

**State of New York
Office of the Attorney General**



**SERVICE ANIMALS IN
PUBLIC ACCOMMODATIONS
AND THE WORKPLACE**



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STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
THE CAPITOL
ALBANY, NEW YORK 12224

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Attorney General

(518) 474-7330

Dear New Yorkers:

As Attorney General, one of my most important responsibilities is to safeguard the civil rights of all New Yorkers. One way I seek to achieve this goal is through enforcement of laws that prohibit discrimination based on race, color, national origin, sex, religion, age, marital status, sexual orientation, and disability. Using federal, State, and local civil rights laws, this Office's Civil Rights Bureau investigates and litigates patterns, practices, and policies of unlawful discrimination in employment, housing, credit, education, and places of public accommodation.

Discrimination can result not only from prejudice but also from indifference, carelessness, or ignorance. Therefore, another way that this Office combats discrimination is through education and information.

This brochure answers frequently asked questions about the legal protections for individuals who use a service animal. I hope that this information will help individuals better understand their legal rights and obligations and prevent discrimination against individuals who utilize service animals. If you have any questions or concerns that are not answered by this brochure, please do not hesitate to contact my Civil Rights Bureau at (212) 416-8250 (voice) or (800) 788-9898 (TDD). Together we can strive to eliminate discrimination.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric T. Schneiderman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Eric T. Schneiderman

Service Animals in Public Accommodations and the Workplace

PLEASE NOTE

The material contained within this pamphlet provides general information and is for informational purposes only. This pamphlet should not be used as a substitute for an attorney's services and nothing contained herein constitutes legal advice, services, or representation.

General Information

What is a service animal?

Service animals are animals that help individuals with disabilities perform certain functions and tasks. For example, a "seeing eye dog" is one type of service animal that can help the navigation of individuals who are blind or visually impaired. There also are service animals that assist persons with other kinds of disabilities in their day-to-day activities. For example, a service animal can alert persons with hearing impairments to sounds; pull wheelchairs or carry and pick up things for individuals with mobility impairments; and assist persons with mobility balance impairments.

The federal Americans with Disabilities Act ("ADA") and New York State civil rights laws define what animals

are considered service animals under the law. Under the ADA regulations, a service animal is any guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability. If an animal meets this definition, then the animal is considered a service animal under the ADA regardless of whether the animal has been licensed or certified as such. New York State also has a specific law that protects individuals who use guide dogs, hearing dogs, and service dogs. In addition, there are broader New York State laws that prohibit discrimination against individuals with disabilities in general, *e.g.*, Section 40-c of the New York Civil Rights Law and Section 296 of the New York Executive Law, and these laws may include protection for all service animals, not just dogs.

Are service animals different from pets?

Yes. Service animals are NOT pets. A service animal is an assistive aid and is akin to other assistive devices, such as eye glasses, hearing aids, canes, wheelchairs, and other adaptive equipment. Service animals are trained specially to help individuals with disabilities.

Do any laws apply to service animals in places of public accommodations?

Yes. The right of a person with a disability to bring a service animal into a place of public accommodation is protected by both federal and New York State laws.

Places of public accommodation are covered by federal law, specifically by Title III of the ADA. Title II of the ADA further requires government and state programs to be accessible to individuals with disabilities. The New York State laws that protect the rights of persons with disabilities in places of public accommodation are Sections 40-c, 47(1), and 47-b of the New York Civil Rights Law and Sections 296(2)(a) and 296(14) of the New York Executive Law.

Do any laws apply to service animals in the workplace?

Yes. The right of a person with a disability to bring a service animal into the workplace is protected by both federal and New York State laws. The federal laws that extend such protection are: (1) Title I of the ADA that applies to all employment except individuals employed by a state entity; and (2) Section 501 of the Rehabilitation Act of 1973 that covers federal government employment. The New York State laws that protect the rights of persons with disabilities in the workplace are Sections 40-c and 47-a of the New York Civil Rights Law and Sections 296(1)(a) and 296(14) of the New York Executive Law.

Service Animals in Public Accommodations

What is a place of public accommodation?

Under the ADA, a place of public accommodation is a private entity that engages in commerce. Examples of places of public accommodation under the ADA include:

- places of lodging such as a hotel;
- places serving food and drink such as a restaurant or bar;
- places of entertainment such as a theater or stadium;
- places of public gathering such as a convention center;
- places of sales such as a retail store;
- service establishments such as a lawyer's office, bank, dry-cleaner, or barber shop;
- public transportation such as a train station;
- places of public display or collection such as a museum or library;
- places of recreation such as a zoo or park;
- places of education such as a school;
- social service centers such as a homeless shelter, day care center, or senior center;
- places of recreation such as a gym or golf course.

Under Section 47-a of the New York Civil Rights Law (“CRL § 47-a”) places of public accommodation include, but are not limited to:

- all modes of public and private transportation;
- all forms of public and private housing and buildings to which the public is invited or permitted; and
- all other places of public accommodations, convenience, resort, entertainment, or business to which the general public normally or customarily is invited or permitted.

Do public accommodations have to allow service animals?

Yes. Under the ADA, public accommodations are prohibited from discriminating against individuals with disabilities. Accordingly, the ADA requires these businesses to allow individuals with disabilities to bring their service animals onto business premises in all areas customers generally are allowed. Similarly, New York State Law, CRL § 47-a provides that no person shall be denied admittance to and/or the equal use and enjoyment of any public facility because he or she has a disability and is accompanied by a guide dog, hearing dog, or service dog.

How can a public accommodation determine whether an animal is a service animal rather than a pet?

Some service animals wear special collars and harnesses. Others are licensed or certified and have identification papers. If a public accommodation is not certain that an animal is a service animal, it can ask the individual if their animal is a service animal. Individuals are not required, however, and, indeed often do not carry, documentation for their service animal. Accordingly, a public accommodation may not require licensing documentation as a condition for providing service to an individual accompanied by a service animal. Although a number of states have programs to certify service animals, the public accommodation may not insist on proof of state certification before permitting the service animal to accompany the person with a disability onto its premises.

Does a public accommodation with a posted “no pets” policy still have to allow service animals?

Yes. A service animal is not a pet and therefore the “no pets” policy does not apply to the animal. This does not mean that the public accommodation must abandon its “no pets” policy; it simply may not apply the policy to service animals because they are not considered pets.

If a public accommodation follows a local health department's advice that only a seeing eye or guide dog has to be admitted, has it violated the ADA?

Yes. The ADA is a federal law and thus it overrides any local or state laws or regulations that are to the contrary.

Can a public accommodation charge a fee for a customer who is accompanied by a service animal?

No. A public accommodation is not permitted to charge any type of fee for an individual to bring his or her service animal into a place of public accommodation.

Accordingly, neither a deposit nor a surcharge may be imposed. A public accommodation, however, may charge a fee if a service animal causes damage so long as it is the regular practice of the entity to charge nondisabled customers for the same type of damage.

Is a public accommodation responsible for the service animal while the individual with a disability is in the establishment?

No. The care and supervision of a service animal is the sole responsibility of his or her owner. The public accommodation is not required to provide care, food, or a special location for the service animal.

What if a service animal barks or growls at other people or otherwise misbehaves?

A public accommodation may exclude from the facility

any service animal whose behavior poses a direct threat to the health or safety of others. The public accommodation, however, may not make assumptions about how a particular animal is likely to behave.

Although a public accommodation may exclude any service animal that misbehaves in a manner that poses a threat to the health or safety of others, it should give the individual with a disability who uses the service animal the option of continuing to enjoy the goods and services without having the service animal on the premises. If possible, the public accommodation also should permit the person with a disability to try to first discipline the animal and stop the behavior before asking the person to leave.

Can a public accommodation exclude a service animal that does not seem dangerous but is disruptive?

There may be a few circumstances under which a public accommodation is not required to accommodate a service animal -- that is, when doing so would result in a fundamental alteration to the nature of the business.

Generally, this is not likely to occur in restaurants, hotels, retail stores, theaters, concert halls, and sports facilities.

But when it does, for example, when a dog barks repeatedly during a movie and the owner is unable to control the dog, or the dog's barking does not serve to communicate something of benefit to the owner, the animal can be excluded.

Does a taxi driver violate the law by refusing to pick up an individual with a service animal?

Yes. A taxicab may not refuse to provide services to an individual with a disability who is accompanied by a service animal. Taxicab and car service companies also are prohibited from charging an individual with a disability who is accompanied by a service animal a higher fare or fee for the same or equivalent service than that charged to an individual who is not accompanied by a service animal.

If I believe a public accommodation has discriminated against me because I use a service animal to whom should I complain?

If a business improperly refuses entry to an individual who requires the assistance of a service animal, the ADA and New York State laws may have been violated. Under the ADA, a person can bring a lawsuit in federal court. If State laws are violated, a person may bring a lawsuit directly in state court and also may file a complaint with the Office of the New York State Attorney General. A violation of the ADA and New York State laws can result in damages and penalties.

Service Animals in the Workplace

Does an employer have any obligation to an individual with a disability who uses a service animal in the workplace?

Yes. Employers must provide individuals with disabilities who use service animals reasonable accommodations to enable qualified individuals with disabilities to perform the essential functions of their jobs. A reasonable accommodation can include permitting an employee to be accompanied by his or her service animal while at work.

What purpose does a service animal serve in the workplace?

A service animal can help minimize the impact of an individual's disability on his or her job performance, as well as reduce that individual's dependence on other people.

What assistance can a service animal provide to a person with a disability that a co-worker cannot provide?

A service animal can eliminate the need for a person with a disability to seek the assistance of a co-worker. The service animal also can alleviate the stress and fatigue of overcoming the effects of a disability. Often, a service animal may provide better assistance than a co-worker

who is not specially trained. In addition, colleagues are not always available or receptive to having their work interrupted to help the individual with a disability at the moment such assistance is needed. Further, the necessary help may require complicated instruction or training. Unskilled assistance also may lead to injuries and/or lost work time.

A few examples of the helpfulness of service animals are as follows:

- An employee has a hearing impairment and must constantly be alert for cues signifying the presence of other people or important sounds in an environment, *e.g.*, alarms, telephones, names being called, fax notification. Touching the employee to get his or her attention may be startling and disruptive. Service animals that assist individuals with hearing impairments reliably notify the individual of the presence of others or of specific sounds in a work environment without disrupting the employee's concentration.
- A trained service animal for an employee with a mental disability can help the person focus more effectively on job related tasks and improve the employee's ability to interact with others.

- Trained service animals can provide seizure alert that allows an employee with a disability to remain injury free in the workplace.
- Trained service animals can alert employees with visual impairments to obstacles ahead, above, or approaching. These service animals may be trained to alert people to dropped items and to find specific targets, *e.g.*, bathroom, colleague's office, briefcase, etc.

How do I interact with a person who uses a service animal in the workplace?

When interacting with a person who is accompanied by a service animal follow these general guidelines:

- speak to the person first, rather than first petting the animal;
- touching or offering treats to the service animal could distract it from its work, ask for permission first and do not feel offended if the person asks you not to touch or feed the animal;
- whistling or other noises directed at the animal may be distracting (remember the animal is there to perform a specific job);

- avoid personal questions about the individual's disability or what the animal does for them;
- if there is a complaint about an animal being present, explain that federal and state laws protect the rights of individuals with disabilities to be accompanied by a service animal in the workplace;
- if you do not like animals or are afraid of certain animals, it is appropriate to excuse yourself and move away from the service animal; and
- if the service animal's behavior is disruptive or destructive, the animal may be excluded from the workplace at that particular time.

Who is responsible for the service animal in the workplace?

The individual with the disability is responsible for the care and behavior management of the service animal. It is not the employer's responsibility to care for the service animal even though it employs the animal's owner.

The service animal in our office lies around a lot. Is the service animal really working?

Yes. The help that a service animal provides might not be readily apparent. For example, an individual with a

disability may require the assistance of a service animal only to walk outside of the office and the person may be able to navigate inside of the office effectively without assistance from the service animal. The animal, however, always is on duty and its performance depends on its owner's individual needs.

Does a co-worker have the right to know why a person has a service animal?

No. Individuals with disabilities are not required to disclose the details of their condition.

Is the workplace a safe place for a service animal?

Most workplaces are safe for service animals. In positions where a regular part of the job requires the employee to come into contact with hazardous materials or where the employee must take special safety precautions, the service animal may not be protected adequately from such hazards and therefore the job may not be appropriate for that person.

How does an employer interview a person who has a service animal?

When interviewing an individual with a service animal, allow the individual to comfortably arrange the service animal before beginning the interview. While conducting the interview, focus on the person's abilities, achievements, and qualities, not on the service animal. If

it appears that the service animal's presence would inhibit performance of the job it is *inappropriate* to say: "I see you have a service dog and I wonder what you'll do with him when" An employer can, however, phrase the same inquiry as: "As you can see from the job description, this position requires Do you foresee any difficulty performing the required tasks?" The latter approach gives the individual the opportunity to explain any accommodations that may be needed without assuming that such accommodations are necessary.

Can an employer refuse to hire a person because he or she has a service animal or discharge an employee who gets a service animal?

No. An employer cannot discriminate against applicants or employees who are qualified for the job because they have a service animal.

What if other employees are allergic to the service animal or the service animal is making them sick?

The obligation of the employer is to provide reasonable accommodations for the person with the disability. If co-workers complain of allergies, the employer still has an obligation to accommodate the person with a disability. Employee education on service animals and open discussions between the involved individuals and management usually can lead to a mutually satisfactory solution, such as a change in desk or office assignment.

What if other employees complain about the service animal because they do not like or are scared of animals?

Co-workers' attitudes are irrelevant for purposes of the employer's legal obligation to accommodate an employee with a service animal. Both federal and New York State laws protect the employee with a disability and require the employer to provide reasonable accommodations for such employee. Again, employee education on service animals and open discussions between the involved individuals and management usually can lead to a mutually satisfactory solution, such as a change in desk or office assignment.

What if other employees waste time by playing with the service animal?

The individual with a disability should not be penalized for the actions of others. No one should touch, talk to, feed, or otherwise divert the attention of the service animal without the owner's permission. If you believe co-workers are wasting time by playing with the service animal, you should speak to those employees and tell them not to do so both because it is a not productive use of their time and also because the service animal should not be distracted from its work. You also can let the employee who uses the service animal know that he or she can tell co-workers not to play with the service animal.

How can an employer best support an employee with a service animal?

An employer may best support an employee with a service animal by adhering to the following guidelines:

- Develop a clear company policy that is consistent with the ADA and other disability laws. Company policies may not be more restrictive than prevailing laws.
- Discuss with the employee how much disability-related detail, if any, the employee is comfortable disclosing to co-workers.
- Educate employees about service animals in the workplace and inform them about company policy to reduce the risk that the individual with a disability who uses a service animal will be discriminated against or harassed.

What accommodations can the employer make for an employee with a service animal?

Some of the accommodations that employers may make to accommodate the service animal and employee are as follows:

- designating bathroom and exercise areas outside for the service animal;
- allowing breaks with opportunities to walk the service animal;
- educating employees about service animals and service animal etiquette; and
- providing an area for the service animal to sit while the person is working (in some situations, the animal will be actively assisting the person as the person works, while in other situations the animal's direct assistance may not be required for long periods of time).

If I believe that my employer has discriminated against me because I have a service animal to whom should I complain?

A person who is subject to such discrimination can complain both internally, to his or her employer, and externally, to a government agency and/or the courts. A person may file a complaint with the U.S. Equal Employment Opportunity Commission (“EEOC”), the U.S. Department of Justice, the Office of the New York State Attorney General, and the New York State Division of Human Rights. The individual also may be entitled to bring a private lawsuit although certain deadlines apply

and a federal lawsuit requires that the person first file a complaint with the EEOC.

What kind of remedies are available for workplace discrimination?

The remedies in a litigation or administrative proceeding include reasonable accommodations, an offer of a job or promotion if refusal to hire or promote was at issue, compensatory and punitive damages, backpay, front pay or reinstatement, lost benefits, and attorneys' fees.

Although these remedies may be available, they are not applied automatically in each case. The amount and type of damage award is decided on a case-by-case basis.

Where to file a complaint:

- Office of the Attorney General for the State of New York:

Civil Rights Bureau
120 Broadway, 23rd Floor
New York, NY 10271
(212) 416-8250
(800) 788-9898 (TDD/TTY)

- New York State Division of Human Rights:

Albany:

Empire State Plaza
Agency Building 2, 18th Floor
Albany, NY 12220
(518) 474-2705

Binghamton:

44 Hawley Street, 6th Floor
Binghamton, NY 13791
(607) 721-8467

Bronx:

Administrative Offices
1 Fordham Plaza, 4th Floor
Bronx, NY 10458
(718) 741-8400

Brooklyn:

55 Hanson Place, Room 304
Brooklyn, NY 11217
(718) 722-2856

Buffalo:

The Walter J. Mahoney State Office Building
65 Court Street, Suite 506
Buffalo, NY 14202
(716) 847-7632

Manhattan:

- State Office Building
270 Broadway, Room 922
New York, NY 10007
(212) 417-5041

- State Office Building
163 West 125th Street, 4th Floor
New York, NY 10027
(212) 961-8650

Long Island (main office):

175 Fulton Avenue, Suite 211
Hempstead, NY 11550
(516) 538-1360

Rochester:

259 Monroe Avenue
1 Monroe Square, 3rd Floor
Rochester, NY 14607
(716) 238-8250

Suffolk (branch office):

State Office Building, Room 3A-15
Veteran's Memorial Highway
Hauppauge, NY 11787
(631) 952-6434

Syracuse:

State Office Building
333 East Washington Street, Room 443
Syracuse, NY 13202
(315) 428-4633

White Plains:

30 Glenn Street, 3rd Floor
White Plains, NY 10603
(914) 949-4394

- New York District Office of the EEOC:
201 Varick Street, Room 1009
New York, New York 10014
(212) 748-8500

- United States Department of Justice, Civil Rights Division:
 - Office of the Americans with Disabilities Act
 - P.O. Box 66738
 - Washington D.C. 20035
 - (202)514-0301 (voice)
 - (202)514-0381 (TTY)
- New York City Commission on Human Rights:
 - 40 Rector Street, 9th Floor
 - New York, NY 10006
 - (212) 306-7500

Helpful contact numbers:

- New York State Office of Advocate for Persons with Disabilities
 - 1 Empire State Plaza, Suite 1001
 - Albany, NY 12223
 - (800) 522-4369 (Voice/TTY/Spanish)
- Office for People with Disabilities
 - 52 Chambers Street, Room 206
 - New York, NY 10007
 - (212) 788-2830
 - (212) 788-2842 (TTY/TDD)

- The New York State Independent Council, Inc.
(The Council is comprised of a state-wide network of independent living centers and can locate the center nearest to you)
(518) 427-1060 (phone/TDD)

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Binghamton

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Binghamton, New York 13901-4433
(607) 721-8778

Brooklyn

55 Hanson Place, Suite 1080
Brooklyn, NY 11217
(718)722-3949

Buffalo

350 Main Street Suite 300A
Buffalo, New York 14202-3473
(716) 853-8400

Harlem

163 West 125th Street
New York, NY 10027
(212) 961-4475

Nassau

200 Old Country Road
Suite 460
Mineola, New York 11501-4241
(516) 248-3300

New York City

120 Broadway
New York, New York 10271
(212) 416-8345

Plattsburgh

43 Durkee Street, Suite 700
Plattsburgh, NY 12901-2958
(518) 562-3282

Poughkeepsie

One Civic Center Plaza-Suite 401
Poughkeepsie, NY 12601-3157
(845) 485-3900

Rochester

144 Exchange Boulevard
Rochester, NY 14615-2176
(716) 546-7430

Suffolk

300 Motor Parkway
Hauppauge, NY 11788
(631) 231-2424

Syracuse

615 Erie Boulevard West
Syracuse, NY 13204-2465
(315) 448-4800

Utica

207 Genesee St. --Rm 508
Utica, NY 13501-2812
(315) 793-2225

Watertown

317 Washington Street
Watertown, NY 13601-3744
(315) 785-2444

Westchester

101 East Post Road
White Plains, NY 10601-5008
(914) 422-8755

**Consumer Complaint
Number:**

1-800-771-7755

**For the Hearing Impaired:
1-800-788-9898**

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