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Fido, Sit … Stay … and Roll Over for Your Court-Ordered ADA Inspection

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In the employment context, employers are required to consider whether an employee's Americans with Disabilities Act (ADA) request to bring a service animal or an emotional support animal (ESA) to work qualifies as a reasonable accommodation for that employee's disability, and, if so, whether allowing the animal in the workplace would be an undue hardship. To properly handle such requests, the ADA requires employers to engage in an interactive process to determine whether and how to provide accommodations to disabled employees.

On June 23, 2023, in Meyer v. City of Chehalis, a federal district judge held that not only can an employee requesting an accommodation and/or claiming damages for emotional distress be subjected to a physical or mental examination pursuant to Federal Rule of Civil Procedure 35, but the employee's claimed service animal can also be subjected to inspection and examination pursuant to Rule 34. Neither of these situations is a big surprise, but this decision might be the first that says service animals (and ESAs) can potentially be inspected in the context of an ADA claim.

Quick Hits

- A federal judge recently ruled that the FRCP's discovery procedures apply to both employees and their animals in ADA litigation.
- According to this decision—either at the time of the request or later during subsequent litigation, if appropriate—an employee requesting an accommodation in the form of an animal at work can be subjected to a physical or mental examination and/or the proposed service animal or ESA can also be "inspected."

In Meyer, a firefighter with post-traumatic stress disorder (PTSD) asked his employer to allow him to bring his dog to work to help alleviate his symptoms. Requests like this are not new, but they are certainly on the rise (especially after many employees have become accustomed to working remotely from home alongside their animals). The ADA allows employers to ask employees questions during the interactive process—both regarding the employee's claimed "disability" and what assistance the

animal would provide to allow the employee to safely and effectively perform his or her job functions. Sometimes, these inquiries can delve into the animal's training, behavior, and skills.
And remember: almost any animal—whether an actual service animal or ESA—may theoretically qualify as a reasonable accommodation in the employer-employee context (though only dogs and miniature horses are valid service animals in the public accommodation context under federal law).

The court confirmed this might be the first time the issue has been raised because it could find no other decisions addressing whether an employer may compel the employee's service dog to sit for an examination. However, the court applied Rule 34(a)(1)(B), which permits a party to serve a discovery request on another party "to produce and permit the requesting party or its representative to inspect, copy, test, or sample … items in the responding party's possession, custody, or control [including] … any designated tangible things." According to prior federal case law, "[C]ourts have understood the phrases 'tangible objects' and 'tangible things' in the Federal Rules of Criminal and Civil Procedure to cover everything from guns to drugs to machinery to … animals."

One problem existed, though, because the service dog that the employee had asked to use as an accommodation was no longer "in service" and had been replaced by another dog. Accordingly, the court explained that a different, current service dog would not be required to sit for an examination because it would not "shed light on the training of his prior service dog at the time of the City's initial denial of Plaintiff's reasonable accommodation request." Thus, the court was basically saying that Subsequent Fido's inspection would not help the court or a jury determine what Original Fido could do to help the employee at work. Makes sense.

And, even though this recent decision addressed litigation concerning an employee's service animal request, theoretically, the same discovery tools (physical and mental examinations pursuant to Rule 35 and animal inspections pursuant to Rule 34) could be used in litigation concerning a customer or guest's request to have a service animal when using a public accommodation's facilities. However, a customer and his or her Guest Fido cannot be subjected to much questioning at the time they are using the public accommodation. This questioning would be limited to: (a) is the dog a service animal required because of a disability? and (2) what work or task has the dog been trained to perform?

Guest Fido thereby escapes inspection in the moment but might still have to sit for one on a later date. However, it appears there is no such free pass for an employee's Original Fido.

Key Takeaways

This decision confirms that employers have a legal responsibility under the ADA to properly handle employees' requests to bring an animal to work and to use their normal ADA interactive process procedures. And, if they are going to deny the use of a service animal or later challenge an employee's legal entitlement to the animal in court, employers may want to have Original Fido inspected at the time of the request. Otherwise, poor Original Fido might no longer be available for inspection. And, Subsequent Fido might not be fit to speak on the issue as it existed at the time the reasonable accommodation request was made by the employee and processed by the employer.

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inspection