

Kimball, Tirey & St. John LLP

Animals on Commercial Property

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It is common for people to bring dogs and animals to businesses and other commercial property, claiming that they are service animals for the disabled.

Service Animals

A “service animal” is defined by the Americans with Disabilities Act (“ADA”) as “any dog 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.” (Service animals may also include miniature horses). Under the ADA, service animals are allowed to accompany disabled individuals in all areas of a public accommodation where members of the public, clients, customers, patrons, or invitees are allowed to go.

What is a Public Accommodation?

The ADA defines public accommodation as a private entity that owns, operates, leases, or leases to, a place of public accommodation. Places of public accommodation include a wide range of entities such as restaurants, hotels, theaters, doctors’ offices, pharmacies, retail stores, museums, libraries, parks, private schools, and day care centers.

Excluding legitimate service animals from places of public accommodation can be a violation of the Americans with Disabilities Act, California’s Unruh Civil Rights Act and Disabled Persons Act. Under the ADA, violations and/or fines of up to \$55,000 may apply for a first violation and \$100,000 for subsequent violations, if a lawsuit is brought by the Attorney General.

Service Animal Removal

Under the ADA, a person with a disability may be asked to remove a service animal from the premises if:

- the animal is not housebroken; or
- the animal is out of control and the animal’s handler does not take effective action to control it. The service animal must always be under control of its handler, utilizing a harness, leash or other tether, unless it disrupts the service animal’s work or the individual’s disability prevents using the device. In that case, the service animal must be under the handler’s control, through voice control, signals, or other effective means.

If there is a legitimate reason to request removal of the service animal, the person with the disability must be offered the opportunity to obtain goods and services without the animal’s presence.

Allowable Inquiries

Under the ADA, if a person’s disability is not obvious and it is not clear what service the animal provides, the following inquiries are allowed:

- (1) Is the dog a service animal required because of a disability?
- (2) What work or task has the service animal been trained to perform?

Inquiries about the dog's certification, training or special service animal licensing nor the person's disability should not be made. Additionally, documentation about the dog's certification, training or service animal licensing should not be required. The service animal cannot be requested to demonstrate its ability to perform the task it is assigned to do.

Fees and Surcharges

The California Disabled Persons Act (Cal. Civil Code §54.3) protects those people using guide dogs, signal dogs, or service dogs from additional fees for utilizing their assistive animal. An individual with a disability should not be required to pay a fee or surcharge to utilize a service animal, even if people accompanied by pets are usually required to pay these fees. It is important to distinguish that service animals are NOT pets. If a service animal causes damage to property, the person responsible for the service animal may be charged for that damage ONLY if the accommodation normally charges individuals without service animals for similar damages.

Emotional Support Animals, Comfort Animals, and Therapy Animals

Emotional support animals, comfort animals, and therapy animals are not "service animals" and the ADA rules stated above for service animals do not apply to them.

While they may not be given protection under the ADA, emotional support animals may, however, be provided protection under the California Fair Employment and Housing Act, if the animal is being used by an employee in a commercial setting. FEHA requires employers with five or more employees to provide reasonable accommodation for individuals with a physical or mental disability to apply for jobs and to perform the essential functions of their jobs unless it would cause an undue hardship. Employers are required to initiate and engage in a timely, good faith, interactive process with an employee or applicant to determine effective reasonable accommodation for a disability or known medical condition. If your commercial tenant is requesting you to allow an employee to have an assistive animal on-site, we urge you to contact competent counsel to advise you as to the best course of action.

It is important for business and commercial property owners to be mindful of these different definitions and have knowledge of your requirements under the various laws. Attorneys at Kimball, Tirey & St. John LLP are available to help you navigate this minefield of potential liability. Please contact us at (800) 574-5587 or breginfo@kts-law.com.

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