

An Employer's Guide on Service Animals and the ADA

Labor & Employment Law Update

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Under the Americans with Disabilities Act (ADA) it is unlawful for an employer to discriminate against a qualified individual on the basis of disability, and this includes not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual.

A qualified individual is a person with a disability who can perform the essential functions on the job with or without a reasonable accommodation. A reasonable accommodation includes making existing facilities used by employees readily accessible to individuals with disabilities. If an employee with a disability can perform the essential functions of the job utilizing a reasonable accommodation, they fall within the protections of the ADA.

There are no bright-line limitations on what is reasonable or what is not. What if your employee asks to bring a service animal to the worksite? Must an employer allow dogs or other animals on the premises alongside their employees if an employee claims the animal is needed to assist them in maintaining their employment? Perhaps.

Although uncommon, requests for service animals have been litigated, and the courts often allow the issue to proceed through a jury trial, a very expensive process for any employer. Examples include a paraplegic physician utilizing her dog to pull her wheel chair, open and close doors, and retrieve items, and a mechanic with PTSD utilizing a service dog around the shop.

It is important to remember that Title I of the ADA governs employment, while Title II and Title III of the ADA govern places of public accommodation. A reasonable accommodation under Title I is not necessarily limited to a service animal as defined for Titles II & III. If an employee with a disability requests a reasonable accommodation to assist in the performance of his or her job, an employer should engage in a good faith interactive dialogue with the employee about his or her request. Failure to do so is a violation of the ADA.

The employer should analyze the job purpose and essential functions, and consult with the employee to ascertain the precise job-related limitations caused by his or her disability and how those limitations would be overcome with a reasonable accommodation, such as the service animal or other alternatives. If the disability or need for the animal is non-obvious, an employer can request

reliable documentation verifying the employee's disability and the relationship of the animal to that disability.

Issues to consider include the nature of the worksite (i.e., office setting versus production facility), the relationship between the animal's function and the employee's disability, how well the service animal will improve the employee's ability to perform his or her job, and the temperament and behavior of the animal. If an employee shows their request is reasonable, the employer is required to provide a reasonable accommodation unless the accommodation would impose an undue hardship on the operation of the business.

It is important to keep an open mind and evaluate every request on a case-by-case basis. Although the employee's preference should always be considered, an employer is not required to grant the specific request simply because it is the employee's preference. The employer should implement the accommodation that is most appropriate for both the employee and the workplace.

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