

# Publications

## The Top 9 Things Retailers Need to Know About Service Animals

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Pandemic Pups. Covid Pets. Whatever name you choose, the story is the same. Quarantine and work-from-home have led thousands to become new dog owners. And, they are getting used to having their dogs with them all the time. Many of these new (and old) dog owners are going to want to bring their canine pals with them to stores, restaurants, and other venues that normally ban pets.

These fake service dogs present problems and pitfalls to the responsible business owner. Does she put up with a misbehaving and possibly dangerous animal or does she risk liability under the Americans with Disabilities Act (ADA) for denying access to a legitimate service dog/handler team? This article will answer some of the questions that business owners may have with respect to service dogs and the federal laws regulations addressing access for legitimate service dogs and their handlers.

### What laws apply?

For retail businesses and restaurants, the most relevant federal laws are Titles I and III of the ADA, which prohibit discrimination against people with disabilities in terms of employment and access to public accommodations and commercial facilities.<sup>[1]</sup> States may also have laws that are applicable to service dogs.

### What is a service dog?

In the past, identifying legitimate service dogs, such as guide dogs, was uncomplicated. In the last few decades, dogs have been trained to assist with a wide range of disabilities, many of which are “invisible disabilities.” They can alert handlers to imminent issues with diabetes or the presence of allergens; they can assist a handler during a seizure; and they can help with psychiatric or neurological disabilities, including panic disorders and PTSD. The list is growing as we learn more about the capabilities of dogs.

Under the ADA, a service animal is defined as “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.”<sup>[2]</sup> The service dog must be trained to perform a specific task that is “directly related to the individual’s disability.”<sup>[3]</sup> Providing comfort, emotional support, or companionship are not work or tasks under the law. Thus, just because having the dog near or petting it provide a sense of well-being and calm does not make him a service dog. However, service dogs can be trained to sense the signs of an oncoming panic or anxiety attack and to take actions to avoid or lessen the severity and impact of the attack, including by preventing self-harm.

## Do local bans on dangerous dog breeds apply to service dogs?

No. The federal regulations do not contain any breed restrictions and are deemed to trump any local laws or regulations.<sup>[4]</sup> Similarly, weight and size restrictions do not apply to service dogs.

## Where can a service dog go?

Almost anywhere. In general, service dogs are permitted to accompany their handlers in all areas of a place of public accommodation where members of the public may go. This means they may go in stores, restaurants, hotels, fitness facilities, hospitals, and more. Service dogs may be excluded where their presence would “fundamentally alter” the nature of the services provided to the public.<sup>[5]</sup> For example, a service dog would not be permitted in an operating room that requires sterility. Similarly, they are not allowed in swimming pools at hotels or gyms because of hygiene concerns. They are allowed on the pool deck, however.

## What if I have an employee or patron who is allergic to or afraid of dogs?

Allergies or fear of dogs on the part of employees or patrons are not valid reasons for denying a service dog/handler team access to a business.<sup>[6]</sup>

## Does a service dog have to wear a vest or tag identifying it as a service dog?

There is no legal requirement that a service dog wear any special vest, patch, or harness. In most cases, the service dog should be leashed or tethered to its handler. Most service dog handlers will use a vest with patches identifying the dog as a service dog. These vests and patches are readily available on line, however, and fake service dogs will likely have them as well.

## Is there a certificate or license indicating that the dog is a service dog?

There is no required certification or licensing requirement for service dogs under the ADA and asking for such documents is not permitted under the Act.<sup>[7]</sup> Neither are there legally required ID cards for service dogs, even though they are freely available on the internet for a fee. Importantly, the prevalence of “ID cards” or certificates by fake service dog owners has caused many businesses to incorrectly believe that such identification exists and to refuse service to a disabled person who cannot provide the requested documents, putting the business at risk of fines or other legal action for violating the rights of the disabled customer.

## How can a business owner determine if a dog is a legitimate service dog?

Legitimate service dogs will be well-behaved; they will not be lunging at people or real service dogs, barking uncontrollably, or trying to eat food off the table in a restaurant. And, they are unlikely to be riding in a shopping cart. A legitimate service dog handler would be mortified if her dog were acting in such a manner.

If the handler's disability is not readily apparent, there are only two questions you may ask to determine if the dog is a legitimate service dog.

- Is the animal required because of a disability?
- What work or task has the animal been trained to perform?[8]

You *may not* ask what the disability is. Nor may you ask the dog's handler to demonstrate the work or tasks. If the handler's disability is readily apparent, you may not ask the two questions.[9]

## When can I ask a someone with a service dog to leave my establishment?

This is a bit of a trick question. While there are circumstances when you can ask to have the dog removed, you cannot remove the owner without providing the owner an opportunity to obtain the goods, services, or accommodations without the animal.[10] You can ask for a dog to be removed if the animal is misbehaving and the owner is not addressing the issue.[11]

If you have questions please reach out to Nina Webb-Lawton or your Vorys attorney.

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[1] See 42 U.S.C. §§ 12111-12117 (Title I - employment); 42 U.S.C. §§ 12181-12189 (Title III – public accommodations).

[2] 28 CFR § 35.104.

[3] *Id.*

[4] See 28 C.F.R. 36 App.

[5] 28 C.F.R. 36.302(a).

[6] See Dept. of Justice, *ADA Requirements: Service Animals*, p. 1.

[7] 28 CFR 35.136(f).

[8] 28 CFR 35.136(f).

[9] *Id.*

[10] 28 C.F.R. §36.302(c)(3).

[11] 28 C.F.R. § 36.302(c)(2).

