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REAL ESTATE PRACTICE GROUP | AUGUST 2015

Otten Johnson Alert -

Dogs at Work - Only Service Animals Are Covered Under the ADA

We have all seen them: perfectly coiffed teacup dogs sitting on the laps and inside the handbags of their well-heeled owners, going in and out of various boutiques and restaurants, without a care in the world.

Service animals, on the other hand, do much more than experience life from inside of a Louis Vuitton purse. Their day-to-day work can include, among other things, guiding a person who is blind, alerting a person who is deaf, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications and calming a person with post-traumatic stress disorder during an anxiety attack.

The distinction between the two types of animals seem pretty clear. However, there appears to be broad confusion about which animals fall under the Americans with Disabilities Act (the "ADA") and applicable state laws. This prevailing confusion has allowed a large number of people to improperly bring their pets into retail stores, restaurants and other public places where they would otherwise not be allowed. This article provides general guidance to commercial property owners, property managers and business owners in navigating the ADA requirements with respect to service animals. This article does not address the ADA requirements with respect to housing, employment or transportation. In addition, this article does not address the requirements under the Fair Housing Act, Air Carrier Access Act or state laws other than Colorado.

Questions to Ask

So how do you differentiate between a person with disability and a person who is overly attached to his or her pet? **Only service animals are covered under the ADA.** Service animals are specifically trained to perform tasks or work for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual or other mental disability. The work or task the animal has been trained to provide must be directly related to the person's disability. The ADA does NOT cover emotional support animals, comfort animals or therapy dogs.

If you are trying to determine whether a particular animal is a service animal covered under the ADA, you should ask the person these two questions:

- Is this animal required because of a disability?
- What work or task has the animal been trained to perform?

However, you are NOT permitted to ask the following questions:

- What is your disability?
- May I see the animal's license or certification?
- Can the animal demonstrate its ability to perform the work or task for me?

Things to Look Out For

Trainers. Colorado law provides protections similar to the ADA. In addition, Colorado law specifically provides that a qualified trainer of a service animal also has the right to be accompanied by the animal if the trainer is in the process of training.

Animals Other Than Dogs. Other than miniature horses, dogs are the only animals that can be classified as a service animal under the ADA. Therefore, if a person strolls into your business with a cat, lizard or chicken, it is safe to say that you do not have to let the animal in.

Emotional Support Animals. Emotional support animals ("E.S.A.s") are animals that provide therapeutic benefit to an individual with a mental or psychiatric disability. Rather than being specifically trained to perform certain tasks like service animals, E.S.A.s serve their owners by providing emotional support and comfort. E.S.A.s are not regulated by any governmental agency and are not protected under the ADA. However, there are many for-profit organizations that provide, for a fee, certification letters, identification cards and other dog accessories that make their E.S.A. status look official. People oftentimes use this documentation to gain entry into public places with their adored pet. Do not be fooled—E.S.A.s are not exempt from health code and building regulations that would apply to other animals.

Treatment of Service Animals

Once you have determined that a dog is a service animal, the service animal must be permitted to accompany the person to all areas of the facility where the public is normally allowed to go. You cannot charge an additional fee or segregate the person with the service animal from other patrons. Colorado law expressly provides that the mere presence of a service animal in a place of public accommodation will not be grounds for any violation of a sanitary standard, rules or regulation.

The individual bringing in the service animal remains responsible for the care and supervision of the service animal. The individual may only be asked to remove his or her service animal from the premises if it poses a direct threat to the safety of others. However, you must still offer the person an opportunity to obtain goods or services without the service animal's presence.

Signage to Post

Although many buildings and businesses post generic "No Pets Allowed" signs, service animals (which are not considered pets) are deemed exempt. Detailed signage can provide an opportunity to educate building staff and patrons alike. Here is an example of comprehensive signage language:

SERVICE ANIMALS ARE WELCOME

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

Colorado state regulations prohibits 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.

Not only does the sign provide information on what qualifies as a service animal, it describes what does NOT qualify.

In conclusion, service animals provide an invaluable service to individuals with disabilities. They allow many people to enter public places and participate in activities, fully and freely, without worrying about their limitations. By understanding these prescribed laws, businesses, building managers and owners will be able to better accommodate these hard-working, much-needed service dogs and the individuals who rely on them.

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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