

Federal Law

ADA Service Animal
Service Dogs

Under the Americans with Disabilities Act (ADA), “service animal” means 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. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition.

The work or tasks performed by a service animal must be directly related to the individual’s disability. 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, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, 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 provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.

28 C.F.R. 35.104

*Policies,
Practices, or
Procedures*

A public entity, including a college district, shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. [See FA(LEGAL)] *28 C.F.R. 35.130(b)(7), .136(a)*

Access

Individuals with disabilities shall be permitted to be accompanied by their service animals in all areas of a public entity’s facilities, where members of the public, participants in services, programs or activities, or invitees, as relevant, are allowed to go. *28 C.F.R. 35.136(g)*

Exceptions

A public entity may ask an individual with a disability to remove a service animal from the premises if:

1. The animal is out of control and the animal’s handler does not take effective action to control it; or
2. The animal is not housebroken.

28 C.F.R. 35.136(b)

The ADA does not require a public entity to permit an individual to participate in or benefit from the services, programs, or activities of that public entity when that individual poses a direct threat to the health or safety of others. [See FA(LEGAL)] 28 C.F.R. 35.139

If a public entity properly excludes a service animal, it shall give the individual with a disability the opportunity to participate in the service, program, or activity without having the service animal on the premises. 28 C.F.R. 35.136(c)

A service animal shall be under the control of its handler. A service animal shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control (e.g., voice control, signals, or other effective means). 28 C.F.R. 35.136(d)

Inquiries

A public entity shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A public entity may ask if the animal is required because of a disability and what work or task the animal has been trained to perform.

A public entity shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal.

Generally, a public entity may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (e.g., the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability).

28 C.F.R. 35.136(f)

*Care or
Supervision
of Animal*

A public entity is not responsible for the care or supervision of a service animal. 28 C.F.R. 35.136(e)

Surcharges

A public entity shall not ask or require an individual with a disability to pay a surcharge, even if people accompanied by pets are required to pay fees, or to comply with other requirements generally not applicable to people without pets.

If a public entity normally charges individuals for the damage they cause, an individual with a disability may be charged for damage caused by his or her service animal.

28 C.F.R. 35.136(h)

Fair Housing Act
Assistance Animal

The Fair Housing Act (FHA) prohibits discrimination against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of that person; person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or any person associated with that person.

Discrimination includes a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

42 U.S.C. 3604; 24 C.F.R. 100.204

The FHA requires housing providers to modify or make exceptions to policies governing animals when it may be necessary to permit persons with disabilities to utilize animals. There are two types of assistance animals:

1. Service animals; and
2. Other trained or untrained animals that do work, perform tasks, provide assistance, and/or provide therapeutic emotional support for individuals with disabilities (referred to as “support animals”).

Persons with disabilities may request a reasonable accommodation for service animals and other types of assistance animals, including support animals, under the FHA.

Because the U.S. Department of Housing and Urban Development (HUD) interprets the FHA to require access for individuals who use service animals, housing providers should initially follow the analysis that the U.S. Department of Justice (DOJ) has determined is used for assessing whether an animal is a service animal under the ADA. The DOJ’s ADA regulations generally require state and local governments and public accommodations to permit the use of service animals by an individual with a disability. For support animals and other assistance animals that may be necessary in housing, although the ADA does not provide for access, housing providers must comply with the FHA, which does provide for access.

U.S. Dep’t of Housing and Urban Development, [FHEO Notice FHEO-2020-01 \(PDF\)](#)¹ (Jan. 29, 2020)

Miniature Horses <i>Reasonable Modifications</i>	A public entity shall make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability. <i>28 C.F.R. 35.136(i)(1)</i>
<i>Assessment Factors</i>	In determining whether reasonable modifications in policies, practices, or procedures can be made to allow a miniature horse into a specific facility, a public entity shall consider: <ol style="list-style-type: none">1. The type, size, and weight of the miniature horse and whether the facility can accommodate these features;2. Whether the handler has sufficient control of the miniature horse;3. Whether the miniature horse is housebroken; and4. Whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation. <p><i>28 C.F.R. 35.136(i)(2)</i></p>
<i>Other Requirements</i>	Provisions at 28 C.F.R. 35.136(c) through (h) shall also apply to miniature horses. <i>28 C.F.R. 35.136(i)(3)</i>

State Law

Public Facilities

Definitions

Assistance
Animal or
Service Animal

"Assistance animal" or "service animal" means a canine that is specially trained or equipped to help a person with a disability and that is used by a person with a disability. *Human Resources Code 121.002(1)*

Person with a
Disability

"Person with a disability" means a person who has a mental or physical disability; an intellectual or developmental disability; a hearing impairment; deafness; a speech impairment; a visual impairment; post-traumatic stress disorder; or any health impairment that requires special ambulatory devices or services. *Human Resources Code 121.002(4)*

Public Facility

"Public facility" includes a street, highway, sidewalk, walkway, common carrier, airplane, motor vehicle, railroad train, motor bus, streetcar, boat, or any other public conveyance or mode of transportation; a hotel, motel, or other place of lodging; a public building maintained by any unit or subdivision of government; a retail business, commercial establishment, or office building to which the general public is invited; a college dormitory or other educational

	<p>facility; a restaurant or other place where food is offered for sale to the public; and any other place of public accommodation, amusement, convenience, or resort to which the general public or any classification of persons from the general public is regularly, normally, or customarily invited. <i>Human Resources Code 121.002(5)</i></p>
<p><i>Assistance Animal Access</i></p>	<p>No person with a disability may be denied admittance to any public facility in the state because of the person's disability or may be denied the use of an assistance animal.</p> <p>Regulations relating to the use of public facilities by any designated class of persons from the general public may not prohibit the use of particular public facilities by persons with disabilities who, except for their use of assistance animals, would fall within the designated class.</p> <p>A service animal in training shall not be denied admittance to any public facility when accompanied by an approved trainer.</p> <p><i>Human Resources Code 121.003(c), (e), (i)</i></p>
<p><i>Harassment and Harm Prohibited</i></p>	<p>A person may not assault, harass, interfere with, kill, or injure in any way, or attempt to assault, harass, interfere with, kill, or injure in any way, an assistance animal. <i>Human Resources Code 121.003(j)</i></p>
<p><i>Transportation</i></p>	<p>No common carrier, airplane, railroad train, motor bus, streetcar, boat, or other public conveyance or mode of transportation operating within the state may refuse to accept as a passenger a person with a disability because of the person's disability, nor may a person with a disability be required to pay an additional fare because of his or her use of a service animal. <i>Human Resources Code 121.003(b)</i></p>
<p><i>Housing</i></p>	<p>A person with a total or partial disability who has or obtains a service animal is entitled to full and equal access to all housing accommodations provided for in this section and may not be required to pay extra compensation or make a deposit for the animal but is liable for damages done to the premises by the animal except for reasonable wear and tear. <i>Human Resources Code 121.003(h)</i></p>
<p><i>Inquiries</i></p>	<p>A person is not entitled to make demands or inquiries relating to the qualifications or certifications of a service animal for purposes of admittance to a public facility except to determine the basic type of assistance provided by the service animal to a person with a disability. <i>Human Resources Code 121.003(k)</i></p>
<p>Exception</p>	<p>If a person's disability is not readily apparent, for purposes of admittance to a public facility with a service animal, a staff member or manager of the facility may inquire about:</p>

1. Whether the service animal is required because the person has a disability; and
2. What type of work or task the service animal is trained to perform.

Human Resources Code 121.003(l)

*Responsibilities
of Persons with
Disabilities*

A person with a disability who uses an assistance animal for assistance in travel is liable for any damages done to the premises or facilities by the animal.

A person with a disability who uses an assistance animal for assistance in travel or auditory awareness shall keep the animal properly harnessed or leashed, and a person who is injured by the animal because of the failure of a person with a disability to properly harness or leash the animal is entitled to maintain a cause of action for damages in a court of competent jurisdiction under the same law applicable to other causes brought for the redress of injuries caused by animals.

Human Resources Code 121.005

Penalties

A person, including a firm, association, or other public or private organization or the agent of the person, who violates a provision of Human Resources Code 121.003 commits an offense. An offense under this section is a misdemeanor punishable by:

1. A fine of not more than \$300; and
2. Thirty hours of community service to be performed for a governmental entity or nonprofit organization that primarily serves persons with visual impairments or other disabilities, or for another entity or organization at the discretion of the court, to be completed in not more than one year.

In addition to the penalty provided above, a person, including a firm, association, or other public or private organization or the agent of the person, who violates a provision of Human Resources Code 121.003 is deemed to have deprived a person with a disability of his or her civil liberties. Subject to Human Resources Code 121.0041, if applicable, the person with a disability deprived of his or her civil liberties may maintain an action for damages in a court of competent jurisdiction, and there is a conclusive presumption of damages in the amount of at least \$300 to the person with a disability.

Human Resources Code 121.004

Food Service
Establishments and
Retail Food Stores
Service Animal

In this section, “service animal” means a canine that is specially trained or equipped to help a person with a disability. An animal that provides only comfort or emotional support to a person is not a service animal under this section. The tasks that a service animal may perform in order to help a person with a disability must be directly related to the person's disability and may include:

1. Guiding a person who has a visual impairment;
2. Alerting a person who has a hearing impairment or who is deaf;
3. Pulling a wheelchair;
4. Alerting and protecting a person who has a seizure disorder;
5. Reminding a person who has a mental illness to take prescribed medication; and
6. Calming a person who has post-traumatic stress disorder.

Health and Safety Code 437.023(c)

Access

A food service establishment, retail food store, or other entity regulated under Health and Safety Code Chapter 437 may not deny a service animal admittance into an area of the establishment or store or of the physical space occupied by the entity that is open to customers and is not used to prepare food if the service animal is accompanied and controlled by a person with a disability; or the service animal is in training and is accompanied and controlled by an approved trainer. *Health and Safety Code 437.023(a)*

Inquiries

If a service animal is accompanied by a person whose disability is not readily apparent, for purposes of admittance to a food service establishment, retail food store, or physical space occupied by another entity regulated under this chapter, a staff member of the establishment, store, or entity may only inquire about whether the service animal is required because the person has a disability and what type of work the service animal is trained to perform. *Health and Safety Code 437.023(b)*

¹ FHEO Notice FHEO-2020-01 (PDF):
<https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf>