**Commonwealth of Massachusetts Massachusetts Office On Disability** 



# **Service Animals**

## University of Massachusetts School of Law

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# **MOD Mission & Duties**

"to bring about **full and equal participation** in all aspects of life by all **persons with disabilities** in the commonwealth...in a manner which fosters **dignity and selfdetermination**." —*M.G.L. Chp. 6; Sec. 187* 

### **Duties & Functions**

- ADA Coordinator for Executive Branch of State Government (Executive Order 526)
- Member of Architectural Access Board (MGL Ch. 22, Sec 13A)
- ✓ State Affiliate to New England ADA Center
- Member of State 9-1-1 Commission (MGL c. 6A, Section 18B)
- Technical Advisor to Local Commissions on Disability (MGL Ch. 40, Sec. 8J)
- Maintains Client Assistance Program (CAP) within Client Services Unit
- Consultant to Supplier Diversity Office









## Applicable Laws & Enforcement Agencies: Federal

- Americans with Disabilities Act (ADA) & Amendments Act of 2008 U.S.
   Department of Justice (DOJ)
  - ✓ Title II: State and Local Governments
  - Title III: Public accommodations, commercial facilities, examinations and courses related to licensing or certification, and transportation provided to the public by private entities.
- Section 504 of the Rehabilitation Act of 1973 (programs & activities that receive federal funding), designated Office of Civil Rights (OCR)
- ✓ Air Carrier Access Act (US DOT)
- ✓ Fair Housing Act (HUD)



### Applicable Laws & Enforcement Agencies: State

- Public Accommodation (includes state/local government) -MGL Ch. 272, Sec., 92A & Sec. 98- MA Commission Against Discrimination (MCAD)
- Employment & Housing- MGL Ch. 151B MCAD

Service Animals - MGL Ch. 272, Sec. 98A – MCAD



# Physical or mental impairment

that *substantially limits* one or more *major life activities* 

No exhaustive list of impairments

Must be broadly applied





# **Definition of Disability**

# Major Life Activities:

- caring for oneself
- performing manual tasks
- ✓ seeing
- ✓ hearing
- thinking
- eating
- sleeping
- walking
- standing
- ✓ sitting
- ✓ working
  - Learning

# **Includes Major Bodily Functions:**

- ✓ immune system
- ✓ cell growth
- ✓ digestive
- ✓ bowel
- ✓ bladder
- neurological
- ✓ respiratory
- ✓ circulatory
- cardiovascular

# Non-exhaustive list



Covered entities must:

# Operate in a nondiscriminatory manner



Permit service animals to accompany people with disabilities in all areas where members of the public are allowed to go.

✓ Make reasonable modifications to policies, practices, and procedures

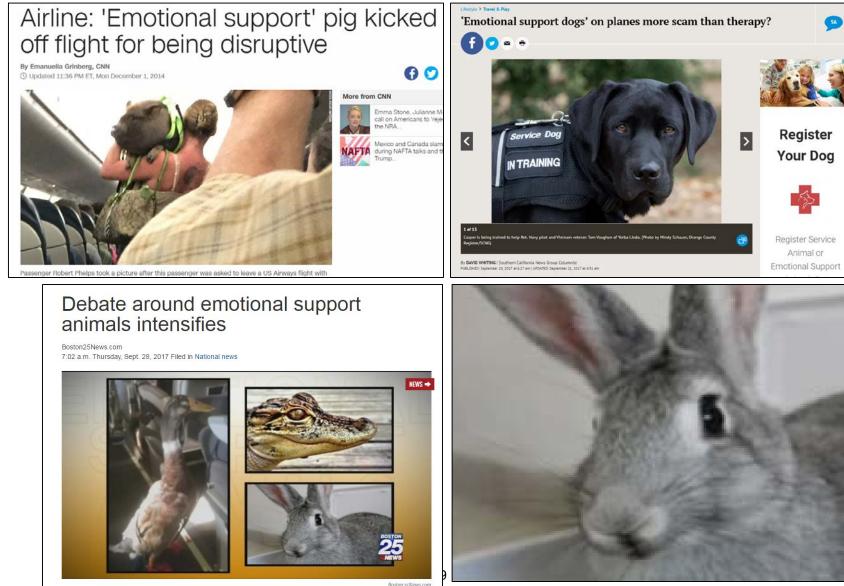


# **Service Animals**





# Misconceptions





# $\checkmark$ Places that are open to the public

# Not:

- Housing
- Airplanes
- Employment





# **ADA Definition**

- **Service animals**: <u>dogs</u> individually trained to perform tasks for people with disabilities.
- "Perform tasks" trained to take a specific action when needed:
- ✓ Guiding people who are blind,
- ✓ Alerting people who are deaf,
- ✓ Pulling wheelchairs,
- Protecting a person who is having a seizure,
- ✓ Retrieving objects



People with disabilities have the right to train the dog and are not required to use a professional service dog training program.



# Psychiatric service animals - considered service animals by DOJ

- Trained to provide a task or service for an individual with a psychiatric disability.
- "recognize & respond"
- Distinct from "emotional support" and "companion" animals

Calming person during panic attack
 Reminding person to take medication
 Assisting someone with PTSD
 Interrupting compulsive behavior



# **Miniature Horses**

✓ 24" - 34" in height
✓ 70 - 100 lbs.

Covered entities must permit miniature horses based on:

- 1. whether miniature horse is housebroken;
- 2. whether miniature horse is **under control**;
- 3. whether the facility can accommodate horse's type, size, and weight;
- 4. whether horse's presence will compromise **legitimate** safety requirements necessary for safe operation of the service.



Image: Google.com



- Permitted anywhere the handler may go: exam rooms, cafeterias, waiting rooms
- ✓ Any breed weight, size
- ✓ Working animals and not pets
- ✓ Under control at all times
- ✓ Housebroken

✓ May not pose direct threat to health or safety





# Q. What does "under control" mean?







- Q. What does "under control" mean?
- Harnessed, leashed, or tethered unless these interfere with the animal's work or the person's disability prevents use of these items.
- ✓ Should not bark repeatedly in a quiet place.
- Barking once or because it has been provoked does not mean dog is out of control.



# Q: What if someone has an allergy to dogs? Isn't that a disability too?







- Q: What if someone has an allergy to dogs? Isn't that a disability too?
- A: Allergies are not a permissible reason to deny entry to a person with a service animal. BUT places may have to accommodate both parties.
- ✓ Allergies may or may not rise to the level of disability
- ✓ If possible, both parties could be separated without excluding either
- Educate each party about situation and service animal rights
- ✓ Have literature on hand
- $\checkmark$  You may not be able to accommodate everyone in every situation.



# Q. Do service animals have to wear a vest or patch or special harness identifying them as service animals?





Q. Do service animals have to wear a vest or patch or special harness identifying them as service animals?

# A. No.

Laws do not require service animals to wear a vest, ID tag, harness, or any other identifying items.

Some individuals choose to use such items even though they are not required.



# Q. Does the ADA require that service animals be "certified"?



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**A. No.** Covered entities may not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal, as a condition for entry into a public place.

- Entities that sell service animal "certification" or "registration" documents
- These documents do not convey any rights under any applicable laws
- Enforcement agencies do not recognize them as proof that the dog is a service animal.

# Misconceptions

Google

buy service animal vest

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About 506,000 results (0.66 seconds)

#### US Service Cat Registry - #1 US Registry Database.

News

Emotional Support Cat Certification. No Hassle - ID, Certificate & Vest Kits Services: Service Animal Registry, Emotional Support Animal, Airlines & Housing Letter, Service Animal ... Emotional Support Reg. - \$79.95 - Lifetime Registration · More \*

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#### Emotional Service Animal Vest - Free 2-day Shipping w/ Prime

4.7 ★★★★★ rating for amazon.com Find Deals on Emotional **Service Animal Vest** in **Dog** Supplies on Amazon. Coupons: Food & Treats · Top Deals on Pet Supplies · Get Automatic Deliveries

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How To Make Your **Dog** A **Service Dog** Valid For All 50 States & Canada Vests & Id Cards · Free Fact BOOK · Free Instant Registration · Free Registration Letter Styles: Service Dogs, Emotional Support Dogs, Therapy Dogs, Letters Of Registration

#### Need an ESA Letter? - TherapyPet.org

#1 Rated ESA Letter **Service**. Simple Process. Free Evaluation. Qualify Your Pet · No Landlord Fees · Licensed Therapist · No Airline Fees · Get ESA Letter in 24hrs

Types: Emotional Support Animal, Certified Travel Letter, Certified Housing Letter

#### Service Dog Vests & Patches | Therapy Dogs | USA Made | Free ...

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The place for working service dogs. Find the right **service dog vest** and patches. Huge variety for service, therapy, PTSD, emotional support and working dogs. Vest Kits · Service Dog Vests · Ready-to-Wear Service Dog ... · Vests

Amazon.com : Service Dog Harness Vest Comes with 2 reflective ...

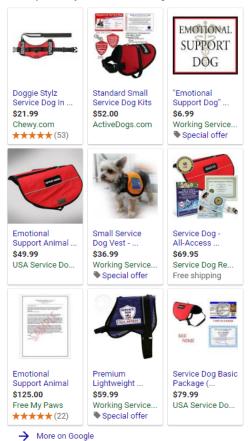
https://www.amazon.com/Service-Harness-reflective-patches.../dp/B00BOA6ND8 🔻

Amazon.com : Service Dog Harness Vest Comes with 2 reflective SERVICE DOG Velcro patches. Please measure dog ... Very nice would buy 100% again!

#### Service Dog Vests and Harnesses - Activedogs.com

www.activedogs.com/page/80/therapy-service-dog-vests-and-harnesses/ Here at Active Dogs we are the leading designer and manufacturer of service dog vests, capes, and harnesses. With many styles, sizes and designs we have a ...

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# Q: How can I tell if an animal is really a service animal and not just a pet?





Q: How can I tell if an animal is really a service animal and not just a pet?

A: If you are not sure that a dog is a service animal, you may ask the handler <u>ONLY</u>:

 $\checkmark$  if it is a service animal required because of a disability and

✓ what work it performs.



# Q: What if I think the person is lying about the animal being a service animal?

### Tightening The Leash On Fake Service Dogs

10/16/2017 10:31 am ET | Updated 2 days ago

Can states stop people from trying to pass off their pets as service animals?



COURTESY OF CHRIS SLAVIN

Chris Slavin of Danvers, Massachusetts, with her 3-year-old service dog, Earle. Massachusetts is considering a bill that would crack down on people who misrepresent their pets as service dogs. Nineteen other states have adopted similar measures.





Q: What if I think the person is lying about the animal being a service animal when answering the two questions?

# A: <u>The law requires you to take</u> the person at their word.





But remember, service animals must be:

- ✓ Under control at all times
- Housebroken
- ✓ May not pose direct threat to health or safety
- If handler does not correct behavior, you may ask handler to remove the animal.
- You must still provide access & services to the **person**.



Q. Must a service animal be allowed to ride in an ambulance with its handler?

A. Generally, yes.

However, if ambulance is crowded and dog's presence would interfere with the emergency medical staff's ability to treat the patient, staff should make other arrangements to have the dog transported to the hospital.



# Q. Who is responsible for the care and supervision of a service animal?

A. The handler is responsible for caring for and supervising the service animal, which includes toileting, feeding, grooming and veterinary care.

Covered entities are not obligated to supervise or otherwise care for a service animal.



Q. What happens if a person who uses a service animal is unable to care for or supervise their animal?E.g. after being hospitalized or placed under arrest

A. If person is not able to care for service animal, the person can make arrangements for family member or friend to come to provide these services (in hospital situation), or to take the dog.

If the person is unable to arrange for someone else to take dog, entity may place dog in a boarding facility until person is released, or make other appropriate arrangements.

However, entity must give the person the opportunity to make arrangements for the dog's care before taking such steps



- State or local health codes cannot be used as a reason to deny access to a service animal. E.g. in establishments that prepare food
- Vaccinations: Service animals are not exempt from local animal control or public health requirements that dogs be vaccinated.

Licensure: Service animals are subject to local dog licensing and registration requirements.



# Q. Is a voluntary registry program for people with service or assistance animals legal under the ADA?





## A. Yes.

Entities, such as local governments, may offer voluntary registries.

Many communities maintain a voluntary registry that serves a purpose, for example, to ensure that emergency staff know to look for the animals during an emergency

✓ Registries for purposes like this are permitted under the ADA.

An entity may not, however, **require** that a dog be registered as a service animal as a condition of being permitted.

# Emotional Support Animals

# not pets

- provide emotional support that alleviates identified symptom(s) or effect(s) of a person's disability
- ✓ not required to be individually trained or certified
- commonly dogs but can also be other animals
- ✓ Not specifically defined in ADA or 504
- ✓ Under umbrella of *reasonable modifications*
- ✓ *are* mentioned in Fair Housing Act & Air Carrier Access Act





 Housing providers must modify "no pets" policies to allow a resident to have an assistance animal needed because of a disability

✓ This includes emotional support animals

 Housing provider can require documentation of disability need if not obvious



### **Overlapping Laws on Campus**

#### Public Places: ADA & Sec. 504

- Recreational facilities
- Lecture halls
- Libraries
- Dining halls
- Book stores

#### Housing: FHA, ADA & Sec. 504

- Dorms
- Apartments
- Common areas in housing: laundry rooms, rec. room, kitchen, bathroom, etc.

#### **Reasonable accommodations**

#### Service Animals

- Trained to perform task or service
- Dogs or miniature horses only
- Includes psychiatric service animals

#### **Assistance Animals**

#### **Emotional Support Animals**

- Not trained to perform task
- Mere presence provides support
  - Any type of animal

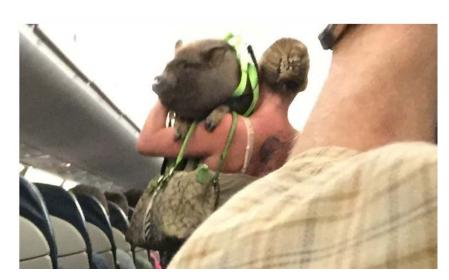
#### **Reasonable Modifications**

Case-by-case modification of policy

# Academic Adjustments



- Airlines must permit passengers to travel with animal needed because of a disability
- ✓ in cabin
- ✓ at no additional cost
- ✓ This includes emotional support animals





# **Air Carrier Access Act:** Proof



- service animals: airline must accept identification cards, other written documentation, harnesses, tags, or "credible verbal assurances"
- emotional support or psychiatric service animals: airline can require current documentation (i.e., no older than one year from date of the flight) on letterhead of a licensed mental health professional (e.g., psychiatrist, psychologist, licensed clinical social worker, including a medical doctor specifically treating the passenger's mental or emotional disability) stating:
- (1) passenger has mental or emotional disability recognized in the Diagnostic and Statistical Manual of Mental Disorders—Fourth Edition (DSM IV);
- (2) passenger needs animal as accommodation for air travel or at destination;
- (3) Individual providing assessment is a licensed mental health professional, passenger is under his or her professional care; and
- (4) Date and type of mental health professional's license and state or other jurisdiction of issue.



- Airlines are "never required to accommodate certain unusual service animals (e.g., snakes, other reptiles, ferrets, rodents, and spiders)"
- With respect to all other animals, including unusual or exotic animals (e.g., miniature horses, pigs, monkeys), carrier must determine whether any factors preclude their traveling in the cabin as service animals (e.g., whether animal is too large or heavy to be accommodated, whether animal would pose a direct threat to health or safety, whether it would cause a significant disruption, whether it would be prohibited from entering country that is the flight's destination).
- If no such factors preclude the animal from traveling in the cabin, carrier must permit it to do so.







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