

# Passing The Sniff Test. A sensible plan to deal with counterfeit service animals.



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In December 2013, I wrote about a growing problem involving pets being passed-off as legitimate service animals and the negative effect it is having on the business community and the community of people who genuinely and legitimately employ service animals nationwide.

After posting that article, my office received multiple calls from clients and total strangers asking for advice on how to effectively combat this issue while staying within the boundaries of the law.

While federal service dog law is written to protect individuals with disabilities and their complete, unfettered public access with their (well-trained) canine partners, it also has provisions to protect businesses and other members of the public from service dogs in public who shouldn't be there.

Individuals with a disability have the right to have their service dog accompany them anywhere members of the public are allowed to be or go, but business owners and patrons have rights, too.

Currently, there is no requirement for an individual with a service animal to produce any certification or I.D. to prove the animal is trained.

Additionally, we know that we can only ask the following two questions when confronting a customer with an animal:

**Two questions  
you can ask:**



**Is this a trained service animal?  
What is it trained to do for you?**

This doesn't seem like much to work with. We have to take these customers answers at face value and hope they are telling the truth.

But it's not just the possibility of damage to a shop owner's carpet when an untrained animal urinates. In some cases, it has gotten a lot worse for some shop owners.

Legitimate service dogs are becoming victims to unruly fakes! When an aggressive pet attacks a service dog, it often is unsure how to respond and looks to the owner for help. Remember, service dogs are trained to be helpful — not aggressive. As a result, this has caused injury to the service dog as well as the owner in some cases. This issue becomes one of safety, not only for service dog — the target of the attack — but for any employee

## Disclaimers And All The Technical Stuff ...

ADA laws, both State and Federal, are constantly changing. This guide addresses the topic based on current law as of its writing. You are encouraged to call us to ensure the recommendations we provide are current and accurate. This material was written and produced by Chris Taylor, ADA Compliance Consultants, Inc.

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or customer that may be in close proximity.

As I mentioned, business owners and patrons have rights in this matter.

The ADA states: U.S. Code of Federal Regulations § 36.202(c)(2):

*(2) Exceptions. A public accommodation may ask an individual with a disability to remove a service animal from the premises if: (i) The animal is out of control and the animal's handler does not take effective action to control it; or (ii) The animal is not housebroken.*

*(3) If an animal is properly excluded. If a public accommodation properly excludes a service animal under § 36.302(c)(2), it shall give the individual with a disability the opportunity to obtain goods, services, and accommodations without having the service animal on the premises.*

Here's what this means: if an alleged service animal misbehaves, you have the right to ask the owner to remove the animal from the premises. By educating ourselves we can make our business safer for our disabled customers who rely on their service animals.

As excerpted from U.S. Code of Federal Regulations § 36.202, there are two instances cited in federal law where a business may exclude a service dog:

- The service dog is out of control and the handler isn't doing anything about it.
- The service dog isn't housebroken and urinates or defecates inappropriately

If a service dog team (dog and owner) is asked to leave due to the dog's behavior, the business must provide the unaccompanied handler the opportunity to obtain goods or services. Only the dog can be excluded from the premises. If a dog's behavior infringes on the ability of other patrons to enjoy a safe, routine experience similar to one they would experience without a service dog on-site, then a business may be within their legal right to ask the team to leave. Before making that determination, check out the two lists below detailing what service dogs in public should and shouldn't do.

## Passing the sniff test ...

### In public, service dogs should:

- Focus on their handler at all times unless doing trained task work.
- Possess a stable, even temperament without anxiety, reactivity or aggression of any kind.
- Walk nicely on a leash without pulling, straining, lunging, lagging, circling or forging.
- Remain quietly by their handler's side when their handler stops without the animal wandering or losing focus.
- Lay quietly under the table or beside their handler's chair without getting up or moving around excessively. Changing positions is fine; outright breaking stays to respond or engage with distractions or to wander off is not.
- Ignore distractions.
- Be quiet at all times unless performing specific, trained task work. Outside of trained and necessary task work, there should be NO other vocalization, including, but not limited to, whining, grumbling, wooing, barking, growling, whimpering or other noise. Unless working, service dogs should be seen by the public and not heard.
- Appear professional, well-groomed and well-taken care of. The service dog is a representative of both you and the service dog community.
- Keep his or her nose to his or herself at all times. Even if there are food, products or other interesting things readily

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accessible. Sniffing people, objects or food is not only rude, it's a possible health hazard. Exceptions to this rule include Allergen Alert Dogs or other service dogs who rely on their nose to perform their work. However, the service dog's sniffing should be directly related to task work and not random or merely "exploring."

- Respond quickly and readily to the handler's commands, cues or directions. Service dogs should give off the appearance to anyone watching that they are highly trained and that they completely understand what's being asked of them. Service dogs should possess outstanding obedience skills and above-average manners and both should be readily apparent. A service dog's demeanor, training and behavior should, without question, differentiate them from all but the best-trained pet dogs.
- Be able to do pertinent task work to mitigate their handler's disability. In order to be considered a "service dog" under U.S. federal law, a dog must be partnered with an individual with a disability AND perform specific, trained task work to mitigate that disability. Task work is not optional. If a dog doesn't perform task work, he or she is not a service dog – he or she is an Emotional Support Animal and she doesn't belong in public.

### In public, service dogs should NOT:

- Urinate or defecate inappropriately. If a dog isn't house trained, he or she doesn't belong in public — service dog or not. For younger service dogs in training, outings should be short enough to provide plenty of opportunities to make trips outside. "Accidents" are one of the few reasons a business can exclude a service dog team and there are no excuses for having a service dog who isn't house trained. On rare occasions, a service dog may truly be sick or have an upset stomach and an accident is unavoidable, but those occurrences are definitely an exception and not the rule for service dogs.
- Whine, bark, grumble, growl or make other noises.
- Pick food or objects up off the floor or steal (or even show much interest in) food or items that are sitting out. Exceptions to the "picking objects up off the floor" rule include dogs that retrieve dropped items for their handlers or who are otherwise doing trained task work. In general, though, service dogs should not interact with distractions or any kind unless cued to or otherwise working.
- Sniff staff members, patrons, floors, tables, counters, surfaces, products, shelving or anything else unless the service dog is performing specific, trained task work, such as detecting allergens or other substances dangerous to their handler.
- Drag or pull their handler for any reason, unless the dog is performing specific mobility-related task work for their handler as evidenced by the presence of a brace mobility support harness, other task-related gear or wheelchair assistance harness. A service dog's behavior should never appear "out of control," and there's a huge difference between a service dog providing counter-balance for their handler by leaning into a harness and a dog who is simply dashing here and there and yanking their handler towards distractions.
- Wander or move widely out of heel position unless cued to by their handler. While service dogs aren't robots and can't be expected to maintain exact heel position at all times, neither should they range widely enough to infringe on the space, movement or rights of other patrons or teams. Service dogs should be responsive to their handler's movements and focused enough to readily move with him/her without significant lags or delay. Service dogs should not be so engaged or engrossed with the surrounding environment or distractions that they give the appearance of wandering, daydreaming, ignoring or of just being generally untrained.
- Break "stays," or other fixed-position behaviors to investigate distractions, explore or other move around. Exceptions include service dogs who must perform task work that requires them to take the initiative to respond to their handler's disability regardless of location or position or to retrieve assistance/medication/help. The service dog's decision to break position or disobey a "stay" should be a DIRECT result of specific, trained task work. Again, there's a huge difference between a dog who gets up because they're bored or distracted and a service dog who's obviously responding to their handler's disability.

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- Be anxious, antsy, agitated or aggressive in any way, shape, form or fashion. A service dog should never make anyone interacting with him or her nervous or afraid because of his or her direct behavior. Some people are afraid of dogs or intimidated by large, dark or certain breeds of dogs, but a service dog's actions should NEVER contribute to that fear. Dogs who are anxious, on edge, reactive, fearful or aggressive in ANY way do not belong in public and especially not as a service dog representative.
- Stink, smell or appear unkempt/ungroomed in any way.
- Engage with other dogs, people, children or distractions unless allowed to do so by their human partner. The key here is "allowed to do so by their human." There's nothing wrong allowing a service dog to greet a friendly child or dog if the handler is comfortable with it, but it should be the handler's decision and choice, not the service dog's. A service dog should not appear overly excited, unfocused, distracted, over-stimulated or otherwise out of control. There's no defined line in the sand on this one, but it's easy to spot when you see it.
- Jump, scratch, mouth or exhibit other "out of control" behavior. A service dog should NEVER exhibit rude, ill-mannered, untrained, or behaviors that are considered inappropriate or nuisances. They should NEVER infringe on other patron's personal space in a way that appears untrained or impolite. This includes laying their head on stranger's knees, licking hands while passing by, or leaning against the legs of the person standing next in line. It's not "cute," regardless of whether or not the other person provides assurances they're "okay with it." A service dog should NEVER engage in any behavior or activity that could potentially be hurtful, harmful, leave a bad taste in someone's mouth or cause the handler to have to apologize to the recipient.

## What you can do ...

If you're out in public and you see a service dog engaging in "should not" behaviors, and it's readily obvious the dog in question is generally ill-mannered or not well-trained, ask to quietly speak to a manager. Let the manager know that while federal law does require them to permit access for all service dog teams, they're not required to deal with dogs who aren't ready for public access yet, and that federal law allows them to quietly ask the handler to remove the dog from the premise. Don't challenge the team directly, but by letting the manager know federal law protects their business and patron's rights to not be molested or subjected to poorly behaved service dogs, you'll be paving the way toward better access rights for well-trained service dog teams.

When business owners know they have recourse for dealing with service dogs who, due to their temperament, manners or lack of training, obviously shouldn't be working in public, there's less backlash from negative encounters with dogs showcasing unacceptable behavior.

Many business owners fear excluding a poorly-behaved team due to the "must provide access, period", or "you're breaking the law" statements touted by those who drag their substandard dogs around with them in public. With each instance, their business, clients or sense of control suffers due to a bad experience, the more all teams, even well-trained and professional ones, will encounter access challenges and issues. By providing the manager with the real facts concerning service dog access rights, you're empowering him or her to respond appropriately to those individuals and dogs who negatively impact or affect the service dog community.

Help educate the business community and protect service dog access rights by sharing this guide. By giving businesses the tools they need to recognize what service dogs in public "should" and "should not" be doing, you'll help reduce access challenges for teams who have well-trained, well-mannered canine partners and educated and informed handlers.

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