

ADA UPDATE: SMALL BUSINESSES HIT WITH LAWSUITS REGARDING SERVICE ANIMALS

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Recently, a number of lawsuits have been filed against small businesses alleging the businesses have refused access to "service animals" in violation of the Americans with Disabilities Act (ADA). The purpose of this article is to alert you to the requirements for allowing access to service animals and to assist you in avoiding such a lawsuit.

A service animal is an animal that is trained to perform tasks for people with disabilities, such as guiding people who are blind, alerting people who are deaf or pulling wheelchairs. If they meet this definition, animals are considered service animals under the ADA, regardless of whether they have been licensed or certified by state or local government. Under the ADA, businesses that serve the public must allow people with disabilities to bring their service animals onto business premises in the areas where customers are generally allowed. Persons with service animals may not be charged extra fees; nor should they be treated differently than, or be isolated from, other customers.

Some businesses believe they can avoid the service animal issue by having a "no pet" policy. That is not necessarily the case. The service animal must be permitted to accompany the individual with a disability to all areas of the facility where customers are normally allowed to go. The ADA requires you to modify your "no pets" policy to allow the use of a service animal by a person with a disability. This does not mean you must abandon your "no pets" policy altogether, but simply that you must make an exception to



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your general rule to allow for access by service animals.

However, there should be no additional burden or liability to business owners created by allowing access by a service animal. The care or supervision of a service animal is solely the responsibility of his or her owner. The ADA provides that a business may exclude a service animal when the animal is out of control (for example, barking repeatedly during a movie) or the animal's behavior poses a direct threat to the health or safety of others. Any service animal that displays vicious behavior towards other customers may be excluded. Of course, a business owner or operator should not make assumptions about how a particular animal is likely to behave based on past experience with other animals. Each situation must be considered individually. Although a business may exclude any service animal that is out of control, it should give the owner the option of remaining on the premises without the service animal.

Unfortunately, it may be difficult to

identify a service animal that is entering your business. Service animals may wear special collars and harnesses, but they are not obligated to do so. Some, but not all, are licensed or certified and have identification papers. However, documentation is not required as a condition for providing service to an individual accompanied by a service animal. If you are not certain that an animal approaching your business is a service animal, you may ask the owner if it is a service animal. If he or she says "yes," allow that animal access. If he or she says "no," the ADA does not require you to allow the animal to enter. If you do not receive a clear response either way, do not debate the issue or ask for proof that it is a service animal. Instead, you should allow the animal access. You do not want to run the risk of being sued for a mistake or misunderstanding concerning the issue.

Allowing access to service animals is not only the law, but it makes good business sense. The disabled community represents a substantial group of potential or actual customers. About 18 percent of Americans in 2002 said they had a disability, and 12 percent had a severe disability, according to a report issued by the U.S. Census Bureau. Business owners should be on the lookout for and welcome any patron who has a service animal.

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