



22 November 2021

Access Rights of Assistance Dog Owners

South African Guide-Dogs Association for the Blind (GDA) is a registered Non-Profit Organisation (NPO) and a registered Public Benefit Organisation (PBO). GDA was established in 1953 and the mission of the Association is to enhance the mobility and independence of people who have visual, physical and developmental needs.

This letter is an informational publication highlighting the rights of persons with disabilities and seeks to promote awareness of the minimum standards of accessibility of facilities and services provided to the public. This includes the identification and elimination of obstacles and barriers to accessibility.

**SOUTH AFRICAN LEGISLATION**

**Constitution and Equality Act (PEPUDA)**

In terms of **Section 9 of the Constitution of the Republic of South Africa, No. 108 of 1996 ("the Constitution")** no person may unfairly discriminate directly or indirectly against anyone on the grounds of disability.

**The Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000 ("the Equality Act")** was enacted to give effect to Section 9 of the Constitution to prevent and prohibit unfair discrimination and to promote equality and eliminate unfair discrimination.

The Equality Act seeks to prevent and eradicate unfair discrimination based on disability and to provide measures to protect the human dignity of disabled persons.

The Equality Act is applicable to all persons, including juristic persons.

Discrimination in the Equality Act means any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly imposes burdens, obligations or disadvantage on; or withholds benefits, opportunities or advantages from any person on inter alia, the ground of disability.

The principle of equality under the Equality Act includes the full and equal enjoyment of rights and freedoms as contemplated in the Constitution.

**Section 6 of the Equality Act** states that no person may unfairly discriminate against any person.

**Section 9 of the Equality Act** states that no person may unfairly discriminate against any person on the ground of disability, including:

- Denying or removing from any person who has a disability, any supporting or enabling facility necessary for their functioning in society;
- Failing to eliminate obstacles that unfairly limit or restrict persons with disabilities from enjoying equal opportunities; or
- Failing to take steps to reasonably accommodate the needs of such person.

---

**South African Guide-Dogs Association for the Blind**

**Western Cape Office**  
**De Villiers House**

89 Belvedere Road, Claremont, 7708  
P O Box 2674, Clareinch, 7740  
Tel: 021 674 7395

**KwaZulu-Natal Office**

Office 3, Brannic House  
54 St Andrews Drive, Durban North, 4051  
P O Box 20120, Durban North, 4016  
Tel: 082 875 6244

Email: [info@guidedog.org.za](mailto:info@guidedog.org.za)  
Website: [www.guidedog.org.za](http://www.guidedog.org.za)  
NPO number: 000-758 NPO  
PBO number: 130001003



In addition, in terms of **Section 29 of the Equality Act** it is considered an unfair practice in the provision of goods, service and facilities to unfairly refuse or fail to provide the goods or services to or to make the facilities available to any person or group of persons on the ground of disability.

### **Foodstuffs, Cosmetics and Disinfectants Act**

In terms of the **Foodstuffs, Cosmetics and Disinfectants Act, No. 54 of 1972 ("the Foodstuffs Act")** and **regulation R962(10)(i)** governing general hygiene requirements for food premises and the transport of food, no animal, subject to the provisions of any law, is to be kept or permitted in any room or area where food is handled, except for a guide dog accompanied by a blind person, who may be permitted in the sales or serving area of the food premises.

It is submitted that this provision logically extends to guide dogs who are service dogs in the areas of autism or service dogs required for disabled persons (other than blind persons) on the basis of the principles discussed above in relation to the Equality Act and Constitution.

### **INTERNATIONAL LEGISLATION**

#### **United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)**

South Africa is a signatory to the above Convention which has amongst the general principles: non-discrimination; respect for inherent dignity, individual autonomy including the freedom to make one's own choices and independence of person; full and effective participation and inclusion in society; respect for difference and acceptance of persons with disabilities as part of human diversity and humanity; equality of opportunity and accessibility.

Article 9 urges States Parties to take appropriate measures to ensure persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. State Parties are obliged to identify and eliminate obstacles and barriers.

In addition, the **General Comment 2014 no. 2 of the UNCRPD** reiterates that "as long as goods, products and services are open or provided to the public, they must be accessible to all, regardless of whether they are owned and/or provided by a public authority or a private enterprise" (para. 13).

#### **Current Situation in S A**

On 29 March 2019 Justice Saldanha handed down a landmark judgment, the first in South Africa dealing with the denial of access of a working guide dog. The Equality Court held that a Guide Dog Owner's choice to have a guide dog assist her in her everyday living as a visually impaired person and to assist with her disability "*is a choice worthy of protection and that cannot be removed by another person except for a justifiable cause*".

Justice Saldanha commented that the Department failed to appreciate not only the loss of independence that the Guide Dog Owner suffered as a result of the denial of having her working dog accompany her, but also failed to appreciate the impact the denial of access and their conduct had on the Guide Dog Owner and the embarrassment and humiliation suffered by her.

The denial of access to the Guide Dog Owner and her working dog was held to constitute unfair discrimination on the grounds of the Guide Dog Owner's disability.

The Department was ordered to take steps to accommodate the needs of persons with disabilities; which steps had to include the placing of visible signs at all entrances of the Department that Guide and Service Dogs are allowed and the ongoing training of employees and security guards employed and/or contracted to the Department on the treatment and handling of disabled persons and in particular the identification of guide and service dogs.

The Department was further ordered to report back on oath to the Court within 120 days of the steps it had taken and intended to take in the future to accommodate the needs of persons with disabilities. In addition to these orders, the Court deemed it appropriate to order the Minister of Home Affairs and the Department to tender a written apology to the Guide Dog Owner for the manner in which she and her working dog were treated on 17 August 2017.

### **How this applies to your company**

In terms of the above legislation, should you refuse access and/or service to a person with a disability with their guide/service dog, appropriate recourse in the Equality Court or other appropriate forum may be sought against you and your company.

You should aim to foster respect for the rights and dignity of persons with disabilities and not discriminate on the basis of their disability (be it a person who is visually impaired, a person who is autistic or a person who is physically impaired who requires the assistance of an assistance dog).

You should grant persons with disabilities full and equal enjoyment of the rights and freedoms of all other patrons - including access and enjoyment.

We understand that you and/or your company may have a particular concern relating to access and/or facilities but you should nevertheless aim to provide reasonable assistance to the person with a disability and trust you will communicate this to the person who is disabled and their companion in a courteous manner.

GDA encourages you and your company to allow full access to people who are disabled as this will contribute to the greater social awareness of the rights of people who are disabled.

GDA will advocate for the access rights of people who are disabled who use assistance dogs that have been professionally trained by the Association (or any assistance dog trained by a member organisation of the International Guide Dog Federation or a member Organisation of Assistance Dogs International). GDA will assist people who use assistance dogs to take advantage of the legal rights that they are entitled to.

Should your company require any further information or training please contact, Pieter Van Niekerk, Head of Public Relations, [PieterV@guidedog.org.za](mailto:PieterV@guidedog.org.za) or 011 7053512.