



Issue 144 3rd Quarter

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### SERVICE ANIMALS AND COMFORT ANIMALS



We frequently receive questions from property owners and managers about the increased number of animals being brought to commercial property settings and the accommodations that must be made for such animals. This is a brief overview of the current state of the law with respect to service and support animals.

#### CURRENT LAW

##### Service Animals:

Federal law, specifically the Americans with Disabilities Act (“ADA”), provides that a disabled person with a Service Animal must be allowed to accompany its handler to any place or facility where members of the public, program participants, customers or clients are allowed. Even if the business has a “no pets@” policy, it may not deny entry to a person with a

Service Animal. A Service Animal is defined as an animal that has been individually trained to do work or perform tasks for the benefit of an individual with a disability.

If a person enters commercial property with an animal, you are legally allowed to ask only two questions:

1. Is the animal required because of a disability?
2. What work or task has the animal been trained to perform?

If the answer to the first question is “no”, then it is not a Service Animal. If it has no work or task that it has been trained to perform, then it is not a Service Animal. If the person identifies the animal as required for a disability and discloses what it has been trained to do, then it is a Service Animal and you must allow the person and their animal access to your commercial property. You may NOT ask for documentation or proof that the animal has been certified or trained as a Service Animal. You may NOT ask if the person is disabled or ask the nature of their disability. Those types of questions are in violation of HIPPA. You also may NOT ask the person to have the Service Animal perform the task for which it is allegedly trained.

This does not mean you may not place limitations on the access. The disabled person is responsible for the care and supervision of his or her Service Animal. It must be under the control of the owner

at all times and must behave in a manner that does not disrupt the business environment. You can exclude an animal that is out of control (which includes any behavior that infringes on the rights of other customers/clients/visitors/patrons, including sniffing, begging, growling, whining, barking, wandering, jumping, or any other rude behavior) if the animal's handler does not take effective action to control it. It must be on a leash with the exception that it may be off leash if that freedom is required for it to perform the service for which it is trained. In that case, it must be controlled in another manner, i.e. voice or hand signals, by the owner. The Service Animal must be housebroken and vaccinated in accordance with state and local law. You have no obligation to care for, feed or supervise the animal.

#### Other Support, Therapy, Comfort or Companion Animals:

California, through the Fair Employment and Housing Act, has chosen to expand the rights provided by the ADA. In addition to the access provided to a Service Animal, people in California are allowed certain access for animals frequently referred to as Support, Therapy, Comfort or Companion Animals ("Support Animals"). While the law in California does not currently provide the same protection for access to "public places", it does provide for access to housing, places of employ-

ment (businesses with 5 or more employees) and travel. A Support Animal does NOT have to be trained to do anything and it does NOT need to perform any service. A Support Animal is defined as an animal that provides the owner with a sense of well-being, safety or calm as a result of the animal's presence.

If an animal is identified as a Support Animal as opposed to a Service Animal, an employer MAY require the handler to provide written verification from a health care provider confirming his or her need for the Support Animal. The term provider includes doctors, marriage & family therapists, psychologists, nurse practitioners, social workers and physician assistants, among others. Employers are required to review requests for Support Animal accommodations and base their decision on the reasonableness of the request, the effectiveness of the support that will be provided by the animal and whether any undue hardship will be put on the business. Employers are required to make "reasonable accommodations" for their employees. Given that this is an evolving area of law, we recommend that employers consult labor counsel before revising any policy or rendering a decision. As with Service Animals, reasonable limitations can be placed on the presence of the Support Animal and its interaction with others.

While we respect the rights of the disabled, there is some concern that the

expanded rights provided by California law over and above the provisions of the ADA have resulted in abuse. Even a cursory review of the internet reveals a multitude of advertisements from companies that will provide people with letters, certificates and tags that will effectively turn the family pet into a "Support Animal" for as little as \$69.95 in 48 hours.

### ISSUES

There are a variety of issues that have arisen as a result of the increased number of animals going in and out of businesses.

1. **Interior Maintenance:** The increase in animal traffic causes more wear and tear in buildings resulting in an increase in maintenance expenses such as carpet cleaning and repair, deodorizing common areas and the need for additional services such as flea and tick control.
2. **Safety:** An increase in animal traffic in confined places such as elevators and busy areas such as lobbies increases the potential for attacks on humans and dog versus dog altercations.
3. **Defecation and Sanitation:** While an animal owner is required to "scoop" after his or her animal, urine cannot be scooped. The increase in animal traffic at properties can result in a urine smell in gardens and destruction of plant life and landscape.
4. **Fear of Dogs or Allergies:** There are

people who have a strong fear of dogs (especially large dogs) or have severe allergies to animals.

### RIGHTS OF LANDLORDS

While commercial landlords are required to accommodate both Service Animals (complete access) and Support Animals (access to places of employment), you do have the ability to establish reasonable restrictions to protect your property and the safety and well-being of your tenants. The key here is to make sure the policy you implement is, in fact, reasonable. These are our suggestions:

- A. Any animal must be well behaved, on a leash and under the control of its owner at all times while on the property. The exception is that a Service Animal may be off leash if that freedom is required in order for the animal to perform the specific service for which it is trained. In that case, the animal must be controlled in another manner i.e. voice or hand signals.
- B. The animal may not do anything that disrupts the business or neighboring businesses such as excessive barking, sniffing, begging, growling, whining, wandering, jumping, or any other rude behavior.
- C. Animals must be housebroken. You may designate an area where animals may be taken to relieve themselves, similar to having a designated smoking area for tenants. Make sure that the designat-

ed pet relief area is easily accessible to persons with a disability, i.e. close proximity to entrance/exit, provision of ramps, safety from traffic, etc.

D. While you should already have proof of insurance from all of your commercial tenants, you should review the policies to confirm there is no exclusion for animal incidents. In addition, you will want a clear indemnity provision in place that provides for indemnity of the landlord in the event of any type of injury to persons or other animals or damage to real or personal property caused by any animal.

E. Any animal that engages in behavior that endangers the health or safety of other people or animals in the workplace can be removed. Keep in mind that this must be an actual threat as opposed to an assumption that a particular type of animal or breed may be aggressive.

The information provided in this article is an overview of a few select issues that impact commercial property owners only. The laws, both Federal and California, are complex and the law on this subject, particularly in California, are continuing to evolve. Consult counsel before developing or altering any policy.

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## SEIDE LAW

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