

## What's Your Policy Toward Pets? You Need To Have One.

If you're a property owner or a business owner, there's always something new to think about. Until recently, you probably never thought you'd have to consider whether your customers, employees, or commercial tenants could bring their pets on to your location.

How things have changed. Enter "pet friendly" into a search engine today and you'll generate numerous listings of retail outlets, employers, and even dining and hospitality establishments that allow — and even invite — pets to accompany their owners. Some restaurants even add pet fare to their menus.

The trend toward pet-friendly business practices is grounded in several factors:

- Compared to other retail markets, the market for pet owners and pet-related expenditures has demonstrated strong and stable growth throughout the 21st century, even during the recession of 2008-09.<sup>1</sup>
- In metropolitan areas, pet owners reportedly have higher levels of income and education than the general population, making them a desirable market segment. Pet ownership has grown substantially among unmarried and childless adults, a demographic with substantial discretionary spending power.<sup>2</sup>
- The pet owner market is highly organized, with vendors of pet care, food, and supplies subsidizing organizations and websites that communicate with millions of pet owners,

actively encouraging them to seek each other out and recommend pet-friendly businesses.

- Over the past few decades, there's been a profound change in attitudes toward pets, a reflection of widespread improvements in pet rearing and a growing appreciation for the positive role "companion animals" can play in people's lives.

### Sorry cats, dogs rule

For most practical purposes, the pet-friendly movement is about accommodating dogs. Dogs are the most common pet in the U.S., comprising about 90 million canines in more than 60 million households that account for nearly half the population of the country.<sup>3</sup> One study claims that dog ownership has jumped 29% in the past decade, far faster than the overall growth in households.<sup>4</sup>

Most dogs by nature need to get out of the house and socialize to thrive. House cats, the second largest category of pets in the U.S.<sup>5</sup>, remain indoors for long periods more easily. Cats are, therefore, much less likely to be seen in commercial establishments, although some establishments feature roaming cats as part of their attraction.

Other animals — such as birds, reptiles, and domesticated rodents — are even less of an issue for commercial establishments, but it is not uncommon to see a patron enter an establishment with a parrot perched on his/her shoulder or a snake draped around his/her neck.



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Given their numbers, their presence outside the home, and their potential for fierceness, dogs are the leading source of bodily injury claims for homeowners insurers, who have responded at times by seeking to exclude or restrict coverage for injuries caused by dogs in general or certain breeds of dogs.

Organizations of dog owners have resisted these efforts, arguing that, in their view, it is the dog owner, not the dog, that is the principal factor for any danger posed by a dog. On that score, dog-rearing practices have improved enormously in recent years.

### "Good boy; good girl!"

Dog-owning practices that were common in the past, such as tethering a dog outdoors or confining it in a cage for long periods, are now widely condemned and prohibited in some communities. At the same time, responsible and humane dog-rearing is vigorously promoted by local authorities, humane societies, and animal shelters.

Today, many dogs spend time in "doggy daycare" facilities and frolic in community "dog parks," where they become accustomed to interacting without hostility to other dogs and different people. In the home, it has become increasingly common to allow dogs into the ebb and flow of family life; years ago, animals were often kept separate from family space.

As a result of this revolution in dog-rearing, it is common to see well-behaved dogs in commercial establishments who are no more disruptive than adult humans, and less disruptive than some children.

### No easy choice

So, is it time to open your doors, literally and figuratively, to pets? Maybe not, but it is time to come up with a pet policy and be prepared to justify it as a matter of business.

There are drawbacks as well as benefits to a pet-friendly policy. There are still risks in allowing animals on premises



(although those risks may be less than formerly believed), and not everyone is "on board" with the new outlook toward pets in public.

Older customers may look askance at the presence of animals, and may fear injury from the actions of even friendly dogs. Children may be delighted to encounter dogs (if they're not frightened), but can naively approach or startle them, prompting a dog to strike out.

Given these persistent realities, if you're managing a property or running a business, you might think a strict "no pets allowed" policy would be the simplest and smartest approach. It's not so simple, however, and may not be very smart.

As indicated above, pet owners are a highly motivated consumer constituency that is organized to patronize their friends and boycott their foes. If you say "no" to one of them, word will get out.

### Landlords and tenants<sup>6</sup>

Generally speaking, landlords have broad range of discretion regarding pets on their property, including rights to:

- Prohibit pets generally (subject to exceptions discussed below);
- Permit some types of pets but not others;
- Establish rules and restrictions regarding pets, such as the number, size, and breeds tenants are allowed to have, and whether they must be spayed or neutered;
- Require additional monetary deposits as security for injuries or damage caused by pets; and
- Withdraw permission for pets on a general or individual basis, subject to lease provisions.

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In the case of residential tenants, landlords are subject to some restrictions in regard to “assistance animals.” These include “service animals,” primarily dogs, which act as guides or perform other visible services for handicapped people, and “comfort” or “emotional support” animals, which help their companions manage psychological and emotional disorders.

Under federal fair housing rules, a residential landlord must make reasonable attempts to accommodate prospective tenants who rely on assistance animals. For their part, tenants seeking to have an assistance animal in a “no pets” apartment must be able to demonstrate that they need the animal to help them manage a physical or emotional disability that impairs their ability to carry out basic life activities.

If an applicant’s disability and need for an assistance animal are not readily apparent, a landlord can request written documentation of them from a medical or psychological professional. That’s not to be done in cases where the disability and need are apparent, as with a blind person and a seeing eye dog.

### Commercial leases

Commercial landlords have greater discretion under federal law to restrict animals on their premises, although they may also be subject to state laws.

Commercial leases are not, for the most part, subject to federal fair housing rules, but they are subject to the Americans with Disabilities Act (ADA), which requires employers and property owners to make reasonable accommodations to people with

disabilities. The ADA generally bars property owners and employers from prohibiting service animals, but excludes emotional support animals from that category.

In most cases, it will be a business decision whether, and under what conditions, commercial landlords will permit pets on premises, but they are advised to be mindful of two considerations:

- Commercial property owners can discriminate among pets, but not among pet owners. Pet policies that are enforced arbitrarily or inconsistently can lead to discrimination claims by pet owners.
- Whenever possible, permission to allow pets on premises should be contracted to individuals, and not included in a lease that can be sublet or transferred to successors.

### In the office

Allowing pets in an office setting is a big break with past practices, but a growing number of employers allow them, including Amazon, Google, and other major companies. Once you think about it, it’s not hard to imagine the benefits. Job candidates who own pets will value the opportunity to bring their companions onsite and may be attracted at less pay than they would otherwise seek, especially if they are saved the cost of pet care and no longer have to go home at lunchtime to “let the dog out.”

Also, an employer will require that any animal allowed in a workplace be well-behaved, so it does not face the risk of



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unfriendly animals coming onsite which could cause injury. There will still be questions about the impact of animals on workplace hygiene, safety, and decorum, but many enterprises are finding these matters to be manageable.

In any case — be it leasing, employment, or retail traffic — property owners and business owners considering whether to allow pets onsite need to pay careful attention to the pet owners' insurance coverage. A tenant or employee may accurately report that there is liability coverage for his or her pet under a homeowners or renters policy, but that coverage could be subject to a business activities exclusion, depending on the circumstances.



Even if pet owners under consideration clearly have coverage for damage or injury caused by their animals, property and business owners need to consider having their own coverage in the event a loss exceeds the pet owner's insurance limits. Owners will generally want the pet owner's insurance to be the primary coverage that responds first to a claim.

It's new and perhaps unnerving for enterprises to consider these questions, but again, many are finding that they can accommodate pets. By doing so, they can leverage the emotional connection employees and customers have to their companion animals.

If a pet becomes accustomed to a workplace, an employee will think twice before leaving a job. If a pet looks forward to visiting an establishment, its owner may patronize it more often, and stay longer. It adds a whole new meaning to "going to the dogs."



<sup>1</sup>American Pet Products Association (APPA), The 2017-2018 APPA National Pet Owners Survey Debut, accessed at [https://americanpet-products.org/Uploads/MemServices/GPE2017\\_NPOS\\_Seminar.pdf](https://americanpet-products.org/Uploads/MemServices/GPE2017_NPOS_Seminar.pdf)

<sup>2</sup>Research and Markets, "United States Pet Population and Ownership Trends Report 2017--Focus on Dogs, Cats, and Other Pets," July 17, 2017; summarized at <https://www.packagedfacts.com/product/print/10858348>; available at [https://www.researchandmarkets.com/research/f9ws72/pet\\_population](https://www.researchandmarkets.com/research/f9ws72/pet_population)

<sup>3</sup>APPA, op. cit.

<sup>4</sup>Research and Markets, op. cit.

<sup>5</sup>Ibid.

<sup>6</sup>References to leasing in this section are drawn, in part, from Beth Pace Tiggelaar, "Is Your Lease Ready For The Pet-Friendly Workplace?," April 5, 2016; accessed at <http://www.mondaq.com/unitedstates/x/479712/landlord+tenant+leases/Is+Your+Lease+Ready+For+The+PetFriendly+Workplace> Stimmel, Stimmel & Smith P.C., "Landlord's Right to Prohibit Pets and Animal-Limits," accessed at <https://www.stimmel-law.com/en/articles/landlords-right-prohibit-pets-and-animal-limits> Joanne Woodsum, "Consequences for Violation of a Commercial Tenant's Dog Policy," accessed at <http://www.jleasinglaw.com/blog/2016/11/8/consequences-for-violation-of-a-commercial-tenants-dog-policy>