

Service Animals – September 2011

The Montana Human Rights Act and other state law, the federal Americans with Disabilities Act, the federal Fair Housing Act, and the 1973 Rehabilitation Act protect the right of persons with disabilities to use service animals to aid them in various settings.

MONTANA LAW

Montana law does not limit the definition of service animals to dogs. It broadly defines a service animal as any animal that performs a task or service to a person with a disability or is in training to perform that task or service. Mont. Code Ann. § 49-4-203(2). A person that is a qualified person with a disability has a right to use his or her service animal in public accommodations, in public transportation, and housing governed by the Montana Human Rights Act. The ultimate scope of this right is unclear. However, it would be prudent to assume that this right would be subject to limitation if a handler does not keep the animal under control, clean up after the animal, or otherwise prevent damage or disruption by the animal.

In other situations governed by the Montana Human Rights Act such as employment and public services, use of service animals would need to qualify under the legal definition of a reasonable accommodation. To be entitled to use this reasonable accommodation, the individual must be a qualified person with a disability.

To be reasonable, the accommodation of using a service animal in employment must not pose an undue burden on an employer or require the employer to fundamentally alter the employment situation. It cannot pose a risk to the health or safety of the person with a disability or to other persons or to property. For this reason, a service animal may be ejected if it is aggressive, disruptive, or causes damage. General concerns about allergies or fear of animals are not valid reasons for denying access or refusing services to people with service animals.

Under Montana law, no distinction is made between service animals that provide support for persons with mobility impairments, sensory impairments, or cognitive or psychiatric impairments. All are entitled to the same legal protections.

FEDERAL LAW

The regulations interpreting the ADA provide that only dogs may be service animals. This definition applies to public accommodations and public services. In these regulations, a service animal is defined as a dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained are not service animals for purposes of this definition. 28 C.F.R. 35.104. Dogs that are not trained to perform tasks that mitigate the effects of a disability, including dogs that are used purely for emotional support, ARE NOT service animals.

House broken miniature horses also may be used as service animals under the regulations, but their use is much more limited than service dogs. As with dogs, the miniature horse must be “individually trained to do work or perform tasks for the benefit of the individual with a disability.” The only entities that are required to modify their policies to accommodate these animals are public entities. Public entities are allowed to consider “the type, size, and weight of the miniature horse and whether the facility can accommodate these features; . . . and whether the miniature horse’s presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.”

Service dogs that meet the federal definition are not treated as reasonable accommodations in public accommodations or public services. They are afforded more protection and thus can only be barred from public accommodations when the animal is out of control and its handler has taken no steps to address this. However, even where a service animal is ejected or barred, an individual with a disability must still be offered the service or other benefit without the service animal.

The Fair Housing Act and the Rehabilitation Act of 1973 do not define service animals. For that reason, the Department of Housing and Urban Development has determined that in housing situations governed by these federal laws, animals other than service dogs would be entitled to

protection if they met the definition of a reasonable accommodation.

http://www.bazelon.org/LinkClick.aspx?fileticket=lhyaA_hRAoE%3d&tabid=268. Thus a tenant with a disability could be entitled to have an emotional support animal if the tenant can prove a relationship between his or her ability to function and the companionship of the animal sufficient to establish the animal as a reasonable accommodation.

Like the Montana definition, the federal definition of service dogs makes no distinction between those that provide support for persons with mobility impairments, sensory impairments or cognitive or psychiatric impairments.

Given that Montana law and Federal law differ in some ways, the following Commonly Asked Questions will be answered primarily with regard to Montana law:

1. What are some examples of tasks a service animal can perform?

The work or tasks performed by a service animal can include:

- assisting individuals who are blind or have low vision with navigation and other tasks,
- assisting individuals who are deaf or hard of hearing to the presence of people or sounds, providing individuals non-violent protection or rescue work,
- opening doors for a person in a wheelchair,
- assisting an individual during a seizure,
- alerting individuals to the presence of allergens,
- providing physical support and assistance with balance and stability, and
- helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors.

The crime deterrent effects of an animal's presence and the provisions of emotional support, well-being, comfort or companionship do not constitute work or tasks for the purposes of the federal definition of service dog. 28 C.F.R. 35.104.

2. Is a service animal required to be certified or pass a course to be considered a service animal?

In Montana, there currently is no state certification or training process for service animals. The law does require that the service animal be trained to perform particular tasks specific to the individual's disability to qualify as a service animal.

The Montana Human Rights Act requires that a dog that is being trained as a service animal must wear a leash, collar, cape, harness, or backpack that identifies the animal as in training that is visible and legible from a distance of at least 20 feet. Mont. Code Ann. § 49-4-214(4).

The Act does not require that trained service animals be similarly vested, however, such identification can help avoid misunderstandings and access obstacles for the person with the disability. We strongly advise individuals to consider identifying their service animal in this manner.

Federal law does not require a specific certification for service dogs. However, a dog must meet the definition of service dog provided above in the federal law section to qualify. Examples of trained dogs that would satisfy the regulation are:

- **Dog Guide, or Seeing Eye Dog** - a dog that serves as a travel tool for persons with severe visual impairments or who are blind.
- **Hearing, or Signal Dog** - a dog that has been trained to alert a person with significant hearing loss or who is deaf when a sound occurs.
- **Psychiatric Service Dog** – a dog trained to perform a variety of tasks that assist individuals with disabilities to detect the onset of psychiatric episodes and ameliorate the effects of those episodes. Tasks performed by psychiatric service animals may include reminding the handler to take medicine; providing safety checks, or room searches, or turning on lights for persons with Post Traumatic Stress Disorder; interrupting self-mutilation by persons with dissociative identity disorders; and keeping disoriented individuals from danger.
- **SsigDog** - a dog trained to assist a person with autism. The dog alerts the handler to distracting repetitive movements common among those with autism, allowing the person to stop the movement (e.g., hand flapping).

- **Seizure Response Dog** - a dog trained to assist a person with a seizure disorder. How the dog serves the person depends on the person's needs. The dog may stand guard over the person during a seizure, or the dog may go for help. A few dogs have learned to predict a seizure and warn the person in advance.

3. What documentation or information should I provide to an employer to support my request to use a service animal at work?

You should provide an employer an explanation of what service or task the service animal performs to demonstrate why the animal is needed in the workplace. If your employer is not already aware of your disability, you should provide the employer information from your physician that establishes that your disability substantially limits the way you conduct major life activities and that your service animal performs a task or service that helps you compensate for your disability. Your employer is not entitled to review your entire medical record, but is entitled to enough information to determine whether you are a qualified person with a disability. For more information regarding your rights at various stages of employment, see DRM Employment Discrimination fact sheet at:

http://disabilityrightsmt.org/janda/articles/UploadFile/1278446886_Fact%20Sheet%20-%20Employment%20Discrimination%20July%202010.pdf

4. Can an employer deny an employee's use of a service animal in the workplace because other employees are allergic, environmentally sensitive or fearful?

The employer is required to prove that providing the accommodation would prove an undue hardship, require a fundamental alteration of the business or pose a threat to the health or safety of the person with the disability, others or property. To demonstrate that an accommodation establishes such a threat, an employer must "independently assess whether the accommodation would create a reasonable probability of substantial harm." ARM 24.9.606 (7). As such, a general concern about safety or health is not sufficient. There are numerous accommodations and alternatives that can be discussed between the employer and employee for these situations to mitigate or entirely eliminate such concerns. (See Job Accommodation Network webpage, <http://askjan.org> "Service Animals as Workplace Accommodations.")

5. Can an employer reduce pay or require an employee to use leave to care for a service animal in the workplace?

When an employee submits a request for reasonable accommodation, that request should also include using break and lunch time to allow the service animal to relieve itself and for the employee to otherwise care for the animal. If the employer denies this accommodation, the employer must continue to engage in the interactive process to establish an accommodation that would be reasonable. The employer may not reject a service animal or the necessary accommodations to have a service animal at work, including bathroom breaks, unless it would be an undue hardship, require a fundamental alteration in the business or pose a risk to the health or safety of the individual, others or property.

6. Am I responsible for cleaning up after my service animal?

Yes. A service animal handler is responsible for cleaning up after his or her service animal. This includes when the animal is assisting in public, and in housing and employment situations.

7. Is it best to let my landlord know that I have a service animal before I move in?

Yes. It is best to talk with the landlord about the service animal prior to moving in. An individual with a disability has a right to have a service animal in housing governed by the Montana Human Rights Act, so it is best to avoid any misunderstandings by having an upfront conversation about what the animal does to perform tasks and meet the definition of a service animal. Remember, part of establishing that an animal is a service animal includes establishing that you are a qualified person with a disability under state law. To do so, you can provide information from your physician or therapist establishing that the service animal performs a task or service that meets a need you have because of your disability. You should give enough information to the landlord to establish your need for the service animal, but you are not obligated to disclose details of your disability or your medical records.

If your animal is not a service animal but an emotional support animal, you should also discuss this issue with your landlord upfront. In Montana, to have an emotional support animal in a rental property governed by the Montana Human Rights Act, you must establish that it is a reasonable accommodation. It is best to request this reasonable accommodation in writing, from the landlord, manager or other appropriate authority. The request should state that you have a disability and explain how the requested accommodation will be helpful to address needs you have because of your disability. In addition, you should include a note from your service provider, such as a doctor or therapist, verifying the need for the support animal to address your needs because of your disability. You do need to provide enough information to demonstrate that you are a qualified person with a disability and that the animal is a reasonable accommodation, but you need not disclose the details of your disability, nor provide a detailed medical history.

8. Can a landlord require me to pay a deposit just for my service animal?

Pursuant to Montana law, a person with a disability who has a service animal or who obtains a service animal may not be required to pay extra compensation to a landlord for the service animal in housing governed by the Montana Human Rights Act. Mont. Code Ann. § 49-4-214(2). Individuals are liable for any damage done to the premises by a service animal. *Id.*

Landlords of federally assisted housing for the elderly or persons with disabilities are prohibited from charging a deposit for service animals. According to the Department of Housing and Urban Development's internal regulations, service animals are exempt from "no pets" policies and from required pet security deposits. Occupancy Requirements of Subsidized Multifamily Housing Programs, HUD, No. 4350.3, 4-13(b) (1998).

For those tenants who are not protected by the Housing and Urban-Rural Recovery Act, at least one administrative law judge has similarly found that these landlords cannot charge a tenant a deposit for a service dog.

If a person with a disability can establish that an emotional support animal is a reasonable accommodation, an argument can be made under federal law that it should be exempted from a pet deposit, as landlords are required to make reasonable

accommodations as long as any costs to do so are not an undue financial burden. *See United States v. California Mobile Home Park Management Co.*, 29 F.3d 1413, 1416 (9th Cir. 1994).

Similarly Montana law provides that the “refusal to make reasonable accommodations in rules, policies, practices, or services when the accommodations may be necessary to allow the person equal opportunity to use and enjoy a housing accommodation or property” is evidence of housing discrimination on the basis of disability. Mont. Code Ann. § 49-2-305(5)(b).