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Factsheet, Series: 2019

## Agriculture and the ADA: Service Animals

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Department of  
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National Agricultural Library

This material is based upon work supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture

The Americans with Disabilities Act of 1990 (“ADA”) prohibits discrimination based on disability. A disability, generally speaking, is a physical or mental condition that substantially limits a major life activity.<sup>1</sup> Different parts, or “titles” of the act prohibit discrimination by different types of entities. Title I of the Act covers employment, which applies to

many businesses. Title II requires compliance by public entities, such as school districts, cities, counties, and the state. Title III requires that individuals with a disability may not be discriminated against with regards to the full and equal enjoyment of services, facilities, or accommodations of any place of “public accommodation.” This includes privately owned businesses that are accessible to the public.

The ADA is applicable very broadly, and can affect many types of agricultural operations. Title I protections apply to employers, including agricultural employers, who have 15 or more employees. It requires ADA compliance for the benefit of employees with disabilities. Further, any business with a public facing component, where the public is invited to visit the operation or business itself, would fall under Title III as a place of public accommodation subject to those requirements. Some examples include agritourism operations where families are invited to visit pumpkin patches or corn mazes, petting zoos, farm stands, wineries, “farm-stays,” retail greenhouses, and other related businesses with areas that are open to the public. As a result, these facilities must be ADA compliant to benefit outside visitors with disabilities.

While there are many facets to a business maintaining ADA compliance, this factsheet only addresses ADA requirements concerning animals. Further, while ADA is the predominant federal law addressing disability discrimination, keep in mind that cities or states may have enacted laws or policies of their own, none of which will be covered in this factsheet.

Finally, keep in mind that different ADA rules apply to a customer bringing their service animal into a store (Title III) than govern a service animal accompanying an employee to their job (Title I).

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<sup>1</sup> 42 U.S.C. § 12102.

## What is a service animal?

The ADA applies to individuals with a disability who use a service animal to engage in everyday activities. The protections differ, however, depending on the role that person is engaged in. Under Title III, which governs public accommodations such as customers visiting a produce stand, a “service animal” as any dog that has been individually trained to perform tasks to benefit the individual with a disability.<sup>2</sup> The tasks must be directly related to the individual’s disability. Some of these tasks include pulling a wheelchair, alerting a person to a sound, or retrieving items dropped by the individual. Importantly, emotional support animals or therapy dogs obtained for comfort are not considered service animals under Title III.<sup>3</sup>

Additionally, a horse can qualify as a service animal under Title III if the horse is trained to work or complete tasks for the benefit of a disabled individual,<sup>4</sup> As with dogs, an agricultural facility must make modifications to its policies, practices, or procedures to permit the use of a miniature horse. With this type of service animal, a business may take specific factors into account in determining if it is reasonable to make modifications.<sup>5</sup> After analyzing the factors, a business may only refuse to make modifications and prohibit the use of a miniature horse as a service animal if doing so would fundamentally alter the functionality and nature of the operation. Even if the horse is not permitted, however, a facility must still allow the individual- without the horse- to participate in the goods and services it provides.

For Title I employment purposes, a “service animal” is not defined, which means that it is not limited to a specific type of animal. Further, because of the differing requirements between Title I and III, an animal need not be individually trained or perform specific tasks. Instead, an employee may request that a service animal be present as a reasonable accommodation for their disability. So-called “emotional support” or “comfort” animals may be considered to be a reasonable accommodation under this title.

## What are the duties of an agricultural operation subject to ADA?

Under Title I requirements for employers, service animals are not specifically mentioned, and their access is not mandated. However, employers are required to make reasonable accommodations for employees with a disability. A service animal on the job site may be one such reasonable accommodation, unless doing so would cause an undue hardship to the employer.<sup>6</sup>

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<sup>2</sup> 28 CFR 36.104.

<sup>3</sup>“Americans with Disabilities Act Questions and Answers: Service Animals”, Department of Justice, found at <https://bit.ly/2jK9Uc9>.

<sup>4</sup> 28 CFR 36.302

<sup>5</sup> Factors include: (1) the size, type, and weight of the miniature horse and whether the facility can accommodate these characteristics; (2) whether the handler has sufficient control of the miniature horse; (3) whether the miniature horse is housebroken; and (4) whether the miniature horse’s presence in a particular facility jeopardizes legitimate safety obligations that are required for safe operation. 28 CFR 36.302(9)(ii)(A)-(D).

<sup>6</sup> Factors to consider in determining an undue hardship include: (i) the nature and cost of the accommodation needed under this chapter; (ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility; (iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and (iv) the type of operation or operations of the covered entity, including the composition, structure, and functions



Under Title III requirements for public accommodations, a facility must allow people to use their service animal while partaking in the good or services offered and in all areas of public accommodation.

To do so, policies, practices, and procedures must be modified to permit the use of a service animal at the business.<sup>7</sup> Even if the operation has a “no pets” policy, an individual cannot be prohibited from using their service animal.<sup>8</sup> The limitation on this, however, is that if changing the policy, practices, or procedures would essentially change the nature of the services or goods being provided by the business, the facility is not required to modify under the ADA.<sup>9</sup>

There are a few instances where a business or place of public accommodation can deny the use of a service animal. If admitting a service animal into the business would “fundamentally alter” the nature of the service being provided, the use of service animals may be prohibited. Further, service animals may be prohibited if the animal is not housebroken.<sup>10</sup> Finally, if the animal is out of control and the animal’s handler is not taking effective action to control it, it may be prohibited. Though in most instances an individual will be allowed to use their service animal, the business is not responsible for the care or supervision of a service animal. Additionally, if any damages are caused by a service animal, the handler of that animal may be liable for the cost of those damages.

### **What are some best practices for an agricultural operation?**

#### *Title I*

Employers have the right to request reasonable documentation that an accommodation is needed if the employee’s disability is not obvious.<sup>11</sup> Employees should be consulted as to whether a service animal is the best option to accommodate their disability, and if they prefer a service animal to other options that may be available.<sup>12</sup> Employers may also request documentation or demonstration that the service animal is trained and will not disrupt the workplace.<sup>13</sup> Further, the employee may be consulted as to what the employee requires to properly care for the service animal.<sup>14</sup> Once a determination is made that a service animal is a reasonable accommodation, employers should create a plan for accommodations, including an identification of where the employee’s office will be located, what the employee’s schedule will be, and how the employee will interact with or avoid coworkers who are uncomfortable with the service animal. Finally, allowing the animal on a trial basis might be a good way to ascertain whether it shows any signs of aggression or if it cannot be kept under control.

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of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity. 42 U.S.C. § 12111(10)

<sup>7</sup> 28 CFR 36.302(c).

<sup>8</sup> *Id.* at 3.

<sup>9</sup> *Id.* at 3.

<sup>10</sup> 28 CFR 36.302(c)(1).

<sup>11</sup> EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act. Available at <https://bit.ly/2GU8AeW>.

<sup>12</sup> Accommodation and Compliance Series: Service Animals as Workplace Accommodations (Job Accommodation Network). Available at <https://bit.ly/2LTlfmJ>

<sup>13</sup> *Id.* at 12.

<sup>14</sup> *Id.* at 12.



### *Title III*

When an individual with a service animal enters a facility, employees—including managers—may not ask the individual about the nature or degree of their disability. However, one may ask if the service animal is required because of a disability and/or what tasks the animal is trained to perform. Nevertheless, these questions should not be asked if the animal’s service tasks are obvious, such as guiding a handler that is visually impaired or the service animal is pulling a wheelchair. Importantly, an operator or employee is prohibited from asking for proof or documentation that the animal is certified, trained, or licensed to be a service animal.<sup>15</sup> Additionally, a place of public accommodation cannot require an individual using a service animal to pay a surcharge or deposit for their use of a service animal.

### **Questions that may be asked of customers:**

1. *Is the animal required because of a disability?*
2. *What tasks is the animal trained to perform?*

Being allergic or having a fear of dogs is not a valid excuse for denying access or refusing service to people using service animals. The business or individual managing the business should ensure there is enough space in the facility to ensure people with minor allergies or a fear of dogs can create space between themselves and the service animal. On the other hand, if there is an individual that has a significant risk of an allergic reaction to a service animal, the operators have the responsibility to find a way to accommodate both that person and the individual using the service animal.

A place of public accommodation cannot deny the use of a service animal because of the breed of the dog.<sup>16</sup> Some local governments restrict certain breeds of dogs in that jurisdiction, but these restrictions do not apply to service animals.<sup>17</sup> However, if a particular service animal has a history of aggression, poses a threat to the health or safety of others, or is not under the control of the handler, the facility may exclude that service animal. Even if the service animal is excluded, the agritourism facility staff must still provide goods and services to the person without the animal present.

### **How is the ADA enforced?**

Title I of the ADA is enforced by the Equal Employment Opportunity Commission. Complaints should be made within 180 days. More information about filing a complaint is available at [bit.ly/2pKfq1w](https://bit.ly/2pKfq1w) or by contacting 800-669-4000.

Title II and III of the ADA are enforced by the U.S. Department of Justice, Civil Rights Division. More information about filing a complaint is available at <https://bit.ly/2YUuvKZ> or by contacting 800-514-0301.

<sup>15</sup> *Id.* at 3.

<sup>16</sup> *Id.* at 3.

<sup>17</sup> *Id.* at 3.



## Other Resources:

- ✓ ADA Statute  
<https://bit.ly/2HDpQrp>
- ✓ ADA Title III regulations  
<https://bit.ly/2JKQPAe>
- ✓ Title 1 Laws & Guidance EEOC  
<https://bit.ly/2Sfobeu>
- ✓ Job Accommodation Network, a US Department of Labor funded technical assistance center  
<https://askjan.org/>
- ✓ Accommodation and Compliance Series: Service Animals as Workplace Accommodations (Job Accommodation Network)  
<https://bit.ly/2LTlfmJ>
- ✓ Frequently Asked Questions about Service Animals and the ADA, Department of Justice (DOJ)  
<https://bit.ly/2jK9Uc9>
- ✓ ADA 2010 Revised Requirements: Service Animals (DOJ)  
<https://bit.ly/2vCr8f1>
- ✓ ADA Update: A Primer for Small Businesses (DOJ)  
<https://bit.ly/292UXwy>

