

CASE IN POINT: Service Dog Designation for ESA? That's Not the Way

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BY FRONA S. ROSS, PHD, MBA




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Legal, practical, and ethical reasons that pet dogs differ from those responsible for supporting a person's well-being.

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Service Dog Designation for ESA? That's Not the Way

Dogs are a gift to those who are blessed by having them as part of their lives. Some dogs serve their person directly, some indirectly, and some are simply pets. There are dogs whose primary purpose in life is to help individuals with challenges live purposeful, productive, and independent lives. There are also dogs, who, by their very existence, mitigate anxiety, depression, and isolation experienced by the dog's guardian by providing a relationship with that person. Finally, there are dogs who are loving family members.

The purpose of this piece is to explore the legal, practical, moral, and ethical differences among dogs who are more than pets. Let's start by defining the responsibilities and training of the two main types: Service Animals and Emotional Support Animals.

Service Animals

In the Federal Government's Department of Justice Civil Rights Division most updated version of the Americans with Disabilities Act (ADA, February 2020), a Service Animal is legally defined as "... a *dog* that is individually trained to do work or perform tasks for a person with a disability." That means the person being helped by the dog must have a disability which is covered by the ADA. The law requires that a Service Dog be well-behaved, obedience trained, and under control at all times. Most earn the American Kennel Club's Canine Good Citizen (CGC) certificate by scoring a perfect 10 out of 10. The CGC is considered to be the gold standard distinction for well-mannered canines in our society. A well-behaved

dog is one that has been trained to stay calm and focused—even around loud sounds, other animals, or any other distractions. They must walk well on a leash or, if the handler is unable to use a leash, be controlled by voice. They must be trained to use the outdoors for bodily elimination functions. Their focus is to serve their handler. A Service Dog is a trained, working animal; it is not a pet. That is not to say the dog is not loved; it usually is, but it is not a defining characteristic of being a Service Dog.

A Service Dog is trained to perform tasks that a specific individual with specific physical and/or mental challenges cannot complete independently. There are several specific types of Service Dogs. These include:

- Guide Dogs to help someone who is severely vision impaired or blind.
- Hearing Dogs to notify someone who is deaf that there is an incoming phone call, a person knocking at the door, or a fire alarm sounding.
- Medical Alert Dogs to alert a diabetic handler that their blood sugar is too low or to let someone with epilepsy know that a seizure is impending.
- Mobility Dogs to assist an individual with motor limitations. These dogs can push or pull a wheelchair or aid with balance while walking or standing. They can also be taught to open and close doors, turn lights on and off, retrieve items that have fallen, or bring medication and liquid with which to take the medication to the disabled person.
- Psychiatric Service Dogs who can apply deep pressure to someone who suffers from PTSD to fend off a panic attack. This deep pressure prevents or decreases the intensity of the episode.

A Service Dog's actions are triggered by an identifiable need, and the animal responds accordingly. For example, a Service Dog might see a red light while approaching a street and stop the individual from proceeding further, thereby preventing its handler from possibly getting hit by a vehicle. The dog might sense an impending seizure or heart abnormality; it reacts by signaling its handler to get into a safe position to prevent injury, and then it brings medication to the individual to minimize the episode's intensity. These are all "if-then" situations that the dog has been specifically trained for.

The impact that the dog has on the individual's life is not related to the number of tasks it has mastered. Some dogs are trained for one specific job; others may be required to master fifty to sixty different tasks. Take, for example, a child who is severely autistic and wanders. Wandering in these situations does not mean he or she just walks away. With this kind of individual, there is often a dangerous combination of

great physiological strength, agility, and lack of fear. A child like this can climb or scale an eight-foot fence effortlessly and quickly, jumping over to the other side without any regard for safety. These children are often attracted to water, despite not being able to swim. It is impossible for parents to watch the child every second of every day, and in a matter of minutes a child can escape and face a tragic outcome. A Service Dog, or even multiple Service Dogs, can be trained to immediately react by pulling the child away from the escape route. The first step is to grab the child's clothing. If that fails, the dog simultaneously alerts adults nearby by barking and grabs the child's extremities. This prevents the child from escaping over walls or fences, or through windows and doors, and can save the child's life. It's only one task, but it's a vital one.

The list of tasks a Service Dog can be trained for is endless, as is the positive impact a Service Animal can have on a person's life. Unfortunately, this comes at a great expense. A Service Dog's training is generally known to cost anywhere between \$15,000 and \$50,000, but the impact on the human is priceless.

Emotional Support Animals

An Emotional Support Animal (ESA), unlike a Service Animal, does not have to be a dog. It can be any kind of animal. Unlike a Service Dog, an ESA is not specifically trained to perform a task. That is not to say the animal doesn't help alleviate psychological or psychiatric symptoms; an ESA can give an individual who has an ongoing and disabling psychological condition relief by their very existence. The animal's relationship with the handler is what helps to mitigate the symptoms of the disorder. It is the relationship that is the "cure."

The impact an ESA can have on its handler can also be life altering, but narrower in scope. A handler will often say the dog has saved their life. While this can absolutely be true, it's important to note that the influence is limited to psychological and emotional needs. Whereas a Service Dog reacts to a situation in a manner consistent with its training, an ESA has no training.

Jeremy Barron, M.D., Medical Director at the Beacham Center for Geriatric Medicine at Johns Hopkins, says the psychological and physical benefits of having a relationship with an animal include lower levels of stress, anxiety, loneliness and depression. It can even lower blood pressure (Johns Hopkins Medicine. (n.d.). Barron notes that these effects have been shown to increase mental and physical well-being, improve life satisfaction, and decrease suicidal tendencies. Responsibility for a dog or another active animal can also increase physical activity and expand opportunities for social interaction, another quality of life improvement.

With an ESA, the handler benefits from an ongoing positive and reciprocal relationship. The individual is happier because the animal is part of the person's life—and the animal is happier for the same reason.

Legal Implications

Besides serving mental health needs, an ESA can have an impact on where its handler can live. If an individual meets certain criteria, a mental health professional or a medical doctor can provide a letter of need to grant an individual an accommodation allowing them to live in a place that normally does not permit animals. The sanction afforded by the Fair Housing Act (FHA, 2020) is that having an Emotional Support Animal can put a housing provider in the position of having to "... make reasonable accommodations in rules, policies, practices or services..." when the accommodations are needed to allow the person with a disability the "equal opportunity to use and enjoy a dwelling." (U.S. Department of Housing and Urban Development. (n.d.). This means if a person with a documented disability wants to live in a place that does not normally allow animals, the housing provider is required to make an accommodation. ESA status does not afford the same legal status as a Service Dog, but it does afford an accommodation not afforded to a pet. As with a Service Dog, loving a support animal is not a requirement, but is often the outcome; having an ESA gives the handler an opportunity to love and care for an animal and to be loved in return.

Practical Aspects

■ ACCESS TO PUBLIC AND PRIVATE SPACES

A Service Dog is, with only a few exceptions, afforded the rights of a human who assists an individual with a disability. These rights are protected in every state. A Service Dog can go where dogs are not usually allowed to go. They can go into restaurants, theaters, hotels, supermarkets, planes, and hospitals. One exception is places that need to be sterile, such as an operating room. An ESA does not get special permission to accompany its owner in any of these places; however, in states that recognize ESAs, it can live with its handler in a building that does not normally allow animals. An ESA, unlike a Service Dog, does not have to be a dog. It can be any animal that a physician or mental health worker has determined helps reduce the severity of the disability in the individual under their care.

Identification

Publicly identifying a dog as a Service Animal is not a requirement. A vest, harness, or collar is not legally mandated. Many people who require the help of

a Service Dog have the dog wear an item that says something along the lines of "Working Dog- Do Not Pet." While it is not a requirement, it does serve as a way to educate the public that the dog is not a pet, has a job to do, and needs to be allowed to do its job uninterrupted and without distraction.

To verify that a dog is truly a Service Animal, owners or managers of businesses may only ask two questions. The first is "Is the dog a Service Animal required because of a disability?" and the second is "What work or task has the dog been trained to perform?" The handler is required to answer those questions and nothing more.

It should be noted there is no governmental agency that issues proof that a dog is a Service Animal. The same is true for an ESA animal. There is no business or agency with the authority to validate the legitimacy of a Service Dog or an ESA's standing. The proof that an animal is an ESA is the letter the health care provider submits to a housing authority. No one else has the authority to question the ESA status. Any "proof" or "documentation" obtained from any agency professing to be a provider of certification has no legal standing; it is only a business trying to make money.

Moral and Ethical Considerations

While the government has protected the rights of Service Dogs and ESAs, it has been slow to prevent and punish people from misrepresenting a pet as a Service or ESA animal. When a dog that is just a pet without specific training is presented as a Service Dog, it reflects poorly on real Service Dogs with extensive and expensive training.

While some states have laws that punish owners who essentially commit fraud when they represent their dogs as Service Dogs, more states need to take a stand. More laws and harsher penalties are needed to protect the status of Service Dogs. Individuals who try to present their pets as Service Dogs for self-serving reasons need to be educated about the negative impact these actions cause. Trying to classify a pet as an ESA or, even worse, a Service Dog, is immoral and unethical. It is an act of a selfish individual who doesn't understand, or doesn't care about, the damage they are causing. The initial factor in deciding whether an animal should be trained or classified as an ESA or Service Dog is determining whether there is a need, or if it's only a want. The legal, moral, and ethical answer is obvious: if there is a need... absolutely. If there is only a want... absolutely not. Instead, a healthy, able handler should be grateful that they do not have a disability and appreciate that they are blessed to have a pet they love and who loves them in return.



CASE STUDY

JESSICA, A 29-YEAR-OLD WOMAN FORMALLY DIAGNOSED with generalized anxiety disorder, has an Emotional Support Animal (ESA), a 55-pound Labrador mix named Luna. Luna provides daily emotional comfort, helping Jessica manage her anxiety through companionship and routine. Jessica's therapist provided her with a valid ESA letter, which allows Luna to live with her in a no-pets-allowed apartment.

Jessica is scheduled to fly across the country to attend her sister's wedding. Her airline, following new Department of Transportation (DOT) regulations, no longer recognizes ESAs as service animals, meaning Luna must fly as a pet, in a crate in the cargo hold—or stay behind.

Desperate to have Luna with her, Jessica purchases a "Service Dog" vest and registers Luna on a for-profit website offering bogus certification. She tells the airline representative that Luna is a psychiatric service dog trained to apply deep pressure during panic attacks. The airline permits Luna to fly in the cabin under the ADA. •CSA



Frona S. Ross has a PhD in Speech Pathology and a Masters in Business Administration. She is the past owner of K-9 Kids, where she worked with pet parents and families training their dogs. Using dogs as motivation, she provided therapy services for children and eventually founded Will's Way Dog Rescue, a 501(c) 3 not-for-profit rescue, where she continues as President, helping unwanted and uncared for dogs in the South Florida area.

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