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BLOGS

Archives;Discrimination

Lions and Tigers and Bears In the Workplace??

After a surge of unorthodox flight companions ranging from pigs, to squirrels, and even a peacock the U.S. Department of Transportation recently announced a proposed rule that would allow only specially trained emotional support dogs to qualify as service animals and to fly, free of charge, on domestic flights. This proposed rule change comes after multiple complaints from flight attendants, fellow passengers, and advocacy groups about the rise in untrained animals aboard domestic flights and the impact on others on flights. Such complaints have included allergies, safety concerns (i.e. biting, lunging, or animals going into attack mode while in a confined space), and sanitation.

The issues that the U.S. Department of Transportation are trying to tackle are similar to those many employers are facing today, namely how to balance the rights of those legitimately needing service or emotional support animals for medical reasons with the potential rights of others impacted by the presence of those animals. Because the law is nuanced, it is important for employers who are determining how to address these competing considerations to consider if a request for an animal is coming from an employee or a member of the general public and whether the requested animal is a service animal or an emotional support animal.

The Americans with Disabilities Act (ADA) broadly requires that business owners and employers allow qualified service animals in spaces accessible to the public. Under the ADA, only dogs and miniature horses can be qualified service animals and, to be qualified, the animal must be trained to perform tasks directly related to the owners disability. Under the ADA, business owners and employers must allow service animals in their publicly accessible business spaces if the following limited criteria are satisfied: the animal is trained, provides disability-related assistance, and is harnessed, leashed, or tethered or the animals handler can otherwise maintain control of the animal through voice, signal, or other effective controls. Business owners and employers are limited in what information they can require about the need for the animal or the services the animal performs. A business owner or employer may only inquire, where the need for the animal is not obvious, if the animal is required for a disability and what work or task the animal is trained to perform.

In contrast, employers who are faced with deciding whether to allow animals in their nonpublic workspaces based on an employees medical needs must work

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through the ADAs interactive process to determine if (i) the employee requesting the animal has a disability and a disability-related need for the animal and (ii) if the employer can reasonably accommodate the presence of the animal or if this would be an undue hardship. As part of the interactive process, the employer can seek limited medical provider input to make these determinations. Moreover, while the threshold to prove an undue burden is high, an employer can consider the impact of the animal on others in the workspace in determining if the animal can be reasonably accommodated and whether alternative accommodations would be equally effective.

Employers should not, however, assume that a requested animal will pose undue hardships. For example, another employee's allergies may not be a basis to deny an animal as an undue hardship if an employer can relocate employees in the workspace to accommodate both employees' medical situations. Some courts have found, however, that an employer can deny an animal request where multiple employees' allergies to a service animal in a small, shared workspace did, in fact, create an insurmountable undue burden on the employer.

Employers should stay tuned to the trajectory of the U.S. Department of Transportation's proposed rule, as it may foreshadow how other agencies or courts may eventually view employer accommodation or undue hardship considerations.