



DISABILITY RIGHTS OREGON

FIRST EDITION

Service and Assistance Animals in Oregon

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With sections reproduced from the U.S. Department of Justice publication “Service Animals,” and the Disability Rights Oregon publications “Fair Housing Handbook” and “Employment Handbook.”

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Notice: The purpose of this publication is to provide general information to individuals regarding their rights and protections under the law. This publication is not a substitute for legal advice. Federal and state law can change at any time. Contact Disability Rights Oregon or consult with an attorney in your community if you need additional help.

INTRODUCTION	6
GENERAL GUIDELINES	7
AMERICANS WITH DISABILITIES ACT (“ADA”)	8
Where does it apply?	8
What animals are allowed under the law?	8
What service must the animal provide?	8
OREGON STATE LAW	9
Where does it apply?	9
What animals are allowed under the law?	9
What service must the animal provide?	9
PUBLIC ACCOMMODATIONS	10
What can I be asked?	10
Can I be charged?	10
How can I file a complaint?	10
PUBLIC PROGRAMS, SERVICES AND ACTIVITIES	12
What can I be asked?	12
Can I be charged?	12
How can I file a complaint?	12
PUBLIC TRANSPORTATION	13
What can I be asked?	13
Can I be charged?	13

How can I file a complaint?	13
PRIVATE TRANSPORTATION	14
What can I be asked?	14
Can I be charged?	14
How can I file a complaint?	14
EMPLOYMENT	15
What can I be asked?	15
How do I request a reasonable accommodation?	15
How can I file a complaint?	16
AIR CARRIER ACCESS ACT	17
Where does it apply?	17
What can I be asked?	17
Can I be charged?	17
How can I file a complaint?	17
FAIR HOUSING ACT	18
Where does it apply?	18
What animals are allowed under the law?	19
What service must the animal provide?	19
What can I be asked?	19
Can I be charged?	19
How do I request a reasonable accommodation?	20
How can I file a complaint?	20

APPENDIX	21
Oregon Bureau of Labor and Industries (BOLI) – Civil Rights Division.....	21
Equal Employment Opportunity Commission.....	21
Fair Housing Council of Oregon.....	21
US Department of Housing and Urban Development (HUD) – Oregon	22
Aviation Consumer Protection Division	22
Federal Transit Administration, Office of Civil Rights.....	23
Oregon State Bar Lawyer Referral Service.....	23

INTRODUCTION

People who use service animals are protected from discrimination under several different laws:

- Americans with Disabilities Act (“ADA”)
- Air Carrier Access Act (“ACAA”)
- Fair Housing Act (“FHA”), and
- Oregon state law.

Each law governs different places or services. Each law has a different definition of service or companion animals.

Definitions

- **Disability:** A physical or mental impairment which substantially limits one or more major life activities.
- **Service animal:** An animal which is trained to do a task or service directly related to a disability. Oregon state law also uses “assistance animal.”
- **Companion animal:** An animal that provides emotional support, comfort or companionship.

GENERAL GUIDELINES

Some guidelines are the same for all of these laws:

- **Fees or pet deposits cannot be charged for service animals or companion animals.**
 - A service animal is not considered a pet. A person using a service animal cannot be turned away because of a “no pet” rule.
- **You must maintain control of your service or companion animal at all times.**
 - Your service animal must not pose a direct threat to the health or safety of other people. Your animal must comply with state and county animal control laws.
- **There is no formal certification process or paperwork recognized by the state or federal government.**
 - However, air carriers, employers and housing providers may require specific documentation; see those sections of this guide for more details.
- **Vests, tags, and other “working animal” accessories are not legally required or recognized, but may make it easier for other people to identify a service animal.**
 - Some counties may allow you to register your animal as a “service animal” rather than a pet, and waive or reduce their animal licensure fees. Contact your county animal control for more information.

AMERICANS WITH DISABILITIES ACT (“ADA”)

The Americans with Disabilities Act prohibits discrimination against people with disabilities in employment, transportation, public accommodation, communications, and governmental activities.

Where does it apply?

- places of public accommodation
- public services, programs and activities
- public transportation
- private transportation
- the workplace

What animals are allowed under the law?

Under the ADA, service animals are defined as dogs. It also includes miniature horses under certain conditions.

What service must the animal provide?

Service animals must be **individually trained to do work or perform tasks** for people with disabilities. The work or task a dog has been trained to provide must be **directly related** to your disability.

Examples include guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person with a seizure disorder, reminding a person with mental illness to take prescribed medications, guiding a person with a mental illness out the room during an anxiety attack, or performing other duties.

Companion animals do not qualify as service animals under Titles II or III of the ADA, but may be approved as a reasonable accommodation under Title I.

OREGON STATE LAW

Oregon state law was recently changed to reflect Titles II and III of the ADA. It also recognizes service animals that are in training.

Where does it apply?

- places of public accommodation
- public services, programs and activities
- state government services, programs and activities
- public transportation
- private transportation

What animals are allowed under the law?

A dog or other animal designated by administrative rule.

What service must the animal provide?

Service animals must be **individually trained to do work or perform tasks** for people with disabilities.

Under the new law, providers of these services cannot:

- ask you about the nature or extent of your disability;
- require documentation proving that an animal is an assistance animal or trainee; or
- charge a fee or admission charge for an assistance animal.

You may be able to seek damages under the Oregon law. For more information about how the law affects different places, see the sections below.

PUBLIC ACCOMMODATIONS

Oregon state law and Title III of the ADA require reasonable accommodation in places of public accommodation. (42 U.S.C. 12182).

Places of public accommodation must modify their policies to allow the use of service animals by individuals with disabilities, unless the public accommodation can demonstrate that it would result in a **fundamental alteration**.

This means that your service animal may accompany you to restaurants, hotels, theaters, stores, auditoriums, museums, parks, schools, recreational facilities, doctor or lawyer's offices, hospitals, and most other places of public accommodation.

Service animals must be allowed in all areas where members of the public are allowed to go, such as restaurants. At a hospital, this includes the emergency room, in and outpatient rooms, clinics, and all other facilities except those that require a protected environment, such as operating rooms, holding and recovery areas, intensive care, and other sterile environments

What can I be asked?

Staff members can ask if your animal is a service animal, and what tasks it has been trained to perform. Under the ADA and Oregon state law, they cannot ask what your disability is or ask you for documentation. However, you can provide documentation if you want to.

Can I be charged?

A public accommodation may not charge a fee as a condition of allowing the animal to accompany you.

How can I file a complaint?

You can file a complaint with the Civil Rights Division of the Oregon State Bureau of Labor and Industries (BOLI). (See appendix for contact information.)

You can also file a lawsuit in state or federal court. The court may order the public accommodation to allow you access to their services (or prevent them from excluding you). Damages are not available under federal law, but are available under the state's public accommodation law.

PUBLIC PROGRAMS, SERVICES AND ACTIVITIES

Under Oregon state law and Title II of the ADA, public programs operated by state or local governments, including schools, government buildings, public parks and recreation centers, may not exclude people with disabilities from receiving the benefits of, or participating in any programs or benefits offered.

Again, reasonable accommodations must be made, including permitting a person to be accompanied by a service animal.

Under federal law, all programs, services and activities of state and local government must be accessible by January 26, 1992. There are similar protections governing programs that receive federal money under Section 504 of the Vocational Rehabilitation Act.

What can I be asked?

Staff members can ask if your animal is a service animal, and what tasks it has been trained to perform. Under the ADA and Oregon state law, they cannot ask what your disability is or ask you for documentation. However, you can provide documentation if you want to.

Can I be charged?

A public program may not charge a fee for you bringing your service animal.

How can I file a complaint?

You can file a complaint with the Civil Rights Division of the Oregon State Bureau of Labor and Industries (BOLI). (See appendix for contact information.) Section 504 may be enforced by filing a complaint with the federal funding agency.

Both Title II and Section 504 may also be enforced by filing a lawsuit in federal court. Compensatory damages may be awarded for “intentional discrimination.” You can get referrals to a private attorney through the Oregon State Bar. (See appendix for contact information.)

PUBLIC TRANSPORTATION

Title II of the ADA and Oregon state law prevent discrimination against people with disabilities using public transportation, including refusing to allow a service animal to accompany a person with a disability. Public transportation means transportation by bus or rail, or by any other conveyance, including dispatched vehicles such as vans and cabs (but excluding air travel and public school transportation, which are separately regulated). The statutory provisions are expressly limited to “public entities.” (42 U.S.C. 1214 1, et seq.)

The transportation must be readily accessible to and useable by individuals with disabilities. Discrimination is defined to include denial of the opportunity to use the transit system if you are capable of doing so. (49 C.F.R. Section 37.5(b)).

What can I be asked?

Staff members can ask if your animal is a service animal, and what tasks it has been trained to perform. They cannot ask what your disability is. They cannot ask what your disability is or ask you for documentation. However, you can provide documentation if you want to.

Can I be charged?

A public transportation entity may not charge a fee as a condition of allowing the animal to accompany you.

How can I file a complaint?

You can file a grievance or complaint directly with the transportation agency. You may also file an administrative complaint within 180 days with the Federal Transit Administration or the Department of Justice.

You may also file a private lawsuit seeking injunctive relief and/or damages.

PRIVATE TRANSPORTATION

Title III of the ADA and Oregon state law prohibit discrimination on the basis of disability by private entities engaged in the business of transporting people and whose operations are affected by commerce. (42 U.S.C. 12184). This includes private taxicab companies. The regulations require that these carriers allow disabled persons to the full enjoyment of their services, and includes the obligation to make reasonable accommodations to rules and policies. (49 C.F.R. Section 37.5(f)).

Therefore, you must be permitted to bring a service animal with you when using private forms of transportation. Injunctive relief is available in federal court to redress violations of this law.

What can I be asked?

Staff members may ask you if your animal is a service animal, and what tasks it has been trained to perform. They cannot ask what your disability is. They cannot ask what your disability is or ask you for documentation. However, you can provide documentation if you want to.

Can I be charged?

A private transportation entity may not charge a fee as a condition of allowing the animal to accompany you.

How can I file a complaint?

You have a right to file a lawsuit seeking damages if you are denied services. You can get referrals to a private attorney through the Oregon State Bar. (See appendix for contact information.)

EMPLOYMENT

For more detailed information, please see the Disability Rights Oregon publication “Employment Handbook.”

Title I of the ADA prohibits discrimination against disabled people in employment, and requires reasonable accommodation at the employee's request. (42 U.S. C. 12111)

Allowing you to bring your service animal into your workplace is a form of reasonable accommodation. As with any accommodation request, your employer must consider allowing you to use your service animal at work unless doing so poses an undue hardship or could disrupt the workplace.

Recent developments indicate that allowing you to be accompanied by a companion animal may also be a form of reasonable accommodation.

There is at least one case involving a restaurant employee (at McDonald's) where the question arose as to whether the animal would pose a health hazard. The EEOC has taken the position that the standard is very high to prove such a direct threat.

What can I be asked?

Your employer may require documentation that your service animal is fully trained, that you need your service animal to address your functional limitations resulting from your disability, and that your service animal is capable of functioning in the work environment. This documentation does not need to be from a medical professional.

How do I request a reasonable accommodation?

The best way to ask for an accommodation is to write a letter explaining that you have a disability that impacts your ability to do your job, and proposing the accommodation that would enable you to perform the essential functions of your job (i.e. your service or companion animal). You should attach a letter from your doctor or other medical professional confirming your disability and why you need the accommodation. For an example of a reasonable accommodation letter, see the

Disability Rights Oregon publication “Employment Handbook.”

Although there are no specific words that have to be used in your request, using the term “reasonable accommodation” can help. A verbal request may be sufficient, but it is strongly recommended to request a reasonable accommodation in writing. You do not need to complete any special forms, although you may want to use your employer’s form (if there is one).

How can I file a complaint?

In order to bring a charge of discrimination against an employer, the employee must first make a request for the reasonable accommodation, providing documentation of the need for the animal, if requested.

If the request is denied, you have the right to file a lawsuit under state law.

To get the protection of the ADA, you must file an administrative complaint within 300 days of the discriminatory conduct. It must be filed with the Oregon Bureau of Labor and Industries, and/or the Equal Employment Opportunity Commission, prior to filing a federal lawsuit. (See appendix for contact information.)

AIR CARRIER ACCESS ACT

The Air Carrier Access Act (ACAA, 49 U.S.C. 41705) prohibits discrimination by U.S. and foreign air carriers on the basis of physical or mental disability. Its implementing regulations make it clear that carriers shall permit service animals used by people with disabilities to accompany them on a flight. (14 C.F.R. Section 382.55).

Service animals include dogs and other animals that generally perform identifiable tasks or functions for an individual with a disability. Carriers must accept any emotional support or psychiatric service animal in the aircraft cabin consistent with applicable safety and animal health requirements.

Where does it apply?

The ACAA applies when you are receiving services from a private commercial air carrier. This includes boarding, deplaning, and making connections.

What can I be asked?

It is reasonable for airline employees to request appropriate documentation of your disability, and the medical or therapeutic necessity of traveling with your animal.

Can I be charged?

An air carrier may not charge a fee as a condition of permitting the animal to accompany you.

How can I file a complaint?

“Real-time” issues can be addressed through the U.S. Department of Transportation hotline for travelers with disabilities, at 800-778-4838 (voice) or 800-455-9880 (TTY).

You can file a complaint with the individual airline carrier, which must designate "complaints resolution officials" to respond to passengers' written complaints. You can also file a complaint with the DOT's Aviation Consumer Protection Division. (See appendix for contact information.)

FAIR HOUSING ACT

For more detailed information, please see the Disability Rights Oregon publication “Fair Housing Handbook.”

The federal Fair Housing Act (42 U.S.C. §§ 3601-19) prohibits discrimination in housing practices on the basis of race, color, religion, sex, national origin, familial status, and disability.

Protection by fair housing law does not require a service animal meet certain criteria, or require certification or any kind of special equipment, identification or tags.

These rights come from the federal Fair Housing Act (42 U.S.C. §§ 3601-19) and Oregon state statutes (ORS 659a).

Public housing authorities must accommodate service animals under Title II of the ADA. Under Title II, a publicly funded program must make its programs and facilities accessible to persons with disabilities.

There is no limit to the number of service animals a person with a disability can have. Housing providers are entitled to impose limitations with regard to requests for multiple service animals based on what is necessary for you to have full use and enjoyment of your unit. A housing provider has to consider each request for a service animal on a case-by-case basis just like any other reasonable accommodation request.

Where does it apply?

This law covers any type of residential dwelling, including but not limited to:

- Privately owned rental units
- Dwellings governed by homeowners or condominium associations
- Shelters and other temporary housing
- Public housing
- Retirement centers and nursing facilities
- Group homes
- Mobile homes and trailer parks

We use the term rental unit, but the same principles apply to any other type of covered residential housing.

What animals are allowed under the law?

The Fair Housing act permits both service animals and companion animals, including cats and other animals.

What service must the animal provide?

The animal must serve a function directly related to your disability. The animal must be necessary to allow you to use and enjoy the housing. You must request your service or companion animal as a reasonable accommodation of your disability, which enables you to fully enjoy the benefit of the housing.

Companion animals can provide emotional support to individuals with mental disabilities. This can include alleviating anxiety, depression, stress and other symptoms of mental illness that can interfere with your ability to live independently. It is necessary to demonstrate the relationship between your ability to function and the companionship of the animal.

What can I be asked?

A landlord can ask if your service or companion animal is necessary for you to use and enjoy the housing unit. Housing providers can ask you to provide documentation from a professional, stating that you have a disability that results in one or more functional limitations.

A landlord cannot ask about the nature or extent of your disability, or require you to release your medical records.

Can I be charged?

A service or companion animal is not a pet, and therefore is not subject to a housing

provider's pet rules. For example, size or weight restrictions in the pet rules do not apply to service animals. Housing providers are prohibited from charging a person with a disability a pet deposit or fee in order to keep a service animal.

If the animal causes damage to your unit beyond regular wear and tear, you will have to cover the damage out of the standard security deposit charged to everyone.

How do I request a reasonable accommodation?

The best way to ask for an accommodation is to write a letter explaining that you need a reasonable accommodation to use and enjoy your unit. If you live in housing operated by a county Housing Authority, they may have a reasonable accommodation form that you can use.

For an example of a reasonable accommodation letter, see the Disability Rights Oregon publication "Fair Housing Handbook."

How can I file a complaint?

The Fair Housing Council of Oregon (FHCO) assists with reasonable accommodations of service and companion animals in housing. (See appendix for contact information.)

You can also file a complaint with the United States Department of Housing and Urban Development (HUD), the Oregon Bureau of Labor and Industries (BOLI), or by filing a lawsuit in state or federal court. (See appendix for contact information.) Compensatory and punitive damages are available as remedies, along with attorney's fees.

APPENDIX

Oregon Bureau of Labor and Industries (BOLI) – Civil Rights Division

You can file a complaint with BOLI if you have experienced discrimination in employment, vocational/career schools, housing, and places of public accommodation.

800 NE Oregon Street, Suite 1045 | Portland, OR 97232

Voice: 971-673-0731 | TTY: 971-673-0766 | Fax: 971-673-0762

E-mail: boli.mail@state.or.us

Website: www.oregon.gov/BOLI

Complaint form: http://www.oregon.gov/boli/CRD/pages/c_q_terms.aspx

Equal Employment Opportunity Commission

You can file a complaint with the EEOC if you have experienced discrimination in employment.

909 First Avenue, Suite 400 | Seattle, WA 98104-1061

Voice: 800-669-4000 | TTY: 800-669-6820 | Fax: 206-220-6911

Website: <http://www.eeoc.gov/employees/howtofile.cfm>

Fair Housing Council of Oregon

You can contact the FHCO for fair housing questions and advocacy.

506 SW Sixth Avenue, Suite 1111 | Portland OR 97204

Fair Housing Hotline: 503-223-8197 (Portland metro area), 800-424-3247 (statewide) | Fax: 503-223-3396

E-mail: information@FHCO.org

Website: <http://www.fhco.org>

US Department of Housing and Urban Development (HUD) – Oregon

You can file a civil rights complaint with HUD if you have experienced discrimination in housing.

400 SW Sixth Avenue, Suite 700 | Portland, OR 97204

Voice: (800)669-9777 | TTY: (800)927-9275

E-mail: fheo_webmanager@hud.gov

Website: <http://www.hud.gov>

Complaint form:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/online-complaint

Aviation Consumer Protection Division

You can file a complaint with the ACPD if you have experienced discrimination in air travel.

1200 New Jersey Ave, SE | Washington DC 20590

Voice: 202-366-2220 | TTY / Assistive Device Number: 202-366-0511

Website: <http://www.dot.gov/airconsumer/file-consumer-complaint>

Complaint form: <http://www.dot.gov/airconsumer/air-travel-complaint-comment-form>

Federal Transit Administration, Office of Civil Rights

You can file a complaint with the FTR if you have experienced discrimination in public transportation.

East Building – 5th Floor, TCR | 1200 New Jersey Ave., SE | Washington, DC 20590

Voice: 888-446-4511 | Federal Information Relay Service: 800-877-8339

Email: FTA.ADAAssistance@dot.gov

Website: <http://www.fta.dot.gov>

Complaint form: http://www.fta.dot.gov/12874_3889.html

Oregon State Bar Lawyer Referral Service

If you want to file a lawsuit, the LRS can provide referrals to attorneys who specialize in the appropriate area of law.

P.O. Box 231935 | Tigard, OR 97281-1935

Voice: 503-684-3763 or toll-free in Oregon at 800-452-7636 | Fax: 503-684-1366

Email: info@osbar.org

Website: <http://www.osbar.org>

Online referral request form: <http://www.osbar.org/public/ris/lrsform.html>