

NFIB UPDATE

Small Business Reset and Recover Webinar Series

with Beth Milito and Holly Wade, NFIB



February 2, 2022

Topic – Dogs in the Shop: Understanding Service Animal Protections Under the Americans with Disabilities Act (ADA)

Special Guests –

**Celeste Adams-Simmons, Program Manager, U.S. Department of Justice,
Andrew Washburn, Civil Rights Program Specialist, U.S. Department of Justice**



DISCLAIMER

- The materials and information provided in this webinar and on NFIB's website are for informational purposes only and not for the purpose of providing legal or tax advice. You should contact your attorney and/or tax professional to obtain advice with respect to any particular issue or problem.
- This is based on information available by 2/1/22.

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Agenda

—

- Updates
- Guest Speakers
- Q&A
- Send questions to info@nfib.org

Happy Groundhog Day!



NFIB's Small Business Legal Center

1st Wednesday Webinar Series



Wednesday, March 2
12:00 PM EST

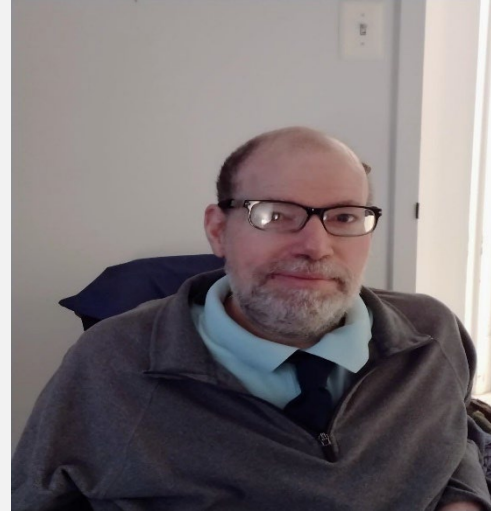
***Ask the CPA: Employee Retention Tax Credit and
Tax Season Essentials!***

Guest Speaker: Kristi Stone, Stone & Company CPAs

Small Business Resources

-
- NFIB Resources (including past webinars)
 - SBA Updates – sba.gov/updates
 - Paycheck Protection Program (forgiveness)
 - Employee Retention Credit - ***still open! (claim retroactively for wages paid after March 12, 2020, through Q3 2021)***

Webinar Speakers



**Andrew Washburn,
Civil Rights Program Specialist,
U.S. Department of Justice**



**Celeste Adams-Simmons,
Program Manager,
U.S. Department of Justice**

Service Animals and the ADA



Disability Rights Section
Civil Rights Division
U.S. Department of Justice
February 2, 2022

Training Objectives

- **WHY** service animals are permitted under the ADA
- **WHAT** service animals are (and are not)
- **WHERE** service animals must be permitted to go
- **WHEN** service animals can be properly excluded
- **WHO** to contact if you have questions



WHY are service
animals permitted
under the ADA?

Reasonable Modifications

The ADA requires your business to make **reasonable modifications** to your policies, practices, or procedures to make the goods and services you offer accessible to people with disabilities.



Allowing Service Animals Is A Reasonable Modification

In general, your business must modify your policies, practices, and procedures to permit the use of a service animal by an individual with a disability.



WHAT is a
service animal
under the ADA?

A service animal is:

- A dog
- that is individually trained
- to do work or perform tasks
- for the benefit of a person with a disability.



Examples of work/tasks performed by service animals

- Guiding a person who is blind or has low vision
- Alerting a person who is deaf or hard of hearing to sounds
- Pulling a wheelchair



Examples of work/tasks performed by service animals

- Detecting the onset of a seizure and assisting during a seizure
- Reminding a person with a mental health disability to take medications
- Providing stability for a person who has limited mobility and difficulty walking



Service animals are **NOT**:



Other species of animals besides dogs



Emotional support, therapy, comfort, or companion animals



Emotional Support Animals

Emotional support animals are animals that provide comfort just by being with a person.



Because they have not been trained to perform a specific job or task, they do **NOT** qualify as service animals under the ADA.



You can solicit certain information with two questions:

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

Note: You cannot ask these questions if it is obvious that the animal is a service animal.



What if the customer refuses to answer the two questions?

Your business does **NOT** need to allow the animal to enter.

BUT: If you exclude the animal because the customer refuses to answer the two questions, you must still permit the customer to enter your business without his or her animal.



Your business may **NOT**:

- Ask the two questions if it is obvious the animal is a service animal
- Request documentation for the animal
- Request that the animal demonstrate its task
- Inquire about the nature or extent of a person's disability



What about service animal badges, vests, and IDs?

- There are organizations that sell service animal certification documents online as well as badges, vests, and IDs for dogs.
- These are **NOT** proof that a dog is a service animal under the ADA.



Interactive Exercise

- I'm going to read you several hypothetical scenarios.
- At the end of each hypothetical, I will ask:

Is the animal a service animal under the ADA?



Instructions

When prompted, type one of the following answers into the chat box:

- **Yes:** The animal is a service animal
- **No:** The animal is not a service animal
- **Maybe:** I need to ask the person questions



Scenario 1

A deaf man walks into your store with a parrot on his shoulder.

The parrot has a sign around its neck that reads: “Hi, my name is Patsy. My owner is deaf. I’m trained to alert him to the presence of sounds.”



Is Patsy the parrot a service animal under the ADA?

NO



Scenario 2

A man enters your hotel with his dog, Sadie.

Sadie is wearing a red vest that says “Registered Service Animal.”



Is Sadie the dog a service animal under the ADA?

MAYBE



Scenario 2 continued

You ask the man whether his dog Sadie is required because of a disability. He says “yes.”

Next, you ask him what work or task his dog has been trained to perform. He tells you that Sadie has been trained to assist him with balance and stability.



Is Sadie the dog a service animal under the ADA?

YES



Scenario 3

A teenager enters your store with her dog, Zoey. You ask her whether her dog is required because of a disability. She says “yes.”

Next, you ask her what work or task her dog has been trained to perform. She tells you that her dog provides her with emotional support just by being with her.



Is Zoey the dog a service animal under the ADA?

NO



WHERE must
service animals be
permitted to go?

General Rule

Your business must allow service animals to accompany people with disabilities in *all* areas of your business where members of the public are allowed to go.



Examples

- Locker rooms
- Waiting rooms
- Buffets and dining rooms



Self-Service Food Lines

Service animals must generally be allowed to accompany people with disabilities to and through self-service food lines.



Hotel Rooms

A guest with a disability who uses a service animal must generally be provided the same opportunity to reserve any available room at your hotel as guests without disabilities.



Doctor's Offices

Service animals must generally be allowed to accompany people with disabilities in doctor's office waiting rooms, exam rooms, and anywhere else in the office that the public and patients are allowed to go.



Shopping Carts and Furniture

Generally, your business is NOT required to allow a service animal in a shopping cart or on furniture.



Swimming Pools

Your business may prohibit service animals from entering your swimming pool, BUT you must allow the service animal on the pool deck, in the changing room, and anywhere else the public is allowed to go.



Interactive Exercise

- I'm going to read you several hypothetical scenarios.
- At the end of each hypothetical, I will ask:

Must you allow the service animal to access this area?



Instructions

When prompted, type one of the following answers into the chat box:

- **Yes:** Must allow the service animal
- **No:** Do not need to allow the service animal



Scenario 1

A customer enters your restaurant and approaches the salad bar with her service animal.



Must you allow the customer to access the salad bar with her service animal?

YES



Scenario 2

A customer approaches your nail salon with her service animal. You have a strict “no pets” policy, which is posted on your shop’s front window for all to see. The poster explains this is to keep the shop clean and free of pet hair for the benefit of your patrons.



**Must you allow the service animal
in your nail salon?**

YES



Scenario 3

A member of your gym has a disability. She signed up for a water aerobics class that you offer and would like to bring her service animal into the pool with her during the class.



Must you allow the service animal in your pool?

NO

(but the service animal must be
allowed to remain on the pool deck)



WHEN can
service animals be
properly excluded?

Two Specific Exceptions

- The service animal is **out of control** and the animal's handler does not take effective action to control it; or
- The service animal is **not housebroken**



Under Control

A service animal must:

- Have a harness, leash, or other tether; or
- Otherwise be under the handler's control (e.g., voice control, signals, or other effective means)



Not Under Control

- Growling
- Barking more than once or twice
- Nipping or biting



General Limitations

- Fundamental alteration
- Direct threat
- Legitimate safety requirement

*In most settings, the presence of a service animal will not trigger these limitations on the need to comply with the ADA's requirements.



Fundamental Alteration

Your business may exclude a service animal if its presence or behavior would fundamentally alter the nature of the goods or service your business provides.



Direct Threat

- Your business is not required to permit an individual with a disability to participate in or benefit from your goods and services when that individual poses a direct threat to the health or safety of others.
- A direct threat is a significant risk to the health or safety of others that cannot be eliminated by the modification of your policies, practices, or procedures.



Legitimate Safety Requirement

Your business may impose a legitimate safety requirement that excludes service animals if it is necessary for the safe operation of your business.



But, remember, if you exclude a service animal...

You must still permit the customer to enter your business without his or her service animal.



Interactive Exercise

- I'm going to read you several hypothetical scenarios.
- At the end of each scenario, I will ask:

Can the service animal be properly excluded?



Instructions

When prompted, type one of the following answers into the chat box:

- **Yes:** The service animal can be excluded
- **No:** The service animal cannot be excluded



Scenario 1

A man with a service animal is dining in your restaurant. While he is eating, his service animal urinates on the floor.



Can the service animal be properly excluded?

YES



Scenario 2

While grocery shopping in your supermarket, a woman with a service animal encounters an open bag of popcorn that fell on the floor. Her service animal rushes over to the popcorn and starts eating it and she does nothing to stop it.



Can the service animal be properly excluded?

YES



Scenario 2 continued

What if the woman instead immediately pulled on the leash to stop her service animal from eating the popcorn and quickly relocated to another aisle?



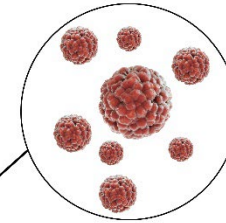
Can the service animal be properly excluded?

NO



Scenario 3

Your small dental practice is attempting to schedule upcoming appointments with two new patients—one who has an allergy to dog dander and another who uses a service animal.



ALLERGEN



Can the service animal be properly excluded?

NO



WHAT ELSE?

Miniature Horses

Your business must make reasonable modifications 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 individual with a disability.**



Assessment Factors

- The type, size, and weight of the miniature horse and whether your facility can accommodate those features
- Whether the handler has sufficient control of the miniature horse
- Whether the miniature horse is housebroken
- Whether the miniature horse's presence compromises legitimate safety requirements that are necessary for safe operation



WHO to contact if you
have questions?

Resources

- www.ADA.gov

Frequently Asked Questions about Service Animals and the ADA

ADA Requirements: Service Animals

- ADA Information Line

1-800-514-0301 (voice) or 1-800-514-0383 (TTY)



Q&A

