Service and Comfort Animals in the Workplace

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I. Introduction

May I bring my hen to work today? As an employer, this request may seem like one that does not merit much consideration. The process required to adequately respond to this question and comply with the law, however, may be more involved than you would initially think.

Indeed, it was not very long ago that seeing a pet in the workplace would have been an uncommon sight. Typically, the only animals in the workplace would be service animals to assist employees suffering from an obvious disability. Today, however, it is becoming increasingly common to see pets in the workplace. There are several reasons for this increase. First, employers generally are creating more pet-friendly environments in the workplace because the presence of pets has been found to increase productivity and reduce stress. Second, the increase in pets in the workplace is attributable to the use and acceptance of comfort animals, therapy animals, and emotional support animals. This trend should not be surprising given that mental illnesses, such as depression, are the third most common cause of hospitalization for persons aged 18-44 in the United States, and anxiety disorders are the most prevalent mental illnesses in the United States. See Mental Health: Data and Publications, CTRS. FOR DISEASE CONTROL & PREVENTION https://www.cdc.gov/mentalhealth/data_publications/index.htm (last updated January 26, 2018). Although many employers may still have a “no pet policy” in the workplace, such employers need to be cognizant of certain laws, more specifically, the Americans with Disabilities Act, when a request is made by an employee to have emotional support animals, comfort animals, or therapy animals accompany them to work.
Therefore, this Article aims to provide you with an overview of the legal considerations that you, as an employer, should make when asked: May I bring my hen to work today?

II. Americans with Disabilities Act

In the United States, it is still common for employers to prohibit pets in the workplace. Employers with no pet policies, however, may nevertheless be faced with a request from an employee to bring an emotional support, therapy, or comfort animal or emotional support animal with them to work. Although there is no federal law directly addressing the use of emotional support, therapy, or comfort animals in the employment context, the Americans with Disabilities Act (“ADA”) may require the employer to accommodate these requests.¹

In 1990, Congress enacted the ADA “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” See 42 U.S.C. § 12101(b)(1). The ADA, among other things, prohibits employers from discriminating against a qualified individual because of a disability, and further requires employers to provide a reasonable accommodation to individuals with a disability, unless doing so would cause an undue hardship. The ADA defines discrimination to include:

[A] failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making

¹ Service animals are different than emotional support, therapy, or comfort animals. However, an emotional support, therapy, or comfort animal may be considered a service animal depending on the disability and therapeutic needs of an employee.
such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations

Id. § 12182(b)(2)(A)(ii).

So what considerations must an employer undertake when asked to provide a reasonable accommodation, including, perhaps, a request to bring an emotional support animal to work?

a. Reasonable Accommodation Framework

As discussed previously, the ADA requires employers to provide a reasonable accommodation to individuals with a disability, unless doing so would cause an undue hardship. The Code of Federal Regulations ("CFR") provides that a reasonable accommodation under the ADA, is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities. See 29 C.F.R. § 1630.2(o). The regulations provide that an undue hardship occurs when the request imposes a significant difficulty or expense. See 29 C.F.R. § 1630.2(p).

i. Threshold requirements

When an accommodation request is made by an employee, employers that are subject to the ADA are required to engage in what is referred to as an “interactive process” when responding to the employee’s request. Before an employer is required to engage in the “interactive dialogue,” however, certain requirements must first be met. Thus, the first step in responding to a request for an accommodation requires the employer to make several threshold determinations.
When presented with a request, an employer should first determine whether it is covered by the ADA. A private employer is covered under the ADA if it has fifteen (15) or more employees on its payroll for twenty (20) or more calendar workweeks in either the current or preceding calendar year. See 42 U.S.C. § 12111(5)(A); 29 C.F.R. § 1630.2(e)(1). There are certain exceptions that apply, however. See C.F.R. § 1630.2(e)(2). Additionally, the ADA applies to state government employers. See 42 U.S.C. § 12202. Notably, any suit for monetary damages with respect to state government employers is subject to restrictions imposed by the Eleventh Amendment. See Bd. Of Trs. of Univ. of Ala. v. Garrett, 531 U.S. 256 (2001).

The next step is to determine if the employee is covered by the ADA. The ADA protects disabled individuals who are qualified for the position in question. See 42 U.S.C. § 1211(a). Therefore, the individual must be qualified and disabled as defined by the ADA. The regulations provide that an individual is qualified if that individual has the skills, experience, education, and other job related requirements necessary for the position and is able to perform essential functions of the job with or without reasonable accommodation. See 29 C.F.R. § 1630.2(m). The ADA defines disability with respect to an individual as “a physical or mental impairment that substantially limits one or more major life activities of such individual” or that an individual has “a record of such impairment.” See 42 U.S.C. 12102. The regulations further define physical and mental impairment. See 29 C.F.R. § 1630.2(h)(1)-(2). It is also worth noting that state or local laws may have a broader definition of disability or might provide more generous employee protections than those afforded under the ADA.
If the employer and employee are subject to the ADA, the next step in responding to a request for a reasonable accommodation is to engage in the “interactive process.”

ii. The interactive process

Federal courts have stated that the employer must be proactive during the “interactive process.” See Taylor v. Pheonixville School Dist., 184 F.4d 296, 315-316 (3d Cir. 1999). “Although an employee’s request for reasonable accommodation requires a great deal of communication between the employee and employer . . . this does not mean that the employer has the unreasonable burden of raising and discussing every conceivable accommodation with the disabled employee.” Tobin v. Liberty Mut. Ins. Co., 433 F.rd 100, 109 (1st Cir. 2005). So what does the process look like when an employer is asked to provide a reasonable accommodation to a disabled employee?

Employers should take the following steps in order properly engage in an interactive dialogue:

Determine the job’s essential functions. Analyze the particular job involved and determine its:

- purpose; and
- essential functions.

Establish the individual’s limitations. Consult with the individual with a disability to ascertain:

- the individual’s precise job-related limitations; and
- how those limitations could be overcome with a reasonable accommodation.

Explore potential accommodations. Confer with the individual to be accommodated to:

- identify potential accommodations; and
- assess their effectiveness in enabling the individual to perform the essential functions of the job.
Select the most appropriate accommodation. Consider the preference of the individual to be accommodated and select and implement the accommodation that is most appropriate for both the employee and the employer.

See Interactive Process Under the ADA, Practical Law Practice Note 5-509-4840 (citing 29 C.F.R. § pt. 1630, App.)

“[A]n employee’s accommodation request, even an unreasonable one, typically triggers an employer’s duty to engage in an ‘interactive process’ to arrive at a suitable accommodation collaboratively with the employee.” Wilson v. Dollar Gen. Corp., 717 F.3d 337, 346-47 (4th Cir. 2013). Although the “interactive process” is to be “informal” and a means of uncovering potential reasonable accommodations that could overcome the employees disability, see C.F.R. § 1630.2(o)(3), a failure to engage in the process at all amounts to discrimination per se under the ADA. See Higgins v. New Balance Athletic Shoe, Inc., 194 F.3d 252, 263-64 n.5 (1st Cir. 1999).

b. Service animals vs. emotional support animals

The term “service animal” may conjure images of a guide or seeing-eye dog for someone who is blind or otherwise visually impaired. Although such a guide or seeing-eye dog certainly qualifies as a “service animal” there are myriad reasons an individual may seek to use a “service animal” beyond vision impairment. So what makes an animal a “service animal”?

Service animals are not specifically addressed or defined in Title I of the ADA. The term “service animal” is defined, however, in the regulations pertaining to Titles II and III of the ADA. Pursuant to those regulations, a “service animal” means “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.” See 28 C.F.R. § 35.104. The regulations further provide that:

Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors.

*Id.* What is expressly excluded from this definition is the use of an animal for emotional support. *Id.* (observing that “[t]he crime deterrent effects of an animal’s presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition”).

Nowadays, it is not uncommon for someone to have an animal that they describe as an emotional support animal, comfort animal, or therapy animal. Although these animals may provide therapeutic or emotional benefits to an individual, they are not typically trained to perform any specific task and would therefore not fall within the definition of “service animal” discussed above. Addressing this issue, the Department of Justice has stated that there is no need to include emotional support dogs within its regulations because it includes psychiatric dogs within its definition of “service animals.”

*See Nondiscrimination on the Basis of Disability in State and Local Government Services, 73 Fed. Reg. 34, 473 (June 17, 2008) (codified at 28 C.F.R. 35).*
What is also telling from the above-referenced definition is that the term “service animal” as defined only applies to dogs. Indeed, the definition clearly states that “[o]ther species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition.” See 28 C.F.R. § 35.104. It is also worth noting, however, that in addition to dogs, miniature horses also qualify as a “service animal.” See 28 C.F.R. § 36.302(c); see also See U.S. DEP’T OF JUSTICE: CIVIL RIGHTS DIV., ADA 2010 REVISED REQUIREMENTS: SERVICE ANIMALS 1-3 (2011). As discussed below, this definition is expanded in other areas of the law to include animals other than dogs and miniature horses.

Although the definition of “service animal” is fairly rigid, many advocates argue that given the benefits provided by emotional support animals the definition of “service animal” should be expanded. These advocates note that the benefits of “emotional support animals” are not in dispute and include assisting those diagnosed with depression to get out of bed and interact with others, assisting individuals who suffer from Alzheimer’s or dementia, and assisting persons with psychotic, mood, or anxiety disorders. See Chelsea Hernandez-Silk, They Say Emotional Support Dog, We Say Service Dog: Why the Americans with Disabilities Act Should Recognize Emotional Support Dogs As Service Animals?, 21 RICH. PUB. INT. L. REV. 313, 319 (2018).

c. Cases addressing service animals, emotional support animals, and the ADA

So with this framework and these definitions in mind, do you need to allow an employee to bring a hen to work? As is common in many areas of the law, the answer is, “it depends.” Although a firm “no” is not the correct response, an unequivocal “yes” is not required either. As discussed above, it is clear that an emotional support animal
does not qualify as a “service animal” as defined by the regulations applicable to Titles II and III of the ADA. Pursuant to Title I of the ADA, which applies to private employers, employers are required to offer reasonable accommodations to qualified, disabled employees and this obligation exists irrespective of the definition of “service animal.” Whether an animal meets the Title II or III definition of service animal, or is merely an emotional support animal, comfort, or therapy animal, does not determine whether allowing an animal in the workplace is a reasonable accommodation for a disabled employee. Service Animals and Pets in the Workplace, Practical Law Practice Note w-013-5647 at 4. “Similarly, accommodation requests are not limited to dogs or miniature horses, and may extend to other species such as cats, monkeys or pigs.” Id.

Therefore, an employer under Title I of the ADA cannot simply refuse a disabled employee’s request to use an animal in the workplace solely based on the fact that that animal does not meet the definition of “service animal” applicable to Titles II and III of the ADA. Id. As a result, an employer cannot refuse a disabled employee’s request to use an animal in the workplace simply because the animal does not meet the ADA’s definition of “service animal.” Id. (citing EEOC v. CRST Int’l, Inc. 2017 WL 4959219, at *1-2 (M.D. Fla. Nov. 1, 2017)). Conversely, however, merely because a disabled employee’s animal qualifies as a “service animal” as defined, does not automatically obligate an employer to permit the employee to use the animal in the workplace. Id.

The employee and employer must engage in the interactive process to determine whether allowing the animal is a reasonable accommodation that assists the disabled employee in performing an essential job function and is an accommodation that does not impose an undue hardship on the employer.
In *Arndt v. Ford Motor Co.*, 247. F. Supp. 3d 832 (E.D. Mich. 2017), an employee sought to bring a service dog to work as a reasonable accommodation. This included accompanying the employee on the factory floor because he was having issues with post-traumatic stress disorder. The court concluded that the employee failed to prove that having a service animal would have enabled him to perform the essential functions of his job. Neither the employee nor his physician ever told the employer what job functions the employee was unable to perform because of his post-traumatic stress disorder or how the service dog would assist him in performing those functions.

In *Schultz v. Alticor/Amway Corp.*, 177 F. Supp. 2d 674 (W.D. Mich. 2001), an employee sought to bring his service dog to work to assist with his hearing loss and stability issues. The court ultimately held that the employer was no required to accommodate the employee by permitting the service dog in the work place given that the employee's job required him work at a desk and required minimal contact with other employees. Very simply, the Court found that the employee was unable to list any job function that would require the use of his service dog.

In *Clark v. School District Five*, 247 F. Supp. 3d 734 (D.S.C. Mar. 29, 2017), however, the court concluded that fact issues precluded summary judgment for the employer on an employee's request to use a service animal. This is not surprising given the fact intensive process associated with reasonable accommodation requests and the "interactive process." In *Clark*, a former school district teacher sought to bring a service dog to school with her as an accommodation for her disability, namely, post-traumatic stress disorder and panic disorder. The dog, a Chihuahua, was trained to respond to and interrupt anxiety and panic attack symptoms and to provide pressure to
the employee’s chest. Although the school initially allowed the dog to accompany the teacher to school as part of a therapy dog program, after a location change the school did not allow the dog to accompany the teacher to work. On summary judgment, the court ultimately concluded that issues of material fact existed regarding, among other things, whether: (1) the employee could perform the essential functions of her job without the accommodation; (2) the employer unreasonably failed to engage in the interactive process, and (3) the accommodation was the only reasonable accommodation available. Ultimately, through the “interactive process” it must be determined whether allowing the service animal or emotional support animal in the workplace is a reasonable accommodation that assists a disabled employee in performing an essential job function without imposing an undue hardship on the employer. The practical considerations an employer should undertake in evaluating a reasonable accommodation request pertaining to an emotional support animal are discussed further in Part IV of this Article, but prior to that discussion it may be helpful to briefly examine other areas of the law outside the ADA that have addressed or are addressing the use of service animals, emotional support animals, and comfort animals.

III. Other considerations and laws addressing emotional support and service animals

Many advocates strongly oppose the Department of Justice’s definition of “service animal.” See, e.g., Mary Faithfull, Advocacy, Inc., Comment Letter on Proposed Rule to ADA Title II & III (Aug. 18, 2008), https://www.regulations.gov/document?D=DOJ-CRT-2008-0016-1579. This is especially true in light of other federal laws such as the Fair Housing Act (“FHA”) and the Air Carrier Access Act (“ACAA”) both of which seem to acknowledge the importance of providing access to those with emotional support
animals. Although the FHA and ACAA have broader definitions when it comes to emotional support animals, there are other laws and regulations an employer needs to consider when asked if an animal can be reasonably accommodated at work, such as the Occupational Safety and Health Act (“OSHA”). Navigating this additional legal framework also may be a consideration for employers and businesses that are deemed to be public accommodations, depending upon the situation in which an individual seeks to include a service animal.

a. Fair Housing Act

The FHA, which was passed as part of the Civil Rights Act of 1968, was enacted to prevent discrimination on the basis of race, color, national origin, or gender in housing, but was subsequently expanded to prevent discrimination against disabled persons. See Chelsea Hernandez-Silk, *They Say Emotional Support Dog, We Say Service Dog: Why the Americans with Disabilities Act Should Recognize Emotional Support Dogs As Service Animals?*, 21 RICH. PUB. INT. L. REV. 313, 324 (2018). In the context of the FHA, if a plaintiff can prove a failure to provide a reasonable accommodation, such as a service dog, the plaintiff may prove discrimination. *Id.*

The Department of Justice and Department of Housing and Urban Development are responsible for enforcing the FHA. The Department of Housing and Urban Development utilizes a much broader definition of “service animal” when compared with the definition applicable to Titles II and III of the ADA. In guidance, the Department of Housing and Urban Development defines an “assistance animal” as “an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates or one or more identified
symptoms or effects of a person’s disability.” See JOHN TRASVIÑA, U.S. DEP’T OF HOUS. & URBAN DEV., SERVICE ANIMALS AND ASSISTANCE FOR PEOPLE WITH DISABILITIES IN HOUSING AND HUD-FUNDED PROGRAMS 2 (2013), https://www.hud.gov/sites/documents/SERVANIMALS_NTCFHEO2013-01.pdf. Therefore, pursuant to the FHA an emotional support animal can qualify as a reasonable accommodation. Id.

For example, in Castillo Condo Ass’n v. HUD, 821 F.3d 92 (1st Cir. 2016), the Department of Housing and Urban Development charged Castillo Condo Association with discriminating against a homeowner after it refused to allow the homeowner to have an emotional support dog as a reasonable accommodation, thereby forcing the homeowner to vacate and sell his unit. A finding was entered that the Condo Association had discriminated against the homeowner under the FHA. The Condo Association petitioned for judicial review. The First Circuit affirmed the finding of discrimination noting that substantial evidence supported the finding that the Condo Association’s refusal to permit the homeowner to keep an emotional support dog in his condominium unit as a reasonable accommodation for his disability violated the FHA.

In a similar case, the Department of Housing and Urban Development charged Kent State University with housing discrimination under the FHA for refusing to allow a student with disabilities to keep her emotional support dog in her campus apartment despite a letter from the University’s psychologist stating that an emotional support dog was the best way for this student to cope with her disabilities. See HUD v. Kent State Univ., FHEO Nos. 05-10-0670-8 & 05-10-0669-8, at 1 (HUD ALJ Aug. 1, 2014). The
student was ultimately forced by the University to vacate her campus apartment, which constituted discrimination under the FHA. *Id.*

In another case, however, a New York Federal Court found that a tenant that suffered from diabetes was not entitled to keep a second emotional support dog as an accommodation. *See Ayyad-Ramallo v. Marine Terrace Associates LLC*, No. 13-CV-7038 PKC, 2014 WL 2993448 (E.D.N.Y. July 2, 2014). In that case the tenant was already permitted one dog for unspecified reasons, but sought to keep a second dog in her unit as a service animal. The second dog was causing problems for neighboring units and the landlord stated the second dog needed to be removed or the tenant would be evicted. The tenant filed a complaint alleging discrimination under the ADA and FHA. The court ultimately found there was no discrimination under the FHA because the tenant did not establish that she was disabled. It was not disputed that the tenant had diabetes, but she did not establish an activity, much less a “major life activity” that was affected by her diabetic condition and required a service dog.

Therefore, although the FHA clearly recognizes and accepts the use of emotional support animals as an accommodation, such acceptance and use is not without limitation.

a. Air Carrier Access Act

Pursuant to the ACAA, airlines are required to allow passengers with a disability to bring their service animals aboard commercial flights. See 14 C.F.R. § 382.117(a). The ACAA defines a service animal 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.” See
Guidance Concerning Service Animals in Air Transportation, 68 FR 24874-02. The Regulations further provide, however, that:

You are never required to accommodate certain unusual service animals (e.g., snakes, other reptiles, ferrets, sugar glider, rodents, and spiders) as service animals in the cabin. With respect to all other animals, including unusual or exotic animals that are presented as service animals (e.g., miniature horses, pigs, monkeys), as a carrier you must determine whether any factors preclude their traveling in the cabin as service animals (e.g., whether the animal is too large or heavy to be accommodated in the cabin, whether the animal would pose a direct threat to the health or safety of others, whether it would cause a significant disruption of cabin service, whether it would be prohibited from entering a foreign country that is the flight’s destination).

14 C.F.R. § 382.117(f). Thus, while service animals are permitted for emotional support purposes pursuant to the ACAA, the carrier is afforded the right to practical considerations posed by a particular service animal.

Jet Blue, which allows emotional support animals and psychiatric service animals to travel in the aircraft cabins at no additional charge, recently redrafted its policy on emotional support animals. See Service and Emotional Support Animal Travel, JETBLUE, https://www.jetblue.com/at-the-airport/special-assistance/service-dogs-animals/ (last visited April 12, 2019). The policy states that “emotional support animals” are animals that “provide comfort to support a customer’s diagnosed mental or emotional disorder.” Id. The policy further provides that the “emotional support animal” must be trained to behave appropriately in a public setting.

Under Jet Blue’s policy, however, not just any animal can travel as an “emotional support animal.” The policy states that the airline “accepts only dogs, cats, and miniature horses as emotional support animals. We do not accept the following as service animals as they pose unavoidable safety and/or public health concerns: Animals
improperly cleaned and/or with a foul odor; Animals who appear to be in poor health; Animals with tusks; Hedgehogs; Ferrets; Insects; Rodents; Snakes; Spiders; Sugar gliders; Reptiles.” *Id.*

The Jet Blue policy further provides that “[f]or travel beginning July 1, 2018, regardless of purchase date of ticket, customers will be required to provide 48 hours’ notice of their intention to travel with an emotional support or psychiatric service animal.” *Id.* The policy also requires a customer to provide certain documentation, including a medical/mental health professional’s form, veterinary health form, and confirmation of animal behavior. *Id.* These documents must also be submitted 48 hours’ prior to departure and must be submitted for each flight.

One recent article noted that Delta Airlines will ban certain animals after finding those animals caused chaos, including defecating, biting, and mauling. See Ross Ibbetson *Delta BANS all emotional support animals on long-haul fights and young pets from shorter journeys after reports the defecated on board and bit staff – and one person was attached by a 70-POUND dog* (Dec. 11, 2018) https://www.dailymail.co.uk/news/article-6482837/Delta-BANS-emotional-support-animals-long-haul-flights-reported-attack-70-POUND-dog.html. Another article explained that the new Delta policy, which went into effect on December, 18, 2018, banned all emotional support animals on flights longer than eight hours and further banned all service and support animals under fourth months of age, irrespective of the flight duration. See *Delta bans kittens and puppies as support animals on all flights and all emotional-support animals on longer hauls*, (Dec. 11, 2018) https://www.marketwatch.com/story/delta-bans-kittens-and-puppies-as-support-animals-
on-all-flights-and-all-emotional-support-animals-on-longer-hauls-2018-12-10?utm_source=fark&utm_medium=website&utm_content=link&ICID=ref_fark. The airline decided to modify its emotional support animal policy “after finding an 84% increase in reported incidents involving service and support animals in 2016 and 2017, including urination/defecation, biting and even a widely reported attack by a 70-pound dog.” Id.

Similar to the FHA, although the ACAA clearly recognizes and accepts the use of emotional support animals as an accommodation, such acceptance and use is not without limitation.

b. Occupational Safety and Health Act

It is clear that the FHA and ACAA have broader definitions of what constitutes a “service animal” or “emotional support animal” when compared with the definition applicable to Titles II and III of the ADA. However, when faced with a reasonable accommodation request pertaining to an animal, an employer should be aware of the Occupational Safety and Health Act (“OSHA”).

Although OSHA does not have any specific prohibitions against pets in the workplace, it does impose a general duty on an employer to keep its workplace free of any recognized hazards that are likely to cause death or serious harm to its employees. See 29 U.S.C. § 654(a)(1). Additionally, specific safety standards for general industry as defined in OSHA require employers to keep all places of employment, passageways, storerooms, service rooms, and waking surfaces in a clean, orderly, and sanitary condition. See 29 C.F.R. § 1910.22(a)(1). An employer must also provide and ensure each employee uses a safe means of access and egress to and from walking-working
surfaces. Id. § 1910.22(c). Additionally, an employer must inspect walking and working surfaces regularly and correct, repair, or guard against hazardous conditions as needed. Id. § 1910.22(d)(2).

With these regulations in mind, it is not hard to imagine a scenario where an animal in the workplace may generate a complaint of an OSHA violation. For example, “the presence of dogs or other animals in the workplace may trigger an employee complaint that the employer has violated the general duty clause or OSHA regulations . . . by allowing the presence of water from dog bowls, urine, or pet toys on a walking surface, creating a slipping hazard.” See Service Animals and Pets in the Workplace, Practical Law Practice Note w-013-5647 at 6. Additionally, a complaint could be made for dogs or leashes on the floor, creating a tripping hazard. Id.

IV. Practical Considerations for Employers Engaging in the “Interactive Process”

With the ADA framework and “interactive process” in mind, what considerations can and should an employer make when an employee requests to bring an animal to work through a reasonable accommodation request?

As a practical matter, the issue typically will only arise when a disabled employee makes a request to bring a “service animal” or “emotional support” animal to work at a place of employment that does not allow pets or animals. If the employer has a no pet policy but an employee makes a request for a reasonable accommodation to bring an emotional support animal to work the employee and employer must engage in the interactive dialogue. As discussed previously, this is a fact-intensive analysis. As part of this process the employer can and should inquire about, and the employee must demonstrate: “[w]hat essential job functions the employee cannot perform because of
the disability” and “[h]ow the animal will assist in performing those functions.” See Service Animals and Pets in the Workplace, Practical Law Practice Note w-013-5647 at 6.

There are innumerable reasons a disabled employee may claim that a service animal or emotional support animal is necessary, including: guiding blind or low vision employees; providing signals for deaf or hearing-impaired employees; soothing employees’ anxiety or pose-traumatic stress disorder symptoms; detecting or responding to an employees’ seizures; or assisting employees with mobility by opening doors, retrieving dropped items, or providing a source of balance and stability. Id. at 6-7.

There are also numerous reasons an employer may object or hesitate to allow an animal in the workplace, such as: co-workers or customers with a fear or phobia of a particular animal; coworkers’ or customers’ allergies or sensitivities; distractions in the workplace; break time necessary for the employee to tend to the animal to allow for urination or and defecation; animal waste impacting the workplace and surrounding grounds; potential insurance coverage for any workplace illnesses or injuries; potential liability issues for injuries sustained by another employees’ animal; and health and safety concerns such as the speared of zoonotic disease, tripping hazards, animal bites, potential exposure to fleas, ticks, and other pests. Id.

Although there is no specific language under the ADA that an employee must use to request a reasonable accommodation, employers generally should treat requests to bring service animals or emotional support animals to work as such a request. Once such a request is made the employer should promptly engage in the interactive process
to determine whether use of the requested animal is a reasonable accommodation and whether any other available accommodation meets the employees need. There is no bright line answer for every situation so the determination will have to be made on case by case basis through utilization of the “interactive process.” For a more general discussion on engaging in the interactive process under the ADA, see Interactive Process Under the ADA, Practical Law Practice Note 5-509-4840.

Therefore, pursuant to Title I of the ADA an employer’s obligation to allow a service animal or emotional support animal in the work place depends not necessarily on the type of animal, but rather it depends on whether allowing the employee to use the animal constitutes a reasonable accommodation for that employee’s disability, and whether the accommodation is one that does not impose a undue hardship on the employer. “[B]ecause the accommodation process is intended to be a flexible one—for both employees and employers—[an employer] may (and should) take into consideration how the presence of an animal in the workplace will affect [the employer’s] business, . . . customers, and . . . other employees.” See When Rover Comes to work, 26 No. 4 Ala. Emp. L. Letter 5. “[An employer] should weigh any countervailing concerns—and not just basic concerns about the animal itself, like whether its housebroken, loud, or potentially violent, but also broader concerns about how the animal might react or disrupt the health or safety of the work environment or otherwise impeded [the employer’s] ability to do business.” Id.

V. Conclusion

As an employer having read this article, you now are familiar with the laws and the interactive process you should engage in if you are ever asked by an employee to
accommodate a service animal or emotional support animal in the workplace. So don’t get your feathers ruffled if you are ever asked “May I bring my hen to work today?”