Service Animals & The Law

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Goals:

1. Understand the difference between service, emotional support, and therapy animals.
2. Recognize the primary laws that impact these animals and their handlers.
3. Consider controversies surrounding service, emotional support, and therapy animals.
Terminology

- Service Animals
- Emotional Support Animals
- Comfort Animals
- Therapy Animals
- Companion Animals
Under the ADA, a “service animal” is defined as a dog that has been individually trained to do work or perform tasks for an individual with a disability. The task(s) performed must be directly related to the person's disability.

Recent revisions also allow accommodation of miniature horses that have been trained to perform specific tasks.
Service Animals

- Service animals are permitted in all places of public accommodation.
- No special certification or tags are necessary.
- Animals must be “house broken” and under the control of the handler.
Examples of Service Animals

1. A person with diabetes may have a dog that is trained to alert him when his blood sugar reaches high or low levels.

2. A person with depression may have a dog that is trained to remind her to take her medication.

3. A person with visual impairment may have a miniature horse that is trained to guide her.

4. NOTE: The animal can only be removed if it is out of control of handler or not housebroken.
Emotional Support Animals

- Also sometimes called “comfort animals”
- An emotional support animal is an animal that provides a therapeutic benefit to its owner through companionship. The animal provides emotional support and comfort to individuals with psychiatric disabilities and other mental impairments. The animal is not specifically trained to perform tasks for a person who suffers from psychiatric or emotional disabilities.
Emotional Support Animals

Unlike a service animal, an emotional support animal is not granted access to all places of public accommodation.

Under federal housing and air travel laws, emotional support animals are considered a reasonable accommodation.

Different species of animals can act as emotional support animals.

No particular training or certification is necessary.

No tags or identification is necessary.
Emotional Support Animals

- Reasonable accommodation for housing and air travel under:
  - Federal Housing Act
  - Section 504 of the Rehabilitation Act of 1973
  - Air Carrier Access Act
The Fair Housing Act (FHA) applies to almost all housing types including those for sale or rent. This includes apartments, condominiums, and single family homes.

Major exceptions: buildings with four or fewer units where the landlord lives in one of the units. The law also excludes private owners who do not own more than three single family homes, do not use real estate agents or brokers, and do not engage in discriminatory advertising practices.
Examples of what the FHA covers:

- Houses in a planned community with a "no pets" restriction.
- Condominiums, owned or rented, with a "no pets" covenant.
- Apartments with a "no pets" clause in the lease.
- As long as these housing units do not fall within listed exceptions, landlords, homeowners associations, communities must comply with the FHA.
Section 504

- Law covers any property which receives financial assistance from HUD:
  - Public housing authority owned units (conventional public housing),
  - Project based Section 8 housing where the subsidy goes with the building,
  - 202/811 buildings for seniors or persons with disabilities,
  - Section 236 buildings where there is a mortgage subsidy,
  - Rural Development 515 properties, and
  - SOME Low Income Housing Tax Credit properties (where the owners also received HOME assistance from the state or the local government.)
Accommodation Criteria for Fair Housing Act & § 504 of Rehabilitation Act

01

(1) Does the person seeking to use and live with the animal have a disability — i.e., a physical or mental impairment that substantially limits one or more major life activities?

02

(2) Does the person making the request have a disability-related need for an assistance animal? In other words, does the animal work, provide assistance, perform tasks or services for the benefit of a person with a disability, or provide emotional support that alleviates one or more of the identified symptoms or effects of a person’s existing disability?

03

Request may be denied if animal is a direct threat to (1) safety or (2) property, provided there is another reasonable accommodation.
"Housing providers may ask individuals who have disabilities that are not readily apparent or known to the provider to submit reliable documentation of a disability and their disability-related need for an assistance animal." (FHEO Notice: FHEO-2013-01)

While the tenant or owner does not need to disclose the disability, he or she will need to provide documentation from a doctor or other health professional id requested.

According to HUD, a physician, psychiatrist, social worker, or other mental health professional can provide documentation that the animal provides emotional support that alleviates one or more of the identified symptoms or effects of an existing disability. (FHEO Notice: FHEO-2013-01).
Air Carrier Access Act

- Includes emotional support animals in its definition of “service animals.”
- Animals do not necessarily need specialized training.
- Many different types of animals permitted.
- Animals will not be allowed to fly if they are:
  - a “direct threat to the health or safety of others,” or
  - a significant threat of disruption to the airline service in the cabin (i.e., a “fundamental alteration” to passenger service).
Air Carrier Access Act (ACAA)

- Emotional support animals are recognized as service animals under the ACAA.
- Covers any animal that is individually trained or able to provide assistance to a qualified person with a disability; or any animal shown by documentation to be necessary for the emotional well-being of a passenger.
- U.S. carriers are required to transport all service animals except certain unusual animals (e.g., snakes, other reptiles, ferrets, rodents, and spiders). Foreign air carriers are not required to transport service animals other than dogs.
- Psychiatric service animals are recognized as service animals, but are considered to be emotional support animals and, therefore, subject to the applicable regulatory requirements, i.e. documentation.
- All service animals must be trained to behave appropriately in a public setting.
DOT suggests five steps to determine whether an animal is a service animal or pet:

1. Obtain credible verbal assurance;
2. Look for physical indicators on the animal (e.g., harnesses, vests);
3. Request documentation for service animals if passenger’s verbal assurance is not credible;
4. Request documentation for emotional support and psychiatric service animals; and
5. Observe behavior of animal.
To obtain credible verbal assurances carriers are permitted to ask the following:

- Is this your pet?
- What tasks or functions does your animal perform for you?
- What has it been trained to do for you?
- Would you describe how the animal performs this task (or function) for you?
- Carriers cannot ask about the person’s disability.
For Emotional Support and Psychiatric Service Animals:

The air carrier can request that the passenger provides current documentation (i.e., no older than one year from the date of the passenger's scheduled initial flight) on the letterhead of a licensed mental health professional (e.g., psychiatrist, psychologist, licensed clinical social worker including a medical doctor specifically treating the passenger's mental or emotional disability)
Documentation should include:

1. The passenger has a mental or emotional disability recognized in the Diagnostic and Statistical Manual of Mental Disorders.
2. The passenger needs the emotional support or psychiatric service animal as an accommodation for air travel and/or for activity at the passenger's destination;
3. The individual providing the assessment is a licensed mental health professional, and the passenger is under his or her professional care; and
4. The date and type of the mental health professional's license and the state or other jurisdiction in which it was issued.
Therapy animals provide affection and comfort to various members of the public, typically in facility settings such as hospitals, retirement homes, and schools. But also in other stressful settings such as universities or courtrooms.

These animals have a special aptitude for interacting with members of the public and enjoy doing so.
A good therapy dog must be friendly, patient, confident, gentle, and at ease in all situations. Therapy dogs must enjoy human contact and be content to be petted and handled, sometimes clumsily. A therapy dog’s primary job is to allow unfamiliar people to make physical contact with it and to enjoy that contact.

A therapy animal has no special rights of access, except in those facilities where they are welcomed. They may not enter businesses with “no pets” policies or accompany their handler in the cabin of an airplane regardless of their therapy animal designation.
The Pennsylvania Human Relations Act (PHRA) governs state and local government activities and many privately-owned public accommodations within Pennsylvania.

Some local Pennsylvania municipalities (including Philadelphia and Pittsburgh) have enacted local laws that may govern service animals in some types of public spaces.

The PHRA does not use the term "service animal," but, "guide or support animal." There is no further definition of what this means. On the surface, it does not appear to be limited to dogs or miniature horses and could, conceivably, include other types of animals. Also, it is arguable that therapy animals are "support animals" that may be protected by the PHRA.
Pennsylvania law makes it a summary offense for a public accommodation's owner, manager, or employee to deny access to the accommodation or its benefits to any person who uses a "guide, signal or service dog or other aid animal that has been certified by a recognized authority to assist a person because of the physical disability, blindness, or deafness of the user." The law similarly applies to persons who are training an animal for or from a recognized authority for use by a person with one of the listed disabilities. This law thus is more limited than the ADA because the animal must be certified by a recognized authority and it plainly excludes animals that assist individuals with non-physical or non-sensory disabilities.
Controversies

- Certification?
- Requirements for Emotional Support Animals?
- Inclusion of exotic animals?
- Abuse of Laws in apartments and on airplanes?
- Service Animals in Schools?
- Use of controversial breeds of dog as service or emotional support animals?
QUESTIONS?