EMPLOYMENT LAW BULLETIN

Mazanec, Raskin & Ryder September 2019 Newsletter

Do I Have to Accommodate My Employee and His Dog?

An employee walks into your shop with a corgi named Cincinnati Jake, claiming that Jake is a service animal and that Jake is going to accompany him to work every day from now on. What should you do?

The U.S. Justice Department explains in guidance that there is a distinction between a service dog and a therapy/emotional support dog. A service dog is the only recognized canine accommodation under the law. Service dogs are individually trained to do work or perform tasks for a disabled individual. The dog is not required to complete professional training. Individuals have the right to train the dog themselves, but again, the dog must be trained to actually perform a task or do work. Therapy dogs, on the other hand, are not a recognized canine accommodation under the law. Therapy dogs is a generic term to identify dogs whose mere presence provides comfort (as opposed to service dog that would be trained to sense an anxiety attack in a person in order to help the person avoid or lessen the impact of such an attack).

While business owners are generally required to accommodate service animals of people with disabilities under the Americans with Disabilities Act, this does not mean that they must allow admittance of any and all animals. When encountered with a person claiming to be accompanied by a service animal, keep the following Dos and Don'ts in mind:

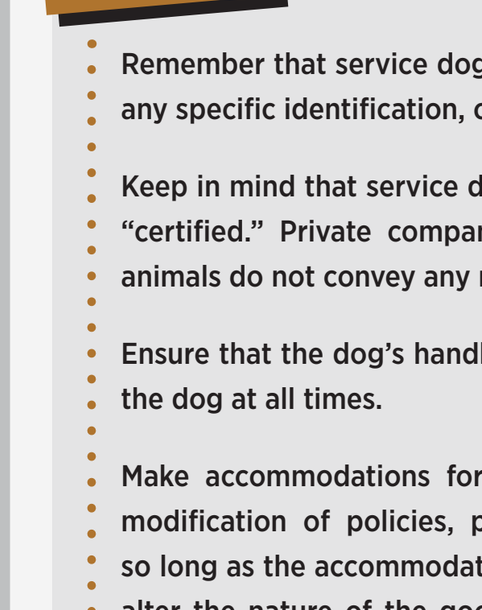
Do

- Remember that service dogs are not required to wear any specific identification, clothing, or harness.
- Keep in mind that service dogs are not required to be "certified." Private companies that "certify" service animals do not convey any rights under the ADA.
- Ensure that the dog's handler remains responsible for the dog at all times.
- Make accommodations for service dogs by way of modification of policies, practices, and procedures, so long as the accommodations do not fundamentally alter the nature of the goods, services, programs or activities provided to the public.

Don't

- Ask the dog's handler any question about the animal or his or her disability, outside of the following:
- "Is the dog a service animal because of a disability?" "What work has it been trained to perform?"
- Require the dog's handler to produce any paperwork relating to the dog's status as a service animal.
- Prohibit any dog based on breed. The ADA does not restrict the type of dog breeds that may become service animals.
- Prohibit any service animal from accompanying its handler to and through self-service food lines.

These basic rules will help business owners maintain compliance with the ADA. However, be sure to check your local laws, which may provide even greater protections for handlers of service animals.



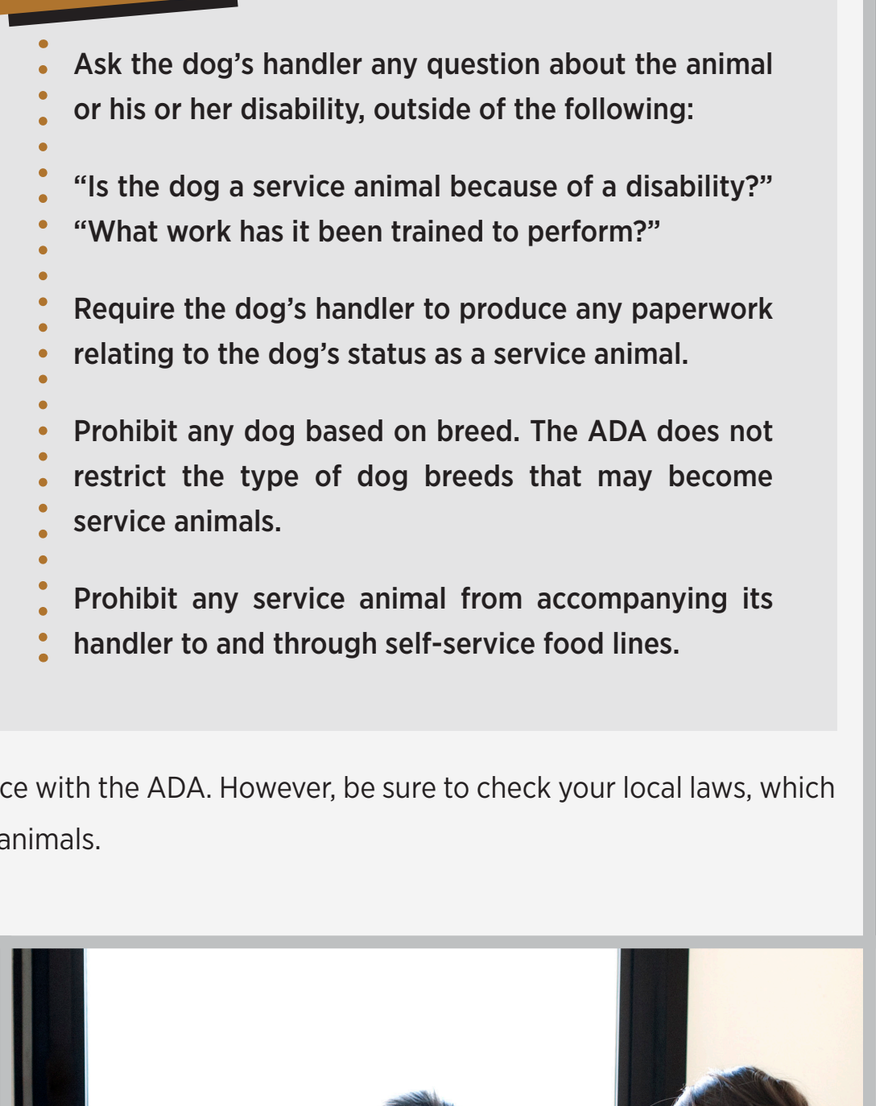
ATTORNEY SPOTLIGHT

Larry Stelzer

GENERAL LIABILITY DEFENSE, EMPLOYMENT & LABOR, AND BUSINESS & COMMERCIAL LAW

COLUMBUS OFFICE

Larry Stelzer joined MRR in the Columbus office July 1st of this year and has been practicing law since 1991 in law firm and in-house counsel roles. He focuses his practice on General Liability defense, Employment & Labor, and Business & Commercial Law. In his spare time, he enjoys running, golfing, reading good biographies and science fiction, watching too much television, hanging out with his wife, and trying unsuccessfully to convince his high school age kids to go do errands and go places with him. He resides in Upper Arlington, Ohio with his wife Lorraine, his daughter Jessica, son Larry, cats Teddy and Charlie, dog Maggie, and a newly adopted Leopard Gecko named Frankie (not to mention a family of skunks under the porch, a ground hog burrowed next to the foundation, and many rabbits and deer that somehow get over and under the back yard fence). To reach Larry, contact him at lstelzer@mrrlaw.com.



Taking FMLA Leave for a Child's School IEP Meeting

On August 8, 2019 the U.S. Department of Labor released an opinion regarding whether an employee may take leave under the Family Medical Leave Act (FMLA) to attend a Committee on Special Education (CSE) meetings to discuss the Individual Education Program (IEP) of the employee's children that have certified, serious health conditions. In response to the request to the Department, the Administrator stated that the employee's need to attend the CSE/IEP meetings addressing the educational and special medical needs of the employee's children is a qualifying reason for taking intermittent FMLA leave. The opinion states that the employee's attendance at IEP meetings is essential to the employee's ability to provide appropriate physical and psychological care to the children. Further, the opinion states, that among other qualifying reasons, the employee's attendance is "to ensure that your children's school environment is suitable to their medical, social, and academic needs." The Administrator added that a child's doctor does not need to be present at the meetings in order for the employee's leave to qualify.

DOL Likely Updating FMLA Forms

On August 5, 2019, the U.S. Department of Labor published a notice announcing a 60-day comment period on revisions to the optional FMLA forms. The changes seek to provide clarity to employees and health care providers about information employers seek. MRR will keep a close eye on changes to these forms. For more information, visit: www.dol.gov/whd/fmla/forms2019.htm

PUBLIC SECTOR

Last Chance Agreements are recognized under R.C. § 124.34

Last Chance Agreements can be an effective disciplinary tool when an employee engaged in conduct that would justify termination but the employer would like to provide the employee with another chance before terminating the employment relationship. Ohio law recognizes the importance of Last Chance Agreements. Accordingly, pursuant to R.C. § 124.34(B), if an employee appeals a termination based upon a violation of a last chance agreement to the State Personnel Board of Review (SPBR) on, SPBR will only determine whether the employee violate the terms of the agreement. Therefore, the SPBR will only affirm or disaffirm the appointing authority's termination. SPBR will not modify the termination.

DID YOU KNOW?

Employers Must Compensate Employees for Short Breaks

Federal law does not require lunch or coffee breaks. However, when employers do offer short breaks (usually lasting about 5 to 20 minutes), federal law considers the breaks as compensable work hours that would be included in the sum of hours worked during the work week and considered in determining if overtime was worked. Unauthorized extensions of authorized work breaks need not be counted as hours worked when the employer has expressly and unambiguously communicated to the employee that the authorized break may only last for a specific length of time, that any extension of the break is contrary to the employer's rules, and any extension of the break will result in discipline. Bona fide meal periods (typically lasting at least 30 minutes), serve a different purpose than coffee or snack breaks and, thus, are not work time and are not compensable.

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