

PUBLICATION

Puppies Too Frisky for ADA Shelter

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A Burger King franchise was sued recently for violating the Americans with Disabilities Act (ADA) when an owner and his service dog-in-training were asked to leave the restaurant. A federal district court in California sided with Burger King and dismissed the case in the last few weeks. The court focused on whether the puppy, a 13-week-old Great Dane named Barack, was actually a service dog under the ADA.

Privately-owned businesses that serve the public, such as restaurants, hotels, retail stores, taxicabs, theaters, concert halls and sports facilities, are prohibited by the provisions of the ADA from discriminating against individuals with disabilities. The law requires these businesses to allow people with disabilities to bring their service animals onto business premises in whatever areas customers are generally allowed. A restaurant, for example, cannot segregate a person with a service dog from other guests at the establishment, and the service dog and its owner can go in whatever areas other customers can access.

So what is a service animal? The ADA defines a service animal as any guide dog, signal dog or other animal individually trained to provide assistance to an individual with a disability. If they meet this definition, animals are considered service animals under the ADA regardless of whether they have been licensed or certified by a state or local government.

A service animal is not a pet. Service animals perform some of the functions and tasks that the individual with a disability cannot perform for him- or herself. Guide dogs are one type of service animal, used by some individuals who are blind. This is the type of service animal with which most people are familiar. But there are service animals that assist persons with other kinds of disabilities in their day-to-day activities. Some examples include:

- Alerting persons with hearing impairments to sounds
- Pulling wheelchairs or carrying and picking up things for persons with mobility impairments
- Assisting persons with mobility impairments with balance

In the Burger King case, a man with a degenerative back condition entered the restaurant with the 13-week-old Great Dane puppy. When he attempted to order food, the worker informed him the restaurant had a "no dog" policy. The man asked to speak to a manager. She pointed him to the restaurant's policy and the sign on the door which read "No animals except for service animals." The man explained that the puppy was a service dog in training, but when the manager asked to see the dog's service dog ID, his owner advised he did not have it. The manager told the man he could not stay in the restaurant, but he could either take his order to go or leave the puppy outside. The man left the restaurant, took a camera from his car and photographed the signs.

The restaurant asserted that Barack the Great Dane puppy was not fully trained as a service animal and only had basic obedience training. His owner, who was training the puppy to assist him with walking and balancing, countered that the puppy had a service dog tag from the county that was issued prior to the restaurant visit. The restaurant provided expert testimony that the puppy still had a "playful streak" and was too young to have complete control over its bladder and bowels for extended training periods.

However, the court focused on the fact that although the owner stated that the puppy was being trained to assist him with walking and balance, the puppy was not large enough at that point to assist with walking and balancing. According to the restaurant's expert, the owner could have actually injured himself and the puppy if he had leaned on the puppy for balance. The court found that the puppy was not a service dog, because it had not been trained to perform tasks for the benefit of the individual with a disability, and the work or tasks performed by a service dog must be directly related to the individual's disability.

So what does this mean for businesses such as restaurants and hotels? Generally, service animals, not just guide dogs, must be permitted to accompany the individual with a disability to all areas of the business where customers are normally allowed to go. Posting a "no pets" policy does not comply with the ADA regulations, because a service dog is not a pet. If someone enters a restaurant or hotel with a pet, it is reasonable to make an inquiry to determine if the animal is a service dog. Some, but not all, service dogs wear special collars or harnesses. Some, but not all, are licensed or certified and have identification papers. If the employees are not certain if the animal is a service animal, they may inquire of the person with the animal if it is required because of a disability. A person who is going to a restaurant will likely not be carrying documentation of his or her disability so the establishment cannot require proof of a disability or certification of the animal as a condition to providing service to the customer.

In addition, the business cannot charge any sort of maintenance or cleaning fee, even if deposits are routinely required for pets, such as at hotels, for example. However, if a service animal causes damage and it is the regular practice or policy of the establishment to charge non-disabled customers for such damage, the establishment can charge fees relative to any damage caused by the service animal.

What if a service animal is being disruptive or the animal's behavior otherwise poses a threat to the health and safety of other customers? It is perfectly reasonable to exclude an animal that displays aggressive behavior toward other guests or customers. But an establishment cannot make assumptions about how a particular animal will likely behave, simply based on experience with other animals of the same breed, for example. If a service animal should be excluded, the establishment should allow the individual with a disability the option of continuing to enjoy the establishment's goods and services without the service animal on the premises.

Although the Burger King case is an example that hospitality providers do not have to give unfettered access to customers with animals represented as service animals, they should exercise caution and common sense when encountering individuals with service animals.