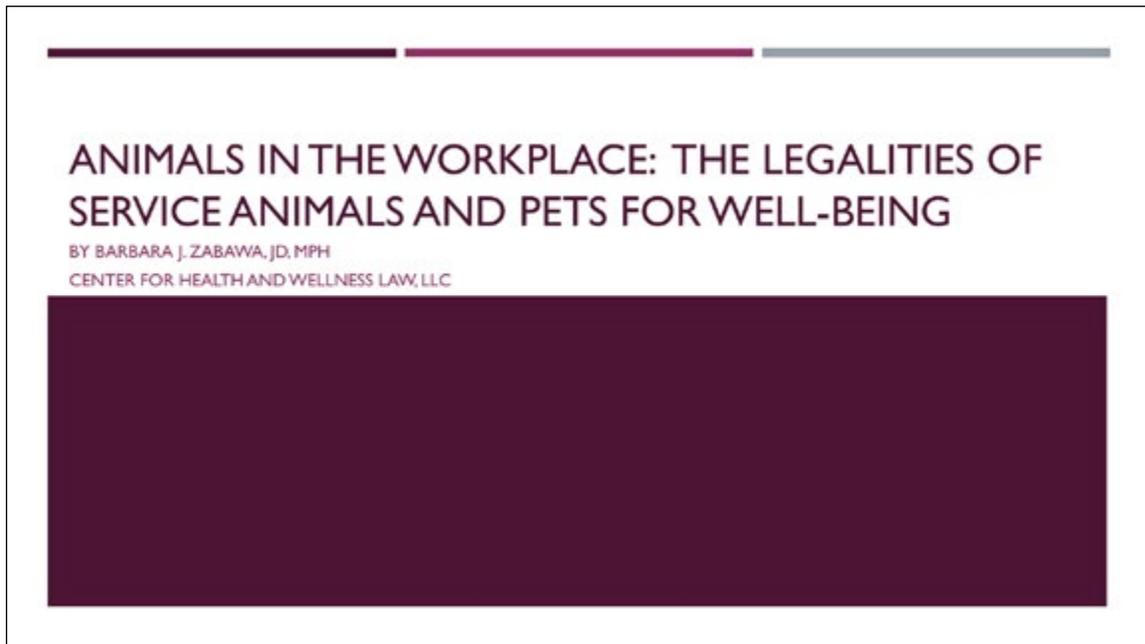


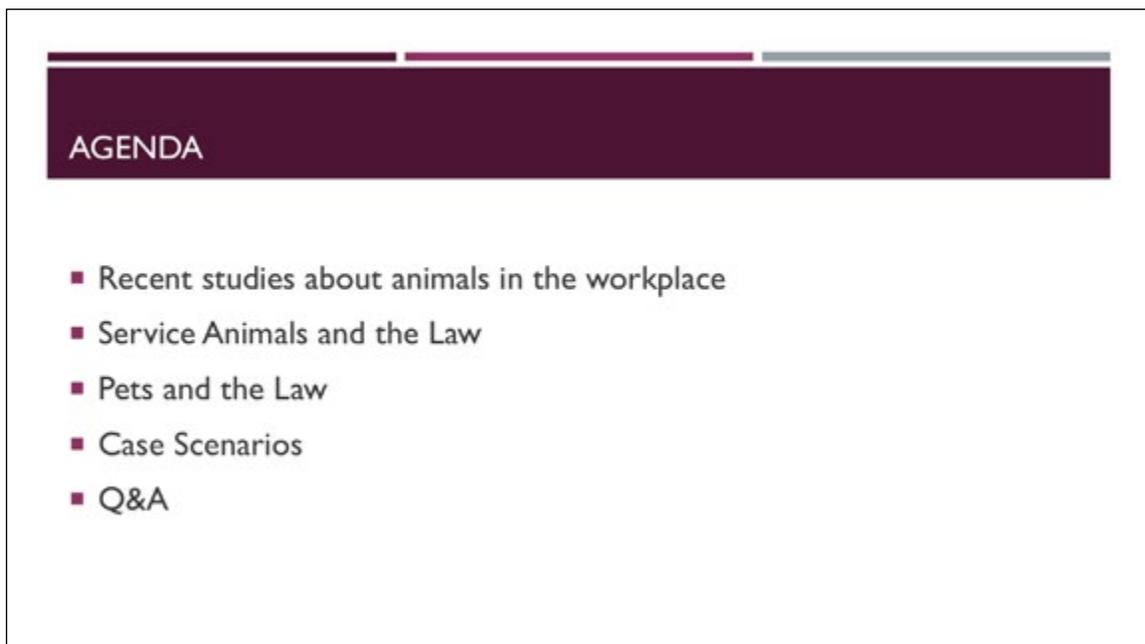
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RECENT STUDIES ABOUT ANIMALS IN THE WORKPLACE

- AVMA survey in 2011:
 - 70 million pet dogs and 74 million pet cats in the US
 - 63% view pet as family member
- Google and Amazon allow employees to bring pet dogs to work, regardless of disability status
- 2015 SHRM study found increase between 2013 and 2015 of workplaces permitting pets (8% of workplaces in 2015 compared to 5% in 2013)

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RECENT STUDIES ABOUT ANIMALS IN THE WORKPLACE

- Empirical evidence supports the notion that dogs in the workplace may provide social support, improve performance, and increase social interactions.
 - One study found the presence of a pet vs. a spouse when performing stressful tasks.
 - The study found that heart rate, and blood pressure were significantly lower than when a spouse was present
 - Studies have also found improved performance on arithmetic and speech tasks when pets were present
- A. Foreman, et al, *Dogs in the Workplace: A Review of the Benefits and Potential Challenges*, International J. of Environ. Res. & Public Health (May 2017).

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RECENT STUDIES ABOUT ANIMALS IN THE WORKPLACE

- The popularity of pet-friendly workplaces hinges on expectations of positive benefits to employee morale and well-being.
- Until these expectations are confirmed through actual experience or empirical research, consider regular assessment.
 - Surveys
 - Focus groups
 - Interviews
 - Direct observations

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RECENT STUDIES ABOUT ANIMALS IN THE WORKPLACE

- Concerns about animals in the workplace:
 - Allergies (15-30% of people with allergies have allergic reactions to dogs and cats)
 - Zoonoses (infectious diseases that can be transmitted between non-human animals and humans)
 - Slip, trip and fall hazards
 - Dog bites
 - Fear and phobias
 - Cultural sensitivities
 - Welfare concerns

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SERVICE ANIMALS IN THE WORKPLACE

- Service animals may also be present in the workplace
 - Service animals are usually dogs and accompany employees with disabilities
 - Service dogs are individually trained to perform work or tasks to assist an individual with a disability.
 - Employees with physical disabilities may receive help from a service dog that helps them use a wheelchair, retrieve items, open doors, navigate corridors and streets, alert for alarms, etc.
 - Employees with psychological disabilities, such as panic disorder, a service dog may be trained to perform therapeutic tasks, such as lying across a lap during a panic attack.

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LEGAL ISSUES WITH SERVICE ANIMALS IN THE WORKPLACE

- Service animals not specifically addressed in ADA Title I (Employers), but they are in Titles II (public entities) and III (public accommodations).
- For purposes of Titles II and III, 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, including a physical, sensory, psychiatric, intellectual or other mental disability." (28 CFR ss. 35.104, 36.104).
- According to DOJ, public entities covered by ADA Titles II and III may be required to accommodate miniature horses if they meet certain requirements.



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LEGAL ISSUES WITH SERVICE ANIMALS IN THE WORKPLACE

- Work or tasks performed by service animal must be directly related to individual's disability.
- Service animal tasks **do not** include:
 - Provision of emotional support and comfort
 - A dog's mere presence as a crime deterrent



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LEGAL ISSUES WITH SERVICE ANIMALS IN THE WORKPLACE

- No universal accreditation program to have an animal certified or licensed as a service, emotional support, comfort or therapy animal.
- Certain websites provide vests, certificates, ID cards and other documents without requiring that an animal meet any minimum standards or behavior.
 - Ex: employee could get certificate purporting that dog is service dog without providing any proof that the dog is trained to do anything.

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LEGAL ISSUES WITH SERVICE ANIMALS IN THE WORKPLACE

- Although ADA Title I does not address service animals specifically, covered employers are required to offer reasonable accommodations to qualified, disabled employees.
- A reasonable accommodation may be a service animal or an emotional support/comfort/therapy animal.
- Whether the animal meets ADA Titles II and III definition of service animal, or is merely an emotional support/comfort/therapy animal is of no import.
- What matters is whether the animal qualifies as a reasonable accommodation for an employee's disability who is otherwise qualified to do the job, with or without reasonable accommodation.
 - Under ADA Title I, reasonable accommodation requests not limited to dogs or miniature horses and may extend to other species, such as cats, monkeys or pigs.
 - Under 2008 ADA amendments, anxiety and seizure disorders are disabilities.

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LEGAL ISSUES WITH SERVICE ANIMALS IN THE WORKPLACE

- Because any animal might qualify as a reasonable accommodation, just because an employee's animal meets ADA's definition of service animal, employer not automatically obligated to allow employee to use it in the workplace.
- Employer and employee must engage in interactive process to determine whether allowing the animal is a reasonable accommodation that assists a disabled employee in performing an essential job function.
- Employers do not have to grant accommodations that impose an "undue hardship" on their operations.



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LEGAL ISSUES WITH SERVICE ANIMALS IN THE WORKPLACE

- As part of the interactive process, employer should:
 - Take request seriously
 - Document the request and steps taken
 - Request information from employee, employee's medical provider or other sources such as animal trainer to understand why employee needs animal and how animal helps employee perform essential job functions
 - Request documentation if not obvious on how animal helps employee
 - Investigate potential problems animal may create instead of relying on speculation, indirect knowledge or hypothetical situations.
 - Propose alternative accommodations of allowing animal presents problems that create undue hardship
 - Allow employee to bring animal or other individual to an interactive process meeting so employee can demonstrate animal's abilities.
 - Consider allowing employee to bring animal to work on trial basis
 - Document final determination.

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LEGAL ISSUES WITH SERVICE ANIMALS IN THE WORKPLACE

- Examples of possible accommodations for the service animal might include:
 - Allowing the animal in the workplace if employer has a no-animals policy
 - Rearranging the workspace to make room for the animal and minimize distractions for the animal
 - Rescheduling breaks to allow the employee to care for the animal
 - Training supervisors, managers and coworkers on how to treat the service or support animal
 - Changing schedules and work spaces to protect allergic or fearful coworkers

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LEGAL ISSUES WITH SERVICE ANIMALS IN THE WORKPLACE

- Don't forget to check state law about service animals in the workplace
- State laws may have more specific laws regarding use of service animals or more broadly define what constitutes a disability.
- For example, the State of Washington's law requires an employer to permit dog guides and service animals in the workplace if the animal provides a disability-related service to an individual with a disability.
 - Example of authorized task under Washington law: helping workers with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. Wash. Rev. Code 49.60.040.

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LEGAL ISSUES WITH PETS IN THE WORKPLACE

- Potential pet-friendly workplace benefits:
 - Helps employees maintain a healthy work-life balance
 - Serves as recruitment/retention tool
 - Encourages employees to take healthy walking breaks instead of sedentary breaks
 - Reduces employee absenteeism and increases productivity because employees no longer need to leave work to walk or care for pet
 - Improve customer perception of employer
 - Improve overall employee morale.

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LEGAL ISSUES WITH PETS IN THE WORKPLACE

- Before adopting a pet-friendly workplace policy, however, employers should consider potential legal risks:
 - Requests for reasonable accommodations for animals outside pet policy
 - Example: employee in dog friendly workplace asks to bring a cat or snake as emotional support animal.
 - Example: pet policy limits size or breed of dog, but employee has a nonconforming dog.
 - Employee with allergies asks the employer to accommodate their allergy as a disability.
 - Employees who, for religious reasons, don't want to bring a dog but would like to bring a cat may claim that a dog-friendly policy is a pretext for religious discrimination.
 - Pets could create workplace hazard under OSHA

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LEGAL ISSUES WITH PETS IN THE WORKPLACE

- Pets could create workplace hazard under OSHA
- OSHA does not prohibit pets in the workplace, but OSHA general duty clause requires employer to keep its workplace free of any recognized hazards that could cause death or serious physical harm to employees.
- OSHA also requires employers to:
 - Keep all workspaces, passageways, storerooms, service rooms, and walking-working surfaces in a clean, orderly and sanitary condition (29 CFR s. 1919.22(a)(1)).
 - Inspect walking and working surfaces regularly and correct, repair, or guard against hazardous conditions as needed (29 CFR s. 1919.22(d)).

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LEGAL ISSUES WITH PETS IN THE WORKPLACE

- Pets in workplace could trigger OSHA general duty clause complaint because of:
 - Water from dog bowls, urine, or pet toys on a walking surface, creating a slipping hazard
 - Dogs or leashes on the floor, creating a tripping hazard



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LEGAL ISSUES WITH PETS IN THE WORKPLACE

- Physical location issues:
 - Does building lease or any other agreements prohibit animals on the premises?
 - How many animals can be accommodated both indoors and outdoors?
 - Can the workspace be arranged to allow animals to be located comfortably next to their owners, avoid confrontation between animals, avoid distractions, and allow animal-free areas if necessary for business reason, health reasons, or for certain employees to feel comfortable?
 - Will allowing animals dramatically increase operating expenses, such as the cost of daily cleaning, landscaping, air filtration, repairs, general maintenance of facilities or insurance?

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LEGAL ISSUES WITH PETS IN THE WORKPLACE

- Other potential liability considerations:
 - How will employer address failures by employees to adequately supervise or clean up after their animals?
 - How will employer obtain honest feedback from employees who may fear negative repercussions from coworkers if they do not like animals in the workplace?
 - What will be the minimum requirements for animals' health and vaccinations and veterinary records?
 - What will the minimum training requirements be for animals allowed at the worksite?

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IMPLEMENTING A PET-FRIENDLY WORKPLACE

- To minimize common problems with pet-friendly workplaces, first conduct a survey, focus group or pet attitude questionnaire to determine allergies, phobias, culture, etc.
- Then, implement a written pet policy and enforce it in a fair and nondiscriminatory manner.

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IMPLEMENTING A PET-FRIENDLY WORKPLACE

- For the written policies, consider:
 - Limiting the types of animals allowed in the workplace (such as dogs only, or dogs, cats and fish);
 - The size or breeds of animals allowed;
 - The number of animals each employee may bring in per day
 - The number of animals that may be brought into the workplace as a whole
 - The times during which, or places where, pets may be present, as business or client needs require
 - Requiring employees to register the details about the animal they plan to bring
 - Requiring approval of employee's manager and nearby coworkers before bringing the animal
 - Requiring employees to clean up after their animal
 - Requiring animals to be well-behaved, housebroken, vaccinated, parasite-free and healthy and requiring proof thereof

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IMPLEMENTING A PET-FRIENDLY WORKPLACE

- Requiring animals to be on a leash and under the owner's supervision at all times
- Prohibiting long leashes and requiring toys, dishes and beds be located in certain areas to avoid tripping hazards
- Establishing a pet and pet owner etiquette policy with accompanying discipline (three-strikes) for minor infractions or zero-tolerance for biting and other more serious issues
- Creating a pet-free zone
- Complaint policy
- Conflict policy for pets that can't get along with another employee or animal
- Animal abuse policy
- Evaluation policy

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CASE SCENARIO #1

- ABC Company has a no pet policy. A new employee, Terry, shows up with a dog at work. The dog was not mentioned at the interview. Terry's supervisor approaches him about the dog and asks how the dog helps him. Terry responds that it is comforting to have the dog nearby and can help calm him down. The supervisor states that it sounds like a pet, not a service animal and that dogs are not allowed on premises. The supervisor contacts HR after she sends Terry home. What should HR do?
- 1. Deny employee's request for dog based on no pets policy.
- 2. Refer matter to employer's disability program manager for consideration.
- 3. Deny employee's request because becoming anxious is not a disability.
- 4. Grant request on a trial basis.
- 5. Deny request because even if employee has a disability, the dog is an emotional support animal and the law only allows service animals.

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RESPONSE

- Referring matter to employer's disability program manager for consideration is probably the best option. #5 is incorrect because the EEOC recommends processing requests for animals like any reasonable accommodation request.

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CASE SCENARIO #2

- Based on the description of Terry's need for his dog, the Disability Program Manager at ABC Company concludes the dog is a pet and that ABC doesn't have to let the employee bring the dog to work. But, the Disability Program Manager wants to be sure and asks the employee's doctor to complete a reasonable accommodation form after Terry gives consent to do so. The Disability Program Manager asks the doctor whether Terry is substantially limited in one or more life activities and why Terry needs the dog at work. Terry's doctor responds that Terry is an Iraq war veteran and suffers from panic attacks and sleeplessness. Terry is on medication, but it is not always effective. Someone at the VA stated that a dog might help in addition to medication and therapy. Terry is able to work without restrictions, however. What should the Disability Program Manager recommend based on the information provided by Terry's physician?
- 1. Deny request because the doctor says Terry does not have a disability.
- 2. Deny the request because the dog is not a service animal.
- 3. Ask the doctor for a specific diagnosis and to describe how the employee is limited or would be limited when experiencing anxiety.
- 4. Deny the request because there is not evidence that the dog will help Terry perform essential elements of the job.
- 5. Allow the dog on a trial basis.

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RESPONSE #2

- EEOC thinks offering Terry the trial period is the best option. Employer can ask the doctor for a specific diagnosis, but it probably is not necessary in this case (could probably guess it is PTSD).

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CASE SCENARIO #3

- Terry begins bring his dog to work. Terry's coworker has serious allergies to dogs causing watery eyes and difficulty breathing. The co-worker has an office near Terry's. What should Terry's supervisor do?
- 1. Inform Terry that his dog can't remain because ABC exceeded its obligation under the ADA and it is affecting another employee's health.
- 2. Refer the co-worker to the Disability Program Manager.
- 3. Rescind the agreement to allow Terry to bring his dog but tell Terry only because telling others would violate confidentiality.
- 4. Devise a short-term solution to limit the co-worker's contact with Terry's dog and consult the Disability Program Manager about a more permanent solution.

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RESPONSE #3

- #4 is the best option. Terry's supervisor could relocate Terry's co-worker, but should be cautious about not segregating employees or excluding employees. Sometimes remote work arrangements help. Conference room meetings can be addressed by having the employee call in)but don't always have the person with the allergy or the one with the dog always having to call in). Don't need to get the Disability Program Manager involved if the supervisor comfortable with the short-term solution.

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CASE SCENARIO #5

- After the trial period, ABC agrees to allow Terry to continue bringing his dog to work as a reasonable accommodation, emotional support animal. There is an opportunity for ABC's employees to enroll in a leadership training class offered by a third-party vendor at a nearby hotel conference center. Terry signs up for the training. When he shows up at the hotel with his dog, someone at the hotel asks Terry if the dog is a service animal and what service the dog performs. Terry responds that his dog is an emotional support animal. The hotel states that it does not allow emotional support animals, only service animals and asks Terry to leave. Is this permissible? What could ABC have done differently to avoid this?

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RESPONSE #5

- Hotel is covered by Title III of the ADA, which requires public places to permit service animals, not emotional support animals. ABC could have anticipated these types of accommodation issues in advance and asked employees to inform ABC if they need accommodations for the training so ABC could inform the training company. ABC could have built accommodation needs into the contract with the training company.

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CASE SCENARIO #6

- WellWays, ABC Company's wellness vendor, would like to incorporate allowing pets in the workplace as part of a holistic wellness program offering. According to a recent employee survey, bringing pets to work was one item that the majority of survey respondents requested. What should WellWays consider before approaching ABC with this wellness program feature?

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RESPONSE #6

- Does building lease or any other agreements prohibit animals on the premises?
- How many animals can be accommodated both indoors and outdoors?
- Can the workspace be arranged to allow animals to be located comfortably next to their owners, avoid confrontation between animals, avoid distractions, and allow animal-free areas if necessary for business reason, health reasons, or for certain employees to feel comfortable?
- Will allowing animals dramatically increase ABC's operating expenses, such as the cost of daily cleaning, landscaping, air filtration, repairs, general maintenance of facilities or insurance?
- How will employer address failures by employees to adequately supervise or clean up after their animals?
- How will employer obtain honest feedback from employees who may fear negative repercussions from coworkers if they do not like animals in the workplace?
- What will be the minimum requirements for animals' health and vaccinations and veterinary records?
- What will the minimum training requirements be for animals allowed at the worksite?
- What kinds of animals will be allowed?

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Q&A REMINDER

The following Q&A session does NOT constitute legal advice and should not be used as such. It is for educational purposes only.

WELCOA Members should retain legal counsel to obtain definitive answers.

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■ For more information, contact:

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