Are reasonable accommodations 'for the birds?'

COMPLIANCE CORNER

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The Americans with Disabilities Act (ADA) prevents privately owned businesses that serve the public from discriminating against individuals with disabilities. According to the U.S. Department of Justice, "under the ADA, businesses that serve the public generally must allow service animals to accompany people with disabilities in all areas of the facility where the public is normally allowed to go."

On Feb. 22, the Oregon Court of Appeals upheld a $60,000 award to a customer who was denied access to a Eugene convenience store with her service dogs. The customer, who has both physical and mental disabilities, attempted to enter the store when the owner and employees refused to allow the customer in with her service animals. Both dogs are trained to assist with the customer's disabilities.

Despite having a sign outside the front door saying, "Service dogs welcome," the owner insisted that the dogs weren't service animals. The business argued that one of the dogs was still in training and did not qualify as a service dog. The Court of Appeals disagreed with the business and determined that the ADA did not require the dogs to be licensed or fully trained to be service animals. The court concluded that the dogs were service animals under federal and Oregon law.

In Oregon, service animals are not considered pets. People with disabilities may bring service animals into all areas where customers are normally allowed. Those places include restaurants, retail stores, banks, hotels, theaters, libraries, parks, hospitals and other spaces open to the general public. Service animals cannot be refused entry because of a "no pet" rule. The ADA defines service animals to be only dogs, and under certain conditions, miniature horses. No other animals can be "service animals" under the ADA; there is no such thing as a "service peacock." Oregon law similarly constrains service animals to be dogs (or "other animal designated by administrative rule").

Service animals are required to be trained to perform tasks that directly relate to an individual's disability. However, there is no formal certification process for an animal to be recognized as a service animal (although there are numerous services that will "certify" a service animal). Importantly, Oregon law recognizes service animals to include animals who have not yet completed their training. The only requirement is that the owner must be able to maintain control of the service animal at all times.

The ADA only allows an employee to ask two questions: 1, "Is that dog (or miniature horse) a service animal required because of a disability?" and 2, "What work or task has the dog (or miniature horse) been trained to perform?" The ADA and Oregon law both prohibit questions about an individual's disability or documentation proving the animal is a service dog. In addition, businesses cannot charge admission of the animal.

Emotional support animals are not service animals, and do not have to be accommodated. Service animals must be trained to perform some task, and emotional support animals, by definition, do not perform a task.

But what about employees with service animals? The ADA also prohibits discrimination against individuals with disabilities in employment, and requires reasonable accommodation at the employee's request. Permitting an employee to bring his or her service animal is a form of reasonable accommodation, though an employer may forbid a service animal at work if it poses an undue hardship or disrupts the workplace.

Although emotional support animals or companion animals do not qualify as service animals under the law, may an employer nonetheless be required to allow use of such an animal as a reasonable accommodation? It's possible. Employers must evaluate the use of a companion animal under the same conditions as a service animal (and other requests for accommodation) and engage in the interactive process with the employee who is requesting to bring the animal to work as an accommodation.

But what is an employer to do if, after a request to bring a service animal to work is made, another employee is allergic to dogs or afraid of dogs? This balancing act can be tricky for employers, because both employees may need to be accommodated. Neither allergies nor fear of dogs is a valid reason for denying access or requests for accommodation to people using service animals; however, the employer may need to accommodate those who have an allergy or phobia related to the service animal as well. This may take the form of allowing employees to telecommute or work different shifts, placing employees on different floors, or providing one of the employees with a private workspace, if feasible.

So how can employers keep this straight? Employers should have practices in place to comply with federal and state disability laws regarding service animals, and educate their employees on what can and cannot be asked when encountering animals at the business. Employers should also ensure they properly engage in the interactive process to assess requests from employees for accommodations that involve animals coming into the workplace. When in doubt, employers should consult their legal counsel to develop policies and ensure compliance with laws surrounding the use of service animals or emotional support animals for customers as well as employees, because mistakes can be costly.

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