**SERVICE AND EMOTIONAL SUPPORT ANIMALS IN THE WORKPLACE**

JAN Webcast:April 13, 2021, follow-up questions

## Please explain the difference you spoke about in the beginning regarding Title I, II, and III and service/emotional support animals.

There are different rules about service and emotional support animals under the various titles of the ADA, and this leads to some confusion about how the ADA applies to service and emotional support animals in the workplace. So, it’s important to understand what rules apply to requests to bring service or emotional support animals to work.

**Overview:**

Title I: Employment

* + No mention or definition of service or emotional support animals
  + No automatic access for service or emotional support animals
  + Employers can treat a request to bring a service or emotional support animal to work as a request for a reasonable accommodation
  + The accommodation being considered is modifying a no-animals policy
  + Employers should check state laws as they may address service and emotional support animals in the workplace.

Title II: State and local government

* + Specific definition of service animal: dogs that are individually trained to do work or perform tasks for people with disabilities
  + Excludes emotional support animals
  + Two questions can be asked: (1) is the dog a service animal required because of a disability, and (2) what work or task has the dog been trained to perform

Title III: Public accommodations

* + Specific definition of service animal: dogs that are individually trained to do work or perform tasks for people with disabilities
  + Excludes emotional support animals
  + Two questions can be asked: (1) is the dog a service animal required because of a disability, and (2) what work or task has the dog been trained to perform

## Is it a conflict to current ADA policy to ask a person if they have a record that their animal is a “Service/Emotional Support Animal,” when the animal has no identifying label or indicators and appears like a normal pet animal being brought into the workplace? If the person continues to bring the animal, with no proof and government employee eventually states that the animal is their pet and they just wanted to bring them into the office, what guidance can the employer/supervisor provide to the employee?

Under Title I of the ADA and section 501 of the Rehabilitation Act for federal agencies, employers do not automatically have to allow an employee to bring a service animal into the workplace. Instead, a request to bring a service animal to work can be treated like any other accommodation request, meaning that the employee can ask for documentation to show that the employee has a disability and needs the requested accommodation. Employers can also ask questions or require documentation about the animal’s ability to be in the workplace without disruption.

If it turns out the animal is just a pet and not needed because of a disability, then the employer can follow the usual policies related to animals in the workplace.

## We got a lot of non-employment questions, so maybe mention where to go with those questions? Airlines, rental properties, things like that.

Here is a good overview of the laws that apply to service and emotional support animals in various settings: <https://adata.org/guide/service-animals-and-emotional-support-animals>

## Is there a definition for a service animal or emotional support animal? in other words, are other animals allowable? Is there a restriction on what kind of service animal you can have? Is it only a dog?

There’s a definition of service animal under titles II and III for public access and that definition states that only dogs can be service animals. Titles II and III also contain some rules related to miniature horses, but they are not classified as service animals.

See the following publication for more information: <https://www.ada.gov/service_animals_2010.htm>

However, remember that these rules do not apply in the workplace so an employer might have to consider allowing employees to bring other service or emotional support animals to work, absent undue hardship.

## How does the employer determine a certain species is inappropriate for the workplace?

That can be tricky! I’ve never seen any guidance on this but in general an employer can require that an animal have appropriate training so it can be in the workplace without disruption or direct threat. Some species of animals may be unable to be trained appropriately, but we have heard of employees wanting to bring in an animal that would be in a cage all day so even though it’s not trained, it might not disrupt the workplace. The best approach might be a case by case approach based on the animal and how it behaves in the workplace as well as the work environment.

## How do you distinguish between emotional support animal and a service animal? We always were told unless an animal provides a service to the employee, it’s an emotional support animal. What's the difference?

**A service animal 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.** Tasks performed can include, among other things, pulling a wheelchair, retrieving dropped items, alerting a person to a sound, reminding a person to take medication, or pressing an elevator button.

An emotional support animal isn’t trained to do work or perform tasks. It provides emotional support just by being with a person, typically someone with a mental health condition.

## Is there a process to determine what criteria or approval of animals as service/support animal? Is there a process the individual goes through to determine or to obtain a trained service/support animal?

We have some guidance for employers for assessing a request to bring a service or emotional support animal into the workplace in the following documents:

Accommodation and Compliance Series: Service Animals as Workplace Accommodations at [https://AskJAN.org/publications/Topic-Downloads.cfm?pubid=277897](https://askjan.org/publications/Topic-Downloads.cfm?pubid=277897)

Emotional Support Animals in the Workplace: A Practical Approach at [https://AskJAN.org/publications/consultants-corner/vol12iss04.cfm](https://askjan.org/publications/consultants-corner/vol12iss04.cfm)

Regarding the process for choosing an animal to be a service animal or the process an individual goes through to obtain a trained service or emotional support animal, there are various organizations that train and provide service animals. Here’s an article that offers information about some of the organizations: <https://www.rover.com/blog/getting-a-service-dog/>

## I feel like it would be a bad business practice to allow employees to bring emotional support animals, but not customers especially for animals that are not dogs. Do you have any best practices to share regarding this?

Customers would likely have no idea that you have allowed an employee to use an emotional support animal at work so hopefully this won’t be much of an issue. But if the issue does come up, you might educate the customer about the different ADA rules for employee accommodations versus public access. However, you’ll want to be careful about maintaining ADA confidentiality rules, meaning that you cannot tell customers or coworkers anything about an employee’s accommodation or disability.

## I thought ESAs only have rights related to housing and flying, though flying has been tightened up. I'm confused why an ESA, which does not have to have ANY training, would ever be considered at the workplace. Though its more restrictive than best practices, couldn't an employer just say: we only entertain service animals, not ESAs, in our workplace.

Because the employment provisions of the ADA do not mention service or emotional support animals, there’s an argument that employers do have to consider allowing an employee with a disability to use an emotional support animal at work. So, it might not be the best legal strategy for an employer to outright refuse to consider allowing an employee to bring an emotional support animal to work. When considering a request to use an emotional support animal, employers can insist that the animal be trained to be in the workplace without causing disruption even if not trained to perform a specific task.

See: Emotional Support Animals in the Workplace: A Practical Approach at [https://AskJAN.org/publications/consultants-corner/vol12iss04.cfm](https://askjan.org/publications/consultants-corner/vol12iss04.cfm)

## Can employer require the service animal wear identifying signage, such as the back wrap on the photo on slide 26?

Title I of the ADA does not address this issue so what we often suggest is that employers not place unnecessary requirements on employees who use service animals. If there’s a valid reason that a service animal needs to be identified, talk with the employee about the best way to do so. In general, you don’t want to force an employee to advertise that he/she is using a service animal as that will identify the employee as having a disability. When possible, let the employee make these types of decisions.

## What if the service animal/comfort animal is for a teacher in a classroom? What about letting students' parents know, or students if they are high school age?

As a starting point, talk to the teacher about how to educate students and notify parents about the service or emotional support animal. In most cases, people who use service or emotional support animals prefer to educate others so they do not interfere with the work of the animal. However, if the teacher prefers not to disclose any information, the school can notify parents and students that an animal (e.g., a dog) will be on the premises without being more specific. The students can be instructed that they are not to interact with the animal.

## How would an employer know if another employee has an allergy where the employer just allows the service animal to come in one day as part of the trial period?

The employer can talk with the employee who uses the service animal about educating co-workers. If the employee voluntarily chooses to educate co-workers, that could take place prior to the service animal coming to work and hopefully any employees who are allergic could let the employer know. Otherwise, the employer could notify all employees that an animal will be in the workplace and invite employees to request accommodations if needed.

## Can the employer inform the Security Team that an employee is approved to bring a dog on-site?

Yes, if the Security Team needs to know about the dog to effectively implement the accommodation, the Security Team can be told that the employee has been approved to bring the dog on-site. However, the amount of information disclosed should be limited to only what is necessary.

## Regarding Service Animal demonstrations ("behavior, training, what do"): Can an employer ask for demonstration of the trained tasks? If so, what if the conditions do not exist at the time, i.e., medical alert?

While employers can ask for demonstrations as part of verifying the need for an accommodation, it may not be possible for an employee to demonstrate the tasks the service animal is trained to perform when, as mentioned, the tasks are related to providing medical alert should the employee experience symptoms. In this type of situation, the employer may want to see if other documentation is available such as a statement from the employee’s doctor or whoever trained the animal.

## Can you please repeat what at an employer is to do or not do regarding notifying employees a dog will be on premises?

As a starting point, the employer should talk to the employee about how to educate co-workers about the service or emotional support animal. In most cases, people who use service or emotional support animals prefer to educate others so they do not interfere with the work of the animal. However, if an employee prefers not to disclose any information, the employer can notify co-workers that an animal will be on the premises without being more specific and instruct them that they are not to interact with the animal.

## I heard that the employer could be responsible for giving employee time off to get the service animal trained. Is this correct?

Yes, under the ADA employers must consider unpaid leave as an accommodation if the employer’s regular leave policy does not cover leave needed by an employee with a disability. The federal agency that enforces the ADA states this in the following excerpt from <https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada#leave>

An employee with a disability may need leave for a number of reasons related to the disability, including, but not limited to:

* obtaining medical treatment (e.g., surgery, psychotherapy, substance abuse treatment, or dialysis); rehabilitation services; or physical or occupational therapy;
* recuperating from an illness or an episodic manifestation of the disability;
* obtaining repairs on a wheelchair, accessible van, or prosthetic device;
* avoiding temporary adverse conditions in the work environment (for example, an air-conditioning breakdown causing unusually warm temperatures that could seriously harm an employee with multiple sclerosis);
* **training a service animal (e.g., a guide dog)**; or
* receiving training in the use of braille or to learn sign language.

## What facts would you need to have from an employee regarding a sick service animal?

If an employer’s leave policy covers the employee’s need for leave to deal with a sick service animal, then the employer could follow its usual policies for verifying the need for leave. Otherwise, the employer can treat it like an accommodation request under the ADA. Likely the employer will have already verified the need for the service animal if it’s been allowed to come to work so the employer may only need to verify that the service animal is sick and therefore the employee cannot come to work. If the employee has taken the service animal to the vet, the vet may be able to verify that it is sick. However, there is no rule under the ADA that says an employer can’t just take the employee’s word for it.

## In lieu of requests for full telework, reassignments we sometimes offer employees the option of going to our health suite to tend to medical conditions. For example, if needing to lie down, use the bathroom (for privacy if they have a colostomy bag), or other reasons. Is this something we should stay away from because it totes the line of deciding how someone is going to manage their healthcare and deciding what medical intervention they will use?

I think this is fine to do. It sounds like you’re not trying to dictate what medical treatment an employee gets; you’re just exploring ways an employee can perform his/her chosen treatment at work instead of having to stay home to do it.

## We are struggling with an employee that is not controlling his dog. Are there conditions that the employee and the animal must meet? Can they have toys? Can they be off leash?

Under the ADA, you can require that any accommodation, including service and emotional support animals, not disrupt the workplace. If an employee’s animal is out of control and disrupting the workplace, you can let the employee know that the animal must be under control or the employee will not be able to continue bringing it to work. If having toys or being off leash creates a disruption, you can ask the employee to discontinue those practices. In some cases, a service animal may have to be off leash to do its work. If that’s happens, you may need to talk with the employee about ways the service animal can do its work without disrupting the workplace.

## What about the candidate who shows up to the interview with an emotional support animal, not a service animal?

You can approach this the same way we discussed approaching it if a candidate shows up with a service animal – you can opt to just go ahead with the interview unless there’s a reason you can’t conduct the interview with an animal present, or you can reschedule the interview and go through the accommodation process. As I mentioned during the presentation, it might be easier to just go through with the interview and then if you hire the candidate, you can go through the accommodation process at that point.

## What is the Best Practice for conducting interviews and a person informs the interviewer that they will be bringing an emotional support/service animal?

If during an interview an applicant discloses that they will need to bring a service or emotional support animal to work as an accommodation, you can ask limited questions about how that will work if you meet the following conditions:

From <https://www.eeoc.gov/laws/guidance/enforcement-guidance-preemployment-disability-related-questions-and-medical>

When an employer could reasonably believe that an applicant will need reasonable accommodation to perform the functions of the job, the employer may ask that applicant certain limited questions. Specifically, the employer may ask whether s/he needs reasonable accommodation and what type of reasonable accommodation would be needed to perform the functions of the job. The employer could ask these questions if:

\* the employer reasonably believes the applicant will need

reasonable accommodation because of an obvious disability;

\* the employer reasonably believes the applicant will need

reasonable accommodation because of a hidden disability that the

applicant has voluntarily disclosed to the employer; or

\* an applicant has voluntarily disclosed to the employer that s/he

needs reasonable accommodation to perform the job.

## What about animals in a healthcare setting? Any resources on that?

I usually refer people to the following CDC guidance as a starting point. It’s mostly about patients/visitors using service animals, but the guidance can be useful for employment related requests to use service or emotional support animals in health care settings: <https://www.cdc.gov/infectioncontrol/guidelines/environmental/background/animals.html#anchor_1554754036>

## If an employee is part of a union, should they start with informing them, or the employer first?

I haven’t seen anything under the ADA that addresses this. Assuming there’s no specific requirement under the union contract, I’d say that an employee can start with either the union or the employer or maybe both. We often suggest that employees consider making a written accommodation request and if an employee chooses to do so, they could send it to both the employer and the union at the same time. Often the employer and union must work together on accommodation requests so it might make sense to get them both involved early on.

## If there is a dog in the workplace, and we have a very public office with people coming in/out all day, should we post a notice that a dog is inside? To warn in case someone has allergies/phobia.

As long as you maintain confidentiality and just indicate there’s a dog inside, as opposed to saying it’s a service animal, I don’t see anything wrong with posting a notice. One thing I always mention to employers who are concerned with the public coming in and being exposed to an employee’s service animal: under the ADA members of the public who use service animals are permitted to bring their service animals into the public parts of the workplace already so other members of the public may already be aware that there could be a dog on the premises any time they go into a public place. So, it may not be an issue that an employee has a dog.

## What if you are asked to have the employee provide a hardship letter in order to allow the animal onsite?

I’m not really clear about what this means, what a hardship letter is in relationship to a request to bring a service or emotional support animal to work. If you want to contact JAN, we can try to talk this through with you.

## When an ESA does not have the training to keep from being reactive to a working Service Animal, what can the employee do to keep being able to fully participate in their workplace?

The employee may want to talk with the employer about ways to keep the two animals separated if that’s possible. Some of the suggestions we have in our service animal/coworker allergies publication might be useful: [https://AskJAN.org/publications/consultants-corner/vol02iss01.cfm](https://askjan.org/publications/consultants-corner/vol02iss01.cfm)

## Is there a central location or resource I can go to for information on best practices regarding Service Animals?

We have a page on service animals with a lot of information, articles, and resources at [https://AskJAN.org/topics/servanim.cfm](https://askjan.org/topics/servanim.cfm)