



Requirements for Service & Assistance Animals

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Protecting the rights of Coloradans of all ages since 1976

Agenda

- ▶ Disability Law Colorado
- ▶ Definition of Disability
- ▶ General Overview of Animals
- ▶ Animals in Public Accommodations
- ▶ Note About Animals in Schools
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- ▶ Animals in Employment
- ▶ Animals in Air Travel
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Colorado's Protection & Advocacy System

- ▶ Every state & territory in the U.S. must have a designated P&A
- ▶ DLC designated in 1977
- ▶ Protect and promote the rights of individuals with disabilities through:
 - ▶ Legal representation;
 - ▶ Advocacy;
 - ▶ Investigation;
 - ▶ Education; and
 - ▶ Legislative action.



Who is Considered a Person with a Disability?



Definition of Disability

- ▶ Disability (Handicap) means:
 - ▶ Physical or mental impairment that substantially limits a major life activity (an *actual disability*); or
 - ▶ *Record of* a disability; or
 - ▶ *Regarded as* a person with a disability



Having an *Actual Disability* Includes:

- ▶ Epilepsy, HIV, MS, Deaf, Blind, Diabetes, Cancer (even in remission) - this list is NOT exhaustive
- ▶ People with diagnosed mental illness
- ▶ Recovering Alcoholics and Substance Abusers
- ▶ Does *NOT* include current users of illegal drugs



An Actual Disability is Viewed *Without Mitigating Factors*

► Mitigating Factors Include:

- Medications
- Medical supplies or equipment
- Low-vision devices (other than ordinary glasses/contacts)
- Prosthetic devices
- Hearing aides or cochlear implants
- Mobility devices



*Look at how the person is affected by the disability *without* the use of these mitigating factors

Having a Record of a Disability Means:

- Documentation in a person's medical history of a disability
- Examples:
 - History of institutionalization
 - History of a mental condition that has been successfully treated
 - History of diabetes that is now controlled without medication



Regarded as having a Disability Means:

- ▶ Whether or not a person has a disability, others view that person as having a disability
- ▶ Examples:
 - ▶ People who are argumentative
 - ▶ People with large birthmarks or port wine stain



* People who are regarded as having a disability are protected from discrimination, but not entitled to reasonable accommodations

What is NOT Considered a Disability?

- ▶ Common personality problems
- ▶ Gender preferences & identity (but would still be covered under CADA)
- ▶ Pyromania; kleptomania
- ▶ Simple physical characteristics
- ▶ Sexual disorders
- ▶ Current drug/alcohol users
- ▶ Compulsive gambling



* Temporary impairments may be considered a disability if they are substantial *

Different Classifications of Animals

- ▶ **Service Animals** - *individually trained* to provide assistance to an individual with a disability
- ▶ **Assistance Animals** - ameliorate (help) one or more symptoms of a person's disability (do not have to be trained)
 - ▶ Includes companion and emotional support animals
- ▶ **Therapy Animals** - provide benefits to people other than owner (visit people in hospitals, nursing homes, etc.)
- ▶ **Pets** - catch-all provision that includes all animals that any person, with or without a disability, may have if they do not fall into one of the other categories



What is a Service Animal?

- ▶ Must be a dog or miniature horse
- ▶ Must be *individually trained* to provide assistance to an individual with a disability
- ▶ Can be trained by the owner
- ▶ Does not require licensing, certifications, or a vest
- ▶ Service animals in training are also covered in Colorado
- ▶ Do not pet - they are working



What is an Assistance Animal?

- ▶ Not specifically defined in Americans with Disabilities Act or Fair Housing Act
- ▶ HUD guidance and case law defines assistance animals as animals that ameliorate (help) one or more symptoms of a person's disability
- ▶ Includes companion and emotional support animals
- ▶ Assistance animals are allowed in housing (most common context, but can also be allowed in others)
- ▶ There is no limit on the type of animal or even how many animals are allowed
 - ▶ Though local ordinances may play a role (but not with regard to breed/size restrictions)
 - ▶ Must be reasonable



Examples of Assistance Animals

- ▶ A cat who encourages a person with depression to get up, eat, take her medication and leave the house
- ▶ A dog who sits in its owner's lap when the owner is experiencing severe anxiety
- ▶ A dog that helps a young person with autism to learn to relate to others

*Assistance animals are not required to have any specific training; they just have to help the person with a disability

Assistance Animals are not bound by weight, size or breed restrictions



State/Local Government & Public Accommodations: Service animals must be allowed (ADA Titles II & III)



State & local government

- ▶ ADA applies regardless of state or local government size and regardless of whether or not the entity receives Federal funding (expansion of 504)
- ▶ *Requires that individuals with disabilities have an equal opportunity to benefit from the programs, services, and activities of the state or local government*
- ▶ Applies to:
 - ▶ State legislatures, city halls, city councils
 - ▶ State and local agencies and courts
 - ▶ State police, local police, and sheriffs
 - ▶ State and local prisons and jails
 - ▶ Public medical or health facilities or clinics
 - ▶ State and local parks and recreation programs
 - ▶ Public libraries and museums
 - ▶ Schools



Public Accommodations

- ▶ Privately operated entities who own, lease, lease to, or operate facilities that are open to the general public, such as:



- ▶ Hotels and motels
- ▶ Colleges and universities
- ▶ Restaurants
- ▶ Movie theaters
- ▶ Sales or rental offices
- ▶ Recreation or exercise facilities
- ▶ Places of public gathering
- ▶ Bus or train stations
- ▶ Museums

Exceptions to Title III (ADA Does Not Apply)

- ▶ Bona fide private membership clubs that require:
 - Substantial membership fee,
 - Numerical limit on club membership,
 - Membership's control over selection of members,
 - Criteria for admission,
 - Formality of admission process,
 - Entity is operated on a nonprofit basis
- ▶ Religious entities like churches
 - ▶ BUT, if another entity is using a church for their program, they must comply with the ADA
 - ▶ Examples: secular preschool program in a church community room, day program for people with disabilities in a church basement



Service Animals in State/Local Gov't & Public Accommodations

- ▶ Can only ask: "Is the animal required because of your disability?" and "What task does it perform?"
- ▶ Cannot require documentation or ask other questions (can't ask any questions if obvious)
- ▶ Cannot ask that the animal perform the task
- ▶ Must allow a service animal to any area where a customer is generally allowed
- ▶ Cannot segregate or give less desirable location
- ▶ Must allow in places that serve food even if against local health code - do not have to allow them to sit on table or eat off plate



Service Animals in State/Local Gov't & Public Accommodations (cont.)

- ▶ Not exempt from local animal control or public health requirements - must be vaccinated
- ▶ Owners must take care of them, keep them leashed or otherwise under control and they must be housebroken
- ▶ Can ask animal to leave if it is out of control of the owner or if it is not housebroken (defecating in aisle of grocery store, sitting on table in restaurant and eating off plate), but must still offer services to the person with a disability



Quick Note about Animals in Schools

- ▶ Must comply with the ADA & Section 504
 - ▶ Public schools are considered local government entities; private schools are considered public accommodations
 - ▶ Allergies are not a legitimate reason to deny a service animal admittance to a school - must work to accommodate both individual who has a service animal and the individual w/ allergies
 - ▶ Student must be able to control and care for the dog independently or with little assistance (but see exception on next page)
 - ▶ "If [the dog] is tethered to [the child] and the only assistance [the child] needs is to untether her from the dog ... [the child] can be considered to be in control of [the dog]," the judge wrote. "On the other hand, if [the child] requires school district personnel to actually issue commands to [the dog], as opposed to occasionally reminding her to do so, then [she] cannot be considered in control of her service dog." - *United States of America v. Gates-Chili Cent. Sch. Dist.*, [116 LRP 32029](#) (W.D.N.Y. 07/28/16)

Animals in Schools, cont.

- ▶ Public K-12 schools must also comply with the Individuals with Disabilities Education Act (IDEA), which provides that children with disabilities are entitled to a free appropriate education (FAPE)
 - ▶ FAPE is implemented through the child's Independent Education Program (IEP), which is determined by a team of people
 - ▶ IF the IEP team determines that the child NEEDS the animal in order to receive a FAPE, the animal must be allowed and this COULD include school staff providing some assistance for care and control of the animal if the team decides that is what is needed for that individual student to receive a FAPE



Companion & Emotional Support Animals in State/Local Gov't & Public Accommodations

- ▶ While **service** animals are automatically considered reasonable under the ADA, **companion** and **assistance** animals are not
- ▶ That said, an individual can make a reasonable accommodation request to ask that an entity allow her to be accompanied by her companion or emotional support animal
- ▶ Requests would need to be made to each entity the individual wishes to enter with their animal
- ▶ It would then be up to each entity to determine whether or not to grant the accommodation

Questions about Animals in Public Places?



BREAK TIME

Housing: both service & assistance animals must be allowed - this includes companion and emotional support animals (Fair Housing Act)



What Housing is Covered?

- ▶ Dwelling means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof. 42 U.S.C. § 3602(b)
- ▶ In some circumstances, the Act exempts owner-occupied buildings with no more than four units, single-family housing sold or rented without the use of a broker, and housing operated by organizations and private clubs that limit occupancy to members



Is this Housing?



Homeless Shelters



Hotels/Motels

- ▶ Does it look like this is intended to be a place someone stays for a long time?
 - ▶ Residential Dwelling: primarily long-term in nature
 - ▶ Transitional Lodging: primarily short-term in nature
- ▶ Some people have urged a strict cutoff like 2 weeks or 30 days, but nothing regarding specific timeframes has been enacted
- ▶ Homeless shelters & hotels with long-term stay options COULD be considered housing

What can the Landlord Require from the Tenant?

► Can require

- ▶ Proof of disability (if not obvious) - from medical provider
 - ▶ Practical Tip: Strongest note from medical provider should not only include that the person has a disability, but should also list the specific major life activities the disability impacts
- ▶ Proof that the animal will help with the person's disability - from medical provider OR anyone "in the know"
- ▶ Proof that the animal is registered and vaccinated
- ▶ The tenant to take care of the animal
- ▶ The animal cannot pose a real threat or a nuisance

► Cannot require

- ▶ Additional security deposit or pet rent
- ▶ Proof of training or certification
- ▶ Full medical records



Duties Related to Service & Assistance Animals in Housing

► A tenant must:

- ▶ Take care of the animal - it is not considered reasonable to ask the housing provider to assist
- ▶ Clean up after the animal
- ▶ Ensure the animal does not pose a *real* threat or *significant* nuisance
- ▶ Pay for any damages done by the animal
 - ▶ As long as management typically charges for damages



Questions About Animals in Housing?



**Employment: Both service &
assistance animals may need
to be allowed
(ADA Title I)**



Reasonable Accommodations

- ▶ Employers must make reasonable accommodations for their employees with disabilities, which might include allowing an employee to bring a service or assistance animal to work
- ▶ BUT, unlike in public accommodations, the ADA allows employers to choose among effective accommodations, so the employer may not be required to allow the service or assistance animal as an accommodation if an alternative accommodation would be effective
- ▶ At a minimum, employers must engage in the interactive process with the employee



Animals on Airplanes:
*****Service animals must be allowed***
(Air Carrier Access Act)
*****broader definition than ADA***



Flying with a “Service” Animal

- ▶ More broad in this context only because it is defined by the Air Carrier Access Act to include emotional support animals
 - ▶ Not limited to dogs & miniature horses
 - ▶ Does not have to be individually trained
- ▶ The “service” animal must be allowed to sit with the passenger - if necessary, the carrier must offer the passenger the opportunity to move with the animal to another seat where both the passenger and animal can be accommodated, presuming such a seat exists on the plane
- ▶ An airline cannot require a passenger traveling with a “service” animal to sit on the bulkhead row, but the passenger may choose to sit on the bulkhead row
- ▶ Good idea to notify airlines ahead of time - some ask for 48 hours notice
- ▶ Airlines may require documentation for emotional support/psychiatric “service” animals

Questions About Animals at Work or on Airplanes?



Colorado's New Law

Also Known as House Bill 16-1426



Colorado's New Law

- ▶ Goes into effect on January 1, 2017
- ▶ Addresses intentional misrepresentation of both service and assistance animals
- ▶ Does NOT trump federal law (particularly important with regards to documentation requirements for assistance animals - including those that provide companionship or emotional support - in housing)



Intentional Misrepresentation of a Service Animal

- ▶ Must have 1st received a verbal or written warning regarding the fact that it is illegal to intentionally misrepresent an animal as a service animal
- ▶ Violation of this law is a class 2 petty offense
 - ▶ 1st offense = fine of \$25
 - ▶ 2nd offense = fine of \$50 to \$200
 - ▶ 3rd offense = fines of \$100 to \$500



Side Note: Interference with a Service Animal is a Misdemeanor

- ▶ It is a class 3 misdemeanor to withhold, deny, deprive, interfere with or attempt to withhold, deny, deprive or interfere with a qualified individual with a disability who is accompanied by a service animal or a trainer of a service animal of any of the rights or privileges guaranteed by C.R.S. § 24-34-803
- ▶ Violators can be subject to actual damages & attorney's fees
- ▶ Willful and wanton violators are subject to treble damages



Intentional Misrepresentation of an Assistance Animal

- ▶ Must have 1st received a verbal or written warning regarding the fact that it is illegal to intentionally misrepresent an animal as an assistance animal
- ▶ Violation of this law is a class 2 petty offense
 - ▶ 1st offense = fine of \$25
 - ▶ 2nd offense = fine of \$50 to \$200
 - ▶ 3rd offense = fines of \$100 to \$500
- ▶ Nothing about this law changes the documentation requirement for individuals who request an assistance animal in housing - still need proof of disability and disability-related need, the latter of which does not have to be from a medical provider
- ▶ However, if you do have a letter from a medical provider verifying BOTH factors, that serves as an affirmative defense if you are charged under this law



Questions



Please be sure to grab the additional printed materials we have provided for today's training

Thank you!



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