

A yellow Labrador Retriever is shown from the chest up, wearing a brown leather harness with a metal handle. The dog is looking towards the camera. A person wearing a blue shirt is partially visible behind the dog. The background is a plain, light-colored wall.

Assistance Animal Users' Public Accommodations and Fair Housing Toolkit

The Equal Rights Center



The Equal Rights Center (ERC) is a national non-profit civil rights organization dedicated to promoting equal opportunity in housing, employment, public accommodations, and government services.

With more than 5,500 members across the country, the ERC has worked for 30 years to identify, address and remedy both individual instances of discrimination, as well as large-scale, systematic discrimination nationwide.

The ERC collaborates with government agencies, allied civil rights organizations, and housing, retail, and restaurant industry leaders; provides training and expertise to individuals and entities; and advocates on behalf of people who have experienced discrimination.

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Introduction



From guide dogs that help blind individuals navigate their surroundings, to cats that provide emotional support to people suffering from depression, there are numerous types of assistance animals available to people with disabilities. However, federal laws governing the right to be accompanied by these animals in various settings can be confusing.

This toolkit is designed to help define and categorize the different types of assistance animals, and to inform those who use an assistance animal of their rights and what they can do if they experience discrimination. This toolkit focuses on the federal laws that prohibit differential treatment of those who use assistance animals in public accommodations and housing. Every state and some counties have their own equal access and fair housing laws, which may provide further protections to people with disabilities who live in that jurisdiction.

Service and Other Assistive Animals

Assistive animals include service animals, support animals, and assistance animals. Virtually any animal that performs tasks or provides support to a person with a disability by alleviating at least one of the identified symptoms or effects of a disability is considered an assistive animal.

Not all assistive animals are allowed in all places. Under the Americans with Disabilities Act (ADA), only animals defined as “service animals” must be allowed in public places such as retail stores, hotels, and restaurants. However, under the Fair Housing Act (FHA), housing providers and property managers must allow any assistive animal that helps provide a person with a disability equal opportunity to enjoy the dwelling.

What is a service animal?

According to the U.S. Department of Justice, a **service animal** is defined as, “a **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.” There are specific criteria that must be met in order for an animal to be considered a service animal:

- Only dogs can be considered service animals;
- The tasks performed by a service animal must be directly related to an individual’s disability;
- A service animal must be individually trained by a professional or owner to perform a task.
- A service animal needs no documentation or vest.

The following are examples of tasks that a service animal may perform for an individual:

- A guide dog that aids people who are blind by assisting with navigation and alerting an individual to changes in surroundings;
- A dog that assists people with limited mobility by retrieving items or assisting with balance;
- A dog that assists people with Post-Traumatic Stress Disorder (PTSD) by creating personal space and fetching medicine;
- A dog that assists someone who is Deaf by alerting them to auditory clues.

ted as service animals in places of public accommodation, because they are not dogs. Likewise, there are dogs and other animals that provide assistance and are considered assistive animals, but are not formally trained and therefore do not meet the criteria for a service animal.

An emotional support animal, which may also be referred to as a companion animal, a therapy animal or a comfort animal, provides therapeutic nurturing and support and is a common type of assistive animal. While any type of animal can be an emotional support animal, support animals tend to be cats and dogs. These animals provide comfort, companionship and stress relief to individuals with severe depression or anxiety. Mental health professionals believe that these animals are very effective in assisting people with mental illness function better in their daily lives.

Like service animals, other assistive animals are not required to have tags or licenses.

What are other assistive animals?

Animals that provide assistance to people with disabilities but do not meet the definition of a service animal must generally be permitted in one's home, although not in public accommodations. In order for an animal to be considered an **assistive animal**, the following two criteria must be met:

- Does the individual using the assistive animal have a recognized disability under the law?
- AND**
- Does the animal serve to ameliorate at least one of the conditions of the recognized disability?

The definition of emotional support and other assistive animals is quite broad and is intended to encompass more animals than those defined as service animals. Some animals, such as cats and small monkeys, have been trained to perform tasks but are not permit-



Photo courtesy of Trillium Studios

Federal Laws Protecting the Use of Assistance Animals



Service Animals and the Americans with Disabilities Act

The Americans with Disabilities Act (ADA) is a federal law that protects people with disabilities from discrimination. Under Title III of the ADA, people with disabilities must have equal access to all goods and services afforded to other individuals. The ADA applies to all places of public accommodation, including:

- Restaurants
- Retail Stores
- Hotels
- Movie Theaters
- Private Schools (but not religious schools)
- Convention centers
- Doctors' offices
- Private transportation
- Recreation facilities

In order to ensure equal access to goods and services, the ADA requires public places to make reasonable modifications in policies, practices or procedures when modifications are necessary to afford goods, services, facilities, privileges, advantages or accommodations to individuals with disabilities. A valid reasonable modification request may only be denied if it would fundamentally alter the nature of the good or service being offered to the public.

Permitting service animals is among the most common type of reasonable modification. Public accommodations must permit the use of a service animal by an individual with a disability, unless the animal is out of control or is not housebroken.

It is important to note that under the ADA, public places must provide a modification for service animals, but not other types of assistive animals. Although only dogs are considered service animals, individuals using miniature horses are generally also entitled to a reasonable modification under Title III of the ADA.

Assistive Animals and the Fair Housing Act

The Fair Housing Act (FHA) provides protections to people with disabilities in housing-related transactions, including the right to obtain a reasonable accommodation for the use of an assistive animal. In order to ensure equal access, the FHA requires that housing providers provide reasonable accommodations to people with disabilities that are necessary for the person to have equal opportunity to enjoy the dwelling.

A reasonable accommodation under the FHA is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity. A housing provider or property manager must grant a reasonable accommodation if:

- There is an identifiable relationship between the requested accommodation and the individual's disability.

AND

- The requested accommodation does not impose an undue financial or administrative burden on the housing provider.

For example, a landlord may have a "no pet" policy, but the landlord is required to make a reasonable accommodation by waiving



that policy for an individual with a disability who uses an assistive animal. Any fees or costs that may be required to have a pet in the building (e.g., a pet deposit) should also be waived. Under the FHA, all assistive animals are considered reasonable accommodations, including emotional support animals, service animals and any other assistance animal.

Summary

Because of the wider range of activities which someone can do in the privacy of his or her home, people with disabilities often have more protections in the housing context than elsewhere. A person with a disability who uses any type of assistive animal, including an emotional support animal or a service animal, is entitled to a reasonable accommodation to have the animal in their home without any additional fee or cost. In a public place, such as a restaurant, theater or store, a reasonable modification to allow the animal is only required if it is a trained dog or miniature horse that meets the definition of a service animal.

Requesting a Reasonable Modification or Reasonable Accommodation

In general, the process for securing a reasonable modification in a public place under the ADA versus a reasonable accommodation in housing under the FHA is very different. Under the ADA, a request should generally not be required. A person with a disability who has a service animal is entitled to enter any location, and need only explain when asked that the dog is a service animal related to a disability. People with disabilities who are denied access to, or limited from portions of, public places because of their service animals can, and should file a discrimination complaint.

Under the FHA, a reasonable accommodation in housing generally needs to be requested, which can be done verbally or in writing. When possible, making a written request and requesting a written response may help enable you to challenge a denial of your request. Whether made verbally or in writing, a request for a reasonable accommodation must make clear that you have a disability and the accommodation requested is needed because of the disability. (For more information on how to request a reasonable accommodation in housing, see the Equal Rights Center's Accessibility Self-Advocacy Toolkit.)

Reporting Discrimination

Anyone who believes they have experienced discrimination in violation of the ADA or the FHA may contact the Equal Rights Center for assistance, or file a complaint with the applicable federal or local agency. For discrimination in a public place, in violation of the ADA, a complaint can be filed with the U.S. Department of Justice. For housing discrimination in violation of the FHA, a complaint can be filed directly with the U.S. Department of Housing and Urban Development (HUD). State and local human rights offices may also be able to respond to your complaint.

The ERC can explain your rights under the law and discuss possible options for you to address the problem.

When making contact with the ERC, or filing a complaint form yourself, be sure to include the following information

- Your name, address, phone number(s);
- Name(s) of the person(s) who committed or were involved in the alleged discrimination
- The basis or bases on which you think you may have been discriminated against;
- Specific date(s) and time(s) discrimination occurred, including when you made any request(s) for a reasonable modification or reasonable accommodation
- and when you received any responses(s);
- Location(s) where the discrimination took place, including the name of any company, owner, or management involved;
- A brief description of the events, in chronological order; and
- Any actions you have already taken, including requesting an accommodation or modification, and any responses received.

Advocacy Tips

Whether you are working with the ERC, or filing a complaint on your own, knowing how to be an effective advocate will help you reach a good resolution. Below are some advocacy tips that can help you in addressing your issue:

- ✓ **Identify the Problem**—clearly identify which law applies to you and why you need your assistive animal.
- ✓ **Take notes and keep all documentation**—In order to assist with the identification of the issue, you may want to prepare a written description of the events that took place and retain copies of any policies, documentation, or correspondence from the business or housing provider.
- ✓ **Understand your legal rights**—The more you know about your rights and responsibilities, the more easily you can spot potential problems early, identify laws that apply and use those laws as tools to resolve those issues.
- ✓ **Be persistent**—If you are denied an accommodation, try following up with a phone call and letter. If the business or housing provider refuses to communicate with you, then you may eventually have to involve a third party such as the ERC. Keep a log of your contacts with the business, or housing provider, including your attempts at contact where you did not receive a response.
- ✓ **Know when it is time to get outside assistance**—If you cannot reach a resolution with a business or housing provider, call the ERC and we will advise you on possible next steps.



Where to go for help

Contact the ERC

Individuals can call the ERC, or use the ERC online complaint form located on our website to submit a complaint or ask a question about discrimination. Depending on the circumstances, the ERC uses a variety of tools to resolve complaints, including: investigating the extent of possible discriminatory behavior, communicating directly with housing providers to attempt to reach an agreeable outcome for the complainant, assisting in the filing of complaints with administrative agencies, and, when appropriate, assisting in finding legal representation.

You may fill out the ERC complaint form on the back of this toolkit or on the ERC's website at www.equalrightscenter.org/complaint. If mailing or faxing the complaint form, please allow approximately two weeks for an ERC staff member to contact you. You may also contact the ERC for assistance at:

The Equal Rights Center
820 First St. NE, Suite LL160
Washington, DC 20002
(202) 234-3062 (Voice)
(866) 549-0009 (Toll Free)
Relay 711
(202) 234-3106 (Fax)
www.equalrightscenter.org
complaints@equalrightscenter.org

Contact a Government Agency

If you wish to file a complaint with a government agency on your own, then you should contact the local agency for your region or the appropriate federal agency. For public accommodations/ADA complaints, the U.S. Department of Justice is the appropriate federal agency; for housing/FHA complaints, contact the U.S. Department of Housing and Urban Development.

U.S. Department of Justice

Complaints of discrimination under the Americans with Disabilities Act can be filed with the U.S. Department of Justice. To file a complaint send a letter including the following information:

- Your full name, address, and telephone number, and the name of any other party also discriminated against by the same person or entity;
- The name of the business, organization, or institution that you believe has discriminated against you;
- A description of the act or acts of discrimination, the date or dates of the discriminatory acts, and the name or names of the individuals who you believe discriminated; and
- Other information that you believe necessary to support your complaint. Please send copies of relevant documents. **Do not send original documents.** (Retain them.)

Sign and send the letter to the address below:

U.S. Department of Justice
950 Pennsylvania Avenue, NW
Civil Rights Division
Disability Rights - NYAVE
Washington, D.C. 20530



U.S. Department of Housing and Urban Development

Complaints of housing discrimination may be directed to the U.S. Department of Housing and Urban Development (HUD). To initiate a complaint you can complete a form online at www.hud.gov/complaints/housediscrim.cfm. Or, send a letter to the nearest HUD Office including:

- Your name and address;
- The name and address of the person who believe has discriminated against you (the respondent);
- The address or other identification of the housing involved;
- A short description of the alleged violation (the event that caused you to believe your rights were violated);
- The date(s) to the alleged violation(s); and
- Other information that you believe necessary to support your complaint. Please send copies of relevant documents. **Keep original documents, do not send them.**

HUD is organized into 10 regions. If you live in Washington, D.C., Virginia, or Maryland, you can send the letter to the address below. Otherwise, consult the above website for your region.

**Philadelphia Regional Office of Fair Housing and
Equal Opportunity
U.S. Department of Housing and Urban Development
The Wanamaker Building
100 Penn Square East, 12th Floor
Philadelphia, PA 19107-3380
(215) 861-7646
1-888-799-2085
TTY (215) 656-3450**

If you live in another area, please contact the above website for your regional HUD office.

Local Agencies

Complaints can instead be filed with a local agency, providing the same information as described above for DOJ or HUD.

In the District of Columbia

The D.C. Office of Human Rights (“DCOHR”) requires that an intake questionnaire be completed and submitted to begin the filing process. This questionnaire can be found at:

www.ohr.dc.gov/ohr/cwp/view,a,3,q,638025.asp.

D.C. Office of Human Rights
441 4th Street N.W., Suite 570
North
Washington, D.C. 20001
(202)727 – 4559 (Voice)
(202)724-2050 (TTY)
www.ohr.dc.gov

In Maryland

State of Maryland
Commission on Human
Relations
6 St. Paul Street, 9th Floor
Baltimore, Maryland 21202
410-767-8600 / 1-800-637-6247
410.333.1737 (TTY/TDD)
<http://www.mchr.state.md.us>

In Virginia

Alexandria, VA Office on
Human Rights
421 King Street, Suite 400
Alexandria, VA 22314
703-746-3140 (V/TTY)

Arlington, VA Human
Rights Committee
9901 Braddock Road
Fairfax, VA 22032
703-323-2098 / 1-877-600-7431

Fairfax, VA Human Rights
Commission
1200 Government Center
Parkway, Suite 318
Fairfax, VA 22035
703-324-2953

Other Areas

Please consult your local
“government” listings in a phone
directory, or contact the
Equal Rights Center

- The Americans with Disabilities Amendments Act of 2008. 42 U.S.C. §§ 12181-89.
- The Fair Housing Amendments Act of 1988. 42 U.S.C. § 3601, et seq.
- Americans with Disabilities Act Title III Regulations 2010. 28 CFR Part 36.
- Pet Ownership for the Elderly and Persons with Disabilities 2008. 24 CFR Part 5.
- Bazelon Center for Mental Health Law. Right to Emotional Support Animals in “No Pet” Housing. <http://www.bazelon.org/LinkClick.aspx?fileticket=mHq8GV0FI4c%3D&tabid=245>
- The Equal Rights Center, Accessibility Self Advocacy Toolkit. http://www.equalrightscenter.org/site/DocServer/Reasonable_Accommodation_and_Modification_Self-Advocacy_.pdf?docID=141
- The Guide Dog Foundation for the Blind, Compendium of State Access Laws, <http://www.guidedog.org/content.aspx?id=1392>
- Memorandum to all FHEO Regional Directors from Sara Pratt, Deputy Assistant Secretary for Enforcement and Programs, U.S. Department of Housing and Urban Development, New ADA Regulations and Assistance Animals as Reasonable Accommodations under the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973 (Feb 17, 2011). http://www.bazelon.org/LinkClick.aspx?fileticket=lhyaA_hRAoE%3D&tabid=268
- United States Department of Housing and Urban Development, “Joint Statement of the Department of Housing and Urban Development and the Department of Justice: Reasonable Accommodations under the Fair Housing Act,” (2004), <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>



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