



Rights to Service and Emotional Support Animals in Housing and Public Places – FAQs

Pub#7155.01 - June , 2020

If you have a disability, are experiencing homelessness, and have a service animal, the law enables you to have it with you in public places and in your housing, including in homeless shelters.

If you have an emotional support animal rather than a service animal, there are also laws which allow you to have it with you in your housing, including in homeless shelters, but not in public places.

Use this list of questions and answers to learn the rules that apply to you, and which exceptions apply.

For quick reference, also see “Emotional Support and Service Animals in Public Places and Housing - Quick Facts Sheet.”

Which laws apply?

NOTE: this section is intended to provide a brief overview of the laws that apply to disability rights in public spaces and housing. The sections thereafter beginning with “What is considered a service animal?” will begin to provide specific questions and answers on whether you can bring service or emotional support animals with you in public places and/or housing.

There are different sets of laws that cover disability rights for public spaces and housing. Some are state laws, and others are federal laws.

Here is a list of the primary laws that cover disability rights in public spaces:

- The Americans with Disabilities Act (ADA) Title II (covers state and local government entities, AKA public entities) and Title III (covers businesses) of the [Federal Law]
- California Unruh Civil Rights Act (covers businesses)
- California Disabled Persons Act (covers businesses)
- California Government Code 11135 (covers recipients of state funds)

Here is a list of the primary laws that cover disability rights in housing:

- Fair Housing Amendments Act [Federal Law] (covers most forms of housing, including homeless shelters)
- Section 504 of Rehabilitation Act (covers recipients of federal funds) [Federal Law]
- California Disabled Persons Act
- California Fair Employment and Housing Act

NOTE: disability rights in homeless shelters can be covered by several sets of both federal and state laws – depending on how the shelter is funded, and which aspect of the shelter is being used or how it is accessed (as a dayroom/resource center, or as a form of housing). However, you can still use this FAQ to assess what rules apply to you when, and how to assert them.

Who is protected by disability rights law?

Individuals with disabilities are protected by disability rights law. Disabilities are defined slightly differently under federal and state laws, but generally, they are:

1. a physical or mental impairment
2. that limits
3. one or more major life activities (MLA) of an individual

Federal disability rights laws, and California laws all use a similar definition, with the exception that California law is broader – federal law requires that the limitation of an MLA be “substantial.”

Individuals are protected from disability-based discrimination if they:

1. Have a physical or mental impairment that [substantially - if federal law applies] limits one or more major life activities;
2. Have a record of such an impairment; or
3. Are regarded as having such an impairment.

What is considered a major life activity (MLA)?

As with the definition of disability, the definitions of major life activities vary slightly across federal and state laws. However, they generally include but are not limited to: caring for oneself, eating, sleeping, seeing, hearing, speaking, concentrating, thinking, working, walking, standing, breathing, and major body functions such as digestive, respiratory, circulatory, neurological, and reproductive functions.

As with the definition of disability, the state law definition of MLA is slightly broader and additionally describes an MLA as limited if it is made difficult by the physical or mental impairment.

What is considered a service animal?

A “service animal” is a:

1. a dog
2. that is individually trained
3. to perform work or tasks
4. that benefit a person with a disability, including a physical, sensory, psychiatric, intellectual, or other type of disability.

NOTE: A service animal may be trained by a professional, a friend, a family member, or the person with a disability.

NOTE: A service animal can also include a miniature horse. Although the ADA definition is limited to dogs, federal regulations provide that miniature horses must be allowed as service animals in public spaces if they are individually trained to benefit an individual with a disability and can be reasonably accommodated.

What is considered an emotional support animal?

An emotional support animal is:

1. any animal
2. that eases the effects
3. of a person's disability
4. by providing comfort or support.

What are some examples of work and tasks that service animals can be trained to perform?

Turning on lights, picking up objects, tactile stimulation and deep pressure therapy for the handler, preventing or interrupting impulsive or destructive behaviors, reminding the individual to take medication, and removing a disoriented individual from a dangerous situation.

NOTE: There is no specific legal requirement as to the amount or type of work a service animal must provide for the benefit of the disabled person. The only requirement to be a service animal is that the dog be individually trained to benefit the person with a disability.

Do I have to do anything to identify my dog as a service animal?

NO. The ADA does not require service dogs to be registered as service animals, or wear a special tag or vest identifying them as service animals. California law provides for local animal control departments to issue identification tags to people who use and train service animals. However, unless the dog is a service animal in training (see discussion below), the tags are not required and do not establish that an animal is a service animal under the law.

What are my rights when seeking to have my service animal with me in public spaces?

Title II and III of the ADA provide that owners of service animals, are permitted to have their service animal accompany them in public spaces (see questions below for explanation of "public space"), so long as none of the exceptions apply (see below "When can my service animal be denied access to a public space?").

What is considered a public space?

A public space is a business or government entity which is open to the public.

Businesses include as restaurants, hotels, movie theatres, stores, medical offices and hospitals.

Government entities are places operated by a state or local government, such as government buildings, public transportation and public parks.

NOTE: government entities can also include homeless shelters which are run by the local government.

NOTE: public spaces can also include homeless shelter day rooms, libraries, food banks and senior centers, as they are all open to the public.

What do I have to do when attempting to access a public space with my service animal/what questions can be asked of me?

If you have a service animal, the law protects your right to access public spaces with it. Therefore, the only thing you need to do, is access the public space. Additionally, if the need for the animal is apparent or obvious, then you cannot be asked any questions.

However, when an employee or representative of a public space is not certain that your animal is a service animal, they may ask you, the handler:

- 1) Is the animal required because of the handler's disability?; and
- 2) What work or task the animal has been trained to perform?

NOTE: Under California law, misrepresenting that a dog is a trained service animal is a misdemeanor punishable by up to six months imprisonment and/or up to a \$1,000 fine (Penal Code Section 365.7(a)).

When can my service animal be denied access to public spaces?

Public spaces are not required to allow access to service animals that:

1. pose a direct threat to others,
2. are not under the handler's care and control, or
3. would fundamentally alter the nature of the goods, services or programs provided by the business or government entity.

What is considered a direct threat?

A direct threat is:

1. a significant risk to the health or safety of others
2. that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

For example, a dog that bites without provocation may present a direct threat.

NOTE: Excluding a service animal based on a direct threat must be based on the actual behavior of the particular animal, not on assumptions or stereotypes about how the animal, or the animal's breed, might behave.

AND, in determining whether a direct threat exists, an individualized assessment must be made, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence. The assessment should evaluate: The nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.

What can happen if my service animal is not under my care and control?

A person with a disability can be asked to remove their service animal from the premises if the animal is out of control and the animal's handler does not take effective action to control it, or if the animal is not housebroken. The responsibility to supervise and care for a service animal does not fall on the business or government entity that provides access.

Generally, a service animal must have a harness, leash or other tether. However, if the handler is unable to use a harness, leash or other tether because of disability, or if the use of a tether would interfere with the service animal's safe, effective performance of work or tasks, the handler may use other means to keep the animal under control.

What does it mean to “fundamentally alter the nature of the goods, services or programs offered at a location?”

For example, asking a homeless shelter day room employee to feed, walk, or clean up after a service animal might be considered a fundamental alteration in the service that the homeless shelter staff person provides.

Can I bring my service animal with me into a hospital or other healthcare facilities?

YES. Hospitals and other healthcare facilities are treated like other businesses and public spaces for the purposes of service animal access. Service animals must be allowed anywhere in the hospital where healthcare personnel, patients and visitors are allowed to go. This includes patient rooms and other public areas of inpatient and outpatient mental health units, including locked mental health facilities. Patients must be able to care for the animal, or must arrange for someone else to care for the animal if necessary.

However, service animals may be excluded from limited access areas of hospitals that employ general infection-control measures, such as operating rooms and burn units. As with other businesses and government spaces, when health-care workers are not certain that an animal is a service animal, they may ask the handler if it is a service animal required because of a disability and what service that animal performs, but may not require certification or other documentation of service animal status.

Can I be required to pay a pet deposit to stay in a hotel with my service animal?

NO. A business or government entity cannot require a person with a disability to pay a deposit or surcharge in order to be accompanied by a service animal, even if that is their policy for pets. However, if a public accommodation or public entity ordinarily charges its guests for damage caused to the premises, such as with a hotel room, it may charge the owner of a service animal for similar damage.

What are my rights while I am training my dog to become a service animal?

California's Unruh Civil Rights Act (Civil Code Section 54.1) and Disabled Persons Act (Civil Code Section 54.2), allow people with disabilities to bring dogs into rental housing and other businesses for the purpose of training them to be service dogs.

The dogs must wear a county-issued tag identifying them as a service dog in training, and must be kept on leash. If a county-issued tag is not available, a service dog in training can still be requested as a reasonable accommodation.

If I have an emotional support animal and not a service animal, do the same rules concerning public spaces apply?

NO, the ADA provides that service animals only and not emotional support animals are permitted to accompany their handler in public spaces, and there are no other state or federal laws which allow for emotional support animals in public spaces.

What are my rights to access housing with an assistance animal?

In the housing context of disability rights law, service animals, and emotional support animals, are collectively referred to as "assistance animals."

Access to housing with service animals – including access to homeless shelters – is treated the same as access to public spaces (see above questions "What do I have to do when attempting to access a public space with my service animal/what questions can be asked of me?" and "When can my service animal be denied access to public spaces?")

Access to housing with emotional support animals – including access to homeless shelters – is allowed as a reasonable accommodation to a landlord, homeowner's association, or homeless shelter's no-pets policy. The reasonable accommodation process involves a more thorough inquiry into the disability-related need than if accessing with a service animal. See questions below for further explanation.

What is a reasonable accommodation?

Reasonable accommodations are exceptions to rules or policies that are necessary to allow people with disabilities an equal opportunity to use and

enjoy their housing. The obligation to make reasonable accommodations includes a requirement that housing providers make exceptions to a “no-pets” policy to permit persons with disabilities to use and live with their emotional support animal.

Under California and federal law, emotional support animals must be allowed in housing as a reasonable accommodation for a tenant’s disability.

Does my assistance animal have to be certified in order to get a reasonable accommodation to a no pet policy?

NO. There is no requirement that an assistance animal be specially trained or certified in order to be allowed as a reasonable accommodation in housing. There must be a connection between the individual’s disability and the service, comfort or companionship that the animal provides.

NOTE - Any kind of animal can be an assistance animal, as long as it alleviates symptoms of the handler’s disability.

When can my request for a reasonable accommodation to have my emotional assistance animal with me in my housing be denied?

If the animal:

1. is not necessary because of the handler’s disability,
2. poses a direct threat to other people or property,
3. is not under the handler’s care or is not housebroken,
4. imposes an undue financial or administrative burden, or
5. fundamentally alter the nature of the services that the landlord or homeowner’s association provides.

NOTE: Remember that a direct threat must be determined by an individual assessment of the animal’s behavior, not stereotypes about the breed.

NOTE: Handlers must also ensure that their assistance animal complies with state and local animal control laws and is not a danger or nuisance to the community. This includes recent vaccinations. (See, California Food & Agriculture Code § 30851.)

What is an example of fundamentally altering the nature of the services that the landlord or homeowner's association or homeless shelter provides?

Asking a housing provider to feed, walk, or clean up after an assistance animal might be considered a fundamental alteration in the service that the landlord or homeless shelter staff person provides.

How do I make a request for a reasonable accommodation?

You can make the request orally, or in writing [See below for sample letter].

What questions can I be asked by my housing provider when requesting a reasonable accommodation to their no pet policy?

If you are seeking a reasonable accommodation for an assistance animal in housing, a landlord, homeowners association, or manager of a shelter may:

1. ask for documentation that you have a disability and
2. that you have a disability-related need for the animal.

NOTE: the housing provider should not request documentation if your disability and your disability-related need for the service or support animal are apparent.

A housing provider can request information from a reliable third party, such as treating professional, to support the need for an assistance animal as a reasonable accommodation. The request should be limited to the information that is necessary to establish the disability-related need.

A housing provider may not ask a housing applicant or tenant to provide access to medical records or medical providers or provide detailed or extensive information or documentation of a person's physical or mental disability.

*Sample assistance animal request and support letters are below.

Can I be required to pay a fee to keep my assistance animal with me?

NO. A housing provider may not require an applicant or tenant to pay a fee or a security deposit or to buy insurance for the animal as a condition of

allowing the person to keep an assistance animal. However, the housing provider can charge the individual for repairing any damage that the animal causes to the unit or common areas.

How do I file a complaint if I believe I have been discriminated against by a public entity or place of public accommodation?

If you believe that you have been wrongfully discriminated against because of your service animal by a business or public entity, you can file a complaint with the Department of Justice (DOJ). If the complaint is against the government or a private entity receiving federal funding, then the complaint must be received within 180 days of the discriminatory incident (when the problem occurred). There is no deadline for filing a complaint against a business under the ADA that does not receive federal funding, 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 https://www.ada.gov/filing_complaint.htm, or through the ADA Information Line at (800) 514-0301 (voice); (800) 514-0383 (TTY).

You can also file an administrative complaint against a public accommodation, public entity or housing provider (including a homeless shelter) for disability discrimination under California law with the California Department of Fair Employment and Housing (DFEH), within one year from the last date of discrimination. Additional information on how to file a complaint with DFEH can be found at <https://www.dfeh.ca.gov/filing-a-complaint-online/> 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 state or federal court for injunctive and declaratory relief under federal or state law. Money damages may be available under state law, including minimum statutory damages of \$4,000 per incident of discrimination. Civil Code §52. Lawsuits must be filed within two years after the discriminatory incident.

If you are seeking less than \$10,000 in money damages, another option is to file a discrimination case in Small Claims Court. The statutes of limitations discussed above will apply. You cannot use a lawyer if you go to small claims court. [Here is a link](#) to a Disability Rights California publication that explains the process of using Small Claims for discrimination cases.

Additionally, the Government Tort Claims Act requires that a government tort claim be filed within six months of a discriminatory incident before bringing a lawsuit for money damages against a state or local governmental entity. More information about tort claims can be found at [this link](#). Please note that this website links to the form for claims against the state or a state agency or employee, which may not be applicable in your case. Other public entities may have their own tort claims form available on their website. If you are interested in pursuing litigation, you should consult with an attorney as soon as possible.

How do I file a complaint if I believe I have been discriminated against by a housing provider?

If a landlord, condominium association or other housing provider refuses to allow your assistance animal as a reasonable accommodation, you can file a lawsuit or an administrative complaint.

You can file an administrative complaint with the California Department of Fair Employment and Housing (DFEH) within one year of the most recent date of discrimination. Information on how to file a complaint with DFEH can be found at <https://www.dfeh.ca.gov/filing-a-complaint-online/>, or by calling (800) 884-1684 (voice) or (800) 700-2320 (TTY).

You can file an administrative a complaint with U.S. Department of Housing and Urban Development (HUD) under the Fair Housing Amendments Act, also within one year after the discrimination. Information on how to file a HUD complaint can be found at 1-800-669-9777 or: https://portal.hud.gov/hudportal/HUD?src=/topics/housing_discrimination.

Violations of the laws discussed above may also be enforced through private lawsuits. Please be aware that statutes of limitations restrict the timeframe for filing litigation and that you could potentially lose claims if you do not act within the applicable statute of limitations. These deadlines can be as short as two years from the date of discrimination. If you are interested in pursuing litigation, you should consult with an attorney as soon as possible.

If you are seeking less than \$10,000 in money damages, another option is to file a discrimination case in Small Claims Court. The statutes of limitations discussed above will apply. You cannot use a lawyer if you go to small claims court. For more information, see Disability Rights California, A

Guide to Small Claims Court: How to Sue if a Business or Landlord Discriminates Against You Because of Your Disability, at: <https://www.disabilityrightsca.org/publications/a-guide-to-small-claims-court-how-to-sue-if-a-business-or-landlord-discriminates>.

Sample Letter to Housing Provider Requesting Assistance Animal

[Date]

Dear [Landlord, Housing Authority, Homeowners Association, Name of Homeless Shelter]

I am writing to request an assistance animal as a reasonable accommodation for my disability/disabilities.

I live at/am applying to rent your property/stay at [address]. Because of my disability, I need to keep an assistance animal as a reasonable accommodation.

My physician/psychiatrist/psychologist/therapist/social worker/occupational therapist /other individual [describe] has deemed this accommodation necessary in light of my disability. Please see the attached letter from [doctor or professional's name].

Federal and state law require that a housing provider reasonably accommodate tenants/occupants and applicants who have disabilities. Please respond to this request by [date]. 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]

Sample Verification Letter

[Date]

To [Landlord, Housing Authority, Homeowners Association, Name of Homeless Shelter]:

I am the physician/psychiatrist/psychologist/therapist/social worker/occupational therapist for [Your name], and am familiar with his/her condition. (S)he has a disability that causes certain functional limitations. These limitations include [list functional limitations that require the requested accommodation].

An assistance animal is necessary for _____ to live in the community and use and enjoy his/her dwelling by [describe how the animal will assist or support the individual].

Thank you for providing this reasonable accommodation for [Name].

Sincerely,

[Name and Title]

How to Get into Contact With Disability Rights California

If you have further questions, and for legal assistance call **Disability Rights California** at 800-776-5746 or complete a [request for assistance form](#). For all other purposes call 916-504-5800 (Northern CA); 213-213-8000 (Southern CA).