VETERANS – HAVE YOU SERVED?

Service Dogs and the Americans with Disabilities Protections

By Chad H. Lennon

Under the Americans with Disabilities Act, a service animal is one that is individually trained to do work or perform tasks for people living with disabilities. Service dogs have become more prevalent in the veteran community with great results. Many veterans have been diagnosed with post-traumatic stress disorder and traumatic brain injury. Some of the common symptoms are nightmares, flashbacks, headaches, dizziness, and panic attacks. Service dogs can perform tasks such as reminding a veteran to take medication, prevent impulsive behavior, calm a veteran down from a flashback or anxiety attack, as well as wake up a veteran having a nightmare. Service dogs are just that, providing a service and are not a general pet.

Service dogs will undergo in-depth training as will the veteran who will handle the service dog. The service dog is trained for the specific service it will provide. The training can last months and even years depending on the service. In addition, the handler and dog will undergo training together, usually two weeks. Further, "proof" that a service dog is trained, certified, or licensed is not required. However, service dogs will wear a harness/vest that states they are a service dog. In addition, service dogs are not to be pet like a common dog. They are "on-duty" and are not to be disturbed while performing their service. The harness a service dog wears lets others know the dog is on duty performing its job and is not to be pet or played with. Once the harness is removed, the dog is considered to be "off-duty."

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The ADA does not provide for protection for emotional support dogs because the Department of Justice does not view emotional support as a job the dog can perform. Emotional support is not considered work or a task and therefore, an emotional support dog cannot be a service dog, nor do they have the protections a service dog has.

Where can a service dog go? The answer is anywhere. One caveat is the dog must be under control with the handler. Service dogs cannot be asked to leave or not allowed in a location unless the dog is misbehaving. Such examples are if the dog is not housebroken, acting aggressively, or posing a threat to human health and safety. All service dogs are to be leashed, but if leashing a service dog interferes with the service the dog provides, the dog must be kept under control through voice and/or signals. If the service dog must be removed for a legitimate reason, the establishment must permit the handler to obtain the services or goods they need without the dog's presence.

Businesses and governments usually allow a service dog into places the general public is allowed. Further, service dogs shall be allowed to enter a place where food is prepared or served regardless of state or local codes. ADA service dog laws will always overrule local laws. Only two questions may be asked concerning a service dog. One is if the dog is a service animal that is required due to a disability. Two is what type of work or task the dog has been trained to do. No one can ask the handler about his or her disability, nor any type of identification or certifications for the dog or handler. They also may not ask that the dog demonstrate what it has been trained to do. Veterans with disabilities and their service dogs are not to be isolated from other individuals. They also may not be treated less favorably or be required to pay additional fees because of the service dog. Businesses that charge additional fees or require deposits for pets must waive these fees for service dogs or face serious consequences from the law and the public.

An employer cannot prohibit employment to an employee, or potential employee, because of a disability. Reasonable accommo-

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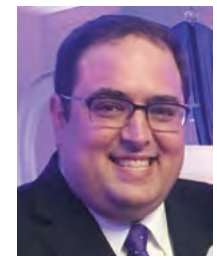
EMPLOYMENT

Top 5 Labor and Employment Laws of 2019

By Mordy Yankovich

As we enter into 2020, it is important to take a look back at the major legal developments in the field of labor and employment law from 2019 as these laws will surely have an impact in the workplace in 2020 and beyond. Attorneys should be aware of these laws in order to assist clients in ensuring compliance.

- **Reforms to New York State Discrimination/Harassment Laws (S6577):** In August 2019, Governor Cuomo signed legislation dramatically increasing protections for victims of discrimination and harassment in the workplace. These include: the "severe and pervasive" standard no longer being applicable; extending protections to independent contractors; permitting recovery of punitive damages and attorneys' fees; prohibiting non-disclosure/confidentiality provisions in settlement agreements; and limiting the effectiveness of the *Faragher Ellerth* affirmative defense. The courts' interpretation and enforcement of these provisions as well as whether the number of discrimination/harassment cases filed in New York State court increase will be interesting to observe in 2020.
- **Expansion of Pay Equity Laws (S6549; S5248B):** Two recent bills were signed into law to combat wage discrimination in New York state. The first law prohibits employers from inquiring into an employee's or applicant's salary history. If the applicant voluntarily discloses his/her salary history, the employer may only confirm the prior wage with the applicant's previous employer. The second law permits individuals to bring pay equity claims based on any protected class (claims were previously limited to discrimination based on sex) and lowers the standard for establishing a wage discrimination claim. The law now protects employees who are paid less than an employee in a different protected class for "substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions." Pay disparity for "substantially similar" work is still permitted if it is based on a legitimate non-discriminatory factor such as seniority.



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- **Added Protections for Immigrants (S5791):** Section 215 of the New York State Labor Law was amended to clarify that unlawful retaliation against an employee for complaining of an alleged violation of the wage and hour laws include "contacting or threatening to contact the United States immigration authorities or otherwise reporting or threatening to report the suspected citizenship or immigration status of an employee's family or household member to a federal, state or local agency." Penalties for violating this provision include civil penalties up to $20,000 and potential imprisonment for committing a misdemeanor. In addition, an employee whose employment was terminated in retaliation for bringing a complaint can file an action to recover lost wages, liquidated damages and attorneys' fees. This amendment may result in more undocumented workers filing claims against their employer for unpaid wages (i.e. failure to pay minimum wage and overtime).
- **Misclassification of Employees as Independent Contractors:** In 2019, the California legislature passed a law (*Assembly Bill 5*) precluding employers form classifying workers as independent contractors unless the worker is free from the control and direction of the hiring entity; the worker performs work that is outside the usual course of the hiring entity's business; and the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed. Following California's lead, Governor Cuomo stated in his recent State of the State Address, that he desires to enact legislation limiting the ability of employers in New York State to classify workers as independent workers. If a similar law is passed in New York state, the number of independent contractors will likely decrease and the amount of Department of Labor audits of employers issuing 1099s to workers will likely increase.
- **Additional Protected Classes of Discrimination (S4037, S660):** In 2019, New York state added several new protected classes. On Oct. 8, 2019, the Executive Law was amended to prohibit religious discrimination in employment relating to the "the wearing of any attire, clothing or facial hair in accordance with the requirements of his or her religion." As of Nov. 8, 2019, discrimination is prohibited in New York state based on an employee's "reproductive health decision making." Additional protected classes are likely on the horizon for 2020.

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PERSONAL INJURY

Adjourning Trial to Accommodate an Expert

By Paul Devlin

Coordinating the availability of witnesses to testify at trial can be a juggling act. Sometimes, counsel is left with no choice but to request an adjournment because an expert witness is unavailable. Fortunately, there is precedent providing that an expert witness's unavailability may provide a reasonable excuse for a party's inability to proceed to trial. However, it is within the sound discretion of the trial court to determine whether an excuse is reasonable.

In the case of Meledez v. Stack, 171 A.D.3d 726 (2nd Dept 2019), this issue arose in our very own courthouse and was decided by Hon. Paul J. Baisley, Jr. The parties in Meledez selected a jury on the third time jury selection which was scheduled. When they appeared to begin trial eight days later, the court advised that a trial part was not available until the following day. Plaintiff's counsel advised he was not prepared to go forward and did not want to be rushed through the process. Over defendant's counsel's objection, the jury was disbanded, and jury selection adjourned four days until Jan. 30, 2017, with trial to start Feb. 1, 2017. The court explicitly stated that the parties could have as much time as they needed to complete the trial. Plaintiff's attorney requested that the matter be adjourned 30 to 60 days instead of the much shorter adjournment proffered by the court. The court denied his request and the parties appeared for jury selection on Jan. 30, 2017.

Paul Devlin

Upon appearing on Jan. 30, 2017, plaintiff's counsel again requested an adjourn-

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