

## Service Animals

**Tom Hlavacek**, Milwaukee Office Director  
Wisconsin Coalition for Advocacy

### Introduction

Under state and federal statutes and regulations, persons with disabilities are allowed the use of service animals in many locations where animals are otherwise prohibited.

### Federal Law

42 USC § 12181 Federal policy regarding service animals is found primarily in Title III of the Americans with Disabilities Act (**ADA**), and is based on previous interpretations of section 504 of the 1973 Rehabilitation Act, 29 U.S.C. 794. The federal Fair Housing Act reasonable accommodation provisions also have applicability to service animals.

42 USC § 12182 Under the ADA, privately owned businesses that serve the public, such as restaurants, hotels, retail stores, taxicabs, theaters, sports facilities, and hospitals are considered public accommodations, and are prohibited from discriminating against individuals with disabilities. Under section 36.302 of the Title III rules, 28 C.F.R. 36.302, a public accommodation is required to modify policies, practices, or procedures to permit the use of a service animal by a person with a disability, unless doing so would result in a fundamental alteration of the goods or services provided, or the safe operation of a public accommodation would be jeopardized. According to policy guidance provided by the Department of Justice, the intent of this regulation is to ensure the broadest feasible access be provided to service animals in all public accommodations, including hospitals and nursing homes.

#### Public accommodation definition and requirements

#### Definition of service animal

Service animals are defined in section III-4.2300 of the Title III Technical Assistance Manual to include any guide dog, signal dog (e.g., a “hearing dog”), or other animal individually trained to do work or provide assistance to an individual with a disability, regardless of whether they have been certified or licensed by a state or local government.

Under the ADA, public accommodations are allowed to ask the person who has the animal if the service animal is required because of the person’s disability, but are not permitted to require proof of training or certification of status to be shown before allowing access. See “Commonly Asked Questions about Service Animals in Places of Business” (“Commonly Asked Questions”) available through the Department of Justice website. **In this respect, the ADA provides greater protection for people with disabilities than state law (see below) and so it takes priority over state laws and regulations.**

<http://www.usdoj.gov/crt/ada/qasrvc.htm>



*You are not required to justify your need for a service animal, or to describe the tasks your service animal performs, in order to establish your right to have the animal accompany you.*

### **When animals can be excluded**

A service animal may be excluded from a facility when that animal poses a direct threat to the health or safety of others. For example, any service animal that displays vicious behavior toward other guests or customers may be excluded. A service animal that barks or growls uncontrollably during a concert or movie may also be excluded, since the animal's behavior may result in a fundamental alteration of the facility's offering to other customers. A public accommodation is not allowed to make assumptions about how a particular animal is likely to behave based on past experience with other animals, but instead must consider each situation individually.

### **Not subject to "no pets" policy**

Public accommodations are not allowed to invoke a "no pets" policy because a service animal is not a pet. Nor can a public accommodation require a surcharge or deposit as a condition to allowing a service animal to accompany a person with a disability, even if deposits are routinely required for pets. However, a public accommodation may charge its customers with disabilities if a service animal causes damage so long as it is their regular practice to charge non-disabled customers for the same types of damages. The service animal must be permitted to accompany the individual with a disability 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.

When using a public accommodation, the care or supervision of a service animal is solely the responsibility of his/her owner. The public accommodation is not required to provide care or food or a special location for the animal.

42 USC § 3604(f)(2)

Under the federal Fair Housing Act, an individual with a disability may request to occupy a dwelling unit with a service animal as a reasonable accommodation to a "no pets" policy. A landlord cannot charge an additional security deposit for the service animal.



*If you are denied the right to housing because you have a service animal, you can utilize the same appeal procedures which apply to other housing discrimination situations. (See [Fair Housing chapter, pg. 265.](#))*

## **State Law**

Service animals for individuals with disabilities are covered under two sections of state law, public accommodations and housing.

Sec. 174.056, Wis. Stats.

Places of public accommodation, amusement, or recreation are not allowed to deny access to any person who is blind, deaf or mobility

**Access during training**

impaired because the person is accompanied by a specially trained dog. In addition, public accommodations cannot deny access to a person with a disability being trained in the use of a specially trained dog, or to a trainer who is preparing such animals for their eventual use by persons with disabilities. The statute goes on to say that the provisions only apply if the dog is wearing a harness or a leash and special cape, and the person has presented credentials about the dog issued by a school that trains such animals, but the broader provisions of the ADA (*see above*) have priority over this limitation.

Sec. 106.04(2r)(4)(bm), Wis. Stats.

Under Wisconsin housing law, if an individual's vision, hearing, or mobility is impaired, it is discrimination to refuse to rent or sell housing, evict from housing, or harass an individual because s/he keeps an animal that is specially trained to lead or assist the individual. The statute states that upon request, the individual is required to show credentials issued by a school recognized as accredited to train such animals, but a court case has shown that the broader provisions of federal law have priority over this requirement<sup>1</sup>.

**Allergy exception**

Sec. 106.04(2r)(4)(bm)(b)(2), Wis. Stats.

There is an exception in the housing law in the case of owner-occupied housing. If the owner or a member of their immediate family can show evidence of an allergy to the specific type of animal the individual with a disability possesses, it is permissible to refuse to rent to the individual.

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1. Bronk v. Ineichen, 54 F.3d 425 (7th Cir. 1995)