



ADA Live! EPISODE 14: SERVICE ANIMALS

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Presenters: Rebecca Williams, Southeast ADA Center

Host: Cheri Hofmann, Southeast ADA Center

VOICE OVER ANNOUNCER: Blog Talk Radio. (Music) Welcome to WADA ADA Live! Talk Radio, brought to you by Southeast ADA Center, your leader for information, training and guidance on the Americans with Disabilities Act. And here's your host.

CHERI: Good afternoon, and welcome to WADA ADA Live!. On behalf of the Southeast ADA Center, Burton Blatt Institute at Syracuse University, and the ADA National Network, we are excited to welcome our Internet radio audience to the 14th installment of WADA Live! My name is Cheri Hofmann, Distance Learning Coordinator for the Southeast ADA Center, and today's host. The topic of today's show is service animals. I'd like to introduce today Rebecca Williams, Information Specialist – Training and Technical Assistance for the Southeast ADA Center in Atlanta, Georgia. Welcome, Rebecca.

REBECCA: Thanks, Cheri. It's great to be here today. Thanks for the opportunity to speak to your listening audience.

CHERI: In this episode, we will discuss the definition of a service animal and some of the issues involving access for individuals with disabilities using service animals. ADA Live! listening audience, please note that you're able to submit your questions via our online forum at adalive.org. Again, you may submit your questions via our on line forum at adalive.org.

In 2010, the U.S. Department of Justice issued revised regulations for Titles II and III of the Americans with Disabilities Act, better known as the ADA. One of the changes was the definition of service animals. As of March 15, 2011, only dogs are defined as service animals under the new ADA regulations.

The revised ADA regulations also have a new, separate rule about miniature horses that have been individually trained to do work or perform tasks for people with disabilities.

Rebecca, can you tell us the definition of a service animal under the new ADA regulations?

REBECCA: That's a perfect place to start, Cheri. Sure. As you mentioned, the DOJ has a very specific definition for service animals, which is -- service animals are defined as dogs that are individually trained to do work or perform tasks for people with disabilities. Common tasks for service animals include flipping light switches, opening doors, picking up dropped objects, alerting a person hearing impairment to an alarm or bell, reducing the anxiety of a person with post-traumatic stress disorder, guiding people who are blind, pulling a wheelchair, or alerting and protecting a person who is having a seizure. Other tasks might include reminding a person with mental illness to take prescribed medications, keeping autistic children from fleeing premises or disrupting inappropriate behavior, assisting with mobility issues or performing other duties. Service animals are working animals, Cheri; they are not considered to be pets. Some liken service animals to a piece of necessary medical equipment that allows a person to function more independently. The work or task a service dog has been trained to provide must directly be 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.

Folks should keep in mind that the definition of a service animal under the ADA 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.

Cheri, in our conversation today I will use the words "service animal" and "dog" interchangeably, since the ADA has defined service animals to be dogs.

CHERI: Well, thank you for that information, Rebecca, and I completely understand that the new regulations also include a separate section about miniature horses. But can you expand on miniature horses that are also to be considered as service animals?

REBECCA: Sure, as unusual as it sounds, miniature horses that have been, again, individually trained to do work or perform tasks for a person with a disability are also allowed under the ADA, but there are some exceptions as to where they are allowed.

Miniature horses generally range in height from 24 inches to 34 inches measured to the shoulders and they generally weigh between 70 and 100 pounds. Entities covered by the ADA – including state and local governments and private businesses - must modify their policies to permit miniature horses where this is reasonable.

The regulations set out four assessment factors to assist places in determining whether miniature horses can be accommodated in their facility. These 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 compromise legitimate safety requirements necessary for safe operation of the facility.

CHERI: Now that we have the definition of a service animal explained, can you please tell us where is a service animal allowed?

REBECCA: Absolutely. Under Title II of the ADA, which is state and local governments, and also businesses and nonprofit organizations that serve the public -- generally must allow service animals. This includes places such as city hall, parks, libraries, barber shops, movie theaters, malls, schools (which includes primary and secondary schools as well as post-secondary education institutions), bowling alleys, hospitals, grocery stores, and the list just goes on and on. Of note is that service animals must be allowed 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, areas where patients have extremely low immune systems or burn units where the animal's presence may compromise a sterile environment.

Title I of the ADA deals with employment rights, and it does not include a definition of a service animal. In employment situations, service animals are considered on a case-by-case basis as a reasonable accommodation.

An important thing to remember is that in cases where the state or local laws or public health codes do not agree with federal law, the law that is less restrictive for the person with the disability is the law that takes priority.

CHERI: Well, Rebecca, are there other requirements regarding service animals that you can share with us?

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

CHERI: Can a service animal ever be asked to leave an establishment?

REBECCA: It sure can, under two circumstances. A person with a disability can be asked to remove his service animal from a business, if: (1) the dog is out of control and the person with a disability does not take “effective action” to control it or (2) or if the dog is not housebroken.

However, when there is a legitimate reason to ask that a service animal be removed, staff must still offer the person with the disability the opportunity to obtain the goods or services without the animal. So, what this comes down to, Cheri, is - if the animal is displaying bad behavior, then the animal can be removed, but not the individual with the disability.

CHERI: We have a question from our listening audience. Can a business owner or staff person ask if the dog is a service animal?

REBECCA: Absolutely, when it is not obvious what service the dog provides, staff or business owners may ask two questions, and two questions only. The first question is: “Is the dog required because of a disability?” Second question: “What work or task has the dog been trained to perform?” Staff or business owners can’t ask about the person’s disability. They can’t require medical documentation, or require a special identification card or training document for the service animal, or ask that the service animal demonstrate its ability to perform the work or task.

CHERI: Well, great. What about restaurants? Can a restaurant refuse to allow a service animal where food is cooked or prepared?

REBECCA: Many people think, Cheri, that due to health regulations animals are not permitted in restaurants. However, we need to keep in mind that people with service animals can go anywhere the general public is allowed to go, and this includes restaurants. So, restaurants must allow service animals in public areas even if state and local health codes prohibit animals on the premises. This means that the service animal must be allowed to accompany its owner to the salad bars or the buffet line — but the service dog cannot go into the kitchen or other areas that are “off limits” to the general public.

CHERI: ADA Live! listeners, if you have any questions you want our guest speaker to answer, please submit your question via the ADA Live! online forum which is found at adalive.org. Again, you may submit your question via the ADA Live! online forum at adalive.org. Now, we’ll have a word from our sponsor.

VOICE OVER ANNOUNCER: The Southeast ADA Center is your leader in providing information, training and guidance on the Americans with Disabilities Act and disability access tailored to the needs of business, government and individuals at local, state, and

regional levels. The Southeast ADA Center, located in Atlanta, Georgia, is a member of the ADA National Network and serves eight states in the southeast region. For answers to your ADA questions, contact the ADA National Network at 1-800-949-4232.

CHERI: Welcome back, ADA Live! listening audience. We're going to continue our discussion with Rebecca Williams, Information Specialist – Training and Technical Assistance for the Southeast ADA Center in Atlanta, Georgia.

CHERI: So, Rebecca, if a person with a disability requests food to be prepared for their service animal, must the restaurant comply?

REBECCA: Not at all. Restaurants are not required to provide care or food for a service animal. Most service animals are typically on a feeding and watering schedule and usually won't need to eat or drink while their handler is in the restaurant.

CHERI: Can a restaurant or a theater request that a person sit in the back away from other customers?

REBECCA: Again, Cheri, the answer is no. People with disabilities who use service animals cannot be isolated from other people or treated less favorably than others. A key component of the Americans with Disabilities Act is integration of people with disabilities in their community.

CHERI: We have a question from our listening audience in Mississippi. He asks, my employer asked for a letter from my doctor saying why I need my service animal at work. Must I give this to him?

REBECCA: Cheri, this is one of those “it depends” answers. Because more people are using service animals, employers are asking more questions about service animals in the workplace. According to the Equal Employment Opportunity Commission, the enforcing agency for employment discrimination complaints, Title I does not require employers to automatically allow employees to bring their service animals to work. Instead, allowing the service animal into the workplace is a form of a reasonable accommodation, and if an employer can find a different accommodation that is equally effective, the ADA permits the employer to decide upon which accommodation they are going to use. Now, when it comes to reasonable accommodation under the ADA, employers have the right to request reasonable documentation that an employee meets the definition of disability under the ADA and why an accommodation is needed. The work or task performed by a service animal must, again, be directly related to the employee's disability.

CHERI: That was useful information. Our technical assistance team has received many calls about landlords saying a person with a disability can't keep their service animal. Is that against the ADA?

REBECCA: This issue can be complicated, but the main point to remember is that the definition of a service animal is different in housing situations than it is under the ADA. Housing is covered by the Fair Housing Act and by regulations developed by the U.S. Department of Housing and Urban Development for Section 504 of the Rehabilitation Act. The ADA definition of service animal is different from the definitions used in the Fair Housing Act and Section 504 of the Rehabilitation Act. Under the Fair Housing Act and Section 504, people with disabilities in housing situations may request reasonable accommodation for their assistance animals, including emotional support, companion or therapy animals. The reasonable accommodation provisions of both laws must be considered in situations where persons with disabilities use or seek to use service animals or assistance animals in housing, even where the provider forbids residents from having pets or otherwise has restrictions or conditions relating to pets or other animals. We suggest that for more information about service animals and housing, that you call your regional ADA Center at 1-800-949-4232.

CHERI: We have a caller from a post-secondary educational institution. A student that is coming on campus has identified that they use a service animal. Is that institution limited to asking the two questions that are found in the DOJ regulations? Or in a college setting, does the college have the ability to require, if the student wants to bring that service animal into the classroom and other settings on campus, can they require the student to go to disability services, register with disability services, and can the college obtain additional documentation?

REBECCA: Wow, that is a loaded question, Cheri, as several laws could apply. First, let me say that if anyone listening has specific questions regarding service animals in post-secondary educational institutions I do suggest that you call your regional ADA Center. The answer to this question could just about be a show in itself; it could be so complicated. But in general, post-secondary educational institutions will fall either under Title III of the ADA, which is state and local government or – I'm sorry – Title II of the ADA, which is state and local government – or Title III, which is places of commerce and business.

So assuming it's a service animal as defined by the ADA and this is a public institution, then yes, the school is limited by the specific ADA service animal provisions, which means they can only ask those two questions. An easy way to think about it is try to think about an individual who uses a service animal like an individual who uses a wheelchair. The person who uses a wheelchair should be permitted to come on campus

and to travel wherever on campus he or she needs to go with the service animal without being asked any questions, especially if it's obvious that the animal is a service animal and the person is using the animal because of a disability. Generally, with a service animal, the school wouldn't be permitted to require the student to first be registered with disability services.

Now a number of schools do use voluntary registries where someone, if they choose, can identify themselves as someone perhaps who uses a service animal or has a disability for whatever reason, but they can't be forced to as a precondition of participating in a program, activity, or service.

Now, if the institution has housing, then the Fair Housing Act comes into play within the housing setting. Just as we discussed previously that the Fair Housing Act does not use the ADA definition of service animals and must allow assistance animals, including emotional support, companion and therapy animals as a reasonable accommodation.

If the institution is a public entity (Title II of the ADA) then Section [504] would require the institution to modify their policies and procedures as necessary to avoid discrimination. The student with a disability who wants to use a non-service animal, for instance, let's say, a comfort rabbit, is free to follow the particular institution's procedures for requesting a modification or an accommodation under Section 504.

As you see, Cheri, this question is another one of those "it depends". It can be tricky to try to figure out service animals and how they fit into colleges, universities and technical school campuses and which law applies. As I mentioned previously, it's always good to talk with the regional ADA Center whenever in doubt.

CHERI: Well, thank you, Rebecca. That does sound challenging. Let's talk about hotels. Hotels normally charge a pet deposit fee. Can a hotel charge a deposit fee when a guest has a service animal?

REBECCA: No, they can't. This would be considered a surcharge, which is prohibited under the ADA. Remember, service animals are not pets. Even if a business requires a deposit or fee be paid by customers with pets, they must waive the charge for service animals. In addition, the ADA requires hotels to allow service animals throughout the facility even if they have a "no animal" policy. However, if the business, such as a hotel, normally charges guests for damages they cause, a customer with a disability may also be charged for the damage caused by him or his service animal.

CHERI: Can a taxi cab driver not allow a person with a disability to bring their service animal in the cab. Isn't that against the ADA?

REBECCA: I have heard this question quite often, Cheri. Service animals are always permitted to accompany their users in any private or public transportation vehicle or facility. This means that they must be allowed to ride with a person with a disability. One of the most common misunderstandings about service animals is that they're limited to being guide dogs for persons with visual impairments. But dogs used as service animals are trained to assist people with a wide variety of disabilities including individuals with hearing and mobility impairments. Oftentimes transportation providers are not aware of the many ways in which service animals work for people with various types of disabilities, including those disabilities that are not obvious.

In addition, it would be a violation of the ADA if a taxicab driver or transportation service provider charged extra fees to carry the service animal or an individual with a disability, as once again, this would be a surcharge.

CHERI: Thank you, Rebecca. That is super, great information. WADA Live! listening audience, if you should have a question that you'd like to submit, you may do so by using our online forum at adalive.org. Again, you may submit your questions through our ADA Live! online forum at adalive.org. Now, a word from our sponsor.

VOICE OVER ANNOUNCER: The ADA National Network provides information, guidance and training on the Americans with Disabilities Act tailored to meet the needs of business, government and individuals at local, regional and national levels. The ADA National Network consists of 10 regional ADA centers in the United States providing local assistance to insure that the ADA is implemented wherever possible. The ADA National Network is not an enforcement agency but a helpful resource supporting the ADA's mission, to make it possible for everyone with a disability to live a life of freedom and equality.

CHERI: Welcome back to the WADA ADA Live! audience. We're continuing our Question and Answer discussion.

CHERI: We have another question from our listening audience: A patron at our dinner theater brought her dog to one of our shows and she was carrying it in a little bag. She told the ticket taker that it was her service animal. During the meal, the dog sat in her lap and ate off her plate, and then proceeded to go under tables looking for scraps. Our other patrons complained after the show. What can I do if she comes back with the dog?

REBECCA: Wow, that might have been something to see. This question actually covers several issues. One issue is that fact that the dog was roaming around under other tables and not with its handler. Allowing the animal to move around the dinner theater while looking for scraps of food would signal to an observer that the animal may not be

a service animal or that it is not under the handler's control. If this were the case, the patron should be asked to control the dog or otherwise the dog will have to be removed. Secondly, allowing the animal to eat from her plate should have been addressed quietly between management and the patron. It is not normal practice to have animals eat from people's plates and they should not be allowed to come into contact with serving dishes, utensils, tableware, linens, paper products or any other items involving food service operations. Keep in mind the person with a disability must be allowed to return alone if their service animal has been banned.

CHERI: That is useful information, Rebecca. Now I have a question. If a woman came into a business with two dogs and she said they were both service animals. Can a person have more than one service animal?

REBECCA: It's not often that we hear this, Cheri, but on rare occasions this topic has come up at a training or from other callers. . A person may actually have two service animals for a couple reasons. It could be because he or she needs help with different tasks and one dog can't do both jobs. For example, one dog may have been trained to be an alert dog while the other is trained to pick up items or help with mobility. It really depends on what the dogs are trained to do. Other times some people may have two dogs that do the same job. This is usually because one is nearing retirement and the other dog is just starting its work life. But, normally in this situation however the handler won't work the dogs at the same time.

CHERI: I am sure our listening audience is getting a lot of great information today. We have another question from our listening audience. This is from Florida. What if someone who does not have a disability brings in a dog and she says it's a service animal in training?

REBECCA: Now, the ADA does not apply to service animals in training. There are a number of local jurisdictions and states that have enacted legislation and ordinances that apply to folks who are training service animals, to bring them into businesses. In fact, I know that Florida is one state that has this protection. You know, the animals need to get this experience, but for the purposes of the ADA, because that animal has not yet been individually trained to do work or perform tasks for a person with a disability, it's not considered a service animal. Irrespective of if the trainer is a person with a disability or not. It's still not covered. Folks should always check with their state statutes on their service animal laws. This falls into one of the answers I mentioned earlier where a state law may have a broader definition of a service animal than the ADA.

CHERI: Well, we have one more question and it comes in from South Carolina. I own a hair salon. A customer came in with a service dog last week. One of my employees is

afraid of dogs. Next time, can I tell this customer that the dog has to stay outside because my employee is afraid?

REBECCA: Great question, Cheri, because many people are afraid of dogs, but the answer is no. Fear of dogs or common allergies are not valid reasons for denying access or refusing service to people using service animals. Remember, a person with a disability cannot be asked to remove their service animal unless the dog is out of control and the person with the disability does not take effective action to control it or the dog is not house broken. So, if an employee is afraid of dogs, perhaps arrangements could be made for that employee to work at a different station when the customer is in with the service animal. The key here is the customer with a disability is the one to be accommodated under the ADA.

CHERI: We will be wrapping up this session, and I have time for one final question: If an apartment or a housing complex or a place of business will not accept service animals, who do I contact to file a complaint?

REBECCA: This question has a two-part answer. To file a housing complaint, folks can go online to hud.gov/complaints. That's hud.gov/complaints. Folks can also contact the Housing Discrimination Hotline at 1-800-669-9777. A person's housing discrimination complaint will be viewed by a fair housing specialist to determine if an alleged act might have violated the Fair Housing Act.

Now, if a business has refused someone to be allowed in with a service animal, this complaint would be handled by the U.S. Department of Justice. To learn more about filing an ADA complaint, visit ada.gov/filing_complaints.htm. Again, that's ada.gov/filing_complaints.htm. Folks may also file a complaint by email at ada.complaint@usdoj.gov. If anyone needs further assistance, please call your National ADA Center toll-free line for technical assistance at 1-800-949-4232.

CHERI: Well, Rebecca, at this time I'd like to thank you very much for everything that you've provided today and I'd like to thank our WADA Live! listening audience for listening to today's show on service animals. If listeners were unable to submit a question and still have a question about the ADA, they may contact 1-800-949-4232. Again, that number is 1-800-949-4232. I'd like to remind them that all of their questions are very important to us and all will be held in the strictest of confidence. I again would like to thank Rebecca Williams for joining us today.

The Southeast ADA Center is extremely grateful for your support and participation in this series of WADA ADA Live! broadcasts. Don't forget to tell a friend about ADA Live!. "Like" us on Facebook, tweet about or share an update with your LinkedIn colleagues. Join us next month on Wednesday, December 3rd at 1:30 Eastern Standard Time,

when we will be talking with John Robinson, Our Ability managing partner and CEO, the White House 2014 Champions of Change recipient.

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