



# Guest Services

by Michael Gentile, J.D.

## Guests traveling with service animals cannot be denied service

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Most property managers are aware by now that Title III of the Americans with Disabilities Act (ADA) makes the ADA applicable to places of public accommodation, including hotels and restaurants, whether owned or leased, and also includes other areas of service that may be provided such as transportation services like designated airport shuttles. In summary, to comply with the ADA a property must assure access to a person with a disability by making a reasonable accommodation that will not result in a material alteration of service or an undue hardship, usually financial, for the property owner.



### The ADA opens the doors

The ADA has been interpreted to allow a specific accommodation that has a direct impact on hotels and restaurants. Specifically, hotels and restaurants must allow persons with disabilities to bring their service animals into all areas where customers are normally permitted to go. It is easy to see however, that due to the nature of the services provided and the accommodation in question, many issues may arise as to compliance with the law.

The first issue to resolve for any ADA compliance question is whether the person involved has a disability. That is usually apparent or may be easily documented. Once resolving that issue, the next question is whether the animal involved is in fact a "service animal" as contemplated by the law. A service animal is defined as any guide dog, signal dog or other animal individually trained to provide assistance to a person with a disability.

But while it may be apparent to you that a person has a disability, it may not be as apparent that the accompanying animal is a service animal. Often, the owner of the animal will not have documentation to verify that their animal is a service animal. And, while most people are familiar with guide dogs that assist the blind, there are other types of animals that may be service animals.

According to the Code of Federal Regulations, (28 CFR Sec. 36.104), service animals may do any of the following:

- Alert persons with hearing impairments to sound
- Pull wheelchairs
- Carry or pick up things for persons with mobility impairments
- Assist persons with mobility impairments with balance

In a case in Washington, a person with a disability was evicted from public housing for a variety of activities. In the lawsuit to contest the eviction the tenant claimed that he was evicted because of his service animal; a snake. That court never made a determination as to whether the snake was a service animal, finding instead that the tenant was evicted for drug use. But this gives some insight as to the difficulties that may be presented.

According to the Department of Justice, Civil Rights division, property managers may inquire whether an animal is a service animal and can also ask what tasks the animal performs to assist the master. However, hotels may not require a special ID for the service animal or inquire about a guest's disability. Likewise, allergies and fear of animals are generally not valid reasons for denying access or refusing service to people with service animals. Nor can guests traveling with service animals be restricted to certain floors, rooms or tables in restaurants. Additionally, hotels may not charge an additional fee or cleaning deposit, isolate the guest, or treat them less favorably because of



the existence of the service animal. Hotels may, however, charge a fee for damage done by the animal, if it is customary to charge any customer for damage done to a hotel room.



### Service animal must be accommodated

A guest may not be asked to remove his or her animal from the premises unless the animal is out of control and the customer is unable to control the animal or unless the animal poses a direct threat to the health and safety of others. It should be noted that it may be a question of fact as to whether the actions of the animal are “out of control”. For instance, a case in California federal court found that a dog “yippling” at a concert may cause a material disruption to the performance, whereas, the same conduct may not be a disruption under other circumstances. In cases where the animal is a disruption, the business should offer alternative methods for the customer to obtain service.

Some additional facts about the presence of service animals:

- Properties are not required to provide special care, food or places for service animals to relieve themselves.
- The requirements of the ADA supersede any local health department laws regulating the presence of animals on premises.
- Fear of animals or allergies are not sufficient reasons to exclude a service animal.



It is important to note by definition in the Code of Federal Regulations that service animals are not pets. Therefore, a well structured and consistently enforced “NO PETS” policy means absolutely nothing when it comes to allowing or excluding service animals from an establishment. Additionally, some states have developed state laws regulating the presence of service animals. But those laws can do nothing to limit the requirements or applicability of the ADA in this respect.

If a hotel or restaurant denies service to a guest accompanied by a service animal, such action can expose the property owners to significant penalties, fines, and attorneys fees. Some guests who have been denied access to hotels and restaurants when traveling with their service animals have been known to call local police for assistance in enforcing their rights under the ADA. These situations can be avoided by training all staff members about the rights afforded to guests traveling with service animals and the important role that the animals serve their masters.

### Recommendation

From everything reported here, if a guest has a disability and represents that the animal accompanying them is a service animal pursuant to the ADA, the best course to follow is to proceed as if the law applies and do the best you can to comply. If a situation arises that may be disruptive, deal with it at that time, but do not try to exclude the animal on any preemptive basis.

Look on the bright side. There is one positive to the cases involving service animals. In one case in New Mexico, a woman sued for a violation of her civil rights for failure to allow her dog into a fast food restaurant. She also took the unusual step of naming her dog as a co-plaintiff. The case for the woman was dismissed against the restaurant because she could not prove what service the dog could provide. But the court also noted that the dog had no standing to sue. This means that while a disabled person may sue for a violation of the service dog provisions, the animal cannot! ✧

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### Hot tip

“We Welcome Service Animals” is a national campaign created by the California Hotel & Lodging Association Educational Foundation to teach people in the hospitality industry and law enforcement how to improve service to disabled guests who depend on service animals for assistance. As part of this campaign, they have created two very informative videos that are available for viewing online or to download. These videos are free, serve as an excellent training tool for all hotel employees, and are available in both English and Spanish. The videos and other pertinent training information about service animals are available online at:

[www.calodging.com/products/service\\_animals.shtml](http://www.calodging.com/products/service_animals.shtml)