

# Is that pup really protected under the law? - Emotional support and other assistance animals

By Matthew W, Dietz

Some people get their feathers in a ruffle when they see a fur baby being pushed around in a stroller.

There are so many myths and misconceptions regarding assistance animals and emotional support animals that I will try to clear up a few.

Under the law, an emotional support animal is a tool that is similar to any other device or equipment that is used by a person with a disability to assist such person with his or her disability. One of the tenets or guiding principles of the disability rights movement is that the person with a disability has the right of self-determination of their own health care choices. The use of animals for therapeutic purposes is a recognized method of lessening the effects of a disability.



## **FACT # 1 – A person with an assistance dog or an emotional support animal must have a disability**

A disability is a substantial impairment of a daily life activity or a major bodily function. For purposes of an emotional support or a service animal, this includes limitations in vision, hearing, mobility, socialization, sleep, anxiety, depression, conditions that are exacerbated by stress.

## **FACT # 2- Service Animals are different from Emotional Support Animals, or non-trained assistance animals.**

The requirements relating to animals used by a person with a disability are different depending on the reason why the person needs the animal and the training of the animal.

- A service animal is only 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, including a physical, sensory, psychiatric, intellectual, or other mental disability.
- An emotional support animal is any creature that provides emotional support, well-being, comfort, or companionship for a person with mental illness or psychiatric disability. The ADA specifically exempts tasks including emotional support, well-being and companionship from the definition of a service animal.
- A non-trained assistance animal can be any type of creature that is necessary for a person with a disability's equal use and enjoyment of a premises or facility, which includes emotional support animals.



*A snake can be an emotional support creature as long as it is not a direct threat to others*

**FACT # 3 – Only Service Animals are permitted in businesses, hotels restaurants, or governmental facilities in which dogs are ordinarily not permitted.**

The Americans with Disabilities Act specially allows service animals to be in these categories of facilities. No reason necessary. That's the law. There are only two questions that can be asked of a service animal user if the disability and use of the dog is not obvious - (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? NO documentation can be requested and the dog cannot be asked to perform tasks.

**FACT #4 – Emotional Support Animals and other Assistance Animals are not permitted in facilities where dogs are ordinarily not permitted, but are permitted in housing, either as a guest or a resident.**

The Fair Housing Act requires a housing provider to permit any creature as a reasonable accommodation if the animal is necessary for a person with a disability's equal use and enjoyment of the premises.

- “Reasonable” means that it does not pose an undue burden of fundamental alteration in the programs and services in the operations of the housing provider and reasonable in the scope of such services. The more of a burden the accommodation



would have on other tenants would weigh against the reasonability of an accommodation (i.e. a cat hoarder may not be reasonable)

- “Necessary” means that the animal ameliorates (or lessens) the effects of the disability.

**FACT #5 – Documentation can be requested for an animal in housing where the disability and need for the animal is not obvious.**

Housing providers can request the information necessary to advise them of the disability and the desire and possible need for an accommodation. However, the requested documentation is limited to that which is necessary for the housing provider to conduct a meaningful review of the application to obtain actual knowledge of the requestor's disability and the necessity of a service animal. Any information of the disability-related need for the service animal is sufficient if it establishes that an individual has a disability and that the animal in question will provide some type of disability-related assistance. This does not include medical records or interviews with the doctors.



**FACT 6 -- A Creature can be denied when it is an actual direct threat to the health and safety of other residents.**

Any animal or creature can be denied when there is an actual threat, and not conjectural or hypothetical. For example, while some municipalities have pit-bull restrictions, such restrictions are not valid when a pit bull is an assistance animal, unless that individual pit bull demonstrates threatening behavior. For another example, dogs cannot be banned based upon the concern that some residents in the building may have allergies. In the circumstances where an actual resident has allergies that are so serious that they need to take an allergy (epinephrine) shot when in close proximity to a dog, then the housing provider has a duty to see whether the risk could be minimized (i.e. setting schedules, installing an ionizer) prior to denying an assistance animal.

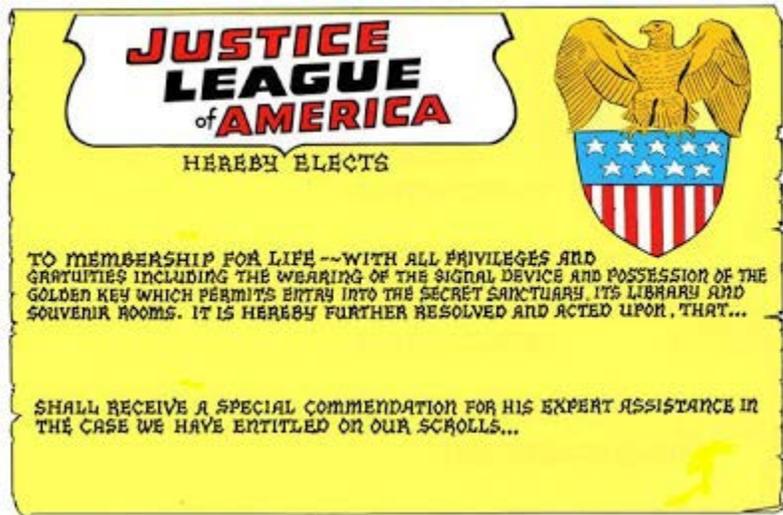


*If Hong Kong Phooney went rogue, he would be a direct threat.*

**FACT 7 – THERE ARE NO OFFICIAL LICENSES, REGISTRIES OR COSTUMES FOR SERVICE ANIMALS OR EMOTIONAL SUPPORT ANIMALS**

Again – there are no official licenses, clothes, or vests for a service or assistance animal. If I have a client who gives me their official registration card, I still ask for medical verification.

Similarly, if I had a “Justice League of America” membership card and ran around in colored tights, I would not have super powers and not be a super hero. I would not have a bat mobile, or fly an invisible plane. The license and clothing do not magically transform the animal into a creature that has the blessing of any governmental agency that verifies the animal’s training or emotional attachment.



**FACT 8 – You can not be charged a deposit or any other fee because of your assistance animal, unless the animal damages property.**

This speaks for itself. Just like a person cannot be charged if they are using a cane or a wheelchair, he or she cannot be charged for the use of an assistance animal.

**FACT 9 – Airlines are covered under a different law, and have different requirements.**

Unlike the ADA, airlines are required to permit emotional support or assistance dogs, similar to housing providers. However, current documentation and pre-registration may be required. Airlines are not required to accommodate unusual animals, such as snakes, other reptiles, ferrets, rodents, and spiders. However, with respect to all other animals, including unusual or exotic animals that are presented as service animals (e.g., miniature horses, pigs, monkeys), an airline is required to permit them in the cabin as long as the animal is not too large or heavy to be accommodated in the cabin, whether the animal would pose a direct threat to the health or safety of others, whether it would cause a significant disruption of cabin service, or whether it would be prohibited from entering a foreign country that is the flight's destination.