

# Client Bulletin

June 2006

## Service Animals In The Cabin

This month's Client Bulletin concerns service animals and the requirement that airlines accommodate them in the passenger cabin, a rule which is probably bad news for almost everyone in the airline service business.

In 1990, the United States Department of Transportation promulgated official regulations implementing the Air Carrier Access Act (ACAA) to prohibit discrimination against people with disabilities traveling by air. If an individual has a disability, defined as someone "who has a physical or mental impairment that . . . substantially limits one or more major life activities," that person is entitled to travel with a "service animal" which is defined as "any animal that is individually trained or able to provide assistance to a qualified person with a disability or any animal shown by documentation to be necessary for the emotional well being of a passenger."

While few would quarrel with the proposition that a trained guide dog used to assist a blind person should be allowed in the passenger cabin of a commercial flight, other situations create a potential for abuse of the guidelines concerning disability. In May of 2003, the Department of Transportation issued policy guidelines to the effect that service animals who perform a far wider range of services, including providing emotional support to their owner, must be permitted to accompany their users on airline flights. See *Guidance Concerning Service Animals in Air Transportation*, 68 Fed. Reg. 24874 (May 9, 2003) (codified at 14 CFR Part 382). In fact, emotional support service animals have included not only dogs but cats, monkeys, miniature horses and even, on one occasion, a duck.

The Federal Aviation Regulations require carriers to permit a service animal to accompany

a qualified individual with a disability in any seat in which the person sits. The airline is required to allow the user to have his service animal accompany him unless the service animal presents a direct threat to the health or safety of others or a significant threat of disruption to the airline service in the cabin (*i.e.*, the service animal bites a flight attendant or another passenger).

How does a harried airline check-in person know whether an animal is a service animal or a pet? The DOT counsels that the key is training and asking questions, although the DOT admits that an animal used for emotional support need not have specific training in that function. The first method to determine whether an animal is a service animal or a pet is to ask the passenger "is this your pet?" If the passenger responds in the negative, then there is a presumption that the animal is a service animal and can be taken aboard the aircraft. The second clue is to look for physical indicators on the animal such as a harness, vest, cape or backpack with the words "service animal" written on it. As the Times' article points out, these articles of animal clothing, together with cards stating that the animal is a service animal and not a pet, are easily accessible over the internet at little or no charge. Other ways to determine whether the animal is a service animal or a pet include its behavior (has it relieved itself in the terminal, barked or growled at other passengers or jumped on them?). Since properly trained service animals would generally be well behaved, a barking or urinating dog at an airport gate is a tip off for the airline employee that the animal is more likely a pet (albeit an unruly one) than a service animal.

There is one important exception: where the passenger is seeking to bring an emotional support animal on board the aircraft, airline personnel may require documentation as a condition of permitting the animal to accompany the passenger in the cabin. Airline personnel

may require current documentation within the last year on letterhead from a health professional stating that the passenger has a health related disability, that having the animal accompany the passenger is necessary to the passenger's health or to assist the passenger and that the individual providing the assessment is a licensed medical care provider.

The DOT also points out that there are some unusual service animals. Snakes, reptiles, ferrets, rodents and spiders, while they may well be service animals, pose public health concerns and airlines are not required to transport them. The line is grayer with respect to other unusual animals such as miniature horses, pigs and donkeys, which should be evaluated on a case by case basis. Factors to consider are the animal's size and weight, whether the animal would pose a direct threat to the health or safety of other passengers or whether it would disrupt cabin service. If none of these factors disqualify the service animal, it may accompany the passenger in the cabin. Otherwise, the service animal should be relegated to the cargo hold.

A passenger may legitimately have more than one service animal (beware of any passenger whose name is Noah). If the passenger has more than one service animal or if the service animal does not fit in the assigned location underneath the seat, the airline may offer the passenger the option of either purchasing a second seat for the service animal, having the service animal travel in a cargo hold, or traveling on a later flight. Airlines may not, however, charge passengers for accommodations that are required by Part 382, including transporting service animals in the cargo department.

Finally, what about those unfortunate passengers who may be allergic to a pig, monkey or miniature horse sitting in a seat next to them? The DOT takes the understated view that "passengers who state that they have allergies or other animal aversions should be located as far away from the service animal as practicable."

Fortunately, there is a modicum of common sense in the regulations as Part 382 does not require the airline to make modifications that would unduly burden their programs. Airlines are not required to ask passengers to give up the space in front of their seats to accommodate service animals, deny passengers transportation

in order to provide accommodations to passengers with service animals, furnish more than one seat per ticket or transport service animals in a class other than the one that the passenger has purchased.

Passengers whose service animals have an accident during the flight also may be charged for the cost of clean up or the cost of repairing any damage.

While you may think this client bulletin was written as an untimely April Fools' joke, it accurately reflects the Department of Transportation's policies as reflected in its rules and regulations published in the Federal Register. While undoubtedly those people with genuine disabilities have a need to have service animals with them to assist them in their activities of daily living, there is a line to be drawn between those passengers traveling with a needed service animal and passengers who attempt to transport a duck or a miniature horse as "emotional support" animals aboard a commercial flight.



If you have any questions or would like further information, please contact:

Michael J. Holland, Esq.  
Condon & Forsyth LLP  
Times Square Tower  
7 Times Square  
New York, NY 10036  
Tel: (212) 894-6740  
Fax: (212) 370-4482

E-mail: [mholland@condonlaw.com](mailto:mholland@condonlaw.com)