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WHO'S CRYING "WOOF"?

Adopting Pet and Service Animal Policies to Avoid Lawsuits from Disabled Hotel Guests

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What should you do when a guest brings a "seeing eye dog" to your "no pets" hotel? What if a guest claims that a monkey is a "service animal" to assist with some disability or to alert the guest to some danger (such as fire or smoke in a room)? What if a service animal (dog) yaps a lot and disturbs other guests? Do you have to let the guest in? Do you have to let the service animal in? What can you ask a guest about a claimed disability and his or her service animal before you get into trouble? Can you demand proof that this is a "service animal"?

The wrong question or a bad decision with little or no time to react can put you in court defending an expensive and dangerous lawsuit. Inappropriate action can be a violation of the Americans With Disabilities Act (ADA) and additional state laws in California and many other states. The ADA applies in all 50 states, and to all types of properties open to the public, whether hotels, restaurants, sports facilities, stadiums, wineries, retail stores, apartment houses or senior living facilities. In fact, the problem is serious enough that it received attention in May 2004 from the influential 9th Circuit Court of Appeal (*Lentini vs. California Center for the Arts Escondido, et al.* (9th Cir. 2004) 370 F.3d 837).

SERVICE ANIMAL OR PET?

The liability-creating issue relates to accommodating disabled guests with service animals. This is entirely independent from the question of whether or not your hotel or restaurant has a "no pet" or "pet friendly" policy.

According to the law, service animals are not pets.

Service animals are specifically trained to protect, aid, alert and provide their owners with mobility and independence. Health codes that prohibit animals in restaurants, for example, do not apply to service animals. California law recognizes "service canines," such as sight or guide dogs, signal dogs and seizure alert dogs, but under the ADA, the definition of service animals includes any type of animal individually trained by the disabled person or someone else, to provide assistance.

No discrimination against disabled guests with service animals. Under the ADA, hotels and all other public accommodations are required to treat disabled guests with service animals like all other guests; namely, they are to be provided the same services and access to all areas of the property where other guests are generally allowed. While most service animals are trained guide dogs, the ADA applies to any individually trained animal. Service monkeys or cats have been encountered. The potential for abuse is obvious, but how far can you probe?

Guests with service animals should be welcomed and provided access to all areas where guests are normally allowed, such as pool areas, laundries, business centers, restaurants, lobbies, etc. If a guest says that he or she is disabled and the animal is a service animal, that should be the end of it. Check the guest in without further inquiry on the subject. Otherwise, you are just asking for a letter from an ADA activist enforcement group.

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OTHER GUESTS COMPLAINING, SPECIAL REQUESTS, CLEANING UP, EXTRA CHARGES?

If other guests complain of the mere presence of the service animal, staff should explain the law requires hotels to let disabled guests have service animals. If the service animal becomes unreasonably disruptive or threatening, the owner is responsible for controlling the animal. However, most service animals are particularly trained to be around people and are not dangerous and they are quite tidy. If the service animal becomes dangerous or disruptive, they can be removed, but the disabled guest should be welcome to stay without the animal.

Hotel operators are not required to provide special services like food, water, doggy bags, leashes, etc. Staff is not required to clean a service animal's mess, but if staff cleans the rooms generally and put guest items away, they should do the same with the animal's accoutrements.

Hotels cannot impose a separate charge or cleaning deposit for service animals, even if it generally charges for pets. However, like any other guest, the disabled person is responsible for cleaning up after the animal, protecting the public from vicious animals, and paying to repair any damage to the property. The animal's owner is responsible for supervising and caring for it.

With these overriding principles, the bottom line is, if a person says she or he is disabled and that the animal is a service animal, staff should accept the statements as true and permit the guest and the animal to stay. Staff can specifically ask the potential guest what kind of assistance the animal provides, but that's all. Staff can neither ask the individual to prove their disability nor inquire about the nature of the disability. Staff cannot demand any certification or proof that the animal is a "service animal."

9TH CIRCUIT ON YAPPING DOG IN CONCERT!

In May, 2004, the 9th Circuit handed down a decision regarding service animals. In *Lentini v. California Center for the Arts*, the Center tried to bar a disabled patron and a yapping dog (which yapped to warn the owner of people in close proximity) from attending a concert performance because the dog was allegedly previously

disruptive. When plaintiff and her service animal refused to leave the Center, she was threatened with arrest. The Court observed that dogs bark, even at concerts. The Center had to modify its policies to allow the disabled patron to attend performances with a service animal that may have made disruptive noises at past performances if such behavior would have been acceptable if engaged in by humans (warning, not barking!).

The court said the noise the animal makes is for a valid reason (i.e., to warn the owner) and humans would be permitted to voice the same warning. The Center had to accommodate the dog. The court held Center staff failed to consider the reasons why a service animal would make noise and without the modifications to the policy, individuals like the plaintiff, would be excluded from future performances. Humans certainly can scream out "Fire" if there is one. So too can a service animal alert its owner. The Center unsuccessfully argued the admission of the service animal would fundamentally alter the nature of the services by disrupting the performances. However, the court found the Center failed to prove the dog's yipping would necessarily be disruptive. Thus, the court recognized under certain circumstances where the animal was disruptive, unrelated to its service function, it could be removed or excluded.

There were no complaints from patrons. The Center's manager and another employee lied about the incident. Bad facts! The Center and its two employees were ordered to pay monetary damages to the plaintiff. The court went on to say intentional discriminatory conduct was not required to recover the \$4,000 minimum statutory damages under the Unruh Civil Rights Act. The court awarded damages for the actual evening plaintiff was excluded and for the next 6 performances she proved she would have attended but for defendants' policies and practices.

APPLICATION OF PET POLICIES

Most hotels have developed "Pet Policies," either prohibiting pets or imposing reasonable restrictions such as the type and number of pets, confining pets to certain areas, leash requirements, requiring owners to clean up after their pets, to furnish their own pet services, impose pet fees and cleaning deposits and

removal of noisy or disruptive pets. Such policies are perfectly appropriate for "Pets."

Remember! Service animals are not pets—so many policies that apply to pets are simply illegal if applied to service animals. A carefully drawn policy for pets and service animals can help avoid embarrassing encounters and expensive litigation.

We wish to thank Jim Abrams, President & CEO of the California Hotel & Lodging Association for his valuable insights and excellent treatment of

the subject in his book "Laws Pertaining to the California Innkeeper."

The California Hotel and Lodging Association will soon release its latest new training video on service animals to help the industry and others deal proactively with service animal issues. The video is in both English and Spanish and discusses the "Do's and Don'ts" on the issue. It is easy to understand and informative. The tape, called "Ask Spike," is an important overview of the law and the commonly encountered issues. It is quite useful for management and employees. Contact Jim at the CH&LA offices at 1-800-678-2462 or jim@chlaonline.com



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