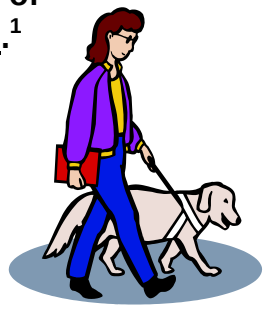
DISABILITY RIGHTS
NORTH CAROLINA
Champions for Equality and Justice

Service Animals

The only species of service animal recognized under Title II and Title III of the Americans with Disability Act (ADA) are <u>dogs</u> and <u>miniature horses</u>.[1]



North Carolina state law does not have a similar limitation.[2]

By state and federal law, service animals are allowed to go almost everywhere their handler goes. Unfortunately, people with disabilities often face problems when they are out and about with their service animal.

Title II and Title III of the ADA

The ADA is a federal civil rights law for people with disabilities[3]

- **Title II applies to state and local government programs and services**.[4]
  - prohibits state and local government entities from discriminating on the basis of disability in its programs or services, including classes through a parks and recreation department, town hall meetings, and tax departments
- **Title III applies to private businesses that are open to the public.**[5]
  - Title III prohibits a "place of public accommodation" from denying goods or services, offering only unequal or separate benefits, or offering services in a segregated setting because a person has a disability or is associated with a person with a disability. Special programs for people with disabilities can still be offered, as long as

[1] 28 C.F.R. § 35.101, *et seq.* (Title II); 28 C.F.R. § 36.101, *et seq.* (Title III).
[2] N.C. Gen. Stat. § 168-4.2.
[3] 42 U.S.C. § 12101, *et seq.*
[4] 42 U.S.C. §§ 12131-12165. Title II of the ADA has similar prohibitions to that of Section 504 of the Rehabilitation Act of 1973. 29 U.S.C. §§ 701 to 796.
[5] 42 U.S.C. §§ 12181-12189.

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people with disabilities are not excluded from the programs offered to all other people.

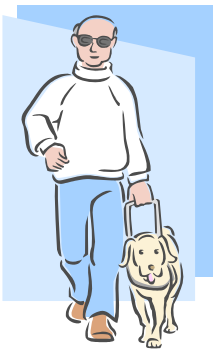
- **Public accommodations** are places, buildings, or outdoor spaces that a person can enter with or without a fee. Examples include: hotels, restaurants, theaters, stadiums, auditoriums, bakeries, clothing stores, video stores, professional offices, gas stations, funeral parlors, stations used for public transportation, museums, gardens, galleries, parks, zoos, private schools, homeless shelters, day care centers, gymnasiums, and golf courses.[6] Public accommodations do not include "private clubs"[7] or religious entities. [8]

What is a Service Animal?

- **Only a dog or a miniature horse can qualify as a "service animal" under Title II and Title III of the ADA.** Other species of animals, such as reptiles, birds, or cats, do not qualify as service animals under the ADA.

- Federal regulations have narrowed the definition of a "service animal" to mean "**any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability**, including a physical, sensory, psychiatric, intellectual, or other mental disability."[9] The type of work or task a service animal performs must be directly related to the handler's disability to be a service animal.[10]

What does "do work or perform tasks" mean?



The dog must be trained to take a specific action when needed to assist the person with a disability.[11] Examples include:[12]

- Assisting individuals who are blind or have low vision with navigation and other tasks,
- Alerting individuals who are deaf or hard of hearing to the presence of people or sounds,

[6] 42 U.S.C. § 12181(7).
[7] 42 U.S.C. § 12187. A private club is one in which membership must be voted on by other members.
[8] 42 U.S.C. § 12187.
[9] 28 C.F.R. § 35.104; 28 C.F.R. § 36.104 (emphasis added).
[10] 28 C.F.R. § 35.104; 28 C.F.R. § 36.104.
[11] U.S. Dept. of Justice, Civil Rights Division, Disability Rights Section, *Frequently Asked Questions about Service Animals and the ADA* (July 20, 2015) ("DOJ FAQs"), http://www.ada.gov/regs2010/service_animal_qa.pdf.
[12] 28 C.F.R. part 35 App. A (2010); 28 C.F.R. 36 part App. A (2010).

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- Providing non-violent protection or rescue work,
- Pulling a wheelchair,
- Assisting an individual during a seizure,
- Alerting individuals to the presence of allergens,
- Retrieving items such as medicine or the telephone,
- Providing physical support and assistance with balance and stability to individuals with mobility disabilities, and
- Helping persons with psychiatric or neurological disabilities by prevent or interrupted impulsive or destructive behaviors

Note: The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute "work or tasks" under the ADA.[13]

Is an "emotional support," "therapy," "comfort," or "companion" animal considered a service animal?

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.

Trained to respond and assist → Service Animal
Not trained to respond → Comfort Animal

Example: If a service animal senses that a person is about to have a psychiatric episode (such as a panic attack) and it is trained to respond with a specific action (such as nudging, barking, or removing the individual to a safe location) that helps avoid the episode or lessen its impact, then this would qualify as a service animal. However, if the dog's mere presence provides comfort, the dog would not be considered a service animal under the ADA."[14]

Who can use a service animal?

- A person with a disability is entitled to use a service animal, so long as the work or tasks performed by the service animal are **directly related** to the individual's disability.[15]

[13] 28 C.F.R. part 35 App. A (2010); 28 C.F.R. 36 part App. A (2010).
[14] Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, 28 C.F.R. pt. 36.
[15] 28 C.F.R. part 35 App. A (2010); 28 C.F.R. 36 part App. A (2010).

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A disability is defined as "a physical or mental impairment that substantially limits one or more of the major life activities of such individual."[16] The phrase "major life activities" means "functions such as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working."[17] "A major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions."[18]

Where is a service animal allowed?

Individuals with disabilities are allowed to be accompanied by service animals in all areas of a government entity or business where members of the public are allowed to go.[19]

"For example, in a hospital, it would be inappropriate to exclude a service animal from areas such as patient rooms, clinic, cafeterias, or examination rooms. However, it may be appropriate to exclude a service animal from an operating room or burn units where the animal's presence may compromise a sterile environment."[20]

Who is responsible for a service animal?

- The service animal's handler is responsible for caring for and supervising the service animal, including toileting, feeding, and grooming and veterinary care.[21]

Does a service animal have to be on a leash?

- Typically. A service animal must be harnessed, leashed, or tethered while in public places, unless being tethered interferes with the service's animal's work or the person's disability prevents use of a tether. In that case, the person must use voice or other means to maintain control of the service animal.[22]

Should a service animal wear a vest or a special collar?

[16] 42 U.S.C. §12102(1)(A).
[17] 42 U.S.C. §12102(2)(A).
[18] 42 U.S.C. §12102(2)(B).
[19] 28 C.F.R. § 35.136(g); 28 C.F.R. § 36.302(c)(7).
[20] U.S. Dept. of Justice, Civil Rights Division, Disability Rights Section, *ADA 2010 Revised Requirements Service Animals* (July 2011).
[21] DOJ FAQs, http://www.ada.gov/regs2010/service_animal_qa.pdf.
[22] DOJ FAQs, http://www.ada.gov/regs2010/service_animal_qa.pdf.

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- No. The ADA does not require service animals wear a vest, ID tag, or specific harness.[23]

- Although it is not required, you may find that you encounter fewer problems if your service animal is wearing a special vest or collar.

Is it required to show documentation that his/her service animal is registered or certified?

No. There is no rule under the ADA that service animals must be registered or certified to be an official service animal. You cannot be required to show documentation (e.g. proof of certification, training, licensure, identification card, or registration) to prove that it is a service animal.[24]

If you are interested in registering your service animal with the N.C. Department of Health and Human Services, the registration application is available at www.ncdhhs.gov/document/registration-application-service-animal-people-disabilities. For more information, contact the N.C. Division of Vocational Rehabilitation Services: (919) 733-0390

CASE-IN-POINT: A patient wanted to bring her service animal with her into the emergency room. The Tennessee hospital said that no animals, including service animals, were allowed past the waiting room. The court said that this rule was wrong. Instead, hospitals and healthcare providers can only keep a service animal out of treatment areas when they can prove that a particular patient's service animal poses a risk that cannot be eliminated.[25]

CASE-IN-POINT: An Oregon hospital patient had her service animal in her hospital room. The hospital asked her to remove the dog because of its overwhelming smell. The dog also growled and snapped at hospital staff. Before asking that the dog leave, the hospital tried to accommodate the dog by putting an air filter in the room, by shutting the door to the room, by assigning staff allergic to the dog to other areas of the hospital, etc. Nothing worked. Although the dog was a service animal, the hospital was allowed to have the dog removed. The court said that the dog threatened the health and safety of others at the hospital. The court also pointed out that patient did nothing to help the hospital contain the

[23] DOJ FAQs, http://www.ada.gov/regs2010/service_animal_qa.pdf.
[24] 28 C.F.R. § 35.136(f); 28 C.F.R. §36.302(c)(6).
[25] *Day v. Sumner Regional Health Systems, Inc.*, 2007 U.S. Dist. LEXIS 94615 (M.D. Tenn. 2007).

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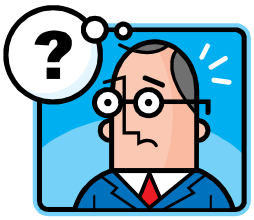
smell or help with other problems related to the presence of the service animal. She also refused to close the door and complained about the noise from the air filter.[26]

What questions can someone ask to find out if an animal is a service animal?



You may be asked two questions:[27]

(1) Is the dog a service animal required because of a disability?

(2) What work or task has the animal been trained to perform?

You should be prepared to describe how your service animal helps you and how the animal has been trained.

- For example, you are a person with diabetes that uses a service animal to detect your blood sugar level. Someone has asked whether your dog is a service animal. You would answer, "Yes," and you would explain that your service animal is trained to detect changes in your blood sugar level and to alert you. That person might also ask if you have a disability. This question is okay, and you can answer with a simple, "yes."

If someone asks you what your disability is, that is inappropriate and you do not have to answer. It is your choice whether to give specific information regarding your disability. However, it should not be assumed that an entity and its' employees know about the types of tasks a service animal can perform because many service animals perform tasks that are not obvious to the general public.

CASE-IN-POINT: A woman in Washington attempted to challenge a business's written policy regarding service animals. The policy provided that, first, employees must look for visible identification that an animal was a service animal; if no such identification existed, the employee could inquire of the animal's owner what tasks or functions the animal performs that its owner cannot otherwise perform. The policy prohibited employees from asking about the specifics of a person's disability. The business' policy was upheld.[28]

CASE-IN-POINT: After showing a casino security guard his service animal's identification card, a Delaware man refused to answer questions regarding the work or task his dog was trained to perform, alleging the questions violated his civil rights. The manager contacted the ADA information line, and confirmed that, while specific questions regarding a person's

[26] *Roe v. Providence Health System-Oregon*, 655 F. Supp. 2d 1164 (D. Or. 2009).
[27] 28 C.F.R. § 35.136(f); 28 C.F.R. § 36.302(6).
[28] *Grill v. Costco Wholesale Corp.*, 312 F. Supp. 2d 1349 (W.D. Wash. 2004).

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disability cannot be asked, questions regarding what task a service animal is trained to perform are permissible. The court found that the business did not violate the ADA.[29]

When can a service animal be excluded?

A person with a disability who uses a service animal has a right to the same service and treatment as someone who does not use a service animal. This means that many "No Pet" or "No Animal" policies do not apply to service animals.

However, a government entity or public accommodation **can exclude a service animal if**:

(1) making such modifications would fundamentally alter the nature of the entity's goods, services, facilities, privileges, advantages, or accommodations;[30]

(2) there are legitimate safety requirements necessary for the safe operation of its services, programs, or activities.[31]

Allegations of a safety risk "**must be based on actual risks** rather than on mere speculation, stereotypes, or generalizations about individuals with disabilities."[32]

Note: "Allergies or a fear of dogs are **not valid reasons** for denying access or refusing service to people using service animals. When a person who is allergic to dog dander and a person who uses a service animal must spend time in the same room or facility, for example, in a school classroom or at a homeless shelter, they both should be accommodated by assigning them, if possible, to different locations within the room or different rooms in the facility."[33]

CASE-IN-POINT: A man wanted to take his service animal on a tour of a beer brewery in Texas. The brewery said no because they would get in trouble with the Food and Drug Administration if an animal got that close to their beer brewing process. The brewery was worried that animal hair might get into the beer. The court did not agree with the brewery's argument, and said that humans and animals were equally likely to get their hair in the beer.[34]

CASE-IN-POINT: A doctor worked at a hospital in Illinois. The doctor wanted to use her service animal at work to pull her wheelchair and do other tasks for her, but the hospital

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[29] *Thompson v. Dover Downs, Inc.*, 887 A.2d 458 (Del. Super. Ct. 2005).
[30] DOJ FAQs, http://www.ada.gov/regs2010/service_animal_qa.pdf.
[31] 28 C.F.R. § 35.130(h); 28 C.F.R. § 36.301(b).
[32] 28 C.F.R. § 35.130(h); 28 C.F.R. § 36.301(b).
[33] U.S. Dept. of Justice, Civil Rights Div. Disability Rights Section, *ADA 2010 Revised Requirements Service Animals* (July 2011). *See also Lockett v. Catalina Channel Express*, 496 F.3d 1061 (9th Cir. 2007).
[34] *Johnson v. Gambrinus Co./Spoetzl Brewery*, 116 F.3d 1052 (5th Cir. 1997).

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said no. The court said that the hospital had to allow the doctor to use her service animal at work. The only places that the service animal was not allowed to go were operating rooms, coronary care units, dialysis units, intensive care units, and areas designated as infectious care or isolation areas. The court said that the general rule is that service animals can go anywhere their owners go unless the animals pose a greater hazard than the owners do in the same place.[35]

Service animals may also be excluded if:

(3) if the service animal is out of control and the animal's handler does not take effective action to control it;[36] or

(4) if the service animal is not housebroken."[37]

- A service animal is not necessarily "out of control" if the animal is being provoked to disruptive or aggressive behavior, which is why an animal's handler must be given a reasonable opportunity to gain control of the animal.[38]
- A service animal is out of control when, for example, it is continuously barking or snapping at others.

Can an individual be charged or asked to pay for the use of a service animal?

No. A person with a disability who uses a service animal "cannot be isolated from other patrons, treated less favorably than other patrons, or charged fees that are not charged to other patrons without animals. In addition, if a business requires a deposit or fee to be paid by patrons with pets, it must waive the charge for service animals."[39]

However, if a business generally charges a person for damages he or she caused to the business, a business may charge a person with a disability for the damages caused by that individual's service animal.[40]

How is the ADA enforced? What can happen if a business violates the ADA?

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[35] *Branson v. West*, 1999 U.S. Dist. LEXIS 7343 (N.D. Ill. 1999).
[36] 28 C.F.R. § 35.136(b)(1); 28 C.F.R. § 36.302(c)(2)(i).
[37] 28 C.F.R. § 35.136(b)(2); 28 C.F.R. § 36.302(c)(2)(ii).
[38] 28 C.F.R. pt 35, App. A (2010); 28 C.F.R. pt. 36, App. A (2010).
[39] U.S. Dept. of Justice, Civil Rights Div. Disability Rights Section, *ADA 2010 Revised Requirements Service Animals* (July 2011); 28 C.F.R. § 36.302(8); 28 C.F.R. § 35.136(h) (emphasis added).
[40] U.S. Dept. of Justice, Civil Rights Div. Disability Rights Section, *ADA 2010 Revised Requirements Service Animals* (July 2011); 28 C.F.R. § 36.302(8); 28 C.F.R. § 35.136(h).

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The Department of Justice and other federal agencies, such as the Department of Education or Department of Transportation, enforce civil rights under the ADA.[41] For the Department to investigate, an individual must file a complaint with the appropriate federal department's Office of Civil Rights within 180 days from the alleged discriminatory act.[42] The Department will investigate the complaint; it may attempt informal resolution with the parties, and issue a Letter of Findings depending on the investigation.[43]

An individual can also bring a civil lawsuit in state and federal court. The remedies that can be granted depend upon whether the entity is covered under Title II or Title III.

- Violation under **Title II**: remedies include injunctive relief (the court can order the entity to do or refrain from doing something) and compensatory damages (money to pay back for actual loss, injury or harm).

- Violation under **Title III**: the only remedy a private individual can receive is injunctive relief; compensatory damages are not available.[44] However, if the Dept. of Justice decides to bring a lawsuit to vindicate the public interest against a Title III entity, a court can award a civil penalty of up to $50,000 for the first violation and up to $100,000 for each subsequent violation.[45]

Punitive damages (money awarded as a punishment for a malicious act) are not available under Title II or Title III of the ADA.[46] Under both Title II and Title III of the ADA, attorneys' fees are recoverable.[47]

Other Federal & State Laws

What happens if a state or local law conflicts with the ADA?

- If a state law conflicts with the ADA, the state law should not be enforced unless it provides greater or equal protection for individuals with disabilities than is provided by the ADA.[48]

[41] 28 C.F.R. § 35.170(c).
[42] 28 C.F.R. § 35.170(b).
[43] 28 C.F.R. § 35.172(b).
[44] 42 U.S.C. § 12188 and 2000a-3(a).
[45] 42 U.S.C. § 12188(b)(2).
[46] 42 U.S.C. § 12188(b)(4); *Barnes v. Gorman*, 536 U.S. 181 (2002).
[47] 28 C.F.R. § 35.175; 28 C.F.R. § 36.505.
[48] U.S. CONST. AMEND. XIV, §5; *Tennessee v. Lane*, 541 U.S. 509 (2004) (regarding fundamental rights).

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- For example, if a local health code does not allow a food establishment to have animals on the premises, the establishment still must allow service animals in public areas based on the ADA.

- Various **federal laws** provide rights for the use of service animals, including:
  - Section 504 of the Rehabilitation Act of 1973 is very similar to the ADA, but only applies if the entity is a recipient of federal funds (such as a federal grant or Medicaid);
  - The Fair Housing Act provides for regulation of "assistance animals" in virtually all forms of housing, whether for sale or rent. [49] For a separate fact sheet regarding housing and assistance animals, please contact Disability Rights North Carolina; and
  - The Air Carrier Access Act was an amendment to the Federal Aviation Act that prohibits discrimination on the basis of disability by airlines and airports. [50] It provides regulations relating to air travel and service animals. In some ways, the Air Carrier Access Act has more strict criteria for service animals, and it should not be assumed that an animal that qualifies as a service animal under the ADA has the same access to airports and airlines.

- **State laws** also protect the use of service animals by people with disabilities. In North Carolina, there is a state law that protects your right to use a service animal in a public place.[51]

Criminal Penalties:

In North Carolina, it is a **Class 3 misdemeanor** to:

- Disguise an animal as a service animal or service animal in training;
- Deny a person with a disability (or a person training a service animal) any rights to the use of a service animal;
- Deny a person with a disability (or a person training a service animal) any other rights or privileges provided to the general public, with respect to being accompanied by animals; or

[49] 42 U.S.C.A. §§ 3601 *et seq.*
[50] 49 U.S.C.A. § 41705.
[51] N.C. Gen. Stat. §§ 168-4.2 to -4.5 (2005).

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- Charge any fee for the use of a service animal.[52]

You can ask for a law enforcement official or magistrate to issue a criminal summons against a person or business owner who is refusing you access because of your service animal. This is a criminal proceeding, where the local district attorney is responsible for holding the individual or business owner accountable for violating your rights. During this process, as a witness to the crime, you should work with the local district attorney as he or she prosecutes the defendant. The maximum fine that can be imposed for a Class 3 misdemeanor is a $200 penalty, plus the costs of court. Other forms of restitution could include alternate dispute resolutions, like ADA training or unsupervised probation.

[52] N.C. Gen. Stat. § 168-4.5 (2005).

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Step-by-step guide to advocate for your rights to a service animal

#1 Provide advance notice.

While it is your choice and not required for you to provide advance notice that you will be using a service animal, providing advance notice may help make bringing a service animal to a new place easier and may help avoid a conflict. Consider calling the location in advance to notify them that you will be bringing a service animal with you.

#2 If you are told your service animal is not welcome, get a second opinion.

Politely ask the employee to speak to their supervisor or the business owner. Explain that you use a service animal because you are a person with a disability. You can also refer the government agency or business owner to the U.S. Department of Justice ADA Information Line at **1-800-514-0301** for more information about service animals. It may be helpful to carry a copy of a Department of Justice Fact Sheet, with you to facilitate your discussions with the business. (Fact sheet is available at http://www.ada.gov/service_animals_2010.pdf)

#3 If you were denied access, send the government department or business a letter that explains your right to a service animal.

You can use the sample letter that is included in this packet, which provides the legal framework to assert your rights under the ADA, as a model.

#4 Follow up on your letter.

After a few days, follow up on your letter with a phone call. Ask if the program director or business owner has read the letter, and if he or she has changed his or her mind about allowing you to use your service animal to access the program or public accommodation. If the answer is still no, ask why not. Ask if he or she understands their obligations under the ADA. Express to the program director or business owner that you are prepared to file a complaint with the U.S. Department of Justice, the government agency that enforces the ADA. Ask again if he or she will reconsider and allow you to use your service animal.

#5 If you are still unable to have your service animal with you, ask for help.

There are several avenues for you to seek assistance in gaining access to government programs and services and public accommodations.

a. **Contact an attorney.** Call Disability Rights NC at 1-877-235-4210, your local Legal Aid of North Carolina office, or a private attorney to help you stand up for your right to use your service animal. We cannot guarantee that Disability Rights NC or another attorney will take your case.

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b. **File a complaint with the U.S. Department of Justice.** If you have questions about how to file a complaint or would like to request a complaint packet, contact the Department's ADA Information Line at 1-800-514-0301 or visit its website at www.ada.gov.

c. **Contact law enforcement and/or your local magistrate.** Request that a criminal summons be issued against the person that is denying you access to a business or program because of your service animal.

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Sample letter for place of public accommodation

Date

Dear Business Owner:

I am a person with a disability who uses a service animal. Under the Americans with Disabilities Act (ADA) and N.C. state law, I have the right to use my service animal in areas that are open to the public, including those of type of business. This letter will provide you with information on my rights.

The Americans with Disabilities Act protects me from discrimination based on my disability.[53] Places of public accommodation are forbidden to discriminate against me and other persons with disabilities.[54] Public accommodations are any place, building, or outdoor space that a member of the public can enter with or without a fee. Some examples of places of public accommodations include: hotels, restaurants, theaters, auditoriums, bakeries, clothing stores, professional offices of doctors, dentists, lawyers, gas stations, funeral parlors, stations used for public transportation, museums, galleries, parks, zoos, private schools, homeless shelters, day care centers, and gym. [55]

A disability is defined as a physical or mental impairment that substantially limits one or more major life activities of an individual.[56] I am a person with a disability because I am substantially limited in the major life activity/activities of _____. My service animal is individually trained to assist me by _____.

Denying people with disabilities service and/or providing us with a lesser service than is provided to persons without disabilities is discrimination prohibited by the ADA.[57] Unless an accommodation for a person with a disability would fundamentally alter the nature of your services or result in significant difficulty or expense, you must: (1) modify your policies, practices, or procedures; (2) provide auxiliary aids and services; and (3) remove architectural and communication barriers when readily achievable to ensure that people with disabilities enjoy equal access to your services or facility.[58]

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[53] 42 U.S.C. § 12101, *et seq*.
[54] 42 U.S.C. § 12182(a); 28 C.F.R. § 36.101.
[55] 42 U.S.C.A. § 12181(7); 28 C.F.R. § 36.104.
[56] 42 U.S.C. § 12102(1).
[57] *See* 42 U.S.C. § 12182(b)(1)(A).
[58] *See* 42 U.S.C. § 12182(b)(2)(A).

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An example of a reasonable modification to your facility's policies includes allowing the use of service animals in your facility.[59] Service animals are defined by the ADA as any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.[60] Along with dogs, the ADA recognizes miniature horses as service animals.[61]

Please be advised that the ADA does not require me to register my service animal with a state or federal agency to qualify it as a "real" or "official" service animal, nor is there a mandatory service animal registration program in North Carolina. Thus, you may not require any further verification that my animal is a service animal beyond asking what tasks it has been individually trained to do. Furthermore, it is a class 3 misdemeanor under North Carolina state law to deny me access to your business with my service animal.[62]

If you are hesitant to allow my service animal in your business because you fear that it will harm the health or safety of other patrons, you must be able to demonstrate both the severity of the risk posed and the likelihood of an injury actually occurring.[63] For instance, if you are concerned about admitting a service animal into a "dander free" area or because of allergies, you must conduct an individualized assessment to determine the risk posed by the service animal and whether reasonable modifications may be undertaken to mitigate the risk.[64] Courts generally find that service animals are to be allowed in restaurants, hospitals and other areas open to the public, regardless of other's allergies, immunodeficiencies, or fears related to dogs.[65] Also, please be advised that many courts have found a blanket policy banning all animals, such as "no dogs" policies, are discriminatory under the ADA if exceptions are not made for service animals.[66] As demonstrated by the cases referenced in the footnotes below, places of public accommodation must satisfy a very high burden before excluding service animals from their facility or particular locations in their facility.

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[59] *See* 28 C.F.R. § 36.302(c).
[60] 28 C.F.R. § 36.104.
[61] 28 C.F.R. § 36.302(c)(9)(i).
[62] N.C. Gen. Stat. § 168-4.5 (2005).
[63] *See* 28 C.F.R. § 36.208.
[64] *See* 28 C.F.R. § 36.208; *see also Lockett v. Catalina Channel Express*, 496 F.3d 1061 (C.D. Cal. 2007), *aff'd*, 496 F.3d 1061 (9th Cir. 2007) (statement that lounge was reserved as "dander free" insufficient under ADA; ferry boat required to attempt modification of policies or procedures to allow service dog in "dander free" zone).
[65] *Branson v. West*, 1999 U.S. Dist. LEXIS 7343 (N.D. Ill. 1999) (ruling that service animal is allowed in hospital setting; was reasonable to restrict service animal from hospital operating room).
[66] *See Day v. Sumner Regional Health Systems, Inc.*, 2007 U.S. Dist. LEXIS 94615 (M.D.Tenn. 2007) (finding that service animals in ER treatment area are not, as matter of law, a direct threat to health or safety).

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If you have any questions or would like more information about your responsibility to accommodate persons with disabilities, please visit the Department of Justice ADA website regarding service animals at http://www.ada.gov/regs2010/service_animal_qa.html or consult with your attorney. Your professional association may also have information about accommodating clients. You may also want to consult with your accountant about the positive tax benefits available for providing accommodations under the ADA.

Please contact me in writing or by phone within ten business days to let me know of your service animal accommodation policy going forward. My number is _____ and my address is _____. I look forward to hearing from you.

Sincerely,

Your Name

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Sample Letter for Government Program or Service

Dear Government Program Director:

I am a person with a disability who uses a service animal. Under the Americans with Disabilities Act (ADA) and North Carolina state law, I have the right to use my service animal when accessing local and state government programs and services. This letter will provide you with information on my rights.

The Americans with Disabilities Act protects me from discrimination based on my disability.[67] A disability is defined as a physical or mental impairment that substantially limits one or more major life activities of an individual.[68] I am a person with a disability because I am substantially limited in the major life activity/activities of _____. My service animal is individually trained to assist me by _____.

Denying people with disabilities service and/or providing us with a lesser service than is provided to persons without disabilities is discrimination prohibited by the ADA.[69] Unless an accommodation for a person with a disability would fundamentally alter the nature of your services or result in significant difficulty or expense, you must: (1) modify your policies, practices, or procedures; and (2) provide auxiliary aids and services to ensure that people with disabilities enjoy equal access to your programs and activities.[70]

An example of a reasonable modification to your program's policies includes permitting the use of service animals in your facility.[71] Service animals are defined by the ADA as any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.[72] Along with dogs, the ADA recognizes miniature horses as service animals.[73]

Please be advised that the ADA does not require me to register my service animal with a state or federal agency to qualify it as a "real" or "official" service animal, nor is there a mandatory service animal registration program in North Carolina. Thus, you may not require any further verification that my animal is a service animal beyond asking what

[67] 42 U.S.C. § 12101, *et seq*.
[68] 42 U.S.C. § 12102(1).
[69] *See* 28 C.F.R. § 35.130.
[70] *See* 28 C.F.R. § 35.130.
[71] *See* 28 C.F.R. § 35.136.
[72] 28 C.F.R. § 35.104.
[73] 28 C.F.R. § 35.136(i).

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tasks it has been individually trained to do. Furthermore, it is a class 3 misdemeanor under North Carolina state law to deny me access to your business with my service animal.[74]

If you are hesitant to allow my use of a service animal because you fear that it will harm the health or safety of other patrons, you must be able to demonstrate both the severity of the risk posed and the likelihood of an injury actually occurring.[75] For instance, if you are concerned about admitting a service animal into a "dander free" area or because of allergies, you must conduct an individualized assessment to determine the risk posed by the service animal and whether reasonable modifications may be undertaken to mitigate the risk.[76] Courts generally find that service animals are to be allowed in restaurants, hospitals and other areas open to the public, regardless of other's allergies, immunodeficiencies, or fears related to dogs.[77] Also, please be advised that many courts have found a blanket policy banning all animals, such as "no dogs" policies, are discriminatory under the ADA if exceptions are not made for service animals.[78] Government programs and services must satisfy a very high burden before excluding service animals from their facility or particular locations in their facility.

If you have any questions or would like more information about your responsibility to accommodate persons with disabilities, please visit the Department of Justice ADA website regarding service animals at http://www.ada.gov/regs2010/service_animal_qa.html or consult with your attorney. Your professional association may also have information about accommodating clients. You may also want to consult with your accountant about the positive tax benefits available for providing accommodations under the ADA.

Please contact me in writing or by phone within ten business days to let me know of your service animal accommodation policy going forward. My number is _____ and my address is _____. I look forward to hearing from you.

Sincerely,

Your Name

_____

[74] N.C. Gen. Stat. § 168-4.5 (2005).
[75] *See* 28 C.F.R. § 35.139.
[76] *See* 28 C.F.R. § 35.139; *see also Lockett v. Catalina Channel Express*, 496 F.3d 1061 (C.D. Cal. 2007), *aff'd*, 496 F.3d 1061 (9th Cir. 2007) (statement that lounge was reserved as "dander free" insufficient under ADA; ferry boat required to attempt modification of policies or procedures to allow service dog in "dander free" zone).
[77] *Branson v. West*, 1999 U.S. Dist. LEXIS 7343 (N.D. Ill. 1999) (ruling that service animal is allowed in hospital setting; was reasonable to restrict service animal from hospital operating room).
[78] *See Day v. Sumner Regional Health Systems, Inc.*, 2007 U.S. Dist. LEXIS 94615 (M.D.Tenn. 2007) (finding that service animals in ER treatment area are not, as matter of law, a direct threat to health or safety).

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Sample letter to law enforcement and/or magistrate

Date

Dear Sir or Madam:

I am a person with a disability who uses a service animal. Under North Carolina state law, I have the right to use my service animal when accessing places of public accommodations, like private businesses.

North Carolina state law, in addition to federal laws, protects me from discrimination based on my disability.[79] A disability is defined as a physical or mental impairment that substantially limits one or more major life activities of an individual.[80] I am a person with a disability because I am substantially limited in the major life activities of _____. My service animal is individually trained to assist me by _____. On date & time, I went to business name & address with my service animal to _____. Business owner/employee name would not allow me to {in this section: provide detailed timeline, with names of witnesses}.

Please be advised that the ADA does not require me to register my service animal to qualify it as a "real" or "official" service animal, nor is there a mandatory service animal registration program in North Carolina. Further verification that my animal is a service animal beyond asking what tasks it has been individually trained to do is not required. Furthermore, it is a class 3 misdemeanor under North Carolina state law to deny me access to your business with my service animal.[81]

I respectfully request that a criminal summons be issued against NAME OF INDIVIDUAL BUSINESS OWNER/MANAGER pursuant to N.C. General Statute § 168-4.5, because "it is unlawful to deprive a person with a disability or a person training a service animal of any rights granted the person pursuant to G.S. 168-4.2 through G.S. 168-4.4, or of any rights or privileges granted the general public with respect to being accompanied by animals or to charge any fee for the use of the service animal. Violation of this section shall be a Class 3 misdemeanor."

Please contact me in writing or by phone within five (5) business days to let me know of any action that will be taken based on my experience. My number is __-_____and my address is _____

[79] N.C. Gen. Stat. § 168-2; N.C. Gen. Stat. § 168-4.2; 42 U.S.C. § 12101, *et seq*.
[80] 42 U.S.C. § 12102(1).
[81] N.C. Gen. Stat. § 168-4.5 (2005).

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_____. I look forward to hearing from you.

Sincerely,
Your Name

Disability Rights North Carolina is a 501(c)(3) nonprofit organization headquartered in Raleigh. It is a federally mandated protection and advocacy system with funding from the U.S. Department of Health and Human Services, the U.S. Department of Education, and the Social Security Administration.

Its team of attorneys, advocates, paralegals and support staff provide advocacy and legal services at no charge for people with disabilities across North Carolina to protect them from discrimination on the basis of their disability. All people with disabilities living in North Carolina are eligible to receive assistance from Disability Rights NC.

Contact us for assistance or to request this information in an alternate format.

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