Can Fido Come to Work? EEOC Files Suit to Require Emotional Support Dog on Truck Route

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It’s true. The U.S. Equal Employment Opportunity Commission (EEOC) is taking the position that an emotional support animal may be a required reasonable accommodation in the workplace. In January, we explained that federal (and most states’) public accommodation laws do not require businesses and organizations to accommodate disabled individuals with regard to their requested use of emotional support dogs or other animals. Some state laws and city ordinances even make it a crime to try to pass an emotional support dog or pet as a legally-protected, disability-related service animal. And, while it requires accommodating a true service animal (defined as “any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability”), the Americans with Disabilities Act (ADA) expressly excludes emotional support dogs from the protections granted in Title III, which regulates public accommodations and their obligations to customers, guests, patients, patrons, clients, etc.

However, Title I of the ADA—which prohibits disability discrimination in the employment context and affirmatively requires employers to provide reasonable accommodations to applicants and employees—is completely silent with regard to service dogs and other animals as examples of appropriate accommodations. Even an EEOC resource document recently released in December 2016 as guidance for workplace accommodation of employees’ mental health conditions fails to mention the use or need for emotional support or service animals. Nevertheless, we have long suspected that the EEOC would take the position that a service animal—and even an emotional support animal—might be a reasonable accommodation in the employment context, depending on the circumstances.

Now our suspicion has been confirmed. In what may be the first lawsuit of its kind, earlier this month, the EEOC filed a complaint in a Florida federal court against a trucking company claiming that the employer wrongfully failed to accommodate a truck driver’s request to have his dog with him as he drives his trucking routes (EEOC v. CRST Int’l, Inc., filed March 2, 2017). Unlike some service dogs that perform physical tasks for disabled individuals with vision, hearing, mobility, and other impairments, the dog in this case admittedly provides only emotional support for its owner Leon Laferriere’s post-traumatic stress disorder and mood disorder.

According to the lawsuit, Laferriere’s psychiatrist actually “prescribed” an emotional support animal to help him cope with his disabilities and “maintain appropriate social interactions.” During the hiring process Laferriere claims to have requested that his dog accompany him as an accommodation while driving. A manager allegedly “pressured Laferriere to leave his service animal at home and refused to provide a reasonable accommodation for Laferriere’s disabilities.” Laferriere claims he
repeated his request to bring his dog with him but the company said it had a “no pet” policy and revoked his offer of employment. The company reportedly refused to employ him without going through any “interactive process” to determine whether or not driving with his dog was a reasonable accommodation. The EEOC is seeking injunctive relief, a change in the employer’s policies, the hiring of Laferriere, back pay and emotional pain and suffering compensation, and even punitive damages.

So, now is a good time for us to remind employers that they have a legal duty under Title I of the ADA (and related state laws to which they are subject) to engage in the “interactive process” to determine whether an employee’s—or even an applicant’s—request for use of a service dog is appropriate or an undue hardship. And, this apparently includes requests for emotional support dogs. Even though public accommodations do not need to provide customers’ emotional support dogs access to grocery stores, movie theaters, restaurants, hospitals, etc., employers potentially have a much broader obligation to explore options for applicants and employees who request emotional support dogs or service animals. In fact, the EEOC’s repeated use of the term “service animal” throughout the lawsuit makes us wonder whether the EEOC might require employers to accommodate the use of animals other than dogs (or miniature horses, which can be service animals under Title III of the ADA . . . but that is an entirely different story). Don’t laugh . . . we have previously seen requests for employment-related service animals such as monkeys, birds, pigs, and kangaroos. This area of the law is just starting to unfold.

It’s too soon to know whether Laferriere needs to regularly pet or hold his dog while driving his truck to reap the emotional support benefits (or whether the dog’s mere presence in the truck suffices) and whether the dog would need to wear a seat belt. Those details would presumably be discovered during any interactive process taking place on this issue. We will continue to follow this case and others like it on our Disability Access blog, so stay tuned!