

OHIO CIVIL RIGHTS COMMISSION COMMISSIONERS' GUIDANCE MANUAL

DATE: December 17, 2015

TECHNICAL POLICY T - 31

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T – 31 ANIMAL ASSISTANTS AS A REASONABLE ACCOMMODATION FOR INDIVIDUALS WITH DISABILITIES

Ohio Revised Code (R.C.) Chapter 4112 does not specifically reference animal assistants, and there is a dearth of state case law on the issue. The Ohio Administrative Code (O.A.C.), specifically §4112-5-02(C), defines animal assistant as “any animal which aids the disabled.” This section references specific examples of what may be considered an animal assistant:

- (1) A dog which alerts a hearing impaired person to sounds;
- (2) A dog which guides a visually impaired person;
- (3) A monkey which collects or retrieves items for a person whose mobility is impaired.

Though this definition of animal assistant generally applies to all subject matter jurisdiction of the Commission, the unique nature of each protected area requires individualized guidance as it relates to animal assistants and accommodation of disabilities.

For example, allowing an animal assistant in a place of public accommodation is factually an isolated and temporary incident with little opportunity for prolonged communication. In contrast, accommodation in housing contemplates the broadest definition of animal assistants because of elements, such as the right to housing enjoyment, tenant privacy matters, the long-term nature of the relationship, and the right to live independently. For example, inclusion of comfort and therapy animals may be contemplated in housing because there is ample opportunity to communicate about medical necessity.

The Commission takes a moderate approach to animal assistants in employment. An employment accommodation occurs in an environment which is more permanent than a place of public accommodation, but shorter than a housing situation and with less autonomy. This context allows for the interactive process, which affords opportunities for consistent communication about the employee’s physical or mental limitations, and how an animal assistant may accommodate the disability. Yet, at the same time, in weighing the need for an animal assistant as an accommodation in employment, other factors, such as safety, cleanliness, and principles of undue burden, may be considered due to the confined nature of the environment.

Finally, an accommodation in higher education constitutes more than the isolated and temporary incident of a patron visiting a public accommodation (Policy T.31.1). The educational environment allows interplay between the student and the institution of learning, much like the context of employment. (Policy T.31.2). Such cases will be viewed with a similar approach, unless the claim pertains to student housing. In such situations, the need for the animal assistant may be examined under Policy T.31.3

Therefore, the Commission adopts the following Technical Policies as *interpretive guidance* to staff, charging parties, respondents, and the general public on the applicability of the regulations pertaining to use of “animal assistants” for accommodations in public accommodation, employment, housing and higher education.

T – 31.1 The Application of Animal Assistants in Places of Public Accommodation

Under R.C. §4112.02(G), proprietors, employees, keepers and managers of places of public accommodation are required to give every person equal access to the full enjoyment of the accommodation, advantages, facilities, or privileges of the place of accommodation. O.A.C. §4112-5-06(A)(4) makes it unlawful to “deny any disabled person in a place of public accommodation the attendance of an animal assistant.” Thus, places of public accommodation must make reasonable changes to rules, policies, and practices to afford persons with disabilities an equal opportunity to access places of public accommodation. This includes allowing animal assistants for individuals with disabilities.

The Commission takes the position that in a place of public accommodation, an animal assistant must be trained to perform work or assist in the completion of specific tasks. This interpretation is consistent with the federal rules promulgated by the U.S. Department of Justice on service animals. 28 CFR Part 35 (Nondiscrimination on the Basis of Disability in State and Local Government Services) and Part 36 (Nondiscrimination on the Basis of Disability by Public Accommodations). Under the federal public accommodation regulations, the term used is ‘service animal’ and is defined as

Any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.” 28 CFR §36.104.

The definition under 28 CFR Part 35 is more comprehensive:

Service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition. 28 CFR §35.104.

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Similarly, under Ohio law, an animal assistant used to aid the disabled in a place of public accommodation must assist the disabled individual with performing tasks. O.A.C. §4112-5-02(C) provides specific examples, such as a dog that alerts a hearing impaired person to sounds; a dog which guides a visually impaired person; or a monkey which collects or retrieves items for a person whose mobility is impaired. For example, if the individual with the disability is unable to see, the animal assistant would have to assist the person in performing tasks that would be more difficult without sight.

In some situations the disability may not be apparent, but the animal can still qualify as an animal assistant. For example, an animal may qualify as an animal assistant if the animal is assisting individuals with mental health concerns, such as a dog that alerts people with epilepsy to an impending seizure. *Evans v. Watson*, 1993 WL 36073, *2 (D. Or. Feb. 5, 1993). However, the individual with the disability has to articulate how the animal helps to prevent or interrupt impulsive or destructive behaviors. Unlike a housing environment (T-31.3), animals that merely provide emotional support, comfort, or companionship, without more, are not viewed as performing tasks to qualify the animal as an assistant to accommodate patrons in places of public accommodation.

When it is not obvious what service an animal provides in a place of public accommodation, only two questions may be asked of the disabled individual: (1) Is the animal required because of a disability, and (2) What work or task(s) has the animal been trained to perform? See, 28 CFR §§35.136(f), 36.302(c)(6). A proprietor, employee, keeper or manager of a place of public accommodation may not request medical documentation to support the need for the animal assistant and cannot require special papers, cards or insignia for the animal. *Id.*

Furthermore, although the animal assistant is required to be trained to assist the individual in completion of a specific task, the training requirement is not stringent. There is no requirement that an animal complete a certain level of training or be trained for a specific amount of time. Nor, must a patron show a document of training or certification. *Vaughn v. Rent-A-Center, Inc.*, 2009 WL 723166, *10-11 (S.D. Ohio Mar. 16, 2009).

Under federal law, service animals must be harnessed, leashed or tethered unless these devices interfere with the service animal's work or the individual's disability prevents using these devices. See, 28 CFR §35.136(d). Service animals must be permitted unless: (1) The animal is out of control and the animal's handler does not take effective action to control it; or (2) The animal is not housebroken. §35.136(b). If a public entity properly excludes a service animal under §35.136(b), it shall give the individual with a disability the opportunity to participate in the service, program, or activity without having the service animal on the premises. §35.136(c).

The Commission takes a similar position with respect to animal assistants in places of public accommodation. In all cases, it is up to the individual to control the animal. An institution can request that an animal assistant be removed from the premises if the animal becomes threatening, hostile or aggressive and/or if the animal is unusually disruptive, and the animal's owner does not take effective action to control the animal and/or the animal is not housebroken. In these situations, although the animal assistant may be removed, the patron may remain. Finally, akin to federal law, O.A.C. §4112-5-06(A)(4) prohibits proprietors, employees, keepers and managers of a place of public accommodation from requiring the disabled person to pay an extra charge for the attendance of an animal assistant.

T-31.2 The Application of Animal Assistants in Employment

Under R.C. §4112.02 and O.A.C. §4112-5-08(D)(4)(d), employers are required to provide reasonable accommodations to persons with disabilities if the accommodation will assist the individual in performing the essential functions of the job or assist in accessing the work site. This includes making changes to rules, policies, and practices against having animals on the property for an individual with a disability, who needs an animal assistant to safely and substantially perform job functions. These changes must be reasonable. Employers are only required to accommodate animal assistants for qualified individuals with disabilities, and accommodation requests should be considered on a case by case basis.

As with other requests for an accommodation, an employer may need specific information regarding the employee's disability and how the service animal's presence will aid with his/her ability to perform job duties in order to properly evaluate the request. When the need for an accommodation is not obvious, an employer, before providing a reasonable accommodation, may require the individual with the disability to provide documentation of the need for the accommodation. In order to determine whether an animal would be a reasonable accommodation for a disabled person in employment, the following factors should be considered:

1. What is the nature of the employee's disability?
2. Whether/How the animal assistant enables the disabled employee to perform essential job functions?
3. What is the type, size, weight, and demeanor of the animal assistant?
4. Has the animal had any specific training, and if so, what type?
5. Whether allowing the animal at the worksite would constitute an undue hardship? This includes an analysis of whether the animal:
 - a. Involves significant difficulty;
 - b. Involves significant expense;
 - c. Is disruptive to the work environment; and/or
 - d. Requires the employer to alter the basic nature of its business.
6. Whether the animal assistant poses a clear safety or health risk to employees?

Under federal law, service animals must be harnessed, leashed or tethered unless these devices interfere with the service animal's work or the individual's disability prevents using these devices. See, 28 CFR §35.136(d). Service animals must be permitted at the worksite unless: (1) The animal is out of control and the animal's handler does not take effective action to control it; or (2) The animal is not housebroken. §35.136(b).

The Commission takes a similar position with respect to animal assistants in places of employment. In all cases, it is up to the individual to control the animal. An employer can request that an animal assistant be removed from the premises if the animal becomes threatening, hostile or aggressive and/or if the animal is unusually disruptive, and the employee does not take effective action to control the animal, or if the animal is not housebroken. Employees and employers should engage in the interactive process to determine what accommodations are needed at work and also to put parameters in place for the employee to care for the animal and ensure safety and hygiene needs are met.

T-31.3 The Application of Animal Assistants in Housing

R.C. §4112.02(H)(16) forbids any person to “discriminate in the terms, conditions, or privileges of the sale or rental of housing accommodations to any persons or in the provision of the services or facilities to any person in connection with the housing accommodations because of disability.” R.C. §4112.02(H)(19) provides that prohibited discrimination includes a refusal “to make reasonable accommodations in rules, policies, practices, or services when necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling unit, including associated public and common use areas.” The Ohio Administrative Code, supplements the Revised Code, providing: “Every disabled person who has an animal assistant or who obtains an animal assistant shall be entitled to keep the animal assistant on the premises purchased, leased, rented, assigned or subleased by such disabled person.” See, O.A.C. §4112-5-07(C).

Animal assistants are not pets. Therefore, “no pets” policies do not apply to animal assistants. They should be treated as an extension of the disabled person; hence, they are not subject to the restrictions that housing providers generally apply to pets. While O.A.C. §4112-5-07(C) prohibits the assessment of a pet fee for an animal assistant, the regulation specifies the disabled tenant is liable for any damages done to the premises by the animal assistant. In making a determination whether an animal assistant(s) is necessary and reasonable in housing, the following factors should be considered:

1. How is the animal assistant necessary to afford a disabled person equal opportunity to use and enjoy the dwelling unit?
2. What is the type, size, weight, demeanor of the animal assistant(s)?
3. Whether an animal assistant poses a clear safety or health risk to other tenants?
4. Whether providing the accommodation would be reasonable in regards to the number of animals an individual requests?

Unlike an animal assistant in a place of public accommodation, (See T-31.1), an animal assistant in housing does not need to be trained. Therefore an animal that provides emotional support or comfort may qualify as an animal assistant under R.C. §4112.02(H). See, *Falin v. Condominium Ass’n of La Mer Estates, Inc.* 2012 WL 1110024 (S.D.Fl. April 3, 2012). However, if the need for an accommodation is not readily apparent, the housing provider may request submission of reliable medical documentation of a disability and the related need for an assistant animal. *Overlook Mutual Homes, Inc., v. Spencer*, 415 Fed. Appx 617 (6th Cir. 2011). This request may be only be made *after and not during* the application process.

Finally, it is up to the tenant to control the animal. A landlord can request that an animal assistant be removed from the premises if the animal becomes threatening, hostile or aggressive, or if the animal is unusually disruptive, and the animal’s owner does not take effective action to control the animal; or if the animal is not housebroken. In these situations, although the animal may be removed, the disabled tenant may not be asked to leave or be evicted because of the animal assistant.

T-31.4 The Application of Animal Assistants in Institutions of Higher Education

R.C. §4112.022 makes it unlawful for an educational institution, which is defined to include state and state-assisted universities and colleges, nonprofit educational institutions and career colleges and schools – to discriminate against any individual on account of any disability. Educational institutions may not discriminate in admission or assignment of programs, classes, and programs; in participation in activities of school-sponsored property; with respect to the award of financial aid and benefits; in admission or assignment to campus housing; and in awarding of grades, diplomas and degrees. See, §§4112.022(A)-(E). Akin to federal law, Ohio law allows qualified disabled students the right to have an animal assistant on campuses throughout Ohio to aid them in their educational pursuits.

The federal regulations supporting Titles II and III of the ADA, as well as 504 of the Rehabilitation Act are generally applied to service animals in academic environments. Under these regulations, the animal must be trained to perform work or assist in the completion of specific tasks. See, 28 CFR Part 35 and Part 36. See also, Policy T-31.1; O.A.C. §4112-5-02(C). Animals that merely provide emotional support, comfort, or companionship without more are not viewed as performing tasks as required for animal assistants in educational institutions, which are akin to places of public accommodation. However, with respect to campus housing, students may be protected by the fair housing provisions of the federal Fair Housing Act, as well as Ohio's Fair Housing Laws. See, R.C. §4112.02(H). Therefore, situations involving students in need of comfort or emotional support animals in campus housing will be examined on a case by case basis. See, *e.g.*, *United States v. Univ. of Nebraska at Kearney*, 940 F.Supp.2d 974, 975 (D.Neb.2013). (U.S. Department of Justice permitted to bring lawsuit against University for violations of Fair Housing Act for refusing to allow a student diagnosed with depression to keep a prescribed therapy dog to respond to anxiety attacks in University-owned off campus housing). (See T-31.3).

Under federal law, service animals must be harnessed, leashed or tethered unless these devices interfere with the service animal's work or the individual's disability prevents use of these devices. See, 28 CFR §35.136(d). Service animals must be permitted on campus unless: (1) The animal is out of control and the animal's handler does not take effective action to control it; or (2) The animal is not housebroken. §35.136(b). If a public entity properly excludes a service animal under § 35.136(b), it shall give the individual with a disability the opportunity to participate in the service, program, or activity without having the service animal on the premises. §35.136(c).

The Commission takes a similar position with respect to animal assistants in institutions of higher education. In all cases, it is up to the individual to control the animal. An educational institution can request that an animal assistant be removed from the premises if the animal becomes threatening, hostile or aggressive, or if the animal is unusually disruptive, and the animal's owner does not take effective action to control the animal; or if the animal is not housebroken. In these situations, although the animal assistant may be removed, the individual, whether a student or visitor, cannot be required to leave because of the animal. Finally, students of and visitors to Ohio's educational institutions may not be charged a special fee or penalized for bringing an animal assistant to campus.