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New York Makes it Unlawful To Misrepresent Dogs as Service Animals

By Carolyn D. Richmond, Ernest E. Badway and Jason B. Jendrewski

Beware: service dog fraud will not be tolerated in New York State, which recently passed a law prohibiting the misrepresentation of service dogs. The law, effective December 18, 2017, makes it unlawful for any person to knowingly affix to any dog any false or improper tag identifying the dog as a guide, service, therapy or hearing dog. Violations of the law could result in a fine of up to \$100 and up to 15 days in jail.

Many persons with disabilities use service animals (typically trained dogs) to assist them in performing important tasks that enable them to fully participate in everyday life. Service animals play an increasingly important role in our society, and the tasks these animals are trained to perform are broad and not necessarily obvious, such as guiding persons who are blind. For example, service animals may alert a person with diabetes that his or her blood sugar has reached high or low levels or detect the onset of a seizure for a person who has epilepsy.

Under federal, state and local laws, persons with disabilities are permitted to be accompanied by service animals in all public areas of places of public accommodation, such as restaurants and retail stores, at no additional charge or condition (even if animals are prohibited by state or local health codes). However, there are concerns that people are taking advantage of these important laws and abusing their protections. The intent of New York State's new law is to curb such abuse and to deter individuals from engaging in service dog fraud.

While this law is an important and positive development, businesses should be mindful that it does not broaden the scope of permissible questions

that their employees may ask of patrons. Employees may ask only a limited number of questions to assess whether they are required to allow an alleged service animal to enter the premises. For example, if it is not obvious what service an animal provides, an employee may ask a patron if the service animal is required because of a disability. An employee may also inquire about the work or task that the service animal has been trained to perform. Employees should ask these questions only if necessary and should not ask any other questions. Importantly, employees should not inquire about the patron's disability, require medical documentation, require a special identification card or training documentation for the service animal or ask that the service animal demonstrate its ability to perform the work or task.

While the new state legislation prohibits persons from applying false or improper identification tags, under the federal Americans with Disabilities Act, service animals are not required to wear an identification tag, or any vest, patch or harness identifying the animal as a service animal. Accordingly, businesses should not deny any service animal entry based on any lack of identification, as it is not required under the law. Only in very limited circumstances may a service animal be excluded, such as if the service animal is out of control (and the handler is unable to control it) or the service animal is not housebroken. In these events, businesses should offer alternative methods for providing their goods and services to the patron with a disability.

The new law should serve as an important reminder for businesses to ensure that they have comprehensive policies and procedures in place for

dealing with service animals and for accommodating persons with disabilities. We suggest that businesses review those policies and procedures with counsel and train their employees regarding these issues, including the proper manner for determining whether an animal qualifies as a service animal. Additionally, while not necessarily required by law, businesses may want to consider installing signs stating that service animals are permitted to enter their establishments.

For more information about this alert or general inquiries about service animals or accommodating persons with disabilities, please contact Carolyn D. Richmond at 212.878.7983 or crichmond@foxrothschild.com, Ernest E. Badway at 212.878.7986 or ebadway@foxrothschild.com, Jason B. Jendrewski at 212.878.7952 or jjendrewski@foxrothschild.com or any member of the firm's Hospitality Practice Group.