

What is a Service Animal? And why you need to know

Eric Holm: Good morning my name is Eric Holm. I'm the president of the State Board of Guide Dogs for the Blind. The State Board of Guide Dogs for the Blind has been licensing trainers and schools in the State of California since 1938. We are the only such regulatory Board in the United States. As such, we get a tremendous amount of inquiries from law enforcement, private sector, and public sector regarding the roles and responsibilities of guide dog teams and service dogs in general. That is why we thought it would be a good idea to do this program; what is a service Animal and why you need to know. In 1991 the United States Justice Department started to revise the rules and regulations regarding service animals. These changes were signed by the Attorney General of the United States Eric Holder September 15, 2010 and will go into effect on March 15, 2011. We have assembled experts in the field who have taken part in both the regulatory changing process and have a great deal of life experience with service animals. With that being said I will turn you over to Liz Savage from the United States Department of Justice.

Liz Savage: Thank you Eric. Good Morning everyone. As Eric said we at the Department of Justice enforce two sections of the Americans with Disabilities Act (ADA) ~~that law~~ -- one that covers state and local government entities which is known as Title II of the law and the other is title III which covers public accommodations and commercial facilities. Commercial facilities are entities like office buildings, factories, plants; areas where the public normally doesn't go. The most important area for all of you and for title III entities is public accommodations. Any private business that is open to the public which can range - a private hospital, grocery store, hotel, theatre, any type of other store, private daycare center, any type of museum, private park, or amusement park. There are twelve categories of public accommodations and they are intended to be very broad. State and local governments include any public entity so a county hospital would be covered by Title II. The requirements that I'm going to talk about are identical for both types of entities: public and private -- Title II and Title III. The original ADA regulations became effective, as Eric mentioned, in 1991. The regulations that I'm going to focus on are revised regulations that he said were put in the federal register on September 15, 2010 and they take effect on March 15, 2011.

Our service animal provisions are revised and clarified. We take policies that had been in our technical assistance guidance under the 1991 regulations and put them into the regulations. A lot of what I will be talking about, if you're familiar with the service animal provisions, is not very new but, there are some new areas I want to focus on. First, the definition of a service animal is now limited to a dog. Secondly, that dog cannot be what is known as an emotional support dog or a dog that provides companionship or comfort. Third, our regulation clarifies

that a service animal, the dog, can work for an individual that has either a physical sensory, psychiatric, intellectual or any other mental disability. The precise definition in the regulation of a service animal is "a dog that has been individually trained to do work or perform tasks for the benefit of an individual with a disability whether that individual has a physical, sensory, psychiatric, intellectual or other mental disability." The key here is that the dog must be trained. The dog can be trained by a school, a program or by the individual to do work or tasks directly related to the individual's disability. The regulation gives a host of examples of work or tasks that a service animal can do but it is not limited to those that are listed. For example a guide dog that helps a blind person or a person with low vision navigate; a dog that alerts a person who is deaf or hard of hearing to sound; dogs that alert persons with epilepsy to an oncoming seizure. With respect to those that have psychiatric disabilities, a dog can alert or remind people to take their medication or can prevent or interrupt anxiety attacks or the individual partaking of dangerous behavior. If a dog just senses that an individual may be in harm's way or may be about to hurt themselves but doesn't perform a task or do any work to help the individual that is not a service dog.

Many ask when can a service dog be excluded. The only time that a service animal can be excluded from public accommodations is if it is out of control and the handler is unable to regain control or when the dog is not house broken. We often receive the question, "What if the dog has an accident?" The guidance that accompanies the regulation says that the dog must be trained to retain waste. An occasional accident is allowed. However, if the dog has been excluded from a business or public entity the handler must be allowed access without the dog. Failing to allow the individual into the facility without the dog would be a violation of the law.

What does it mean for the dog to be in the handler's control? Dogs must be in a harness, a leash, or be tethered in some way but, if a harness, leash or tether would interfere with a task that they are performing or the work that they are doing for the individual, then an individual can be allowed to retain control by voice, signals or some other effective means. They must be able to control their dog.

These are dogs that do work or perform tasks for the benefit of an individual with a disability so providing mere companionship, emotional support or comfort is explicitly stated in the regulation as being a task that is not allowed. So, these dogs are not permitted under the ADA. However, the Fair Housing Act and the Air Carrier Access Act permit dogs that are comfort animals as a reasonable accommodation. An individual with a disability that has a comfort or companion dog can have a dog in their home or can take it on an airplane but, they would not be allowed to take it into a restaurant, a theater, etc.

Dogs must be allowed in all areas where the public can go. We get questions about hospitals. Our regulations and our guidance explicitly follow the Centers for Disease Control (CDC) guidance which states that if an area of a hospital or other health care facility has limited access because of infection control then a dog cannot be permitted to go into that area.

What can you ask an individual about their dog? If it is apparent that the dog is a service animal like, in the instance of an individual who is blind and a guide dog, you cannot ask the individual anything because it is obvious. You can ask if the dog is required because of a disability and what work or tasks it has been individually trained to perform on behalf of the individual. Those are the only questions you can ask. You cannot inquire about an individual's disability, whether the dog has been certified by a training program, or if the dog has any type of license specific to service animals. If all dogs in the State of California or in a county are given a license showing that they have had their shots then obviously a service animal has to comply with those requirements but, there can be no specific requirement for service animals.

In terms of surcharges, let's say a hotel wanted to charge an individual a surcharge for having a service animal in their guest room. That would be a violation. You cannot charge a surcharge unless your business has a policy that states that any damage caused by the dog would be the responsibility of the handler. In that situation if the service animal causes damage to the property of the business the handler, individual with a disability, can be charged for the damage. A business must apply this policy regarding damage to everyone -- customers with and without disabilities.

The regulations explicitly state that the business or public entity is not responsible for the care of the animal. The owner is.

I said that the definition of a service animal is limited to dogs, which is true. However if an individual is allergic to dogs they may use a miniature horse. There are several types of miniature horses. A miniature horse weighs between 70-100 pounds and is typically between 24-34 inches high but, The Miniature Horse Foundation states that they only use miniature horses that are no more than 26 inches high. There are four assessment factors that must be taken into consideration by a business or public entity to determine whether a miniature horse should be permitted on their premises. If the entity believes based on objective facts that the horse does not meet any of these factors, they are entitled to exclude the miniature horse but, once again, the individual must be allowed access without the miniature horse. The first factor is the type, size, and weight of the miniature horse and whether that type, size, and weight can be accommodated in the facility. Secondly, the miniature horse must be under

control of the handler, the individual with a disability, and cannot get out of control. The miniature horse must be house broken. Lastly, whether the miniature horse's presence in the business or public entity's facility would adversely affect the legitimate safety standards based on actual facts not fears. Those are the four factors that must be taken into consideration; all other rules apply.

If an individual is excluded because of their service animal and they answer the question appropriately the individual can file a complaint with the Department of Justice and we have discretion whether to investigate it. We evaluate all complaints very carefully. Sometimes complaints are referred to mediation so long as both parties agree to mediation. In other situations, we investigate. All of our settlement agreements can be found on our Web site at www.ada.gov and you will see that when we settle a complaint with an entity that failed to allow access to an individual who uses a service animal we require the entity to develop a comprehensive policy to admit service animals and do staff training as well as ongoing staff training, especially when it is an entity with a high turnover rate. Failure to do staff training can result in unfortunate circumstances and an individual filing a complaint because they weren't treated appropriately. We have a course on our Web site for training purposes. The same remedies apply to state and local governments. We have the right to obtain compensatory damages for individuals. In some situations involving public accommodations the Justice Department has the right to obtain civil penalties - which go to the United States Treasury. . We try to work with entities in good faith and be reasonable and resolve issues through negotiations and technical assistance rather than litigation. We have a Web site that is being constantly updated and it will have new information and documents on our new regulations that will be put on the Web site on an ongoing basis over the next year. There will be a new service animal one up over the next couple of months so, you should always check www.ada.gov and click on "What's New" to view the most current updates or sign up for notifications. We also have a toll free Information Line with experts on hand to answer questions.

Stuart Seaborn: I'm Stuart Seaborn and I'm an attorney with Disability Rights California. We're a statewide nonprofit disabilities rights organization. We receive funding from both the federal government and the State of California. With me is Fred Nisen who is an attorney in our Oakland office. Both Fred and I work on disability rights issues in California. We've been asked to talk about State law issues. Liz has given an excellent description of the federal laws surrounding service animals. I want to point out that everything Liz has said is valid in California. California generally tracks federal law and for those of you who know a little about preemption, the ADA is the minimum or the floor of protection for disability rights in California including with service animals. If you have a situation where a state law provides less protection then that portion of

the State law is invalid. Fortunately in California there are no laws that provide less protection for disability rights. In the State of California a public or private entity cannot charge a surcharge on a person using a service animal however Civil Code Section 54.2 allows a private business or a public entity who has experienced some damage due to the service animal to charge the individual for damage. Of course, that entity would have to show that the damage was caused by the service animal. The Food and Agriculture Code has a provision that requires counties to endorse service animal tags and identification based on a certain set of criteria. That portion of the Food and Agriculture Code does not allow the counties to violate the ADA. So, if a person is in a public or private entity in California and they don't have a tag or they haven't been endorsed by the county under that California Food and Agriculture Code the public accommodation cannot require it. We receive calls asking "What can I do to ensure that my service animal is protected and allowed access?" One of the things they can do is get their animal registered under this California Food and Agriculture Code. Most counties in California have straight forward provisions. One thing that the person requesting the service animal tag is going to have to state to the county is that they know it is a misdemeanor to fraudulently claim that they are using a service animal. Many of our clients have gone through certified guide dog trainers and schools and the process has been made more streamlined for them since they are using certified trainers and schools but, I want to reiterate that the federal law is the minimum of protection for those using service animals in California and because of that the State law says that you cannot require an identification tag. Most of our calls are in the cases where the person does not have an obvious disability and the entity doesn't believe that the dog is a service animal and although it is illegal, they will ask for identification. We see this as a preemptive measure that the State has taken upon itself to give individuals with disabilities a tool to use when using public accommodations. One thing that Fred will talk about is that if you have a service animal in training that is with a certified trainer that service animal has to be allowed access as well to public accommodations. How do I know if a service animal is in training? In that instance you can ask for identification. If it is a person actually using the service animal they cannot be asked for identification. As Liz said, and this is both true in State and federal law, you can ask if the service animal is required due to a disability and what that animal is trained to do. Additionally, the California Penal Code Section 365.5 states that if a public accommodation or private business that is open to the public prevents somebody from using their service animal in that public accommodation, essentially from going to the same places as somebody without a legitimate service animal could go that person could be guilty of a misdemeanor and fined up to \$2,500. If a person is found to intentionally deny a service animal access then in addition to the possibility of a fine, there is a possibility of six months in jail. The final thing that is important in the Penal Code is if you are not a person who needs a service animal and claim that you need one you are committing fraud and it is a

misdemeanor in California. One thing that Liz mentioned, there are some remedies through the Department of Justice for those whose service animals have been denied access. Under California law, both the Disability Act and the Unruh Act, individuals have a private right of action to sue for damages. If a dog is needed for psychiatric reasons and it's not a comfort dog needed for emotional support it is permitted the same rights of access because it was individually trained to do to aid the person with the disability. Both the Fair Housing Act and the California Fair Employment and Housing Act, as they apply to housing, do allow comfort animals and emotional support animals, regardless if they perform a task, as a reasonable accommodation. The most common call my office receives is in the instance when the disability is not obvious and the entity does not believe that it is a guide dog. In that instance the entity can ask if there is a disability-related need for the animal and also what it is trained to do. If the individual provides an answer to those questions then the animal should be permitted into the establishment. My department tends to do mediation; we often do not enter into litigation. We have shied away from doing litigation against small business owners but, in some situations where it is a large public accommodation we have litigated and sought both damages and attorney's fees where service animals have been denied. I'm going to turn it over to Fred who will give additional requirements under state law.

Fred Nisen: Thank you. Only a couple of additions. First, although the Food and Agriculture Code requires counties to provide tags for service animals, it is not required by the ADA. However, if there is a service dog in training by a licensed trainer, that dog must be certified in order to prove the training to be able to bring it into a public accommodation or a public entity and that same law, which is the Disabled Person's Act has a provision for a person with a disability to get damages three times actual damages, or emotional distress, or whatever actual damages they have incurred, the amount is triple. Or, under the Disabled Person's Act, a minimum of \$1,000 for every incident. Under the Unruh Act, which says all protected classes, people have the right to \$4,000 per incident, and that is in addition to what we call injunctive relief, which says they will be required to allow the dog in. Finally, the State law allows for attorneys' fees. So, in the somewhat rare instance that a case needs to be filed in court then the client, the person, will be entitled to attorney's fees which unfortunately can be pretty high, even small litigation. If somebody cannot find an attorney, we recommend, instead of filing a lawsuit in state or federal court, they can file the lawsuit in small claims court for \$7,500 or less. The other option is to file a complaint with the Department of Fair Employment and Housing. Yes, even though it's a public accommodation or public entity, the person would file a claim with the Department of Fair Employment and Housing because they are the entity that enforces California's Anti-Discrimination statutes. In addition to the example that Stuart used, we also just completed a case involving a homeless shelter that had a policy of no animals, even service animals. We wrote a

demand letter and they ended up changing their policy allowing guide dogs, as a reasonable accommodation.

Q & A

Q: What regulations apply at the present time if we are advised that it is a companion dog?

Liz Savage: Companion dogs are permitted the same rights until March 15, 2011. After March 15, 2011 they will not be granted the same rights as service animals under the ADA.

Q: If a local jurisdiction has an ordinance that allows for an emotional support/companion dog, would that trump the ADA and the service animal definition? And, would the public accommodation have to allow the dog into the business?

Liz Savage: The ADA is the minimum protection provided for an individual. If a local government provides more, then that would have to be followed. Therefore, the dog should be allowed access.

Q: Does the law address socialization issues with the dogs?

Liz Savage: No.

Q: If a Handler is detained by law enforcement what is supposed to be done with the dog?

Liz Savage: You would have to allow the dog to accompany the individual and then the dog should be picked up by a family member, friend, etc. Individuals are not entitled to have service dogs in jails or prisons with them.

Q: How should a Hospital that treats patients with a high sensitivity to dogs respond to an individual coming in with a service animal?

Liz Savage: You cannot exclude a person who has a disability because a patient has allergies related to dogs.

Q: As an employer are you obligated to allow a person who is not disabled to bring a dog that they are helping to train as a service animal?

Stuart Seaborn: No, the only way you would be obligated to allow access is if the individual was a licensed instructor.

Q: Are there suggestions beyond going to a web site for small business to ensure that they are in fact compliant?

Liz Savage: We have various ways for small business to ensure that they are in compliance outside of our Web site. We create publications, take part in many outreaching events, and we also can be reached by telephone.

Q: In the event a handler is detained by the law enforcement and we are unable to transport the service animal. Is there anything that law enforcement needs to do that is specialized for service animals as opposed to a regular animal?

Eric Holm: Law enforcement is to notify animal control and advise them that it is a guide dog and the dog should be returned to the school.

Q: If an aggressive looking dog comes into a business and customers are fearful of the dog is this enough justification to ask the individual to leave the dog outside?

Liz Savage: No the exclusion can only be based on the dog's behavior not it's appearance. The ADA is very clear on customer preference not being grounds for an exclusion of the dog.

Q: Can a service dog be excluded for barking?

Liz Savage: That is dependent on the setting in which the animal is in and whether or not it is prolonged.

Q: Does a person who is self-training a guide dog have access rights?

Liz Savage: The ADA regulation says "is trained". It does not include those that are self-trained.

Q: If a dog was to relieve themselves in a store, can the individual be asked to remove the dog from the premise?

Liz Savage: The dog has to be trained to retain waste absent illness or accident.

Q: When asking an individual what tasks the dog is trained to perform and the person responds mental support is that enough justification to allow access in to a business?

Liz Savage: No, because comfort or emotional support animals are not within the definition of a service animal. Mental support is not a task.

Q: How can a member of the public or a business owner ascertain whether a service animal is legitimate or not? If an individual has doubts about the legitimacy of a dog what is their recourse? What recourse do those who have legitimate service dogs have for those that are abusing the system and do not have legitimate service animals?

Liz Savage: The only individuals that can ask questions under the ADA are the staff and or owner of the entity; a person from the public cannot ask. If an individual with a service animal has questions about another service animal that is in the same establishment due to the other dog interfering with theirs they should notify staff of the establishment.

Q: If an individual believes that they have encountered abuse of a service animal right what recourse does this individual have to respond? Is there a reporting process for this scenario?

Liz Savage: The individual would be able to file a complaint under the ADA

Q: If a service animal user is denied access has the recourse of action changed under the new rules?

Liz Savage: No.

Q: Are there any exemptions for providing accommodations for a service animal?

Liz Savage: Religious entities are exempt and not covered by the ADA. If a Bed and breakfast has 5 or fewer guest rooms and the proprietor lives on the premise then it is exempt as well. Private clubs are also exempt. If a private club is open to the public for a specific event, it would be covered for the duration of that event.

Q: What is the liability of the business for violating the ADA in regards to access to service animal teams?

Stuart Seaborn: Typically a settlement is negotiated if the individual files a complaint. These settlements require that the business establish a policy and publicize it in a noticeable place on the premise as well as on their Web site as well as comprehensive training on an on-going basis. The individual can also file a lawsuit in federal court but they will not receive compensatory damages.

Q: What is the reasoning for not requiring all service dogs not to be certified?

Liz Savage: The main reason is that there is no national certification process.

Q: Who carries the liability if there is a dog bite from a service dog to a member of the public?

Stuart Seaborn: Liability would be based by local law.

Q: Can a city or county require a service dog apply for an identification tag?

Liz Savage: No.

Q: Is the Food and Agriculture Code in violation of the ADA?

Stuart Seaborn: No the Food and Agriculture Code has a section stipulating that if any part of the code violates the ADA then it is invalid.

Q: What accommodations does a small restaurant need to provide to a miniature horse? What constitutes a miniature horse?

Liz Savage: Typically, a miniature horse weighs between 70-100 pounds and is no more than 34 inches high. The restaurant would have to consider its size, the size of the horse, if the handler has control, whether the miniature horse is housebroken and whether or not it compromised legitimate safety.

Q: What are the limitations for access to miniature horses? Are ambulances and emergency rooms required to allow miniature horses access?

Liz Savage: It all depends on the situation there is no yes or no answer.