

March 9, 2017

Smokey Sparks, Fire Chief
City of Anytown
123 MTAS Street
Anytown, TN 37921

Dear Chief Sparks:

You asked for guidance in making a determination on what is a reasonable accommodation under the Americans with Disabilities Act (ADA) for a firefighter with diabetes who has a service dog, and wishes to bring the service dog to work with him at the fire station. MTAS has researched your question and provides the following information and advice.

Regarding making an inquiry about a service animal, federal law (28 CFR § 35.136(f)) allows a public entity (i.e. the city) to ask two questions only regarding the service animal:

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

A public entity cannot ask for documentation of training, proof of certification, or inquire as to the nature or extent of the person's disability. A public entity should not ask these questions if the disability is readily apparent, such as a guide dog for a blind person.

Under the ADA, a service animal is defined as a dog (since March 15, 2011, only dogs are recognized as service animals under Title II (activities provided to the public by state and local governments (i.e. public entities)) and Title III (places of public accommodation) of the ADA) that has been individually trained to do work, or perform tasks, for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. The task(s) performed by the service animal must be directly related to the person's disability. In your instance, a canine trained to detect low or rapidly dropping blood glucose levels, and alert his owner of this change in glucose levels, meets the definition of a service animal.

The Department of Justice (DOJ) enforces the ADA, and the DOJ states that "The ADA requires State and local government agencies, businesses, and non-profit organizations (covered entities) that provide goods or services to the public to make "reasonable modifications" in their policies, practices, or procedures when necessary to accommodate people with disabilities." The question is, what is a reasonable modification to your policy in the case of a firefighter with diabetes who wishes to bring his/her service dog to work at the fire station? MTAS was not able to locate any examples of this same situation in

another fire department, so we turned to the DOJ for guidance on what is required to provide a reasonable accommodation in the commercial and business world.

The Department of Justice has a pamphlet with frequently asked questions about service animals (https://www.ada.gov/regs2010/service_animal_qa.pdf). There are several questions in the pamphlet that provide advice on what the ADA does, and does not, require regarding accommodations for service animals. Several of the relevant questions from the brochure are listed below, and I have highlighted sections significant to this issue.

Q9. Who is responsible for the care and supervision of a service animal? A: The handler is responsible for caring for and supervising the service animal, which includes toileting, feeding, and grooming and veterinary care. Covered entities are not obligated to supervise or otherwise care for a service animal.

Q16. Must a service animal be allowed to ride in an ambulance with its handler? A: Generally, yes. However, if the space in the ambulance is crowded and the dog's presence would interfere with the emergency medical staff's ability to treat the patient, staff should make other arrangements to have the dog transported to the hospital.

Q25. When can service animals be excluded? A: The ADA does not require covered entities to modify policies, practices, or procedures if it would "fundamentally alter" the nature of the goods, services, programs, or activities provided to the public. Nor does it overrule legitimate safety requirements. If admitting service animals would fundamentally alter the nature of a service or program, service animals may be prohibited. In addition, if a particular service animal is out of control and the handler does not take effective action to control it, or if it is not housebroken, that animal may be excluded.

Q26. When might a service dog's presence fundamentally alter the nature of a service or program provided to the public? A: In most settings, the presence of a service animal will not result in a fundamental alteration. However, there are some exceptions. For example, at a boarding school, service animals could be restricted from a specific area of a dormitory reserved specifically for students with allergies to dog dander. At a zoo, service animals can be restricted from areas where the animals on display are the natural prey or natural predators of dogs, where the presence of a dog would be disruptive, causing the displayed animals to behave aggressively or become agitated. They cannot be restricted from other areas of the zoo.

Q27. What does under control mean? Do service animals have to be on a leash? Do they have to be quiet and not bark? A: The ADA requires that service animals be under the control of the handler at all times. In most instances, the handler will be the individual with a disability or a third party who accompanies the individual with a disability. In the school (K-12) context and in similar settings, the school or similar entity may need to provide some assistance to enable a particular student to handle his or her service animal. The service animal must be harnessed, leashed, or tethered while in public places unless these devices interfere with the service animal's work or the person's disability prevents use of these devices. In that case, the person must use voice, signal,

or other effective means to maintain control of the animal. For example, a person who uses a wheelchair may use a long, retractable leash to allow her service animal to pick up or retrieve items. She may not allow the dog to wander away from her and must maintain control of the dog, even if it is retrieving an item at a distance from her. Or, a returning veteran who has PTSD and has great difficulty entering unfamiliar spaces may have a dog that is trained to enter a space, check to see that no threats are there, and come back and signal that it is safe to enter. The dog must be off leash to do its job, but may be leashed at other times. Under control also means that a service animal should not be allowed to bark repeatedly in a lecture hall, theater, library, or other quiet place. However, if a dog barks just once, or barks because someone has provoked it, this would not mean that the dog is out of control.

Q29. Are hotel guests allowed to leave their service animals in their hotel room when they leave the hotel? A: No, the dog must be under the handler's control at all times.

MTAS Analysis and Advice

When providing this advice, MTAS considers a reasonable accommodation as taking all interests into account when evaluating a specific situation, not just whether the individual with a disability thinks it is reasonable from their perspective, but whether it is reasonable for all.

Allowing service animals into a “no pet” facility, such as a fire station, is a common type of reasonable modification of policy necessary to accommodate people who have disabilities (28 CFR § 35.136(a)). Service animals must be allowed in all areas of a facility where the public is allowed except where the dog's presence would create a legitimate safety risk (28 CFR § 35.136(g)). The ADA has never advocated, nor required, that a covered entity compromise legitimate safety requirements necessary for safe operation of the facility to accommodate a service animal. Therefore, allowing the firefighter to bring the service dog into the fire station is a reasonable modification to your operational policy, and a reasonable accommodation under ADA.

A covered entity is not required to provide care or food for a service animal (28 CFR § 35.136(e)). Therefore, the firefighter is totally responsible for the care of the animal while the service dog is in the fire station.

Under the ADA, the service dog must be under the handler's control at all times (28 CFR § 35.136(d)). The law states, “A service animal shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control (e.g., voice control, signals, or other effective means).” Since the law uses the word “shall,” the fire department should require compliance with 28 CFR § 35.136(d), meaning the service dog shall remain on a leash the entire time the service animal is in the fire station.

Since the ADA requires that a service animal be under the control of the handler at all times, and in the case of a low blood glucose detection service dog, leashed at all times, since the service the dog provides can be provided while leashed, the service dog must accompany the firefighter on fire department responses, which means the service dog must ride in the fire apparatus, or other fire department vehicle. Fire apparatus are not cars, and they are not designed to accommodate dogs. Allowing a service dog in the cab of a fire engine compromises legitimate safety requirements necessary for safe operation of the vehicle. Therefore, it is not a reasonable accommodation to allow a service dog to ride in fire apparatus.

Since the ADA requires that a service animal be under the control of the handler at all times, and in the case of a low blood glucose detection service dog, leashed at all times, since the service the dog provides can be provided while leashed, the service dog must accompany the firefighter while the firefighter performs tasks on the fire ground or other emergency scene. A firefighter holding on to a leashed service dog cannot enter a burning structure, hold extrication equipment, carry or throw a ladder, advance hose lines, or perform other essential firefighting or emergency operations tasks. Therefore, it is not a reasonable accommodation to allow a service dog to be on a fireground or other emergency scene, as this is a legitimate safety concern.

Tennessee Code Annotated (T.C.A.) § 8-50-103 prohibits discrimination in employment of the disabled (a paid or volunteer firefighter is covered by the term employment) “unless such disability to some degree prevents the applicant from performing the duties required by the employment sought or impairs the performance of the work involved.” Therefore, you have no duty to employ in a paid or volunteer capacity an individual who requires the constant presence of a service dog if the constant presence of the service dog impairs performance of the duties of the position for which the individual applied.

The ADA allows service animals to be excluded from certain places when the presence of the animal could compromise the health of others (i.e. the exclusion from a certain portion of a dormitory reserved for those allergic to pet dander) or would be disruptive (i.e. the zoo example). Since fire department’s respond to homes where the occupants may have pet allergies, or may have aggressive animals that do not like other animals, it is a legitimate safety concern that the presence of the service dog could be disruptive, detrimental to patient care on a medical call, or could cause a safety issue if one animal tried to attack another animal. Because of this legitimate safety concern, the firefighter may be limited on where he may safely enter with his service dog when responding to fire, EMS, and other calls for service from the public. If the firefighter cannot enter a certain location because of the presence of his service dog, the firefighter would not be able to perform his essential job functions and provide service to the public, which would fundamentally alter the ability of the fire department to provide an emergency or essential service.

MTAS advises that allowing the firefighter to bring the service animal in the fire station is a reasonable modification to fire department policy and a reasonable accommodation. As required by the ADA, the fire department should require that the service dog be leashed at all times, and require that the firefighter be responsible for the care, custody,

and control of the service dog at all times. This means that the firefighter cannot leave the service dog behind in the fire station in order to respond to a call, even if the service dog is in a kennel. Because of legitimate safety concerns, the fire department should prohibit the service dog (and other animals as well) from riding in the cab of fire apparatus. Because of legitimate safety concerns, the fire department should prohibit service animals from fireground and other emergency scenes.

You indicated that this individual has not been, and probably will not be, an interior firefighter. Regarding your question about having the right to send him for a physical exam, you do have that right. The Americans with Disabilities Act prohibits employers from requiring a physical examination before an offer of employment is made (including volunteer service), so the physical exam should be required after an offer of employment is made. The physical exam can also include a drug screen. For example, you go through your normal selection process and decide that candidate Ben Franklin is acceptable, so you make him an offer of employment contingent upon passing a physical exam that is related to the job he will be doing. You accomplish this by providing the examining physician with a copy of the job description that includes essential functions of the job, such as climbing ladders, lifting tools and equipment weighing up to so many pounds, pulling hoselines, crawling, wearing turnouts, wearing SCBA, working in temperature extremes, etc. It is important that you have a good job description for every position on the fire department.

You indicated that this person does not have his service dog with him at all times. My research found a situation where the nature of the individual's employment precluded having his service dog at work (the situation was a chef in a busy restaurant kitchen), and this individual just used his service dog away from his job. Your firefighter may elect to do the same. However, if he does bring his service dog to the fire station, then my advice about care, custody, and control applies, and the firefighter should not respond to calls with his service dog.

I hope this information and advice assists Anytown in forming a policy on this issue. Please call or email me if you have any questions about this advice, or if MTAS may be of further assistance.

Sincerely,



Dennis Wolf
Fire Management Consultant