Service & Emotional Support
Animals in the Workplace

Panelists:
Kathleen Wolfe, Aaron Konopasky, Linda Carter Batiste, Beth Loy, and Tiffany Jolliff

Moderator:
Mia Ives-Rublee
Introduction

• As service and emotional service animals have become more prevalent, employers and the public have increasingly asked for assistance to understand the laws and policies around them.

• The Federal Government has numerous policies, guidelines and laws addressing service and emotional support animals. These tend to overlap one another and can get confusing.

• The Federal Interagency Disability Policy Group has created a workgroup to review the issues that people with disabilities face around the use of service and emotional support animals.
Panel

• Today, we invited panelists to talk to FEED members about how service and emotional support animals affect the federal workplace environment.

• Panelists include:
  • Kathleen Wolfe, Special Litigation Counsel from the Civil Rights Division of U.S. DOJ
  • Aaron Konopasky, Attorney Advisor from the Office of Legal Counsel at EEOC
  • Linda Carter Batiste, Principal Consultant at the Job Accommodations Network (JAN)
  • Beth Loy, Principal Consultant at JAN
  • Tiffany Jolliff, Program Specialist from the Office of Disability Employment Policy at DOL
Service Animals
Titles II and III of the ADA

Kathleen Wolfe
U.S. Department of Justice
November 8, 2018
SERVICE ANIMALS: ADA Titles II and III

**Basic Rule:** A public entity shall modify its policies, practices or procedures to permit the use of a service animal.

**Rule of Thumb:** Allow service animal to go anywhere members of public go
A dog that is *individually trained* to do *work or perform tasks* for the *benefit of an individual with a disability*, including a physical, psychiatric, sensory, intellectual or other mental disability.
SERVICE ANIMALS: ADA Titles II and III

Service Animal Definition

- Limits species to **dogs**
- A dog that is **individually trained**
  - Professional training not required
  - Dogs in training are not service animals
  - Must be able to perform disability-related task
SERVICE ANIMALS: ADA Titles II and III

Service Animal Definition

- A dog that is individually trained to **perform work or tasks**
  - Guiding or wayfaring
  - Alerting to sounds
  - Detecting the onset of a seizure and assist during seizure
  - Retrieving items
Psychiatric Service Animal

Service dogs for people with psychiatric disabilities are recognized under DOJ regulations

- Dog takes independent action to alert – e.g., prior to anxiety/panic attack
- Dog’s action is consistent
- Handler generally does not cue dog
Emotional Support/Comfort?

Providing emotional support or comfort is **not** a recognized **task** under DOJ service animal regulations

- If the dog’s mere presence provides comfort, it is **not** a service animal under DOJ regulations
- You typically cannot determine on sight whether a dog is a service animal under the ADA or an emotional support or comfort animal that is not covered by the ADA.
SERVICE ANIMALS: ADA Titles II and III

Questions and Documentation

☐ Two permissible questions
☐ No certification, identification, licensure or registration required

DOJ does not recognize any document sold online by any individual or organization as proof that a dog is a service animal
Service Animals
Title I of the ADA

Aaron Konoposky
November 8, 2018
Animals in the Workplace as Reasonable Accommodations

- Animals are not specifically addressed in the text of the ADA/Section 501, or in EEOC regulations

  **BUT**

- Statutes and regulations make clear that reasonable accommodations include “appropriate modification of ... policies”
  - EEOC Technical Assistance Manual (1991): Modifying a “no-animal” policy to allow a guide dog for a blind employee is a form of reasonable accommodation
No Restrictions

- EEOC has never imposed any restrictions on animals as reasonable accommodations, other than restrictions that apply generally (required only if needed because of a disability and will not impose undue hardship)
  - Species
  - Whether the animal must perform a service (whether it is a “service animal”)
  - Certification or training
Documentation

- Where a disability and the need for the animal are obvious (e.g., a guide dog for someone who is blind), no documentation is required
- Where not obvious, employer may get reasonable documentation that the employee has a disability and needs the accommodation
  - No requirement to show that the animal is trained or certified
Alternative Accommodations

- Employers generally may require an employee to accept an alternative accommodation if it is effective.
- However, employers generally should avoid requiring alternatives to service animals.
  - Compare: EEOC has said that an employer should not tell an employee what medications to use.
Effect on Other Employers

• If the service animal affects another employee because of his or her disability (e.g., an allergy or phobia that substantially limits a major life activity), the employer may have to provide a reasonable accommodation to the other employee:
  – Separate paths of travel
  – Telework for one or both employees
  – Alternatives to in-person communication, such as by allowing participation in meetings by phone, even when an employee is in the office
Undue Hardship

- An employer may show that the service animal’s effect on others imposes an undue hardship on the business if the animal:
  - Is disruptive
  - Poses a direct threat (i.e., a significant risk to health or safety)
  - Is not properly cared for by handler
FEED: Service Animals

Linda Carter Batiste, J.D., & Beth Loy, Ph.D.
Principal Consultants
Job Accommodation Network
Accommodation Issues:

- Allergies and phobias
- Animal care
- Restrictions
- Other issues
Helpful Tips:

- Process requests on a case by case basis
- Don’t make assumptions
- Allow animal when possible
- Customize accommodations
Documentation Issues:

- How to document
- What is allowed?
Helpful Tips:

- Document disability in the regular way
- Consider other documentation related to the animal
- Consider a demonstration or trial period
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Liability Issues:

- Injuries or property damage
- Insurance
Helpful Tips:

- Check your policy and workers compensation
- Don’t treat the employee differently than other employees
Confidentiality Issues:

- Coworkers
- Customers/clients
Helpful Tips:

- Do general disability awareness training
- Talk with the employee
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Resources:

- Service Animals as Workplace Accommodations at https://askjan.org/topics/servanim.cfm
- Emotional Support Animals in the Workplace: A Practical Approach at https://askjan.org/publications/consultants-corner/vol12iss04.cfm
- Service Animals and Allergies in the Workplace at https://askjan.org/publications/consultants-corner/vol02iss01.cfm
Personal Experience

Tiffany Jolliff
November 8, 2018
QUESTIONS?
Thank you for attending!

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