

# Best Practices for Service Animals in the Workplace

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Service dogs are in high demand, not only in New Jersey, but across the country. Individuals with qualifying conditions rely on these animals to assist them in places of public accommodation, such as airports, hotels, stores and restaurants, and also in the workplace. As the number of service animals has increased, so have the laws governing them.

The Americans with Disabilities Act (ADA) and the New Jersey Law Against Discrimination (NJLAD) specifically permit access to service animals in all places of public accommodation. In the employment context, both the ADA and NJLAD confirm that service animals are considered reasonable accommodations for employees. There are, however, distinct procedures delineating how best to respond to a service animal request from a customer in a public accommodation setting versus from an employee in a workplace context. This article provides guidance under the two separate procedures.

## Service Animal Requests in the Public Accommodation Context

The first step is to determine if the animal is actually a service animal under the legal definition. In the public accommodation context, the ADA defines a service animal as a dog or miniature horse that is individually trained to do work or perform tasks for an

individual with a disability. Service animals under the ADA do not include other species such as cats, birds, etc.

Service animals are trained to assist disabled individuals with certain tasks. Those tasks include assisting individuals who are blind or have low vision with navigation; alerting a person with hearing loss to a sound; assisting an individual during a seizure; reminding a person to take medication; providing physical support with balance and stability; and so on.

When it is not obvious what service an animal provides, an establishment may only ask two questions:

- (1) Is the dog a service animal required because of a disability?
- (2) What work or task has the dog been trained to perform?

It is very important to note that, unlike in the employment context, in a public accommodation setting you are not permitted to request medical documentation evidencing a disability or proof of training for the service animal. Furthermore, service animals are not required to attend a specific certification or training course to be considered a bona fide service animal, but they are not

required to wear an approved vest indicating service animal status.

## Registration and Permissions

Because there is no central database of approved “service animals” under the ADA or NJLAD, dogs do not need to be registered as service animals in the public accommodation setting. There is no regulatory oversight of service animal training programs by state or federal governments.

A service animal is permitted to go anywhere the general public is permitted to go, including restaurants, classrooms, on school buses and on school grounds. (See N.J.S.A. Section 18A:46-13.2-13.3 and the ADA.) The service animal must remain with the handler at all times and must be harnessed, leashed or tethered, unless the individual’s disability prevents using these devices or these devices interfere with the service animal’s safe, effective performance of tasks.

There are some circumstances where the presence of a service animal can pose a direct threat to others or change the fundamental nature of the business, and, therefore, the service animal can be excluded. For example, a service animal may be excluded from a zoo where the animals on display are the natural prey or natural predators of dogs. Additionally, a service animal may be excluded from a sterile operating room in a hospital, for obvious reasons.

A service animal can be removed from the premises if: (1) the animal is out of control and the animal’s handler does not take effective action to control it, or (2) the animal is not housebroken. When there is a legitimate reason to ask that a service

animal be removed, staff must offer the person with the disability the opportunity to obtain goods or services without the animal’s presence.

There are also some public accommodation settings that may exclude service animals due to safety/health concerns. Again, certain zoo exhibits and water features may not be suitable for service animals. Such scenarios should be evaluated on a case-by-case basis.

In the event you are forced to exclude a service animal from your facility, you should discuss with the individual whether other reasonable accommodations are available to allow the guest/customer to enjoy the benefits of the entity’s goods/services.

Places of public accommodation cannot prohibit the entrance of a service animal due to potential allergies or fears of other guests/customers. The ADA specifically addresses this concern, finding that potential allergies and fears of other guests/customers/clients is an insufficient reason to deny access to a service animal.

## Service Animal Requests in the Employment Context

If a disabled employee requests the use of a service animal to assist the employee during the course of their workday, the employer must evaluate this request as they would any other request for reasonable accommodation. The ADA and NJLAD both require that, as the employer, you must engage in the “interactive process” to determine whether the employee can complete the essential functions of the job with or without the assistance of a service animal. During the “interactive process,”

the employer must determine whether the use of the service animal is a reasonable accommodation or would cause undue hardship on the employer. Generally, the ADA and NJLAD have determined that the use of service animals constitutes “reasonable accommodations” that employers can provide. Nonetheless, employers are encouraged to evaluate each instance on a case-by-case basis to determine the employee’s specific limitations and service animal request.

The employer can also request medical documentation from the employee’s medical provider to substantiate the use of a service animal. However, unlike the public accommodation context, in the employment context the ADA does not provide a definition of a service animal. Therefore, animals other than dogs and miniature

horses could qualify as a reasonable disability accommodation request.

The demand for service animals is only anticipated to grow over the next few years. Employers and establishments of all types will benefit from being familiar with the laws surrounding service animals to avoid any related claims or lawsuits that may result from noncompliance with the law.



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