

TEXAS DEPARTMENT OF STATE HEALTH SERVICES



DIVISION FOR REGULATORY SERVICES ENVIRONMENTAL AND CONSUMER SAFETY SECTION POLICY, STANDARDS, AND QUALITY ASSURANCE UNIT PUBLIC SANITATION AND RETAIL FOOD SAFETY GROUP

PUBLIC SANITATION AND RETAIL FOOD SAFETY GROUP REGULATORY CLARIFICATIONS

May 27, 2009 (Revised: July 2, 2015)

PSRFSGRC - No. 14

SUBJECT: SERVICE ANIMALS IN A RETAIL FOOD ESTABLISHMENT

Texas Health and Safety Code, Chapter 437, Section 437.023

Applicable Texas Food Establishment Rules (TFER) Sections:

§228.2 (128) Service Animal

§228.186 (o)(2) Prohibiting Animals

Question:

What is required for a service animal to be allowed inside a food establishment?

Response:

House Bill 489 of the 83rd Legislative session amended Chapter 437, Health and Safety Code, by adding Section 437.023 relating to rights and responsibilities of persons with disabilities, including with respect to the use of service animals that provide assistance to those persons.

The TFER supports the Americans with Disabilities Act (ADA) Regulation for Title III and the Texas Human Resources Code, TITLE 8. RIGHTS AND RESPONSIBILITIES OF PERSONS WITH DISABILITIES, CHAPTER 121. PARTICIPATION IN SOCIAL AND ECONOMIC ACTIVITIES, in allowing service animals in certain areas of a food establishment as long as the service animal does not pose a problem with regard to public health safety of the food service operation. The animal should be performing a task or function for the person with a disability. A service animal is not considered to be a pet. A person with a service animal shall not be denied admittance into a public facility, including a food establishment or other place where food is offered for sale to the public, for lack of documentation of the person's medical condition or disability. A food establishment operator can request that a service animal be removed from the premises if that animal is causing a disturbance or is a threat to the health and safety of others.

Support:

Public Sanitation and Retail Food Safety Group • PO Box 149347, Mail Code 1987 • Austin, Texas 78714-9347
(512) 834-6753 • Facsimile: (512) 834-6683 • <http://www.dshs.state.tx.us/foode establishments/>

§228.186(o)(2) of the TFER states that service animals are to be allowed in a food establishment "...if the contamination of food, clean equipment, utensils, linens, and unwrapped single-service and single-use articles cannot result". Service animals may be present only in areas that "are not used for food preparation and that are usually open for customers, such as dining and sales areas". Service animals are also permitted when they "are controlled by the disabled employee or person, or service animals in training when accompanied by an approved trainer, if a health or safety hazard will not result from the presence or activities of the service animal".

Under the Code of Federal Regulations, the U.S. Department of Justice's regulation implementing Title III, 28 CFR Part 36, of the ADA prohibits discrimination on the basis of disability in "places of public accommodation" (businesses and non-profit agencies that serve the public) and "commercial facilities" (other businesses). Section 36.302(2)(c) states that "a public accommodation shall modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability". In addition, Texas Health and Safety Code, Chapter 437, Section 437.023 clarifies ADA regulations in the State of Texas.

Texas Health and Safety Code, Chapter 437, Section 437.023 defines a 'service animal' or 'assistance animal' as a canine specially trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with visual impairment, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, alerting and protecting a person who has a seizure disorder, reminding a person who has a mental illness to take prescribed medication, or calming a disabled veteran who has post-traumatic stress disorder. An animal that provides only comfort or emotional support to a person is not a service animal under this section. If they meet this definition, canines are considered service animals under the Texas Health and Safety Code, Chapter 437, Section 437.023 regardless of whether they have been licensed or certified by a state or local government.

The Texas Health and Safety Code, Chapter 437, Section 437.023 requires a food establishment to allow people with disabilities to bring their service animal into all areas of the facility where customers are normally permitted. If a person's disability is not readily apparent, for purposes of admittance to a public facility with a service animal, a staff member or manager of the facility may inquire about:

- (1) whether the service animal is required because the person has a disability
- (2) what type of work or task the service animal is trained to perform.

U.S. Department of Justice's regulation implementing Title III, 28 CFR Part 36, of the ADA section 36.302(c)(6) states "A public accommodation shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal."

The person with a disability cannot be asked to remove the service animal from the premises unless: the animal is out of control and the animal's owner does not take effective action to control it; or the animal poses a direct threat to the health and safety of others.

In addition Texas Health and Safety Code, Chapter 437, Section 437.023 addresses service animals-in-training by stating, "an assistance animal in training shall not be denied admittance to any public facility when accompanied by an approved trainer who is an agent of an organization generally recognized by agencies involved in the rehabilitation of persons who are disabled as reputable and competent to provide training for assistance animals, and/or their handlers."

Additional information pertaining to Service Animals in Food Establishments on ADA Regulation and Technical Assistance can be obtained from the ADA's webpage at <http://www.ada.gov> including Commonly Asked Questions about Service Animals in Places of Business at <http://www.ada.gov/qasrvc.htm>, and ADA Business Brief: Service Animals reference sheet at <http://www.ada.gov/svcabrpt.pdf>.

The Human Resource Code, Title 8, Chapter 121 can be accessed at

<http://www.statutes.legis.state.tx.us/docs/HR/htm/HR.121.htm>

Chapter 437, Health and Safety Code, Section 437.023 can be accessed at

<http://www.statutes.legis.state.tx.us/Docs/HS/htm/HS.437.htm>

Agree to form and substance:



Christopher Sparks, MPA, R.S.

Manager

Public Sanitation and Retail Food Safety Group

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