

General Rule:

The Maine Human Rights Act (“MHRA”) requires that a *place of public accommodation* (“PA”) allow the use of service animals by individuals with disabilities. While there are some exceptions, the general rule is one of inclusion, requiring that the PA allow the service animal to be present.

What is a PA?

An establishment that is open to the general public; this may be by offering its goods/facilities/services to, or by soliciting/accepting patronage from, the public. Some examples include: town or state buildings/agencies, professional offices, movie theaters, stores, schools, trains, airplanes, hotels, hospitals and restaurants. A full (not exhaustive) listing of types of entities qualifying as PAs can be found at 5 M.R.S. § 4553(8).

What counts as a Service Animal?

A “service animal” is a dog that has been individually trained to do work or perform tasks for the benefit of a person with a disability, including a physical, sensory, psychiatric, intellectual or other mental disability. *Other species of animals are NOT considered service animals in the context of PAs.* The work or task that the dog is trained to do must be directly related to the person’s disability. Examples include: assisting a person with a visual impairment in navigation; alerting a person

with a hearing loss to the presence of people or sounds; assisting a person during a seizure; providing physical support and assistance with balance and stability to a person with a mobility disability; reminding a person with an intellectual disability to take a medication; and helping a person with a psychiatric or neurological disability by preventing or interrupting problem behaviors. A service animal is an aid that helps a person with a disability access services, like a wheelchair or cane. Service animals are not pets.

What is an Assistance Animal?

An assistance animal is an animal – not necessarily a dog- that is either determined necessary to mitigate the effects of a mental or physical disability by a physician, psychologist, physician assistant, nurse practitioner or licensed social worker or is individually trained to do work or perform tasks for the benefit of an individual with a physical or mental disability. This can include the types of externally-observable work service animals provide but also can include providing emotional support, well-being, comfort, or companionship related to an invisible disability (such as depression, anxiety, and certain phobias); they can - but do not always - have special training to perform tasks that assist people with disabilities. In PAs, an assistance animal does not qualify as a service animal UNLESS it is a dog, and otherwise meets the service animal definition. Many people are not aware of the distinctions between service and assistance animals.

PA v. Housing:

The category of animals which PAs must allow (service animals) is much more restrictive than the category of animals which must be allowed in housing (assistance animals and service animals). PAs need only allow dogs individually trained to perform a disability-related task.

What can a PA ask a person with a Service Animal?

A PA may make two inquiries to determine whether a dog is a service animal:

1. Is the animal required because of a disability?
2. What work or task has the animal been trained to perform?

These are the ONLY permissible inquiries that may be made. The PA may not ask about the nature / extent of the person’s disability. These inquiries should not be made at all when it is readily apparent that the animal is trained to perform work for a person with a disability, such as a dog that is observed pulling a wheelchair.

Can a PA ask for a Service Animal’s identification (tags/collar/ID)?

No! A PA shall not require documentation showing that the dog has been certified, trained, or licensed as a service animal. While some service animals may have such documents, they are not required in order for the animal to be covered by the MHRA. It is a violation of the MHRA for a PA to

request or require documentation proving that an animal is a service animal.

Terms of Use:

Individuals with disabilities must be allowed to be accompanied by their service animals in all areas of a place of PA where members of the public, clients, customers, patrons, and invitees, or others are able to go. A PA may not designate certain areas of its facility as off-limits to individuals because they are with a service animal. For example, a restaurant cannot require a patron with a service animal to sit outside, or in any particular restaurant section. A PA may not request or require a person to pay a fee or comply with special rules in order to be accompanied by their service animal, even if the PA requires those things of people accompanied by pets. Service animals are not pets.

If a PA normally charges individuals for the damage they cause, an individual with a disability may be charged for damage caused by his or her service animal.

What if there's a problem with the Service Animal? Can it be removed?

A PA may ask a person with a disability to remove a service animal from the premises if either (1) the animal is out of control and its handler does not take effective action to control it or (2) the animal is not housebroken. A service animal generally must be on a halter/tether/leash, unless the handler's disability prevents using a halter/

tether/leash, or doing so would interfere with the work or task the animal is trained to do. If the animal cannot be on a halter/tether/leash, it must be otherwise under the handler's control (such as through voice command or hand signals). If a service animal is properly excluded, the PA must offer the person with a disability the opportunity to get or use its goods, services, or other benefits without the presence of the service animal.

A service animal also may be removed from the premises if either (a) it is a direct threat to the health or safety of others, or (2) it would result in substantial physical damage to the property of others, or (3) it substantially interferes with the reasonable enjoyment of the PA by others. This must be based on the particular animal's behavior, and not breed-based fears or assumptions.

What if the PA suspects that the Service Animal is not a "real" Service Animal?

This can be tricky, and frustrating. Since there are only two questions the PA is allowed to ask the person with a disability about the service animal, and asking any other questions or demanding to see proof otherwise of the animal's "genuine" status as a service animal, the PA must make its determination based on the limited information it has. Allowing the person to retain the use of the service animal is always the safer choice.

SERVICE ANIMALS IN PLACES OF PUBLIC ACCOMMODATION



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Compliance with this section of the Maine Human Rights Act can be technical and complicated. Feel free to call us with any questions you may have!