

A hand in a dark suit jacket is shown from the wrist up, pointing upwards with the index finger. The years 2021, 2022, 2023, 2024, and 2025 are overlaid on the hand, with 2024 being the largest and most prominent. The background is a blurred outdoor scene with trees and a bright sky.

# BUSINESS IN 2024

WEEKLY WEBINAR SERIES



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# Your Host



## Kristen E. Smith

Member

[ksmith@bsk.com](mailto:ksmith@bsk.com)

Syracuse, NY

# TODAY'S AGENDA

**Kristen Smith – (12:00PM-12:05PM)**

- Introduction

**David Burgio – (12:05PM-12:15PM)**

- Service and Emotional Support Animals

**Laura Harshbarger – (12:15 PM-12:25PM)**

- Implementation of NYS Paid Breastmilk Expression Law

**Suba Viswanathan – (12:25PM-12:35PM)**

- Travel Time Considerations

**Kristen Smith – (12:35PM - 12:45PM)**

- Questions

# Service and Emotional Support Animals



## David M. Burgio

Associate

[dburgio@bsk.com](mailto:dburgio@bsk.com)

Buffalo, NY

# Definitions

- *Service Animal*- dog that is individually trained to perform specific work or tasks related to a person's disability
- *Emotional Support Animal*- any animal that provides emotional support alleviating one or more symptoms or effects of a person's disability
  - Do not have special training
  - Also called "assistance animal" (FHA)
- *Title III of the Americans with Disabilities Act*- applies to public accommodations and commercial facilities
  - Only considers dogs, and in limited situations, miniature horses as service animals
- *Title I of the Americans with Disabilities Act*- applies to Employers
  - Treats any animal request as a reasonable accommodation request

# Customers or Patrons

- Under Title III of the ADA, businesses and nonprofit organizations that serve the public generally must allow **service animals** to accompany people with disabilities in all areas of the facility where the public is allowed to go
- *Can you ask for proof?*
  - Legal Inquiry
    - May ask: (1) if the service animal is required because of a disability; and (2) what work or task has the dog been trained to perform
  - **Cannot** ask about the disability, medical documentation, license or ID card, or ask for demonstrations

# When can service be denied?

- If the dog is not identified as a service animal by the customer or patron, as under Title III, there is no requirement to accommodate support animals
- If identified as a service animal by answering legal inquiries, can be denied if:
  - The dog is out of control and the handler does not take action to resolve the situation
  - The dog is not house broken
  - The dog is not harnessed, leashed, or tethered, unless the disability/task to be performed prevents this
- *What about allergies?*
  - Under the ADA, allergies or fear of dogs are generally not valid reasons to deny access or refuse service to people using service dogs
- Owners and employees cannot
  - Discriminate or isolate people with service dogs, discriminate in behavior, or charge fees associated with animals to those with service dogs (even if there is a charge for other animals)

# Things to Watchout for

- Doctor's notes do not turn animals into service animals
- There is no certification or license
- In situations with customers, take the answers at face value

IDS & CERTS LETTERS VESTS LEARN MORE ID LOOKUP

Get Your Service Dog a Certificate  
Take your service dog in public with confidence!

**SERVICE DOG**  
SERVICE DOG  
DOG NAME: Tucker  
HANDLER: Olivia Smith  
REGISTRATION NO.: 123456789  
SERVICE DOG REGISTRATION

**EMOTIONAL SUPPORT ANIMAL**  
EMOTIONAL SUPPORT ANIMAL  
DOG NAME: Stanley  
HANDLER: Robert Brown  
REGISTRATION NO.: 987654321  
ESA REGISTRATION

**PSYCHIATRIC SERVICE DOG**  
PSYCHIATRIC SERVICE DOG  
DOG NAME: Buddy  
HANDLER: Karen Brooks  
REGISTRATION NO.: 123456789  
PSD REGISTRATION





# Employees and Staff

- *Do the same rules apply?*
  - Under Title 1 of the ADA, the employers must provide reasonable accommodations
    - This is any change to the application or hiring process, to the job, the way the job is done, or the work environment, that allows a person with disabilities who is qualified to perform the essential functions of the job
    - Applies to service dogs **and** emotional support animals
- *What is “reasonable”?*
  - Depends on the job, the way the disability affects the work, and the environment in which they work
  - Usually, an accommodation will be reasonable if it does not create an undue hardship or direct threat

# The Process

- Laws require an interactive process where employers and employees work together to assess whether the disability can be reasonably accommodated through the use of an animal
- *Interactive Process – not an automatic right*
  - Step 1: Employee (or third party) requests the accommodation for animal
    - Should put employer on notice of the relation to a medical condition
    - No specific method required and employers may **not** condition an accommodation on the completion of a form.
  - Step 2: Analyze Eligibility
    - Employer reviews the request and takes all factors of the job into consideration
    - Employers looks at the link between the medical condition and the request for an accompanying animal
    - Employer asks: Is this employee disabled under ADA definition?

# The Process (Cont.)

- Step 3: Engage in an informal process to clarify needs and identify reasonable accommodation
  - Open dialog with employees
  - Request additional information
    - Can ask for medical documentation if the disability or need for an accommodation is not obvious
    - Documents can only be used to: (1) establish the individual has a disability; and (2) that disability requires an accommodation
    - Once provided, cannot ask for additional proof

# The Process (Cont.)

- Step 4: Look for Alternatives and Make the Decision
  - Employer is the ultimate decision maker
  - Accept or deny the original request with documented reasons for doing so, while providing accommodating alternatives that are effective in allowing employee to perform essential functions of the job
  - Denial of service animals will be rare
    - Generally expected to grant if: (a) the disability and the service animal’s functions are related; (b) the service animal will enable employee to perform job; (c) the animal has had sufficient training; and (d) there is no undue hardship, direct threat, or fundamental alteration to the employer
  - If denied, employer should offer alternative accommodations that provide equal “benefits and privileges of employment”
- Document each aspect of the process and steps taken

# How to be Compliant as an Employer

- Ensure responsible employees understand the law
- Explain to requesting party that there is a difference between Employment and public accommodation rights under the ADA
- Fully engage in the interactive process
- Avoid inflexible policies that treat emotional support animal requests as invalid, while making service animal requests automatic
- Set clear boundaries and expectations
- Address problems with the animal quickly and privately
- Do not ask about animals during hiring unless an accommodation is requested
- Customize accommodations on a case-by-case basis, as every step in the interactive process is a fact-intensive analysis
- Treat requests for animals like any other request for a disability accommodation

# Implementation of NYS Paid Breastmilk Expression Law



**Laura H. Harshbarger**

Member

[lharsbarger@bsk.com](mailto:lharsbarger@bsk.com)

Syracuse, NY

# Breast Milk Expression – New York State

- NYS Labor Law 206-c
- **Applicability**
  - Applies to public and private employers of all sizes
  - Provides for break time and private location

# Breast Milk Expression – New York State

- **Break Time**

- Previously, 20 minutes of unpaid time for expression
- As of **June 19, 2024, 30 minutes of paid time**
  - *“You are entitled to **as many 30 minute paid breaks as you need.**”*
  - Employee’s individualized needs dictate
  - *“Your employer must accommodate you whenever you reasonably need to take a break. The number of break times needed throughout the day will be unique to each individual employee.”*
  - Employee may take additional unpaid time beyond the 30 minutes
  - Employee’s other break time (meals, other breaks) may not be diminished
    - *“As an employer, you cannot deduct paid break time for breast milk expression from the employee’s regular paid break or meal time. The paid time for breast milk expression is in addition to any regularly paid break or meal time. Employees can also choose to take breast milk expression breaks right before or after their regularly scheduled paid break or meal periods.”*
  - Employee cannot be required to make up lost time



# Breast Milk Expression – New York State

- **Notice Requirements**

- Employers must provide “all employees” notice of the right to express breast milk at work at three different times:
  - (1) Time of hire
  - (2) Annually thereafter
  - (3) Upon return from maternity leave
- NYSDOL has issued a policy
  - “Employers are required to tell employees about their rights regarding breast milk expression by providing them **the NYSDOL Policy** on the Rights of Employees to Express Breast Milk in the Workplace when they start a new job and annually thereafter.”
  - <https://dol.ny.gov/breast-milk-expression-workplace>

# Breast Milk Expression – New York State

- **Invoking Rights**

- Up to three (3) years post-birth
- Employee must provide the Employer written notice through letter, email, text, chat app or other communication means used by the employer
  - Employer must respond **in writing** to the request **within five (5) days**

# Breast Milk Expression – New York State

- **Lactation Space Requirements**

- Dedicated room if possible
- If not possible, a temporarily vacant room or “as a last resort” a cubicle with walls at least seven (7) feet tall
- Never a bathroom
- Other physical requirements:
  - functional lock or privacy sign (if cubicle) and, if windows, they must be covered
  - chair and small table or other flat surface
  - an electrical outlet (if the workplace has electricity)
  - good natural or artificial light
  - access to a clean water supply.
  - If there is a refrigerator, employees must be allowed to use the space to store pumped milk.

# Travel Time Considerations



## Subhash Viswanathan

Member

suba@bsk.com

Syracuse, NY

# Ordinary Commuting Time

- Ordinary travel between home and work is not compensable
- Reporting to fixed location vs. different job sites
  - *Kavanagh v. Grand Union Company, Inc.* (2<sup>nd</sup> Cir. 2000)
- Emergency or call-out situation
  - Time spent traveling between home and work may be compensable if the employee is required to travel a substantial distance to perform emergency work outside of regular work hours

# Travel on a Special One-Day Assignment

- Time spent traveling on a special one-day assignment outside the geographical area where the employee regularly works is compensable if there is no overnight stay
- Example:
  - An employee is regularly employed in Syracuse, but is required to travel to Buffalo for a special one-day assignment
  - The employee leaves home at 6:00 a.m. and arrives back home at 7:00 p.m.
  - All time from 6:00 a.m. to 7:00 p.m. is compensable, excluding the employee's regular 30-minute unpaid meal period

# Travel From One Work Site to Another

- Travel from one job site or customer location to another is always compensable
- It is permissible to pay different rates for travel vs. regular job duties
  - Need to ensure compliance with minimum wage
  - Time records must specify how many hours worked at each hourly rate
  - Overtime must be computed at one and one-half times the blended hourly rate or one and one-half times the higher hourly rate

# Out of Town Travel Requiring an Overnight Stay

- All out of town travel that keeps an employee away from home overnight is compensable during the hours that correspond to the employee's regular work day, regardless of whether the travel occurs on a regular work day
- Example:
  - An employee regularly works 9:00 a.m. to 5:00 p.m. on Monday through Friday
  - Out of town travel between 9:00 a.m. to 5:00 p.m. is always compensable even if the travel occurs on Saturday or Sunday



## Out of Town Travel Requiring an Overnight Stay (cont.)

- Out of town travel outside an employee's regular work hours
  - Compensable if the employee drives
  - Not compensable if the employee is a passenger in an airplane, train, bus, or car
- Example:
  - Employee regularly works in New York City 9:00 a.m. to 5:00 p.m. Monday through Friday
  - Employee flies from New York City to Raleigh on an 8:00 a.m. flight on Wednesday and arrives in Raleigh at 10:00 a.m.
  - 8:00 a.m. to 9:00 a.m. not compensable; 9:00 a.m. to 10:00 a.m. compensable

# Questions?



## **Kristen E. Smith**

Member

[ksmith@bsk.com](mailto:ksmith@bsk.com)

Syracuse, NY

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### **New York Employment Law: The Essential Guide**

NYS Bar Association Members can buy the book from the bar [here](#).

Non-NYS Bar Association Members can purchase through Amazon [here](#).

# Thank You

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