

The New ADA Regulations: Service Animals Go to the Dogs (and Miniature Horses)

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On July 23, 2010, U.S. Attorney General Eric Holder signed final regulations revising the Department of Justice (DOJ) ADA regulations under Title II and Title III, including its ADA Standards for Accessible Design. The official text was published in the Federal Register on September 15, 2010. Perhaps the most eagerly awaited sections of the new regulations were those concerning the definition of a “service animal.” The final rule includes new language (in Sect. 35.104 of the Title II regulations and in Sect. 36.104 of the Title III regulations) that defines “service animal” as a dog that has been individually trained to do work or perform tasks for the benefit of an individual with a disability. The final rule also clarifies that the ADA protects individuals with mental disabilities who use service animals that *are trained to perform a specific task*. For example, a service dog may help persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors.

Although the ADA has been around for more than 20 years, there is still a lot of confusion about service animals. Owners and managers of hotels and restaurants want to know if they must allow a person with a service animal to enter their place of business. Employers ask for advice on workplace accommodations for employees who use service animals. Medical offices and schools wonder what their ADA obligations are to persons who use a service animal.

Some of the frequently asked questions include:

- What types of animals are qualified as service animals?
- What tasks do the animals perform?
- A person who is deaf came into my store with a dog. I thought that people who are blind are the only ones who use service dogs. Can you tell me how dogs help other people with disabilities?

Definition of Service Animal (became effective March 15, 2011)

“Service animal” means 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. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the handler’s disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or

destructive behaviors. The 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 for the purposes of this definition.

Because the work or tasks performed by a service animal must be directly related to the person's disability, dogs that are not trained to perform tasks that reduce the effects of a disability, including dogs that are used purely for emotional support, well being, comfort or companionship, do not meet the definition of service animals under the new regulations.

Miniature Horses May Be Service Animals

The 2010 regulations also permit the use of trained miniature horses as alternatives to dogs, subject to certain limitations. The rule states: "A public entity shall make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability."

The Justice Department's ***Fact Sheet on Highlights of the Final Rule Highlights of the Final Rule to Amend the Department of Justice's Regulation Implementing Title II of the ADA*** notes that "to allow flexibility in situations where using a horse would not be appropriate, the final rule does not include miniature horses in the definition of 'service animal.'"

In addition to being individually trained to do work or perform tasks for the benefit of the individual with a disability, the miniature horse must be housebroken and, as with dogs used as service animals, the handler must have sufficient control of the animal. When considering whether a reasonable modification can be made for a miniature horse serving as a service animal, the public entity shall consider "the type, size, and weight of the miniature horse and whether the facility can accommodate these features; ... and whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation."

According to the Guide Horse training program, most miniature horses are 34 to 38 inches high at the shoulder blades. Miniature horses selected for the Guide Horse training program must measure less than 26 inches high to enable accessibility for their owners. (www.guidehorse.org/faq_horses.htm)

Emotional Support Animals and the ADA

Emotional support can be an important part in the lives of people with disabilities. However, emotional support animals are not included in the definition of service animal under the ADA and are not considered service animals — even if a doctor states that the person has a disability and needs the dog for emotional support. However, a psychiatric service dog that has been "trained to perform a variety of tasks that assist individuals to detect the onset of psychiatric episodes and [reduce] their effects" falls under the ADA definition of a service animal.

The ADA National Network by DBTAC publication, *Service Animals and Emotional Support Animals: Where are they allowed and under what conditions*, gives examples of tasks performed by psychiatric service dogs as well as disability-specific tasks performed by other types of service animals.

- **Psychiatric Service Dog** can be trained to perform a variety of tasks that assist individuals with disabilities to detect the onset of psychiatric episodes and ameliorate their effects. The tasks performed by psychiatric service animals may include reminding the handler to take medicine; providing safety checks, or room searches, or turning on lights for persons with Post Traumatic Stress Disorder; interrupting self-mutilation by persons with dissociative identity disorders; and keeping disoriented individuals from danger.

- **Dog Guide, or Seeing Eye® Dog** is a carefully trained dog that serves as a travel tool for persons with severe visual impairments or who are blind.

- **Hearing or Signal Dog** is a dog that has been trained to alert a person with significant hearing loss or deafness when certain sounds occur - such as a crying baby or a knock on the door.

- **SsigDog** is a dog trained to assist a person with autism. For example, the dog alerts the person with autism to their distracting repetitive movements (e.g., hand flapping) that are common behaviors for persons with autism, allowing the person to stop the behavior.

- **Seizure Response Dog** is a dog trained to assist a person with a seizure disorder. How the dog serves the person depends on the person's needs. The dog may stand guard over the person during a seizure, or the dog may go for help. Some dogs have learned to predict a seizure and warn the person in advance.

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