

## CLIENT ALERT: Retail Store Held Liable for Denying Patron Entry with Service Dog

In a recent decision, the Massachusetts Commission Against Discrimination (“MCAD”) found that a Costco retail store in Massachusetts impermissibly denied entry to a patron who attempted to enter the store accompanied by his dog. The store apparently had a “no pets” policy which its manager sought to enforce. As this decision highlights, Massachusetts employers should be mindful of the use of service animals as a reasonable accommodation for customers of places of public accommodation – and by extension as a reasonable accommodation for qualified disabled employees.

When denied entry, the customer indicated that he suffered from various physical and mental disabilities including panic attacks and Lyme disease and that the dog, Ozzie, served as a guide dog under the provisions of Massachusetts law. Ozzie was carried in a dog carrier and there were no visible indications that Ozzie was a guide dog, although the customer produced an identification card for the dog from his wallet. The customer claimed that he had trained Ozzie to alert him prior to the onset of a panic attack, remind him to take his medication, and refocus his attention during a panic attack.

After he was not permitted to enter the store with the dog, the Customer filed a complaint with the MCAD. Conceding that “characterizing Ozzie as a guide dog constitute[d] a liberal interpretation [of the Massachusetts law prohibiting discrimination in places of public accommodation of persons with guide dogs],” the MCAD found that the characterization served the purposes of the Massachusetts anti-discrimination statutes. The MCAD awarded the customer \$8,000 in emotional distress damages.

The MCAD ruling is consistent with EEOC rulings and guidance disseminated by anti-discrimination agencies of other states. Places of public accommodation, such as restaurants, stores, theaters, etc, have long been required to allow people to access their locations with their service animals. Service animals can take many forms – cats, birds, even miniature horses and can serve varied functions.

Service animals are also increasingly accepted as a reasonable accommodation to persons with disabilities in the workplace. While the Costco case addressed a fairly clear situation of public accommodation, Massachusetts employers dealing with similar issues in the workplace should be guided by the MCAD decision. Employers may consider a disabled employee’s request for assistance of a service animal in the same manner that it assesses any other requested reasonable accommodation.

Whether an employer is required to allow a disabled employee’s use of a service animal can be a complicated question calling for significant inquiry and analysis depending on the workplace and the nature of the disability. Consultation with counsel on complicated accommodation questions should always be part of an employer’s process.

*David Connelly ([dconnelly@morganbrown.com](mailto:dconnelly@morganbrown.com)) is an attorney at Morgan, Brown & Joy, LLP. He may be reached at (617) 523-6666. Morgan, Brown & Joy, LLP focuses exclusively on representing*



[www.morganbrown.com](http://www.morganbrown.com)

*employers in employment and labor matters.*

This publication was prepared on July 21, 2009.

This publication, which may be considered advertising under the ethical rules of certain jurisdictions, should not be construed as legal advice or a legal opinion on any specific facts or circumstances by Morgan, Brown & Joy, LLP and its attorneys. This newsletter is intended for general information purposes only and you should consult an attorney concerning any specific legal questions you may have.