ARE YOU READY FOR A WALLABY AT THE WATER COOLER? SERVICE ANIMALS AND EMOTIONAL SUPPORT ANIMALS IN THE WORKPLACE-WHAT DO EMPLOYER CLIENTS NEED TO KNOW?

IADC MID-YEAR MEETING

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A pig flies on a commercial plane and forgets its manners. A baby kangaroo enters McDonald's, catches a flick at the cinema, and attends church. A tarantula named "Sam" tries to enter the recreational facility at a condominium complex. As outlandish as these stories may seem, they are all real examples of recent occurrences. There has been an influx of reports of furry, feathered, and scaly creatures accompanying their owners 24/7 for a variety of reasons, including for medical and mental health purposes. It should be no surprise that this has extended into the workplace.

While employers have no legal duty to accommodate employees' pets at work, a 2015 Society for Human Resource Management survey found that 8% of American employers permitted employees to bring their pets to work, which was up from 5% in 2013. There is a gray area between the classification of animals as pets, service animals, and emotional support animals ("ESAs"), which courts have said:

> permits no identifiable stopping point: every person with a handicap or illness that caused or brought about feelings of depression, anxiety or low self-esteem would be entitled to the dog of their choice, without regard to individual training or ability. And if certain people liked cats, fish, reptiles or birds better than dogs, there would be no logical reason to deny an accommodation for these animals.

Edwards v. EPA, 456 F. Supp. 2d 72, 101-02 (D.D.C. 2006) (citing *Prindable v. Ass'n of Apartment Owners of 2987 Kalakaua*, 304 F. Supp. 2d 1245, 1257 n. 25 (D. Haw. 2003)).

Recently, more and more employees are attempting to bring their service animals and ESAs to work, and whether or not an employer has a duty to accommodate for service animals and ESAs is still a developing area of law. As of November 2018, the National Service Animal Registry (NSAR) had registered 190,386 service animals and ESAs (for a fee). NATIONAL SERVICE ANIMAL REGISTRY, https://www.nsarco.com/database.html (last visited November 28, 2018). Issues regarding the use of ESAs became hot national news following two highly publicized incidents in 2018; one in February 2018, when a woman claimed she was forced to flush her emotional support hamster down the toilet to board a plane; and the other in October 2018, when another woman was tossed from a flight for bringing her emotional support squirrel, captured on videotape.

While Title I of the Americans with Disabilities Act (ADA) prohibits employment discrimination against individuals with disabilities, neither the statute nor the Equal Employment Opportunity Commission (EEOC) have specifically addressed the use of service animals and ESAs for medical or mental health reasons. The ADA requires employers to provide a "reasonable accommodation" to disabled employees or applicants, which can include allowing such an individual to bring his/her service animal to work. *See* 42 U.S.C. § 12112(b)(5)(A); 29 C.F.R. app. § 1630.2(o).

Unfortunately, there are few (and often inconsistent) court decisions to guide attorneys, business owners, and human resource professionals on how to handle ESAs in the workplace, as

this is a more recent, emerging phenomenon. Employers are left wondering how to deal with the influx of reasonable accommodation requests by employees to bring their ESAs to work. This is a concern of particular importance for employers, because incorrectly denying an employee's request to bring a service animal or ESA to work can expose them to liability and potential awards for compensatory damages, injunctive relief, and civil penalties.

Service Animals Versus ESAs

The first roadblock for an attorney in evaluating a request for an accommodation is to distinguish between what is a "service animal" versus an ESA. While Title I of the ADA (prohibiting discrimination in employment) does not address or define "service animals," Title III of the ADA (prohibiting discrimination by public accommodations) does. *See* 42 U.S.C. § 12116; 29 C.F.R. § 1630.1(a); 42 U.S.C. § 12186; 28 C.F.R. § 36.101; Pub. L. No. 101-336, 104 Stat. 327 (1990). Title III regulations may be considered persuasive authority, to the extent those regulations are not inconsistent with Title I regulations. *McDonald v. Dep't of Envtl. Quality*, 214 P.3d 749, 762 (Mont. 2009).

Title III requires public accommodations, such as hotels/motels, restaurants and stores, to allow service animals entry. 28 C.F.R. § 36.302(c). According to Title III regulations, a service animal is defined 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. . . . The work or tasks performed by a service animal must be directly related to the individual's disability.

28 C.F.R. § 36.104. The definition limits service animals to dogs and, in certain circumstances, miniature horses. 28 C.F.R. § 36.302(c)(9).

On the other hand, ESAs are not defined by any federal law. The ADA and its implementing regulations do not address ESAs, and as such, ESAs are not required entrance to public accommodations. Unlike service animals, ESAs are not trained to perform specific tasks, but simply provide a sense of comfort, safety, or calmness to their owner. *See* Pet Ownership for the Elderly and Persons with Disabilities, 73 Fed. Reg. 63834 (Oct. 27, 2008) (final rule issued with respect to the Fair Housing Act, stating ESAs "without training, may relieve depression and anxiety, and/or help reduce stress-induced pain in persons with certain medical conditions affected by stress"). In addition, whereas service animals are limited to dogs or miniature horses, ESAs can be any kind of animal, regardless of species.

Reasonable Accommodation

Under Title I of the ADA, private employers with 15 or more employees and state and local government employers, regardless of size, are required to make "reasonable accommodations" for the known physical or mental limitations of an employee or job applicant with a disability. 42 U.S.C. §§ 12111(5) and 12112(b)(5)(A). A person is considered disabled for the purposes of

requesting a reasonable accommodation from an employer, if he/she: (1) has a physical or mental impairment (which includes emotional or mental illness) that "substantially limits" one of more "major life activities;" or (2) has a record of such impairment. 42 U.S.C. § 12102(1); 29 C.F.R. § 1630.2(g)(1). An employer is only required to provide a reasonable accommodation to a person with an "actual" disability. *See* 29 C.F.R. §§ 1630.2(o)(4) and 1630.9(e).

In order to be considered disabled, an individual must show that they are limited in a major life activity, which can include, but is not limited to: "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, . . . working[,] and the operation of a major bodily function . . . ." 29 C.F.R. § 1630.2(i)(1); 42 U.S.C. § 12102(2). One does not need to be completely prevented or severely restricted from performing the activity, but only needs to be substantially limited as compared to "most people." 29 C.F.R. § 1630.2(j)(ii). In order to be considered substantially limited in working (only one of numerous potential "major life activities"), an individual must be significantly restricted in the ability to perform either a class of jobs or broad range of jobs in various classes as compared to the average person having similar training and skills, rather than the inability to perform a single, particular job. *Pritchard v. Southern Co. Services*, 92 F.3d 1130, 1133 (11th Cir. 1996); *see also Welch v. Holcim, Inc*., 316 P.3d 823, 828 (Mont. 2014).

Reasonable accommodations are "[m]odifications or adjustments to the work environment" that enable a disabled employee to: (1) perform the "essential functions" of his/her position **or** (2) "enjoy equal benefits and privileges of employment as are enjoyed by [his/her employer's] other similarly situated employees without disabilities." 29 C.F.R. § 1630.2(o)(1). With respect to the first part of this definition, Title I of the ADA states that in determining what is an essential job function, consideration is given to the employer's judgment. 42 U.S.C. § 12111(8). Other relevant evidence includes the amount of time spent performing the function, the consequence of not requiring the employee to perform the function, the terms of a collective bargaining agreement, work experience of past incumbents in the job, and the current work experience of other employees in similar jobs. 29 C.F.R. § 1630.2(n)(3).

Under the second part of the "reasonable accommodation" definition, the ADA requires accommodations that allow disabled individuals to lead normal lives; not just accommodations that ease the performance of specific employment tasks. *Branson v. West*, No. 97 C 3538, 1999 WL 311717, at *12 (N.D. Ill. May 11, 1999). Such "reasonable accommodations" can include service animals. *See* 29 C.F.R. app. § 1630.2(o). And since Title I of the ADA has no limitation as to the type of animal providing support to a disabled individual, this means an ESA could also be deemed a "reasonable accommodation" in the workplace.

It is important that employers check their local and state laws, as they may obligate employers to allow ESAs in the workplace in certain situations. For example, California's Fair Employment and Housing Act requires employers with five or more employees to allow persons with disabilities to bring service dogs **and ESAs** to work, with some limitations. CAL. CODE REGS. tit. 2, § 11065(a), (n)(1), (p)(2)(B) (2016). In addition, ESAs are already considered "reasonable accommodations" under the Fair Housing Act. *See Overlook Mut. Homes, Inc. v. Spencer*, 666 F.Supp.2d 850, 861 (S.D. Ohio 2009); *see also* 42 U.S.C. §§ 3601-3619 (1988). ESAs are also

allowed to fly in the cabin of an aircraft with their handlers under the Air Carrier Access Act. 42 U.S.C. § 41705 (2003); 14 C.F.R. 382.117 (2009) (excluding snakes, other reptiles, ferrets, rodents, and spiders). One might ask, if an emotional support goat is allowed to fly in a cramped cabin with other passengers and live in its handler's apartment, how will courts reconcile not allowing the goat to accompany its owner to work? With only a few courts addressing service animals and/or ESAs in the workplace, the courts have been split on whether an employee's animal accompanying him/her to work is a "reasonable accommodation."

Generally, in order to establish a *prima facie* case for failure to accommodate under the ADA, a plaintiff must show: "(1) that [he/]she was an individual who had a disability within the meaning of the statute; (2) that the employer had notice of [his/]her disability; (3) that with reasonable accommodations, [he/]she could perform the essential functions of [his/]her position; and (4) that the employer refused to make such accommodations." *Clark v. School Dist. Five of Lexington and Richland Counties*, 247 F.Supp.3d 734, 743 (D.S.C. 2017). The courts have applied this same test for employees claiming their employer discriminated against them for failing to accommodate their service animals and/or ESAs. *See id.*; *Edwards v. EPA*, 456 F. Supp. 2d 72, 97 (D.D.C. 2006); *see also Arndt v. Ford Motor Co.*, 247 F.Supp.3d 832, 849 (E.D. Mich. 2017); *Miranda v. Schlumberger Tech. Corp.*, No. SA-13-CA-1057-OLG (HJB), 2014 WL 12489995, at *3 (W.D. Tex. Nov. 24, 2014).

An employee bears the burden of demonstrating that his/her requested accommodation is reasonable by showing that the animal would enable him/her to perform the "essential functions" of his/her job and, at least on its face, that it is feasible for the employer under the circumstances. *See Arndt*, 247 F.Supp.3d at 849; *Edwards*, 456 F. Supp. 2d at 98; *see also Miranda*, 2014 WL 12489995, at *3. Once this showing is satisfied, the burden shifts to the employer to articulate a legitimate, non-discriminatory reason for its actions regarding the proposed accommodation. *Edwards*, 456 F.Supp. 2d at 83. However, the courts appear split on whether any analysis should be conducted regarding whether having a service animal or ESA at work is reasonable if it allows the employee to enjoy "equal benefits and privileges" of employment as similarly situated employees without disabilities (the second part of the "reasonable accommodation" definition).

For example, in *Branson v. West*, No. 97 C 3538, 1999 WL 311717 (N.D. Ill. May 11, 1999), the Northern District Court of Illinois granted a paraplegic physician summary judgment when it determined that her employer, a VA Hospital, violated the Rehabilitation Act by denying her the use of her service dog at work. The court noted that the plaintiff was able to perform all the functions of her job without her service dog, but without the dog to pull her manual wheelchair, she suffered fatigue and stress on her upper extremities, hindering her from enjoying the "privileges and benefits" of employment equal to those of similarly situated employees without disabilities. *Id.* at *2, 11-13 (noting that the VA did not dispute plaintiff's claim that a manual wheelchair provided her more independence than an electric wheelchair).

Conversely, in *Schultz v. Alticor/Amway Corp.*, 177 F.Supp.2d 674 (W.D. Mich. 2001), *aff'd* 43 Fed. Appx. 797 (6th Cir. 2002), the Western District Court of Michigan held that an employer was not required to accommodate an employee with hearing loss and mobility issues by allowing him to bring his service dog to work, as the animal was not needed in order to carry out the "essential functions" of his job. Unlike in *Branson*, this court only considered how the service

dog assisted the employee with his job tasks as a designer, which were "working at an easel or desk on a computer" and having minimal contact with other employees. *Id.* at 678. These tasks did not require assistance hearing or retrieving dropped items and, therefore, the court found that the service dog was unnecessary and granted summary judgment for the employer. *Id.*

The Eastern District Court of Michigan in *Arndt v. Ford Motor Co.*, 247 F.Supp.3d 832 (E.D. Mich. 2017) granted summary judgment for the employer, finding that the plaintiff failed to prove that his service dog, used for post-traumatic stress disorder, would have enabled him to perform the "essential functions" of his job as a manufacturing supervisor at a Ford plant. *Id.* When questioned by his employer regarding his proposed accommodation, the plaintiff continually responded that he could perform all aspects of his job, but needed to have his dog with him to alleviate environmental factors by providing "calming interventions" while sitting under the plaintiff's desk. *Id.* at 842-43. Ultimately, however, both the plaintiff's psychologist and the employer's expert questioned whether plaintiff would be able to continue performing the "essential functions" of his job, **either with or without a service animal**, and the court ultimately dismissed the plaintiff's complaint on this basis. *Id.* at 853-54, 858.

In *Clark v. School Dist. Five of Lexington and Richland Counties*, 247 F.Supp.3d 734 (D.S.C. 2017), the South Carolina District Court denied the employer's summary judgment motion for multiple reasons, including that there were issues of fact as to whether the plaintiff, a special needs school teacher, was able to perform the "essential functions" of her job without bringing her dog to school for her PTSD and panic disorder with agoraphobia. Although the school district had already excused the plaintiff from ancillary job functions (lunch monitoring, fire drills, meetings/in-service trainings), the court found a question of fact as to whether she was able to perform the "essential functions" of her job without the accommodation of her dog. *Id.* at 749.

Overall, employers need to carefully analyze whether the requested accommodation is reasonable and will adequately alleviate the effects of the employee's disability on his/her ability to work. An accommodation is only reasonable if it is effective and proportional to the costs. *Branson v. West*, No. 97 C 3538, 1999 WL 311717, at *11 (N.D. Ill. May 11, 1999); *see also Edwards v. EPA*, 456 F. Supp. 2d 72, 100 (D.D.C. 2006) (granting summary judgment for the employer where employee's doctor provided a note that referred to the employee's untrained 10-week-old puppy as a "holistic and experimental approach," which the court found fell far short of "objective" evidence that the dog would reduce the employee's stress).

At the same time, an employer is required to address any barriers to an employee's ability to actually **use** an assistive device, such as a service animal, effectively in the workplace. *McDonald v. Dep't of Envtl. Quality*, 214 P.3d 749, 760 (Mont. 2009) (holding the employer was obligated to provide the reasonable accommodation of nonskid floor coverings for an employee's service dog). But, an employer is also allowed to place reasonable parameters on the animal in the workplace, such as requiring that the animal be fully trained and capable of functioning appropriately in the workplace. For example, in *Mennen v. U.S. Postal Serv.*, EEOC Appeal Decision No. 01A13112 (Sept. 25, 2002), the EEOC rejected a postal employee's claim that he was discriminated against because his employer would only allow him to keep his bird on the premises if the bird stayed in its cage (which he claimed made the bird unhappy) and the cage was

kept clean. It stated that a disabled employee is not entitled to accommodations of his choice, but rather is entitled to an effective accommodation. *Id.*; *see* 29 C.F.R. §1630.9(d).

Additionally, an employer is **not** required to provide a reasonable accommodation when: (1) the employer can demonstrate that the accommodation would impose an "undue hardship" on the operations of the employer or (2) when a requested accommodation would pose a direct threat to the health or safety of the employee, other employees, or the public. 42 U.S.C. § 12112(b)(5)(A); 29 C.F.R. §§ 1630.9(a) and 1630.15(d); *see* 29 C.F.R. app § 1630.2(r); *see also* 28 C.F.R. § 36.208(a) (applying to Title III – public accommodations). Undue hardship is defined as an action requiring significant difficulty or expense. 42 U.S.C. § 12111(10)(A). When analyzing whether an accommodation would impose an undue hardship, employers can consider the following factors:

(1) the nature and cost of the accommodation needed;
(2) the overall financial resources of the facility involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources or the impact otherwise of such accommodations upon the operation of the facility;
(3) the employer's overall financial resources; the overall size of the employer's business with respect to the number of its employees; and the number, type, and location of its facilities; and
(4) the type of operation, including the composition, structure, and functions of the employer's workforce; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the employer. 42 U.S.C. § 12111(10)(B).

Animals that fundamentally alter the nature of business operations, cannot be controlled by their handler, bite someone, or are not housebroken would constitute an undue burden and a request to bring them to work can be denied on that basis. *See* 28 C.F.R. §§ 35.130(b)(7)(i), 35.136(d) and (i)(2)(ii), 35.150(a)(3), 35.164, 36.301(b), and 36.302(c). Any denial of a request on these grounds should be placed in writing to the employee and clearly state the basis for the denial.

The requirement to provide reasonable accommodations under Title I of the ADA "does not automatically preempt medical standards or safety requirements established by federal law or regulations." 29 C.F.R. app. § 1630.1(c). For example, the presence of animals in health care facilities and places that prepare food and beverages can create a hazard. *Cf.* FDA Food Code § 6-501.115 (2013) (permits services animals in areas not used for food preparation if a health or safety hazard will not result from their presence or activities). In addition, the workplace itself may pose hazards to the animal, such as manufacturing facilities, construction sites and chemical plants. These industry-specific challenges need to be addressed on a case-by-case basis.

Of note, the presence of other allergic employees does not fall under the "direct threat" exception. If other employees have allergies or asthma, an employer must make accommodations for those employees, **as well**, such as separating them to a different area of the workplace, providing each of the employees with an enclosed workspace, providing an air purifier, changing

their schedules, or other appropriate actions. JOB ACCOMMODATION NETWORK, SERVICE ANIMALS IN THE WORKPLACE, 9-10 (2017). Where it is a hardship on other employees with allergies to have an ESA in the workplace, and the employer offers other reasonable alternatives, which the employee rejects, the employer cannot be liable for failing to accommodate the employee's disability. *See Maubach v. City of Fairfax*, 2018 U.S. Dist.LEXIS 73815, *18 (Va. E.D.C. 2018)("Defendant sought to present alternatives that would meet plaintiff's needs while avoiding the hardships Mr. B's presence imposed, and rather than consider these alternatives plaintiff refused to discuss any accommodation other than bringing Mr. B to work and working the night shift. Where…an employee causes the interactive process to break down by insisting on a particular accommodation, an employer cannot be held liable under the ADA").

Interactive Process

Under the ADA, once an employer becomes aware of the need for an accommodation (i.e., an employee requests an accommodation to bring his/her animal to work), that employer has a mandatory obligation to engage in an "interactive process" with the employee to identify the limitations caused by the employee's disability and potential reasonable accommodations that could overcome those limitations. *Assaturian v. Hertz Corp.*, 2014 WL 4374430, at *8 (D. Haw. Sept. 2, 2014); *see also Equal Emp't Opportunity Comm'n v. Autozone, Inc.*, No. CV-06-1767-PCT-PGR, 2008 WL 4418160, at *4 (D. Ariz. Sept. 29, 2008); 29 C.F.R. § 1630.2(o)(3); 29 C.F.R. app. § 1630.9. An employee's request does not have to use the magic words "reasonable accommodation" or be in writing to trigger the "interactive process." *Branson v. West*, No. 97 C 3538, 1999 WL 311717, at *13 (N.D. Ill. May 11, 1999); *AutoZone*, 2008 WL 4418160, at *5; *Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the American with Disabilities Act*, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (Oct. 22, 2002). While some requests can seem very unusual and not all requests have to be granted, they must at least be investigated to determine whether the accommodation sought is reasonable, just as if the employee had asked for an ergonomic chair.

Once the request is made and the need for such accommodation is not obvious, then the employer may require that the individual provide reasonable documentation about his/her disability, functional limitations, and that the disability necessitates a reasonable accommodation. *Enforcement Guidance*, *supra*; 29 C.F.R. app. § 1630.9. This may include copies of the employee's medical documentation from the appropriate healthcare provider and information on the animal's training, if requested within a reasonable time frame. *See Branson*, 1999 WL 311717, at *14; *Edwards v. EPA*, 456 F. Supp. 2d 72, 79 (D.D.C. 2006); *Autozone*, 2008 WL 4418160, at *2. An employer cannot request a person's complete medical records and, if the employee has more than one disability, an employer can request information pertaining only to the disability that the employee is claiming requires accommodation. *Enforcement Guidance*, *supra.* An employer can also ask an employee to sign a limited release allowing the employer to submit a list of specific questions to the employee's health care or rehabilitation professional. *Id.*

As an alternative to requesting documentation, an employer may explain to the employee that it needs to verify the existence of an ADA disability and the need for the accommodation and then ask the employee the nature of his/her disability and functional limitations. *Id.* Some courts have found that excessive documentation requests for information on how the animal will assist

the employee in the performance of his/her specific job duties is inappropriate. *See Branson*, 1999 WL 311717, at *15. Overall, an employer can request just enough information so that it can learn: (1) why the animal is necessary; (2) what the animal does for the employee; (3) that the animal is trained; (4) that the animal will not disrupt the workplace; and (5) that the animal will be able to safely navigate the workplace. *See Arndt v. Ford Motor Co.*, 247 F.Supp.3d 832, 858-65 (E.D. Mich. 2017); *Branson*, 1999 WL 311717, at *14; 29 C.F.R. app. § 1630.9.

The next step is that the employer and employee should discuss the possibilities and logistics of such an accommodation and the employer should make a timely good faith effort to find a suitable effective solution. *See Branson*, 1999 WL 311717, at *12; 29 C.F.R. app. § 1630.9. In the *Arndt* decision, for example, the court found that the employer engaged in the interactive process in good faith under the ADA with respect to its employee's request to bring his service dog to work for his PTSD, as it: (1) immediately put together a multi-member team to address the employee's request and to consider potential safety concerns from having a dog on an automobile assembly floor; (2) researched other manufacturing facilities that might have encountered similar requests; (3) sought information from employee's treating psychologist; and (4) placed the employee on full paid leave while it investigated the employee's request. 247 F.Supp.3d at 863.

If a breakdown occurs in the interactive process, the court will isolate the cause and assign responsibility, accordingly. *Id.* at 850; *Branson*, 1999 WL 311717, at *13. For instance, in *Assaturian v. Hertz Corp.*, 2014 WL 4374430 (D. Haw. Sept. 2, 2014), the court denied summary judgment for the employer, stating that "neither side fully participated in the interactive process, if indeed, it had been triggered." The employee, who had chronic ulcerative proctitis and colitis, brought his Shih Tzu to work with him without permission from his employer, allowing it to be unleashed and urinate indoors on a pad on the floor. *Id.* at *1-2. This continued for a year and a half until the employee's supervisor notified a human resources representative, who then told the employee that some form of medical documentation was needed before he could bring the dog back to work. *Id.* at *2-3, 9. Plaintiff claimed he had a service animal card for the dog, but never provided a copy or any other documentation supporting his request, before ultimately commencing a lawsuit against his employer. *Id.* at *4, 9. In denying summary judgment, the court concluded there were questions of fact regarding whether the plaintiff requested to bring his dog to work as an accommodation, and if so, whether either party satisfied their obligation to engage in the interactive process, and whether plaintiff's request was reasonable. *Id.* at *8-9.

The *Assaturian* case stresses the need for the employer to engage in the interactive process after there is any indication that an accommodation is needed, even if the employee never uses the word "disability" or "reasonable accommodation." If an employee suddenly starts bringing an animal to work, the employer should immediately attempt to ascertain the reason the employee is bringing his/her animal to work. If the presence of pets in the workplace is not desired, the employer should take prompt action to either end the practice (if not related to a physical/mental impairment) or evaluate whether it is a reasonable accommodation (if bringing the animal to work is related to the employee's physical/mental impairment).

If an employer chooses to deny a request for a reasonable accommodation, it should provide a written explanation for the denial and/or suggest an alternative accommodation. *See Branson*, 1999 WL 311717, at *14-15 (granting summary judgment for the employee as the court

found that the employer never explained its objections to the service dog, never suggested alternative accommodations, and never claimed "undue hardship"); *see also Clark*, 247 F.Supp.3d at 746, 750-51 (where employer suggested alternative accommodation of wearing a weighted vest to quell panic attacks instead of bringing a dog into the workplace); *cf. Arndt*, 247 F.Supp.3d at 863. An employer has the final discretion regarding the most effective accommodations that satisfy both the employee's and employer's needs and is not obligated to adhere to the employee's preference. *Miranda v. Schlumberger Tech. Corp.*, No. SA-13-CA-1057-OLG (HJB), 2014 WL 12489995, at *4 (W.D. Tex. Nov. 24, 2014); *see also Clark*, 247 F.Supp. 3d at 746.

Conclusion

Essentially, there are three key elements to an employer's processing of an employee's request for a reasonable accommodation under ADA Title I, as the employer:

(1) should ascertain whether the employee has a physical or mental impairment that substantially limits one or more major life activities or has a record of such impairment;
(2) is obligated to participate in good faith in an interactive process to determine the employee's limitations and the nature of any reasonable accommodations to overcome such limitations; and
(3) must make the **reasonable** accommodation (effective and proportional to the costs) for the known limitations, unless the accommodation would:
    (a) impose an "undue hardship" on the employer's operations; or
    (b) pose a direct threat to the health or safety of the employee, other employees, or the public.

Overall, requests to bring service animals and ESAs to work will need to be analyzed on a case-by-case basis and employers should remain open to engaging in an interactive process with employees to discuss whether an accommodation is reasonable and feasible (even if the request may seem strange or unusual). If a service animal or ESA is not disruptive and having it in the workplace is not problematic from a logistical standpoint, an employer may want to consider allowing the animal, especially given that what constitutes a "reasonable accommodation" or "undue hardship" in the context of animals at work is still a somewhat amorphous subject. This area of law remains murky and it is likely that employees will choose to push the envelope in the future with respect to what reasonable accommodations they claim are necessary.