

ACCESS RIGHTS IN MINNESOTA OF PERSONS USING OR TRAINING ASSISTANCE DOGS

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A Fact Sheet From The Minnesota Disability Law Center

This fact sheet is intended as a brief introduction to the access rights in Minnesota of persons using or training assistance dogs. The term "assistance dogs" includes service dogs for persons with physical disabilities, guide dogs for blind or visually-impaired persons, and hearing dogs for deaf persons. Some of the laws discussed here refer generally to service animals, but the issues most often arise with assistance dogs and this discussion is limited in that way. Because the laws use the term "service" rather than "assistance," the term "service dog" is used here to include all assistance dogs. This information does not constitute legal advice with regard to any particular situation.

1. What laws govern access for service dogs?

There are two Minnesota laws which include similar provisions for access to public accommodations and to housing for persons using or training service dogs. Minnesota Statutes §§ 256C.02 and 256C.025 prohibit discrimination on the basis of disability in regard to access to public accommodations and to housing accommodations. Both sections allow a person using a service dog full and complete access. The public accommodations section extends that right of access to persons training a service dog.

Two sections of the Minnesota Human Rights Act provide comparable rights of access. Minnesota Statutes § 363.03, Subd. 2(5) provides that a person with a disability cannot be denied housing because he or she uses a service animal. Minnesota Statutes § 363.03, Subd. 10 provides a right of access to public accommodations for users of service animals.

Federal regulations also provide access for service dogs. The Americans with Disabilities Act (ADA) regulations assure access to public accommodations for persons using a service animal. The federal regulations implementing the Fair Housing Act state that the person using a service animal must be allowed access to housing.

Federal regulations implementing the Air Carrier Access Act require that air carriers must allow dogs and other service animals used by persons with a disability to accompany the persons on a flight.

The text of these statutes and regulations appears at the end of this Fact Sheet.

2. What does the law say it takes to be a service dog?

The Minnesota statutes require that a service animal be properly identified as being from a recognized program which trains service animals to aid persons with disabilities. The law does not define what a "recognized program" is.

The definition of "service animal" in the ADA regulations refers to any dog or animal "individually trained" to do tasks for persons with disabilities. There is no requirement for any special certification or harness. The Air Carrier Access Act regulations suggest a number of ways to identify the dog, including the "credible verbal assurances" of the person with a disability using the animal.

3. Are there any exceptions to the right of access for housing?

Yes. The Minnesota laws do not apply where rooms are rented in a single-family residence.ⁱ The federal Fair Housing Act regulations have slightly broader exceptions.ⁱⁱ Another exception is if the presence of the dog would be a direct threat to the health or safety of others, a circumstance which should not arise with a service dog.ⁱⁱⁱ

ⁱ Minn. Stat. § 256C.025, Subd. 2; Minn. Stat. 363.02, Subd. 2(1).

ⁱⁱ 24 C.F.R. § 100.10(c)(2).

ⁱⁱⁱ Minn. Stat. § 363.03, Subd. 2a(d); 24 C.F.R. 100.202(d).

4. Are there public accommodations which may refuse access to a service dog?

Persons training or using a service dog are entitled to go just about anywhere that the general public may go. There are two exceptions in the state Human Rights Act and in the federal Americans with Disabilities Act regulations. One is if allowing the service dog in would "fundamentally alter" the activities of the place of public accommodation.^{iv} The second is if presence of the dog poses a direct threat to the health or safety of others.^v

5. How would allowing a service dog in a public accommodation "fundamentally alter" the activities there?

This exception is very narrow. For instance, allowing a service dog in a restaurant would not "fundamentally alter" the restaurant business, although allowing the dog in the food preparation area might. A service dog that disrupts an activity, such as barking at a play or concert, would fundamentally alter the activity.

6. When would a service dog pose a threat to health or safety?

This exception is also narrow. The ADA regulations say that safety requirements "must be based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities."^{vi} The same approach should be taken when considering the risk posed by the presence of a service dog. If all people, including persons who are not disabled, are excluded from a particular area for health or safety reasons, no question arises about access for a person with a disability who happens to have a service dog.

7. May the landlord or a hotel or restaurant impose an extra charge on persons accompanied by service dogs?

Absolutely not. The Minnesota laws mentioned above are clear on that issue. The Americans with Disabilities Act regulations are not as explicit, but the Department of Justice guidelines state that no deposit nor surcharge may be imposed upon an individual with a disability using a service dog.

8. Who has the responsibility for supervision of the service dog?

The user or trainer of the service dogs does. The public access provision in the Minnesota Human Rights Act requires the service dog to be properly harnessed or leashed so that the person using the dog may maintain control of the animal. The federal Americans with Disabilities Act regulations state that a public accommodation is not required to supervise or care for a service animal.

9. What if an apartment building or a restaurant has a "no pets" policy?

There are two responses to this question. First, a service dog is not a pet. Second, the law requires "reasonable accommodations" in rules or policies when those accommodations are necessary to allow a person with a disability the full use of an apartment building or a place of public accommodation. The "no pets" policy must give way.

10. Who is responsible for any damage done by a service dog?

The user or trainer of the service dog, so long as other persons who cause damage would be required to pay.

11. Are persons training a service dog entitled to access with that dog to a public accommodation?

In Minnesota they are and in many other states. The Americans with Disabilities Act regulations do not extend to persons who are training service animals.

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Endnotes

^{iv} Minn. Stat. § 363.03, Subd. 3(c)(2); 28 C.F.R. § 36.302(a).

^v Minn. Stat. § 363.03, Subd. 3(d); 28 C.F.R. § 36.301(b).

^{vi} 28 C.F.R. § 36.301(b).