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## OTTEN JOHNSON ALERT

# Misrepresentation of Service Animals is Now Illegal in Colorado: What Does This Mean for Your Business?

February 2017 • [Lindsey A.L. Diedrich](#)

Sorry, Fluffy. Under Colorado law, unless you qualify as a service dog, you aren't permitted to dine with your doting owner in the chichi café down the street. And while we know you're one very obedient, sweet, and cuddly-wuddly widdle doggie, your owner might face criminal penalties if he intentionally misrepresents you as a service animal.

Indeed, certain Colorado dog lovers appear to have crossed the line when it comes to their non-service dog companions. Enough so that Colorado legislators took action last summer in passing [House Bill 16-1426](#), which was signed into law by Governor Hickenlooper on June 10, 2016, and which went into effect on the first of the year.

The new law criminalizes the intentional misrepresentation by individuals of assistance and service animals, making such misrepresentation a class 2 petty offense punishable by a fine of \$25 for a first offense, \$50-\$200 for a second offense, and \$100-\$500 for a third or subsequent offense.

But while they might miss patting your furry little head as you exit the café each day, business owners—whether they own the café or manage the apartment building or condo across the street—have other things to consider vis-à-vis the new law.

### The difference between an assistance animal and a service animal

The law distinguishes assistance animals from service animals (a more limited term, as discussed below), and depending on your business, that distinction may be important.

The new law defines “assistance animal” as an animal that qualifies as a reasonable accommodation under the [Fair Housing Act, 42 U.S.C. Sec. 3601 et seq.](#), as amended (the “FHA”), or Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Sec. 794, as amended (“Section 504”). More specifically, an assistance animal is “an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability.” Assistance animals may perform many tasks, including but not limited to guiding or alerting individuals who are blind, deaf or prone to seizures, pulling wheelchairs or retrieving items, or providing emotional support to persons with a disability-related need for such support. Assistance animals requested as a reasonable accommodation need not be trained or certified. And while dogs are the most common type of assistance animal, other species of animals can also be assistance animals.

“Service animal,” on the other hand, is defined under the new law as having the same meaning as in the implementing regulations of Title II and III of the Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12101 et seq (the “ADA”). These regulations define a service animal 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.” (Emphases added. Other species of animals—other than certain miniature horses, which are addressed by separate ADA regulations—whether trained or untrained, do not qualify as service animals.) Service animals may perform a number of tasks, including many of those performed by assistance animals, so long as “[t]he work or tasks performed by a service animal [is] directly related to the individual's disability.” [The ADA definition of “service animal”](#) specifically provides that “[t]he crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks.”

The primary differences are that assistance animals (a) need not be trained, (b) may include many types of animals, and (c) may provide emotional support as a primary task; whereas service animals (x) must be trained, (y) only include dogs (and miniature horses), and (z) must perform a function greater than simply providing emotional support. The term “assistance animal” is the appropriate defined term where the FHA or Section 504 is concerned; whereas “service animal” is the appropriate defined term where the ADA is implicated.

### Know which laws affect your business

Are you a housing developer, owner or manager? The [FHA protects individuals with disabilities](#) (among other protected groups) from discrimination when they are renting, buying, or securing financing for housing.

Does your business benefit from or allocate Federal financial assistance? [Section 504](#) protects people with disabilities from being “excluded from the participation in, [being] denied the benefits of, or [being] subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.”

Are you an employer, or do you provide public accommodations, transportation or other services that fall within the parameters of the ADA? [The ADA](#) “prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, state and local government services, public accommodations, commercial facilities, and transportation,” and accordingly is more broadly applicable to not only public and common areas in housing developments but also to businesses providing public accommodations.

The more expansive definition of “assistance animal” applies where the FHA or Section 504 is implicated, and it is important that business owners know if they are subject to these laws, whether in addition to or in lieu of the ADA. If your business falls within the bounds of the ADA, but not the FHA or Section 504, then you need only accommodate those dogs (and miniature horses) that qualify as “service dogs” (in addition, of course, to satisfying all other ADA requirements that apply to your business).

**So what do I do if I suspect misrepresentation? And what measures should I take to ensure my compliance with applicable Federal law, while ensuring that my tenants or customers are not misrepresenting their animals as assistance or service animals?**

### If you're the café owner:

For starters, know that animals wearing official-looking vests can be misleading. There are currently no requirements that assistance or service animals wear identification, or that their owners carry identification. And currently there are no restrictions against companies selling such items to anyone who wants them.

However, as discussed, under Federal law, only dogs (and miniature horses) can be service animals. If a person walks into the café with a cat, ferret, or [kangaroo](#) and claims that animal to be a service animal, you can rest assured that she is making a misrepresentation.

But if a customer walks in accompanied by a well-behaved hound or an energetic pooch (with or without that not-to-be-relied-upon service vest), despite your suspicions, don't jump to conclusions. In a previous [Otten Johnson Alert](#), our team presented advice on how to comply with the ADA when service (or so-called service) dogs appear in your business, including examples of appropriate and inappropriate inquiry.

That Alert also provided a template for a sign one might hang at one's (non-housing) business. In consideration of the new law, business owners might consider tweaking that sign to read as follows:

#### SERVICE ANIMALS ARE WELCOME

**Service animals are individually trained to do work or perform tasks for a person with a disability.**

**Colorado state regulations prohibit non-service animals from entering the premises. Pets whose function is to provide comfort or emotional support do not qualify under the Americans with Disability Act.**

**Under Colorado law, it is a criminal offense to misrepresent an animal as a service animal. C.R.S. §18-13-107.7.**

### If you are the landlord or condo manager:

In the housing context, a cat, ferret, or, yes, a kangaroo can qualify as an assistance animal. So if you are a landlord, do not automatically assume the tenant or potential tenant is making a misrepresentation.

In these situations, a housing provider is “entitled to obtain information that is necessary to evaluate if a requested reasonable accommodation may be necessary because of a disability,” but if a person's disability and need for accommodation is obvious or already known, then the housing provider may not request additional information. If the disability or reason for the accommodation is not obvious or known, “the requesting individual, medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability.” Additional information on the landlord and tenant's rights and responsibilities are found [here](#).

Landlords or condominium developers may also consider incorporating language addressing assistance animals (and the new law) into their leases or condominium declarations or rules. For instance, leases may specify that no pets are allowed on the premises unless they qualify as a reasonable accommodation under the FHA (or Section 504, if applicable), but may also make reference to C.R.S. §18-13-107.3, specifying that misrepresentation of an assistance animal is a criminal offense punishable by law. Condo declarations or rules may incorporate restrictions on permitted animals, as limited by Federal and state law, but may also reference C.R.S. §18-13-107.3 to discourage misrepresentation of animals as assistance animals in order to evade the condominium's restrictions.

### And if you are Fluffy:

Fluffy, don't be too discouraged: Colorado is the state of [300 days of sunshine](#) and [sunshine seating for pooches](#) like you is on the rise. So go find yourself a cozy corner on the patio and enjoy your charmed doggie life.

*The ADA, FHA and Section 504 are expansive Federal laws, and this article is limited in its discussion of those laws to the subject addressed here. This article does not address requirements under the Air Carrier Access Act, other Federal laws, or state laws under than Colorado.*

Otten Johnson's attorneys have substantial experience with helping clients navigate business issues like those highlighted in this alert. For more information, or for help evaluating your current situation contact any of the attorneys in the [Real Estate Practice Group](#).

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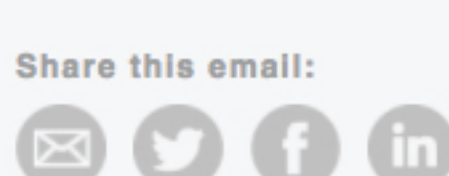
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