



Untangling the Complex and Polarizing Issues of Bringing Animals to Work

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It's a zoo out there!

Animals in the workplace is now one of the most legally complicated — and reported on — issue affecting employers. A maze of legal obligations, urban myths about the right to bring an animal to work, and frequently assertive employees have converted “adorable pets” into true workplace management nightmares. Employers who want to stay out of the dog house need to know the legal landscape, have proper policies and exercise some common sense.

Granting or denying an employee's request to bring their furry friend into the office implicates workplace accommodation issues under the [Americans with Disabilities Act \(ADA\)](#) or applicable state laws, and exposes companies to potential discrimination claims. Animals at work are also incredibly powerful recruiting tools. As a result, businesses must think twice before telling Fido to stay home.

Where did this workplace zoo suddenly come from?

The issue of animals in the workplace is not new. There is no doubt, however, that the issue has truly jumped to the forefront following the recent wave of news reporting and social media posts — showing everything from “emotional support squirrels” on airplanes to kangaroos at restaurants. Combine all this coverage with the passion people have for their pets and “animal certification kits” sold online, and it is an employer recipe for disaster in the making.

Navigating this complicated legal landscape requires a review of the laws themselves, what they do and do not permit, and a sound set of policies that allow nondiscriminatory treatment of employee requests.

Service Animal, Emotional Support Animal or Just a Pet?

For starters, there is no legal right to bring a pet to work. But employers are obligated to accommodate an individual's disability, and that includes an employee's request to bring an animal to work. We find it helpful to think about organizing the workplace zoo into three different types of animals: service animals, emotional support animals and pets. Where each category of animal falls is a factual question tied to both the type of animal and the particular employee condition that the animal is supposed to help accommodate.

Federal and state laws are not nearly as clear as they could be. It also does not help that people seeking to bring animals to work may be confused (or intentionally misusing) terminology to invoke legal protections to get their way.

Service Animals and the ADA

Starting with the basics, under the ADA and related state laws, employers are prohibited from discriminating against an individual with a physical or mental impairment that substantially limits one or more major life activities. "Major life activities" include working and many of the component parts of getting to and participating in the workplace. Title I of the ADA requires employers to engage in the interactive process and provide reasonable accommodations to individuals with qualifying disabilities, unless it would cause undue burden. By default, this can and, in some cases, must include allowing animals at work.

The easiest category is service animals, which the ADA expressly protects. Interestingly, this is a much smaller category of protected animals than the mainstream media suggests. According to the ADA regulations, only dogs and miniature horses qualify as a service animal. Both animals must be "individually trained to do work or perform tasks for the benefit of an individual with a disability," 28 C.F.R. Section 36.104. The definition further provides that "the work or tasks performed by a service animal must be directly related to the individual's disability." The most obvious example is a seeing eye dog for a blind or sight-impaired employee.

Notably, the ADA does not require that service animals be professionally trained, registered, certified or licensed, nor does it require that the animal wear a vest, ID tag or special harness. So, if an employee shows up with a "certified" squirrel or kangaroo, beware. There is no such thing.

Emotional Support Animals: Much Fuzzier Legal Rights

While the protections for service animals are clear, the line gets much “fuzzier” when an employee’s request is for an emotional support or therapy animal that provides comfort for disorders, such as depression or anxiety, regardless of any training or certifications that the animal may have. By definition, this can include a much broader range of animals. The animal also need not be trained to perform a specific function.

The ADA’s definition of “service animal” explicitly excludes emotional support animals and any wild or domestic animals that are not dogs or miniature horses, regardless of whether they are trained. Emotional support animals are, as their name suggests, for support, and the ADA explicitly states that “the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of [the service animal] definition.” While some state and local laws may provide additional protections to individuals with emotional support animals, employers are not necessarily obligated to accommodate this type of request under the ADA.

As such, employers should engage in the interactive process when they receive a request for emotional support animal access to determine if the animal is necessary to allow the employee to perform the essential functions of his or her job.

There are Boundaries

It is important to remember that even employees making a reasonable request do not automatically get their way. As with all other balancing under the ADA, the employer still must ensure that the animal actually accommodates the disability.

The animal also cannot impose an undue burden. This includes factoring in potential workplace disruptions, safety and alternative accommodations when reviewing the employee’s request. Denying the request without engaging in the interactive process increases the likelihood of a lawsuit for disability discrimination or failure to accommodate in violation of the ADA.

Finally, there is no legal protection for an employee who simply wants to bring a pet to work. This includes an employee who might otherwise not be able to come to work due to pet care issues.

What Employers Should Do

Against this legal backdrop, employers should consider the following practical suggestions to reduce their chances of liability:

- **Develop a written policy on animals in the workplace.** If the employer bans all animals, other than those required by law, say so. If it allows pets, set the parameters in advance. This can include

topics such as noise, weight of the animal, hair length or whether the animal is dangerous. This will reduce claims of discrimination or favoritism.

- The ADA does not place restrictions on what type of dog breed can be a service animal, and news stories demonstrate that emotional support animals can range from fluffy puppies to peacocks. **Each request should be taken seriously and handled on a case-by-case basis.** Considerations can include the employee's job responsibilities, the animal's demeanor and whether it's housebroken and the office layout.
- **Make sure policies go beyond just the animals.** Whether to allow pets at work is only the first question. Employers must think about the ancillary issues, such as time away from work to walk or feed animals and what happens if the animal is simply a distraction at work.
- A frequent issue with workplace animals is other employees who either do not like or may be allergic to the animal. In such cases, the **employer must try to balance all employee interests.** It's not enough to simply ban an animal because someone else claims an allergy.
- **You do not have to allow dangerous animals.** The ADA and state law prohibit mandating situations that place the employee or others at risk to physical harm. An employee who gets comfort from a dangerous animal does not have a right to bring that animal to work if it presents a danger to others.
- **Pet-friendly environments are often viewed as useful recruitment and retention tools, and are especially attractive to millennials.** More progressive employers have found success by creating "pet-free" zones, providing alternative-work schedules for those who want to bring pets, updating and maintaining the office's ventilation system, or having the work area professionally and regularly cleaned. At least one company has actually created a pet nursery where animal owners can leave their pets all day for a fee.
- **Consider a "customer buffer."** While employers have legal obligations, there are entirely separate policy concerns and explicit laws governing a public entity or place of public accommodation's obligation to accommodate customers or vendors with service animal needs. While many customers want to bring their animals to your place of business, that does not mean they necessarily want to encounter your employees' animals. At a minimum, consider signs that warn it is a "pet friendly" workplace.
- Finally, **make sure your insurance policies match your animal policy.** Should there be an accident, you do not want to be without insurance.

With these considerations in mind, businesses can accommodate an individual's request for a service or emotional support animal in the workplace without the office becoming a zoo.