

WASHINGTON STATE HUMAN RIGHTS COMMISSION

GUIDE TO SERVICE ANIMALS AND THE WASHINGTON STATE LAW AGAINST DISCRIMINATION



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Service Animals and the Washington Law Against Discrimination

The Washington Law Against Discrimination (WLAD) includes provisions prohibiting discrimination against persons with disabilities who use a service animal to assist them with the disability. RCW 49.60.040 defines a dog guide as a “dog that is trained for the purpose of guiding blind persons or a dog that is trained for the purpose of assisting hearing impaired persons.” RCW 49.60.040 defines service animal as “any dog or miniature horse 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. The work or tasks performed by the service animal must be directly related to the individual's disability.”

Service animals are utilized by persons with a variety of disabilities and in many different ways. Service animals may lead blind people or serve as the ears of a deaf person. They may also carry and pick up items, be used for balance, and provide warnings of impending seizures or low blood sugar. Service animals may allow persons with anxiety disorders, PTSD or other emotional illnesses to function in society by alerting their handlers to avoid anxiety triggers, by recognizing and blocking behaviors, or by stimulating the person to “snap back” to a conscious state. Service animals can remind handlers that it is time to take medication, and can summon help in the case of fainting or a seizure. The ways in which persons with disabilities use service animals are growing and evolving as we discover additional ways in which animals can be utilized by persons with disabilities.



Training

WLAD clearly defines a service animal as being “trained”. Training itself is not defined, and there is no requirement that the animal have a certain type of training, that the animal be certified, or that it be trained by a particular person or by a person having certification. Court cases have determined that the training needs to be more than obedience training or positive reinforcement that are given to family pets. A service animal must have training that sets it apart from a family pet; the service animal must be trained to do work or perform tasks to assist its handler with a disability.

This training requirement often eliminates “emotional support animals”, “therapy dogs”, and “comfort animals” from the definition of service animal. In fact, the definition in the law specifically excludes certain animals from being considered service animals: “The 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.” Before determining that an animal falls into one of these categories and excluding the animal, an inquiry should be made into what the animal is trained to do.



However, if you are in a housing situation, the above limitations do not apply. In housing, animals that do not meet the definition of service animal may still be allowed in a person’s dwelling, because in certain situations, assistance animals can be reasonable accommodations for persons with disabilities, with no training requirement. Please see “Housing” below for more information.

Service animals in places of public accommodation

RCW 49.60.215 prohibits discrimination in a place of public accommodation due to the “use of a trained dog guide or service animal by a disabled person.” WAC 162-26-130 requires “fair service in a place of public accommodation regardless of the use of a trained dog guide or service animal by a disabled person as well as because of the disability itself.” (Internal quotations omitted.)

Service animals must be allowed into all areas of a place of public accommodation where the general public is allowed – this includes dining and eating areas, restrooms, and areas where food is sold. A place of public accommodation cannot request that the service animal be removed unless it creates a risk of harm. This risk must be actual, and cannot be speculative or based on a fear of dogs. In addition, if an animal exhibits disruptive, poor or unsanitary behavior, it would not be considered a trained service animal, and can be removed.

Questions a business can ask:

First a business can ask if the animal is required because of a disability (i.e. is the animal a pet or is it a service animal). If the answer is no, or that the animal is a pet, the business can exclude the animal. If the handler answers that the animal is for a disability or is a service animal, the business can proceed to a second question.

Second, the business can ask what work or task the animal is trained to do, such as, “What is this animal trained to do for your disability?” The answer to this question will determine if the business needs to allow the animal or if it can exclude the animal.

- If the handler refuses to answer, the animal can be excluded.

- If the handler discloses their disability, but refuses to disclose what the animal is trained to do for them, the animal can be excluded.
- If the handler provides documentation or certification that the animal is a service animal, but neither the documentation nor the handler can explain what the animal is trained to do, the business can exclude the animal. (There is no state or federal service animal registry or certification process, so such documentation has no legal meaning and can be purchased on the Internet by anyone.)
- If the handler answers only that the animal can sit, stay, lie down, come when called, or do something else related to obedience and good manners, this does not indicate the animal is trained to provide services for a disability, and the animal can be excluded.
- If the handler answers that the animal makes them feel better, helps them calm down, eases their depression, or something similar, this would indicate that it is the animal's presence alone that helps the handler, and that the animal is not trained to do a task or provide a service. Because the animal does not meet the training requirement, the business can exclude the animal.
- If the handler answers that the animal is trained to guide them, help with balance or mobility, alert them to a condition (either physical or situational), pick up or carry items, remind them to take medication, get help, stabilize them during a seizure, redirect their attention from a trigger, or do some other task or provide some service that the person is unable to do themselves or helps with a disability, then the animal is a trained service and must be allowed.

Points to keep in mind:

- Service animals are not pets, so a “no pets” policy does not apply.



NO PETS
Except Service Animals

- A business cannot charge a fee for the service animal.
- A business cannot require documentation that the animal is certified, licensed or trained as a service animal. There is no such documentation issued by the state or federal government. The business cannot ask for written proof of disability or a medical note.
- The business also cannot ask that the animal demonstrate its tasks or duties.
- The business cannot ask the customer about the nature or extent of the disability, as this is private information.

- Generally, when it is apparent that the animal is working for a person with a disability, such as when the dog is guiding a blind person, or is pulling a wheelchair, the business should refrain from making an inquiry about the animal.
- Service animals are not limited to large dogs; small dogs and miniature horses often work as service animals.



- Service animals will often be identified with a harness or vest, but there is no requirement that the service animal have any identification.



- If an animal is identified as a service animal, the business must allow the animal into all public parts of the business, including where food is sold and eaten. The business cannot segregate the service animal and its handler to a particular part of the place of public accommodation.
- It is reasonable to expect that the service animal should remain in physical or voice control of its handler at all times, that the animal not defecate or urinate inside, and that the animal not bark excessively, be disruptive, run to people or jump on them, or act aggressively toward people. Keep in mind, however, that sometimes it is a service animal's job to warn its handler of surroundings or impending events, and it might do so with a bark or a growl.



- The service animal is there to provide a service; it is working. Therefore it should not be wandering around, socializing, eating at the table, or being fed. If this type of behavior occurs, the business can ask that it stop, and if the behavior continues, the business can ask that the animal leave. Service animals are highly trained, and the majority of service animal handlers will be very conscientious about their animal's behavior, and would not allow it to engage in inappropriate or disruptive behavior.
- Do not pet or speak to the service animal unless invited to do so by its handler. The animal is working and should not be disturbed. Do not allow employees to pet the animal.



Miniature Horses

A place of public accommodation shall make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability.

Misrepresentation of a Service Animal

Under RCW 49.60.214 it will be a civil infraction under RCW 7.80 for any person to misrepresent an animal as a service animal. The penalty for the civil infraction can be up to \$250.00. A violation of this section occurs when a person:

(a) Expressly or impliedly represents that an animal is a service animal as defined in RCW 49.60.040 for the purpose of securing the rights or privileges afforded disabled persons accompanied by service animals set forth in state or federal law; and

(b) Knew or should have known that the animal in question did not meet the definition of a service animal.

If someone falsely represents an animal as a service animal an enforcement officer may investigate and enforce this law by making an inquiry of the person accompanied by the animal in question and issuing a civil infraction.

An enforcement officer 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: if the animal is required because of a disability and what work or task the animal has been trained to perform. An enforcement officer shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal, or require that the service animal demonstrate its task. Generally, an enforcement officer may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for a person with a disability, such as a dog that is guiding a person who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to a person with an observable mobility disability.

If a person refuses to answer the allowable questions, then it is presumed that the animal is not a service animal and the enforcement officer may issue a civil infraction and require the person to remove the animal from the place of public accommodation.

Housing

The U.S. Department of Housing and Urban Development (HUD) is the federal agency in charge of enforcing housing laws throughout the country, including anti-discrimination laws. In Washington State, the Washington State Human Rights Commission enforces fair housing laws. Under both the federal Fair Housing Act and the WLAD, a housing provider (including landlords, property managers, and home owner and condominium associations) cannot discriminate against persons with disabilities, and must reasonably accommodate persons with disabilities. A reasonable accommodation could include an assistance animal for a person with a disability; fair housing law does **not** have a training requirement for such animals. In order for a person to have an assistance animal as a reasonable accommodation, the person must have a disability, must request the animal as a reasonable accommodation for that disability, and must be able to show that the animal is necessary because of the person's disability, usually by presenting a note or recommendation from a medical provider. Emotional support animals and comfort animals would be included as a reasonable accommodation under fair housing laws. Therefore, if a person with a disability has a guide dog, assistance animal, service animal or an emotional support animal, that animal should be allowed into that person's dwelling despite a "no pets" policy. There should be no charge or "pet fee" for the service animal. Fair housing

laws do not limit the species of service animals; service animals could include dogs, cats, and other animals.



Employment

WAC 162.22.100 states, “It is an unfair practice of an employer...to request that a trained dog guide or service animal be removed from the workplace...”

If the animal is trained to provide a disability-related service to a person with a disability, an employer needs to allow the service animal in the workplace. These animals are not pets, so a “no pets” policy in the workplace does not apply. An employer can refuse to allow the service animal only if the animal poses an immediate or reasonably foreseeable risk or danger to people or property. Speculation that the animal poses a risk or danger is not enough to refuse the animal. Fear of dogs by other employees or by customers is not a valid reason for not allowing a service animal. If allergies are an issue, an employer must balance the need for the service animal with reasonably accommodating the person with allergies, often by separation if possible.



Service animals should be under the control of their owners. Service animals should not create sanitary problems or make loud noises. There are certain very specific types of medical and food service operations where certain animals can be excluded under certain circumstances. There is no requirement that the employer provide food, water, or toileting facilities for service animals.

If an employee requests to bring an animal to work to assist with an emotional or psychological disability, but the animal does not meet the training requirement in the definition of service animal, this animal would not be considered to be a service animal, but rather an emotional support animal. The employer needs to enter into a reasonable accommodation interactive process with the employee about the employee’s limitations at work and the need for a

reasonable accommodation, and whether having that animal at work is that reasonable accommodation. If it is determined that the animal is not a reasonable accommodation, then the employer must provide another effective accommodation to the employee.

If you need additional information, have additional questions, or wish to have training for your organization, please contact the WSHRC at 360-753-6770 or 800-233-3247 (TTY 800-300-7525). Additional information on this and other civil rights issues can be found on our website at www.hum.wa.gov. **This document does not constitute legal advice;** if you have a particular situation about which you need legal advice, you should contact your attorney.