

Employee Relations LAW JOURNAL

From the Editor—

Pets and Pot in the Workplace

Steven A. Meyerowitz

Employees' Best Friends and Other Animals
in the Workplace

*C. W. Von Bergen
and Martin S. Bressler*

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for Employer Drug Testing

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A Critical Decision for California Employers

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Pets and Pot in the Workplace

It was not very long ago that employers could not have even imagined having to deal with pets *and* pot in the workplace. Today, these issues are becoming increasingly common at companies around the nation. This issue of *Employee Relations Law Journal* contains a timely, informative article on each, and much more!

PETS AT WORK

In our lead article, "Employees' Best Friends and Other Animals in the Workplace," C. W. Von Bergen and Martin S. Bressler, professors at Southeastern Oklahoma State University, examine several factors that have influenced the development of the "right" to have animals in the workplace and why firms should anticipate this demand to be affirmed more frequently in the future. The authors also speak to what businesses can do to address this situation when presented with an accommodation request for an animal at work from employees claiming a disability. The authors do this by first examining several trends leading to increased requests for animals in the workplace followed by a discussion of the confusing labels used to refer to animals within the work context. The authors then analyze key legislation related to animals and workplace accommodations and present a number of issues organizations should consider as they take up the increasingly important matter of animals in the workplace.

LEGALIZED MARIJUANA AND EMPLOYER DRUG TESTING

Many states have enacted laws decriminalizing the use of marijuana for medical purposes. Several states provide some form of employment law protection for medical marijuana patients. Four states and D.C. allow the recreational use of marijuana and about 30 states have some type of "lawful conduct" or "lawful product" statute. Yet marijuana use remains a crime under the federal Controlled Substances Act. Companies that utilize drug testing protocols face increasing uncertainty as a result of these developments. The authors of our next article, "Legalization of Marijuana: What It Means for Employer Drug Testing," Thomas P. Gies and Glenn D. Grant, attorneys at Crowell & Moring LLP, discuss the issue and note that the potential conflicts between state and federal law, combined with the existence of several open legal issues, may cause some companies to reconsider their substance abuse policies.

EMPLOYEE OR INDEPENDENT CONTRACTOR?

Next, Thomas H. Reilly, Of Counsel to Newmeyer & Dillion LLP, contributed an article titled, "Employee vs. Independent Contractor Status:

A Critical Decision for California Employers,” which provides a brief history of the independent contractor classification, reviews the factors courts consider when determining independent contractor status, and explains the potential warning signs of misclassification.

WORKPLACE INVESTIGATIONS

Employers are finding themselves in the position of having to investigate workplace complaints made by their employees. These complaints range from informal allegations of harassment or discrimination to written complaints of criminal misconduct. In our next article, “Landmines to Avoid in Conducting Workplace Investigations,” Jonder Ho, formerly an associate at Morrison & Foerster LLP, discusses some of the issues that employers should consider in conducting workplace investigations.

RETIREE HEALTH BENEFITS

In their article, “Supreme Court Rejects *Yard-Man* Inference of Lifetime Vesting of Retiree Health Benefits,” Amber A. Ward and Susan P. Serota, attorneys at Pillsbury Winthrop Shaw Pittman LLP, discuss a recent unanimous decision by the U.S. Supreme Court that provides employers facing claims for vested retiree health benefits brought pursuant to collective bargaining agreements greater certainty that when courts interpret ambiguous contracts, extrinsic evidence will be viewed without an inference in favor of employees.

SEXUAL HARASSMENT CASES

Kali T. Wellington-James, an associate at Pepper Hamilton LLP, analyzes a recent New Jersey Supreme Court decision holding that an employer’s antidiscrimination policy can be an affirmative defense to sexual harassment hostile work environment claims in certain situations in her article, “New Jersey Supreme Court Rules on Supervisor Liability in Hostile Work Environment Sexual Harassment Cases.”

REGULATION OF HOME CARE WORKERS

In our next article, “D.C. Court Rejects Unilateral DOL Regulation of Home Care Workers in Sharply Worded Rebuke; DOL to Appeal,” David C. Lindsay, Bridget A. Blinn-Spears, and Matthew D. Duncan, attorneys at K&L Gates LLP, discuss a recent D.C. District Court decision that vacated major provisions of the U.S. Department of Labor’s Home Care Final Rule, which would have prevented third-party employers from claiming the “companionship services” exemption to the Fair Labor Standards Act.

AND MORE...

In addition, this issue contains our "Employee Benefits" column by Mark E. Bokert and Alan Hahn, our "ERISA Litigation" by Craig C. Martin and Amanda S. Amert, and our "Split Circuits" column by Howard S. Lavin and Elizabeth E. DiMichele.

Enjoy the issue!

Steven A. Meyerowitz
Editor-in-Chief

Employees' Best Friends and Other Animals in the Workplace

C. W. Von Bergen and Martin S. Bressler

While some firms welcome pets in the workplace, the vast majority of firms do not permit them; however, more and more Americans are insisting that their animals go with them everywhere and this societal trend means that organizations with "no pets" policies can expect a growing number of petitions from employees seeking to bring their animals to work. One avenue workers have increasingly adopted, having witnessed its success in other areas (e.g., transportation, housing), is requesting firms to eliminate pet bans and relax animal policies at the office as a reasonable accommodation for their impairments. Businesses that unlawfully reject such appeals are finding themselves in court charged with disability discrimination. Organizations are confused about their obligation to waive "no pets" directives for disabled employees and to remedy this situation. This article addresses animals at work and provides guidance with respect to this increasingly contentious issue in order to keep organizations out of the legal "dog house."

"They all go about with their constitution in their pocket demanding their rights."

—Manuel de Mier y Terán, Mexican General¹

As the population of Texas swelled from U.S. settlers because of inexpensive land, Mexican authorities grew increasingly nervous and sent General Manuel de Mier y Terán to investigate the situation. As part of his report, he made the above observation in 1828 about these transplants. Just like then, Americans today are still vigorously asserting their rights and one that seems to be gaining momentum in today's workplace is employees' insistence that business waive their "no pets" policies so that they can bring their animals to work with them. KnowledgeWorkx,² for example, listed pets in the office as number one in their top 10 workplace trends, and today about 1.4 million owners take some 2.3 million dogs to work every day, according to an American Pet Products Association survey.³ In fact, dogs are allowed daily inside

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the offices of Google, Amazon, Zynga, and Ben & Jerry's. Moreover, the Web site DogFriendly.com⁴ posts over 370 organizations that permit dogs at the workplace. And this is just dogs!

In recent years, employers have seen a sharp increase in the number of employees (it should be understood that while employees are the focus of this article, this discussion also applies to job applicants) who use animals as accommodations for physical, mental, or emotional impairments.⁵ Many attribute this rise to changes happening in other areas that have expanded dramatically the scope of animals that can qualify as reasonable disability accommodations. For example, federal statutes including the Fair Housing Act,⁶ Section 504 of the Rehabilitation Act,⁷ and the Air Carrier Access Act (ACAA)⁸ protect the rights of people with disabilities to keep emotional support animals (ESAs) in their homes when the landlord has a "no pets" policy and to travel on airlines with their ESAs. Also contributing to this trend is the recently amended California Fair Employment and Housing Act⁹ that requires employers to allow "assistive animals" as a necessary reasonable accommodation, which includes animals of any species that provide "emotional or other support" to a person with a disability including, but not limited to, traumatic brain injuries or mental disabilities such as major depression."¹⁰

Another factor that may lead to increased petitions for ESAs in the workplace involves the growing number of people claiming mental impairments. This is due, in part, to lowered thresholds for the diagnosis of numerous disorders which, until a short time ago, were not considered "disorders" but are now labeled as such under the 2013 5th edition of the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*,¹¹ the most widely used resource by clinicians to diagnosis and classify mental disorders. What was once considered psychologically healthy (or at least not unhealthy) is presently considered a mental illness. For example, people who are extremely shy and concerned about how others might evaluate them, and who thus avoid certain types of activities, might be diagnosed with "avoidant personality disorder." These same characteristics were not historically considered pathological, and in some other cultures they are not thought to be so today. Some of the behaviors, beliefs, and feelings that were within the then-normal range of human experience until just a few years ago are now deemed to be pathological. Thus, the actual definition of mental illness has broadened, creating a bigger tent with more people under it,¹² and as mental disorders have increased there has been a concomitant rise in pets as therapy for mental conditions.¹³

Such changes have generated considerable ambiguity and many employers have expressed confusion about animals in the workplace. In response to this uncertainty the authors examine several factors that have influenced the development of this "right" in greater detail and why firms should anticipate this demand to be affirmed more

frequently in the future. The authors also speak to what businesses can do to address this situation when presented with an accommodation request for an animal at work from employees claiming a disability. The authors do this by first examining several trends leading to increased requests for animals in the workplace followed by a discussion of the confusing labels used to refer to animals within the work context. The authors then analyze key legislation related to animals and workplace accommodations and present a number of considerations organizations should consider as they take up the increasingly important issue of animals in the workplace. Finally, the authors also hope to bring some clarity to this topic in order to ensure that management enacts effective and lawful policies and practices that focus on the legitimate needs of disabled Americans.

A WORKPLACE ANIMAL POLICY

The first step for organizations considering animals at work is to develop a policy. Employers should develop formal guidelines and procedures for several reasons. First, if supervisors, managers, and human resource professionals have formal policies and procedures to refer to, they are more likely to handle accommodation requests properly and consistently. Second, a formal policy that is shared with employees helps workers know what to expect if they request an accommodation and also helps them understand that other employees might be requesting and receiving accommodations. Finally, formal procedures help employers document their efforts to comply with the Americans with Disabilities Act of 1990¹⁴—the most comprehensive federal civil rights statute protecting the rights of people with disabilities—and amendments provided in the ADA Amendments Act of 2008.¹⁵

Figure 1 lists a number of considerations that might be addressed in policies dealing with animals at work taken from a number of sources including the Job Accommodation Network,¹⁶ a service of the U.S. Department of Labor's Office of Disability Employment Policy. Additionally, there are specific definitions of service animals and ESAs in the law, and there are different definitions depending on where the animal is being taken. These are discussed below.

Figure 1: Animals at Work Guideline Considerations

- | |
|---|
| <ul style="list-style-type: none">• The policy should be as specific and actionable as possible, so there's no confusion over rules. |
| <ul style="list-style-type: none">• The time frame for processing a request (including providing accommodation, if approved) is as soon as possible but no later than __ (e.g., 30) business days from the date of the request. |

Employees' Best Friends and Other Animals in the Workplace

<ul style="list-style-type: none">• Distribute the animal policy to all employees. Be open to adapting rules with feedback and the realities of the firm's environment. Use policy as a perk to attract job candidates.
<ul style="list-style-type: none">• Consider creating pet-free zones where employees can escape any animal brought by others.
<ul style="list-style-type: none">• Animals (e.g., dogs) must be leashed (standard 6 foot leash except in cases where the disability prevents this) or in a closed office or cubicle.
<ul style="list-style-type: none">• Animals must be accompanied by the employee owner at all times. They must not be allowed to wander unattended, inside or outside the building. If animals are left alone in employee work areas, they must be restrained by baby gates, crates, or other appropriate enclosures.
<ul style="list-style-type: none">• Animals should be well-behaved (not aggressive towards people), clean, well-groomed, and free of illness, disease, and offensive odors, and not exhibit any offensive or disruptive actions.
<ul style="list-style-type: none">• Consider a "Three accidents and you're out" rule. Some companies allow only three bathroom accidents per animal and then they must stay at home. However, the animal can come back once it has been potty trained successfully.
<ul style="list-style-type: none">• Review and investigate state and local regulations that may apply to animals but recognize that in the event of conflict federal laws will take precedence over state and local law. The Animal Legal & Historical Center (n.d.) provides information on state regulations.
<ul style="list-style-type: none">• If employer denies a request for accommodation, it will state clearly the specific reason or reasons for the denial. This means that the firm simply cannot state that a requested accommodation is denied because of "undue hardship" or because it would be "ineffective" but should explain why the accommodation would result in undue hardship or why it would be ineffective.
<ul style="list-style-type: none">• Employees are responsible for cleaning up and sanitizing immediately after accidents and for supplying effective products. Feces and bags must be sealed and discarded outside the building in the dumpster. The company should have some type of garbage can located outdoors.
<ul style="list-style-type: none">• Nonexhaustive list of reasons why an accommodation may be revoked or rescinded and what happens when the animal or person does not conform to those rules.
<ul style="list-style-type: none">• Yearly recertification for the employee from a medical professional of the need for an animal.
<ul style="list-style-type: none">• A current (renew annually) veterinary record proving wellness, parasite control, and vaccine compliance must be provided. Animals must have state/local authorizations and registrations.
<ul style="list-style-type: none">• All animals must be treated humanely. A high standard of animal compassion is expected.

- | |
|---|
| <ul style="list-style-type: none">• Animals must not be allowed to chew or void on or waste on any form of office equipment (<i>i.e.</i>, electric wire, cords, carpet, etc.) and animal toys must not be unnecessarily obtrusive. |
| <ul style="list-style-type: none">• Having animals in the office can present liability issues. Have employees sign waivers to be responsible for any damage their animal causes. Employers also might want to consult with legal counsel to ensure liability issues are attended to before animals are permitted. |

ANIMALS IN THE WORKPLACE

Although some firms are at ease with employees bringing animals to work, a large number of organizations are still reluctant to permit such action and continue to enforce "no pet" policies. The ADA, however, requires employers to make a reasonable accommodation for disabled Americans who are otherwise qualified to work, unless doing so would cause undue or excessive expenses that might be incurred by an employer in providing such an accommodation.

Among other things, reasonable accommodation includes *permitting animals at the workplace*.¹⁷ Thus, many workers today are asking firms to set aside their pet bans as an accommodation for their physical or mental impairment and to allow them to bring their

- "companion animals;"
- "comfort animals;"
- "visitation animals;"
- "therapy animals;"
- "social/therapy animals;"
- "assistive animals;"
- "assistance animals;"
- "psychiatric service animals;"
- "pets;"
- "emotional support animals;" or
- "service animals"

to the office. This inconsistent vocabulary has led to an uncoordinated and muddled state of affairs for firms.¹⁸ For current purposes, however, businesses should be concerned with several key animal categories: pets, ESAs, and service animals. Pets represent one end of the animal accommodation spectrum, and firms have no duty to accommodate them. At

the other extreme are service animals, which employers should almost always allow as a reasonable accommodation. In between, however, is the amorphous category of ESAs. These three classes are discussed below.

Pets

The term pet (from the root of the French word "petit") has long been the affectionate term for animals kept for pleasure, comfort, and friendship.¹⁹ Pets serve an emotional purpose and provide love and companionship to people (whether real or perceived).²⁰ They are appreciated for the companionship they offer for its own sake. Often, the term "household pet" is used and includes birds, reptiles, small animals (e.g., ferrets), and fish, in addition to dogs and cats. For many people, life without a pet would be difficult. Human-pet relationships are among the most common and significant in contemporary Western societies with unique bonds being formed and the animals often becoming essential parts of people's lives.²¹

For centuries people have noted that animals can have a positive influence on human functioning, and conventional wisdom has long supported the use of pets in promoting human well-being.²² They can provide unconditional love and affection but also can provide significant psychological and physical health benefits.²³ Recent studies have found that while many benefits of animal companionship apply to groups across the board, unique benefits were found for those individuals with mental or psychiatric disorders,²⁴ and Lipton observed that animals provide a nonchemical therapy for many mentally disabled persons.²⁵ Substantial research across the health sciences provides evidence of the human health benefits including physiological, psychological, and emotional that can be derived from human-pet interactions.^{26, 27} Other studies have confirmed that the presence of pets lowers blood pressure, raises survival chances after a heart attack, and facilitates social contact.²⁸ Pets have been shown to be effective in reducing loneliness, anxiety, and depression,²⁹ and animal assisted therapy is so successful that it is now widespread in a variety of settings including hospitals, nursing homes, and hospices.³⁰ James Serpell³¹ has advocated for animals as "agents of socialization"³² and providers of "relaxation and social support."³³

Despite such benefits there are no laws or regulations that require that pets be permitted in the workplace and so individual organizations are free to determine the appropriateness of such animals on their premises. However, some animal advocates feel that pet-friendly organizations might give a company an edge over competitors with regard to recruitment by making firms attractive to prospective employees who are pet owners. Additionally, some view animals at work as a strategic opportunity and believe this provides them a competitive advantage.³⁴

Emotional Support Animals

Emotional support animals (ESAs) are not pets. An ESA is a companion animal that provides therapeutic benefit through nonjudgmental positive regard, affection, and a focus in life to an individual with a mental or psychiatric disability.³⁵ Persons seeking an ESA must have a verifiable disability (the reason cannot just be a need for companionship). ESAs are not generally trained to perform specific tasks to assist persons with a psychiatric disability, but they must provide a disability-related benefit to such individuals. Courts have ruled that (within a housing context) such animals can be viewed as a reasonable accommodation,^{36,37} and the Fair Housing Amendments Act³⁸ indicated that "no pet" rules must be waived for animals assisting persons with disabilities. This Act states in part that "emotional support animals by their very nature, and without training, may relieve depression and anxiety, and/or help reduce stress-induced pain in persons with certain medical conditions affected by stress."³⁹

Having the animals present may be helpful in managing or mitigating symptoms of various mental health conditions such as depression, anxiety, and post-traumatic stress disorder (PTSD). ESAs are private pets for which a doctor or other health care professional writes a letter explaining why the owner needs the animal and that the owner/handler has been diagnosed by a medical professional as having a verifiable (mental) disability that is not transitory and minor. The Bazelon Center for Mental Health Law, a private organization founded to protect and advance the rights of persons with mental disabilities, provides an extensive list detailing the efficacy of ESAs.⁴⁰

Cats, birds, horses, and even potbellied pigs are being characterized as ESAs, but they are not task trained and, in fact, little training at all is required so long as the animal is reasonably well behaved by pet standards. This means the animal is fully toilet trained and has no bad habits that would disturb others such as frequent or lengthy episodes of barking. As indicated earlier, ESAs are allowed in housing and are permitted to fly with their handler on an airline under the ACAA. While the definitions above do not apply to employment situations, these governmental definitions provide insight for businesses when they are approached by workers asking for exceptions to "no pets" policies because their need for an ESA to assist them with their mental disability.

Service Animals

The most common definition of a service animal is that it has been individually trained to perform a task (work) for a disabled person. As interpreted by the Department of Justice (DOJ), a service animal means "any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds,

providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items."⁴¹ Service dogs (there is a special exception for miniature horses) come in all shapes, sizes, and breeds and need not be licensed, certified, or registered as a service animal, and are not required to wear a special tag, collar, harness, or vest identifying it as such.

Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship that household pets often provide do not constitute work for the purposes of this definition. Additionally, training an animal to kiss on command, jump in a lap, or be hugged are not tasks qualifying a dog as a service animal.

Service animals are not considered pets. The only requirement for a service animal is that the dog be individually trained to benefit the person with a disability and evidence establishing a link (nexus) between the disability and the function the animal provides.⁴² Additionally, a service animal need not have been trained professionally,⁴³ and in fact many service animals are trained by their handlers.⁴⁴ Service dogs are trained to assist persons who have a disability and are also sometimes known by names associated with the tasks and assistance they provide their handlers (*e.g.*, guide dogs for the blind, hearing dogs for the deaf). Service dogs are considered disability mitigating medical equipment.

It should be noted that psychiatric service dogs are commonly confused with ESAs and firms should be aware that employees may confuse the two. Unlike ESAs, psychiatric service animals' trained tasks often include such activities as counterbalance/bracing for a handler dizzy from medication, waking the handler on the sound of an alarm when the handler is heavily medicated and sleeps through alarms, doing room searches or turning on lights for persons with PTSD, blocking persons in dissociative episodes from wandering into danger (*i.e.*, traffic), leading a disoriented handler to a designated person or place, and so on.

This detailed definition of service animals by the DOJ, however, may not concern employers because the DOJ applies to only certain parts of the ADA (specifically Titles II and III). There is no definition of service animals under parts of the ADA that apply to employers (Title I), and Title II and III regulations do not apply to questions arising under Title I. This is important because frequently individuals and firms do not make proper distinctions between the various titles, leading to confusion for employers and workers, which is discussed next.

THE AMERICANS WITH DISABILITY ACT OF 1990 AS AMENDED AND ANIMALS AT WORK

The key legislation regarding individuals with impairments is the landmark ADA that provides comprehensive civil rights protections to individuals with disabilities and is comprised of three Titles (sections). Title I of

the ADA applies to private employers and state or local governments as employers, employment agencies, and labor unions having 15 or more employees from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment and is the most relevant to our discussion of animals in the workplace.

Title II of the ADA requires state and local governments to make their programs, services, and activities accessible to individuals with disabilities. Title III of the ADA requires businesses open to the public (*e.g.*, hotels, theaters, restaurants) to ensure that disabled individuals have equal access to all that the businesses have to offer. It covers both profit and nonprofit organizations.

The use of animals in each of these titles is different and what applies to one title is not appropriate to another. Context matters! This has led to uncertainty and the authors have attempted to clarify these differences, which are presented in Figure 2.⁴⁵ In addition to the definitions of ESAs and service animals already discussed in the above table, there are several other terms that may need further clarification including

- Disability;
- Substantially limits;
- Major life activities;
- Qualified person;
- Undue hardship; and
- Reasonable accommodation.

These are discussed below.

Figure 2: Key Differences between Title I and Title II–III of ADA Regarding Service Animals

Title I	Titles II and III
Governs service animals in the workplace. If an employer discriminates against a person for bringing a service animal to work, the law of Title I will form the basis of the worker's lawsuit.	Governs service animals in state and local government/public entities and places of public accommodation. This means that if a person is asked to leave a private business or state or local government building because of the presence of their service animal, they would sue the state or local entity under Title II or the business under Title III.
Administered by the Equal Employment Opportunity Commission (EEOC).	Administered by the Department of Justice (DOJ).

Employees' Best Friends and Other Animals in the Workplace

EEOC and Title I have not defined service animal. An animal for accommodation purposes could be something other than a dog.	DOJ has a detailed definition of service animal as a dog (with a minor exception for miniature horses) that has been trained to assist a person.
An ESA could be a reasonable accommodation for a person with a disability that substantially limits an individual's major life activities.	An ESA cannot be a reasonable accommodation for individuals with a mental or physical impairment.
According to the EEOC, Title I does not require employers to allow employees to bring their service animals to work automatically. Instead, allowing a service animal into the workplace is a form of reasonable accommodation.	Provides disabled persons an almost automatic right to enter a business or state government building with a service animal.
The employer has the right to ask for "reasonable" documentation from a health professional showing that the animal is required as a disability aid. In the case of a service animal, the appropriate documentation might be from whoever trained the service animal.	Places of public accommodations and state government entities cannot require a person with an animal to produce documentation that the animal is indeed a service animal.
Training may not be necessary for an animal accommodation such as with ESA.	The job the service animal has been trained to do must be related to the person's disability.
Title I has the additional requirement that the person be a "qualified person" in order to bring his or her service animal into the workplace.	Requires the disabled person only to be legally disabled as that term is defined by the ADA.
Employers may ask for medical documentation from a medical professional if the need for the service animal (any breed or size) is not apparent. Employers are <i>not restricted</i> to asking only the two questions permitted in Titles II and III.	In situations where it is not obvious that the dog (only dogs can be a service animal) is a service animal, a business may ask only two questions: (1) Is the animal required because of a disability?, and (2) What work or task has the animal been trained to perform?
The documentation from (generally) a health care provider goes into a confidential medical file.	No documentation is required for a service animal and individual is taken at their word.
Both service and ESAs may be excluded from the workplace if they pose either an undue hardship or a direct threat in the workplace.	No provisions for undue hardship, but service animals may be prohibited if they become a threat to others.

Adapted from Lezon

Disability

The ADA provides protection to individuals who fall under its three-pronged definition: "(1) a person must have a physical or mental

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impairment that substantially limits one or more of the major life activities; or (2) a record of such impairment; or (3) be regarded as having such impairment.”⁴⁶ A person has to meet only one of the three prongs of the definition of disability to be eligible for protection. The regulations specify that an individual must be covered under the first or second prongs in order to qualify for reasonable accommodation. Employers do not need to provide accommodation to employees covered under the third prong only of the definition.

Since the passage of the ADA in 1990 U.S. Supreme Court decisions⁴⁷ whittled away at the definition of disability, narrowing the protections available to citizens and eroding congressional intent of the law. Consequently in 2008, Congress enacted the ADAAA, and the nation reaffirmed its commitment to protect against discrimination of the disabled and to truly opening the doors of opportunity to all people with impairments. In the ADAAA, the regulatory language states that the primary object of attention in cases brought under the ADA should be whether covered entities have complied with their obligations and whether discrimination has occurred, not whether the individual meets the definition of disability. The question of whether an individual meets the definition of disability under this part should not demand extensive analysis. For employers, this means they should no longer be spending much time analyzing whether employees meet the definition of disability but instead focusing on the accommodation, whether it is reasonable, whether it can be provided without an undue hardship, and whether there are other accommodations that can be considered.⁴⁸

After the ADA and ADAAA passed, however, the statutes as applied to physical disabilities received the most attention⁴⁹ and significant progress in gaining access to public facilities was made as employers built ramps, constructed elevators, removed architectural barriers in existing facilities, painted new lines on walkways and elsewhere, modified furniture and equipment, and so forth. Significantly less progress, though, has been made by those having mental, emotional, or psychiatric disorders often dubbed “invisible disabilities” since such maladies are often not readily apparent to others. Significant progress has been made recently with respect to mental health because of improvements in the promotion of mental health and the prevention of mental disorders; the protection and promotion of the rights and interests of persons with mental disorders and their families; the placement of mental health on government agendas; improvements in mental health services, treatment, and care; and changes in laws and government regulations.⁵⁰ Today, accommodations involving animals is the number one topic for people with mental disorders.⁵¹

Major Life Activities

According to the ADAAA, the term “major” shall *not* be interpreted strictly to create a demanding standard for disability. Whether an activity

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is a "major life activity" is *not* determined by reference to whether it is of "central importance to daily life" as in earlier interpretations. Rather, in evaluating a major life activity, it is important to consider the condition, manner, and duration in which the individual performs the activity. Specifically, the ADAAA indicates

- *Major life activities* include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, learning, reading, concentrating, thinking, communicating, and working.⁵²
- *Major bodily functions* include, but are not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, endocrine, respiratory, circulatory, and reproductive functions.⁵³

A mental impairment includes any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities as well as psychological disorders or emotional or mental illnesses including depression, bipolar disorder, anxiety disorders (including PTSD), schizophrenia, personality disorders, and other similar conditions identified in the *DSM-5* that significantly limits one or more major life activities. It is not necessary for the disability be an obvious one.

It is noteworthy that some conditions included in the *DSM-5* are excluded under the ADA, including kleptomania, pyromania, exhibitionism, voyeurism, transvestitism, substance abuse problems, and transsexualism. Moreover, some mental disability claims filed under the ADA have involved "fanciful conditions" not found in the *DSM-5*, including "chronic lateness syndrome," "sexual impulse control disorder," and "authority figure stress reaction syndrome,"⁵⁴ and have not been classified as impairments requiring accommodation. Similarly, employees who claim to be "stressed" over marital problems, financial hardships, work environment demands, job duties, or harsh and unreasonable treatment from a supervisor would not be classified as disabled under the ADA.⁵⁵ Likewise, traits such as irritability, quick temper, and poor judgment are not, in themselves, mental impairments, although they may be linked to mental disorders. Finally, mild conditions, determined on a case-by-case basis, such as a common cold, seasonal or common flu, minor cuts, sprains, muscle aches, soreness, bruises, abrasions, nonmigraine headaches, and minor and nonchronic gastrointestinal disorders do not require employer accommodation.

Substantially Limits

The ADAAA provides that "substantially limits" must be construed broadly in favor of expansive coverage and is *not* meant to be a

demanding standard. Whether a physical or mental impairment "substantially limits" one or more major life activities is determined in accordance with "rules of construction" (guidelines) delineated in the EEOC regulation.⁵⁶ The overall intent is for it to be relatively easy to determine if an impairment substantially limits an individual in a major life activity. The key points of these "rules of construction" include

1. The standard of comparison is whether a disability substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population;
2. The comparison should not require "extensive analysis;"
3. The determination should not take into account the ameliorative effects of mitigating measures or treatments (except for vision correction);
4. An impairment that is episodic or in remission is considered a disability if it substantially limits a major life activity when active; and
5. There are a number of conditions that will virtually always result in coverage, such as deafness, blindness, cancer, epilepsy, multiple sclerosis, mobility impairments, and major depressive disorders, among others.⁵⁷

The regulations note that when determining whether an individual is substantially limited in a major life activity, it may be useful to consider the difficulty, effort, or time required to perform the activity; the pain experienced when performing the activity; the length of time the activity can be performed; and/or the way an impairment affects the operation of a major bodily function. Finally, it is important to note that the only time that employers need to consider substantial limitations is in accommodation cases.

Qualified Person

To determine who is a "qualified person" under Title I of the ADA, a reviewing court generally conducts a two-part inquiry: (1) whether the employee with an animal can perform the essential functions of the job in question, and (2) if not, whether reasonable accommodations made by the employer would enable the person to perform those functions.⁵⁸

A job function may be considered essential if the job exists to perform that function, the job duties can only be performed by a limited number of employees at the company, or the job is highly specialized. Evidence of whether a particular function is essential includes, but is not limited to

1. The employer's judgment as to which functions are essential;
2. Accurate, current written job descriptions;
3. The amount of time spent on the job performing the function;
4. The legitimate business consequences of not requiring the employee to perform the function; and
5. Whether the employer referenced that particular job function in prior performance reviews (hence, emphasizing the importance of the function).⁵⁹

Consequently, employers must keep job descriptions up-to-date and ensure that performance reviews adequately focus on performance of the essential functions of the job.

Undue Hardship

Once an employee has given the proper notice to the employer, the firm must attempt to provide the individual with a work environment where the person can bring their animal, unless the request to bring the animal to work creates an "undue hardship" for the firm. Generalized conclusions will not suffice to support a claim of undue hardship. Instead, undue hardship must be based on an individualized assessment of current circumstances that show that a specific reasonable accommodation would cause significant difficulty or expense.^{60,61} A determination of undue hardship should be based on several factors, including

1. The nature and cost of the accommodation needed;
2. The overall financial resources of the facility making the reasonable accommodation;
3. The number of persons employed at this facility, and the effect on expenses and resources of the facility;
4. The overall financial resources, size, number of employees, and type and location of facilities of the employer (if the facility involved in the reasonable accommodation is part of a larger entity);
5. The type of operation of the employer, including the structure and functions of the workforce, the geographic separateness, and the administrative or fiscal relationship of the facility involved in making the accommodation to the employer, and the impact of the accommodation on the operation of the facility.⁶²

Of course, what is considered a reasonable accommodation and what constitutes an undue hardship varies by employee, employer, position, and condition. Firms have cited the following reasons for an undue hardship which will *not likely* be supported at court:

1. Pets creating allergic reactions among coworkers, which can cause interruptions to their ability to work effectively;
2. Work is disrupted because of the need to take pets outside;
3. Some employees have a genuine fear of dogs, cats, etc., which needs to be respected;
4. There are concerns of liability for an organization should an employee be bitten or injured by a pet brought to work; and
5. An animal cannot be permitted because it violates local/state health standards.⁶³

Additionally, employee complaints alone likely will not constitute an undue hardship.⁶⁴ The standard for an undue hardship is high. It also should be understood that employers may be faced with managing the accommodation needs of two employees, which can complicate things (e.g., when one employee is allergic to another's animal). Finally, the burden of proof is on the employer, not the employee, to demonstrate undue hardship.

In summary, when an employee seeks to bring an assistance dog to work as a reasonable accommodation for a disability, the employer should recognize that the only basis for denial of this request is

1. The employee is not a qualified person with a disability as defined by relevant laws;
2. The animal does not meet the definition of a service animal or ESA in the ADA or other relevant federal, state, or local law;
3. The presence of the animal would require the employer to bear too great of an expense in granting the accommodation; or,
4. The presence of the animal would interfere with the employer's ability to conduct business.

Reasonable Accommodation

Because the subject of reasonable accommodation is so critical to disability law and to employees asking a firm to waive their pet bans, and an important element of this article, this topic is given a more comprehensive treatment in the following section.

REASONABLE ACCOMMODATION

Title I does not require employers to allow employees (whether they work part-time or full-time, or are considered probationary) to bring their animals to work automatically. Instead, allowing an animal into the office is a form of reasonable accommodation that has been defined as "...any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities."⁶⁵ Generally, the individual with a disability must inform the employer that an accommodation is needed.

According to the EEOC,⁶⁶ Title I of the ADA requires employers to provide reasonable accommodation to qualified employees with disabilities who are employees, unless to do so would cause undue hardship. There are three categories of reasonable accommodations: "(i) modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or (ii) modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or (iii) modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities."⁶⁷

The ADA establishes a process in which the employer must assess a disabled individual's ability to perform the essential functions of the specific job held or desired. Where an individual's functional limitation impedes such job performance, an employer must take steps to reasonably accommodate, and thus help overcome the particular impediment, unless to do so would impose an undue hardship. No specific form of accommodation is guaranteed for all individuals with a particular disability. Rather, an accommodation must be tailored to match the needs of the disabled individual with the requirements of the job's essential functions. For example, it would be a reasonable accommodation for an employer to permit an individual who is blind to use a guide dog at work, even though the employer would not be required to provide a guide dog for the employee.

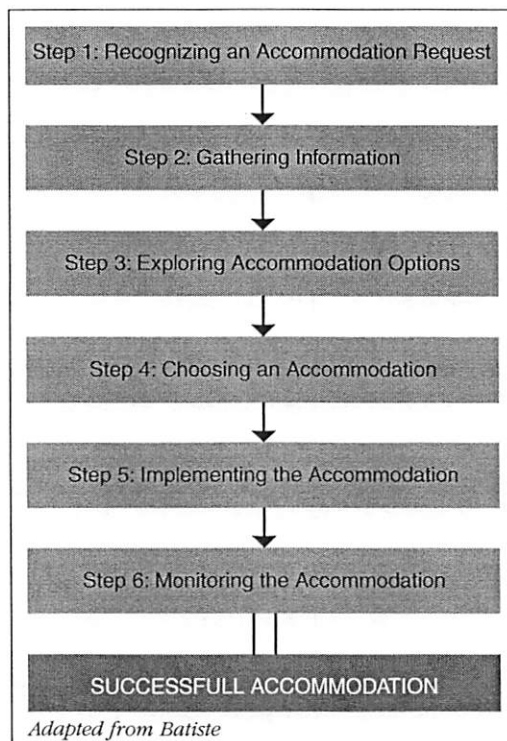
If the disability is not obvious and/or the reason the animal is needed is not clear, an employer may engage the worker in an interactive, informal process with the worker to establish the existence of a disability and how the animal helps the individual perform his or her job. The employer may ask the individual relevant questions that will enable it to make an informed decision about the request. This includes asking what type of reasonable accommodation is needed. The exact nature of the dialogue will vary.

Disability laws reject a "cookie-cutter" approach to accommodations in favor of an *ad hoc* analysis of what would be reasonable in each specific circumstance. Employers will likely get themselves into trouble if they deny accommodation requests offhand and should approach all accommodation requests with a "let's-try-to-make-it-work" attitude. Employers should make good-faith effort to determine whether and to what extent accommodation needs, including animal requests, may be feasible.

AN ACCOMMODATION PROCESS

The interactive process is not required under the ADA, but from a legal standpoint, going through the process is a way for employers to show that they are making a good faith effort to comply with the ADA. And from a practical standpoint, it is a way to streamline the accommodation process and help insure that effective accommodations are provided. Such a process is presented in Figure 3⁶⁸ followed by a brief discussion of each step.

Figure 3. An Interactive Process Addressing Animals in the Workplace



Step 1: Recognizing an Accommodation Request

The interactive process starts with an accommodation request from an employee so it is important for employers to be able to recognize a request. An employee may request a reasonable accommodation at any time, orally or in writing, and may use "plain English" and need not mention "ADA," "disability," or use the phrase "reasonable accommodation" when making a request. The request can be said to include any communication in which an individual asks or states that he or she needs an employer to provide or to change something because of a medical condition. Additionally, a doctor's note outlining medical restrictions for an employee constitutes a request for accommodation.

Therefore, any time an employee indicates that he/she is having a problem and the problem is related to a medical condition, the employer should consider whether the employee is making a request for accommodation under the ADA. Consider the following two examples taken from the EEOC:⁶⁹ (1) An employee tells her supervisor, "I'm having trouble getting to work at my scheduled starting time because of medical treatments I'm undergoing," is, in reality, a request for a reasonable accommodation; and (2) An employee tells his supervisor that he would like a new chair because his present one is uncomfortable. Although this is a request for a change at work, his statement is insufficient to put the employer on notice that he is requesting reasonable accommodation. He does not link his need for the new chair with a medical condition.

If an employer is not sure whether an employee has requested an accommodation, the employer should err on the side of caution and ask the employee to clarify what is being requested and why. A supervisor, manager, or human resources representatives should ask an individual whether she is requesting a reasonable accommodation if the nature of the initial communication is unclear.

Once an accommodation request is identified, the employer should respond immediately since unnecessary delays in processing an accommodation request can violate the ADA. Employers should assign one person who is responsible for making sure an accommodation request is processed so the application is not lost in a firm's bureaucracy. Finally, employers should train all managers and supervisors to recognize accommodation requests and what to do with a request once it is received.

Step 2: Gathering Information

Upon receiving a worker's request for an animal, the employer should gather whatever information is necessary to process the request. If a requestor's disability and/or need for accommodation are not obvious or already known, the firm is entitled to ask for and receive medical

information showing that the requestor has a covered disability that requires accommodation. A disability is obvious or already known when it is clearly visible or the individual previously provided medical information showing that the condition met the ADA definition. It is the responsibility of the employee to provide appropriate medical information requested by the business where the disability and/or need for accommodation are not obvious or already known. In some cases, the employee's disability and need for accommodation are obvious and no additional information is needed. For example, if an employee who recently started using a wheelchair indicates that he needs a ramp to get into the workplace, the disability and need for accommodation are obvious. But firms should insist that all employees with less obvious accommodations provide medical verification that the accommodations are in fact needed.

Generally, such documentation must be on the letterhead of a licensed mental health professional stating (1) that the employee has a physical or mental condition that limits a major life activity or a medical condition, and a description of why the employee or applicant needs a reasonable accommodation to have an equal opportunity to perform the essential functions of his or her job, or to enjoy equal benefits and privileges of employment compared to nondisabled employees; (2) that the individual providing the assessment of the person is under the licensed expert's care; and (3) the date and type of the mental health professional's license and the state or other jurisdiction in which it was issued.⁷⁰

Licensed medical/mental health professionals have a number of clinical titles, including

- Licensed Clinical Social Worker;
- Psychiatric Social Worker;
- Licensed Professional Counselor;
- Licensed Marriage and Family Therapists;
- Licensed Clinical Psychologist;
- Licensed Counseling Psychologist;
- Primary Care Physician;
- Psychiatrist;
- Psychiatric Nurse Practitioners;
- Physician's Assistant, etc.

Other titles can be found at Mental Health America⁷¹ and the National Alliance on Mental Illness.⁷² Most of these individuals have either a

master's degree or more advanced education and training. Employers should be careful in evaluating the credentials of such individuals and not quick to dismiss the legitimacy of the mental health provider. The belief that only assessments from psychiatrists are acceptable is incorrect. To complicate matters a bit, the amended California Fair Employment and Housing Act expanded the types of individuals considered health care providers to include acupuncturists, podiatrists, dentists, optometrists, chiropractors, nurse midwives, "or any other persons who meet the definition of 'others capable of providing health care services.'"⁷³

Additionally, employers should be aware that there are significant variations from state to state and among various federal jurisdictions with regard to legal or professional ethical guidelines that regulate or limit the ways in which or where assessments are performed, diagnoses are made, or treatment is prescribed. For example, the National Board for Certified Counselors has developed a comprehensive set of guidelines for the online delivery of mental health services,⁷⁴ and the American Counseling Association recently incorporated an entire section devoted to regulating online service delivery in the new revision to its code of ethics.⁷⁵ Additional regulations govern face-to-face, written, or digitally transmitted communications under the Health Insurance Portability and Privacy Act⁷⁶ (HIPPA) and more recent clarifications are provided by the Health Information Technology for Economic and Clinical Health Act⁷⁷ (HITECH) rules governing "covered entities."⁷⁸

However, in other cases the individual may know that he/she is having difficulty, but may be uncertain about the exact cause or possible solution. For example, if an employee with a nonvisible disability indicates she is having trouble completing her work tasks because of her disability, the employer does not have enough information to provide effective accommodations. The employer needs to know what limitations are interfering with job performance and what specific work tasks are at issue.

The important thing for employers to remember is not to ask for too much information. Under the ADA, when an employee requests an accommodation and the disability and need for accommodation are not obvious, then the employer can request medical documentation to help determine whether the employee has a disability and needs the requested accommodation. A good policy for employers is to only ask for what is absolutely necessary. Asking for all medical records rarely will be appropriate. Medical information and/or records obtained during the interactive process shall be maintained in medical files separate from the employee's personnel file and shall be kept confidential.

If an employee provides insufficient documentation in response to the employer's initial request, the employer or other covered entity should explain why the documentation is insufficient and allow the employee an opportunity to provide supplemental information in a timely manner from the employee's health care provider. Thereafter, if there is still insufficient documentation, the employer may require an employee to

go to an appropriate health care provider of the employer's choice. Additionally, it should be noted that costs related to providing medical documentation in support of the reasonable accommodation request are to be borne by the individual requesting the accommodation.

Step 3: Exploring Accommodation Options

Once the employer has identified the employee's limitation that is causing a problem and determined what that problem is, then the employer is ready to explore accommodation options. Here employers should be open to new ideas and new ways of doing things. This is the time to brainstorm and consider what might work. Again, the employee who requested the accommodation is a good place to start so employers should always invite the employee to suggest accommodations. Accommodations are about doing things differently to help overcome disability-related limitations, so keeping an open mind when exploring accommodation options is prudent.

If more accommodation ideas are needed, the employer can ask the employee's medical provider for ideas. In some cases, medical professionals are able to suggest effective accommodations. In other cases, they may not be able to suggest ideas, but may be able to say whether ideas under consideration will help overcome the employee's limitations.

And if still more ideas are needed, then the employer should consult with outside resources such as the Job Accommodation Network,⁷⁹ vocational rehabilitation specialists, rehabilitation engineers, and disability-related organizations. When consulting with outside resources, employers must comply with the confidentiality rules of the ADA, which require that a request for reasonable accommodation must be kept in files separate from the individual's personnel file. This includes the fact that an accommodation has been requested or approved and information about functional limitations.

Linda Batiste⁸⁰ of the Job Accommodation Network provides a listing of possible accommodation solutions that may exist regarding animals.

Using a Service Animal or ESA at Work

- Allow the employee with a disability to bring his or her animal to work.
- Allow the worker to take leave in order to participate in individualized animal training.
- Provide the employee with a private/enclosed workspace.
- Provide the employee with an office space near a door and/or out of high traffic areas.

- Establish an accessible path of travel that is barrier-free.
- Allow equal access to employee break rooms, lunchrooms, rest rooms, meeting rooms, and services provided/sponsored by the employer.

Caring for an Animal in the Workplace:

- Provide a designated area where the employee can tend to the service animal's basic daily needs, for example, eating or bodily functions.
- Allow periodic breaks so the employee can care for the animal's basic daily needs.
- Provide a designated area the service animal can occupy until the employee's shift ends if the employee only requires the animal to travel to and from work.
- Provide general disability awareness training on the use of animals in the workplace.

Dealing with Coworkers who are Allergic to the Service Animal:

- Allow the employees to work in different areas of the building.
- Establish different paths of travel for each employee.
- Provide one or each of the employees with private/enclosed workspace.
- Use a portable air purifier at each workstation.
- Allow flexible scheduling so the employees do not work at the same time.
- Allow one of the employees to work at home or to move to another location.
- Develop a plan between the employees so they are not using common areas, such as the break room and restroom, at the same time.
- Allow the employees to take periodic rest breaks if needed, for example, to take medication.
- Ask the employee who uses the service animal if it is possible to temporarily use other accommodations to replace

the functions performed by the service animal for meetings attended by both employees.

- Arrange for alternatives to in-person communication, such as email, telephone, teleconferencing, and videoconferencing.
- Ask the employee who uses a service animal if he or she is willing to use dander care products on the animal regularly.
- Ask the employee who is allergic to the animal if he or she wants to, and would benefit from, wearing an allergen/nuisance mask.
- Add HEPA filters to the existing ventilation system.
- Have the work area, including carpets, cubicle walls, and window treatments, cleaned, dusted, and vacuumed regularly.

Interacting with an Animal:

- Address the person when approaching a person with a disability who is accompanied by an animal.
- Remember that animals are working and are not pets.
- Do not touch, pet, or feed treats to an animal without the owner's permission.

On the other hand, an employer need not offer a temporary light duty position permanently as a reasonable accommodation. Also, employers need not eliminate essential job functions as a reasonable accommodation or lower a quantity or quality standard that is an essential job function. Additionally, mere emotional distress that would result from a worker having to give up an animal because of a "no pets" policy generally will not require a firm to waive a "no pets" policy under federal law.⁸¹ Instead, there must be a link between the animal and the disability. Furthermore, employers are not required to provide an indefinite leave of absence or create new positions as a reasonable accommodation; however, leaves of absence may be a reasonable accommodation, as long as the leave likely will permit the employee to return to work.

Step 4: Choosing an Accommodation

After accommodation options have been explored and a consideration of undue hardships has occurred, the employer must decide what accommodation or accommodations to implement. The employer also

should consider the preferences of the employee. However, the employer is responsible for selecting among effective options and can choose, for example, the lowest cost accommodation. Sometimes employers are not sure whether an accommodation will work and are afraid if they try it out they will be committed forever; however, employers are free to try accommodations and stop them if they do not work. One thing firms might want to do when testing accommodations is to make a written agreement with the employee that specifies that the accommodation is for a trial period only, and thus no one is surprised when the accommodation is revisited.

Step 5: Implementing the Accommodation

After selecting an accommodation, it is time to implement the accommodation. This step is very important to the success of an accommodation. If equipment is involved, then it needs to be installed properly and the employee needs to be trained in its proper use. If the accommodation involves a schedule change or policy modification, then certain managers or supervisors may need to know of the change to effectively implement it. If the accommodation involves an outside service, someone needs to make sure the service is provided promptly and effectively. If the accommodation is a reassignment, then the employee may need time to acclimate to the new job. Maintain confidentiality with regard to animals as an accommodation and only let managers and supervisors know about the change due to a disability.

Step 6: Monitoring the Accommodation

An important but often forgotten part of the interactive process is monitoring accommodations after they are in place. In some cases, an accommodation stops being effective for various reasons such as the employee's limitations change, workplace equipment changes, the job changes, the workplace itself changes, or the accommodation over time becomes an undue hardship for the employer.

Because changes occur, employers may need to review the ongoing effectiveness of accommodations periodically. If equipment is involved in the accommodation, someone may need to be assigned to perform maintenance or upgrades as needed. The most important way to monitor accommodations is to encourage ongoing communication. Employees who are receiving accommodations need to understand that they should let their employers know if there are changes or problems with the accommodation and who specifically to contact to address that.

A short accommodation example is provided to illustrate this process: An employee with PTSD and anxiety worked in a call center. He requested to bring in his dog as an ESA. Because the disability was not obvious, the

employer requested that the employee provide medical documentation to show that the dog was needed for this purpose. The employee provided a limited amount of medical information to the employer.

SUMMARY AND CONCLUSIONS

Taking animals to work is becoming a part of the daily work experience in the U.S. and increasingly is seen by some as a right. Many pet owners claim that their animals enhance their lives and have grown so important that they even are becoming subjects of contention for couples undergoing divorce and are included in prenuptial arrangements known as "pre-pups."⁸² For these reasons more and more animals are showing up at work and this issue has become an emerging workplace trend that more and more organizations must address.

Yet even as dogs are said to be "man's [*sic*] best friend" and members of the family,⁸³ many U.S. firms do not welcome them. However, it is not only workers' best friends (and perceived family members) that are banned but other friends (*i.e.*, other pets) as well because many organizations do not allow any animals on their premises. Things are changing in U.S. business and society,⁸⁴ however, and it is hoped that this article will help managers and human resource professionals effectively deal with the emerging topic of animals at work.

Today, more and more company staff are insisting that businesses permit animals to accompany them to work as a reasonable accommodation for their disability; however, the right of an individual with a disability to a service animal or ESA depends on the type of animal, the function that the animal performs for the impaired person, and the setting or context in which the right is asserted. Different state and/or federal laws apply to different situations. Particularly important today are accommodations related to ESAs.⁸⁵

While "no pets" policies may still be enforced for employee household pets, animals identified as service animals, trained to perform specific tasks, or ESAs, whose mere presence mitigates an impairment, may be allowed as exceptions to such rules, and organizations should conduct collaborative discussions with disabled workers to establish appropriate actions. In these situations it is important that all workers requesting animals provide a letter by a mental health professional indicating that the worker has a disability and how an animal is essential to ameliorate their disability.

Unfortunately, the growing importance of pets in American society also has led some workers with various kinds of conditions purporting to be disabilities to fraudulently claim that their pet is a service animal or, increasingly, an ESA. The proliferation of pet owners who misrepresent their pets is seen as a threat to the validity of genuine service animals or ESAs. The damage that fake service animals and ESAs do to the reputation of other handlers also is very serious. These animals break the trust that the public has in such animals. This directly and

immediately negatively affects other handlers because businesses are less likely to treat them with respect because they have had bad experiences with them in the past. This concerns experts in the assistive-animal community who fear that some people are taking advantage of the designation and are putting disabled people in danger of causing others to question the legitimacy of their animals and may be causing employers to unwittingly violate the law.

Another factor that may contribute to a greater demand for animal accommodations involves the upsurge of Internet-related sites that exploit ADA loopholes by passing off pets as legitimate ESAs and service animals.⁸⁶ A virtual industry has developed to assist individuals qualify pets as service animals or ESAs—for a price. For instance, for \$249, customers visiting the site for Service Dogs America⁸⁷ can buy special dog vests and ID cards that label the dog as a service animal. The company claims the package, along with a self-administered test, helps owners clearly identify their dog as a service animal and avoid awkward confrontations when entering public places. The National Service Animal Registry (NSAR)⁸⁸ advertises that for only \$64.95 plus shipping and handling fees individuals get a lifetime registration, a NSAR online database listing, an official NSAR embossed certificate, two professional quality photo ID cards, and two photo ID card clips. Applicants also can purchase a vest with a round NSAR certified patch professionally sewn to the vest for an additional \$50.95. All that is necessary is the completion of three quick steps in which the registrant certifies by checking a box that he or she meets various qualifications. The Dogtor⁸⁹ Web site indicates that "... your loved one *COULD* qualify in as little as 30 minutes to be approved for an emotional support animal." Some of these sites will arrange for a mental health professional to send the applicant a prescription letter, and a company called ESA Registration of America⁹⁰ will certify a pet rat or iguana as an ESA.

When business owners, employees, and the general public doubt the legitimacy of human-animal teams, a ripple effect is created. The act of misrepresenting a pet as a service dog is one of the primary factors that are responsible for the prevalence of access challenges to legitimate requests for accommodations. Access challenges, especially those which are not resolved quickly and smoothly, can be the beginning of very negative and psychologically tolling experiences for all parties.

Despite what some commentators say is an epidemic of scams regarding animals in the workplace,⁹¹ it is important that organizations continue to make disabled workers feel welcome and to treat them with respect. Clearly, the actions of these impostors undermine this effort but firms should not allow them to detract the business from its commitment to a culture of nondiscrimination that values all people. The aim of most organizations is to promote a welcoming and inclusive workplace that ultimately supports success for all stakeholders including persons with disabilities. Accordingly, employers should communicate that they are committed to providing reasonable accommodations to its employees to ensure that individuals with disabilities enjoy equal access to all employment opportunities.

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