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Dogs Rule: Landlords and Dogs

By ERIN MURPHY

June 26 is the 11th "Take Your Dog to Work Day," an event sponsored by Pet Sitters International Inc. encouraging employees to bring their dogs to work to promote pet adoption. In the past decade, the concept of bringing dogs to work has become more accepted. Large companies - including Google and Amazon - allow dogs in the workplace, and according to [www.cnnmoney.com](#), there are as many as 400 "dog-friendly" employers in the United States. Additionally, CNN/Money.com reports that two-thirds of dog owners say they would work longer hours if allowed to bring their dog to work, and polls by [www.dogster.com](#) and [www.simply hired.com](#) show that pet-friendly workplaces boost employee loyalty. Each of these factors in turn contribute to more tenants requesting that landlords allow dogs in commercial office buildings. When a landlord does allow dogs in commercial office space, it may help the landlord prevail in obtaining a tenant. For example, the Rocky Mountain News reported in 2007 that Chipotle Mexican Grill elected to be the anchor tenant and take 43,000 square feet of office space in Opus Northwest's \$50 million office building in downtown Denver, in part because Opus signed a lease allowing Chipotle corporate employees to bring their dogs to work.

Dog-Friendly Disadvantages

Two important issues for a landlord to consider before allowing a tenant to bring dogs into the tenant's premises are insurance coverage and potential liability. With respect to insurance coverage, a landlord should confirm that its insurance company will not classify the act of permitting dogs in the landlord's commercial office building as an event that changes the scope of the coverage, thus potentially allowing the insurance company to deny a claim, should a claim arise.

With respect to liability, a commercial landlord may be liable for injuries caused by a tenant's dog. In *Portillo v. Aiassa*, the California Court of Appeal held that a landlord owes a duty of care to a tenant and to the general public to provide and maintain the premises in a safe condition, which includes the duty to use reasonable care to discover the risk caused by a dog with dangerous propensities. This includes inspecting the premises or asking others about a dog's personality. Additionally, the court held that a landlord is able to reduce this risk by requiring that the tenant remove the dog, particularly if the landlord has the ability to require the same under the lease or as a condition to agreeing to other requests by the tenant, such as extending the lease term. Accordingly, if a landlord in a commercial office building allows a tenant to keep a dog that later attacks the tenant's agents, employees or invitees, or any other tenants or invitees of the building, the landlord may be held liable if the landlord could have discovered the dangerous propensity of the dog by using reasonable care and eliminated the risk by removing the dog, particularly if the landlord is entitled to require removal of the dog under the lease.

Drafting in the Dogs

If a landlord agrees to allow dogs in a commercial office building, there are two common methods to memorialize the agreement: include a section covering dogs in the lease document; and create a separate side letter. If a tenant requests that a single employee be permitted to bring his pet dog to work, a side letter may work best to accommodate that request. The side letter is an agreement between the landlord and tenant, and may specifically name the individual employee and his dog that is permitted on the premises - and include identifying information including the dog's name, breed and weight. If the tenant requests that some or all employees be permitted to bring their dog(s) to work on a daily basis, or for an

annual event such as Take Your Dog to Work Day, a section governing dogs should be added to the lease.

Whether a landlord chooses to utilize the lease document or a side letter to incorporate the provisions allowing a tenant to bring dogs into the premises (the "Permitted Dogs"), the landlord should consider including the following concepts in the document:

Legal Concepts

*Indemnification: Tenant should agree to indemnify the landlord from all claims resulting from any and all acts of the Permitted Dogs (including biting, causing bodily injury and damaging the property of landlord or any other tenant or occupant of the building), and the presence of the Permitted Dogs in, on or about the building and/or real property.

*Insurance: The tenant's liability insurance should cover dog-related injuries and damage, and the tenant should provide the landlord with a certificate evidencing such insurance before the tenant may bring the Permitted Dogs onto the property.

*Compliance with Laws: Tenant should comply with all applicable laws associated with or governing the presence of the Permitted Dogs at the property and such presence should not violate the certificate of occupancy for the building.

Practical Concepts

*Additional Costs: Tenant should be responsible for any additional costs arising from the presence of the Permitted Dogs in excess of the costs that would have been incurred had the Permitted Dogs not been allowed at the property.

*Veterinary Care: Tenant should provide the landlord with evidence of all current vaccinations and flea treatment for Permitted Dogs having access to the property.

*Waste: Tenant should immediately remove any waste and excrement of the Permitted Dogs from the property and properly clean the affected area. Landlord should consider creating a designated area for Permitted Dogs to relieve themselves.

*Controlling Permitted Dogs: Permitted Dogs should be leashed at all times that they are not within the tenant's premises. A landlord may also require that the tenant keep Permitted Dogs in an enclosed area located in the tenant's premises to decrease the risk of Permitted Dogs escaping from the tenant's space.

*Nuisance: Any Permitted Dogs should not bark excessively or otherwise create a nuisance at the building and/or real property.

A landlord also should consider including a provision that gives the landlord the unilateral right to immediately rescind a tenant's right to have Permitted Dogs in the premises - seeing-eye dogs and other service animals excepted - if the tenant violates a lease provision that governs the Permitted Dogs or, in Landlord's good faith determination, there is a legitimate business reason not to continue to allow Permitted Dogs in the premises.

With careful consideration and proper documentation, it is possible for a landlord of a commercial office building to allow a tenant to bring pet dogs into the workplace, either on a regular basis or for special events like Take Your Dog to Work Day, and give the phrase "working like a dog" a new meaning.

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