



FORUM

Emotional Support Animals: Regulations and Protection

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Most people are familiar with service animals, as they accompany people to schools, malls, airports, and essentially all public places. What people are less accustomed to, however, are emotional support animals (ESAs). ESAs can range from dogs to any other type of animal, as long as they receive certification. While people often overlook ESAs and find them unimportant in comparison to service animals, ESAs actually serve a very critical purpose to people with various conditions—usually mental health conditions such as depression or PTSD. Even in trauma therapy, animals play an irreplaceable role in treatment and care for patients. They are an incredibly valuable source of healing and support to people with mental health conditions or psychiatric disabilities. Delving deeper into the complex legal issues surrounding ESAs provides an opportunity to expand governmental and legal support for those with mental health conditions. I argue that the first step in accomplishing this is expanding the Americans with Disabilities Act (ADA) to include protection for ESAs.

According to the ADA and the Department of Justice, service animals are any breed of dog or miniature horse that are “trained to perform a task directly related to a person’s disability.” For example, a service dog could be trained specifically to help with a person’s blindness. The ADA makes the distinction that ESAs, on the other hand, do not qualify as service animals because emotional support “is not a task related to a person’s disability.”

Another key piece of legislation that is related to service and emotional support animals is The Fair Housing Act (FHA), which provides protection for what is called an assistance animal. “Assistance animal” is a broader term that includes ESAs, but assistance animals are distinguished from service animals because they “[do] not need to be trained to perform a service,” unlike service animals. However, the FHA does state that the owner must provide a letter to their landlord from their primary care doctor or a licensed therapist to prove that they have a disability and that their pet helps with this disability and its symptoms. The FHA defines a disability as a physical or mental condition that “significantly limits a person’s major life activities.” Once the landlord receives this ESA letter, the pet qualifies as an assistance animal and should receive accommodation, even if the housing policy does not allow pets.

Therefore, the FHA clearly identifies mental health conditions as disabilities. The ADA should adopt this definition of a disability in order to first extend their definition of a service animal to ESAs that are dogs or miniature horses; in the future, hopefully the ADA could be further expanded to include other types of animals as well. In other words, if the definition of a disability includes mental health conditions, then the tasks that ESAs typically perform—for example, aiding with panic attacks from anxiety or PTSD—should qualify as a “task directly related to a person’s disability.” This would consequently expand the ADA’s definition of service animals to include ESAs as well, because their execution of emotional support for a mental health condition aligns with the current understandings of the purpose and practices of a service animal.

A significant case to analyze when arguing the importance of expanding the boundaries of the ADA is *C.L. v. Del Amo Hospital, Inc.* The reason this case is particularly relevant to the discussion surrounding the ADA’s connection to ESAs is that in his ruling, Judge Gould stated that the ADA’s exclusion of ESAs is very ambiguous: “it is not apparent why a dog who provides emotional support in a way that consistently alleviates his handler’s ADA-qualifying anxiety should not be covered [by the ADA].” In this statement, Judge Gould aligns with my claim about how the ADA is problematic and unclear in regards to its distinction between ESAs and service animals. The ADA does not specify what kind of task a service animal should perform or an exact method of performing the task, so it is extremely puzzling that the purpose and function of an ESA does not fit under the legislation. Thus, it is illogical to exclude emotional support that is essential for people’s ability to carry out their daily lives from the ADA’s definition of service animals. Evidently, the current limitations of the ADA make the ADA less inclusive of people with mental health conditions.

Another reason why the ADA should include protection for ESAs is that it would improve the ways landlords and housing institutions perceive ESAs. As exemplified by the following court case, ESA owners have struggled with housing issues due to doubt regarding the importance of their ESA. These complications would lessen if ESAs were offered the protection of the ADA.

This is clear from *Bhogaita v. Altamonte Heights Condominium*. Bhogaita had an emotional support dog for his PTSD that was heavier than the pet weight policy of his condominium. The condominium asked Bhogaita to remove his dog and asked for additional information from his therapist about his condition and why he needed an ESA. Bhogaita responded with information and repeated certification from his therapist, and this exchange between Bhogaita and the condominium went back and forth several times as the condominium continued to request additional information. In the end, Bhogaita claimed that the lack of accommodation violated the FHA and the Florida Housing Act. This case is an example of discrimination against someone who needs and benefits from an ESA. The condominium, as well as the legal system surrounding ESAs, failed to properly address Bhogaita's needs as someone with a mental health condition. By perpetually asking for more information even after Bhogaita had already provided the information required by the FHA, the condominium created unnecessary obstacles and stress for Bhogaita. This situation reveals the need to extend the ADA: the condominium would not have been able to deny Bhogaita's rights to keep his ESA in his home if his ESA had qualified as a service animal under the ADA. Especially for disabilities that are not visible, like Bhogaita's, reinterpreting the ADA would offer added protection for the ESA owner and cause less inconvenience for landlords.

Expanding the ADA to include ESAs would also address the issue of counterfeit or fraudulent claims of ESAs. A common concern regarding ESAs is that if the regulations loosen, then the distinction between an ESA and a regular pet will vanish. This may lead to complications for people like landlords and apartment managers, and it would also raise the issue of people who do not have genuine needs for ESAs taking advantage of ESA certifications. The main reason for this worry is that it has become too easy to acquire an ESA letter—the letter that gives owners certification for their ESA. This is mainly due to the emergence of numerous online platforms like Pettable that offer very cheap ESA letters to those in need. Although some of these platforms are legitimate, many of them are often scams, with no transparency about who exactly is writing these letters. These platforms are therefore taking advantage of people's needs for ESAs to make a profit. Some states have created laws that try to curb the usage of these platforms; for instance, California requires that the ESA owner has known their physician or therapist for at least 30 days before

receiving their ESA letter. However, people with legitimate needs for an ESA still gravitate towards these online options because they are much more inexpensive and accessible than finding licensed mental health professionals. This legal system implicates a degree of income-based discrimination because people who genuinely need ESAs often have no choice but to rely on online platforms to obtain their ESA letters since mental health care is very costly. If the ADA extended its protection to ESAs, however, people with genuine needs for ESAs would no longer have to resort to these untrustworthy sources because service animals recognized by the ADA do not need to be certified or professionally trained.

Overall, the ADA should be broadened to include protection for ESAs in order to expand rights for people with mental health conditions, decrease the ambiguity surrounding the boundaries between service animals and ESAs, and reduce fraudulent claims of ESAs. Currently, the uncertainty regarding ESA standards in the FHA and ADA threatens to implicate more risks to ESA owners with mental health conditions. By expanding the ADA, those with mental health conditions will be able to live more comfortably.