

## **Maine Human Rights Commission Issues Guidance Regarding “Service Animals”**

Matthew Tarasevich, Esq. | November 29, 2006

Under the Maine Human Rights Act (“MHRA” or “the Act”), businesses and housing providers are prohibited from discriminating against persons with disabilities who require a “service animal” in order to accomplish the normal tasks of life. On November 17, 2006, the Maine Human Rights Commission (“MHRC”) issued a new guidance brochure which clarifies that the Act’s non-discrimination provisions apply not only to specially trained service animals, such as guide dogs, but also include any “companion” or “emotional support” animal prescribed to a “person with a disability” by a physician or mental health professional. As the guidance explains, a companion or service animal therefore could be any type of animal that is prescribed to provide emotional or therapeutic support to a “disabled person.”

The Act permits persons with disabilities who have a service animal to bring those animals with them into places of “public accommodation” and housing units, subject to certain limitations. “Public accommodations” include nearly any business or public area where the general public is permitted or invited to enter, use, or visit, such as restaurants, stores, public transportation, municipal buildings, libraries, and professional offices, to name a few. Public accommodations, however, do not include private homes, clubs, or parts of businesses that the public is not permitted to enter (such as a restaurant kitchen).

The MHRC guidance counsels that business owners and housing providers must make “reasonable modifications” in their rules, policies, and procedures in order to give a person who uses a service animal an equal opportunity to use and enjoy places of public accommodation or housing. Generally, this means permitting access to the service animal, and not charging persons with disabilities special fees simply because they have a service animal. It is not necessary for an animal to have a collar identifying it as a service animal or for its owner to have any special identification. A business owner or employee is only permitted to ask a patron whether the animal is a service animal and whether it is necessary for a disability – but cannot ask for documentation or proof, or ask about the nature of the person’s disability. Due to the long-term nature of tenancies, a housing provider may go a step further and ask about the nature of the disability, if it is not obvious, and for some evidence that the service animal has been prescribed or trained.

The MHRC guidance also describes some limitations on the use of service animals in businesses and housing units, such as the right to remove the animal from the premises if it is a “direct threat to the health and safety” of others, if it “fundamentally alters the nature” of the business or housing, or if it interferes with the “experiences” of other patrons or tenants. However, a service animal cannot be removed simply because another patron is fearful of animals or has allergies to that animal.

The MHRA’s non-discrimination provisions provide ample opportunities for businesses, employees, and housing providers to inadvertently discriminate against persons with disabilities. In light of the new “service animal” guidance, employers, business owners, and housing providers should:

- Familiarize themselves with their responsibilities under the MHRA regarding persons with disabilities and service animals;
- Train staff and employees on how to deal with persons with service animals in a non-discriminatory manner, and;
- Review and revise any practices and policies that uniformly bar service animals from premises or housing.

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