

Dining With The Dogs

The Law Regarding Service Animals and Public Places



There was a story in the news recently about a dog chasing a cat. Why was that newsworthy? Because it was a service dog attending a showing of Andrew Lloyd Webber’s musical “Cats” with its owner, and the cat in question was one of the show’s characters (which, if you’re not familiar with the show, was a person dressed as a cat, not an actual cat). Hilarity probably ensued, to the embarrassment of the dog’s owner.

That story reminded me of an issue that sometimes vexes restaurateurs and other business owners – how to deal with customers who make questionable claims that an animal is a service animal, and insist on bringing it onto the premises. This article summarizes the legal rights and responsibilities of customers and business owners in those situations. Businesses are, of course, free to be more accommodating than the law requires.

The Americans with Disabilities Act (ADA) and Oregon’s equivalent law requires “places of public accommodation” (including hotels, inns, restaurants, bars, and other establishments serving food or drink) to allow persons with disabilities to bring “service animals” onto the premises. Contrary to popular belief, though, every animal does not qualify as a service animal just because the customer says so.

First, the ADA currently limits the types of animals that can qualify as service animals to dogs and miniature horses. Oregon’s law is also limited to those two types of animals unless

and until administrative rules are enacted that expand the definition to include other animals. Other states’ laws may vary, but, in Oregon, those are the only two animals that qualify as service animals.

Second, the animal needs to be individually trained to do work or perform tasks for the individual with a disability. This includes physical, sensory, psychiatric, intellectual, or other mental disabilities. The work or tasks performed by the service animal must be directly related to the individual’s disability.

Examples of specific tasks the animal can be trained to perform include, among other things:

- pulling a wheelchair
- alerting a person to sights or sounds
- assisting with balance or navigation
- assisting a person with a seizure
- retrieving dropped items
- pressing buttons
- reminding a person to take medication and
- helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors.

Providing general emotional support, well-being, comfort, or companionship does not qualify. This means that emotional support animals, comfort animals, and therapy dogs are not considered “service animals” under the ADA unless the animal

is also trained to perform some other specific task related to the individual's disability.

The law does not require a license, jacket, tag, or other means to identify an animal as a service animal. Nor does it require medical verification or a prescription.

When confronted with a situation where an individual wants to bring a claimed service animal onto the premises, the business can only ask the following two questions of the individual:

1. *Is the animal required because of a disability?*

This is a yes or no question. The individual cannot be asked to specify their disability or provide medical verification.

2. *What work or task has the animal been trained to perform?*

The individual cannot be asked to have the animal demonstrate the work or task, nor can they be required to provide documentation or proof that the animal has been certified, trained, or licensed as a service animal.

These questions should not be asked if the answers are obvious from the nature of the disability or the nature of the task or work being performed. For example, the questions may not be asked if the animal is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability.

The business needs to take the individual at their word, and allow the service animal on the premises, if the individual answers "yes" to the first question and states a specific task or type of work the animal has been trained to perform.

The individual cannot be charged a fee to bring a service animal onto the premises; even a pet fee charged to other customers, because service animals are not "pets."

If the service or assistance animal causes damage, then the owner can be charged for the damage so long as the business normally charges other customers for the damage they (or their pets) cause.

Unruly and disruptive animals need not be accommodated. The owner is responsible for supervising and controlling the service animal. The animal must also be housebroken.

If the animal behaves in an unacceptable or threatening way and the handler does not control the animal, then the business can ask that the animal be removed from the premises. For example, a service dog that repeatedly barks or growls at other customers, destroys property, climbs on the furniture unnecessarily, makes a mess on the carpet, or chases an employee (even one dressed like a cat), could be excluded from the premises if the individual cannot or will not control the dog.

The business can also require that the service animal be kept on a leash, harness, or other tether unless the individual is unable to hold a tether because of a disability or its use would interfere with the animal's safe and effective performance of work or tasks. Even then, the service animal must still be kept under control by some other means, such as voice commands.

The owner is responsible for the care and feeding of the service animal. The business does not need to provide food or water for the animal, or clean up after it. That is the responsibility of the owner.

If a service animal is excluded, the business must still give the individual the opportunity to obtain goods, services, and accommodations without having the service animal on the premises. | SHANE P. SWILLEY, PARTNER, COSGRAVE VERGEER KESTER LLP



RESOURCES

ORLA has a number of compliance information and resources for the hospitality industry. Visit ORLA's website to access ADA regulations and downloadable posters.

- **Oregon/ADA "Sorry, pets are not allowed" Poster**
OregonRLA.org/Compliance
- **U.S. Department of Justice, ADA Requirements for Service Animals**
ADA.gov/service_animals_2010.htm
- **Disability Rights Oregon, Service Laws in Oregon**
DROregon.org/topics/service-animals