Disability Law Center's
Self-Advocacy Materials

Updated April 2026

Service Animals

This document is designed for people with disabilities. The information is about your legal rights and how to advocate for yourself as a resident in Massachusetts.

Contact us to request this information in an alternative format.

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Funding

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Service Animals Under ADA Title II and Title III

You Will Learn About:

- ADA protections for individuals who use service animals in activities related state and local government services and programs, and places of public accommodation
- Responsibilities of individuals who use a Service Animal
- Legal Distinctions Between a Service Animal and an Emotional Support Animal

This document includes general information about legal issues and is intended to be used for informational purposes only. These informational materials should not be taken as legal advice, and do not create an attorney-client relationship. The outcome of any particular matter will depend on a variety of factors. For specific legal problems you would need to contact an attorney.

Protections Under the ADA for Individuals Who Use a Service Animal

What is the ADA?

The ADA is the Americans with Disabilities Act, a federal civil rights law passed in 1990. The ADA prohibits discrimination against individuals with disabilities in many areas of public life, including schools, transportation, and places that are open to the general public. The purpose of the law is to make sure that people with disabilities have the same rights and opportunities as everyone else.

The ADA is divided into five titles, or sections, that relate to different areas of public life. This document focuses on service animal provisions of ADA Title II that apply to state and local governments and ADA Title III that apply to places of public accommodations. Title II ensures equal access to all programs, services, and activities provided by government entities. Title III mandates that businesses that are open to and serve the public, such as restaurants, hotels, and stores, be accessible to and not discriminate against people with disabilities.

What Is Title II of the ADA?

Title II of the ADA forbids discrimination by public entities based on disability. It also requires public entities to provide equal access to people with disabilities.

'Public entities' means any state or local government, or any department or agency of a state or local government. In other words, it can apply to any service provided by a state or local government. Some examples of public entities are courts, town agencies, school districts, voting, recreation, community colleges, and housing authorities.

Does Title II of the ADA Apply to the Federal Government?

No. However, Section 504 of the Rehabilitation Act applies to federal agencies. Section 504 also applies to any program that receives federal financial assistance. The requirements of Section 504 are very similar to Title II of the ADA.

What is Title III of the ADA?

Title III of the ADA forbids discrimination by private businesses in places of public accommodations.[1] This include hotels, restaurants, bars, theaters, stores, banks, professional offices of health care providers, lawyers, and accountants, hospitals, private bus or train stations, museums, libraries, zoos, amusement parks, places of education, day care centers, homeless shelters, gymnasiums, gyms, bowling alleys, and golf courses.[2]

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[1] 42 U.S. Code § 12182

[2] For the Department of Justice ADA Title III Regulations see https://www.ada.gov/law-and-regs/regulations/title-iii-regulations/

What is a Service Animal?

Under both Title II and III of the ADA, a service animal is any 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.[3] The work or tasks performed by a service animal must be directly related to the individual's disability

NOTE: There are no formal methods of certification for a service animal that are required or approved by the ADA.

What Are Examples of a Service Animal's Work or Task?

Examples of work or tasks include, but are not limited to:

- Assisting individuals who are blind or have low vision with navigation and other tasks;
- Alerting individuals who are deaf or hard of hearing to the presence of people or sounds;
- Pulling a wheelchair, assisting an individual during a seizure, or alerting individuals to the presence of allergens;
- Providing physical support and assistance with balance and stability to individuals with mobility disabilities;
- Alerting a person with diabetes when their blood sugar reaches high or low levels;
- Reminding a person with depression to take their medication;
- Detecting the onset of a seizure for a person who has epilepsy and then helping the person remain safe during the seizure; or
- Preventing or interrupting impulsive or destructive behaviors for a person with psychiatric or neurological disabilities.

NOTE: While the ADA allows individuals to train their own animals, the protections of the ADA only begin once the training is complete and the animal can perform its designated task. The ADA does not recognize animals in training as service animals. https://www.ada.gov/resources/service-animals-faqs/

What May a Covered Entity Legally Ask You About Your Service Animal?

In situations where it is not obvious that the dog is a service animal, a business or public entity may ask only two specific questions:

1. Is the animal required because of a disability?

[3] For ADA Title II See 28 CFR § 35.104. See https://www.ecfr.gov/current/title-28/chapter-I/part-35/subpart-A/section-35.104. For ADA Title III See 28 CFR § 36.104. See https://www.ecfr.gov/current/title-28/chapter-I/part-36

2. What work or task has the animal been trained to perform?

NOTE: These two questions may only be asked if the need for the service animal is not obvious. An example of an obvious need for a service animal is an individual who is blind and uses a service animal for navigation.

The business or public entity cannot ask or do any of the following:

- Demand information from the individual about their disability.
- Require that the service animals demonstrate the tasks that they are trained to perform.
- Require that the service animals wear a vest or any form of identification.
- Demand proof that the animal has been certified, trained, or licensed as a service animal.

NOTE: Do not be fooled by organizations that sell service animal certification or registration documents online. These documents do not convey any rights under the ADA. The Department of Justice does not recognize them as proof that the dog is a service animal.

Does a "No Pets" Policy Apply to Service Animals?

No. A business with a "no pets" policy may not deny entry to a person with a service animal because a service animal is legally not a pet. A "no pets" policy is legal, however the policy does not allow a business to exclude service animals.

Where Can You Go with Your Service Animals?

An individual with a service animal may not be set apart from other members of the public. Individuals with disabilities accompanied by service animals must be allowed in all areas of a business where members of the public can go, including schools, universities, libraries, buses, hotels, restaurants, hospitals (except areas requiring a sterile environment), and retail shops.

For example:

- In a restaurant, a service animal must be allowed to accompany the person with a disability in all areas that are open to other patrons.
- In a hospital, the same is true, except that there may be certain areas of the hospital where having a service animal could jeopardize safety, such as in the sterile environment of an operating room. Hospitals must allow a service animal to remain with a patient with a disability whenever possible. However, if a patient who uses a service animal is admitted to the hospital and is unable to care for or supervise their animal, the patient can make arrangements for someone to come to the hospital to provide these services.[4] If the patient is unable to care for the dog and is unable to arrange for someone else to care for the dog then the hospital can arrange board at a nearby facility until the patient is well enough to make other arrangements. In this situation, the patient is responsible for the cost of boarding the service animal.

[4] It is always preferable that the service animal and its handler not be separated but the designated person may need to keep the dog during the patient's hospitalization.

What Are the Responsibilities for the Individual with a Service Animal?

The individual with the service animal:

- Is always responsible for its care and supervision.
- Must maintain control of the service animal at all times.
- Must ensure the service animal is harnessed, leashed, or tethered, unless these devices interfere with the service animal's work or the individual's disability prevents the use of these devices. Individuals who cannot use such devices must maintain control of the animal through voice commands, signals, or other effective methods.
- Must follow local vaccination, licensing, and registration requirements for their service animal. There is no exemption for service animals regarding local animal control or public health requirements. However, mandatory registration of service animals is not permissible under the ADA.
- Must keep the service animal clean and healthy.

NOTE: Businesses and public entities are not responsible for any of the service animal's care or supervision, including providing food, water, or a special place.

When Can a Covered Entity Legally Deny Entry of a Service Animal?

The ADA does not require businesses or public entities to modify policies, practices, or procedures if it would "fundamentally alter" the nature of the goods, services, programs, or activities provided to the public. Service animals may be prohibited in cases where admitting the service animal would fundamentally alter the nature of a service or program. An example of this is a zoo, where service animals can be restricted from areas where the animals on display are the natural prey or natural predators of dogs. In this case, the presence of a dog would be disruptive, causing the displayed animals to behave aggressively or become agitated. However, the service animals cannot be restricted from other areas of the zoo.

A business or public entity may also exclude a service animal if a particular service animal:

- Behaves in a way that poses a direct threat to the health or safety of others;
- Has a history of such behavior; or
- Is not under the control of the handler

NOTE: If an animal is excluded for any of the above reasons, then the staff must still offer their goods or services to the person without the animal present.

Other General Limitations:

- Restaurants, bars, and other places that serve food or drink are not required to allow service animals to be seated on chairs or allow the animal to be fed at the table. The ADA gives a person with a disability the right to be accompanied by their service animal, but covered entities are not required to allow an animal to sit or be fed at the table.

- Gyms, fitness centers, hotels, or municipalities that have swimming pools are not required to allow a service animal in the pool along with the handler. The ADA does not override public health rules that prohibit dogs in swimming pools. However, service animals must be allowed on the pool deck and in other areas where the public is allowed to go.

- Churches, temples, synagogues, mosques, and other places of worship are not required to allow individuals to bring their service animals into their facilities. Religious institutions and organizations are specifically exempt from the ADA.

- The ADA does not apply to the federal government or federal agencies. However, Section 504 of the Rehabilitation Act applies to federal agencies. (See Above).

- Commercial airlines do not have to comply with the ADA. However, the Air Carrier Access Act is a federal law that protects the rights of people with disabilities in air travel.

Can A Private Taxicab/Rideshare Legally Refuse to Pick Up Someone with a Service Animal?

No. It is a violation of the ADA if the taxicab or rideshare driver refuses to pick up a customer with a service animal. Taxicab companies may not refuse to provide services to individuals with disabilities.

A person traveling with a service animal:

- Cannot be denied access to transportation even if there is a “no pets” policy;

- Cannot be forced to sit in a particular spot;

- Does not have to provide advance notice that they will be traveling with a service animal; and

- Cannot be charged a higher fare or fee because of their disability or service animal

Is My Emotional Support Animal (ESA) a Service Animal?

No, animals whose sole function is to provide comfort or emotional support (ESAs) are not service animals under the ADA. The provision of emotional support, well-being, comfort, or companionship does not constitute work or tasks.

If My Dog Calms Me During an Anxiety Attack, Is My Dog a Service Animal?

It depends. The ADA makes a distinction between psychiatric service animals and emotional support animals. If the dog has been trained to sense that an anxiety attack is about to happen and take a specific action to help avoid the attack or lessen its impact, that would qualify as a service animal. However, if the dog's mere presence provides comfort, that would not be considered a service animal under the ADA.

Can Hotels Charge a Cleaning Fee for Guests who Have Service Animals?

No. Hotels are not permitted to charge guests for cleaning the hair or dander shed by a service animal. However, a hotel is permitted to charge the same fee for damages as charged to other guests if the service animal causes damage to its property.

NOTE: A guest with a disability who uses a service animal must be provided the same opportunity to reserve any available room at the hotel as other guests without disabilities. They may not be restricted to "pet-friendly" rooms.

Are Hotel Guests Allowed to Leave Their Service Animals in Their Hotel Room When They Leave the Hotel?

No, the service animal must be under the handler's control at all times.

What Action Can You Take If a Covered Entity's Staff Has Discriminated Against You?

You may file a complaint with the U.S. Department of Justice if you have been illegally denied access or service because of your service animals. You also have the right to file a private lawsuit in federal court charging the entity with discrimination under the ADA Title II or Title III.

Where Do You Go If You Still Need Legal Help?

If you need legal representation or advice, please call the Disability Law Center (DLC) at 1-800-872-9992 and leave a message or complete our online intake form at https://www.dlc-ma.org/ask-for-help/.

Resources

If you have additional questions about the ADA, you can call the U.S. Department of Justice ADA Information Line at 800-514-0301 (voice) or 1-833-610-1264 (TTY). All Calls are confidential.