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Welcoming Guests Accompanied by Service Animals

By Frank V. Petrosino, Esq.

As the sun starts to set on what was a beautiful winter day, a man and woman walk into your restaurant and ask for a table for two. The man is carrying a cute, white ferret. Even though you like ferrets, you know that Vermont's health regulations for food service establishments prohibit (with certain exceptions) live animals to be brought into the restaurant. You welcome them with a bright smile and politely inform them that the ferret is not allowed in the restaurant. The man who is holding (and now gently petting) the ferret counters with, "oh, but this ferret is my service animal."

What is a service animal?

Under regulations issued under the Americans with Disabilities Act of 1990 (the "ADA"), a service animal is any "animal individually trained to do work or perform tasks for the benefit of an individual with a disability" Obvious examples are seeing eye dogs and dogs that alert individuals with impaired hearing to intruders or sounds. Less obvious examples are service animals that provide those with emotional or mental illnesses (which are "disabilities" under the ADA) the support needed to overcome the obstacles created by such emotional or mental illnesses (e.g., the ability to go out of the house alone). Service animals that can be trained to provide such support include (but are not limited to) dogs, cats, ferrets, and monkeys.

In order to qualify as a service animal, the animal must be trained "to do work or perform tasks." There is no requirement as to the formality or the extent of the training. Professional training by certified trainers is not a requirement of the ADA and is not a requirement under Vermont law. Training by the owner is totally acceptable.

"No Pet" Policies

It is very important to understand that a service animal is not a pet. Consequently, even establishments with a "no pet" policy cannot exclude service animals from their establishments pursuant to such a policy (you can, of course, still enforce such policies against pets). Furthermore, those establishments with "no pet" policies need to make sure such policies explicitly provide that service animals are not covered by such policies.

Vermont's Health Regulations

The Vermont's Health Regulations for Food Service Establishments (see http://healthvermont.gov/regs/03food_estab.pdf) provide that service animals are allowed on the

premises of a food establishment, so long as they are kept away from food preparation areas and no health or safety hazard will result from the presence or activities of the service animal.

How can you verify that an animal is indeed a service animal?

Well, the short answer is “You can’t.” An owner of a service animal is not required to carry, or provide you with, documentation verifying the service animal’s status. If it is not apparent that the animal is a service animal, you can ask the person with the animal (a) whether the animal is a service animal required because of a disability, and (b) what tasks the service animal performs. If the person tells you that the animal is a service animal and then describes the tasks the service animal performs, that is the end of the inquiry. You cannot inquire as to the type or nature of the person’s disability or ask for any documentation to support the person’s claim that the animal is a service animal.

There, of course, will be instances where people try and game the system and claim that their pets are service animals when they really are not. It can be very difficult to tell if a person is lying about whether an animal is a service animal. The law, however, is clear and only authorizes the limited inquiry described above.

People with disabilities, especially emotional and mental illnesses, have unfortunately been subject to explicit and implicit discrimination since the dawn of humanity. Consequently, those suffering from disabilities have had to fight hard to obtain reasonable accommodations so that they can share, to the extent practical, in the benefits that places open to the public have to offer. The ADA and Vermont law are both designed to provide this opportunity, and to this end, the laws err on the side of protecting people with disabilities from potentially uncomfortable inquiries regarding their disabilities and the resources they use to compensate for such disabilities.

When a Service Animal is On Premises

Once an animal is claimed to be service animal, the animal may generally accompany the person with the disability in all areas in which your other patrons are normally allowed to be. You are not, however, required to feed or otherwise care for the service animal; that is the sole responsibility of the service animal’s owner.

Service Animals Causing Damage

If a service animal causes damage to the premises, you may ask the owner to compensate you for such damages so long as it is your customary practice to charge patrons without disabilities for the same types of damages. A restaurant that does not customarily charge patrons for broken plates could not levy a charge for a plate broken by a service animal. A hotel that customarily charges patrons for damaged furniture could charge for a chair damaged by a service animal.

Can you ask that a service animal be removed from your establishment?

The short answer here is “Maybe.” You can ask that a service animal be removed from your premises when the service animal poses a direct threat to the health and safety of others. Mercifully, service animals are generally well-mannered and clean. If, however, a service

animal is out of control or threatens another patron without just cause, it may be excluded. Similarly, service animals may be excluded from food preparation areas because of the perceived health risk.

A service animal that does not pose a health or safety risk, but is otherwise disruptive, can be excluded under certain circumstances. In order to justify such an exclusion, however, you would need to show that you could not accommodate the service animal without a fundamental alteration to the nature of the business. Where a restaurant or hotel is concerned, such a showing will generally be difficult. Most service animals are unobtrusive and can easily navigate the premises of most establishments.

If the service animal is being potentially disruptive as a part of its service function (e.g., barking to warn its owner that a person is at the hotel door), it cannot be excluded. If, however, the potentially disruptive behavior is not a service function, and it does disrupt other patrons' enjoyment of use of your establishment, the service animal may be excluded. I suggest confirming that the disruptive behavior is not "task" the service animal performs, making detailed records of all complaints (i.e., get the names and contact information of those complaining and document the nature of the complaints), and giving a few warnings to the owner before demanding exclusion. If it comes down to a lawsuit, you will want to establish that you confirmed with the owner that the disruptive behavior was not a service function, you did indeed receive complaints, and you gave the owner ample opportunity to minimize the disruption.

Beware! Asking the service animal to leave is not the same as asking the owner to leave. The owner of an excluded service animal generally must be afforded the opportunity, without the company of the service animal, to enjoy the goods and services you have to offer.

A Case that Brings It Home to Vermont

In 2005, the Vermont Human Rights Commission decided a case called *Corbeil v. The Music Club*, and this case highlights the issues hotels and restaurants face with regard to service animals. Ms. Corbeil suffered from post traumatic stress disorder and a panic disorder. These disabilities were so severe that they limited Ms. Corbeil's ability to go out in public and interact with others in social settings.

Ms. Corbeil's physician advised Ms. Corbeil to get a service and psychiatric support animal to help Ms. Corbeil with her disabilities. Acting on that advice, Ms. Corbeil did some research on service animals and subsequently obtained a Pomeranian puppy. With the help of an online support group, Ms. Corbeil trained the puppy herself. The type and extent of training was not specified in the case; however, the puppy was apparently trained to "perform the task" of maintaining physical contact with Ms. Corbeil and allowing Ms. Corbeil to pet the puppy in order to alleviate nervousness and panic attacks.

One evening, Ms. Corbeil attended a wedding rehearsal at The Music Club in Williamstown, and she brought her puppy along. When the owner of the club saw Ms. Corbeil with her puppy, the owner asked Ms. Corbeil to remove the puppy from the restaurant because of health regulation restrictions. When Ms. Corbeil explained that the puppy was a service animal, the owner asked to see documentation to prove it. Ms. Corbeil, of course, did not have any documentation to provide. The owner then asked that the puppy be removed from the premises. After an alleged

emotional exchange, Ms. Corbeil removed the puppy and made a complaint to the Vermont Human Rights Commission. The Vermont Human Rights Commission held that the puppy had received training and was a service animal. It also held the owner liable for excluding the puppy from The Music Club premises.

Needless to say, the owner of The Music Club did not handle the situation appropriately. Please do not make the same mistake.

The Heart of the Matter

The heart of your Vermont hospitality business is the ability to create a welcoming, comfortable, and enjoyable experience for all of your guests, including guests with service animals. Though there may be certain misguided individuals who would lie about their pets being service animals, you can rarely know for sure if someone is lying. Therefore, err on the side of caution. When someone claims that his ferret is a service animal, assume that the ferret is indeed a service animal and the owner is not a weasel.

(For more information on this topic, see the U.S. Department of Justice website at <http://www.usdoj.gov/crt/ada/animal.htm>.)

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