

PUBLICATION

All Dogs Go to Heaven, But Can They Go to Work?

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Cartoonist Charles M. Shultz once said, "Happiness is a warm puppy." It is a common sentiment among the canine crowd, those who love their dogs as much as they love their friends and family, and science has recently given reason to believe that it may be true. Oxytocin, sometimes called the "trust hormone" or the "hug hormone," is a powerful hormone that is connected to social recognition, bonding, maternal behaviors, interpersonal trust, anxiety and many other social behaviors. It has long been known that people experience an increase in their oxytocin levels when they interact with their dogs, but a recent study has shown that oxytocin indicates that dogs may love people as much as people love their dogs. So it is not surprising that dogs have proven effective at comforting people in times of stress or illness. Indeed, dogs have been used as emotional support animals for some time now.

This will inevitably lead to an employee seeking to bring a dog to work. Thus, it is important for employers to know what the Americans with Disabilities Act (ADA) requires. The ADA does not address service dogs specifically, so as with most questions under the ADA, the issue is one of reasonable accommodation in the context of disability discrimination.

Disability discrimination occurs when an employer denies a reasonable accommodation to a disabled employee who is qualified for the job. A "reasonable accommodation" is a modification or adjustment to the work environment or to the manner or circumstances under which the position is customarily performed, that enables a qualified individual with a disability to perform the essential functions of that position. This may include modifications or adjustments to make the facilities used by employees readily accessible to and usable by individuals with disabilities. The regulations go on to suggest an "informal, interactive process" of identifying the limitations and the potential accommodations possible to alleviate those difficulties for the employee. The "reasonable accommodation" must enable the individual to perform the job's essential functions. An "essential function" is a fundamental duty of the position. The employer has discretion in choosing between effective alternatives; an employee cannot force the employer to provide a specific accommodation if another reasonable accommodation is available. When deciding whether an accommodation is reasonable, the employer must consider the essential functions of the job, the employee's limitations and means for overcoming them, the effectiveness of the accommodation in enabling the individual to perform the job and the employee's preference for the working environment it provides its employees.

To assess whether a reasonable accommodation must be provided and what accommodation to provide, employers must understand four things. First, employers must understand that they cannot discriminate against a disabled employee because of the employee's disability. A disability is a physical or mental impairment that substantially limits one or more major life activities. In turn, major life activities include things like caring for oneself, performing manual tasks, seeing, hearing, eating, walking, standing, lifting, bending, communicating and working. Second, employers must understand what constitutes a service animal. Under Title III of the ADA, a "service animal" is a dog that has been individually trained to do work or perform tasks for the benefit of a disabled person. The work and tasks may include things like physical, sensory, psychiatric, intellectual or other mental disabilities that directly relate to the individual's disability. People most often associate "service animals" with guide dogs, yet dogs are also trained to alert hearing-impaired people to particular sounds, to assist people with certain psychiatric disorders, to assist people with autism in controlling repetitive movements and to assist people who suffer from seizure disorders. Third, emotional support animals,

also called comfort animals, are not considered service animals under the ADA. Unlike service animals, emotional support animals do not have special training to perform work or tasks that assist disabled people with major life functions. Instead, they provide companionship, relieve loneliness and may help with depression and anxiety, but they do so merely by being present. Finally, employers must understand that the definition of "service animal" under Title III of the ADA applies to public accommodations, not employers, and Title I of the ADA, which applies to employers, does not define "service animal." Thus, while the provisions of Title III may provide a useful guide to resolving the question of reasonable accommodation under Title I, it does not necessarily resolve the issue.

So what is an employer to do? Above all, an employer must approach the issue of service animals and comfort animals just like any other request for an accommodation. The case of *Schultz v. Alticor/Amway Corporation* illustrates this point. In that case, Schultz asked to be able to bring his service dog to work. He worked as a designer who developed detailed design drawings of existing equipment and facilities layouts, a job that required him to work at an easel or on a computer most of the time. His service dog assisted the employee with hearing loss and picked up dropped items that he could not retrieve because of a bad back. Yet, at work, his contact with other employees was minimal and he rarely dropped anything. Although he was initially allowed to bring his service dog to work, his employer revisited the issue after receiving several complaints. In the end, because the service dog was not necessary for Schultz to perform the essential functions of his job, the employer instructed him not to bring the dog to work anymore. The District Court agreed with the employer's decision, concluding that Schultz could not identify any job function that required the assistance from his service dog.

Thus, the key for employers is to assess the requested accommodation closely in light of the essential functions of the job and the actual assistance that a service animal will provide. If the service animal is not necessary for the employee to perform the assigned job duties, the employer will not be required to make the accommodation.