

Psychiatric Service and Emotional Support Animals

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This publication discusses the difference between psychiatric service and emotional support animals and their treatment under the law in the context of housing, public accommodations (restaurants, hotels, or other places of business that are open to the public), public entities (places operated by the government), and air travel.¹

The right of an individual with a disability to a service or emotional support animal depends on the type of animal, the function that the animal performs, and the setting in which the right is asserted. Different state and/or federal laws will apply to different situations.² Under federal law, service animals are covered by the Rehabilitation Act, the Americans with Disabilities Act (ADA), the Fair Housing Amendments Act (FHAA), and the Air Carriers Access Act (ACAA). Emotional support animals are covered by the FHAA and the ACAA. The California Fair Employment and Housing Act (FEHA) and Unruh Act offer equal or greater protection to federal law for people using service or emotional support animals.

¹ For information about the treatment of service animals in employment, please refer to Equal Employment Opportunity Commission regulations, available online at http://www.eeoc.gov/laws/regulations/index.cfm. Additional resources and publications are also available through the Disability Rights California website, http://www.disabilityrightsca.org.

² The California Department of Fair Employment and Housing (DFEH) has published a chart comparing California and federal laws regarding the right to service animals in various

situations:http://www.dfeh.ca.gov/res/docs/Service%20Animals/Service%20Animal%20Chart%20Final.pdf (last visited May 23, 2014).

This publication covers 2010 ADA regulations issued by the Department of Justice (DOJ), which became effective March 15, 2011 as well as applicable provisions of the FHAA, ACAA, and California civil rights laws. This document is current as of May 20, 2014. The law in this area may change and cases must be considered on an individual basis.

I. The Differences Between a "Psychiatric Service Animal" And An "Emotional Support Animal"

A. What Is A Psychiatric Service Animal Under The ADA?

There are specific definitions of "service animals" in the law, and there are different definitions depending on where the animal is being taken. The ADA contains a definition of service animals that applies only in the context of taking an animal into certain types of public spaces. Note that in the context of housing, a broader term is used, which is discussed below in Section II.

Under both state and federal law, a dog that is trained to perform tasks that benefit a person with psychiatric disabilities is a "psychiatric service animal." Under the 2010 ADA regulations, a "service animal" is defined as "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." Although this definition is limited to dogs, federal regulations provide that under the ADA, miniature horses must be allowed as service animals as a reasonable modification in policies, practices, or procedures if they are individually trained to benefit an individual with a disability and can be reasonably accommodated.⁴

Similarly, under California state law, "service dog means any dog individually trained to the requirements of the individual with a disability, including, but not limited to, minimal protection work, rescue work, pulling a wheelchair, or fetching dropped items." This definition includes services for

³ 28 C.F.R. §§ 36.104 (Implements Title III), 35.104 (Implements Title II).

⁴ 28 C.F.R. §§ 36.302(c)(9)(i), 35.136(i).

⁵ California Disabled Persons Act, Cal. Civ. Code § 54.1(b)(6)(C)(iii).

people with physical, developmental or psychiatric disabilities, including autism, epilepsy, and mental illnesses.⁶

B. What Type Of Work Must A Psychiatric Service Animal Be Trained To Do?

"The work or tasks performed by a service animal must be directly related to the individual's disability." Some examples of tasks that psychiatric service animals perform include: "preventing or interrupting impulsive or destructive behaviors; "eminding the individuals to take medicine, providing safety checks or room searches for persons with PTSD [Post-Traumatic Stress Disorder], interrupting self-mutilation, and removing disoriented individuals from dangerous situations." There is no specific legal requirement as to the "amount or type of work a service animal must provide for the benefit of the disabled person." However, "[t]he 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."

An animal is not a service animal if its mere presence benefits the individual with a disability. A service animal must be "trained to respond to the individual's needs. . . The process must have two steps: Recognition and response. For example, if a service animal senses that a person is

⁶ In re Kenna Homes Co-op Corp., 557 S.E.2d 787, 795 FN8 (W.Va.2001).

⁷ 28 C.F.R. §§ 36.104, 35.104. For a detailed list of work and tasks performed by psychiatric service dogs, see http://www.psychdogpartners.org/resources/work-tasks/work-task-list (last visited May 23, 2014).

^{8 28} C.F.R. §§ 36.104, 35.104.

⁹ 28 C.F.R. pt. 36 app. A. Examples of work or tasks related to an individual's physical disability include "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." 28 C.F.R. §§ 36.104, 35.104.

¹⁰ Green v. Housing Auth. of Clackamas County, 994 F. Supp. 1253, 1256 (D. Or. 1998).

¹¹ 28 C.F.R. §§ 36.104, 35.104.

about to have a psychiatric episode and it is trained to respond, for example, by nudging, barking, or removing the individual to a safe location until the episode subsides, then the animal has indeed performed a task or done work on behalf of the individual with the disability."¹²

C. How Do I Show That My Dog Qualifies As A Service Animal Under The ADA?

The only requirement to be a service animal is that the dog be individually trained to benefit the person with a disability.¹³ A service animal may be trained by a non-certified professional, a friend, a family member, or the person with a disability.¹⁴ Under the ADA, a service dog is not required to be registered as a service dog, or wear a special tag or vest identifying it as a service animal.

Although California law provides for local animal control departments to issue identification tags to people who use and train service animals¹⁵ the tags are not required and do not establish that an animal is a service animal under the law. An individual with a disability may choose to use a tag (or a vest) as a convenient way to identify a dog as a service animal. However, because local governments do not make an independent assessment as to whether an animal is trained to perform work or tasks for the benefit of the individual with a disability, the tags do not have any legal significance. Even if you are issued an identification tag for your animal, the animal must meet the requirements of a service animal in order to be protected under federal and state law. When applying for a service dog identification tag, you must sign a declaration that states you understand that it is a crime to misrepresent yourself as the owner or trainer of a trained service animal. 16 Misrepresenting yourself as an owner or trainer of a trained service animal is a misdemeanor punishable by up to six months imprisonment and/or up to a \$1,000 fine.¹⁷

¹² 28 C.F.R. pt. 36 app. A.

¹³ Bronk v. Ineichin, 54 F.3d 425, 430-432 (7th Cir. 1995).

¹⁴ *Bronk*, 54 F.3d at 430-432.

¹⁵ Cal. Food & Agric. Code §§ 30850 – 30854.

¹⁶ Cal. Food & Agric. Code § 30850(b).

¹⁷ Cal. Pen. Code § 365.7(a).

D. What Is The Difference Between An Emotional Support Animal And A Service Animal?

Emotional support animals provide comfort to a person with a psychiatric disability, but are not trained to perform specific tasks to assist them. As discussed below, emotional support animals are not covered under the ADA and other similar laws that apply specifically to service animals. However, under the FHAA and comparable state laws, emotional support animals may be allowed to accompany individuals in housing as "reasonable accommodations" or "reasonable modifications" for the individual's disability. Emotional support animals, unlike service animals, are not limited to dogs.

The provision of emotional support, well-being, comfort, or companionship is not the type of "work or tasks" considered in the ADA's definition of service animal. However, if a dog was individually trained to perform work or tasks for the benefit of an individual with a disability in addition to providing comfort or support, it may still be considered a "service animal."

II. Housing Rights Under The Fair Housing Amendments Act

A. If My Housing Complex Has A "No-Pets" Policy, Must My Landlord Or Homeowners' Association Allow Me To Keep My Psychiatric Service Animal Or My Emotional Support Animal In My House?

Housing discrimination against persons with disabilities is prohibited both under federal law in the FHAA, and under comparable California laws -FEHA and the Unruh Act. Under the FHAA, FEHA, and the Unruh Act, landlords homeowners' associations and must make reasonable disabilities.¹⁹ people accommodations for with Reasonable accommodations are exceptions to rules or policies necessary in order to allow persons with disabilities to have an equal opportunity to use and

¹⁹ Bronk v. Ineichen, 54 F.3d at 429; 42 U.S.C. § 3604(f)(3)(B); Cal. Civ. Code § 54.1

¹⁸ See, e.g., Auburn Woods I Homeowner's Ass'n v. Fair Employment and Housing Com'n, 121 Cal. App. 4th 1578, 1595-96 (2004); Janush v. Charities Housing Development Corp., 169 F. Supp. 2d 1133, 1136 (N.D. Cal. 2000).

enjoy a dwelling as compared to persons without disabilities. The obligation to make reasonable accommodations includes a requirement that housing providers make exceptions to a "no-pets" policy to permit persons with disabilities to use and live with either a service or emotional support animal.²⁰

In the context of housing, the federal government uses a more inclusive definition of what types of animals must be allowed in housing as a reasonable accommodation under the Fair Housing Act. The broader term used in housing is "assistance animal." An assistance animal is "an animal that works, provides assistance, or performs tasks for the benefit of the person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a persons' disability."²¹ This means that, in addition to service animals, emotional support animals and animals that provide some type of disability-related assistance are permitted as a reasonable accommodation in housing.²² Also, assistance animals can be any type of animal, not just a dog or miniature horse.²³

For example, a cat that provides emotional support to a person with a disability could be permitted as a reasonable accommodation in housing because it is an assistance animal. However, the same cat would not be covered by the ADA's more narrow definition of "service animal" and could not come into public spaces, as discussed below in Section III, Part B.

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²⁰ Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs, HUD FHEO Notice: FHEO-2013-01 (April 25, 2013), http://portal.hud.gov/hudportal/documents/huddoc?id= servanimals_ntcfheo2013-01.pdf, at 3 [hereinafter "HUD FHEO Notice"].

²¹ HUD FHEO Notice, at 2.

²² For more discussion, see Deborah Thrope, *HUD Clarifies Definition of Assistance Animals under FHA and Section 504*, Housing Law Bulletin, vol. 43, July 2013, at 134. ²³ HUD FHEO Notice, at 2.

There is no requirement that the animal be specially trained or certified;²⁴ however, the animal must provide a disability-related benefit to the individual with a disability.²⁵

If the animal poses a direct threat to others, would cause substantial physical harm to the property of others, imposes undue financial or administrative burden to the landlord, or fundamentally alters the nature of the services provided by the landlord, then the landlord may refuse to allow a service or support animal.²⁶ Direct threat must be determined by individual assessment of the animal, not stereotypes about the breed.²⁷ Owners must ensure that their service or emotional support animal complies with state and local animal control laws and is not a danger or nuisance to the community.²⁸

B. Can My Landlord Or Homeowner's Association Ask For Proof Of My Disability Or That My Animal Is A Service Animal Or An Emotional Support Animal?

If you are seeking a reasonable accommodation for your service or emotional support animal for housing, a landlord or homeowner's association may ask for documentation that you have a disability and that you have a disability-related need for the animal.²⁹ However, the landlord should not request documentation if your disability and your disability-related need for the service or support animal is obvious or the landlord otherwise should have known about the disability and need.³⁰ In addition,

²⁴ HUD FHEO Notice, at 2.

²⁵ See e.g., Auburn Woods I Homeowners' Ass'n v. Fair Employment and Housing Com'n, 121 Cal. App. 4th at 1595-96 (2004); Janush v. Charities Housing Development Corp., 169 F. Supp. 2d at 1136-37. (N.D. Cal. 2000); Occupancy Requirements of Subsidized Multifamily Housing Programs, HUD, No. 4350.3, 2-44(B) (Nov. 27, 2013), http://portal.hud.gov/hudportal/documents/huddoc?id=43503HSGH.pdf, at 2-41 [hereinafter "Occupancy Requirements"].

²⁶ Occupancy Requirements, 2-44(C), at 2-41 - 2-42.

²⁷ HUD FHEO Notice, at 3.

²⁸ Cal. Food & Agric. Code § 30851; HUD FHEO Notice, at 3.

²⁹ Occupancy Requirements, 3-29(A), at 3-77.

³⁰ HUD/DOJ Joint Statement on Reasonable Accommodations under the Fair Housing Act (May 17, 2004), http://www.justice.gov/crt/about/hce/

there are limits on how much information a housing provider can ask for. A housing provider "may <u>not</u> ask an applicant or tenant to provide access to medical records or medical providers or provide detailed or extensive information or documentation of a person's physical or mental impairments."³¹

For a sample letter to a housing provider requesting reasonable accommodation for a service/emotional support animal, see Appendix B. You may be asked to provide a letter from your primary care physician, social worker, psychiatrist, or other mental-health professional that the animal provides assistance or benefit directly related to your disability.³² For a sample doctor's letter, see Appendix C.

C. Can A Landlord Make Me Pay A Fee To Keep A Service Animal Or Emotional Support Animal?

A housing provider may not require an applicant or tenant to pay a fee or a security deposit as a condition of allowing the applicant or tenant to keep the assistance (emotional support or service) animal. However, if the individual's assistance animal causes damage to the applicant's unit or the common areas of the dwelling, at that time, the housing provider may charge the individual for the cost of repairing the damage if the provider regularly charges tenants for any damage they cause to the premises. ^{33,} However, the landlord should only charge for excessive damage beyond what might be considered ordinary wear-and-tear.

joint_statement_ra.pdf, at 12-13 [hereinafter "HUD/DOJ Joint Statement"]; HUD FHEO Notice, at 3.

³¹ HUD FHEO Notice, at 4.

³² Occupancy Requirements, 3-29(B), at 3-77.

³³ Occupancy Requirements, 2-44(C), at 2-41 – 2-42; HUD FHEO Notice, at 4; see also HUD/DOJ Joint Statement, at 9-10.

III. Access to Places of Public Accommodation and Public Entities Under the ADA

A. Under The ADA, Where Can I Go With My Psychiatric Service Animal?

Regulations from the DOJ under the ADA require that all public entities and places of public accommodation provide modifications in their policies to accommodate the use of service animals.34 A place of public accommodations, which is a "facility operated by a private entity whose operations affect commerce," must provide reasonable modifications of nopets policies for a service animal.³⁵ This includes places of lodging. establishments serving food or drink, places of entertainment, places for public gathering, sales or rental establishments, professional offices, hospitals, offices of health care providers, stations used for public transportation, museums and libraries, zoos, parks, places of recreation, places education, of exercise. of and social establishments.36 "Individuals with disabilities shall be permitted to be accompanied by their service animals in all areas of a place of public accommodation where members of the public, program participants, clients, customers, patrons, or invitees, as relevant, are allowed to go."37

California state law provides an even broader definition of public accommodations, and requires reasonable modifications at any place "to which the general public is invited."³⁸

The reasonable modification mandate also applies to public entities such as state and local governmental entities, as well as private entities that receive federal funds. Therefore, service animals are also allowed into

³⁶ 28 C.F.R. § 36.104; 42 U.S.C. § 12181(7).

³⁴ 28 C.F.R. §§ 36.302(c)(1), 35.136(a).

³⁵ 28 C.F.R. § 36.104.

³⁷ 28 C.F.R. § 36.302(c)(7).

³⁸ Cal. Civ. Code § 54.1(a)(1).

government buildings, public transportation services, and private entities that receive federal financial assistance.³⁹

A public entity or a public accommodation cannot require a person with a disability to pay a deposit or surcharge in order to be accompanied by his or her service animal, even if that is their policy for pets.⁴⁰ The general law allows public accommodations and public entities to refuse to make "reasonable modifications in policies" (including "no pets" policies), if they can show that making such modifications would fundamentally alter the nature of such goods, services, privileges, advantages, programs, activities, or accommodations.⁴¹ Each determination must be addressed according to its individual facts, based on this standard.

Neither government entities nor public accommodations are required to permit access to their services, programs, and/or activities when an individual poses a direct threat to the health or safety of others.⁴² A "direct threat" is a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.⁴³ In determining whether a "direct threat" exists, an entity must make "an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the

³⁹ See Green, 994 F. Supp. At 1256; *Cf. Crowder v. Kitagawa*, 81 F.3d 1480 (9th Cir. 1996) (finding the State of Hawaii's mandatory 120 day quarantine period for carnivorous animals entering the state discriminates against visually-impaired persons dependent upon guide dogs). The ADA Title II covers public entities, which include "(1) Any State or local government; (2) Any department, agency, special purpose district, or other instrumentality of a State or States or local government; and (3) The National Railroad Passenger Corporation, and any commuter authority (as defined in section 103(8) of the Rail Passenger Service Act)." 28 C.F.R. § 36.104. Section 504 of the Rehabilitation Act prohibits discrimination against individuals with disabilities by "any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service." 29 U.S.C. § 794(a). "Programs and activities" includes state and local governments, schools and universities, and private organizations that receive Federal financial assistance. 29 U.S.C. § 794(b).

⁴⁰ 28 C.F.R. §§ 36.302 (c)(8), 35.136(h).

⁴¹ 42 U.S.C. § 12182(b)(2)(A)(ii); 28 C.F.R. § 35.130 (b)(7).

⁴² 28 C.F.R §§ 36.208(a), 35.139(a).

⁴³ 28 C.F.R. §§ 36.104, 35.104.

best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids will mitigate the risk." ⁴⁴

While a showing that health and safety will be jeopardized if an animal is present could serve as a basis for excluding a service animal, allegations of safety risk must be based on actual risks rather than on mere speculation, stereotypes, or generalizations about individuals with disabilities or about a dog's breed. ⁴⁵ A perceived threat without evidentiary basis will not likely support exclusion. Moreover, if other alternatives exist that can alleviate health and safety concerns while allowing service animals to accompany their owners, then these alternatives should be considered before a blanket exclusionary policy is implemented.

B. Can I Take An Emotional Support Animal To The Same Places That I Can Take a Psychiatric Service Animal?

Under ADA regulations that became effective on March 15, 2011, there are no protections for emotional support animals in terms of access to public accommodations and public entities. The DOJ has stated that emotional support animals are not protected as service animals under these regulations, and has implied that emotional support animals can no longer be protected as reasonable modifications in these contexts.⁴⁶

C. When I Go Out Into Public, What Can I Be Asked About My Disability and/or My Service Animal?

A public entity or a public accommodation "shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. [They] may ask if the animal is required because of a disability and what work or task the animal

⁴⁴ 28 C.F.R §§ 36.208(b), 35.139(b).

⁴⁵ 28 C.F.R §§ 36.301(b), 35.130(h).

⁴⁶ 28 C.F.R. pt. 36 app. A.

has been trained to perform."⁴⁷ A public entity or a public accommodation "shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal."⁴⁸

D. Who Is Responsible For The Care And Supervision Of A Service Animal And How Must The Animal Behave In A Public Location?

A public entity or a public accommodation is not responsible for the care or supervision of a service animal.⁴⁹ Rather the service dog's supervision is the responsibility of the handler and or owner. Since, as discussed above, emotional support animals are provided with fewer legal protections than psychiatric service animals, it is reasonable to conclude that owners are responsible for their care and supervision as well.

A service animal must have a harness, leash, or other tether, unless either the handler is unable because of disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control (e.g. voice control, signals, or other effective means).⁵⁰

Service dogs are not required to be on a leash if being on a leash would affect the ability of the dog to perform its service. Nor are dogs required to be in carriers. They are only required to be "under the control of its handler." ⁵¹

Service dogs cannot be prohibited from being on furniture if it is necessary to do their work. For example a service dog may need to be on furniture to perform pressure therapy for a person having a seizure and may need to climb on a couch to perform the task. Dogs who alert to psychiatric episodes by watching a person's face may need to be on an adjacent chair if they would be unable to see the person's face from under a table and there is no safe floor space for the dog.

⁴⁷ 28 C.F.R. §§ 36.302(c)(6), 35.136(f).

⁴⁸ 28 C.F.R. §§ 36.302(c)(6), 35.136(f).

⁴⁹ 28 C.F.R. §§ 36.302(c)(5), 35.136(e).

⁵⁰ 28 C.F.R. § 36.302(c)(4), 35.136(d).

⁵¹ 28 C.F.R. §§ 36.302(c)(4), 35.136(d).

Also service dogs might need to be intentionally disruptive if that is part of their function. A service dog that barks in a concert hall to alert its owner to medical issues will not be deemed sufficiently "disruptive" to exclude the dog as a fundamental alteration, if comparable noise from a person would be tolerated.⁵²

Service animals may be excluded from limited access areas of a hospital that employ general infection-control measures, such as operating rooms and burn units.⁵³ A service animal may accompany its handler to such areas of a hospital as admissions and discharge offices, the emergency room, inpatient and outpatient rooms, examining and diagnostic rooms, clinics, rehabilitation therapy areas, the cafeteria and vending areas, the pharmacy, restrooms, and all other areas of the facility where healthcare personnel, patients, and visitors are permitted without taking added precautions.

E. When Can A Service Dog Be Excluded From A Business Or Other Place Of Public Accommodations?

There are limited reasons that a service dog can be excluded from a place of public accommodation under the ADA: (1) When its presence would fundamentally alter the program, benefit, service, etc.; or (2) when the dog poses a direct threat to the health and safety of others.

Accordingly, a person with a disability can be asked to remove his or her service animal from the premises if: "(1) the animal is out of control and the animal's owner does not take effective action to control it; or (2) the animal is not housebroken." However, a service dog is not automatically excluded if the dog has an "accident." The guidance that accompanies the regulation says that the dog must be trained to retain waste. An occasional

⁵² See Lentini v. CA Center for the Arts, (9th Cir. 2004) 370 F.3d 837, 844 (9th Cir. 2004).

⁵³ See Healthcare Infection Control Practices Advisory Committee, Centers for Disease Control and Prevention, Guidelines for Environmental Infection Control in Health-Care Facilities; (June 2003), available at http://www.cdd.gov/hicpac/pdf/guidelines/eic in HCF 03.pdf (last visited June 2, 2014).
⁵⁴ 28 C.F.R. §§ 36.302(c)(2), 35.136(b).

accident is allowed. ⁵⁵ Businesses generally may not deny access or refuse service because of allergies or fear of animals. ⁵⁶

If a public accommodation or public entity "normally charges its guests for damage caused to the premises, it may charge the owner of a service animal if the animal causes damage." ⁵⁷

F. Can I Take My Service Animal Or Emotional Support Animal With Me On An Airplane?

Unlike the state and federal laws discussed above, regulations implementing the Air Carrier Access Act (ACAA) treat psychiatric service animals differently than service animals for people with physical disabilities. Airlines must permit service animals to accompany people with physical disabilities on flights, and may not charge a fee for this accommodation. As evidence that the animal is a service animal, airlines must accept identification cards, other written documentation, presence of harnesses, tags, or the credible verbal assurances of a qualified individual with a disability using the animal. In contrast, passengers who wish to bring a psychiatric service animal or emotional support animal onto a flight may be required to produce a note, less than one year old, signed by a licensed mental health professional, stating that he or she has a recognized psychiatric disability that requires the use of an emotional support or psychiatric service animal.

BLIND, http://www.guidedogboard.ca.gov/forms_pubs/

servanimal_transcript.shtml (last visited June 2, 2014).

http://www.ada.gov/svcabrs3.pdf (last visited June 2, 2014).

⁵⁵ What is a Service Animal and Why You Need to Know - transcript, Cal. Dept. OF Consumer Affairs: Board of Guide Dogs for the

⁵⁶ DOJ, ADA Business Brief; Service Animals (April 2002),

⁵⁷ 28 C.F.R. §§ 36.302(c)(8), 35.136(h).

⁵⁸ 14 C.F.R. § 382.117.

⁵⁹ 14 C.F.R. § 382.117(a) – (c).

^{60 14} C.F.R. § 382.57.

⁶¹ 14 C.F.R. § 382.117(d).

⁶² 14 C.F.R. § 382.117(e). Note, however, that the Department of Transportation's (DOT's) guidance interpreting this regulation applies this requirement only to emotional

The U.S. Department of Transportation (DOT) has provided a form for filing disability-related complaints with air carriers.⁶³ DOT regulations for airlines specify that for air travel, a service or emotional support animal is "solely the responsibility of the passenger with a disability whom the animal is accompanying."⁶⁴ Exotic animals, such as snakes or spiders, do not have to be accommodated at all.⁶⁵

IV. Complaints and Lawsuits

What Do I Do If I Have A Problem Because Of My Service Animal Or Emotional Support Animal?

If you are wrongfully discriminated against because of your service animal by a business or public accommodation, you can file a complaint with the Department of Justice. If the complaint is against the government or a private entity receiving federal funding, then the complaint must be received within 180 days of the discriminatory incident.66 There is no deadline for filing a complaint against a place of public accommodation under the ADA that does not receive federal funding, but it is best to file a complaint as soon as possible. Additional information on how to file a complaint with the Department of Justice can be found http://www.ada.gov/t3compfm.htm, or through the ADA Information Line at (800) 514-0301 (voice); (800) 514-0383 (TTY).

If a landlord, condominium association or other housing provider refuses to allow your service or emotional support animal, you may file a complaint with U.S. Department of Housing and Urban Development (HUD) under the Fair Housing Amendments Act within one year after the alleged discrimination. To file a complaint with HUD, you can call 1-800-669-9777,

support animals. DOT, *Guidance Concerning Service Animals in Air Transportation* (2003), http://airconsumer.ost.dot.gov/rules/20030509.doc (last visited June 2, 2014). ⁶³ 14 C.F.R. § 382.159. The complaint form is available at http://www.dot.gov/airconsumer/file-consumer-complaint.

⁶⁴ DOT, *Guidance Concerning Service Animals in Air Transportation* (2003) at 16, http://airconsumer.ost.dot.gov/rules/20030509.doc.

⁶⁵ 14 C.F.R. § 382.117(f).

⁶⁶ 28 C.F.R. § 35.170.

complete an online complaint form available at www.hud.gov, or mail a completed complaint form or letter.

You can also file an administrative complaint for disability discrimination involving your service dog or emotional support animal under California law⁶⁷ with the California Department of Fair Employment and Housing (DFEH), within one year of the last date of discrimination. Additional information on how to file a complaint with DFEH can be found at http://www.dfeh.ca.gov/Complaints_ComplaintProcess.htm or by calling (800) 884-1684 (voice) or (800) 700-2320 (TTY).

Alternatively or in addition to filing a complaint with the DOJ, HUD, or DFEH, you can file suit in state or federal court for injunctive and declaratory relief under federal or state law. Money damages may be available under state law. Lawsuits must be filed within two years after the discriminatory incident.

If you file a complaint or a lawsuit because you and your animal were denied access to housing or public accommodation, a court may require proof that your animal meets the legal definition of a service or emotional support animal. Even though an individual with a trained service animal is not required to carry proof that their animal is a service animal when visiting places of public accommodation, it may be helpful to have a letter from your doctor, social worker, or mental health professional (see Appendix C), and/or an assistance dog identification tag.

Different courts have required different types of proof to establish an animal is a service animal rather than an emotional support animal or a pet. Some courts require only a doctor's note stating that a psychiatric service animal is necessary because of a person's disability. Others require an affidavit detailing training, veterinarian declarations, or certificates from licensed schools. For others, even evaluations of a psychiatrist, social worker, and mental health professional are not enough. Instead, the person must actually demonstrate what specific tasks an animal may perform that

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⁶⁷ See the Unruh Civil Rights Act, Civil Code § 51 et seq., the Fair Employment and Housing Act, Cal. Gov. Code § 12926, and the Disabled Person's Act, Cal. Civ. Code § 54.1 et seq.

directly address the person's disability.⁶⁸ Since the law is still unclear, the more proof you have, the better off you will be.

V. What Is The Assistance Dog Special Allowance Program And How Can I Qualify?

The Assistance Dog Special Allowance (ADSA) Program provides a monthly payment of \$50 to eligible persons who use a guide, signal, or service dog to help them with needs related to their physical disabilities. The allowance is to help pay the costs of food, grooming, and health care for the dogs.

To be eligible for the ADSA program, an individual must meet all four of the following criteria:

Live in California.

Is blind, deaf, hard of hearing, or disabled.

Uses the services of a trained guide, signal, or service dog.

Receives benefits from one or more of these programs:

- SSI (Supplemental Security Income)
- SSP (State Supplementary Payment)
- IHSS (In-Home Supportive Services)
- CAPI (Cash Assistance Program for Immigrants)
- SSDI (Social Security Disability Insurance)

(SSDI recipients must also meet federal poverty guidelines)

For more information contact:

⁶⁸ See Storms v. Fred Meyer Stores, Inc., 120 P.3d 126 (Wash. Ct. App. 2005); In Re Kenna Homes, 557 S.E.2d 778; Prindable v. Ass'n of Apartment Owners of 2987 Kalakaua, 304 F. Supp.2d 1245 (D. Hawaii 2003).

Office of Services to the Blind 744 P Street, MS 8-16-94 Sacramento, CA 95814 (916) 657-2628 (Voice) (916) 651-6248 (TTY) (916) 653-4001 (Fax)

Email: ADSAUser@dss.ca.gov

Phone: (916) 657-2628 or TTY (916) 651-6248 www.cdss.ca.gov/cdssweb/Assistance_184.htm

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The Laws and Regulations Governing this Program Are:

Welfare and Institutions Code Sections 12553 and 12554

CDSS Manual of Policies and Procedures Section 46-430

www.cdss.ca.gov/getinfo/pdf/eas14.pdf

Appendix A: Chart

	Service Animals	Emotional Support Animal
Definition	Animal that is individually trained to perform work or tasks for the benefit of a person with a disability.	Animal that provides comfort or support for a person with a disability, but does not have any individualized training to perform work or tasks.
Reasonable Accommodation in Housing?	Yes. Housing provider may ask for documentation that you have a disability and there is a disability-related need for a service animal.	Yes. Housing provider may ask for documentation that you have a disability and there is a disability-related need for an emotional support animal.
Reasonable Accommodation in Places of Public Accommodation and Public Entities?	Yes. Public accommodations and public entities may not ask for documentation, but can ask if the animal is a service animal, and what it is trained to do.	No.
Reasonable Accommodation for airline travel?	Yes. Airline may ask for a signed note from your licensed mental health professional, not more than 1 year old, that states that you have a psychiatric disability and a disability-related need for a psychiatric service animal.	Yes. Airline may ask for a signed note from your licensed mental health professional, not more than 1 year old, that states that you have a psychiatric disability and a disability-related need for an emotional support animal.

Appendix B: Sample Letter to Housing Provider Requesting Reasonable Accommodation

[Date]

Dear [Landlord, Housing Authority, Homeowner's Association]

I live at/am applying to rent your property at [address]. I am writing this letter to inform you that I have a disability and that my disability would be greatly benefited by the use of a service/emotional support animal.

My physician/psychiatrist/psychologist/therapist/social worker/occupational therapist has recommended this accommodation for my disability. Please see the attached letter from [doctor or professional's name].

Federal and state law require that a housing provider reasonably accommodate disabled tenants/occupants. I am requesting that you reasonably accommodate my disability by allowing me to have a service/emotional support animal live with me. Please feel free to contact me at [your phone number and/or e-mail address] if you have any questions. Thank you.

Sincerely,

[Your name]

[Your address]

Appendix C: Sample Letter from Professional

[Date]

To [Landlord, Housing Authority, and Homeowner's Association]:

I am the physician/psychiatrist/psychologist/therapist/social worker/occupational therapist for [Your name]. (S)he has a disability that causes certain functional limitations. These limitations include [list functional limitations here].

I have recommended a service/emotional support animal to help with these issues. I believe that a service/emotional support animal will enhance her/his ability to live in the community and use and enjoy her/his dwelling.

I am familiar with the literature on the benefit of service/emotional support animals for people with disabilities. Should you have any additional questions that are allowable under the law concerning my recommendation, please contact me.

Thank you for providing this reasonable accommodation for my patient. It will be of great benefit to her/him.

Sincerely,

[Doctor or professional's name]

Disability Rights California is funded by a variety of sources, for a complete list of funders, go to http://www.disabilityrightsca.org/
Documents/ListofGrantsAndContracts.html.