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Where service and support animals are, and aren't, allowed

By Kathleen Pender | May 20, 2016 | Updated: May 20, 2016 10:28pm



Photo: Dan Joling, AP

Zaiden Beattie, 4, pulls a toy kite from his miniature service horse, Zoe, in his class at Russian Jack Elementary School on Wednesday, March 20, 2013, in Anchorage, Alaska, as his mother, Lesley Zacharias, holds a halter rope. Zaiden has been diagnosed with A-T, or ataxia-telangiectasia, a rare genetic disorder that affects balance and motor-coordination.

Dogs at work. Turkeys on planes. Pigs and rabbits in college dorms.

If it seems like animals are roaming new territory these days, they are.

As more people with physical and mental disabilities become aware of their rights, they're attempting to bring service and emotional support animals wherever they go. But a confusing patchwork of federal and state laws governs where they must be allowed. Different definitions and rules apply to these animals in housing, employment, aircraft and public places.

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Business and property owners who ask the wrong questions or unlawfully deny access to a support or service animal risk discrimination lawsuits. Unaware or confused about the rules, some employers, landlords, airlines and businesses will simply say "yes" to requests when they could say "no" — or vice versa.

“This is a really gray area,” said Kevin Kish, director of California’s Department of Fair Employment and Housing. “It’s one of the toughest areas of antidiscrimination out there.”

Here’s a look at how some of these laws apply in different circumstances.

Fair Housing Act: The federal Fair Housing Act applies to virtually all public and private housing providers, including property owners, landlords and condo associations. It prohibits discrimination on the basis of various protected classes, including disability. The Department of Housing and Urban Development enforces the act.

The department requires housing providers to reasonably accommodate a person with a physical or mental impairment that substantially limits one or more major life activities, unless doing so would create an undue financial or administrative burden on the providers or would fundamentally alter their service. HUD has a summary of its regulations at <http://1.usa.gov/1NMUNoU>.

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In a nutshell, if a landlord has a no-pets policy, and a tenant or prospective tenant asks to have an assistance animal, the landlord can ask two questions: Does the tenant have a disability that substantially limits a major life activity, and does the animal provide assistance or emotional support for that disability?

If the answer to either is no, the landlord does not have to allow the animal. If the answer to both is yes, the landlord must allow the animal — unless that animal would pose a threat to the safety of others or cause major damage to others' property.

If the person's disability is not obvious, the landlord can't demand specifics, but can ask for proof of the disability and need for the animal, which could come from a physician, psychiatrist, social worker or other mental health professional. The landlord can't ask what the disability is or demand a diagnosis.

"If there is a connection between the disability and the animal, they have to allow it," said Ken Carroll, center director of HUD'S San Francisco Office of Fair Housing and Equal Opportunity.

The landlord cannot charge a deposit for an assistance animal. HUD makes no distinction between mental or physical disabilities or different types of animals. The animal doesn't have to be licensed or trained.

California housing: The California Fair Employment and Housing Act is “substantially similar to our law,” Carroll said.

Kish’s department has never issued regulations interpreting the housing part of the California act. Late next month, however, it is expected to propose regulations that would address the use of assistance animals, including support animals, in housing.



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This year the California Association of Realtors spearheaded an Assembly bill that would have clarified under what conditions landlords must accept emotional support animals. But the bill, AB2760, was pulled this month amid fierce opposition from animal and disability rights groups, who said it discriminated against people with mental illnesses and conflicted with federal law.

Carroll said that about 40 percent of the complaints HUD receives are about disability discrimination, most from tenants who say their landlord is failing to reasonably accommodate them.

ADA in public places: The Americans with Disabilities Act applies to employers, state and local governments and public places — but not in exactly the same way.

The law narrowly defines service animals as any dog that is trained to do work or perform tasks for an individual with a physical or mental disability. “Emotional support animals do not qualify as service animals under the ADA, the California Unruh Civil

Rights Act nor the Disabled Persons Act,” said Alden Parker, an attorney with Fisher & Phillips who represents employers.

State and local governments, businesses and nonprofits generally must allow service dogs to accompany people with disabilities in any part of a facility open to the public, unless doing so interferes with legitimate safety requirements, or the dog is out of control. A separate provision gives trained miniature horses the same general privileges. The act does not say what services the dog or horse must perform, which “leaves a lot of leeway,” Parker said.

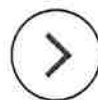
If the person’s disability is not obvious, a business owner can ask if the animal is required because of a disability, and what work or task it has been trained to perform. The owner cannot ask what the disability is or require any proof that the animal has been trained.



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“They essentially have to take the person at face value,” Parker said. “Unless the person trips up and says, ‘This is a comfort pet,’ or ‘This is just my dog,’ the business can’t exclude them.”

Parker said he represented a grocery store where someone came in with a dog. The dog was licking the product, and its owner was told to leave. The dog owner sued, claiming it was a service animal. But the case was dismissed because the owner did not show the

dog was trained at the time of the visit or was there for the purpose of training, Parker said. The case is on appeal in Los Angeles County.

In another case, a miniature horse named Princess came into a retail establishment but was excluded because the employee didn't know it was allowed. Like most of these cases, this one "was resolved confidentially," Parker said.

ADA at work: In the workplace, it's different. Employers have an obligation under federal and state law to accommodate mental as well as physical disabilities. Therefore, an emotional support animal — of almost any type — could be a "reasonable accommodation," Parker said. However, "the employer has more latitude to determine if it is legitimately a support or service animal."

Unless the need is obvious, the employer could ask for verification from a medical provider that the employee has a disability and the animal can help with that condition, said Ann Menasche, senior attorney with Disability Rights California. "I don't think you have a right to go into detail (about the condition) unless there is a real good reason," she said.

Airplanes: Under the ADA, airports are considered public places. But on airplanes, the Air Carriers Access Act applies. It says airlines must allow people with physical disabilities to board with a service dog. If a passenger with a mental disability asks to bring a support animal, the airline must allow it if the person provides a note — less than 1 year old — from a professional verifying the disability and the need for the animal, Menasche said.

People who need a note from a mental health provider can find them online.

The Dogtor, a service from Newport Beach (Orange County), refers clients interested in qualifying for an emotional support animal to state-licensed mental health professionals, said George Lewis, the firm's general manager.

“You fill out an online assessment,” he said. “That gets electronically transmitted to a mental health professional who reviews it and follows up with you. If they approve you, they will write a letter from their office.”

The company charges \$149 for a letter good for one year on airplanes, \$159 for a one-year housing letter or \$199 for both. The fee covers the referral and evaluation, the letter and a system that airlines or landlords can access 24/7 to verify the letters. It does not cover ongoing mental health services.

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