

Misrepresenting pet as service animal now illegal in Arizona

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It's hard to believe that it has been four years since our *Work on It* column began addressing issues facing employers and places of public accommodation when confronted with requests for accommodating an employee's or patron's need for a service animal. Since that time, we've all heard stories about the failed attempts of customers who have tried to board an airplane with their "service" pigs or peacocks. This has resulted in revised service animal policies by places of public accommodation and much criticism by the general public regarding patrons' decisions to bring animals into public places.

Based on that backlash, Arizona legislators got involved to curb the perceived abuse of laws protecting the rights of those who actually need service animals. The legislature passed House Bill 2588, which revises A.R.S. § 11-1024 by adding a provision that a person who fraudulently misrepresents a pet as a service animal is subject to a civil penalty of up to \$250. This statute follows on the heels of approximately 19 other states that have enacted laws cracking down on people who try to pass off their pets as service animals. It took effect August 3, 2018 (90 days after the close of the legislative session).

While many business owners view this as a win, disability advocates are concerned that this provision could subject people with a disability to uncomfortable situations and inappropriate inquiries. Because the law didn't change what constitutes a permissible inquiry, businesses must be mindful of the particulars of what constitutes a service animal and know how to make appropriate

inquiries when the nature of the service isn't obvious.

Are "emotional support animals" considered service animals? No. Neither the Arizona Americans with Disabilities Act (AzDA) nor the Americans with Disabilities Act (ADA) classifies emotional support animals as "service animals." To be a service animal, the dog (or miniature horse) must perform work or tasks directly related to the individual's disability. Tasks don't include providing companionship or comfort to individuals with psychiatric or emotional disabilities. To be considered a service animal that supports a psychiatric condition, the animal must help his handler manage mental and emotional disabilities by, for example, interrupting self-harming behaviors, reminding handlers to take medication, checking spaces for intruders, or providing calming pressure during anxiety or panic attacks. Simple therapeutic benefits offered by the presence of the animal don't qualify the animal as a service animal.

What are the permissible inquiries when it isn't obvious what service the animal provides to the handler? Businesses may ask only two questions: (1) Is the service animal required because of a disability and (2) what work or task has the service animal been trained to perform? You may not ask about the person's disability and may not request or require medical documentation from the handler. Because service animals aren't required to be certified, you may not request a special identification card or training documentation for the service animal. Finally, you may not ask that the service animal demonstrate its ability to perform the work or task for which it is trained.

What are the potential effects of this new provision? Because it's unlikely that a person will self-report misrepresenting a pet as a service

animal, the impact remains to be seen. It has served as a reminder that proper inquiries are extremely limited, but it has provided businesses with a recourse if that inquiry reveals that the animal isn't a service animal. You should take care in making that determination or asking the handler to leave even when you aren't required to accommodate the handler and animal. Handling the situation with compassion—regardless of a perceived misrepresentation—is the best way of addressing an uncomfortable situation with potential legal implications.

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