

# ADA AUDIO

## Conference

ADA NATIONAL NETWORK

### ADA Audio Conference Series November 21, 2017

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2:00pm Eastern Time

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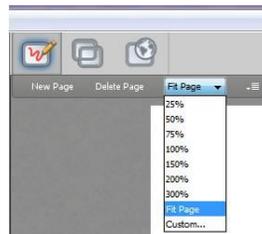
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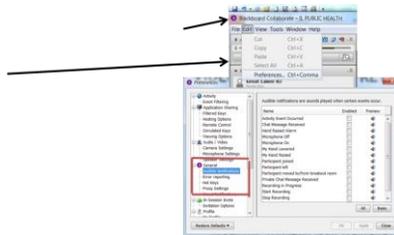
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# SERVICE ANIMALS: WHAT DO YOU NEED TO KNOW

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## Laws to be Discussed

- Americans with Disabilities Act (ADA)
- Rehabilitation Act (Section 504)
- Individuals with Disabilities Education Act (IDEA)
- Fair Housing Act (FHA)
- Air Carriers Access Act (ACAA)



## SERVICE ANIMALS AND THE ADA

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## Scenario:

Gary is responsible for the training of new staff at the Union bowling alley. He has had some issues with recent hires and persons entering the alley with service animals. Gary is updating the training program and wants to make sure he includes information on the ADA and service animals.



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## What is a Service Animal?

- 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



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## What does "do work or perform tasks" mean?

The dog must be trained to take a specific action when needed to assist the person with a disability

### Examples:

- A person with diabetes may have a dog that is trained to alert him when his blood sugar reaches high or low levels
- A person with depression may have a dog that is trained to remind her to take her medication
- A person who has epilepsy may have a dog that is trained to detect the onset of a seizure and then help the person remain safe during the seizure



## Scenario:

During the training of the new staff Gary is asked how do they determine if the animal is a service dog. They want to know if they can ask any questions or do they just have to allow the person into the facility.



## Permissible Inquiries

Only two inquiries may be made by covered entities:

1. Whether the animal is required because of a disability; and
2. What work or task the animal has been trained to perform.

Generally, inquiries may not be made when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability.



## Scenario

A patron with a dog enters a branch of the Asbury Park Library where Patti is the librarian on duty. Patti informs the patron of the library's no pet policy. The person tells Patti the dog is a service animal.

Patti is then shown a document that states the dog is a registered and certified service animal. When Patti asks the two allowed questions the patron refuses to answer and states that she has documentation stating the dog is a service animal.

Patti wonders if the certification is valid and if she can require documentation in the future from someone using a service animal.



## What Should Patti Do?

- Covered entities may not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal, as a condition for entry.
  - There are individuals and organizations that sell service animal certification or registration documents online
  - These documents do not convey any rights under the ADA
  - The Department of Justice does not recognize them as proof that the dog is a service animal



## Scenario

Nils is the manager of a local grocery store. A frequent shopper comes in with his service animal.

Nils has been told by the shopper that his service dog helps him pick up items. While in the store the service animal often of leash and is roaming away from the shopper is located.

Nils is unsure on what he can do since it is a service animal.



## “Under Handler's Control”

- Must have harness, leash, or other tether
- If individual is unable to use these because of his or her disability or because use would interfere with the safe and effective performance of work or tasks, then the animal must otherwise be under the individual's control ( i.e., voice control, signals, or other effective means.)



## Scenario

The next time the shopper with the service animal is in Nils store he becomes aware of an incident involving the service animal.

While in the meat department the service animal became very aggressive towards two other shoppers.

The animal was barking and lunging at the individuals.



## Rules regarding “exclusion” of Service Animals

- General rule is that covered entities must permit service animals.
  - The revised rules, however, add two specific exceptions for when service animals can be excluded:
    1. The animal is out of control and the individual does not take effective action to control it; or
    2. The animal is not housebroken.
- The individual should be given the opportunity to participate without the animal.



## Scenario

Becky is traveling with her family on vacation. She uses a service dog and informs the hotel of this when making the reservation.

Becky is told that an additional fee will be charged because of the additional cleaning that will need to be done because of the service animal.

Becky has never had this experience before.





## Should the Hotel Charge Becky the Additional Fee?

- No surcharges
- Hotels and other covered entities are not permitted to charge guests pet deposits or additional fees
- If a guest's service animal causes damages to a guest room, a hotel is permitted to charge the same fee for damages as charged to other guests.

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## Miscellaneous Provisions

- Covered entities are not responsible for the care or supervision of a service animal.
- Service animals may accompany individual's to areas where the general public are allowed to go.

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## Are emotional support, therapy, comfort, or companion animals considered service animals under the ADA?

- No
  - These terms are used to describe animals that provide comfort just by being with a person.
  - Because they have not been trained to perform a specific job or task, they do not qualify as service animals under the ADA



## Are service-animals-in-training considered service animals under the ADA?

- No
  - Under the ADA, the dog must already be trained before it can be taken into public places

**Note:** Some state laws do contain provisions that recognize the rights of a service-animal-in-training



## MINIATURE HORSE EXCEPTION



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## Miniature Horses

- Rules require reasonable modifications to permit a miniature horse that has been individually trained to do work or perform tasks.
- Rules provide assessment factors to assist entities in determining whether reasonable modifications can be made.



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## Miniature Horse Assessment Factors

- The type, size, and weight of the horse and whether the facility can accommodate those features
- Handler has sufficient control of the horse
- Horse must be housebroken
- Whether the horse's presence in a specific facility compromises legitimate safety requirements



## EMPLOYMENT AND SERVICE ANIMALS

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## Scenario

During a meeting between Carol and one of her staff, the employee indicates the need for an accommodation.

The employee informs Carol that his doctor has prescribed a service animal for him. The employee does not have a visible disability nor does there seem to be an obvious need for a service animal.

Carol considers what the company's obligations are in this situation.



## Employment and Service Animals

- Service Animal as a Reasonable Accommodation - Covered employers are required to provide reasonable accommodations when needed to provide:
  - equal access to application process
  - allow qualified employee to perform essential functions, or
  - to afford equal access to any benefits associated with position
- Service Animal not limited to definition used under Title II and III
  - Emotional and companion animals MAY be considered accommodations under Title I



## Employment and Service Animals

- Documentation - Employer has right to documentation regarding the need for a service animal and how the use of a service animal relates to performing the essential job functions
- Employer is not responsible for the care and/or supervision of the service animal



## Scenario

During one of his nightly commutes home from work Bill notices a passenger board the bus with a cat. He observes the bus driver ask the passenger a few questions.

After the passenger answers the driver's questions the passenger then goes and takes a seat.

Bill thought that only dogs could be service animals under the ADA.



## Federal Transit Administration – Service Animals

- No changes to U.S. Department of Transportation (DOT) ADA regulations regarding service animals in light of revised Title II and III regulations
- DOT ADA regulations cover both public and private transportation providers
- DOT would announce any changes in their rules and provide for a public comment period



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## DOT Definition of Service Animal

- Service animal means:
  - Any guide dog, signal dog, or other animal individually trained to work or perform tasks for an individual with a disability, including, but not limited to:
    - guiding individuals with impaired vision
    - alerting individuals with impaired hearing to intruders or sounds,
    - providing minimal protection or rescue work,
    - pulling a wheelchair,
    - or fetching dropped items



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## Service Animals at Places of Education

- **Individuals with Disabilities Education Act (IDEA)- K-12**
  - Student may require the assistance of a service animal in the classroom
    - Consider inclusion of the need for service animal in Individual Education Plan (IEP)
- **ADA/504- Post-Secondary setting**
  - Student may require the assistance of a service animal in order to access programs, activities or services
  - Fair Housing Act- Post-Secondary housing
  - Applies to University/College housing including dormitories
  - Assistance animals



## Scenario

It is the first day of classes at Clarence Clemons Community College and freshman Jake arrives on campus with his service animal.

Security personnel see Jake and inform him of the college's "no pet" policy. Jake tells them that it is his service dog.

Security directs Jake to the Office for Disability Services so that he may register with the office and have the service animal on campus.



## Service Animals at Places of Education

- Post-Secondary Educational Institution
  - Limited to 2 questions if it is service animal under ADA
  - May require documentation establishing student has disability and disability related need for assistance animal in housing situations
  - Not responsible for the care and/or supervision of the animal



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## Scenario

It is the first day of classes at Asbury Park College and freshman Eddie arrives on campus with his service animal. Security personnel see Eddie and inform him of the college's "no pet" policy.

Eddie tells them that it is his service dog.

The security staff informs Eddie of the college's service animal registry program operated from the Office for Disability Services.



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## Animal Registry

- Colleges and other entities, such as local governments, may offer voluntary registries
- Many communities maintain a voluntary registry that serves a public purpose, for example, to ensure that emergency staff know to look for service animals during an emergency
- Some offer a benefit, such as a reduced dog license fee, for individuals who register their service animals
- An entity may not, however, require that a dog be registered as a service animal as a condition of being permitted in public places



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## Scenario

Susie arrives at her university for her sophomore year. Over the summer she obtained an emotional support animal to help with her anxiety.

Susie will be living in an on-campus dormitory again this year.

Prior to arriving on campus she did not inform the university that she would have the ESA with her in the dormitory.



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## Fair Housing Act

- **History:**
  - 1968 - The federal Fair Housing Act (FHA) was signed into law to provide protection from discrimination in housing, based on race, color, national origin, or gender
  - 1988 - Amendments were passed which expanded the protection from discrimination in housing to other classes, including **disability** and familial status
- 1988 Amendments requires reasonable accommodation including allowing a service animal in a dwelling unit, even when “no pets” allowed.
  - Animals used for emotional support are considered “assistance animals” under FHA and are allowed when necessary to allow equal opportunity to use and enjoy dwelling



## Disability Specific Prohibitions

- **Who does it apply to:**
  - Landlords
  - Condominium Associations
  - Other housing providers
- **Who is covered?**
  - Housing applicants with a disability
  - Residents with a disability
- **Additional protections:**
  - Individuals who are associated with someone who has a disability (Family member or friend)





## Scenario

Max has found an apartment in a neighborhood in Atlantic City he wants to rent. Max has a service dog and his wife has an emotional support dog.

When he tells the property manager this information the manager states that the property has only one pet building and in all other buildings no pets are allowed.

The property further tells Max that in the pet building there breed restrictions and size limits.



## Reasonable Accommodations

- **FHA mandates that housing providers:**
  - Make reasonable accommodations in rules, policies, practices, or services when necessary so that a person with a disability has the equal opportunity to use and enjoy the housing.
- **Modification of “No Pet” policy:**
  - Waiving a no-pets rule to allow a person with a disability to have the assistance of a service animal, or a comfort animal
  - No breed or weight restrictions



## Scenario

Max has spoken with staff from his regional ADA Center about his issue. He has learned the Fair Housing Act requirements for housing providers to make accommodations to no pet policies for a resident with a disability.

Max has another conversation with the property manager and he is told he and his wife may move in with the service dog and emotional support dog but they must provide documentation and pay a pet deposit and a monthly pet fee



## Documentation

- Housing provider may require documentation that:
  - Establishes resident has a qualifying disability
  - Disability related need for the Animal

Note: Housing provider may not place a pet deposit or monthly pet fee on the resident.



## Air Carrier Access Act (ACAA)

- ACAA prohibits discrimination on basis of disability in air travel
  - Applies to all domestic airlines
  - Applies to foreign airlines that fly into or out of the U.S.

## ACAA and Service Animals

- Definition of service animal includes:
  - guide dogs
  - signal dogs
  - psychiatric service animals
  - emotional support animals
- Service animals traveling with people with disabilities are allowed to sit in the cabin of the aircraft
- No fee can be assessed for traveling with a service animal

## Questions and Documentation

- Air carrier personnel may ask questions or request documents including:
  - Verify need for the service animal is related to the disability
  - To substantiate the need for a psychiatric service animal and/or emotional support animal
- Air carriers may request very specific diagnostic documentation related to psychiatric service animals and/or emotional support animals be provided 48 hours in advance of the flight



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## Documentation for Psychiatric/Emotional Support Service Animals

Documentation must:

- Be current (not more than 1 year old);
- Be on letterhead from a licensed mental health professional;
- State that the person has a mental or emotional disability recognized in the DSM IV; and
- State that the animal is needed as an accommodation for air travel or for activity at the individual's destination.
- State that the health professional is treating the individual and include the date and type of the mental health professional's license and the state or other jurisdiction in which it was issued.
- Does not need to state the person's diagnosis.



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## Service Animals – Identification/Inquiry

- Airline should permit the service animal to accompany the person on the plane if:
  - Service animal is wearing a harness, tags, vests, or backpack; or
  - Person provides identification cards or other written documentation; or
  - Person provides credible verbal assurances that the animal is a service animal



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## Additional Inquiry

- If personnel are uncertain of the animal's status after being told that it is a service animal, can ask questions such as :
  - What tasks or functions does the animal perform?
  - What has the animal been trained to do?
  - Describe how the animal performs this task or function?



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## Unusual Animals

- Unusual animals like miniature horses, pigs, and monkeys may be allowed to travel as service animals
- Air carrier may take into account the animal's size, weight, and whether the animal would pose a direct threat to the health or safety of others, or cause a significant disruption in cabin service
- If there are restrictions on the animal at the final destination, the animal may be denied.



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## Other Species Not Considered Service Animals

- Specifically Denied Boarding:
  - Snakes and other reptiles
  - Ferrets
  - Rodents
  - Spiders
- Any animal may be denied board if they pose safety and public health concerns



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## Foreign Air Carriers

- Obligations are limited to recognizing only dogs as service animals
  - Psychiatric/Emotional Support animals are not required



## Conditions for Excluding of Service Animals

A service animal may be denied boarding for any of the following:

1. Barking, growling, jumping on people, or
2. Misbehaving in ways that indicate that the animal has not been trained to behave properly in public settings or
3. Poses a direct threat to the health and safety of others, or;
4. Poses a significant risk of disruption in airline service



## Consideration of Other Customers

- Service animals cannot be denied passage because other customers are allergic to, annoyed by, or afraid of, animals
- If there is a passenger with a severe allergy that rises to the level of a disability and cannot travel in the same cabin as the animal, a carrier may rebook one of the passengers on another flight



## Pre-boarding and Seating Issues

- Passengers with a service animal may request pre-boarding
- They may request any seat unless it blocks an aisle or an area designated for emergency evacuation.
- If the individual and service animal cannot be accommodated in a requested seat, then s/he must be given the opportunity to move to another seat within the same class of service



## Air carriers are not required to.....

- Ask other passengers to give up all or most of the space in front of their seats to accommodate space for a service animal
  - May try to find someone willing to do this
- May voluntarily reseat a person traveling with a service animal to a business or first-class seat to accommodate a service animal



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## In-flight Services for Service Animals

- In-flight services and facilities do not have to be provided to service animals
- Air Carriers are not responsible for the care and/or supervision of the service animal



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## Service Animal Relief Areas

- Air carrier must provide animal relief areas within terminal and must provide escort service to individuals traveling with service animals
  - Relief areas must be within security areas



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## Scenario

John is leaving on a jet plane. All his bags are packed. The dawn is breaking, it's early morn. The taxi is waiting and he's blowing his horn outside of the apartment building. J

John has already provided documentation to the airline so he may travel with his emotional support cat.

Should he use a private car service or public transportation to get to the airport?

What about when John gets to the hotel where he is staying?



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# CONFUSED???

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# Questions

Let's talk now.....



Or Contact me at:  
Peter Berg  
312-413-1407 (V/TTY)  
pberg@uic.edu



## Resources

- ADA National Network
- (800) 949-4232
- [www.adata.org](http://www.adata.org)
  
- U.S. Department of Justice
- (800) 514-0301 (Voice)
- (800) 514-0383 (TTY)
- [www.ada.gov](http://www.ada.gov)



## More Resources

- U.S. Department of Housing and Urban Development
- (800) 669-9777
  
- U.S. Department of Education
- (800) 421-3481
- [www.ed.gov](http://www.ed.gov)
  
- U.S. Department of Transportation
- (800) 778-4838
- <http://airconsumer.ost.dot.gov/hotline.htm>



## Technical Assistance Documents

- Fact Sheet: Service Animals ADA National Network
  - <http://adata.org/factsheet/service-animals#main-content>
- Revised ADA Requirements: Service Animals
  - [http://www.ada.gov/service\\_animals\\_2010.htm](http://www.ada.gov/service_animals_2010.htm)
- HUD Notice on Assistance Animals: Frequently Asked Questions about Service Animals and the ADA
  - [https://www.ada.gov/regs2010/service\\_animal\\_qa.html#cert](https://www.ada.gov/regs2010/service_animal_qa.html#cert)



## National Survey: Service Animals

The Southwest ADA Center is carrying out research into the use of service animals and other assistance animals by people with disabilities in public settings. As part of this research, they are asking people, age 18 and up, who use these animals across the country to complete the survey.

Your response will help them to understand what access issues people are having with their animal, and to develop and improve the information, support, and guidance needed for the community to improve access for users of assistance animals.

Survey link:

<http://www.surveygizmo.com/s3/3773597/Assistance-Animal-Survey>



# ADA AUDIO

## Conference

ADA NATIONAL NETWORK

### Thank you for participating in today's ADA-Audio Conference Session

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