

“How Can THAT Dog be a Service Animal???” - What type of Training is Required for a Service Animal

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When a person brings a dog into a restaurant or any business open to the public, all eyes are drawn to that person. Is the dog a service dog? Is the person a faker? Is the dog an emotional support dog or a “real” service dog? How can that dog be trained?

Primarily, the rules are different for animals in public accommodations and in housing. In public accommodations, under the Americans with Disabilities Act (ADA), a service animal is a dog or a miniature horse that “is individually trained to do work or perform tasks for the benefit of an individual with a disability.”ⁱ The only requirements to be classified as a service animal under federal regulations are that the animal be (1) individually trained, and (2) work for the benefit of a disabled individual. There is no requirement as to the amount or type of training a service animal must undergo. Further, there is no requirement as to the amount or type of work a service animal must provide for the benefit of the disabled person.ⁱⁱ

In housing, because the FHA also includes emotional support animals, whose mere presence provides support for persons with psychological disabilities, no training may be required for the specific person’s disability.ⁱⁱⁱ The FHA does not require any training requirement, only the fact that it facilitates a disabled individual’s ability to function.^{iv}

Under the ADA, there are no requirements as to the amount or type of training that a service animal must undergo, nor the type of work or assistance that a service animal must provide, but the animal must be trained to perform tasks or do work for the benefit of a disabled individual.^v The only standard is that there must be some evidence of individualized training to set the service animal apart from the ordinary pet. As long as the service animal can do one task, the dog is a service animal.^{vi}

Under the Department of Justice’s ADA regulations, the issue of an official training standard for service animals was explicitly considered and rejected. In the commentary to the ADA regulations, the Department of Justice stated as

follows:^{vii}

Training requirement. Certain commenters recommended the adoption of formal training requirements for service animals. **The Department has rejected this approach and will not impose any type of formal training requirements or certification process, but will continue to require that service animals be individually trained to do work or perform tasks for the benefit of an individual with a disability.** While some groups have urged the Department to modify this position, the Department has determined that such a modification would not serve the full array of individuals with disabilities who use service animals, since individuals with disabilities may be capable of training, and some have trained, their service animal to perform tasks or do work to accommodate their disability. A training and certification requirement would increase the expense of acquiring a service animal and might limit access to service animals for individuals with limited financial resources.

Some commenters proposed specific behavior or training standards for service animals, arguing that without such standards, the public has no way to differentiate between untrained pets and service animals. Many of the suggested behavior or training standards were lengthy and detailed. The Department believes that this rule addresses service animal behavior sufficiently by including provisions that address the obligations of the service animal user and the circumstances under which a service animal may be excluded, such as the requirements that an animal be housebroken and under the control of its handler.

Further, there is no behavioral standards for a service animal, other than the animal must be under the control of the handler. The provision of the Americans with Disabilities Act Regulations state as follows:^{viii}

(2) *Exceptions.* A public accommodation may ask an individual with a disability to remove a service animal from the premises if:

(i) The animal is out of control and the animal's handler does not take effective action to control it; or

(ii) The animal is not housebroken.

(4) *Animal under handler's control.* A service animal shall be under the control of its handler. A service animal shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control (*e.g.*, voice control, signals, or other effective means).

(5) *Care or supervision.* A public accommodation is not responsible for the care or supervision of a service animal.

The issue of control under the Americans with Disabilities Act is that an animal can go into a public accommodation on a leash or a tether, and the animal does not pose a direct threat to others.^{ix} It has nothing at all to do with the extent of the trained activity of the animal.

As such, this is why the Department of Justice provides guidance that a business entity can only ask two questions in situations where it is not obvious that the dog is a service animal^x:

(1) is the dog a service animal required because of a disability? and

(2) what work or task has the dog been trained to perform?

Staff are not allowed to request any documentation for the dog, require that the dog demonstrate its task, or inquire about the nature of the person's disability.

ⁱ 28 C.F.R. § 36.104

ⁱⁱ *Green v. Hous. Auth.*, 994 F. Supp. 1253, 1255-56 (D. Or. 1998).

ⁱⁱⁱ See HUD Statement, Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs.

https://www.hud.gov/sites/documents/SERVANIMALS_NTCFHEO2013-01.PDF (last accessed on February 20, 2018).

^{iv} *Bronk v. Ineichen*, 54 F.3d 425, 430-31 (7th Cir. 1995).

^v *Rose v. Springfield-Greene Cnty. Health Dep't*, 668 F. Supp. 2d 1206, 1214-15 (W.D. Mo. 2009); *Prindable v. Ass'n of Apartment Owners of 2987 Kalakaua*, 304 F. Supp. 2d 1245, 1256 (D. Haw. 2003)

^{vi} *Johnson v. Or. Bureau of Labor & Indus.*, 290 Or. App. 335 (2018)

vii 75 FR 56236, 56272 (2010)

viii 28 U.S.C. § 302

ix Alboniga v. Sch. Bd. of Broward Cty. Fla., 87 F. Supp. 3d 1319, 1341-42 (S.D. Fla. 2015).

x https://www.ada.gov/regs2010/service_animal_qa.html