SERVICE ANIMALS

What You Need to Know

RIGHTS & RESPONSIBILITIES INVOLVING SERVICE & EMOTIONAL SUPPORT ANIMALS

OCTOBER 2019

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California’s Protection & Advocacy System

Mission Statement:
Advocate, educate, investigate and litigate to advance and protect the rights of Californians with disabilities
DRC Services

- Intake & Referral
- Self-help materials and other publications
- Training
- Public policy & legislative advocacy
- State hospital patients’ rights advocates
- Clients’ rights advocates for clients of regional centers
- Legal counsel & advice
- Representation of individuals with disabilities in priority areas
- Systemic litigation
Disability Rights Legal Center

Disability Rights Litigation, Special Education, and Cancer Legal Resource Center

Mission Statement/Services:

We engage in impact litigation for systems change in the area of disability rights
# Access Rights: The Big Picture

<table>
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<th>Service Animals UNDER CARE AND CONTROL</th>
<th>Emotional Support Animals UNDER CARE AND CONTROL</th>
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</table>
| **Private Businesses, Government Buildings & Transportation** | Yes - With limited inquiry  
Service animals in training must have county-issued tags | No - But regulations are pending for government buildings |
| **Air Travel** | Psychiatric service animals:  
Yes – With medical documentation  
Other service animals:  
Yes - With verbal assurances | Yes - With medical documentation |
| **Employment** | Yes - As reasonable accommodations through interactive process | Yes - As reasonable accommodations through interactive process |
| **Housing** | Yes - With limited inquiry (CA law) or as reasonable accommodations through interactive process (federal law) | Yes - as reasonable accommodations through interactive process |
Why is this so complicated?

1. Laws strive to ensure BOTH access for people with disabilities who use service and emotional support animals AND safety for the public, businesses, landlords, employers and service dog handlers.

2. Different federal agencies have adopted different regulations for different settings.

3. California laws provide broader access than federal laws.
Federal Laws

Americans with Disabilities Act (ADA)
  Title I: Employment
  Title II: State and local government services, programs and activities
  Title III: Places of public accommodation (businesses)

Rehabilitation Act Section 504
  Prohibits discrimination in programs that receive federal funding

Fair Housing Act
  Housing
California State Laws

Unruh Civil Rights Act
Disabled Persons Act
  Government facilities & businesses - including rental housing

Government Code 11135
  State government and programs that receive state funding

Fair Employment & Housing Act
  Employment & Housing
Definitions and Access Rights
Only people with disabilities are protected by laws providing access to service or emotional support animals.

A “person with a disability” is someone with a mental or physical condition that affects [or substantially affects, under federal law] a major life activity.
In a Nutshell: Service Animals

People with disabilities have a right to bring a service animal into a business public space if it:

1. Is under the handler’s care and control;
2. Is housebroken; &
3. Does not pose a direct threat to other people or property.
In a Nutshell: Emotional Support Animals

Businesses and government buildings are not required to allow emotional support animals.

But people with disabilities will usually have the right to an emotional support animal in their housing if safe and under control.
What’s a Service Animal?

A service animal is a dog or miniature horse that is individually trained to perform work or tasks for a person with a disability.
Examples of Service Animal Work/Tasks

1. Guide handler with vision disability
2. Alert handler with hearing disability
3. Pick up, fetch or carry items
4. Alert handler to panic attacks
5. Provide safety checks
6. Prevent or disrupt impulsive or destructive behaviors;
7. Remove handler who is disoriented from dangerous situations

Work (ongoing) or tasks (prompted) must be directly related to the individual’s disability.
What’s an Emotional Support Animal?

An emotional support (or “comfort”) animal is any animal that provides emotional support to a person with a disability to ameliorate symptoms of the disability.

California DFEH Definition: “Support animals” are animals that provide emotional, cognitive, or other similar support to a person with a disability. A support animal does not need to be individually trained or certified.
Quiz

If someone’s dog calms them when having an anxiety attack, does this qualify it as a service animal?
A) Yes
B) No
C) It depends
Answer

C) It depends.

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.

If the dog’s mere presence provides comfort, that would be an emotional support animal.
Two Magic Questions

If the animal is a dog or mini-horse and does not appear to be threatening or out of control, a business or public entity can only ask:

1. Is the animal required because of a disability?
2. What work or task has the animal been trained to perform?
Not Allowed:

1. Questions about the nature of the handler’s disability
2. Requests for medical records or a doctor’s letter
3. Vests, tags or other proof that the animal has been certified, trained, or licensed as a service animal
4. Questions about the animal’s breed
5. Fees
6. Other requirements that apply only to individuals with service animals
Service Dogs in Training

Under CA law, people with disabilities and trainers have a right to bring a service-dog-in-training into a business or public space if the dog:

1. Wears a county-issued tag;
2. Is there for the purpose of training;
3. Is on leash and otherwise under the handler’s care and control; and
4. Does not pose a direct threat.
Do service animals have to be professionally trained?

No. People with disabilities have the right to train the animal themselves and are not required to use a professional service animal training program.
Do service animals have to wear a vest, patch, or special harness?

No. Service animals are not required to wear a vest, ID tag, or special harness.
The three requirements for service animals in public spaces

1) Under handler’s control;
2) Housebroken;
3) Does not pose a direct threat.
Do service animals have to be on a leash?

Generally requirement (1) (that a service animal must be under the handler’s control) means that the service animal must be harnessed, leashed, or tethered while in a public place unless these devices interfere with the service animal’s work or the person’s disability prevents use of these devices.

In that case, the handler must use **voice, signal, or other effective means** to maintain control of the animal.
Examples

A person who uses a wheelchair may use a long, retractable leash to allow her service animal to pick up or retrieve items.

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.
When does barking render a dog “out of control”?

I. - “Under control” means that a service animal should not be allowed to bark repeatedly in a lecture hall, theater, library, or other quiet place.

II. - However, if a dog barks just once, or barks because someone has provoked it, this would not generally mean that the dog is out of control.

III. - Sometimes a dog must bark in order to perform its job. In those instances, barking should be permitted and would not render the animal out of control.
Is the person with the disability always the one who is required to keep the animal “under control”?

No. Sometimes this will be the job of a third party who accompanies the person with the disability.

Also, in a school or similar setting, the school or similar entity may need to provide some assistance to enable a particular child to handle his or her service animal.
Public Health Issues

Service animals are not exempt from local animal control or public health requirements.

1. Service animals must comply with vaccination and other local requirements for pets.

2. Service animals do not have access to areas where the public is restricted, e.g. restaurant kitchens, operating rooms.
Multiple Service Animals

General Rule: If multiple service animals are needed and can be accommodated without altering the nature of the services provided, multiple service animals must be allowed.
Some people may need 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.

. . . TO PERFORM THE SAME TASK

For example, a person may need two dogs to assist him or her with stability while walking.
Religious Institutions

Federal Law
Entities that are owned or operated by religious entities are exempt from the ADA, but are covered by Section 504 if they receive federal funds.

State Law
Programs run by religious entities may or may not be covered under the Unruh Act, DPA, or Government Code 11135, depending on the extent to which the program involves transactions with the public and/or conveys religious material.
Service and Emotional Support Animals in Housing
Service Animals in Housing

Rental Housing is a “place of public accommodation” under the Unruh Act and a “business establishment” under the Disabled Persons Act.

Service dogs are allowed in housing with the same two questions as for businesses and public spaces. (Required because of disability?, and, “What work or task?”)

The Disabled Persons Act also allows service animals in training into housing.
Assistance Animals as Reasonable Accommodations in Housing

Federal Fair Housing Act and CA Fair Employment and Housing Act give right to service and/or emotional support animals in housing and employment.

Service and emotional support animals in housing do not need to be dogs or miniature horses.

HUD and the CA DFEH refer to service and emotional support animals as “assistance animals.”
Reasonable Accommodations

1. Housing providers and employers must make reasonable accommodations for people with disabilities.

2. Waiver of no-pets policy for emotional support animals may be a reasonable accommodation.

3. Animal must be safe and under handler’s control.
The Reasonable Accommodations
DANCE

D: The individual must have a Disability covered by discrimination laws.

A: The individual must request the Accommodation – no “magic words” are necessary.

N: The accommodation must be Necessary - there must be a Nexus between the disability and the accommodation. Support letter may be requested if disability and need are not apparent.

C: The Cost of the accommodation cannot impose an undue burden on the party providing the accommodation.

E: The Effect of the accommodation cannot be a fundamental change to the program or service provided.
Requesting an Accommodation

1. Request need not be in any particular form.
2. Writing is preferable, but oral requests are OK.
3. Request should explain disability-related need for waiver of no-pets policy as a reasonable accommodation.
4. Support animal certification from online service with no individualized assessment is not considered reliable per DFEH regulations.
5. Animal vests, ID card, or certificate are not proof of need for support animal.
Reasons for Denial of RA

1. Lack of disability-related need for animal;
2. Undue financial or administrative burden;
3. Fundamental alteration in nature of services provided; or
4. Direct threat of substantial physical harm to others or property (individual threat – no breed restrictions)
   a. cannot apply breed, size, or weight limitations. Direct threat must be based on individualized assessment of animal’s conduct.
   b. Multiple animals may be evaluated for cumulative impact.
Other restrictions on support animals

No pet fees, additional rent, security deposit, liability insurance, or other additional fee may be required.

May be required to cover costs of any damage animal causes beyond reasonable wear and tear.

Reasonable conditions may be imposed as long as they do not interfere with animal’s performance of duties (“no noise,” “leash requirement” may be too restrictive in some cases).
Responding to RA Request

1. Housing provider or employer must respond to request in a timely fashion.

2. Housing provider or employer may request a letter from a doctor or other professional to confirm the disability and need for a service or support animal.

3. Housing provider or employer may not demand a copy of medical records, a specific diagnosis, or permission to speak with health care provider directly.
Remedies

1. Work it Out
2. Internal Grievances & Appeals
3. Administrative Complaints
4. Litigation
Administrative Complaints

**U.S. DOJ - ADA T.II (public entity) & T.III (public accommodation)**
Within 180 days of incident for T.II complaints

**U.S. HUD (housing)**
Within 180 days for HUD-funded housing & 1 year for other housing

**U.S. EEOC (employment)**
Within 300 days for private employer (ADA T.I) & 180 days for government employer (ADA T.II)
Must obtain right to sue letter from EEOC or DFEH before litigation.

**California DFEH (state law)**
Within 1 year (within 3 years for specified employment complaints as of 1/1/2020)
Resources
Disability Rights California Fact Sheets

**Service Animals in Business and Public Spaces (2018)**

**Rights to Assistance Animals in Housing (2018)**
DOJ Resources


https://www.ada.gov/regs2010/service_animal_qa.html

ADA 2010 Revised Requirements: Service Animals (2010)

https://www.ada.gov/service_animals_2010.htm
DRC Contact information

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