

Guidance on the Presence of Service Animals in Food Establishments Regulated by the New York State Department of Agriculture and Markets

OVERVIEW OF GUIDANCE ON SERVICE ANIMALS

This document serves as a guide for New York consumers and New York State Department of Agriculture and Markets inspectors in the Division of Food Safety and Inspection. This guidance is informational in nature and summarizes applicable provisions of the Federal Americans with Disabilities Act (ADA) and the New York State Human Rights Law, as well as the rules and regulations promulgated pursuant thereto, and, also, sets forth guidelines designed to ensure that food is manufactured, processed, and held under sanitary conditions. Establishments should not rely upon the provisions of this guidance in determining their obligations under federal or state laws or regulations but, rather, should read the provisions of such laws and regulations and/or should consult with an attorney to determine such obligations.

The scope and limitations of service animals is explained in a question and answer format below.

Q: What is a service animal?

A: A service animal means an animal, such as a guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability. The task(s) performed by the service animal must be directly related to the person's disability.

Q. What does “do work or perform tasks” mean?

A: The service animal must be trained to take a specific action when needed to assist the person with a disability. For example, a person with diabetes may have a dog that is trained to alert him when his blood sugar reaches high or low levels. A person with depression may have a dog that is trained to remind her to take her medication. Or, a person who has epilepsy may have a dog that is trained to detect the onset of a seizure and then help the person remain safe during the seizure.

Q. Are emotional support, therapy, comfort, or companion animals considered service animals under the ADA?

A: No. These terms are used to describe animals that provide comfort just by being with a person. Because they have not been trained to perform a specific job or task, they do not qualify as service animals under the ADA. In New York State, emotional support, therapy, comfort, or companion animals do not qualify as service animals.

Q: If someone's dog calms them when having an anxiety attack, does this qualify it as a service animal?

A: 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.



Q: Are service-animals-in-training considered service animals under the ADA?

A: No. Under the ADA, the service animal must already be trained before it can be taken into public places. However, some State or local laws cover animals that are still in training.

Q: What questions can be asked to determine if an animal is a service animal?

A: In situations where it is not obvious that an animal is a service animal, you may ask only two specific questions: (1) is the animal a service animal required because of a disability? and (2) what work or task has the animal been trained to perform? You are not allowed to request any documentation for the animal, require that the animal demonstrate its task, or inquire about the nature of the person's disability.

Q: Do service animals have to wear a vest or patch or special harness identifying them as service animals?

A: No. The ADA does not require service animals to wear a vest, ID tag, or specific harness.

Q: Can a person bring a service animal with them as they go through a salad bar or other self-service food lines?

A: Yes. Service animals must be allowed to accompany their handlers to and through self-service food lines. Similarly, service animals may not be prohibited from communal food preparation areas, such as are commonly found in shelters or dormitories or shared kitchens.

Q: Can people bring more than one service animal into a public place?

A: Generally, yes. Some people with disabilities may use more than one service animal to perform different tasks. For example, a person who has a visual disability and a seizure disorder may use one service animal to assist with way-finding and another that is trained as a seizure alert dog. Other people may need two service animals for the same task, such as a person who needs two dogs to assist him or her with stability when walking. Staff may ask the two permissible questions (See Question 7) about each of the dogs. If both dogs can be accommodated, both should be allowed in. In some circumstances, however, it may not be possible to accommodate more than one service animal. For example, in a crowded small restaurant, only one dog may be able to fit under the table. The only other place for the second dog would be in the aisle, which would block the space between tables. In this case, staff may request that one of the dogs be left outside.

Q: Does the ADA require that service animals be certified as service animals?

A: No. Covered entities may not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal, as a condition for entry.

Q: Can service animals be any breed of dog?

A: Yes. The ADA does not restrict the type of dog breeds that can be service animals.

Q: When can service animals be excluded?

A: The ADA does not require covered 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. Nor does it overrule legitimate safety requirements. If admitting service animals would fundamentally alter the nature of a service or program, service animals may be prohibited. In addition, if a particular service animal is out of control and the handler does not take effective action to control it, or if it is not housebroken, that animal may be excluded.

Q: What does under control mean? Do service animals have to be on a leash? Do they have to be quiet and not bark?

A: The ADA requires that service animals be under the control of the handler at all times. In most instances, the handler will be the individual with a disability or a third party who accompanies the individual with a disability. In the school (K-12) context and in similar settings, the school or similar entity may need to provide some assistance to enable a particular student to handle his or her service animal. The service animal must be harnessed, leashed, or tethered while in public places unless these devices interfere with the service animal’s work or the person’s disability prevents use of these devices. In that case, the person must use voice, signal, or other effective means to maintain control of the animal. For example, a person who uses a wheelchair may use a long, retractable leash to allow her service animal to pick up or retrieve items. She may not allow the service animal to wander away from her and must maintain control of the service animal, even if it is retrieving an item at a distance from her. Or, a returning veteran who has PTSD and has great difficulty entering unfamiliar spaces may have a dog that is trained to enter a space, check to see that no threats are there, and come back and signal that it is safe to enter. The dog must be off leash to do its job but may be leashed at other times. Under control also means that a service animal should not be allowed to bark repeatedly. However, if a dog barks just once, or barks because someone has provoked it, this would not mean that the dog is out of control.

Q: Are stores required to allow service animals to be placed in a shopping cart?

A: Generally, the service animal must stay on the floor, or the person must carry the service animal. For example, if a person with diabetes has a glucose alert dog, he may carry the dog in a chest pack so it can be close to his face to allow the dog to smell his breath to alert him of a change in glucose levels. When close proximity is needed, and there is no other means of carrying the dog, such as a harness or in arms, and if the person is not capable of carrying the service animal, the service animal is allowed in the shopping cart.



Q: Are restaurants, bars, and other places that serve food or drink required to allow service animals to be seated on chairs or allow the animal to be fed at the table?

A: No. Seating, food, and drink are provided for customer use only. The ADA gives a person with a disability the right to be accompanied by his or her service animal, but covered entities are not required to allow an animal to sit or be fed at the table.

Q: Is there anywhere that service dogs are not permitted?

A: Though service animals of all kinds can legally accompany their disabled handler almost anywhere the handler goes, they can be excluded from areas where their presence would constitute a fundamental alteration of goods and services available for all customers, an undue burden, or a direct threat to safety. Some exceptions to ADA access rights are due to other federal laws, treaties, or the Constitution. Examples where a service animal might be excluded include but are not limited to places where food is prepared (though they cannot generally be excluded from dining areas where food is present).

If a business can show that allowing a service dog to enter a specific part of their business would constitute a direct threat, fundamental alteration, or undue burden, then they may legally, with advice from their attorneys, exclude service dogs from entering there.

A general rule of thumb (which still has exceptions) is that if special clothing such as gown or gloves is required, then a service animal might also be excluded and certainly a service dog handler upon noting special precautions are required for a given area should inquire about whether a service dog can enter.

REFERENCE

[U.S. Department of Justice Civil Rights Division Disability Rights Section](#)

[Food and Drug Administration Food Code](#)

[Subdivision 26 of Section 108 of the Agriculture and Markets Law](#)

[New York State Department of Health Guidance Documents](#)

ADDITIONAL ASSISTANCE

Additional information on the ADA can be found using the following links:

Frequently Asked Questions about Service Animals and the ADA, U.S. Department of Justice:

https://www.ada.gov/2010_regs.htm

How to Comply with the Americans with Disabilities Act: A Guide for Restaurants and Other Food Service Employers, U.S. Equal Employment Opportunity Commission:

https://www.eeoc.gov/facts/restaurant_guide.html

ADA Website and Information Line:

<https://adata.org/>, (800) 514-0301 (Voice), (800) 514-0383 (TTY)

U.S. Department of Justice:

<https://www.ada.gov/animal.htm>, or call (202) 307-0663 (voice and TDD)

NYS Office of the Attorney General Website and Contact Information:

<https://ag.ny.gov/>, (212) 416-8250 (Voice) , (800) 788-9898 (TDD/TTY)

2017 Food Code, U.S. Department of Health and Human Services:

<https://www.fda.gov/food/fda-food-code/food-code-2017>