

Title: Service Animals/Emotional Support Animals

Date Approved: January 26, 2022 (Published Spring 2022)

References: U.S. Department of Justice, Civil Rights Division, Disability Rights Section

Florida Statute Chapter 413.081(d)

ADA.Gov.

Author: Sonja S. Lopez, PER
FSEA Business Practices Committee Secretary
December 13 2021

DISCLAIMER

The Business Practice Committee of the B.P.O. Elks of the State of Florida has prepared this information to assist the Local Lodges of this Fraternal Order. The FSEA Business Practice Committee is neither responsible nor empowered to be responsible for the establishment of such procedures. The Business Practice Committee acts as a resource to assist Local Lodges. You should always consult your Lodge's tax and legal advisors before engaging in any endeavors or transactions to ensure compliance with Federal, State, and Local Laws.

SERVICE ANIMALS/EMOTIONAL SUPPORT ANIMALS

The 1990 Americans with Disabilities Act (ADA) is a civil rights law that prohibits discrimination against individuals with disabilities in all areas of public life, including jobs, schools, transportation, and all public and private places open to the general public. The ADA is divided into five titles (or sections) that relate to different areas of public life. For the purpose of this article we, will refer to Title I and Title III.

Does Title III of the ADA apply to the Benevolent and Protective Order of Elks? The answer is “no, private membership clubs do not have to comply with ADA regulations except when they open their facilities to the general public.”

The U.S. Equal Employment Opportunity Commission (EEOC) regulates Title I of the ADA and defines a private membership club as a nonprofit organization, other than a labor organization (commonly called a union), that meets certain criteria such as:

- How or to what extent the club is controlled or owned by the membership
- The extent to which facilities and services are limited to members and their guests
- Whether or how the organization solicits members or promotes the use of its facilities or services by the general public
- The size of the membership and whether there are limits on the size of the membership
- Membership eligibility requirements

A private club is covered under Title III when it holds events that are open to the general public. Clubs, or in the case of the BPOE, lodges, may hold such events to raise funds for a charitable cause or recruit potential members. A club may lose its exemption on a temporary basis if it opens the facility and sells food and beverages to the general public. It only becomes subject to Title III for the purpose of that specific event. The nature and frequency of such activities, however, may affect the organization’s status as a private club.

Many people with disabilities use a service animal to fully participate in everyday life. Dogs can be trained to perform many important tasks to assist people with disabilities, such as providing stability for a person who has difficulty walking, picking up items for a person who uses a wheelchair, preventing a child with autism from wandering away, or alerting a person who has hearing loss when someone is approaching from behind. The Department of Justice continues to receive many questions about how the ADA applies to service animals. The ADA requires state and local government agencies, businesses, and non-profit organizations (covered entities) that provide goods or services to the public to make “reasonable modifications” in their policies, practices, or procedures when necessary to accommodate people with disabilities. The service animal rules fall under this general principle.

Under the ADA, a service animal is defined as a dog that has been individually trained to do work or perform tasks for an individual with a disability. The task(s) performed by the dog must be directly related to the person's disability. The dog must be trained to take a specific action when needed to assist the person with a disability. For example, a person with diabetes may have a dog that is trained to alert him when his blood sugar reaches high or low levels. A person with depression may have a dog that is trained to remind her to take her medication. Or, a person who has epilepsy may have a dog that is trained to detect the onset of a seizure and then help the person remain safe during the seizure.

U.S. Department of Justice, Civil Rights Division, Disability Rights Section is frequently asked if emotional support, therapy, comfort or companion animals are considered service animals under the ADA. The answer is no. These terms are used to describe animals that provide comfort just by being with a person. Because they have not been trained to perform a specific job or task, they do not qualify as service animals under the ADA.

Florida Statute 413.081(d) defines a service animal as an animal that is trained to do work or perform tasks for an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. The work done or tasks performed must be directly related to the individual's disability and may include, but are not limited to, guiding an individual who is visually impaired or blind, alerting an individual who is deaf or hard of hearing, pulling a wheelchair, assisting with mobility or balance, alerting and protecting an individual who is having a seizure, retrieving objects, alerting an individual to the presence of allergens, providing physical support and assistance with balance and stability to an individual with a mobility disability, helping an individual with a psychiatric or neurological disability by preventing or interrupting impulsive or destructive behaviors, reminding an individual with mental illness to take prescribed medications, calming an individual with post traumatic stress disorder during an anxiety attack, or doing other specific work or performing other special tasks. A service animal is not a pet. The crime-deterrent effect of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for purposes of this definition.

The ADA makes a distinction between psychiatric service animals and emotional support animals. If the dog has been trained to sense that an anxiety attack is about to happen and take a specific action to help avoid the attack or lessen its impact, that would qualify as a service animal. However, if the dog's mere presence provides comfort, that would not be considered a service animal under the ADA.

People with disabilities have the right to train the dog themselves and are not required to use a professional service dog training program.

In situations where it is not obvious that the dog is a service animal, someone may ask only two specific questions: is the dog a service animal required because of a disability and what work or

task the dog has been trained to perform. You are not allowed to request any documentation for the dog, require that the dog demonstrate its task or inquire about the nature of the person's disability.

The ADA does not require service animals to wear a vest, ID tag, or specific harness.

Covered entities may not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal, as a condition for entry. There are individuals and organizations that sell service animal certification or registration documents online. These documents do not convey any rights under the ADA and the Department of Justice does not recognize them as proof that the dog is a service animal.

Individuals who have service animals are not exempt from local animal control or public health requirements. Service animals are subject to local dog licensing and registration requirements.

The ADA does not restrict the type of dog breeds that can be service animals but does require that service animals be under the control of the handler at all times.

The service animal must be harnessed, leashed, or tethered while in public places unless these devices interfere with the service animal's work or the person's disability prevents use of these devices.