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ACCESS TO AIR TRAVEL

Service Animals and Emotional Support
Animals

Presentation Overview

- Introduction to the Air Carrier Access Act (ACAA).
- ACAA's Treatment of Service Animals and Emotional Support Animals.
- Efforts to Amend the ACAA's Service Animal and Emotional Support Animal Regulations.
- Outlook on Treatment of Service Animals and Emotional Support Animals in Air Travel.

Background on the ACAA

- Signed into law on October 2, 1986 (Public Law 99-435).
- Prohibits disability-based discrimination in air travel.
- Covers domestic airlines on all flights and foreign airlines on flights to or from the United States.

Rights Ensured by the ACAA

- Opportunity to preboard if need additional time or assistance in boarding.
- Timely assistance in boarding and deplaning from trained air carrier and contract personnel.
- No charge for a passenger with a disability to store an assistive device, including a bag containing only medication and medical supplies.
- Seating accommodation needed due to a disability available without additional cost in passenger's class of service.
- Cannot be required to travel with an attendant except in very limited circumstances.

Problems Typically Encountered by Passengers with Disabilities

- Broken assistive devices.
- Delays in receiving assistance.
- Training deficiencies.
- Difficulty in receiving seating accommodations.
- Lack of accommodation of service animals.
- Inaccessible aircraft and features.

Disability-Related Complaints

- In 2018, passengers filed 36,930 disability-related complaints as reported by 180 domestic and foreign air carriers, which represents a 7.5 percent increase over 2017.
 - 20,618 failure to provide assistance complaints
 - 3,064 service animal-related complaints
- In 2019, passengers filed 905 disability-related complaints directly with U.S. Department of Transportation (DOT).

Remedies Available Under the ACAA

- Complaints can be filed directly with the airline.
- DOT accepts complaints for ACAA violations.
 - Easiest way to file is online:
<https://airconsumer.dot.gov/escomplaint/ConsumerForm.cfm>.
 - May also be emailed or mailed.
- No private right of action.

Definitions of Service Animals in Transportation

- The Department of Justice defines a service animal under the Americans with Disabilities Act (ADA) as “any dog that is 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.” Exception for miniature horses.
- The Federal Transit Administration defines a service animal under the ADA as “any guide dog, signal dog, other animal individually trained to work or perform tasks for an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.”
- DOT defines a service animal under the ACAA as “[a]ny animal that is individually trained or able to provide assistance to a qualified person with a disability; or any animal shown by documentation to be necessary for the emotional well being of a passenger.”

Access for Emotional Support Animals

- Air travel is the only form of transportation for which federal civil rights laws provide access for emotional support animals.
- The ACAA includes emotional support animals in the definition of a service animal.
 - “any animal shown by documentation to be necessary for the emotional well being of a passenger”

ACAA's Treatment of Service Animals and Emotional Support Animals

- ACAA guidance details a two-step process for carriers to use in determining whether a particular animal is a service animal and whether it should be allowed to travel with its user in the cabin.
 - Is the animal a pet or service animal and is the individual a qualified person with a disability?
 - Does the animal present a direct threat or will it cause a fundamental alteration to passenger service?
- A carrier may determine whether an animal is a service animal through means to include documentation, if needed.
- Carriers are not required to accommodate “certain unusual service animals (e.g., snakes, other reptiles, ferrets, rodents, and spiders) as service animals in the cabin.”

Special Requirements for Psychiatric Service Animals & Emotional Support Animals

- ACAA regulations allow carriers to request documentation regarding a passenger's need for a psychiatric service animal or emotional support animal 48 hours prior to travel.
- The regulation details the types of documentation and information that a carrier may require.
 - Current (no older than one year), on the letterhead of a licensed mental health professional stating that the passenger is under his or her care and requires the animal as an accommodation for a disability recognized in the DSM IV along with the date and type of professional license and jurisdiction where issued.
- Carriers are required to accommodate travel sooner than 48 hours, when possible.

Air Carriers and Passengers with Disabilities Seek Changes

- Service animals and emotional support animals behaving badly in airports and on flights.
- Pets being presented as service animals and emotional support animals.
- Psychiatric service animals being treated differently than other service animals.

DOT Negotiated Rulemaking

- In 2016, DOT established the Advisory Committee on Accessible Air Transportation (ACCESS Advisory Committee) to conduct a negotiated rulemaking on the following issues:
 - Service animals
 - In-flight communications
 - Accessible lavatories on single-aisle aircraft
- Disability advocates and air carriers failed to reach a consensus on amending the definition of a service animal.

Air Carrier Policy Changes Lead to DOT Enforcement Statement

- In January 2018, air carriers, starting with Delta, began to implement changes to their service animals policies in response to increased numbers of these animals and high-profile incidents.
- In May 2018, DOT issued an interim statement of enforcement priorities, followed by a final statement in August 2019.
 - Species and breed, weight, and number restrictions
 - Proof
 - Documentation requirements
 - Advance notice
 - Containment

DOT's ANPRM on Service Animals

- In 2018, DOT published an advance notice of proposed rulemaking (ANPRM) governing the following issues:
 - Treatment of psychiatric service animals
 - Access for emotional support animals
 - Species limitations
 - Social behavior training
 - Large service animals
 - Veterinary forms
- DOT received approximately 3500 comments.

Federal Aviation Administration (FAA) Reauthorization Act of 2018

- The FAA Reauthorization Act, a major piece of legislation covering many aspects of air travel, was signed into law in October 2018.
- Section 437 Harmonization of Service Animal Standards— Requires DOT to conduct a rulemaking to define “service animal” under the ACAA and develop minimum standards for service and emotional support animals to be carried in the cabin.
- A final rule was to be issued no later than 18 months from the reauthorization’s enactment.

DOT's NPRM on Service Animals

- In February 2020, DOT published a notice of proposed rulemaking (NPRM) on service animals. Some of the issues addressed included the following:
 - Definition of a service animal
 - Access for emotional support animals
 - Treatment of psychiatric service animals
 - Species allowed
 - Forms and attestations
 - Number, size, and breed or type of animals
 - Check-in requirements
- Nearly 11,000 comments were received.

Impact of COVID-19 on the Industry

- How long will it take for passengers to return to the skies?
- Will passengers with disabilities who are at high risk for the virus be more reluctant to travel by air than other passengers?
- What will decreased numbers of passengers mean for concerns about service animals and emotional support animals?
- Will fewer passengers mean fewer problems with service animals and emotional support animals because passengers have more space, flight attendants have more flexibility to move passengers with allergies to animals to other parts of the aircraft, etc.?
- Should the final regulation consider the dynamic nature of passenger air travel?

Resources

- Air Carrier Access Act – 49 U.S.C. § 41705; 14 C.F.R. § 382.117.
- ACAA Service Animal Guidance – https://www.transportation.gov/sites/dot.gov/files/docs/20030509_2.pdf.
- Department of Transportation (DOT) ACAA Service Animal Information – <https://www.transportation.gov/individuals/aviation-consumer-protection/service-animals-including-emotional-support-animals>.

Regulatory Comments

- DOT Advance Notice of Proposed Rulemaking on Service Animal Access Under the ACAA: <https://www.federalregister.gov/documents/2018/05/23/2018-10815/traveling-by-air-with-service-animals>.
 - Comments filed by disability organizations, including PVA and Bazelon: <https://www.regulations.gov/document?D=DOT-OST-2018-0068-4187>.
- DOT Final Statement of Enforcement Priorities Under the ACAA Regarding Service Animals: <https://www.transportation.gov/individuals/aviation-consumer-protection/final-statement-enforcement-priorities-service-animals>.
- DOT Notice of Proposed Rulemaking on Service Animal Access Under the ACAA: <https://www.federalregister.gov/documents/2020/02/05/2020-01546/traveling-by-air-with-service-animals>.
 - Comments filed by disability organizations, including PVA: <https://www.regulations.gov/document?D=DOT-OST-2018-0068-19348> and <https://www.regulations.gov/document?D=DOT-OST-2018-0068-19342>.

QUESTIONS?

