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SERVICE ANIMAL LAWS: COMPARISON CHART

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WHAT IS PROTECTED?

Americans with Disabilities Act (ADA)

Requires reasonable accommodation by public entities and accommodations for “service animals,” where this means “any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability.” In some circumstances, this can also extend to miniature horses. Explicitly does not apply to emotional support animals. 28 C.F.R. §§ 35.104, 36.104, 35.136(i) (2010)

Fair Housing Act (FHA)

Requires “reasonable accommodation” to handicapped persons in housing. 24 C.F.R. § 100.204 (1996)

Covers all “assistance animals,” including those needed for emotional support, to the same extent.

Air Carriers Access Act (ACAA)

Prohibits discrimination on the basis of disability in air travel. Broadly defines disability, includes anyone “regarded as having an impairment.” 14 C.F.R. § 382.3 (2010)

California State Law (CSL)

Provides for standardized identification tags for “assistance dogs” which it defines as “guide dogs, signal dogs, or service dogs.” Cal. Food and Agriculture Code § 30850 (2004)**

Protects those using guide dogs, signal dogs, or service dogs from additional fees (such as a standard pet fee) for bringing their assistive animal into their residence. Cal. Civil Code § 54.3 (1996)

California Fair Employment and Housing Act (FEHA)

Prohibits discrimination on the basis of disability in employment and housing; this includes reasonable accommodation in both rental/leasing and construction of housing. Cal. Gov’t. § 12927 (2010), Cal. Gov’t. §§ 12955-12955.1 (2011)

Municipal

Generally, CA counties or cities require licenses for all pets or animals. In most of these counties, service animals receive a fee waiver (though must still license their animal with the city/county).

See: Sacramento, Cal., City Code § 9.44.510 (2013); Los Angeles, Cal., Municipal Code §§ 53.15(b), 53.15.3 (2011); San Jose, Cal., Municipal Code § 7.20.550 (2007); S.F., Cal., Health Code Art. 1 § 41.23(b)(3)(1992).

ADDITIONAL REQUIREMENTS

Americans with Disabilities Act (ADA)

No size, weight, or breed restrictions allowed. 28 C.F.R. Pt. 36, app. a (2011)

May ask ONLY (1) if animal is required due to disability and (2) what tasks it is trained to perform. May not require documentation or proof of certification or licensing. 28 C.F.R. § 35.136(f) (2010)

For public accommodations: allows private civil suit, or Atty. General suit, if violations occur; injunction and/or fines of up to \$55,000 for a first violation and \$100,000 for subsequent violations. 28 C.F.R. §§ 36.501-.505 (2010)(asking additional questions or refusing access is a violation)

Fair Housing Act (FHA)

No size, weight, or breed restrictions allowed; determination of reasonableness based on specific animal in question.

Air Carriers Access Act (ACAA)

May require 48-hours notice for an emotional support animal, or for a service animal on a flight of 8 hours or more. 14 C.F.R. § 382.27(c) (2010)

California State Law (CSL)

Makes falsely claiming an animal to be a service animal a misdemeanor, punishable by imprisonment in a county jail for six month or a fine up to \$1000 or both. Cal. Penal Code § 365.7 (1994), Cal. Food & Agriculture Code § 30850(b) (2004)

Makes “interfering” with rights of a disabled person (such as disallowing them access) a misdemeanor punishable by a fine not exceeding \$2500. Cal. Penal Code § 365.5(c) (1996)

California Fair Employment and Housing Act (FEHA)

N/A

Municipal

N/A

EMOTIONAL SUPPORT ANIMALS?

Americans with Disabilities Act (ADA)

No, under Article II and III. Unclear under Article I, which requires “reasonable accommodation” and does not explicitly mention service animals or limit the scope of what is “reasonable,” though they do name service animals as an example of a “reasonable accommodation” in explanatory documents.

Fair Housing Act (FHA)

Yes, with “reasonableness” determined on a case by case basis.

Requires evidence of disability and that animal’s presence will alleviate this in order to waive “no pets” policy. Can still deny access if evidence that specific animal will cause harm or endanger health and safety of others.

Air Carriers Access Act (ACAA)

Yes, with letter from a mental health professional stating that (1) the passenger has a mental health related disability, (2) that having the animal accompany the passenger is necessary to the passenger’s mental health, and (3) the individual providing the assessment of the passenger is a licensed mental health professional and the passenger is under his or her professional care. 14 C.F.R. § 382.117 (2008)

Can ONLY request this if they identify animal as a support animal (rather than service) or if their statement that it is a service animal does not qualify as a “credible verbal assurance” and there is no physical evidence of the animal’s status. See 1 Americans with Disabilities: Practice & Compliance Manual § 3:348

California State Law (CSL)

No.*

*Unruh Civil Rights Act includes by reference FHA protections re: animals as applied to housing for senior citizens. Cal Civ. Code § 51.2 (2010)

California Fair Employment and Housing Act (FEHA)

It depends. In the workplace, FEHA demands that an employer to “engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations” for a disability “or known medical condition.” Cal. Gov’t. Code § 12940(n) (2012). Thus, it is likely a case-by-case analysis.

In housing, prohibits discrimination based on “disability” only. The absence of “medical condition” in this section tends to indicate that they were not intending to include non-service animals in “reasonable accommodation” provisions. Cal. Gov’t. Code § 12955 (2011)

Municipal

Generally, no. Sacramento allows for animals classified as “livestock” to be kept as pets, as an exception to the limitation of pets to “domestic” animals, if certified as therapeutic. It is unclear whether this acts as a waiver to a no-pets policy. Sacramento City Code 9.44.350. However, this does not extend to public accommodations/buildings. See Sacramento, Cal., City Code § 9.44.300 (2013)

APPLY TO HOUSING?

Americans with Disabilities Act (ADA)

No, unless government provided.

Fair Housing Act (FHA)

Yes.

Air Carriers Access Act (ACAA)

No.

California State Law (CSL)

Yes.

California Fair Employment and Housing Act (FEHA)

Yes.

Municipal

N/A (goes to FEHA)

APPLY TO EMPLOYMENT?

Americans with Disabilities Act (ADA)

Yes. “Reasonable Accommodations” are required; service animals are not explicitly mentioned in Article I, and the EEOC has not issued any limiting instructions. However, with no indication to the contrary, it is logical to assume a consistent definition of “service animal” that must be accommodated throughout the ADA.

Fair Housing Act (FHA)

No.

Air Carriers Access Act (ACAA)

No.

California State Law (CSL)

N/A (goes to FEHA)

California Fair Employment and Housing Act (FEHA)

Yes.

Municipal

Unclear.

EXEMPTIONS & DEFENSES?

Americans with Disabilities Act (ADA)

A public accommodation may remove a service animal from its premises if (1) the animal is out of control and effective remedial action is not taken, or (2) the animal is not housebroken. 28 C.F.R. § 35.136(b) (2011)

Employees with service animals in food service: “FDA Food Code Section 2-403.11 prohibits handling of animals, but allows employees to use service animals. Section 6- 501.115 states that service animals may be permitted in areas not used for food preparation. Employees may handle their service animals if, after handling a service animal, the employee washes his hands for at least 20 seconds using soap, water, and vigorous friction on surfaces of the hands, followed by rinsing and drying as per Section 2-301.12.” The Food Code is not binding but provides the basis for interpretation of a business’ obligations. How to Comply with the Americans with Disabilities Act: A Guide for Restaurants and Other Food Service Employers, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (January 19, 2011), http://www.eeoc.gov/facts/restaurant_guide.html

Fair Housing Act (FHA)

Blank

Air Carriers Access Act (ACAA)

Not required to accommodate “certain unusual service animals” – snakes, reptiles, ferrets, rodents, and spiders. 14 C.F.R. § 382.117 (2010)

California State Law (CSL)

Service Animals are allowed in dining and sales areas “not used for food preparation” only, and employees with service animals must wash their hands after handling the animal. Cal. Health and Safety Code §§114259.4-.5 (2007)

California Fair Employment and Housing Act (FEHA)

Accommodations can be denied by employers only if they can “demonstrate... that the accommodation would impose an undue hardship,” where this means that the accommodation would require “significant difficulty or expense incurred by an employer or covered entity, when considered under the totality of circumstances.” Cal. Civ. Code §§ 11065(r), 11068 (2013)

Valid defense if any possible accommodation would endanger the health and safety of the disabled party or others, but risk of future harm is not a defense. Cal. Civ. Code § 11067 (2013).

Municipal

Blank.

ISSUES TO ADDRESS?

Americans with Disabilities Act (ADA)

ADA is a FLOOR and preempts any state or local law that puts an additional burden on disabled persons. Thus, cannot require certification/identification to accommodate claimed service animal, nor ask for details of disability.

Violations of ADA’s accommodation provisions are also violations of the Unruh Civil Rights Act. Cal. Civ. Code § 51(f) (2011)

Fair Housing Act (FHA)

Blank

Air Carriers Access Act (ACAA)

Blank

California State Law (CSL)

** This does not exist. Per Dept. of Public Health, done locally through each county's animal control.

Descriptions of tag, and processes for obtaining tag, of each county vary widely. (Information from calls to SF, San Jose, SD, LA and OC Animal Control licensing centers, and CA Dept. of Public Health).

California Fair Employment and Housing Act (FEHA)

Blank

Municipal

ADA requires that local animal licensing requirements be met; however, these vary drastically by county.

Provisions requiring certification or identification tags are preempted by the ADA (cannot place any additional burden on disabled persons); while a person can choose to get the tag, in order to avoid being questioned about their animal's status, the tags/certification cannot be required. The best way around this seems to be by standardizing the tag and integrating the licensing of service animals into the standard licensing procedure in each county, with them providing the uniform tag.