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Legislation and Other Legal Issues Relevant in Choosing to Partner with a Service Dog in the Workplace

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Objective. Decisions to use a service dog for employment impacts more than just the workplace. It extends into housing, transportation, and public access. Findings from an exploratory study of the use of service dogs in the workplace revealed a need for clarification and dissemination of relevant laws and resulting regulations associated with living and working with a service dog (Glenn, 2013). This investigation sought to respond with a review of legislation and case law that may impact a person's ability to live and work independently with a service dog. **Method**. A search of the regulations and case law in the United States related to the use of a service dog in various environments was conducted, focusing on examples of legal precedents that have arisen at the federal, state and local levels. **Results**. Federal law and resulting regulations, as well as local and state case law, were presented for Disability Support and Accommodation: service animal definitions, use of service animals in different environments to include housing, public access, transportation, and employment, rights to privacy, and responsibility to maintain control of the dog. **Conclusions**. Two themes needing attention emerged: (1) discrepant interpretations of service animal in the law and by the general population and (2) among service dog handlers and allies there exists a lack of accurate information and ability to inform others of their rights, the laws and associated requirements related to service dog teams.

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We are discovering more and more ways in which dogs can help people with disabilities navigate through life and address a wider variety of health concerns (Eames, 2008; Ravn, 2011). The use of service dogs, in particular, appears to be spreading. They can be found in public arenas, restaurants, hospitals, recreational facilities, and on the job. They are accomplishing a goal that most individuals seek—a life of greater independence and accomplish-

ment. Anecdotal reports and scholarly research studies support the benefits of service dogs for people who are on a path to greater independence in their lives (Rintala, Matamoros, & Seitz, 2008). Yet, because of various legal and practical challenges, it is essential that the decision to partner with a service dog be made carefully.

Making an Informed Choice

Disability is not an isolated component of someone's life. It affects or is affected by family systems, healthcare options, economic status, living arrangements, community environment, rehabilitation resources, education, and employment availability. As a result, adding a service dog to the mix can be challenging. The decision is a significant one, as service dogs are not the best option for everyone (Shore Service Dogs, Inc., 2004). The level of commitment involved in maintaining a successful service dog partnership requires that people have access to sufficient and reliable information to make an informed choice in the matter. That information will allow them to analyze their lives, their support systems, environments and their ability to manage a service dog and the associated interruptions, as well as assistance.

As people work with healthcare professionals, vocational rehabilitation counselors, and others to critically examine this decision around using a service dog, they must understand the laws and regulations that address access to different environments with service dogs and may support or hinder efforts toward independence, particularly as it relates to employment. Misinterpretation of these laws and their application is a common problem for people with disabilities, their families, employers, and others (Military Handbooks, 2013). The language in the legislation regarding disabilities and service dogs is confusing and often more limiting than one may expect. For example, Glenn (2013) cited incidences of confusion among stakeholders (i.e., handlers, trainers, and vocational rehabilitation counselors) regarding the laws that apply to employment in an exploratory study of the elements of successful service dog partnerships in the workplace. Specifically, participants did not have a clear, unified understanding of the distinctions between Titles I, II and III of the Americans with Disabilities Act (ADA) of 1990 and ADA Amendments Act (ADAAA) of 2008. For instance, some incorrectly applied the guidance related to public access to their rights as an employee. An error or misinterpretation such as this is potentially detrimental to the process of negotiating a service dog partnership in the employment arena.

Understanding the Legal Aspects

Glenn (2013) also reported the stakeholders who participated in the study believed an understanding of the law was important to a successful service dog partnership in the employment arena. Legal Knowledge was one of the six categories brainstormed for purposes of organizing the elements of such a partnership that were devised by service dog users, trainers, and rehabilitation counselors. One element specifically addressed the need for "an informed understanding by employer and employee or applicant of the parameters, including limits, regarding the person with disabilities' legal rights, both state and federal, to the use of service dogs in the workplace" (p.5). This included information regarding what constitutes discrimination, addressing problems associated with coworkers or others who may have allergies or phobias; defining the difference between service dogs and pets; environmental limitations; as well as behaviors of the dog. The participants also perceived a need to further disseminate accurate, up-to-date information to employers, coworkers, people using service dogs, trainers, and vocational rehabilitation counselors.

As a step towards addressing these needs and concerns, the present study was conducted to search, review, and evaluate relevant federal and state statutes and legal actions. We recognized the need to expand our search beyond the traditional definition of workplace because a person must be able to travel to work and have a dog living in the same housing. They may also have work assignments that require air travel, meetings in restaurants and other facilities or companies; they may also interact with people other than coworkers including clients, the public, and people of all ages. The results were organized around these different life domains to highlight the main legal and practical considerations that are important when deciding to partner with a service dog.

Methods

A literature search was conducted of the legislation, regulations, and case law in the United States related to the use of a service dog in various settings. The search was focused on locating examples of legal precedents that have arisen at the federal, state, and local levels, but the scope included any evidence impacting the life of a person with a disability using a service dog, not only at work, but also in the home and greater community.

Data Collection

A search of legislation, regulation, and case law pertaining to service dogs was done using Westlaw Next, as well as state specific websites. Searches were conducted using the key terms "service animal" and "assistance animal," and the results were then cross-referenced with controlling state law. Next, each law or regulation was reviewed to determine how the state defines service animal in different contexts and the requirements for that state. The same method was used for federal laws and regulations. Finally, the cases and laws were narrowed to those pertaining specifically to service dogs. Anecdotal information, including reports about the legislation or regulations in the popular and professional press, commentaries, and websites of professional organizations, were also collected in the course of the searches to further assess the impact.

Data Analysis

Analyses of sources of information, to include Federal legislation, regulations and subsequent legal challenges, were done to identify messages that emerged from the documents. State laws vary and examples were also included in the review. Legal cases were reviewed and categorized based on

the setting and specific circumstances surrounding the case. The analyses focused on housing, public access, transportation, and employment. Legal challenges that were local and not generalizable to the larger population were included as points of reference. Then gaps, problems and unresolved issues were identified with evidence to support the analysis.

Results

Several federal, state, and local laws exist to support the civil rights of people with disabilities in access to transportation, housing, employment, and public accommodations. Federal laws are overarching guidelines that states are required to follow, and they set the minimum standard of protection for individuals with disabilities. States and local or municipal governments can codify greater protections than the federal government, but they cannot weaken or provide fewer protections than the federal requirements. In addition, no one federal law, such as the ADA, can take precedence over another federal law.

Perhaps the most well known federal disability legislation is the ADA (U.S. Department of Justice, 2009). According to the findings and purpose section of the 42 U.S. Code § 12101 (2008), the ADA was created by DOJ Civil Rights Division to "provide clear, strong, consistent and enforceable" standards prohibiting discrimination against an individual because of a disability. Public and private businesses, state and local government agencies, private entities offering public accommodations and services, transportation and utilities are required to comply with the law. The ADA has since been amended and is referred to as the ADA Amendments Act (ADAAA; U.S. Equal Employment Opportunity Commission, 2008). There are five Titles, three of which are relevant to this discussion. They are Title I: Employment; Title II: Public Services; and Title III: Public Accommodations.

Another relevant federal regulation is the Federal Housing Act (FHAct) administered by the U.S. Department of Housing and Urban Development (HUD) (2008). This regulates federal housing and provides guidelines for individuals with disabilities in various housing situations. The ADA addresses access for transit systems including fixed route buses, light and heavy rail systems, ADA complementary paratransit, over-the-road buses, shuttles, and other forms of publicly and privately-funded public transportation (1990; 2008). The Air Carrier Access Act (ACAA; U.S. Department of Transportation, 2003) provides rules and regulations for air travel and transport of service animals.

Due process exists for those who believe a person or entity has been discriminatory and violated the protections afforded by federal, state and local laws. In these cases, the courts may provide clarity to associated laws and regulations. These may occur at different levels of the judiciary system and can often provide invaluable guidance to the person with the service dog.

Service Animals Defined under the Law

> Titles II and III of the ADAAA (U.S. Department of Justice, 2008) defines a service animal as 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 (p.unk).

Dogs were the only service animals considered under the protective guidance of Titles II and III of the ADA, but in the revised ADA regulations there is a provision for miniature horses that have been trained for service. There are no specifications regarding how the animal is trained, only that it is and that it mitigates a limitation associated with a person's disability by performing a task or work. Ensminger and Breitkopf (2009) reported on court action relative to training when the Seventh Circuit Court ruled in *Bronk v. Ineichen* 54 F.3d 425 (1995) that instructions to a jury in a trial court improperly indicated a hearing dog needed to be trained through a certified school. There are different avenues by which people obtain or train their dogs.

The U.S. Department of Justice (DOJ) goes on to describe the work in this manner:

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

Understanding the proper task language is important for a handler when they are confronted in different environments because of the language in federal legislation and regulatory actions that will be presented later in this article. The ADAAA (U.S. Equal Employment Opportunity Commission, 2008) considers "emotional support animals" to be distinct from psychiatric service dogs, and thus emotional support animals are not given the right to accompany people in public places. If a person has a psychiatric service dog, a response to an inquiry about the task the dog performs should make the distinction between this dog and an emotional support animal that provides comfort only.

State laws can conflict with the definition of what constitutes a service dog accompanying a person with a

disability. Parenti, Foreman, Meade, and Wirth (2013) found only one state statute included language specific to the ADA. Ten states had definitions restricting protection to service dogs that assist people with physical disabilities. Seven states included minimal protection as a task, one that is not recognized in the ADA. This creates ambiguity for people who may only have knowledge of state statutes and are not aware of the overarching federal regulations. Nor may they understand that state laws are not to be more restrictive than federal and, in the case of a conflict in laws, federal statute prevails.

It should also be noted that the ADA or ADAAA do not address health care for the animal. In a 2015 *Frequently Asked Questions* document produced by the DOJ, it is stated that individuals must adhere to local health regulations, including animal control and public health requirements. The animals must also adhere to local registration and licensing requirements for pets. The ADA does not specify breed limitations for service dogs and that can be in conflict with local breed bans.

Defining Disability in the Context of Service Animals

As stated in the ADA and the ADAAA, the intended purpose of service dog partnerships is to provide necessary support for people with significant disabilities. It is often asked 'what constitutes a significant disability?' The United States Supreme Court established a three-step inquiry process to determine whether a particular condition falls within the definition of a disability under 42 U.S.C. § 12101(2)(A). The ADA provides this as "(a) a physical or mental impairment that substantially limits one or more of the major life activities of [an] individual; (b) a record of such impairment; or (c) being regarded as having such an impairment" 42 U.S.C. § 12102(2) (1990).

When a person with a disability partners with a service dog, the fact that a disability exists becomes public knowledge. For some individuals, particularly those with disabilities not readily apparent, this is new and can be disconcerting. There must be privacy of information because of the potential for stigmatization and/or discrimination. Most importantly, people must be aware of their right to privacy even when confronted by business owners or public service officials, including law enforcement. This privacy is not absolute; the person, who is handling the service dog, must be able to articulate the tasks the animal is trained to perform.

The DOJ's Civil Rights Division summarized the allowable inquiries by staff in public arenas in their ADA 2010 Revised Requirements document (2011). Staff may ask two questions:

> (1) is the dog a service animal required because of a disability, and (2) what work or task has the dog been trained to perform? Staff cannot ask about the person's disability, require medical documentation, require a special identification card or training documentation for the dog, or ask that the dog demonstrate its ability to perform the work or task. (p.1)

The staff of the Job Accommodation Network, a program of the U.S. Department of Labor provided information (personal communication cited in Glenn, 2013) that employers were seeking assistance to address accommodation requests for a wider variety of disability-related needs than ever. They had moved from the traditional guide dog for people with visual disabilities to mobility and stability assistance dogs, as well as to help people with hearing impairments, diabetes, seizure disorders, migraines, to name a few. Given the expanded use of service dogs has been relatively recent, one could expect that employers and other members of the public will not have sufficient information or understanding of the complexity of using dogs for a disability-related task.

Service Animals in Different Environments

The different federal and state legislation, statutes and regulations focus on various aspects of life and a person's ability to access them. In the following, we address those that relate to housing, transportation, and employment and the specific rights of people with disabilities who use service dogs.

Housing. Federal laws provide some housing-related protections, but these cannot be universally applied to all housing arrangements. The 1988 amendments to the Fair Housing Act (FHAA; DOJ) expanded civil rights coverage to people with disabilities in the sale or rental of certain housing (42 U.S. Code § 3604). In the case DuBois vs. Association of Apartment Owners of 2987 Kalakaua (State of Hawaii, 2006), the test for determining discrimination in housing was articulated as follows:

> (1) plaintiff is handicapped under 42 U.S.C. § 3602(h), (2) defendant knew or should reasonably be expected to know of the handicap, (3) the accommodation is necessary to afford the resident equal use and enjoyment of housing, (4) the accommodation is reasonable, and (5) defendant refused to grant the accommodation.

The law covers not only the named buyer/renter but also all individuals who reside in the dwelling or are associated with the buyer or renter.

In the 1988 regulations, the FHAA does not address service animals specifically. They provide a process that allows people with disabilities due process by including language relative to requesting reasonable accommodations (24 CFR 100.204; HUD, 2004). In 2002, HUD addressed the need to conform to the requirements for animals assisting persons with disabilities in their public housing programs in their final rule in the Pet Ownership for the Elderly and Persons With Disabilities 24 CFR Part 5 entitled "Exclusion for animals that assist persons with disabilities". This also covered animals that reside in housing projects for the elderly and people with disabilities (24 CFR 5.303; HUD, 2002). HUD also did not limit the definition of service animal to dogs or miniature horses, a distinction from the ADAAA

(2013). However, they did stipulate that owners or Public Housing Authorities may require documentation regarding the necessity and qualifications of assistance animals.

Service animals are not legislatively categorized as pets. As a result, they are not subjected to pet rules or policies of housing providers such as size or weight restrictions, exclusion from specific common areas, or access restrictions to only a particular door or elevator. Service animal handlers cannot be required to display specific identification of the animal, such as tags or vests. It also is the position of HUD that "no deposits may be charged for the service animal" (Bornstein & Duncan, 2004).

Courts have upheld the notice that individuals may be required to make housing boards aware of disabilities before they request access for a service dog. In Hawn vs. Shoreline Towers Phase 1 Condo Association, Inc., the Court determined that an individual may be forced to provide evidence to establish that the housing board knew or should have known of the disability (U.S. District Court, 2009). Hawn purchased a dog and referred to him as a pet, despite the condo's 'no pets' policy. Hawn initially contacted the condo board asking them to change the 'no pets' policy. When they refused, he claimed the dog was a service dog and provided letters from his chiropractor and psychologist as to the tasks the dog could perform. The board refused to allow the dog and asked for more information about his disability to further consider his request. Hawn did not reply to this letter and instead filed a complaint with the Florida Commission on Human Relations who found the condo board had discriminated against Hawn by refusing to accommodate his disability. The district court subsequently granted summary judgment to the condo board holding that Hawn had not provided sufficient evidence to establish that the board knew or should have known of the disability, stating that it would be difficult for a housing provider to provide accommodations if they are unaware of a tenant's disability. It was explained that a physician-written letter stating a need for an animal based on "medical reasons" was not enough justification for such an accommodation; more information on the nature and extent of the disability was needed.

In 2013, HUD issued an FHEO Notice specific to Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded programs. The intent was to explain obligations of housing providers toward accommodating animals assisting people with disabilities. The clarification provided information specific to the issue in three different laws, including FHAct, Section 504 of the Rehabilitation Act of 1973, and the ADA. The information specifically indicates that:

> Persons with disabilities may request an accommodation for any assistance animals, including an emotional support animal, under the FHAct or Section 504. In situations where the ADA and the FHAct/Section 504 apply simultaneously (e.g., a public housing agency, sales or leasing offices, or housing associated with a university or other place of education), housing providers must meet their obligations under both the reasonable accommodation standard of the FHAct/Section 504 and the service animal provisions of the ADA. (p.1, FHEO-2013-01)

The notice further addressed what housing providers must consider as part of the reasonable accommodation consideration. This includes:

> Does the person seeking to use and live with the animal have a disability – i.e., a physical or mental impairment that substantially limits one or more major life activities?
>
> Does the person making the request have a disability-related need for an assistance animal? In other words, does the animal work, provide assistance, perform tasks or services for the benefit of a person with a disability, or provide emotional support that alleviates one or more of the identified symptoms or effects of a person's existing disability? (p. 3, FHEO-2013-1)

Public Access. The ADAAA (EEOC, 2008) covers only public access within the context of transportation, public entities, and public accommodations. In Pena vs. Bexar County, Texas (U.S. District Court, 2010), the Court acknowledged that the lack of local policies regarding service dogs leads to confusion and frustration in many situations. The plaintiff, Pena, had obtained a service dog after suffering a stroke. He entered the courthouse with his dog, a 90- pound Akita, to go through adoption records. He was stopped by security at the door and asked for verification that he was disabled and the dog was indeed a service dog. Pena provided the verification and was allowed to continue to the adoption records, but shortly thereafter, he was approached by a sheriff's deputy who told him to leave the courthouse as dogs were not allowed. Pena refused, citing his disability, but the officer said only "seeing eye" dogs were allowed in the courthouse after the 9/11 terrorism incident. Pena's continued refusal to leave resulted in his arrest for trespassing. Pena then sued the county and the officers for discrimination, as well as emotional and physical harm caused by the arrest. The court held that "the ADA imposes upon public entities an affirmative obligation to make reasonable accommodations for disabled individuals." The county officer had a legal obligation to put effort into satisfying the matter before arresting the person.

In another case, Amick vs. BM & KM (U.S. District Court, 2003), the Court wrote "hotels, included in this definition, are often alleged to have failed to reasonably accommodate by denying service animals when patrons with disabilities try to place reservations, as was the case in one Georgia lawsuit." The plaintiff, who was legally blind and utilized a service dog to aid in his daily activities, and a business partner traveled to Georgia on business. When they tried to secure a hotel room at a franchise motel, they were refused because of the plaintiff's service dog. They left the hotel and secured a room elsewhere. A few days later, the plaintiff filed suit against the manager of the hotel and the owners of the franchise. The District Court judge in favor of the plaintiff held that: (1) Georgia statute

requiring equal accommodations for persons with disabilities and giving blind persons the right to be accompanied by guide dog created legal duty on part of defendants, and (2) statute requiring innkeepers to receive all guests of good character created legal duty on part of defendants.

Transportation. Title II of the ADA (42 U.S.C. §§ 12131-12165) and its CFR provisions (28 CFR Part 35), written by DOJ and DOT, prohibits discrimination against individuals with disabilities (see disability discussion in Title I: Employment) by "public entities" in the services they offer. This guarantees equal access to transportation. The Federal Transit Administration's Office of Civil Rights is responsible for civil rights compliance and monitoring to ensure nondiscriminatory provision of public transit services. There must also be provision for paratransit service. Title III requires private transportation businesses to provide readily accessible vehicles. This might be hotel or airport shuttles, private buses and taxis. Access is extended to individuals with disabilities who are accompanied by a service dog.

Air transportation is governed by the Air Carriers Access Act (ACAA; U.S. Department of Transportation, 2003). This act, codified in 49 U.S.C § 41705, and its regulations (14 C.F.R. Part 382) promulgated by the U.S. Department of Transportation (DOT), prohibits discrimination against qualified individuals with disabilities in air travel. It requires air carriers to make aircraft and related facilities accessible for individuals with disabilities and it also requires carriers to make efforts to accommodate passengers with disabilities. This Act is designed to ensure that the already complex and daunting process of air travel does not also result in discrimination against individuals with disabilities.

The ACAA uses essentially the same definition of disability as the ADA and FHAA, focusing on protecting individuals with physical or mental impairments that substantially limit a minimum of one major life activity 14 C.F.R. § 382.3(a), (2), (c), (d) (2009). Those activities include "any mental or psychological disorders, such as . . . emotional or mental illness . . . ," "or having a record or being regarded as having such an impairment." A qualified individual with a disability is someone who attempts to avail themselves of the air carrier's services and benefits, attempts to purchase a ticket to travel on the air carrier, and shows a ticket and arrives to catch a flight. The DOT (2003) guidance document defines service animal as any guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability. An animal meeting this definition is considered a service animal regardless of whether it has been licensed or certified by a state or local government. (pg. 4875)

The regulations further give notice that carriers shall permit dog or other service animals to accompany an individual with a disability on a flight; accept as evidence...identifiers such as identification cards, other written documentation, presence of harnesses, tags or the credible verbal assurances of a qualified person with a disability using the animal; and permit a service animal to accompany a qualified individual with a disability in any seat in which the person sits, unless the animal obstructs an aisle or other area that must remain unobstructed in order to facilitate an emergency evacuation or to comply with FAA regulations. (p. 4875)

An important distinction in this language is the language that allows representatives of the carrier to request documentation to verify the animal is a service animal. This may be done if the person's verbal assurance does not seem credible and is only used to determine if the passenger has a disability-related need for the dog. Carriers also have the right to require a 48-hour notice of the need to accommodate an emotional support or psychiatric service animal. They may require documentation from a mental health professional. DOT recommends they do not maintain health records of passengers, so the traveler would have to be responsible for providing the documentation for each travel event (DOT, 2009). One can be denied access as a result of disruptive behavior from dog or human. An interesting note is that a person may be allowed to bring more than one service animal on the plane. (DOT, 2003).

Employment. The ADA (DOJ, 1990) is the most cited law used in the hiring of people with disabilities and addressing reasonable accommodations. The guiding principle of the ADA related to employment is individuals with disabilities who want to work and are qualified must be provided equal opportunities to do so. To facilitate this, individuals with disabilities may need employers to consider modifications to policies, procedures, structures, etc.

Title I of the ADA (42 U.S.C. §§ 12111-7) and its CFR provisions, created by the Equal Employment Opportunity Commission (EEOC) (29 C.F.R part 1630), prohibit discrimination against individuals with disabilities in employment (DOJ, 1990). Discrimination against a person with a disability in employment applies to "...job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment" and includes; separating or segregating an applicant or employee, having an arrangement to discriminate against an applicant or employee, using discriminatory standards, excluding job benefits or opportunities to people who have or are associated with someone with a disability, screening out people with disabilities, or using tests that are not adapted to get accurate results from people with certain disabilities. Discrimination in employment includes:

> ...failing to make reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual who is an applicant or an employee, unless such covered entity can demonstrate that the accommodation would impose undue hardship on the operation of the business of such covered entity...

As service animals are not mentioned anywhere in Title I or in Title I's CFR provisions, they implicitly fall under an employer's reasonable accommodations as "auxiliary aids or services" [42 U.S.C. § 12103(1)]. Title II however defines

service animals as 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 handler's disability.

A reasonable accommodation is any change to the work environment or in the policies or practices of an employer that enable a qualified employee with a disability to perform the essential functions of his or her position or apply for a job. In McDonald vs. Department of Environmental Quality (DEQ; Montana Department of Labor and Industry, 2005), the appellate court reversed the lower court decision, ruling that service animals are not pets, but rather a type of assistive device that needs to be accommodated. In this case, McDonald, who suffered from dissociative episodes, depression, and was physically limited by a leg injury due to a car accident, was hired by DEQ. Three years before she began working at DEQ she received a service dog, Bess. Bess began slipping on the floors in DEQ's building. McDonald took Bess to work on weekends and to other places with similar floors to practice as well as buying her booties, but nothing kept her from slipping on the floors. A condition inventory was done of the building, and it was suggested that runners be installed in the building because people kept slipping and falling. McDonald contacted the human resources department asking for full-length runners to accommodate her under the ADA. Mats were installed in the area, but they covered a smaller surface than originally requested. Bess fell two more times resulting in injuries, which forced her to be retired. McDonald then left DEQ and then filed a disability discrimination complaint with the Human Rights Bureau of the Department of Labor and Industry, which ruled in favor of McDonald and awarded her damages. DEQ appealed the decision to a Montana District Court who reversed the Human Rights Bureau decision stating that there was a duty to reasonably accommodate McDonald, not her dog, and that duty had been met. However, the Appellate Court reversed the District Court's decision and held that the accommodation was for McDonald, not the dog. By accommodating the dog, they would have been accommodating McDonald; denial of the dog is a denial to McDonald, which qualifies as discrimination.

It is important to note that the ADA is not universally applicable. For instance, Title I of the ADAAA applies to employers with 15 or more employees. Some states have provided more protections. Ohio, for instance, provides these identical protections in employment settings where there are four or more employees. Also, Section 504 of the Rehabilitation Act of 1973 obligates employers who receive federal funding to provide reasonable accommodations to people with disabilities (29 U.S.C. § 794) and Section 501 of the Rehabilitation Act of 1973 gives similar rights to federal employees who have disabilities (29 U.S.C. § 791; U.S. Department of Labor, 1973).

Eames (2008) reported on litigation between Chris Branson and the Lakeside V.A. Hospital. In 1999, a judge in the Northern District of Illinois, Eastern Division ruled that the hospital had violated Section 504 of the Rehabilitation Act by denying Branson the right to be accompanied at work by her service dog. The judge found that the hospital had made insufficient effort to cooperate and fell short of its responsibilities under the Act. Specifically, they never explained the objections or suggested any alternatives, while continuing to deny Branson the ability to use her service dog.

Responsibility to Maintain Control of the Dog

Disruptive behaviors by any member of a service dog team, human or canine, can lead to removal from a business or other public place. In addition, disruptive behavior that is not reflective of what is expected from a trained service dog can also be a reason to be denied access to air transportation. Under the ADA (DOJ, 1990), service animals must be harnessed, leashed, or tethered, unless these devices interfere with the service animal's work or the individual's disability prevents using these devices. In those exceptions, the individual must maintain control of the animal through voice, signal, or other effective controls. Some states have more specific legislation, such as the Virginians with Disabilities Act, Title 51.5 of the Code of Virginia. The language states that:

> Every totally or partially blind person shall have the right to be accompanied by a dog in harness trained as a guide dog, every deaf or hearing-impaired person shall have the right to be accompanied by a dog trained as a hearing dog on a blaze orange leash, and every mobility- impaired or otherwise disabled person shall have the right to be accompanied by a dog, trained as a service dog, in a harness, backpack, or vest identifying the dog as a trained service dog, in any of the places listed in subsection B without being required to pay an extra charge for the dog, provided that he shall be liable for any damage done to the premises or facilities by such dog (2010).

The implication in this statute is that specific identifiers (e.g. harness, vest, orange leash) would be sufficient for access of service dogs. It might be noted that this language was also applied to service dogs in training over 6 months old and accompanied by an experienced trainer.

Discussion

A canine partner in a service dog team is not a supportive device that just waits for a person in the office or at home. Well-trained service animals work most effectively when people help them maintain their skills and incorporate them into all aspects of daily activities. The animals live, play and work with their partners. This means someone who is contemplating using a service dog for independence must be aware of the barriers and supports that are in all parts of their lives, including home, employment, healthcare, recreation, public accommodations and transportation.

Given the potential for service dog use to increase over the years, it is important for current and future service dog

handlers to review from a legal perspective the obstacles and issues that have arisen for others. In reading the case law and federal legislation, two main issues appear to be of major concern: interpretation of what constitutes a service animal under the law and related access; and what evidence is minimally sufficient to support the need for an accommodation involving a service dog.

Interpretation of Service Animals

One of the barriers to interpreting and applying the law regarding the use of service dogs is the inconsistency in terms used in federal, state and local law, as well as by the public (Parenti, Foreman, Meade, & Wirth 2013). Until a consistent taxonomy is accepted universally, guidance on what constitutes a service animal is limited to the legal definitions applied in the ADAAA, Rehabilitation Act, the Air Carrier Act, and statutes put forth by HUD, among others. A person considering a service animal must be aware that these federal guidelines vary. The ADAAA limits the definition to dogs and, under Titles II and III, miniature horses. The FHAA and Air Carrier Act broaden the definition, even including access for emotional support animals. Individuals with disabilities must also be able to properly identify their animal and relate the associated tasks.

One area that may create a level of misunderstanding is the varied uses of dogs for people with psychiatric disabilities. A psychiatric service dog must be able to perform tasks directly related to the individual's psychiatric disability; one must consider both the primary purpose of the dog and also the animal's ability to recognize and respond to the individual's needs (NOLO, n.d.). Psychiatric service dogs may learn to anticipate and detect onset of panic attacks or nightmares and perform a task to alleviate the condition. They may be trained to survey a room before someone enters and turn on lights, remind their handler to take medication, interrupt self-mutilation or repetitive behaviors, or help a person leave a dangerous or anxiety-provoking situation (Brennan, 2013). Therapy dogs or animals that provide psychological support alone, commonly called emotional support dogs, may not be considered a service dog. The ADAAA (EEOC, 2008) considers 'emotional support animals' to be distinct from psychiatric service dogs. Emotional support dogs are not granted the access to public places or work sites as psychiatric service dogs, although they are allowed with appropriate documentation of need in certain housing situations and in air transportation.

Asking versus Informing

People with disabilities must be able not only to maintain the behavior and training of their service dog partner, but also to understand legal and legislative supports and constraints. They need the skills to articulate them accurately to others including employers, landlords, transportation carriers, business owners, and police. Patience and understanding is often required of the service dog handler as few people have direct experience with service dogs and probably fewer have awareness or understanding of the laws. One of the legal cases cited earlier puts the onus on public servants (e.g., police) to do their due diligence in addressing service dog access. It was determined they had a legal obligation to make appropriate decisions and actions in protecting public access rights of people with disabilities. Nevertheless, a service dog team may not always be granted easy access to public areas and being prepared for the eventuality of a challenge is necessary.

There are cases in which the person with the service dog has not provided the correct or sufficient information required for access. In most public access situations, it is sufficient to state that the dog is a service animal that is required because of a disability, and specify what work or task the dog has been trained to perform. There appears to be a prevailing belief that this transfers as sufficient in all arenas of life. Even within the Titles of the ADA there are discrepancies. In housing, as evidenced by the Condo Home Board case (U.S. District Court, 2009), these requests must be made in writing. Air carriers are also allowed to ask for documentation that a passenger needs a service dog; in the case of a psychiatric service dog or an emotional support animal, they are even allowed to require 48-hour advance notice.

In the employment arena, the responsibility for making the argument that a service dog meets the definition of a reasonable accommodation lays with the job applicant or employee who is using the service dog. However, responsibility also lays with the employer to be diligent in providing sufficient interactive opportunities to work through the request. Given the potential for misinformation and changing legislation, we recommend that both employee and employer seek guidance from available resources. One such resource is the Job Accommodation Network (JAN; http://askjan.org), which is funded by the U.S. Department of Labor. The JAN representative that specializes in information related to service animals can be reached by phone at (800) 526-7234 or (877) 781-9403 TTY. Their website provides specifics on service dogs at http://askjan.org/topics/servanim.htm

In addition, people with disabilities can receive help from their state vocational rehabilitation agency. Rehabilitation counselors and job placement specialists may provide support for work reentry or assistance in maintaining employment. A list of state agencies is available on the JAN website. Veterans with service-connected disabilit(ies) can also apply to the Vocational Rehabilitation and Employment (VR&E) Program that was authorized by Congress under Title 38, USC, Chapter 31 (U.S. Department of Labor, 1994). It is sometimes referred to as the Chapter 31 program and operated by the Department of Veterans Affairs.

Limitations

There are limitations to the present review, most specifically regarding the court cases that were identified and considered in the results. Most cases are state specific and thus may not provide bearing on other or future legal cases in the U.S. except as a point of reference. Furthermore, the present review was not all-inclusive of every state or local case because of the difficulty in accessing the records. Only

cases that were taken to final judgment were considered in this review. Many others may have been filed but settled out of court or withdrawn, and thus were not included in this analysis. Eames (2008) provides examples of employment related cases where the plaintiff and defendants chose or were directed to mediation. Most had not been settled by the time he wrote the paper; one had not started.

The Job Accommodation Network conducted an analysis of legal concerns and service dog access in the employment arena for their Accommodation and Compliance Series, specifically titled *Service Animals in the Workplace* (Batiste, 2011). Putting this information together with a more comprehensive search for access information allows an individual with a disability to better navigate a complex situation.

Implications

The laws pertaining to service animals are complex, multifaceted, and sometimes require interpretation by the legal system through litigation. Yet, the time and financial resources required to address housing, public access, transportation, and employment challenges in the courts can be prohibitive. One solution is to explore non-profit structures and other legal resources to support service dog teams. For example, a familiar program often referred to in service-dog groups on social media is the ProBono Program. Their volunteers and "Legal Beagles" provide legal resources for service dogs and their handlers, acting as a nationwide network committed to the advancement of service dogs. A program of this sort may be helpful at local or state levels.

In support of this idea, animal law has become an emerging area of study in law schools. As defined by Wagman and Liebman (2011), animal law is concerned with issues related to nonhuman animals, including legislative, judicial, regulatory, and executive facets. In 2001, only nine law schools in the United States covered animal law; today, there are over 100 law programs that have animal law coursework (Rich, 2013). In fact, some schools have programs directly dedicated to animal law. Although it is common to associate animal law with animal cruelty laws and cases, housing disputes involving animals have also been of interest, discrimination of individuals with disabilities using service animals is not as commonly examined by those in the field. As the field of animal law continues to develop, it may be beneficial and appropriate for animal law programs to emphasize a discrimination component for individuals using a service dog, to include but not be limited to housing, transportation, public access, and employment.

A well-informed service dog handler, together with a well-informed community, can go a long way in making service dog accommodations work for people who rely on them for their health and well-being and, in many cases, their lives. There are numerous avenues for ongoing training and dissemination of information. Creating local support groups can be of help, as can groups such as Assistance Dogs International, Service Dog Central, International Assistance Dog Week, and Service Dogs in the Workplace, among others.

Our review of legislation and case law provides only some of the information needed to make changes in what happens day-to-day for people with disabilities who use service animals. Only major implications were highlighted for varying fields of work and occupations, including those in law enforcement, public transportation, housing, and employment. Research is needed on the perceptions, levels of knowledge and skills of the different types of people (e.g., counselors, rehabilitation counselors, family, friends, etc.) engaged in decision making, and interfacing with people with disabilities. Similar research is needed with service dog handlers and trainers. Information gained from this type of study could be used to inform and educate those in the aforementioned fields and occupations, so that they are better equipped to handle service dog-related issues as they arise in the workplace.

Author Note

The findings and conclusions in this report are those of the authors and do not necessarily represent the views of the National Institute for Occupational Safety and Health.

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