

Help! Our New Hire Showed Up with a Service Dog!

Labor & Employment Law Update

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Reasonable accommodation issues often require an employer to balance the needs of the employee requesting accommodation with the needs of other employees who are impacted by the decision. These issues can be magnified when an employee relies on a service dog.

Most employers are unfamiliar with the issue, and courts and enforcement agencies provide little guidance on service dogs in the employment context. As a result, when the issue arises, many employers scramble to answer the most basic questions: Are we required to allow a service dog in the workplace? What if another employee complains or is allergic?

First and foremost a request to bring a service dog to work is a request for a reasonable accommodation and should be analyzed in a manner consistent with other accommodation requests. That means:

Step 1: Engage interactively to determine whether the individual has a disability and can perform the essential functions of the job with or without reasonable accommodation. Check state and local laws. This article addresses federal law, but state and local laws may impose additional requirements.

Step 2: Will the service dog's presence allow the employee to perform the essential functions of the position? In at least one reported case, the court concluded the employer was not required to allow the service dog because the employee failed to prove that the assistance the service dog provided was related to his job duties. Remember, however, service dogs provide assistance in a variety of ways.

It is widely known that dogs can be trained to assist people with visual impairments but service dogs can also be trained to assist people with seizure disorders, PTSD, and a wide range of physical and mental impairments. There is no legally recognized service dog certification. In fact, dogs are often trained to meet a particular person's unique needs.

Step 3: Will the business be burdened by the service dog? If so, are there less onerous ways to accommodate the employee? The ADA requires an employer to provide reasonable accommodation unless it can prove that doing so imposes an "undue burden." However, the employee is not entitled to dictate the nature of the accommodation. The employer can choose from alternative accommodation

options so long as the accommodation provided is effective.

“Undue burden” is difficult to prove. While the determination is necessarily fact sensitive, it is unlikely a co-worker’s allergy will be sufficient. If the issue arises, the employer should look to ways to mitigate the impact on the co-worker. Is it feasible to have the dog use a particular entrance and remain in a specific area that the allergic co-worker can then avoid? What other changes can be made to meet the needs of both employees?

Employers should insist that the dog is well behaved and properly controlled at all times while in the workplace. If problems arise they should be addressed promptly and be well documented.

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