

ALLOWING ANIMALS ONTO YOUR VENUE

WHERE CAN YOU DRAW THE LINE?

During my “Legal English” seminar at the 2016 IFEA Convention in Tucson, AZ, I finished my presentation and opened the floor up for questions. Right out of the gate someone asked about what types of animals should be allowed onto a festival venue. Most of the time I have a general sense of how to answer a legal issue like this because it’s something I’ve already dealt with at the Kentucky Derby Festival. With this one, I was honestly stumped. Do you allow a service dog escorting a blind patron? Sure, that makes sense. How about a dog serving as an emotional support animal with paperwork confirming such? I guess, maybe? But what’s an emotional support animal? A snake serving as an emotional support animal? Hold on a minute, it seems like we’re crossing a line here! I walked away from the conference knowing this topic deserved attention and research. What I discovered is that the answer is fairly straightforward.

The American with Disabilities Act (ADA) spells out specific criteria on what qualifies as a “service animal” versus an “emotional support animal” and the rights associated with each classification.

The Americans with Disabilities Act of 1990 allows people with disabilities to bring their service animals in public places. However, the ADA only extends these protections to dogs that have been "individually trained" to "perform tasks for the benefit of an individual with a disability," which is the definition of service animals under 28 C.F.R. § 36.104. Since emotional support animals are typically not trained for an individual's specific disability and since emotional support animals might not be dogs, they do not receive the protections of the ADA. A public place can therefore deny an emotional support animal admission. https://www.ada.gov/service_animals_2010.htm

The explanation above clearly spells out the black and white letter of the law regarding service versus emotional support animals. The key elements of a service animal are: a dog; trained; to benefit an individual with a disability. “Examples of the work or tasks performed by these dogs include guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with a mental illness to take prescribed medications, calming a person with PTSD during an anxiety attack, or performing other duties.” https://www.ada.gov/service_animals_2010.htm As you can see, these animals require extensive training in order to perform these duties and are vital partners to people with disabilities. If those elements are met, then the animal must be allowed into your public space. In the unlikely event that the service animal shows aggressive behavior,

your festival has the right to remove the animal from the premises, but aside from that, they are to be allowed onto the venue. As a guiding principal, under the ADA, state and local governments, businesses, and nonprofit organizations that serve the general public must allow service animals to accompany people with disabilities in all areas where the public is normally allowed to go.

The issue becomes a bit more complicated as it relates to emotional support animals. You’ve seen the small dogs on a plane or pigs with leashes walking through a Wal-Mart. Many times, for a fee, these animals are “certified” as an emotional support animal by websites or agencies that specialize in these certifications. One of the questions I specifically researched was what legal weight do these “certifications” hold? The answer is none that would apply to festival and events. They are limited to housing and air travel. Again, if the animal is not trained to support a specific disability and it is not a dog, it does not receive protection from the ADA. To be clear, dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under ADA. So the question becomes, should these animals be allowed onto your venue and does your festival have the right to ask them to be removed? When it is not obvious what an animal provides, please be careful to only ask two inquiries: 1) is the dog a service animal required because of a disability, and 2) what work or task has the dog been trained to perform. You cannot ask about specific disabilities or medical conditions. If the answers to these questions are 1) no, and 2) something other than those performed by a service dog, then you can ask that the animal be removed from the premises.

My recommendation for your Festival is to take a hard line stance on this issue. If the animal is a service dog, allow them wherever the public is normally allowed to go. If it’s a pig, cat, snake, monkey, lizard, or dog (that is not specifically trained), then ask the owner to please remove them from the venue. If they show you a certification that the animal is an emotional support animal, simply explain to them that the festival does allow these animals onto its venue. I would also advise making these policies clear on your festival website so that you can point to advance notice to these patrons.

Jeff English, CFE is the Sr. Vice President of Administration/General Counsel of the Kentucky Derby Festival. After graduating from Washburn University School of Law (Topeka, KS) in 2004, Jeff worked in politics and practiced law before joining the KDF staff. He is charged with overseeing all of Festival’s legal issues and serving as its risk management officer. He also manages the Merchandise Department and the 501(c)3 not-for-profit Kentucky Derby Festival Foundation.