



California's Protection & Advocacy System

# PSYCHIATRIC SERVICE AND EMOTIONAL SUPPORT ANIMALS

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## Frequently Asked Questions

This publication discusses the difference between psychiatric service and emotional support animals and their treatment under the law in the context of housing, public accommodations (restaurants hotels or other places of business that are open to the public), public entities (places operated by the government), and air travel.<sup>1</sup> Under federal law, service animals and emotional support animals are addressed in several statutes, including the Rehabilitation Act, the Americans with Disabilities Act (ADA), Fair Housing Act (FHA), and the Air Carriers Access Act (ACAA). California law may differ from federal law and offer further protection for people using service or emotional support animals. This publication covers 2010 ADA regulations issued by the Department of Justice (DOJ), which became effective March 15, 2011.

### **I. What is the difference between a “psychiatric service animal” and an “emotional support animal”?**

#### **A. What is a psychiatric service animal?**

Under the 2010 ADA regulations, a “service animal” is defined as any “any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric,

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<sup>1</sup> For information about the treatment of service animals in employment, please refer to Equal Employment Opportunity Commission regulations, available online at <<http://www.eeoc.gov/laws/regulations/index.cfm>>. Additional resources and publications are also available through the Disability Rights California website <<http://www.disabilityrightscalifornia.org>>.

intellectual, or other mental disability.”<sup>2</sup> Although this definition is limited to dogs, federal regulations indicate that miniature horses must be allowed as service animals under the ADA if they are individually trained to benefit an individual with a disability and can be reasonably accommodated.<sup>3</sup>

Under California state law, “service dog” means “any dog individually trained to the requirements of the individual with a disability, including, but not limited to, minimal protection work, rescue work, pulling a wheelchair, or fetching dropped items.”<sup>4</sup> This definition includes services for people with physical, developmental or psychiatric disabilities, including autism, epilepsy, and mental illnesses.<sup>5</sup> Under both state and federal law, an animal that is trained to perform tasks that benefit a person with psychiatric disabilities is a “psychiatric service animal.”

B. What type of training is required for a psychiatric service animal?

The work or tasks performed by a service animal must be directly related to the individual's disability.<sup>6</sup> Some examples of tasks that psychiatric service animals perform include: preventing or interrupting impulsive or destructive behaviors;<sup>7</sup> reminding the individual to take medicine; providing safety checks or room searches for persons with Post-Traumatic Stress Disorder; interrupting self-mutilation; and removing disoriented individuals from dangerous situations.<sup>8</sup> There is no specific legal requirement as to the

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<sup>2</sup> 28 C.F.R. § 36.104.

<sup>3</sup> See 28 C.F.R. § 36.302(c)(9)(i).

<sup>4</sup> Cal. Civ. Code § 54.1(b)(6)(C)(iii).

<sup>5</sup> See *In re: Kenna Homes Co-op Corp.*, 557 S.E.2d 787, 795 n.7 (W. Va. 2001).

<sup>6</sup> 28 C.F.R. § 36.104.

<sup>7</sup> 28 C.F.R. § 36.104.

<sup>8</sup> 75 Fed. Reg. 56269. Examples of work or tasks related to an individual's physical disability include “assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities” 28 C.F.R. § 36.104

“amount or type of work a service animal must provide for the benefit of the disabled person.”<sup>9</sup> However, “[t]he 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.”<sup>10</sup>

An animal is not a service animal if its mere presence benefits the individual with a disability. A service animal must be “trained to respond to the individual’s needs...The process must have two steps: recognition and response. For example, if a service animal senses that a person is about to have a psychiatric episode and it is trained to respond, for example, by nudging, barking, or removing the individual to a safe location until the episode subsides, then the animal has indeed performed a task or done work on behalf of the individual with the disability.”<sup>11</sup>

C. How do I show that my animal qualifies as a service animal?

The only requirement to be a service animal is that the animal be individually trained to benefit the person with a disability.<sup>12</sup> A service animal may be trained by a non-certified professional, a friend, a family member, or the person with a disability.<sup>13</sup>

Under California law, assistance dog identification tags are available for service animals and service animals in training, if it is being trained by the individual with a disability or a licensed trainer, through your county animal control department.<sup>14</sup> The county will not make an independent assessment as to whether the animal is trained to perform work or tasks for the benefit of the individual with a disability. Even if you are issued an identification tag for your animal, the animal must meet the requirements of a service animal in order to be protected under federal and state law. When applying for an assistance dog identification tag, you must sign a declaration that states you understand that it is a crime to misrepresent yourself as the owner or trainer of a trained service animal.<sup>15</sup>

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<sup>9</sup> *Green v. Housing Auth. of Clackamas County*, 994 F. Supp. 1253, 1256 (D. Or. 1998).

<sup>10</sup> 28 C.F.R. § 36.104.

<sup>11</sup> 75 Fed. Reg. 56267

<sup>12</sup> See *Bronk v. Ineichin*, 54 F.3d 425, 430-432 (7th Cir. 1995).

<sup>13</sup> See *Bronk*, 54 F.3d at 430-432.

<sup>14</sup> Cal. Food & Ag. Code § 30850(a).

<sup>15</sup> Cal. Food & Ag. Code § 30850(b).

Misrepresenting yourself as an owner or trainer of a trained service animal is a misdemeanor punishable by up to six months imprisonment and/or up to a \$1,000 fine.<sup>16</sup>

D. What is an emotional support animal?

Emotional support animals provide comfort to a person with a psychiatric disability, but are not trained to perform specific tasks to assist them.<sup>17</sup> As discussed below, emotional support animals are not covered under laws that apply specifically to service animals, but may be allowed to accompany individuals in housing as “reasonable accommodations” or “reasonable modifications” for the individual’s disability.

## II. Housing

A. If my housing complex has a “no-pets” policy, must my landlord or homeowners’ association allow me to keep my animal in my house?

Housing is covered under federal law in the Fair Housing Act (FHA), and under California law under Fair Employment and Housing Act (FEHA). Under the FHA, landlords and homeowners’ associations must make reasonable accommodations for people with disabilities.<sup>18</sup> Housing providers must make exceptions to a “no-pets” policy to permit persons with disabilities to use and live with a service or emotional support animal as a reasonable accommodation.<sup>19</sup> There is no requirement that the animal be specially trained; however, the animal must provide a disability-related benefit to the individual with a disability.<sup>20</sup>

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<sup>16</sup> Cal. Pen. Code § 365.7(a).

<sup>17</sup> See, e.g., *Auburn Woods I Homeowner’s Ass’n v. Fair Employment and Housing Com’n*, 121 Cal. App. 4th 1578, 1595-96 (2004); *Janush v. Charities Housing Development Corp.*, 169 F. Supp. 2d 1133 (N.D. Cal. 2000).

<sup>18</sup> *Bronk v. Ineichen*, 54 F.3d at 429; 42 U.S.C. § 3604(f)(3)(B).

<sup>19</sup> Occupancy Requirements of Subsidized Multifamily Housing Programs, HUD, No. 4350.3, 2-44(C) (2003);

<sup>20</sup> See e.g., *Auburn Woods I Homeowners’ Ass’n v. Fair Employment and Housing Com’n*, 121 Cal. App. 4th 1578, 1595-96 (2004); *Janush v. Charities Housing Development Corp.*, 169 F. Supp. 2d 1133 (N.D. Cal.

If the animal poses a direct threat to others, would cause substantial physical harm to the property of others, imposes undue financial or administrative burden to the landlord, or fundamentally alters the nature of the services provided by the landlord, then the landlord may refuse to allow a service or support animal.<sup>21</sup> Owners must ensure that their service or emotional support animal complies with state and local animal control laws and is not a danger or a nuisance to the community.<sup>22</sup>

B. Can my landlord or homeowner's association ask for proof of my disability or that my animal is a service animal or an emotional support animal?

If you are seeking a reasonable accommodation for your service or emotional support animal for housing, a landlord or homeowner's association may ask for documentation that you have a disability and that you have a disability-related need for the animal.<sup>23</sup> However, the landlord should not request documentation if your disability and your disability-related need for the service or support animal is obvious or the landlord otherwise should have known about the disability and need.<sup>24</sup> For a sample letter to a housing provider requesting reasonable accommodation for a service/emotional support animal, see Appendix B. You may be asked to provide a letter from your primary care physician, social worker, psychiatrist, or other mental-health professional that the animal provides assistance or benefit directly related to your disability.<sup>25</sup> For a sample doctor's letter, see Appendix C.

C. Can my landlord require a fee or deposit for my animal?

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2000); Occupancy Requirements of Subsidized Multifamily Housing Programs, HUD, No. 4350.3, 2-44(B) (2003);

<sup>21</sup> Occupancy Requirements of Subsidized Multifamily Housing Programs, HUD, No. 4350.3, 2-44(C) (2003);

<sup>22</sup> Cal. Food & Ag. Code § 30851.

<sup>23</sup> Occupancy Requirements of Subsidized Multifamily Housing Programs, HUD, No. 4350.3, 3-29(A) (2003);

<sup>24</sup> HUD/DOJ Joint Statement on Reasonable Accommodations under the Fair Housing Act (May 17, 2004) pp.12-13.

<sup>25</sup> Occupancy Requirements of Subsidized Multifamily Housing Programs, HUD, No. 4350.3, 3-29(B) (2003)

“A housing provider may not require an applicant or tenant to pay a fee or a security deposit as a condition of allowing the applicant or tenant to keep the assistance animal. However, if the individual’s assistance animal causes damage to the applicant’s unit or the common areas of the dwelling, at that time, the housing provider may charge the individual for the cost of repairing the damage if the provider regularly charges tenants for any damage they cause to the premises.<sup>26</sup> However, the landlord should only charge for excessive damage beyond what might be considered ordinary wear-and-tear.

### **III. Places of Public Accommodation and Public Entities**

#### **A. Where can I go with my psychiatric service animal?**

Regulations from the DOJ under the ADA require that all public entities and places of public accommodation provide modifications in their policies to accommodate the use of service animals.<sup>27</sup> A place of public accommodations, which is a “facility operated by a private entity whose operations affect commerce,” must provide reasonable modifications of no-pets policies for a service animal.<sup>28</sup> This includes places of lodging, establishments serving food or drink, places of entertainment, places for public gathering, sales or rental establishments, professional offices, hospitals, offices of health care providers, stations used for public transportation, museums and libraries, zoos, parks, places of recreation, places of exercise, places of education, and social service establishments.<sup>29</sup> “Individuals with disabilities shall be permitted to be accompanied by their service animals in all areas of a place of public accommodation where members of the public, program participants, clients, customers, patrons, or invitees, as relevant, are allowed to go.”<sup>30</sup> California state law provides an even broader definition of public accommodations, and requires reasonable modifications at any place “to which the general public is invited.”<sup>31</sup>

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<sup>26</sup> Occupancy Requirements of Subsidized Multifamily Housing Programs, HUD, No. 4350.3, 2-44(C) (2003);

<sup>27</sup> 28 C.F.R. § 36.302(c)(1) and 28 C.F.R. § 35.136(a).

<sup>28</sup> 28 C.F.R. § 36.104.

<sup>29</sup> 28 C.F.R. § 36.104; 42 U.S.C. 12181(7).

<sup>30</sup> 28 C.F.R. § 36.302(c)(7).

<sup>31</sup> Cal. Civ. Code § 54.1(a)(1).

The reasonable modification mandate also applies to public entities such as state and local governmental entities, as well as private entities that receive federal funds. Therefore, service animals are also allowed into government buildings, public transportation services, and private entities which receive federal financial assistance.<sup>32</sup>

A public entity or a public accommodation cannot require a person with a disability to pay a deposit or surcharge in order to be accompanied by his or her service animal, even if that is their policy for pets.<sup>33</sup> The law is not clear as to whether there must be a connection between the services provided by a service animal and the nature of the reasonable modification for that particular disability. For example, if an animal is trained only to fetch medication or phones at home, and the animal does not provide any benefit in a store, the law is not clear whether the store has to let the animal in. The general law allows public accommodations and public entities to refuse to make “reasonable modifications in policies” (including “no pets” policies), if they can show that making such modifications would fundamentally alter the nature of such goods, services, privileges, advantages, programs, activities, or accommodations.<sup>34</sup> Each determination must be addressed according to its individual facts, based on this standard.

B. Can I take an emotional support animal to the same places that I can take a psychiatric service animal?

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<sup>32</sup> See *Green*, 994 F. Supp. 1253; Cf. *Crowder v. Kitagawa*, 81 F.3d 1480 (9th Cir. 1996). The ADA Title II covers public entities, which include “(1) Any State or local government; (2) Any department, agency, special purpose district, or other instrumentality of a State or States or local government; and (3) The National Railroad Passenger Corporation, and any commuter authority (as defined in section 103(8) of the Rail Passenger Service Act).” 28 C.F.R. § 36.104. Section 504 of the Rehabilitation act prohibits discrimination against individuals with disabilities by “any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.” 29 U.S.C. § 794(a). “Programs and activities” includes state and local governments, schools and universities, and private organizations that receive Federal financial assistance. 29 U.S.C. § 794(b).

<sup>33</sup> 28 C.F.R. §§ 36.302 (c)(8), 35.136(h).

<sup>34</sup> 42 U.S.C. § 12182(b)(2)(A)(ii); 28 C.F.R. § 35.130 (b)(7)

Under ADA regulations that became effective on March 15, 2011, there are few, if any, protections for emotional support animals in terms of access to public accommodations and public entities. The DOJ has stated that emotional support animals are not protected as service animals under these regulations, and has implied that emotional support animals can no longer be protected as reasonable modifications in these contexts.<sup>35</sup>

C. When I go out into a public, what can I be asked about my disability and/or my animal?

A public entity or a public accommodation “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. [They] may ask if the animal is required because of a disability and what work or task the animal has been trained to perform.”<sup>36</sup> A public entity or a public accommodation “shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal.”<sup>37</sup>

D. Who is responsible for the supervision of a psychiatric service animal or emotional support animal that is in a public location?

A public entity or a public accommodation “is not responsible for the care or supervision of a service animal.”<sup>38</sup> The service animal must be on a leash or otherwise under the control of the animal.<sup>39</sup> Accordingly, a person with a disability can be asked to remove his or her service animal from the premises if: “(1) the animal is out of control and the animal's owner does not take effective action to control it; or (2) the animal is not housebroken.”<sup>40</sup> Businesses generally may not deny access or refuse service because of allergies or fear of animals.<sup>41</sup>

If a public accommodation or public entity “normally charges its guests for damage caused to the premises, it may charge the owner of a service

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<sup>35</sup> 75 Fed. Reg. 56269.

<sup>36</sup> 28 C.F.R. §§ 36.302(c)(6), 35.136(f).

<sup>37</sup> 28 C.F.R. §§ 36.302(c)(6), 35.136(f).

<sup>38</sup> 28 C.F.R. §§ 36.302(c)(5), 35.136(e).

<sup>39</sup> 28 C.F.R. §§ 36.302(c)(5), 35.136(e).

<sup>40</sup> 28 C.F.R. §§ 36.302(c)(2), 35.136(b).

<sup>41</sup> DOJ, ADA Brief; Service Animals, available at

<<http://www.usdoj.gov/crt/ada/svcanimb.htm>> (last visited April 1, 2011).

animal if the animal causes damage.”<sup>42</sup> Since, as discussed above, emotional support animals are provided with fewer legal protections than psychiatric service animals, it is reasonable to conclude that owners are responsible for their care and supervision as well.

#### **IV. Air Travel**

##### Can I take my service animal or emotional support animal with me on an airplane?

Federal regulations related to air travel require that service and emotional support animals be reasonably accommodated on all flights. Airlines may ask passengers who use service or emotional support animals whether the animal is a service animal, and what work or tasks the animal performs for the benefit of the passenger.<sup>43</sup>

Additionally, passengers who wish to bring an emotional support animal onto a flight may be required to produce a note, less than one year old, signed by a licensed mental health professional, stating that he or she has a recognized psychiatric disability that requires an emotional support animal.<sup>44</sup> Exotic animals, such as snakes or spiders, do not have to be accommodated at all.<sup>45</sup> The U.S. Department of Transportation regulations for airlines specify that for air travel, a service or emotional support animal is “solely the responsibility of the passenger with a disability whom the animal is accompanying.”<sup>46</sup>

#### **V. Complaints and Lawsuits**

##### What do I do if I have a problem because of my service animal or emotional support animal?

If you are wrongfully discriminated against because of your service animal or emotional support animal, you can file a complaint with the Department of Justice. If the complaint is against the government or a private entity receiving federal funding, then the complaint must be received within 180

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<sup>42</sup> 28 C.F.R. §§ 36.302(c)(8), 35.136(h)

<sup>43</sup> 68 Fed .Reg. 24875

<sup>44</sup> 14 C.F.R. § 382.117(e).

<sup>45</sup> 68 Fed. Reg. 24877.

<sup>46</sup> 68 Fed. Reg. 24875.

days of the discriminatory incident.<sup>47</sup> There is no deadline for filing a complaint against a place of public accommodation under the ADA, but it is best to file a complaint as soon as possible. Additional information on how to file a complaint with the Department of Justice can be found at <http://www.ada.gov/t3compfm.htm>, or through the ADA Information Line at (800) 514-0301 (voice); (800) 514-0383 (TTY).

You can also file a complaint under the Unruh Civil Rights Act with the California Department of Fair Employment and Housing (DFEH), within one year of the last date of discrimination. Additional information on how to file a complaint with DFEH can be found at <http://www.dfeh.ca.gov/DFEH/Publications/PublicationDocs/DFEH-167.pdf> or by calling (800) 884-1684 (voice) or (800) 700-2320 (TTY).

Alternatively or in addition to filing a complaint with the DOJ or DFEH, you can file suit in court for injunctive and declaratory relief under the ADA or Unruh Civil Rights Act. Law suits must be filed within two years after the discriminatory incident.

If you file a complaint or a lawsuit because you and your animal were denied access to housing or public accommodation, a court may require proof that your animal meets the legal definition of a service animal. Even though an individual with a service animal is not required to carry proof that their animal is a service animal, it may be helpful to have a letter from your doctor, social worker, or mental health professional (see Appendix C), and/or an assistance dog identification tag.

Different courts have required different types of proof to establish an animal is a service animal rather than an emotional support animal or a pet. Some courts require only a doctor's note stating that a psychiatric service animal is necessary because of a person's disability. Others require an affidavit detailing training, veterinarian declarations, or certificates from licensed schools. For others, even evaluations of a psychiatrist, social worker, and mental health professional are not enough. Instead, the person must actually demonstrate what specific tasks an animal may perform that

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<sup>47</sup> 28 C.F.R. § 35.170.

directly address the person's disability.<sup>48</sup> Since the law is still unclear, the more proof you have, the better off you will be.

This document is current as of March 15, 2011. The law in this area may change and cases must be considered on an individual basis.

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<sup>48</sup> See *Storms v. Fred Meyer Stores, Inc.*, 120 P.3d 126 (Wash. Ct. App. 2005); *In Re Kenna Homes*, 557 S.E.2d 778; *Prindable v. Association of Apartment Owners of 2987 Kalakaua*, 304 F. Supp. 1245 (D. Hawaii 2003).

**Appendix A: Chart**

	<b>Service Animals</b>	<b>Emotional Support Animal</b>
Definition	Animal that is individually trained to perform work or tasks for the benefit of a person with a disability	Animal that provides comfort or support for a person with a disability, but does not have any individualized training to perform work or tasks.
Reasonable Accommodation in Housing?	Yes. Housing provider may ask for documentation that you have a disability and there is a disability-related need for a service animal.	Yes. Housing provider may ask for documentation that you have a disability and there is a disability-related need for an emotional support animal.
Reasonable Accommodation in Places of Public Accommodation and Public Entities?	Yes. Public accommodations and public entities may not ask for documentation, but can ask if the animal is a service animal, and what it is trained to do.	No.
Reasonable Accommodation for airline travel?	Yes. Airline may ask whether the animal is a service animal, and what it is trained to do.	Yes. Airline may ask for a signed note from your licensed mental health professional, not more than 1 year old, that states that you have a psychiatric disability and a disability-related need for an emotional support animal.

**Appendix B:**

**Sample Letter to Housing Provider Requesting Reasonable Accommodation**

[Date]

Dear [Landlord, Housing Authority, Homeowner's Association]

I live at/am applying to rent your property at [address]. I am writing this letter to inform you that I have a disability and that my disability would be greatly benefited by the use of a service/emotional support animal.

My physician/psychiatrist/psychologist/therapist/social worker/occupational therapist has recommended this accommodation for my disability. Please see the attached letter from [doctor or professional's name].

Federal and state law require that a housing provider reasonably accommodate disabled tenants/occupants. I am requesting that you reasonably accommodate my disability by allowing me to have a service/emotional support animal live with me. Please feel free to contact me at [your phone number and/or e-mail address] if you have any questions. Thank you.

Sincerely,

[Your name]

[Your address]

## **Appendix C:**

### **Sample Letter from Professional**

[Date]

To [Landlord, Housing Authority, Homeowner's Association]:

I am the physician/psychiatrist/psychologist/therapist/social worker/occupational therapist for [Your name]. (S)he has a disability that causes certain functional limitations. These limitations include [list functional limitations here].

I have recommended a service/emotional support animal to help with these issues. I believe that a service/emotional support animal will enhance her/his ability to live in the community and use and enjoy her/his dwelling.

I am familiar with the literature on the benefit of service/emotional support animals for people with disabilities. Should you have any additional questions that are allowable under the law concerning my recommendation, please contact me.

Thank you for providing this reasonable accommodation for my patient. It will be of great benefit to her/him.

Sincerely,

[Doctor or professional's name]