

Service Dogs and the Law

A Perspective for Animal Shelters

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Purpose and Scope

- Explain What animal shelter staff need to know about the law regarding service dogs and related classes of animals
- Address federal, California state, and local laws and regulations
- How shelter staff can respond to issues and questions on these topics
- Issuance of Assistance Animal Identification Tags

Summary

- Service dogs are like medical equipment
- Service dogs are therefore allowed to go almost everywhere with their handler
- Federal law broadly controls, but state and local laws can provide additional or broader protections
- California dog-licensing agencies must issue Assistance Dog Identification Tags, but service dogs do not need these tags to enjoy any legal protection
- Some other animals are similar to service dogs. Some categories enjoy limited legal protections, but others do not.

Sources of Law: Federal Laws & Regulations

- Americans with Disabilities Act of 1990 (42 U.S.C. sec. 12101 et seq.) (“the ADA”) and enabling regulations (by DOJ) – **Public Access**
 - Covers places general public may go. Employment & school coverage limited.
- Air Carriers Access Act of 1986 (49 U.S.C. sec. 41705 et seq.) (“the ACAA”) and enabling regulations (by DOT) – **Commercial Air Travel**
- Fair Housing Act of 1968 (Title VIII of the Civil Rights Act of 1968, 42 U.S.C. sec. 3601 et seq.) (“the FHA”) and enabling regulations (by HUD) – **Housing (Landlords and HOAs)**
- Rehabilitation Act of 1973 (29 U.S.C. sec. 701 et seq.), Section 504 – **Federal Facilities and Federally Funded Programs**

Sources of Law: California state laws

- Food & Ag Code secs. 30850 – 30854 (licensing service dogs)
- Health & Safety Code sec. 121680 (rabies quarantine of service dogs)
- Penal Code sec. 365.7 (fraudulent misrepresentation of service dog)
- Civil Code sec. 54 et seq. (public access for disabled persons)
- Education Code sec. 39839 (schoolbus access)

Sources of Law:

Local ordinances, court decisions

- County and city ordinances can expand rights but not restrict those found in federal or state law
- Value of court decisions:
 - Show how the law applies to specific facts
 - Resolve tension between laws, or between law & constitution
- Published decisions by an appeals court (not trial court) are binding on those in the court's jurisdiction (not just the parties)
- Both state and federal courts can rule on both state and federal issues, but state decisions are authoritative on state law, while federal decisions are authoritative on federal law.

Definitions: Service Dogs

- Broadly speaking:
 - A dog individually trained to perform one or more tasks
 - for the benefit of
 - a person with a disability
 - and the task(s) relates to the disability
 - in a way that directly addresses one or more major life functions of the person.
- Note how much this focuses on the disabled person, not the dog
- Federal disability def'n: “substantially limits a major life activity”
- CA def'n omits “substantially” and is thus broader

See CA Gov't Code secs. 12926(j) [mental disability] and (l) [physical]

Definitions: Service Dogs

- ADA: “any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability”
 - Can include miniature horses on a case-by-case basis
- California Civil Code sec. 54.1(b)(6)(C) definitions (for purposes of housing & public access rights)
 - A guide dog is either one trained by a person licensed under the California Business & Professions Code, or as defined by ADA regulations
 - A signal dog is one trained to alert an individual who is deaf or hard of hearing to intruders or sounds
 - A service dog is one individually trained to the requirements of an individual with a disability, such as pulling a wheelchair or fetching dropped items

Definitions: Service Dogs

- Legitimate service dogs typically receive from six months to two years of specific training, largely in training highly unnatural behaviors or in dealing well with difficult or novel situations.
- This extensive training is not legally required, however, so ordinary dog behavior when “on duty” does not mean it is not a service dog.

Definitions: Assistance Dog (for ID Issuance)

- California Assistance Dog ID: “assistance dogs’ are dogs specially trained as guide dogs, signal dogs, or service dogs”
 - Note: outside California, “service dog” is generally considered to encompass guide dogs (vision) and signal dogs (hearing), and “assistance dog” is widely if informally used to include ESAs.
 - An ESA is not an appropriate candidate for an Assistance Dog ID because it is not specially trained as such.

Definitions: Common Problems

- Generally speaking, “service dog” includes guide (vision) dogs and signal (hearing) dogs, although several California laws list these separately
- Incident Reports

Definitions: Service Dogs in Training (SDiTs)

- California statutorily defines who may train guide dogs for the blind (see Business & Prof. Code secs. 7200 et seq. and the implementing regulations of the ADA), but regarding signal dogs and other service dogs that only “persons authorized to train” such dogs enjoy public access rights beyond those of pet-dog owners.
- ADA regulations permit owners to train their own service dogs
- Aside from guide dogs, there is little legal guidance on whether a dog is a legitimate SDiT. There is one court case, where that turned out not to be a key issue.

Definitions: Emotional Support Animals

- Very broadly, an ESA is an animal whose owner derives a sense of well-being, safety, or calm from its companionship & presence
- Not covered by California law, nor by the ADA
- Only federal benefits: housing and air travel
- FHA: An ESA must alleviate one or more identified symptoms or effects of a person's disability.
 - Disability: any mental (or physical) disorder that makes it difficult to perform a major life activity, incl. participating in social activities
- Terminology varies; San Francisco uses the term "Support Animal" (and allows them in City and County facilities)

Distinguishing Emotional Support Animals from Service Dogs

- Can be of any species, but practical issues limit the scope of legal protections
 - ACAA regulations bar some unusual species
- Only relevant to persons with an emotional or psychiatric disability that is alleviated by the presence of the animal
- Animal is not trained to perform any specific task relevant to that disability
- An animal's ordinary untrained behaviors cannot make it a service dog
- Not entitled to Assistance Dog Identification Tag

Definitions: Therapy Animals

- No universally accepted definition; no legal rights
- Animals that provide some degree of formal service for persons other than their owner/handler
- Excludes working dogs (police K9, search-and-rescue dogs, etc.)
- Examples: airport greeters, read-to-a-dog programs, aids to psychologists and therapists, humane education, regular visitors to hospital patients or homes for the elderly
- Typically but not always dogs
- Most have specific but not extensive training; temperament matters more, and most are emotionally stable and outgoing

Service Dogs: Why have them?

- Need for the services the service dog performs
- As a side effect, able to take your service dog almost anywhere

Service Dogs: A History

- Origins
- Why just dogs? (And miniature horses, sort of)
- Anecdotally, growing numbers
- Probably between 100,000 and 200,000 trained service dogs nationwide

Service Dogs: Where Do People Get Them?

- Organizations
- Breeders
- Already-owned dogs
- Shelter dogs

Service Dogs: How They Get Trained

- National organizations (Guide Dogs for the Blind; Canine Companions for Independence; Paws With a Cause)
- State or local organizations (California Canine Academy; Assistance Dog Institute)
- Specialty trainers
- Owner-trained

Air Travel with Service Dogs (and ESAs)

- ACAA: Airlines st accommodate service dogs and emotional support animals with a verified therapeutic purpose on flights (some species of ESA excepted)
 - 48 hours' prior notice required; documentation required for ESAs and psychiatric service dogs
- Airline must make every reasonable effort to accommodate, including giving a set to the animal if needed.

Service Dogs Must Comply With Dog Laws

- Certain state laws and county ordinances apply to all dogs regardless of whether they are service animals. These are primarily health-related, such as vaccination requirements, but also include licensing.
- Registered assistance dogs, or (at local discretion) any service dog, may be exempt from licensing fees but not from the need to obtain a license.

Things That Do Not Make It a Service Dog/ESA

- Service vest or registration card
 - Easily bought online
 - No special status required for purchase
 - No restrictions on who can sell them
 - No one has special authority to issue
 - No legal or industry standards
 - No legal import
- Improper behavior
 - Even well-trained dogs may have a bad day
 - Most service dogs have good public manners but it is not a requirement
 - Dogs may be removed for uncorrected bad behavior

How Can You Prove It Is (Or Is Not) a Service Dog?

- Only a judge can ultimately decide
- Requires a lawsuit in which this is a relevant issue
- What courts have looked at:
 - Proof that the owner/handler is legally disabled. Usually requires testimony (often via documents) from a medical professional who has evaluated or treated the owner/handler.
 - Proof that the dog is individually trained to perform, and actually capable of performing, one or more tasks that help the owner/handler in ways that relate to his/her disability. Usually involves testimony from the trainer, training logs, eyewitnesses, and sometimes live demonstration of the task.

So How Can I Tell If It's a Service Dog?

Wherever the ADA applies, **if the need for the service dog is not obvious**, you can ask the Two Questions*:

- Is this dog a service animal required because of a disability?
 - The handler need not describe the disability at all
 - If the handler volunteers information about why they need a service dog, the answer may indicate it is not a limitation of a major life activity
- What work or task has the dog been trained to perform?
 - A “task” that is a natural behavior does not qualify a dog as a service animal
 - A task that the animal obviously cannot perform

*28 C.F.R. 36.302(c)(1) and (6)

How Can I Tell If It's SDiT?

The same Two Questions can help evaluate a service dog in training, but be cautious

- Who may train a signal dog or service dog (i.e. not a guide dog) is not well defined
- An owner may train their own dog and is not legally required to have any particular skills or background
- Unlike an active service dog, one in training may be very young, and pet-level training is common

What If I'm Mistaken On Whether It's a Service Dog?

- Mistakenly denying rights that the owner/handler is entitled to may be traumatic to them
- A lawsuit can name not only an organization and its owner or operator, but individuals who wrongly deny these rights
- Potential repercussions from others
 - Regulatory agencies
 - Employer
 - Social (and conventional) media criticism
- Mistakenly treating an uncertain case as legitimate usually has minimal consequences

California Assistance Dog ID Tag

- Food & Ag Code secs. 30850 – 30854
- A tag, not a license: this is not required for service dogs
 - SDiTs are treated as pet dogs unless tagged and leashed
- Answers to the same Two Questions and application paperwork are all that may be required
- Completing the paperwork largely consists of the applicant signing an affidavit that acknowledges falsely claiming a dog is a service dog is a misdemeanor, so a false applicant could face fines and/or jail
- The affidavit invokes Penal Code sec. 365.7, which in theory also applies to spoken statements
- No known case law applies or interprets these statutes

Issues With the Assistance Dog ID Tag

- The statute itself references issue to service dogs, not SDiTs
 - Other statutes require SDiTs to have this ID tag to enjoy soecified rights
 - Attorneys (including county counsel) differ on whether this means SDiTs are covered by the tag-issuance law
 - While the tag may help some service dog owners convince third parties that their dog is a legitimate service dog, the only legal benefit of having the tag goes to trainers of SDiTs
- Potential (hypothetical) liability for incorrect issuance of tag
- Complications and conflicts
 - Spay/neuter laws
 - Dangerous dogs

Other Applicable Service Dog Laws

- Service dogs are also addressed in various other California statutes and regulations.
- The laws we are discussing are those that either most directly affect county animal shelter operations, or that respond to be the most common questions.

Service Dog Etiquette

- Service dog etiquette
- Impounded service dogs

Service Dogs in Training

- Although the state seems to intend issuance of the Assistance Dog ID Tag to SDiTs, some localities have instructed their animal-licensing agencies not to do so
- Federal law does not address SDiTs
- Under state law, SDiTs are allowed, for training purposes, in almost all of the public places where service dogs are allowed
- SDiTs are not covered by state or federal laws that require service dogs to be permitted to live in housing.
 - However, a psychiatric DSiT may also qualify as an ESA. The owner must still have appropriate documentation.

Emotional Support Animals

- Why have one?
 - Emotional or psychiatric disability that the animal meaningfully alleviates
 - Possible rationales for home & air travel:
 - In the home an ESA has the least impact on others and is routinely present for the owner
 - Air travel is stressful for many, and may entail a long period away from home
 - Someone whose disability frequently manifests outside the home may need a service dog instead
- Common issues
 - Disputes re need and whether the landlord has followed appropriate steps
 - In CA, may not be brought into places that serve food, unlike service dogs
- Burgeoning numbers

Therapy Animals

- Broadly, two types of owners:
 - Professionals who use them in the course of work
 - Calm or distract patients/clients
 - Humane education
 - Hobbyists
 - Stress relief for others – college exams; airports
 - Read to a Dog
- No special legal protections at state or federal level
- Insurance requirements

Responding to Questions

- Not only members of the public, but businesses, schools and even government agencies sometimes ask Animal Control for guidance
- You are not their lawyer
 - Similar to how you respond to questions about veterinary care
 - Generalities and suggestions for where to get more information are fine
 - Never state how you think the law applies to someone's specific situation
- People considering getting or training a service animal
- Help finding a trainer

Responding to Questions

- Housing
- Transportation
- Businesses

Where To Next?

How will the law evolve from here?

- FAA efforts
- British Columbia approach
- Badges associated with online database
- Drawbacks to centralized control
 - Difficult (or expensive) to authorize and assess for unusual, complex or infrequent tasks
 - Loss of privacy
 - Loss of control

Questions?

Sources for Additional Information

- Nolo Press
- AnimalLaw.info
- IAADP (Int'l Ass'n of Assistance Dog Partners)
- Disability Rights California
- U.S. Dep't of Justice
- ServiceDogCentral.org

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