service animals/frequently asked questions (May 2015).**

These documents are attached as part of your materials to provide an excellent reference point in the future.

### **III. Service Animals**

The definition of a **Service Animal** is set forth in Title II. A **service animal** is generally a dog that has been trained to do work or perform tasks directly related to the person’s disability.

But, in addition to the provisions about service dogs, the Justice Department’s revised ADA regulations have added a separate provision about **miniature horses** that have been individually trained to do work or perform tasks for people with disabilities (28CFR 35.136(i)). Miniature horses generally range in height from twenty (24) inches to thirty four (34) inches measured to the shoulders, and generally weigh seventy (70) to one hundred (100) pounds. Entities covered by the ADA must modify their policies to permit miniature horses where reasonable (ADA 2010 revised requirements service animals published July 2011).

The regulations set out four (4) assessment factors to assist entities in determining whether **miniature horses** can be accommodated in their facility. The assessment factors are as follows:

1. Whether the miniature horse is housebroken;
2. Whether the miniature horse is under the owner's control;
3. Whether the facility can accommodate the miniature horse's type, size and weight; and
4. Whether the miniature horse's presence will not compromise legitimate safety requirements necessary for safe operation of the facility.

The ADA service animal guidelines identify the following examples of acceptable work or tasks directly related to an individual's disability:

- a. Guide people who are blind;
- b. Alerting people who are deaf;
- c. Pulling a wheelchair;
- d. Alerting and protecting a person who is having a seizure;
- e. Reminding a person with mental illness to take prescribed medications; and
- f. Calming a person with Post Traumatic Stress Disorder (PTSD) during an anxiety attack or performing other duties.

**BUT THERE ARE LIMITATIONS UNDER THE ADA REGULATIONS:**

**Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA. But, the ADA does make a distinction between psychiatric service animals and emotional support animals. For example, if the dog has been trained to sense that an anxiety attack is about to happen and take a specific action to help avoid the attack or lessen its impact, that would qualify as a service animal. However, if the dog's mere presence provides comfort that would not be considered a service animal under the ADA. Neither would the premise that the emotional support animal is a crime deterrent be enough to satisfy the ADA guidelines.**

**Under the ADA, service dogs in training are not considered service animals. However, North Carolina general statutes do recognize service animals in training pursuant to NCGS § 168-4.2 cited later in this presentation.**

**FACT: The ADA 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. The definition of a service animal under each of these acts is different than the federal ADA definition.**

**Some State and local laws also define service animals more broadly than the ADA does. And when State or local laws conflict with federal laws, the rule of thumb is that the law that supersedes the other is the law that is less restrictive for the disabled person.**

#### **IV. WHERE IS A SERVICE ANIMAL ALLOWED?**

The ADA directs that state and local governments, businesses and non-profit organizations that serve the public generally must allow service animals to accompany people with disabilities in all areas of the facility where the public is normally allowed to go.

Yet, a dash of common sense is permitted. Generally, in a hospital it would be inappropriate to exclude a service animal from areas such as patient rooms, clinics, cafeterias, or examination rooms. However, it may be appropriate to exclude a service animal from operating rooms or burn units where the animal's presence may compromise a sterile environment.

The ADA requires state and local government agencies, businesses and non-profit organizations that provide goods and services to the public to make "reasonable modifications" in their policies, practices or procedures when necessary to accommodate people with disabilities. Thus, a "no pets" policy must generally be modified to allow service animals to comply with the following guidelines:

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 CFR 35.130(a)).

In essence, legal scholars agree that 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.

#### **V. WHAT QUESTIONS MAY BE ASKED.**

When it is not obvious what service an animal provides, staff may ask two (2) questions:

- 1. Is the service animal (dog or miniature horse) required because of a disability? And**
- 2. What work or task has the service animal been trained to perform?**

**Staff cannot ask about the persons disability, require medical documentation, require a special identification card or training documentation for the service animal or even ask that the animal demonstrate its ability to perform the work or task.**

**VI. ALLERGIES AND FEAR OF DOGS:**

Allergies and fear of dogs are not permissible legal reasons for denying access or refusing service to people using service animals. If a disabled person who uses a service animal and a person who is allergic to dogs happen to occupy, for example, the same class room or facility, they should both be accommodated by assigning them, if possible, to different locations in the particular room or entirely different rooms in the facility.

**VII. WHAT IF THE SERVICE ANIMAL IS OUT OF CONTROL?**

Service animals must be harnessed, leashed or tethered unless such devices interfere with the service animal's work or the individual's disability prevents using these devices. If such is the case, control of the animal must be maintained through voice, signal or other effective commands.

A person with a disability cannot be asked to remove his/her service animal from the premises unless two (2) circumstances arise:

- 1. The animal is out of control, and the handler's action to control it is ineffective; and**
- 2. The animal is not housebroken.**

- And, if the service animal is removed, staff must offer the disabled person the opportunity to participate without the animal's presence.
- School cafeterias that sell or prepare food must allow service animals in public areas even if state and local health codes prohibit animals on the premises.
- People with disabilities who use service animals cannot be isolated from other patrons, treated less favorable than other patrons, or charged fees that are not

charged to other patrons without animals. Charges for service animals must be waived.

- Staff are not required to provide care or food for a service animal.
- If a service animal causes damages, and the public organization or private business normally charges individuals in the course of business for said damage, the disabled person may also be responsible for said costs.
- The animal should be properly vaccinated pursuant to applicable state and local laws.

### **VIII. NORTH CAROLINA LAW.**

**North Carolina Law: Chapter 168 of the North Carolina General Statutes addresses persons with disabilities in our State.**

#### **North Carolina General Statute § 168-4.2. May be accompanied by service animal.**

(a) Every person with a disability has the right to be accompanied by a service animal trained to assist the person with his or her specific disability in any of the places listed in G.S. 168-3, and has the right to keep the service animal on any premises the person leases, rents, or uses. The person qualifies for these rights upon the showing of a tag, issued by the Department of Health and Human Services, under G.S. 168-4.3, stamped "NORTH CAROLINA SERVICE ANIMAL PERMANENT REGISTRATION" and stamped with a registration number, or upon a showing that the animal is being trained or has been trained as a service animal. The service animal may accompany a person in any of the places listed in G.S. 168-3.

(b) An animal in training to become a service animal may be taken into any of the places listed in G.S. 168-3 for the purpose of training when the animal is accompanied by a person who is training the service animal and the animal wears a collar and leash, harness, or cape that identifies the animal as a service animal in training. The trainer shall be liable for any damage caused by the animal while using a public conveyance or on the premises of a public facility or other place listed in G.S. 168-3. (1985, c. 514, s. 1; 1987, c. 401, s. 1; 1995, c. 276, s. 1; 1997-443, s. 11A.118(a); 2004-203, s. 62(a); 2005-450, s. 1.)

#### **North Carolina General Statute § 168-4.3 Training & Restrictions of Service Animals:**

The Department of Health and Human Services shall adopt rules for the registration of service animals and shall issue registration to a person with a disability who makes application

for registration of an animal that serves as a service animal or to a person who is training an animal as a service animal.

**North Carolina General Statute § 168-4.5 Penalty:**

It is unlawful to disguise an animal as a service animal or service animal in training. It is unlawful to deprive a person with a disability or a person training a service animal of any rights granted the person pursuant to G.S. 168-4.2 through G.S. 168-4.4, 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. Violation of this section shall be a Class 3 misdemeanor.

**FACT: Under the ADA, a local entity may not require an owner to register service animals. A voluntary registry of a service animal is permissible.**

**FACT: ADA guidelines do not apply to service animals in training. However in North Carolina, this law also applies to animals in training to become service animals. North Carolina law allows training organizations and people training a service animal to have the same access rights as people with disabilities using a service animal. The animal must wear a collar and leash, harness or cape that identifies it as a service animal in training under NCGS § 168.4.2.**

**IX. EDUCATION.**

**Public Schools (K-12) and Service Animals**

A student with a disability who utilizes a service animal is authorized by the ADA to have the animal accompany said student at school. The Individual with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act specifically authorize a student to use an animal that does not meet the service animal definition under the ADA upon the following conditions:

1. The student's Individual Educational Plan (IEP) or Section 504 team determines the animal is necessary for the student to receive a free and appropriate education;

**NOTE: Where the use of a service animal is a right under the ADA, said use is not dependent upon the decision of the IEP or Section 504 team.**

Emotional support animals and companion animals are rarely allowed to accompany a student in the public schools. The IEP or Section 504 team would be the

deciding factor in permitting the presence of an emotional support animal rather than a service animal in the public schools.

### **Colleges and Universities and Service Animals**

People with disabilities must be allowed under ADA guidelines to bring their service animal(s) into all areas of the campus that are open to the public or students.

The colleges and universities may develop a policy requesting students with service animals to voluntarily register with the college's disability service coordinator. As mentioned previously, no certification of the service animal training is required; however, proof of vaccinations as required by state and local laws is permissible. The college may not, however, require that a dog be registered as a service animal as a condition of being permitted in public places. This would be a violation of ADA regulations.

## **X. ENFORCEMENT.**

Title II of the ADA addresses state and local government facilities, activities and programs. Title III of the ADA addresses places of public accommodations. Section 504 of the Rehabilitation Act addresses federal government facilities, activities and programs. It also includes organizations or entities that receive Federal funding.

An ADA complaint alleging disability discrimination under Title II and Title III against a state, local government or a public accommodation may be filed accordingly as follows:

1. US Department of Justice  
950 Pennsylvania Ave. NW  
Civil Rights Division  
Disability Rights Section-1425 NYAV  
Washington, DC 20530  
1-800-514-0301 (v)  
1-800-514-0383 (TTY);
2. A private lawsuit;
3. Section 504 complaints must be directed to the federal agency that specifically oversees the program/funding; and
4. In North Carolina pursuant to NCGS § 168-4.5 a person can be charged with a class 3 misdemeanor for depriving a person with a disability or a person training a service animal of any rights granted the person pursuant to NCGS §



168-4.2 through NCGS § 168-4.4 or of any rights or privileges granted the general public with respect to being accommodated by animals or to charge any fee for the use of the service animal.

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## Frequently Asked Questions about Service Animals and the ADA

Many people with disabilities use a service animal in order to fully participate in everyday life. Dogs can be trained to perform many important tasks to assist people with disabilities, such as providing stability for a person who has difficulty walking, picking up items for a person who uses a wheelchair, preventing a child with autism from wandering away, or alerting a person who has hearing loss when someone is approaching from behind.

The Department of Justice continues to receive many questions about how the Americans with Disabilities Act (ADA) applies to service animals. The ADA requires State and local government agencies, businesses, and non-profit organizations (covered entities) that provide goods or services to the public to make "reasonable modifications" in their policies, practices, or procedures when necessary to accommodate people with disabilities. The service animal rules fall under this general principle. Accordingly, entities that have a "no pets" policy generally must modify the policy to allow service animals into their facilities. This publication provides guidance on the ADA's service animal provisions and should be read in conjunction with the publication [ADA Revised Requirements: Service Animals](#).

### DEFINITION OF SERVICE ANIMAL

#### **Q1:** What is a service animal?

A: Under the ADA, a service animal is defined as a dog that has been individually trained to do work or perform tasks for an individual with a disability. The task(s) performed by the dog must be directly related to the person's disability.

#### **Q2:** What does "do work or perform tasks" mean?

A: The dog must be trained to take a specific action when needed to assist the person with a disability. For example, a person with diabetes may have a dog that is trained to alert him when his blood sugar reaches high or low levels. A person with depression may have a dog that is trained to remind her to take her medication. Or, a person who has epilepsy may have a dog that is trained to detect the onset of a seizure and then help the person remain safe during the seizure.

**Q3:** Are emotional support, therapy, comfort, or companion animals considered service animals under the ADA?

A: No. These terms are used to describe animals that provide comfort just by being with a person. Because they have not been trained to perform a specific job or task, they do not qualify as service animals under the ADA. However, some State or local governments have laws that allow people to take emotional support animals into public places. You may check with your State and local government agencies to find out about these laws.

**Q4:** If someone's dog calms them when having an anxiety attack, does this qualify it as a service animal?

A: It depends. The ADA makes a distinction between psychiatric service animals and emotional support animals. If the dog has been trained to sense that an anxiety attack is about to happen and take a specific action to help avoid the attack or lessen its impact, that would qualify as a service animal. However, if the dog's mere presence provides comfort, that would not be considered a service animal under the ADA.

**Q5:** Does the ADA require service animals to be professionally trained?

A: No. People with disabilities have the right to train the dog themselves and are not required to use a professional service dog training program.

**Q6:** Are service-animals-in-training considered service animals under the ADA?

A: No. Under the ADA, the dog must already be trained before it can be taken into public places. However, some State or local laws cover animals that are still in training.

## GENERAL RULES

**Q7:** What questions can a covered entity's employees ask to determine if a dog is a service animal?

A: In situations where it is not obvious that the dog is a service animal, staff may ask only two specific 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 are not allowed to request any documentation for the dog, require that the dog demonstrate its task, or inquire about the nature of the person's disability.

**Q8:** Do service animals have to wear a vest or patch or special harness identifying them as service animals?

A: No. The ADA does not require service animals to wear a vest, ID tag, or specific harness.

**Q9:** Who is responsible for the care and supervision of a service animal?

A: The handler is responsible for caring for and supervising the service animal, which includes toileting, feeding, and grooming and veterinary care. Covered entities are not obligated to supervise or otherwise care for a service animal.

**Q10:** Can a person bring a service animal with them as they go through a salad bar or other self-service food lines?

A: Yes. Service animals must be allowed to accompany their handlers to and through self-service food lines. Similarly, service animals may not be prohibited from communal food preparation areas, such as are commonly found in shelters or dormitories.

**Q11:** Can hotels assign designated rooms for guests with service animals, out of consideration for other guests?

A: No. A guest with a disability who uses a service animal must be provided the same opportunity to reserve any available room at the hotel as other guests without disabilities. They may not be restricted to "pet-friendly" rooms.

**Q12:** Can hotels charge a cleaning fee for guests who have service animals?

A: No. Hotels are not permitted to charge guests for cleaning the hair or dander shed by a service animal. However, if a guest's service animal causes damages to a guest room, a hotel is permitted to charge the same fee for damages as charged to other guests.

**Q13:** Can people bring more than one service animal into a public place?

A: Generally, yes. Some people with disabilities may use more than one service animal to perform different tasks. For example, a person who has a visual disability and a seizure disorder may use one service animal to assist with way-finding and another that is trained as a seizure alert dog. Other people may need two service animals for the same task, such as a person who needs two dogs to assist him or her with stability when walking. Staff may ask the two permissible questions (See Question 7) about each of the dogs. If both dogs can be accommodated, both should be allowed in. In some circumstances, however, it may not be possible to accommodate more than one service animal. For example, in a crowded small restaurant, only one dog may be able to fit under the table. The only other place for the second dog would be in the aisle, which would block the space between tables. In this case, staff may request that one of the dogs be left outside.

**Q14:** Does a hospital have to allow an in-patient with a disability to keep a service animal in his or her room?

A: Generally, yes. Service animals must be allowed in patient rooms and anywhere else in the hospital the public and patients are allowed to go. They cannot be excluded on the grounds that staff can provide the same services.

**Q15:** What happens if a patient who uses a service animal is admitted to the hospital and is unable to care for or supervise their animal?

A: If the patient is not able to care for the service animal, the patient can make arrangements for a family member or friend to come to the hospital to provide these services, as it is always preferable that the service animal and its handler not to be separated, or to keep the dog during the hospitalization. If the patient is unable to care for the dog and is unable to arrange for someone else to care for the dog, the hospital may place the dog in a boarding facility until the patient is released, or make other appropriate arrangements. However, the hospital must give the patient opportunity to make arrangements for the dog's care before taking such steps.

**Q16: Must a service animal be allowed to ride in an ambulance with its handler?**

A: Generally, yes. However, if the space in the ambulance is crowded and the dog's presence would interfere with the emergency medical staff's ability to treat the patient, staff should make other arrangements to have the dog transported to the hospital.

## CERTIFICATION AND REGISTRATION

**Q17: Does the ADA require that service animals be certified as service animals?**

A: No. Covered entities may not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal, as a condition for entry.

There are individuals and organizations that sell service animal certification or registration documents online. These documents do not convey any rights under the ADA and the Department of Justice does not recognize them as proof that the dog is a service animal.

**Q18: My city requires all dogs to be vaccinated. Does this apply to my service animal?**

A: Yes. Individuals who have service animals are not exempt from local animal control or public health requirements.

**Q19: My city requires all dogs to be registered and licensed. Does this apply to my service animal?**

A: Yes. Service animals are subject to local dog licensing and registration requirements.

**Q20: My city requires me to register my dog as a service animal. Is this legal under the ADA?**

A: No. Mandatory registration of service animals is not permissible under the ADA. However, as stated above, service animals are subject to the same licensing and vaccination rules that are applied to all dogs.

**Q21: My city / college offers a voluntary registry program for people with disabilities who use service animals and provides a special tag identifying the dogs as service animals. Is this legal under the ADA?**

A: Yes. Colleges and other entities, such as local governments, may offer voluntary registries. Many communities maintain a voluntary registry that serves a public purpose, for example, to ensure that emergency staff know to look for service animals during an emergency evacuation process. Some offer a benefit, such as a reduced dog license fee, for individuals who register their service animals. Registries for purposes like this are permitted under the ADA. An entity may not, however, require that a dog be registered as a service animal as a condition of being permitted in public places. This would be a violation of the ADA.

## BREEDS

### **Q22: Can service animals be any breed of dog?**

A: Yes. The ADA does not restrict the type of dog breeds that can be service animals.

### **Q23: Can individuals with disabilities be refused access to a facility based solely on the breed of their service animal?**

A: No. A service animal may not be excluded based on assumptions or stereotypes about the animal's breed or how the animal might behave. However, if a particular service animal behaves in a way that poses a direct threat to the health or safety of others, has a history of such behavior, or is not under the control of the handler, that animal may be excluded. If an animal is excluded for such reasons, staff must still offer their goods or services to the person without the animal present.

### **Q24: If a municipality has an ordinance that bans certain dog breeds, does the ban apply to service animals?**

A: No. Municipalities that prohibit specific breeds of dogs must make an exception for a service animal of a prohibited breed, unless the dog poses a direct threat to the health or safety of others. Under the "direct threat" provisions of the ADA, local jurisdictions need to determine, on a case-by-case basis, whether a particular service animal can be excluded based on that particular animal's actual behavior or history, but they may not exclude a service animal because of fears or generalizations about how an animal or breed might behave. It is important to note that breed restrictions differ significantly from jurisdiction to jurisdiction. In fact, some jurisdictions have no breed restrictions.

## EXCLUSION OF SERVICE ANIMALS

### **Q25: When can service animals be excluded?**

A: The ADA does not require covered entities to modify policies, practices, or procedures if it would "fundamentally alter" the nature of the goods, services, programs, or activities provided to the public. Nor does it overrule legitimate safety requirements. If admitting service animals would fundamentally alter the nature of a service or program, service animals may be prohibited. In addition, if a particular service animal is out of control and the handler does not take effective action to control it, or if it is not housebroken, that animal may be excluded.

### **Q26: When might a service dog's presence fundamentally alter the nature of a service or program provided to the public?**

A: In most settings, the presence of a service animal will not result in a fundamental alteration. However, there are some exceptions. For example, at a boarding school, service animals could be restricted from a specific area of a dormitory reserved specifically for students with allergies to dog dander. At a zoo, service animals can be restricted from areas where the animals on display are the natural prey or natural predators of dogs, where the presence of a dog would be disruptive, causing the displayed animals to behave aggressively or become agitated. They cannot be restricted from other areas of the zoo.

**Q27:** What does under control mean? Do service animals have to be on a leash? Do they have to be quiet and not bark?

A: The ADA requires that service animals be under the control of the handler at all times. In most instances, the handler will be the individual with a disability or a third party who accompanies the individual with a disability. In the school (K-12) context and in similar settings, the school or similar entity may need to provide some assistance to enable a particular student to handle his or her service animal. The service animal must be harnessed, leashed, or tethered while in public places unless these devices interfere with the service animal's work or the person's disability prevents use of these devices. In that case, the person must use voice, signal, or other effective means to maintain control of the animal. For example, a person who uses a wheelchair may use a long, retractable leash to allow her service animal to pick up or retrieve items. She may not allow the dog to wander away from her and must maintain control of the dog, even if it is retrieving an item at a distance from her. Or, a returning veteran who has PTSD and has great difficulty entering unfamiliar spaces may have a dog that is trained to enter a space, check to see that no threats are there, and come back and signal that it is safe to enter. The dog must be off leash to do its job, but may be leashed at other times. Under control also means that a service animal should not be allowed to bark repeatedly in a lecture hall, theater, library, or other quiet place. However, if a dog barks just once, or barks because someone has provoked it, this would not mean that the dog is out of control.

**Q28:** What can my staff do when a service animal is being disruptive?

A: If a service animal is out of control and the handler does not take effective action to control it, staff may request that the animal be removed from the premises.

**Q29:** Are hotel guests allowed to leave their service animals in their hotel room when they leave the hotel?

A: No, the dog must be under the handler's control at all times.

**Q30:** What happens if a person thinks a covered entity's staff has discriminated against him or her?

A: Individuals who believe that they have been illegally denied access or service because they use service animals may file a complaint with the U.S. Department of Justice. Individuals also have the right to file a private lawsuit in Federal court charging the entity with discrimination under the ADA.

## MISCELLANEOUS

**Q31:** Are stores required to allow service animals to be placed in a shopping cart?

A: Generally, the dog must stay on the floor, or the person must carry the dog. For example, if a person with diabetes has a glucose alert dog, he may carry the dog in a chest pack so it can be close to his face to allow the dog to smell his breath to alert him of a change in glucose levels.

**Q32: Are restaurants, bars, and other places that serve food or drink required to allow service animals to be seated on chairs or allow the animal to be fed at the table?**

A: No. Seating, food, and drink are provided for customer use only. The ADA gives a person with a disability the right to be accompanied by his or her service animal, but covered entities are not required to allow an animal to sit or be fed at the table.

**Q33: Are gyms, fitness centers, hotels, or municipalities that have swimming pools required to allow a service animal in the pool with its handler?**

A: No. The ADA does not override public health rules that prohibit dogs in swimming pools. However, service animals must be allowed on the pool deck and in other areas where the public is allowed to go.

**Q34: Are churches, temples, synagogues, mosques, and other places of worship required to allow individuals to bring their service animals into the facility?**

A: No. Religious institutions and organizations are specifically exempt from the ADA. However, there may be State laws that apply to religious organizations.

**Q35: Do apartments, mobile home parks, and other residential properties have to comply with the ADA?**

A: The ADA applies to housing programs administered by state and local governments, such as public housing authorities, and by places of public accommodation, such as public and private universities. In addition, the Fair Housing Act applies to virtually all types of housing, both public and privately-owned, including housing covered by the ADA. Under the Fair Housing Act, housing providers are obligated to permit, as a reasonable accommodation, the use of animals that work, provide assistance, or perform tasks that benefit persons with a disabilities, or provide emotional support to alleviate a symptom or effect of a disability. For information about these Fair Housing Act requirements see HUD's Notice on Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-funded Programs.

**Q36: Do Federal agencies, such as the U. S. Department of Veterans Affairs, have to comply with the ADA?**

A: No. Section 504 of the Rehabilitation Act of 1973 is the Federal law that protects the rights of people with disabilities to participate in Federal programs and services. For information or to file a complaint, contact the agency's equal opportunity office.

**Q37: Do commercial airlines have to comply with the ADA?**

A: No. The Air Carrier Access Act is the Federal law that protects the rights of people with disabilities in air travel. For information or to file a complaint, contact the U.S. Department of Transportation, Aviation Consumer Protection Division, at 202-366-2220.



For more information about the ADA, please visit our website or call our toll-free number.

**ADA Website**

[www.ADA.gov](http://www.ADA.gov)

To receive e-mail notifications when new ADA information is available, visit the ADA Website's home page and click the link near the bottom of the right-hand column.

**ADA Information Line**

800-514-0301 (Voice) and 800-514-0383 (TTY)

24 hours a day to order publications by mail.

M-W, F 9:30 a.m. – 5:30 p.m. ,Th 12:30 p.m. – 5:30 p.m. (Eastern Time)  
to speak with an ADA Specialist. Calls are confidential.

For people with disabilities, this publication is available in alternate formats.

Duplication of this document is encouraged.

July 20, 2015



## Service Animals

The Department of Justice published revised final regulations implementing the Americans with Disabilities Act (ADA) for title II (State and local government services) and title III (public accommodations and commercial facilities) on September 15, 2010, in the Federal Register. These requirements, or rules, clarify and refine issues that have arisen over the past 20 years and contain new, and updated, requirements, including the 2010 Standards for Accessible Design (2010 Standards).

### Overview

This publication provides guidance on the term "service animal" and the service animal provisions in the Department's new regulations.

- Beginning on March 15, 2011, only dogs are recognized as service animals under titles II and III of the ADA.
- A service animal is a dog that is individually trained to do work or perform tasks for a person with a disability.
- 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.

### How "Service Animal" Is Defined

**Service animals are defined as dogs that are individually trained to do work or perform tasks for people with disabilities.** Examples of such work or tasks include guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications, calming a person with Post Traumatic Stress Disorder (PTSD) during an anxiety attack, or performing other duties. Service animals are working animals, not pets. The work or task a dog has been trained to provide must be directly related to the person's disability. Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA.

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.

Some State and local laws also define service animal more broadly than the ADA does. Information about such laws can be obtained from the State attorney general's office.

### Where Service Animals Are Allowed

**Under the ADA, State and local governments, businesses, and nonprofit organizations that serve the public generally must allow service animals to accompany people with disabilities in all areas of the facility where the public is normally allowed to go.** For example, in a hospital it would be inappropriate to exclude a service animal from areas such as

patient rooms, clinics, cafeterias, or examination rooms. However, it may be appropriate to exclude a service animal from operating rooms or burn units where the animal's presence may compromise a sterile environment.

## **Service Animals Must Be Under Control**

**Under the ADA, service animals must be harnessed, leashed, or tethered, unless these devices interfere with the service animal's work or the individual's disability prevents using these devices.** In that case, the individual must maintain control of the animal through voice, signal, or other effective controls.

### **Inquiries, Exclusions, Charges, and Other Specific Rules Related to Service Animals**

- 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.
- Allergies and fear of dogs are not valid reasons for denying access or refusing service to people using service animals. When a person who is allergic to dog dander and a person who uses a service animal must spend time in the same room or facility, for example, in a school classroom or at a homeless shelter, they both should be accommodated by assigning them, if possible, to different locations within the room or different rooms in the facility.
- A person with a disability cannot be asked to remove his service animal from the premises unless: (1) the dog is out of control and the handler does not take effective action to control it or (2) the dog is not housebroken. When there is a legitimate reason to ask that a service animal be removed, staff must offer the person with the disability the opportunity to obtain goods or services without the animal's presence.
- Establishments that sell or prepare food must allow service animals in public areas even if state or local health codes prohibit animals on the premises.
- People with disabilities who use service animals cannot be isolated from other patrons, treated less favorably than other patrons, or charged fees that are not charged to other patrons without animals. In addition, if a business requires a deposit or fee to be paid by patrons with pets, it must waive the charge for service animals.
- If a business such as a hotel normally charges guests for damage that they cause, a customer with a disability may also be charged for damage caused by himself or his service animal.
- Staff are not required to provide care or food for a service animal.

## **Miniature Horses**

**In addition to the provisions about service dogs, the Department's revised ADA regulations have a new, separate provision about miniature horses that have been individually trained to do work or perform tasks for people with disabilities.** (Miniature horses generally range in height from 24 inches to 34 inches measured to the shoulders and generally weigh between 70 and 100 pounds.) Entities covered by the ADA must modify their policies to permit miniature horses where reasonable. The regulations set out four assessment factors to assist entities in determining whether miniature horses can be accommodated in their facility. The assessment factors are (1) whether the miniature horse is housebroken; (2) whether the miniature horse is under the owner's control; (3) whether the facility can accommodate the miniature horse's type, size, and weight; and (4) whether the miniature horse's presence will not compromise legitimate safety requirements necessary for safe operation of the facility.

**For more information about the ADA, please visit our website or call our toll-free number.**

**ADA Website**

**[www.ADA.gov](http://www.ADA.gov)**

To receive e-mail notifications when new ADA information is available,  
visit the ADA Website's home page and click the [link](#) near the top of the middle column.

**ADA Information Line**

800-514-0301 (Voice) and 800-514-0383 (TTY)

24 hours a day to order publications by mail.

M-W, F 9:30 a.m. – 5:30 p.m., Th 12:30 p.m. – 5:30 p.m. (Eastern Time)

to speak with an ADA Specialist. All calls are confidential.

For persons with disabilities, this publication is available in alternate formats.

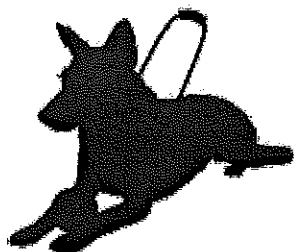
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**PDF Version of this Document**

July 12, 2011

• **NCDHHS | Welcoming Your Customers Who Use Service Animals**



**A Service Animal is any dog or miniature horse that is trained to do work or perform tasks for an individual with a disability.**

**WHAT BUSINESSES NEED TO KNOW**

**Are Service Animals allowed in my place of business?**

Yes, they are allowed in all businesses including those that serve food.

**What am I responsible for when Service Animal is present?**

Only to treat the person the same as any other customer.

**What questions can I ask a person with a Service Animal?**

Is the animal a Service Animal?

What has the animal been trained to do for the individual?

**Is there any required identification for Service Animals?**

No. A Service Animal may wear a vest, harness or display an ID, but this is not required.

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**ADDITIONAL INFORMATION**

**What is a Service Animal?**

### **A service animal as defined by the Americans with Disabilities Act is as follows:**

"**Service animal** means 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. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, 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 to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. 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." (Service Animal as defined by the [ADA, Title III, subpart A 36.104 definitions](#), July 2010)

**In addition to the provisions about Service Dogs, the U.S. Department of Justice's revised ADA regulations have a new, separate provision about miniature horses that have been individually trained to do work or perform tasks for people with disabilities.** (Miniature horses generally range in height from 24 inches to 34 inches measured to the shoulders and generally weigh between 70 and 100 pounds.) Entities covered by the ADA must modify their policies to permit miniature horses where reasonable. The regulations set out four assessment factors to assist entities in determining whether miniature horses can be accommodated in their facility. The assessment factors are (1) whether the miniature horse is housebroken; (2) whether the miniature horse is under the owner's control; (3) whether the facility can accommodate the miniature horse's type, size, and weight; and (4) whether the miniature horse's presence will not compromise legitimate safety requirements necessary for safe operation of the facility.

**The ADA limits the definition of Service Animals to dogs and miniature horses.**

**Therapy dogs, emotional support dogs and companion dogs are not Service Animals as defined by the ADA.**

**In North Carolina, this law also applies to animals in training to become Service Animals. Training organizations and people training a Service Animal have the same access rights as people with disabilities using a Service Animal. The animal must wear a collar and leash, harness or cape that identifies it as a Service Animal in Training. The trainer is liable for any damage caused by the animal while in a place of business.**

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## **FREQUENTLY ASKED QUESTIONS for Businesses regarding access for Service Animals**

### **• What Questions can I ask of a person with a Service Animal?**

There are only two questions you can ask the handler/owner of a Service Animal.

1. Is the animal a Service Animal required for a disability?
2. What work or task related to the individual's disability has the animal been trained to perform?

**You may not ask the handler about the nature of his or her disability.**

### **• How can I be sure that the animal is a Service Animal and not a pet?**

The animal must be accepted unless it displays unruly or aggressive behavior, relieves itself in an inappropriate area, or appears unmanaged by its handler.

In general, a Service Animal will not normally behave in public as an untrained pet would behave. A trained animal will appear calm and comfortable and will usually sit, stand or lay quietly beside the handler but may also provide an alert to the handler.

- **Can I charge a deposit or fee for a Service Animal?**

**No.** Under ADA guidelines, neither a deposit nor a surcharge can be imposed on an individual with a disability. However, customers with disabilities may be charged if the animal causes damage while visiting the facility as long as it is the regular practice to charge people without disabilities for the same type of damages.

- **Are Service Animals allowed in my place of business?**

**Yes.** A Service Animal must be allowed to accompany the individual to all areas of the facility where customers are normally allowed to go. An individual with a Service Animal may not be segregated from other customers. If another customer in the business has an allergy to animals, it is acceptable to separate the two customers to separate areas of the business.

- **Is there any required identification for Service Animals?**

**No.** There is no requirement for the Service Animal to wear special gear or have identification. Sometimes handlers will carry identifying paperwork, and some animals wear harnesses due to the nature of their work, but it is NOT required that they do so.

- **What is the difference in a Service Animal and a therapy animal, support animal or companion animal?**

A Service Animal is trained to perform a specific task for an individual with a disability. A therapy animal, support animal or companion animal provides comfort and/or companionship to an individual. These non-service animals are not afforded the same privileges in public places.

- **Can my business be sued for damages, held liable, or fined for refusing entry to a person with a Service Animal?**

**Yes.** You may not discriminate against a person with a disability or his or her Service Animal and will be held to the federal, state and civil laws governing your business.

- **What rules apply to Service Animals in businesses such as barbershops or nail salons, which are required to pass health inspections?**

Establishments that provide services to the public must allow Service Animals in all public areas.

- **Should I suspect that a young dog/puppy/miniature horse or that a small dog is not a Service Animal?**

**No.** A young dog/puppy/miniature horse may be in training, and, while it must also be identified or declared as a Service Animal in Training, it is afforded the same rights and privileges as a fully trained/adult Service Animal. A small dog may be trained for seizure alert or other medically necessary service. Refer to the questions you may ask of a person with a Service Animal.

- **What am I responsible for when a Service Animal is present?**

The business is not responsible for the feeding or care of the Service Animal. It is acceptable to offer water to the animal if you choose to do so, but always ask permission of the handler first. Please do not pet the Service Animal. These animals are working animals and are not to be touched unless permission is given by the handler.

- **I have a "No pets policy". Do I still have to allow Service Animals?**

**Yes.** Under ADA guidelines, a Service Animal is a working animal, not a pet. A "no pets policy" does not apply to Service Animals.

- **What rules apply to Service Animals in restaurants?**

Establishments that sell or prepare food must allow Service Animals in public areas even if state or local health codes prohibit animals on the premises.

- **What can I do if the Service Animal exhibits disruptive behavior?**

A Service Animal must be under the control of the handler at all times. A Service Animal must not show aggression toward people or other animals. A Service Animal does not bark, growl or whine unless trained to do so as a warning sign to the handler. A Service Animal does not solicit food or other items from the general public. A Service Animal's work does not disrupt the normal course of business. If any of these instances occur, you are allowed to ask the handler and animal to leave the business or refuse entry to the business. You are still expected to provide the handler access to the product or service that he or she has visited your business to receive.

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## RESOURCES

[Welcoming Your Customers Who Use Service Animals](#) (PDF, 435KB)

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