

As Use of Service Dogs—and “Fake” Service Dogs—Rises, Employers Faced With New Questions

By former Associate Jeffrey Hord

Over the past few years, the D.C. area—along with the rest of the country—has seen a dramatic rise in the presence and use of service animals, therapy animals, and emotional-support animals for all manner of medical conditions. This trend prompted *The Washington Post* to publish this article in July highlighting how the proliferation of therapy animals in particular “has raced far ahead of scientific evidence” regarding the efficacy of animal-assisted intervention. The American Humane Association estimates there are now more than 20,000 service dogs working in the United States. More and more people are registering their pets as service animals or support animals, allowing the owners to circumvent pet restrictions in housing, public transportation and aviation, restaurants, and the workplace.

Under the federal Americans with Disabilities Act (ADA) and state disability rights laws in Maryland, Virginia, and the District of Columbia, persons with disabilities have the right to be accompanied by their service animals at work. While the ADA defines service animals generally, the employment provisions in Title I of the Act do not provide specific guidelines for employers to follow when an employee asks to bring a service animal to work. As such, a request from an employee to bring a service animal to work can be processed and considered like any other request for reasonable accommodation, meaning the employer may request reasonable documentation that the accommodation is needed because of the employee’s disability.

That being said, employers may wish to exercise caution when asking employees to provide this type of information unless there is some indication that the animal’s presence will create a problem. For example, the appropriate documentation may not always be from a health care professional; in the case of an emotional-support or therapy animal, it may come from the provider of a rehabilitation service or a counseling center, or in the case of a service animal, it might be from whoever trained the animal. And while it’s common sense to require proof of rabies vaccination for a service dog, how is the employer to know what sort of vaccinations to require and which records are necessary to ensure the health and safety of more exotic and unusual service animals (e.g., here and here)?

Emotional-support animals in particular pose a unique problem for employers. These animals provide a sense of safety, companionship, and comfort to those with psychiatric or emotional conditions; yet despite these therapeutic benefits, the animals are not individually trained to perform specific tasks for people with disabilities. It can often be difficult, however, to determine whether an animal is “merely” an emotional-support animal, or a psychiatric service animal trained to detect the onset of psychiatric episodes or perform tasks like reminding the employee to take medicine, providing safety checks, interrupting self-mutilation by persons with certain disorders, and so on. While emotional-support animals are technically not covered under the ADA—meaning employers can legally deny employees’ requests to accommodate such animals—psychiatric service animals **are** covered.

It can often be impossible for employers to truly know whether an employee is indeed suffering from non-physical and subjective impairments like depression, anxiety, PTSD, and so on. Emotional-support animals pose an additional problem, in that the employer may have no way of knowing whether the animal has undergone rigorous training to become a service animal, or whether the animal could misbehave at work, posing a distraction...or even a danger. Indeed, so many pet owners have tried to pass off their pet as an “emotional-support animal” without A) having a real impairment, or B) putting their pet through a service animal training program, that more than 20 states, including Virginia, have passed some sort of legislation outlawing the use of fraudulent service animals.

While many, many Americans (including the author of this article!) are unabashed dog lovers, canines and other animals create a host of potential problems in the workplace, including safety issues, health and allergy concerns, noise pollution and disruptions, space limitations, and more. Employers must balance these considerations with other moral and practical concerns, and must adhere to their legal obligations

under the ADA while also asserting their rights when appropriate. Working closely with an employment attorney familiar with the unique issues posed by service animal accommodation laws can help ensure that your company has a compliant, effective, and enforceable policy regarding animals in the workplace.