University of Tennessee, Knoxville
Trace: Tennessee Research and Creative Exchange

MTAS Publications: Hot Topics | Municipal Technical Advisory Service (MTAS)

8-22-2012

ADA Changes Regarding Service Animals

Margaret Norris
Municipal Technical Advisory Service, Margaret.Norris@tennessee.edu

Follow this and additional works at: http://trace.tennessee.edu/utk_mtastop

Part of the Public Administration Commons

The MTAS publications provided on this website are archival documents intended for informational purposes only and should not be considered as authoritative. The content contained in these publications may be outdated, and the laws referenced therein may have changed or may not be applicable to your city or circumstances.
For current information, please visit the MTAS website at: mtas.tennessee.edu.

Recommended Citation
Norris, Margaret, "ADA Changes Regarding Service Animals" (2012). *MTAS Publications: Hot Topics.*
http://trace.tennessee.edu/utk_mtastop/152

This Bulletin is brought to you for free and open access by the Municipal Technical Advisory Service (MTAS) at Trace: Tennessee Research and Creative Exchange. It has been accepted for inclusion in MTAS Publications: Hot Topics by an authorized administrator of Trace: Tennessee Research and Creative Exchange. For more information, please contact trace@utk.edu.

THE UNIVERSITY of TENNESSEE
MUNICIPAL TECHNICAL ADVISORY SERVICE
...in cooperation with the Tennessee Municipal League

#224
HOT topic

August 24, 2012

ADA CHANGES REGARDING SERVICE ANIMALS

Margaret Norris, Municipal Management Consultant

In the latter part of 2010 the Department of Justice made many changes to the Americans with Disabilities Act (ADA). One set of changes was with service animal regulations, and the modifications became effective on March 15, 2011. Specifically, the definition of what qualifies as a service animal has been narrowed to now read:

> 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. (§ 35.104 Definitions)

This means that people can no longer claim that their pet iguana is a service animal or that Fido (who has been trained to jump through hoops but not to detect seizures) cannot accompany his owner everywhere she goes.

As with many laws, there is an exception, and that has to do with miniature horses. Because the portion of the ADA regarding service animals is relatively short, including the four-prong test regarding miniature horses, it is included in its entirety here:

§ 35.136 SERVICE ANIMALS

(a) **General**. Generally, a public entity shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability.

(b) **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.

(c) **If an animal is properly excluded**. If a public entity properly excludes a service animal under § 35.136(b), 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.

(d) **Animal under handler's control**. 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).

(e) **Care or supervision**. A public entity is not responsible for the care or supervision of a service animal.

(f) **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).

(g) **Access to areas of a public entity**. 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.

(h) **Surcharges**. A public entity shall not ask or require individuals 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.

(i) **Miniature horses**.
(1) **Reasonable modifications**. 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.

(2) **Assessment factors**. 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—

(i) The type, size, and weight of the miniature horse and whether the facility can accommodate these features;

(ii) Whether the handler has sufficient control of the miniature horse;

(iii) Whether the miniature horse is housebroken; and

(iv) Whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.

(3) **Other requirements**. Paragraphs 35.136 (c) through (h) of this section, which apply to service animals, shall also apply to miniature horses.

Should you have questions about these changes, the Department of Justice has a very easy to read and understand one-page fact sheet available at this link: http://www.ada.gov/service_animals_2010.htm, or you may contact your management consultant at MTAS.

MUNICIPAL TECHNICAL ADVISORY SERVICE

Knoxville (Headquarters) . . . (865) 974-0411
Jackson . . . . . (731) 423-3710
Johnson City . . . . . (423) 854-9882
Martin . . . . . (731) 881-7055
Nashville . . . . . (615) 532-6827

The Municipal Technical Advisory Service (MTAS) is a statewide agency of the University of Tennessee Institute for Public Service. MTAS operates in cooperation with the Tennessee Municipal League to provide technical assistance services to officials of Tennessee's incorporated municipalities. Assistance is offered in areas such as accounting, administration, finance, public works, ordinance codification, and water and wastewater management.

MTAS *Hot Topics* are information briefs that provide a timely review of current issues of interest to Tennessee municipal officials. *Hot Topics* are free to Tennessee local, state, and federal government officials and are available to others for $2 each. Photocopying of this publication in small quantities for educational purposes is encouraged. For permission to copy and distribute large quantities, please contact the MTAS Knoxville office at (865) 974-0411.

www.mtas.tennessee.edu

The University of Tennessee is an EEO/AA/Title VI/Title IX/Section 504/ADA/ADEA institution.

MTAS4449 • E14-1050-000-012-13